

**FINANCE/GOVERNMENT SERVICES
COMMITTEE MEETING
BOARD ROOM**

MAY 9, 2005

4 P.M.

AGENDA

Fiscal Policy Amendment/Special Assessment District

- 4:00 p.m. Recap/Overview – David Rose, County’s Financial Advisor, Davenport & Co., LLC and Mary Jo Kelly, County’s Bond Counsel, Nixon Peabody LLP
- 4:30 p.m. Comments/Applicants – *“Public Benefits of CDA’s as a Financing Tool” (applicants have option of providing presentation not to exceed 20 minutes)*
- Break
- 5:15 p.m. Update on new information – Staff
- 6:00 p.m. Dinner Break
- 6:30 p.m. Questions/Comments from Members of the Finance/Government Services Committee and other Board Members, Planning Commission members, and School Board
- 7:30 p.m. Continued Discussion/Wrap-Up
- 8:00 p.m.

**FINANCE/GOVERNMENT SERVICES
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BOARD ROOM**

MAY 9, 2005

4 P.M.

AGENDA SUMMARY

Fiscal Policy Amendment/Special Assessment District

At the Finance/Government Services Committee meeting held on April 5, 2005, staff along with the County's Financial Advisors, Davenport & Co., provided an amended Special Assessment District Policy for review and discussion. Following this review, the Committee directed that a special meeting of the Finance/Government Services Committee be scheduled. This meeting was scheduled for May 9, 2005.

Members of the Planning Commission and School Board along with the County's Financial Advisors from Davenport & Co., Bond Counsel and applicants who are proposing a CDA, will be in attendance.

This packet will include a memorandum from the County Attorney regarding legal issues related to CDAs; issues regarding CDAs; followup information requests from Board members at the April 5, 2005 meeting; Special Assessment Districts in local jurisdictions; impact on future debt ratios; overlapping debt information; and an outline of the applicants' presentation.

Previously distributed information include the April 5, Finance/Government Services Committee item (Fiscal Policy Amendment/Special Assessment Districts); Davenport & Co. Report on Special Assessment Districts; memorandum from Davenport & Co. regarding National Bond Rating Agency Meetings dated 1-31-05 and a draft proposal for the Upper Broad Run (No. 1) CDA for Greenvest L.C.

Date of Meeting: May 9, 2005

Finance/Government Services Committee

INFORMATION ITEM

SUBJECT: Fiscal Policy Amendment / Special Assessment District Policy

ELECTION DISTRICT: Countywide

BACKGROUND:

At the April 5, 2005 Finance/Government Services Committee meeting, staff along with Davenport Associates, the County's Financial Advisor presented for information purposes the draft amended Special Assessment District Policy. The committee presented staff with detailed questions surrounding the draft policy and voted unanimously to schedule a special meeting/work session. Staff was further directed to conduct additional research on surrounding localities' CDA policies.

Members of the School Board, Planning Commission, Applicants, the County's Financial Advisor and Bond Counsel have been invited to be in attendance to participate in this work session.

The attachments are listed on the following page.

STAFF CONTACTS: Kirby M. Bowers, County Administrator
Jack Roberts, County Attorney
Mark Adams, Paul Arnett, Ben May, Management &
Financial Services

LIST OF ATTACHMENTS

- 1 – Legal Issues Related to the Creation of Community Development Authorities
- 2 - Issues Regarding Community Development Authorities
- 3 – Followup Information Requests Re: CDAs
- 4 - Local Jurisdictions and Special Assessment District Uses
 - A. Prince William County Guidelines
 - B. Prince William County Board of Supervisors Worksession 2/05 on CDAs
 - C. Linganore CDA, Frederick Co., MD
- 5 - Impact on Future Debt Ratios
- 6 - Loudoun's Special Assessment and Other Overlapping Debt
- 7 - Applicants' Presentation Outline – Community Development Authorities – A tool for accelerating critical public infrastructure projects


Previously Distributed Background Materials:

- 8 - Finance/Government Services Committee Item – 4-5-05
- 9 - Davenport & Co. Report on Special Assessment Districts
- 10 - Memorandum from Davenport & Co. – National Bond Rating Agency Meetings – 1-31-05
- 11 - Draft Proposal for the Upper Broad Run No. 1 CDA For Greenvest L.C.

