

NAIOP

June 27, 2007

Navigating* the Entitlement Process

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*** If it's navigable, Mike has to get it permitted**

Area Growth Through 2030

	<u>2005</u>	<u>2030</u>	<u>Increase</u>
<u>Fairfax County</u> ¹			
Population	1,039,300	1,493,200	43.7%
Jobs	820,200	1,548,900	88.8%

<u>Loudoun County</u> ²			
Population	247,300	480,600	94.3%
Jobs	122,700	271,200	121.0%

¹ Source: "More Jobs Than People," delivered by Stephen S. Fuller at Issues Fairfax: Fairfax 2030, on April 26, 2007 – <http://www.cra-gmu.org>.

² Source: "Growth Trends to 2030: Cooperative Forecasting in the Washington Region," published by the Metropolitan Washington Council of Governments, on October 11, 2006 - <http://www.mwcoq.org>.

"A tree is a tree. How many more do you have to look at?"

- Ronald Reagan



Entitlement Process

- **Citizens**
- **Local Planning and Transportation Staffs**
- **Planning Commission**
- **Board of Supervisors, City or Town Council**

Agencies that Review Entitlement Cases

- **Environmental Review**
- **Transportation Staff**
- **Parks and Recreation**
- **School Board**
- **Sewer Authority**
- **Storm Water Management**
- **Urban Forestry**
- **VDOT**
- **Water Authority**
- **Planning**
- **Zoning**

- "The government's view of the economy could be summed up in a few short phrases. If it moves, tax it. If it keeps moving, regulate it. And if it stops moving, subsidize it."
- "It is not my intention to do away with government. It is rather to make it work -- work with us, not over us; stand by our side, not ride on our back."
- Government can and must provide opportunity, not smother it; foster productivity, not stifle it. This Administration's objective will be a healthy, vigorous, growing economy."

- Ronald Reagan





Tuesday, November 6, 2007



Virginia: red, blue or purple?

“Virginians do not register by party. So even if they have a party lean, I think Virginians are pretty darn independent. And so they're willing to make up their mind based upon the particular time and the person, and that means, when they see at the national level things going in a bad direction, they're willing to make a change.”

- Governor Tim Kaine

“Virginia has been a decided movement towards Republican leadership. The Democrat Party controlled the legislature for 130 years; it's only been eight years, for the first time in history, that the Republicans took over.”

- Attorney General McDonnell

Despite recent setbacks in statewide elections -- including the loss of what proved to be a nationally decisive Senate seat -- Virginia remains “a Republican leaning state.”

- Larry Sabato, University of Virginia

Politics Count & Timing Can Be Key



- Governor Kaine's (D) major slow-growth success: a measure authorizing the Virginia Department of Transportation to measure regional traffic impact of development proposals.
- At his request, VDOT conducted a pilot study this year of a Loudoun County proposal ("Dulles South") that would have allowed as many as 33,800 homes in a 9,200-acre area west of Dulles International Airport.

The Washington Post, November, 2006

The Dulles South proposal was defeated.



"It is not a Democrat issue, it is not a Republican issue, it is an economic justice issue," the Prince William County Republican said. "Developers have to pay for the cost of development and stop shoving this off on the citizens."

- Robert G. Marshall (R- Prince William)

Pop Quiz: Which area leader made the following statements?

“I am very pleased that one effect of the turndown has been positive. It has really slowed down the rate of development . . . and that is going to give us time to catch up with building roads and schools and infrastructure.”

“[We need] more authority to slow down residential development and more assistance in terms of road construction.”

“We’ll find another way. Democrat or Republican, communist, whatever, you’re stuck in the same traffic. United, we’ll win this war.”

“We have good tools [to control growth] The biggest one is the power to rezone. We unfortunately have not been using it effectively, and this board over the past two years has approved virtually every major rezoning that has come before it.”