**COUNTY OF LOUDOUN
OFFICE OF THE COUNTY ATTORNEY
MEMORANDUM**

Date: May 5, 2005.

To: Board of Supervisors' Finance & Government Services Committee

From: Jack Roberts, County Attorney 

Subject: **Community Development Authorities**

In your discussion about the County's fiscal policies for special taxing districts, the Board has focused on Community Development Authorities. This memorandum outlines several legal matters related to such authorities. Attachment 1 is a summary of the CDA enabling law. In addition, I offer the following information for your consideration:

1. The nature of CDA debt and the ability of the County to remedy in the event of a failure.

The enabling law provides that bonds issued by a CDA are not obligations of the locality:

Unless otherwise provided in the ordinance which forms the authority or in a subsequent ordinance or resolution authorizing additional improvements, neither the Commonwealth nor any locality shall pay any part of the principal or interest of any bonds issued by a community development authority formed pursuant to §§ 15.2-5152 through 15.2-5157, nor shall any locality carry any part of such bonds on its financial statements as a contingent obligation; except that if a community development authority fails to pay such bonds, to the extent that a locality has imposed a real property tax surcharge or a special assessment at the request of a community development authority pursuant to subdivisions A 3 or A 5 of § 15.2-5138, funds collected from such sources may be paid against such debt.

Va. Code § 15.2-5131 (emphasis added). The rating agencies indicated that the County might be expected to play a role in the event of a CDA default to protect its own credit, depending on the circumstances and type of improvements involved. Accordingly, in the appropriate case the County may wish to include a provision in the ordinance creating the CDA that reserves its ability to intervene, without making a legal or moral commitment to stand behind the CDA bonds.

2. The authority for, and limitations on, imposing a “special assessment for local improvements.”

If a CDA proposes to raise revenue through a special assessment for local improvements, it must do so within parameters established by the Constitution of Virginia and the enabling statute. Article X, § 3 of the Constitution allows the General Assembly to authorize such special assessments under certain conditions:

The General Assembly by general law may authorize any county, city, town, or regional government to impose taxes or assessments upon abutting property owners for such local public improvements as may be designated by the General Assembly; however, such taxes or assessments shall not be in excess of the peculiar benefits resulting from the improvements to such abutting property owners.

The enabling statute for localities to impose taxes or assessments for local improvements is found at Va. Code § 15.2-2404 *et seq.* The CDA enabling statute refers to the provisions of this statute, with certain modifications not relevant to this discussion.

Both the Constitution and the enabling statute include two basic requirements: (a) the assessments are to be placed on property owners “abutting” the improvements; and (b) the assessments may not exceed “the peculiar benefits resulting from the improvements to such abutting property owners.” The Supreme Court of Virginia has stated that abutting properties are those “bordering upon, and not merely adjacent or in close proximity to, [the improvements].” *Taylor v. Board of Supervisors of Northumberland County*, 243 Va. 409, 412 (1992). The “peculiar benefits” are measured by the enhanced value of each property as a result of the improvements. *City of Richmond v. Eubank*, 179 Va. 70, 75 (1942). *See also Southern Railway Co. v. City of Richmond*, 175 Va. 308, 316 (1940).

3. The income tax treatment of special assessments.

I have consulted with the County’s bond counsel on the question of whether a special assessment to finance CDA improvements is deductible by the property owner for income tax purposes. The payment of the special assessment may not be deducted on either federal or state income tax returns.

Under the Constitution of Virginia and the enabling law, special assessments for local improvements must not be in excess of the peculiar benefits to the abutting property owners resulting from the improvements. Section 164(a) of the Internal Revenue Code does not allow the deduction of state and local real property taxes “assessed against local benefits of a kind tending to increase the value of the property assessed.” Bond counsel has also advised that the special assessments are treated in the same manner for Virginia income tax purposes.

4. The establishment of a board to govern a CDA.

Under the enabling law, each CDA is governed by its own separate board consisting of five members appointed by the Board of Supervisors. The statute allows an option for the same number of members as are on the Board of Supervisors. A majority of the CDA board must be property owners in the district or their representatives. There is no authority for a single board to govern all CDAs in the jurisdiction.

5. Changes to the law effective July 1, 2005, requiring a general local ordinance prior to accepting petitions.

Chapter 547 of the 2005 Acts of Assembly (Attachment 2) revised the CDA enabling statute. Effective July 1, 2005, the County must first adopt an ordinance to "elect to assume the power to consider petitions for the creation of community development authorities."

JR

Attachments:

1. Summary of CDA Law
2. 2005 Acts of Assembly Ch. 547 (Revisions to CDA statute)

ATTACHMENT 1: COMMUNITY DEVELOPMENT AUTHORITIES

In 1993, the General Assembly amended the Virginia Water and Sewer Authorities Act (now the Virginia Water and Waste Authorities Act) to allow the creation of “community development authorities” to provide certain types of public improvements.

Authorized Improvements and Activities

A CDA may plan, finance, construct, operate and maintain,

infrastructure improvements enumerated in the ordinance or resolution establishing the district, as necessary to meet the increased demands placed upon the locality as a result of development within the district, including, but not limited to:

- a. Roads, bridges, parking facilities, curbs, gutters, sidewalks, traffic signals, storm water management and retention systems, gas and electric lines and street lights within or serving the district which meet or exceed the specifications of the locality in which the roads are located.
- b. Parks and facilities for indoor and outdoor recreational, cultural and educational uses; entrance areas; security facilities; fencing and landscaping improvements throughout the district.
- c. Fire prevention and control systems, including fire stations, water mains and plugs, fire trucks, rescue vehicles and other vehicles and equipment.
- d. School buildings and related structures, which may be leased, sold or donated to the school district, for use in the educational system when authorized by the local governing body and the school board.
- e. Infrastructure and recreational facilities for age-restricted active adult communities, and any other necessary infrastructure improvements as provided above, with a minimum population approved under local zoning laws of 1,000 residents. Such development may include security facilities and systems or measures which control or restrict access to such community and its improvements.

Va. Code § 15.2-5158(A)(1). The ordinance creating the CDA must enumerate the improvements, and the ordinance must be consistent with the landowner petition requesting the creation of the CDA.

In addition, the statute authorizes certain “special services” to be undertaken by a CDA, including garbage and trash removal, street cleaning, snow removal, extra security,

recreational management, and grounds keeping. The statute also authorizes a CDA to purchase development rights.

Procedure for Creation of a CDA

Landowners petition for the formation of a CDA. The petitioning landowners must represent at least 51% of the land area or assessed value of land to be included within the district. The petition is to include the boundaries of the district, the services and facilities to be undertaken, the plan of financing, and a description of the expected benefits.

Until July 1, 2005, counties of at least 75,000 population may consider individual petitions without a general ordinance. When amending the law in the last session, the General Assembly redrafted the section authorizing localities to create CDA's. Effective July 1, 2005, all counties must first adopt an ordinance to elect to assume the power to consider CDA petitions.

In addition to this general ordinance to entertain petitions, the County must pass an individual ordinance to create each approved CDA. Each ordinance creating a CDA must be consistent with the petition. The ordinance may be approved only after the Board conducts a public hearing, after notice published for three successive weeks.

Governance of a CDA

The CDA is governed by a Board appointed in the same manner as a water and sewer authority; however, a majority of members must be petitioning landowners or their designees. The board shall consist of five members, or as an option, the same number of members as constitute the County Board. The CDA is a public authority.

Financing CDA Improvements

A CDA may generate revenue in one of two ways: an additional ad valorem tax on taxable real property, or a special assessment for local improvements. The special ad valorem tax would be of the same nature as that imposed in the Route 28 special taxing district. For CDA's, the special tax may not exceed 25¢ per \$100 of assessed value, unless a higher amount is requested by all property owners.