- A. Stewart Schwartz, Executive Director, Coalition for Smarter Growth**
- B. Timothy Kaine, Democratic Governor, Commonwealth of Virginia**
- C. Corey Stewart, Republican Chairman, Prince William Board of County Supervisors**

Capital Facilities

Amount per unit

	<u>SFD</u>	<u>SFA</u>	<u>MF</u>
Loudoun County	\$46,809	\$29,709	\$18,904
Prince William County	\$37,719	\$31,927	\$19,526

Atmospherics, Citizens & Politics

Fairgrowth Network: <http://www.fairgrowthnetwork.org>

Fairgrowth	Notollincrease.com
Wedderburn Neighbors	Old Meadow Road Land Bay
Hunter Mill Defense League	Citizens for Fair Zoning
South County Fairgrowth	Hunter Mill Action Coalition
Options for Oakton	McLean Citizens Association
Friends of Burke's Spring Branch	Play by the Rules
Providence District Council	Historic Oakton
Friends of Hunter Mill Road	Friends of Nottoway
Southwest Vienna Citizens Association	Friends of Accotink

"As the [Fairfax County Planning] Commission's vote nears [on the MetroWest re-zoning] . . . the proposal's details continue to fall short of the 'Smart Growth' or 'Transit Oriented Development' goals that MetroWest is supposed to achieve Tell them the proffers need to include: solid phasing; a timeline for a grocery store; full provisions for parks; sufficient contributions for schools; and workable Metro parking during construction." [Fairgrowth](#), March, 2005.

Loudoun's Future

<http://www.loudounsfuture.org>

What Do We Want For Loudoun's Future?

The stakes couldn't be higher than they are today for our home, Loudoun County.

Developers are trying to decide for us what will happen in our county.



Loudoun's future - and ours - hangs in the balance.

In the coming months, the county will make several critical decisions that could profoundly change our lives. From north to south, east to west, the entire county is being targeted for massive development.

We can't stop now. Take action today.

Piedmont Environmental Council

<http://www.pecva.org>

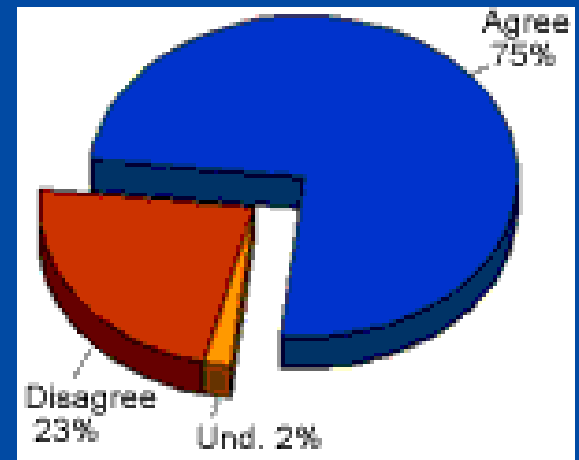
“This [revival of the Western Transportation Corridor - the Outer Beltway] is not about traffic relief. It is about opening these areas up to development. ... Allowing it to proceed as the priority of private speculative developers is not in the public interest and should not be facilitated by the issuance of this [Public Private Transportation Act] request.”

Chris Miller, PEC President, November, 2004.

STATEMENT: VA Voters Overwhelmingly Support Better Growth Management

Building more roads will not solve the traffic congestion problem but only lead to more development and traffic congestion. The real solution to our traffic problems is to stop runaway sprawl and better plan and manage growth.

PEC publicity for 2003 Mason-Dixon Polling & Research survey of 1200 Virginians' attitudes toward development and growth management.



McLean Citizens Association



McLeanCitizens.org



The Planning and Zoning Committee reviews all McLean Area land use applications and represents the MCA during the public hearing process on those applications. The Planning and Zoning Committee also proposes appropriate changes to the Fairfax County Comprehensive Plan and the local Area Plans every five years during the required Plan Review Process.