A special assessment for local improvements is a mechanism specifically authorized by Article X, § 3 of the Constitution of Virginia and Va. Code § 15.2-2400 et seq. This mechanism allows an amount to be assessed on property owners within the district to be used to pay for the improvements. The properties assessed must abut the improvements, and the special assessment may not exceed the "peculiar benefits" to each property. The CDA law includes certain additional provisions governing the special assessments: (1) the assessments shall not exceed the full cost of the improvements (including costs of creating the district; planning, designing, operating and financing the improvements; and administering the collection of assessments); (2) the assessments may

be imposed on abutting land which is later subdivided in accordance with the ordinance creating the CDA; and (3) the assessments may be paid in installments for up to forty years. Costs

A CDA may issue revenue bonds to finance the improvements.

CHAPTER 547

An Act to amend and reenact §§ 15.2-5152, 15.2-5153 and 15.2-5158 of the Code of Virginia, relating to community development authorities.

[H 2381]

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-5152, 15.2-5153 and 15.2-5158 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-5152. Localities may consider petitions for creation of authority.

A. Any city may consider petitions for the creation of community development authorities, a public body politic and corporate and political subdivision of the Commonwealth, in accordance with this article.

B. Any town may by ordinance elect to assume the power to consider petitions for the creation of community development authorities in accordance with this article. A public hearing shall be held on such ordinance.

~~C. The following counties may consider petitions for the creation of community development authorities in accordance with this article:~~

~~1. Any county with a population of at least 75,000;~~

~~2. Any county with a population of less than 50,000 through which an interstate highway passes; and~~

~~3. Any county with a population between 50,000 and 75,000 through which an interstate highway passes;~~

~~D. Any county not listed in subsection C may by ordinance elect to assume the power to consider petitions for the creation of community development authorities in accordance with this article. A public hearing shall be held on such ordinance.~~

§ 15.2-5153. Landowners may petition localities.

The owners of at least 51 percent of the land area or assessed value of land in the following tracts may, by petitioning the locality or localities in which the tract is located, propose the creation of a community development authority:

1. Any tract of any size in any city;

2. Any tract of any size in any town which has elected to consider such petitions pursuant to subsection B of § 15.2-5152;

~~3. Any tract containing at least 250 acres in any county with a population of at least 75,000;~~

~~4. Any tract containing at least 250 acres, a portion of which lies within two miles of the centerline of the right of way of an interstate highway, in any county with a population of less than 50,000;~~

~~5. Any tract containing at least 250 acres in any county with a population between 50,000 and 75,000 through which an interstate highway passes; and~~

~~6. Any tract of any size in any county not listed in subdivisions 3, 4 or 5 of this section which has elected to consider such petitions pursuant to subsection C of § 15.2-5152.~~

~~However, in the counties listed in subdivisions 3, 4 and 5 of this section, the minimum acreage required for a proposed authority district shall be 100 acres for commercial property or for mixed-use commercial-zoned and residential-zoned property. Counties over 50,000 in population may modify minimum district size limits where amounts financed equal or exceed \$3 million.~~

§ 15.2-5158. Additional powers of community development authorities.

A. Each community development authority created under this article, in addition to the powers provided in Article 3 (§ 15.2-5110 et seq.) of Chapter 51 of this title, may:

1. Subject to any statutory or regulatory jurisdiction and permitting authority of all applicable governmental bodies and agencies having authority with respect to any area included therein, finance, fund, plan, establish, acquire, construct or reconstruct, enlarge, extend, equip, operate, and maintain the infrastructure improvements enumerated in the ordinance or resolution establishing the district, as necessary to meet the increased demands placed upon the locality as a result of development within the district, including, but not limited to:

a. Roads, bridges, parking facilities, curbs, gutters, sidewalks, traffic signals, storm water management and retention systems, gas and electric lines and street lights within or serving the district which meet or exceed the specifications of the locality in which the roads are located.

b. Parks and facilities for indoor and outdoor recreational, cultural and educational uses; entrance areas; security facilities; fencing and landscaping improvements throughout the district.

c. Fire prevention and control systems, including fire stations, water mains and plugs, fire trucks, rescue vehicles and other vehicles and equipment.

d. School buildings and related structures, which may be leased, sold or donated to the school district, for use in the educational system when authorized by the local governing body and the school board.

e. Infrastructure and recreational facilities for age-restricted active adult communities, and any other necessary infrastructure improvements as provided above, with a minimum population approved under local zoning laws of 1,000 residents. Such development may include security facilities and systems or measures which control or restrict access to such community and its improvements.

2. Issue revenue bonds of the development authority as provided in § 15.2-5125, including but not limited to refunding bonds, subject to such limitation in amount, and terms and conditions regarding capitalized interest, reserve funds, contingent funds, and investment restrictions, as may be established in the ordinance or resolution establishing the district, for all costs associated with the improvements enumerated in subdivision 1 of this subsection. Such revenue bonds shall be payable solely from revenues received by the development authority. The revenue bonds issued by a development authority

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shall not require the consent of the locality, except where consent is specifically required by the provisions of the resolution authorizing the collection of revenues and/or the trust agreement securing the same, and shall not be deemed to constitute a debt, liability, or obligation of any other political subdivision, and shall not impact upon the debt capacity of any other political subdivision.

3. Request annually that the locality levy and collect a special tax on taxable real property within the development authority's jurisdiction to finance the services and facilities provided by the authority. Notwithstanding the provisions of Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1, any such special tax imposed by the locality shall be levied upon the assessed fair market value of the taxable real property. Unless requested by every property owner within the proposed district, the rate of the special tax shall not be more than \$.25 per \$100 of the assessed fair market value of any taxable real estate or the assessable value of taxable leasehold property as specified by § 58.1-3203. The special taxes shall be collected at the same time and in the same manner as the locality's taxes are collected, and the proceeds shall be kept in a separate account and be used only for the purposes provided in this chapter. All revenues received by the locality from such special tax shall be paid over to the development authority for its use pursuant to this chapter subject to annual appropriation. No other funds of the locality shall be loaned or paid to the development authority without the prior approval of the local governing body.

4. Provide special services, including: garbage and trash removal and disposal, street cleaning, snow removal, extra security personnel and equipment, recreational management and supervision, and grounds keeping.

5. Finance the services and facilities it provides to abutting property within the district by special assessment thereon imposed by the local governing body. All assessments pursuant to this section shall be subject to the laws pertaining to assessments under Article 2 (§ 15.2-2404 et seq.) of Chapter 24; provided that any other provision of law notwithstanding, (i) the taxes or assessments shall not exceed the full cost of the improvements, including without limitation the legal, financial and other directly attributable costs of creating the district and the planning, designing, operating and financing of the improvements which include administration of the collection and payment of the assessments and reserve funds permitted by applicable law; (ii) the taxes or assessments may be imposed upon abutting land which is later subdivided in accordance with the terms of the ordinance forming the district, in amounts which do not exceed the peculiar benefits of the improvements to the abutting land as subdivided; and (iii) the taxes or assessments may be made subject to installment payments for up to 40 years in an amount calculated to cover principal, interest and administrative costs in connection with any financing by the authority, without a penalty for prepayment. Notwithstanding any other provision of law, any assessments made pursuant to this section may be made effective as a lien upon a specified date, by ordinance, but such assessments may not thereafter be modified in a manner inconsistent with the terms of the debt instruments financing the improvements. All assessments pursuant to this section may also be made subject to installment payments and other provisions allowed for local assessments under this section or under Article 2 of Chapter 24. All revenues received by the locality pursuant to any such special assessments which the locality elects to impose upon request of the development authority shall be paid over to the development authority for its use under this chapter, subject to annual appropriation, and may be used for no other purposes.

6. Purchase development rights that will be dedicated as easements for conservation, open space or other purposes pursuant to the Open-Space Land Act (§ 10.1-1700 et seq.). For purposes of this subdivision, "development rights" means the level and quantity of development permitted by the zoning ordinance expressed in terms of housing units per acre, floor area ratio or equivalent local measure. An authority shall not use the power of condemnation to acquire development rights.

7. *Subject to any statutory or regulatory jurisdiction and permitting authority of all applicable*

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governmental bodies and agencies having authority with respect to any area included therein, finance and fund the acquisition of land within the district. All financing authority and methods provided by subsections 2, 3, 4, 5, and 6 shall be permitted for the acquisition of land as provided herein.