The Coalition for Smarter Growth

<http://www.smartergrowth.net>

On Mobility in the Washington Metropolitan Area

- "These projects come out of the blue, and then they jump to the front of the line," complained Stewart Schwartz, director of the Washington area's Coalition for Smarter Growth. <http://www.postwritersgroup.com>, November, 2006.

On Moving Federal Agencies to Winchester

- "Where's the public debate, the elected officials' oversight? This level of dispersal didn't even happen at the height of the Cold War." [*The Washington Post*](#), December, 2006.

On Transportation Funding

- "State taxpayers will never be able to afford the amount of transportation infrastructure needed to match the spread out and scattered development that we are seeing. Moreover, a number of major, costly projects that remain priorities for VDOT will make the development and traffic problems worse, not better. Without reconsideration of current project priorities and their land use impacts, the verdict is still out on whether any of the transportation funding proposals is appropriate." <http://www.smartergrowth.net>, January, 2006.

On the Need for Measures beyond Funding Additional Transportation Infrastructure

- "Let's ensure that the community has the power to say no to development that would overwhelm their roads, and doesn't fit within an affordable and efficient framework." <http://www.smartergrowth.net>, January, 2007.

On Fairfax County's Response to Area Moratoria

- "There is no question that local governments look over their shoulders at developers and how quick they are to sue." [*The Washington Post*](#), January, 2007.

On the Loudoun County Moratorium

- "[t]his is a recognition of the public's concern over the rate of growth and its impact on their quality of life * * * But it's also a recognition that this is an election year." [*The Washington Post*](#), January, 2007.

Tysons Corner Center



<http://www.tysonsfuture.com>









① PHASE TWO:
MALL ENTRANCE WITH WATER FEATURE FROM PEDESTRIAN BRIDGE



② PHASE TWO:
MALL ENTRANCE WITH WATER FEATURE AND TRANSIT PLAZA FROM CHAIN BRIDGE ROAD AT STREET LEVEL



③ PHASE TWO:
123 ENTRANCE PAVILION AND TRANSIT PLAZA

Transportation Improvements & Solutions

- Rail
- Metro bus service & system
- Regional road improvements
- Tysons-wide van & shuttle circulator system
- Transportation Demand Management (“TDM”) Program
- TDM Program for the existing mall
- Pedestrian linkages, trails, sidewalks, bicycle paths and connections
- Creation of live-work-walk community

Community Outreach Presentations

Citizen Groups

Courts of Tysons Homeowners Association
Encore at McLean Condominium Association & Community
Lillian Court Condominium Association & Community
Providence District Council
The Regency at McLean Condominium Association & Community
The Colonies Community
Rotonda Condominium Association & Community
Westwood Homeowners Association
McLean Citizens Association

Corporate Groups

CREW (Commercial Real Estate Women)
Greater Merrifield Business Association
Committee for Dulles
DATA (Dulles Area Transportation Association)
DCRA (Dulles Corridor Rail Association)
McLean Chamber of Commerce
Weichert Realty - Tysons
Weichert Realty - Great Falls
NAIOP (National Association of Industrial and Office Properties)
GWCAR (Greater Washington Commercial Association of Realtors)
NVAR (Northern Virginia Association of Realtors)
RICS (Royal Institute of Charters and Surveyors)
Rotary Club of Vienna
Tysons/Vienna Chamber of Commerce
Tysons Corner Center Tenants and Employers
Saab Realty
TYTRAN (Tysons Transportation Association)

Quasi-Public Entities

Tysons Coordinating Committee (Tysons Land Use Task Force)
DRPT (Department of Rail and Public Transportation)
WMATA (Washington Metropolitan Area Transportation Authority)

Public Entities

Fairfax County Bikes and Trails Committee (Non-motorized Transportation Committee)
Fairfax County Chamber of Commerce
Fairfax County Department of Public Works and Environmental Services
Fairfax County Economic Development Authority
Fairfax County Department of Planning and Zoning
Representatives from Fairfax County Parks and Recreation Department
Representatives from Fairfax County Redevelopment and Housing Authority
Representatives of Fairfax County School Board
Virginia Department of Transportation
Fairfax County Department of Transportation

Other

Sierra Club
Coalition for Smarter Growth
Urban Land Institute
Urban Land Institute Young Leaders
Tysons Trekkers (Mall Walkers)

The Witch's Broom



"Dorothy & the Witch"
by Dale Lewis

"The problem is not that people are taxed too little, the problem is that government spends too much."