B. Nothing contained in this chapter shall relieve the local governing body of its general obligations to provide services and facilities to the district to the same extent as would otherwise be provided were the district not formed.

Legislative Information System

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COUNTY OF LOUDOUN

MEMORANDUM

To: Finance/Government Services Committee
From: Kirby M. Bowers, County Administrator
Date: May 5, 2005
Subject: **Issues Regarding Community Development Authorities (CDAs)**

As an additional follow-up to the Finance/Government Services Committee's April 5 discussion on CDAs, I have directed staff to prepare a summary of major policy issues for further Board consideration regarding the potential establishment of additional authorities. Listed below are some of the major issues and concerns that we have gathered from our ongoing discussions, both internally and with other jurisdictions and our financial advisors and bond counsel. In particular, we have examined the potential issues raised by the most detailed proposal so far, that which accompanied the CPAM submittal by Greenvest.

The current discussion on the County's Fiscal Policies is not limited to just Community Development Authorities, but towards a policy on all special assessment type districts and financings. All of these entities create some form of overlapping debt and, therefore, have implications for the County's overall fiscal condition and creditworthiness.

Use of CDAs for Residential versus Commercial Projects

One of the questions raised by Board Members at the Finance Committee meeting on CDAs was the potential difficulties in using CDAs for traditional suburban residential community projects. Those potential difficulties are manifest from the overall lack, thus far, in Virginia of such CDA projects. Of the dozen or more CDAs legally constituted, none have yet been approved for a Loudoun style planned unit development. Virtually all of the projects so far have been economic development based commercial centered land developments with either small or negligible residential components, some with age-restricted components. These projects have not been typical suburban style single family home development. Loudoun's own experience with CDAs and Special Tax Districts: the Dulles Town Center Mall and the Route 28 Tax District were both specifically structured to avoid traditional residential components.

While proposals have surfaced over the years for suburban residential development CDAs, in several Counties and Cities in Virginia, no major project has gone forward yet. In our discussions with the staff in those communities, the concerns of the staff and their elected officials has centered upon the long run potential difficulties in differential tax rates between different communities. The last decade of public discourse in Loudoun County can provide numerous examples of just such concerns within our existing structure. Citizens in the various incorporated Towns frequently appear with

concerns of “double taxation. Members of homeowner associations are very aware of and concerned with differentials between HOA dues as witnessed by the County’s problems with the old Fire and Rescue proffers. In other localities, (such as James City County and King George County) those types of taxpayer concerns have brought pressure upon local governments to “collapse” special assessment districts and to assume the original debt as a jurisdiction-wide debt, applicable to all taxpayers or rate payers. If the annual tax for the special assessment is structured in such a way to not be deductible for income tax purposes, that pressure will undoubtedly increase.

Another issue of concern in other localities is that if CDAs or other special districts levy a local tax for a “core” governmental service, will the affected taxpayers be as likely to support future bond referenda for that service for other communities? What will be the reaction of the affected taxpayers to other non-taxpayers use of their facilities? How difficult will the already contentious issues of School boundaries be resolved?

Schools

There are other issues and concerns with the practical use of CDAs for School projects. Will the facilities provided be “turnkey”? It is our understanding that the School System has final design authority on all School buildings. How will the issues of School construction be resolved between an elected School Board, representing the entire County and a CDA Board nominated by and largely responsible to other interests?

How will the delivery of School buildings be timed? If the first families to move in are paying the principal on the School Bonds out of the proffer on their home will they not expect their Schools to be available from the first day? The implication is that at least one Elementary, Middle and High School would be open by the time the first families arrive, even though the residential buildout in the Greenvest proposal is for 14 years. Can such expenditures be supported by the financing plan at such an early time?

Public Infrastructure

In light of the issues on timing for School Projects, the question arises if such issues apply to the other categories of public infrastructure. The timing and availability of transportation, water, sewer and broadband infrastructure associated with a large residential CDA is tied to the ability of the underlying financial plan. While the planned development may well be able to support large infrastructure projects later in the development cycle, how much can actually be provided up-front?