- Ronald Reagan



Development Community

- Chambers of Commerce – www.vachamber.com, www.fccc.org, www.regionalchamber.org, www.arlingtonchamber.org, www.alexchamber.com, www.loudounchamber.org
- Dulles Area Transportation Association – www.datatrans.org
- Dulles Corridor Rail Association – www.dullescorridorrail.com
- Fairfax Tomorrow - www.fairfaxtomorrow.org
- International Council of Shopping Centers - www.icsc.org
- Metropolitan Washington Council of Governments – www.mwcog.org
- National Association of Industrial and Office Properties – www.naiop.org
- Northern Virginia NAIOP – www.naiopva.org
- Northern Virginia Building Industry Association – www.nvbias.com
- Northern Virginia Transportation Alliance – www.nvta.org
- Urban Land Institute – www.uli.com

Virginians Crowding the Road

	<u>1970</u>	<u>1985</u>	<u>2000</u>
Lane-miles per 1,000 population	12.1	10.6	9.3
Lane-miles per \$1M of real state GDP	1.05	0.6	0.4

Northern Virginia Transportation Alliance

<http://www.nvta.org>

The Northern Virginia Transportation Alliance is a business/citizen group advocating the funding and construction of long neglected major transportation projects that will improve travel across the region.

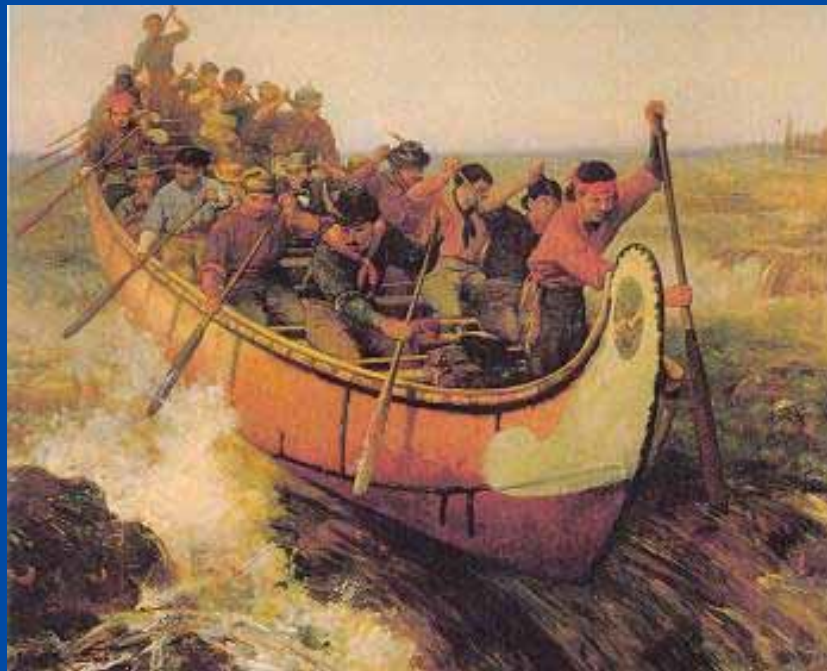
Alliance Survey Results

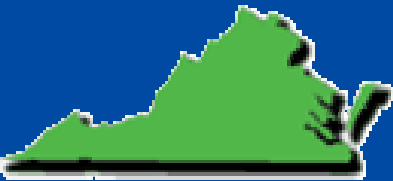
Most media accounts and many public officials regularly describe new regional bypasses, parkways and bridges as “controversial.” However, the Alliance survey finds such projects command broad public support and only limited opposition.

- **Northern Potomac Crossing (Techway):** Nearly seven in ten area residents (68%) support construction of a new Potomac River bridge and parkway connecting the Reston/Dulles area with the Rockville/Gaithersburg, MD area. Only one in six is opposed.
- **Western Transportation Corridor/Bypass:** Seven of ten area residents support construction a western corridor connecting I-95 in Stafford County with Route 7 in Loudoun County and I-270 in Maryland. Only 17% of area residents are opposed, many of whom live inside the Beltway.
- **Eastern Bypass:** The long-planned limited access link between I-95 in Prince William/Stafford to an upgraded Route 301 corridor in Maryland is supported by two of three Northern Virginians. Only one in six is opposed.
- **Tri-County Parkway:** Two of three residents support this linked plan to connect Northern Virginia's three most populous jurisdictions, only 18% oppose.

Bob Chase - (703) 883-1830

Successfully Navigating the Regulatory Realm

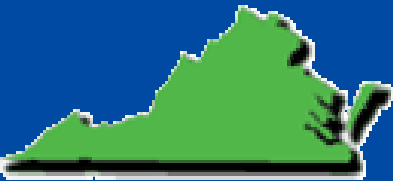




What's regulated?

- Every surface water in Virginia
- Federal jurisdiction
 - Supreme Court 2006:
Rapanos and Carabell
 - Traditional navigable waters (TNWs)
 - “Relatively permanent” and adjacent waters
 - Waters with a “significant nexus” to TNWs that affect TNW integrity
 - Chemically,
 - Biologically, or
 - Physically



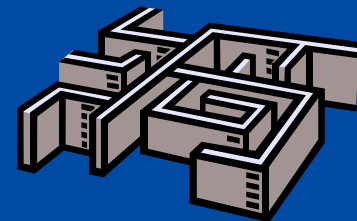


What's regulated?

- Every surface water in Virginia
- Federal jurisdiction
- State jurisdiction
 - All Federal surface waters
 - Ephemeral streams
 - Isolated wetlands
 - Farm ponds
- Linkage to
 - Cultural resources
 - Endangered species



Regulators



■ Federal



Army Corps of
Engineers



Environmental
Protection Agency



Fish and Wildlife
Service



Coast Guard



National Marine
Fisheries Service

■ Virginia



Dept. of Environmental
Quality



Dept. of Conservation
and Recreation



Dept. of Historic
Resources

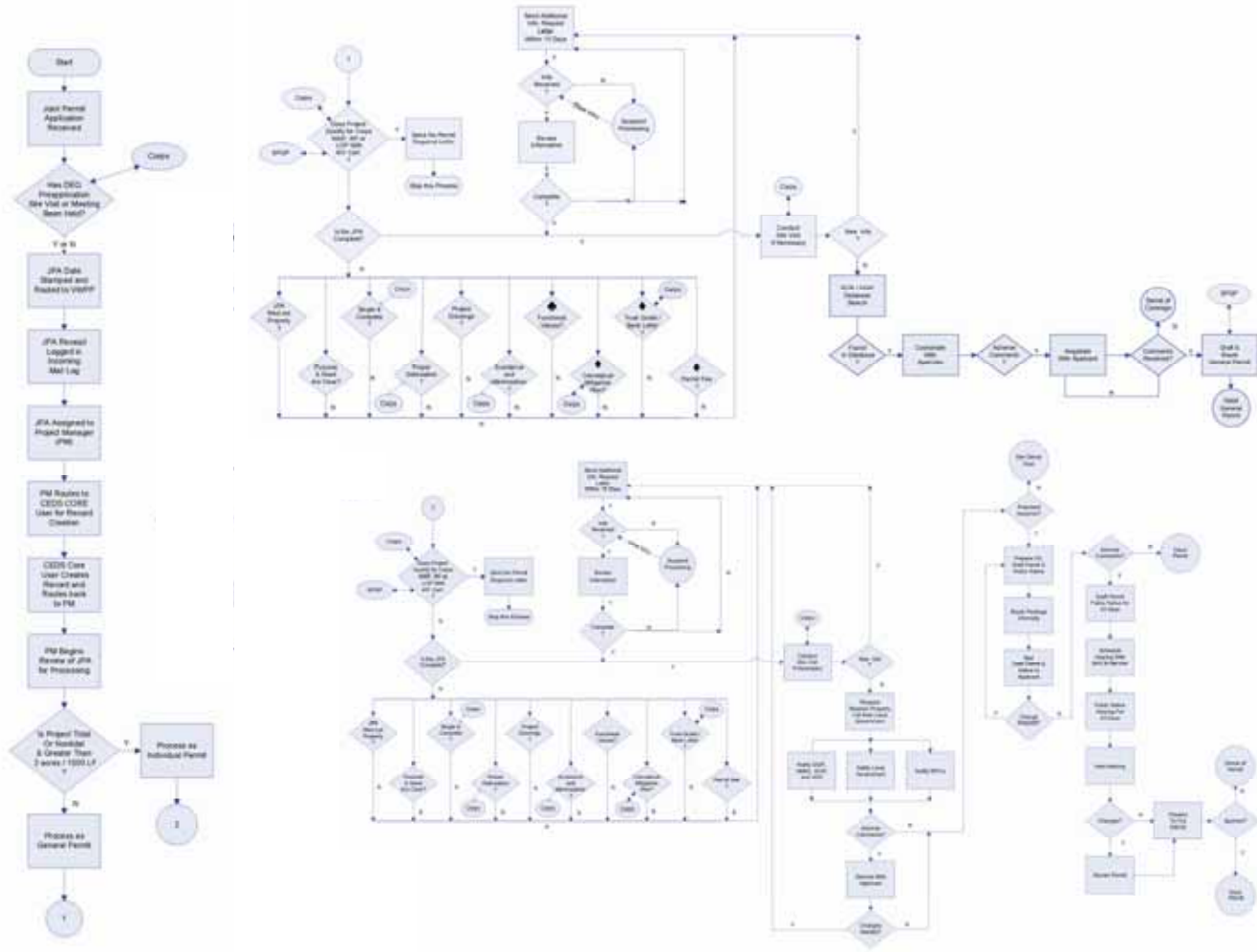


Dept. of Game and
Inland Fisheries



Marine Resources
Commission

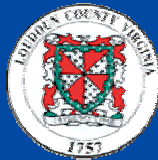
DEQ's Streamlined Process





Local Involvement

- Corps coordinates during land use approval process
- Loudoun County
 - Monthly meetings
 - Tries to require “no net loss” of wetlands and streams in County
 - Conflicts with federal and state policies of “no net loss” in watershed
- Most counties require WOUS compliance evidence
 - In zoning process
 - Prior to site plan/subdivision plan approval



Public Involvement

Smart opponents influence the permitting process
at Public Notice stage *or earlier*.

- Consider Public Notice timing in the rezoning schedule
- General Permits do not have individual Public Notices
- Corps
 - Website postings
 - E-mail distribution
- DEQ
 - Newspaper
- VMRC, Corps, & DEQ
 - Adjacent property owner letters
 - DEQ also sends to riparian owners ½ mile downstream

From: John Blandin [mailto:blandinj@verizon.net]

Sent: Monday, June 11, 2007 9:12 AM

To: Contactus@wetlandstudies.com

Subject: information regarding wetlands permit application

I am reviewing wetlands permit application documents your firm produced for ----- LLC's ----- commercial development project. My

organization comments on projects we believe have excessive impacts on wetlands or which appear not to have been designed in such a way as to avoid or minimize impacts.

Sometimes it is difficult to determine what efforts have been made by an applicant to avoid and minimize impacts based on the drawings submitted. That is the case for the ----- project drawings – based on the drawings alone, it appears that no significant effort was made to design around wetlands at the site. We would like to give the benefit of the doubt to the applicant, so I am hoping you might be able to provide additional information that would clarify the issue.

That is the case for the ----- project drawings – based on the drawings alone, it appears that no significant effort

was made to design around wetlands at the site. We would like to give the benefit of the doubt to the applicant, so I am hoping you might be able to provide additional information that would clarify the issue.

Link to application under review:

<http://www.nao.usace.army.mil/> -----



Feasibility Analysis

Impact Version	Roads & Utilities Only	Proposed Plan	Desired Buildout
Planned Development Density (SF)	1,759,000	2,347,000	3,556,000
Year 1 Return on Cost	6.46%	8.00%	9.57%
Area Impacted			
Wetlands (acres)	0.86	2.34	8.36
Streams (LF)	565	1,206	2,775
Area Avoided			
Wetlands (acres)	19.64	18.16	12.14
Streams (LF)	11,455	10,814	9,245
Impacts (as portion of WOUS)			
Wetlands	4%	11%	41%
Streams	5%	10%	23%

The Mitigation Process

1. Avoid impacts to the maximum extent **practicable**
2. Minimize impacts to the maximum extent **practicable**
3. Compensate for necessary impacts

Practicable?

“Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purposes.”

40 Code of Federal Regulations 230.3(q)

Individual Permit Practicable Alternatives Test

You must rebut two presumptions to pass:

1. Practicable alternatives (*i.e.*, other sites) exist for the proposed nonwater-dependent activities, and
2. Such alternatives result in less adverse impacts on the aquatic environment than do applicant's proposals.

One Developer's Experience

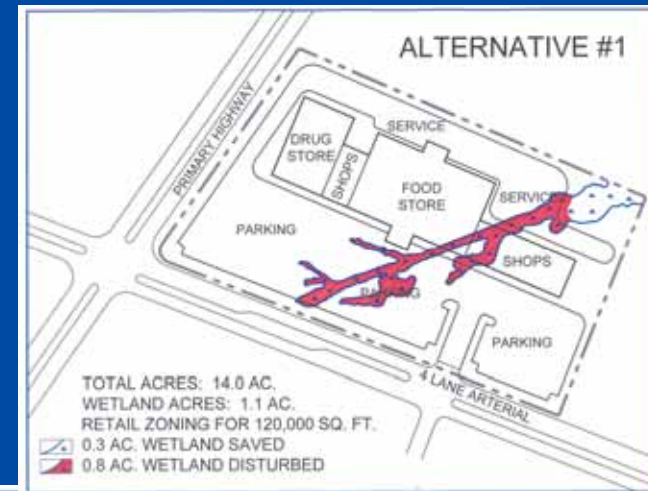
- “Since your proposal will require an individual permit, we need to consider the practicability of off-site location for your proposed development. You are requested to provide the criteria and analysis used in your evaluation of other sites, why other sites were dismissed, and why you selected the proposed site.”

Financial Analysis to Support Practicable Alternative

- “We believe you may have additional opportunities to avoid and minimize those and (*sic*) impacts and still have a viable project. Therefore, we request that you analyze the scenarios listed below and provide us with the information outlined in the enclosure:
 1. Your proposal
 2. A modified proposal that eliminates all filling in waters and wetlands...except for road crossings and utility lines
 3. A modified proposal that eliminates as much filling of waters and wetlands as practicable while maintaining **a return of investment sufficient to match you and your investors’ expectations and needs.**”

Financial Analysis Public Notice

- Corps of Engineers, June 21, 2006
- Provided format for analyzing economics of avoidance scenarios
 - Residential
 - Commercial
- Goal of assisting Corps in applying “practicable” concept to each project



What should we do?

- Identify site resources early
- Avoid impacts to maximum extent practicable
- Minimize unavoidable impacts
- Try to utilize general permits
- Apply for/obtain authorizations ASAP – ideally before zoning heats up
- Stay in compliance with permit conditions



www.wetlandstudies.com

(703) 679-5600