Affordable Housing

Homes with special assessment upon them will result in a higher than usual annual cost for housing. In addition to the normal mortgage payments (based upon home cost and interest rates), regular county taxes and HOA fees, the homeowners in residential CDA projects face an additional annual tax bill for the special assessment. Unless the seller offers the properties at a significantly lower than market rate, the homes will be less "affordable" than the comparable communities in Loudoun. There is no effective way to guarantee or enforce an agreement that the units will be sold at a below market rate.

How do the special assessments work in relation to the ADU ordinance?

Overlapping Debt

CDA and other Special Assessment Debt is viewed as an overlapping debt. It will be taken into consideration by the rating agencies and potential purchasers of the County's debt instruments. The degree of the impact of these projects will depend upon a variety of factors. The proven record of the development group, the soundness of the financial plan, the likelihood of default, and, once established, the success of the project will all determine the impact of the debt upon the County's ability to issue debt for its ongoing capital plan. The relative scale of each proposed project and borrowing and the cumulative impact of all such projects are major factors as well.

There is an expectation that a AAA community will seek to remedy any potential default by such a governmentally created entity. The "good name" of the County will be linked to any project.

While residential housing demand remains quite strong in this region, the County remains vulnerable to economic cycles. Both the region and the County have seen slow-downs and down turns in the residential housing market in the recent past. This is not the first set of proposals to establish special districts for residential development in Loudoun. Just prior to the downturn in the early 90's, the Dulles Perimeter Sanitary District was proposed to finance the water/sewer infrastructure for a large development area. That proposal collapsed as market values fell, but had it been established a year or more earlier, the district would have been unable to survive the down turn and would have likely defaulted. There were several comparable private sector collapses during that time. That period in time was, given the County's reliance upon real property tax revenues, an era in which there would have been very little or no capacity for the County to remedy a default.

Criteria for Approval of Proposals

One of the crucial issues in examining the establishment of CDAs and other special districts and the primary reason for sound policies, is to provide a framework for selecting which projects may go forward. Unless all applicants are approved, the approval process does put the Board and the County in the position of intervening in the "market" and of "picking winners and losers". The outcome of the Board approving one project and not another can result in litigation. The Short Pump Mall project in Henrico

County resulted in a substantial legal expense for the County. A comprehensive and dependable process and policy will be important.

An important consideration for approval of CDAs and other special districts is the public benefit to be received. What public good will be received by the citizens? Is the use and scale of the public good directly related to the affected taxpayer? In the attached Prince William County report, they, in essence ask: Why use up your scarce CDA (overlapping debt) capacity on infrastructure that would normally be proffered? Montgomery County, Maryland staff say, that, in their experience, these districts do not result in homes sold at below market rate. In that case, the district acts to transfer the normal development risks and capital carrying costs from the developer to the eventual homeowner.

Efficiency

Another issue for discussion in examining the creation of CDAs is the efficiency versus expediency. In essence, the Board is judging the interest in timeliness of delivery of the capital projects versus the significantly lower costs of traditional financing. It is unlikely that any CDA will be able to match the very low borrowing costs of the County. If a project issues unrated debt, that translates to less project or facility for every taxed dollar. If, as is proposed in the Greenvest projects, the CDA will rely upon borrowing the funds to make interest payments the first several years (this is called capitalized interest), that results in less project for every tax dollar. As an example, in one of Greenvest's proposals, \$98.8 million in bonds will be issued to construct \$74.4 million in infrastructure projects. The rest of the bonds will be used to pay the administrative, interest and security costs. The tax payment to service this debt is 1/3rd higher than would be suggested to simply build the improvements through traditional means. In the case of the proposed School bonds, since the principal (original loan amount in layman's terms) are to be repaid by the proffers in the project, \$22 million in proffer dollars will be spent to purchase a \$16 million Elementary School. These are proffer dollars that could be used to construct other facility types. Four Elementary Schools, one Middle School and one High School in the Greenvest proposals, are to be funded in such a way.

Capacity

Debt Capacity has been an ongoing discussion for years. Balancing the need for capital facilities and the cost of issuance as determined by the County bond ratings has been the subject of fiscal policy discussions for the last four Boards. The County has a finite amount of capacity for overlapping debt. While the appropriate measure of that capacity is open to some debate, the reality of a finite limit is not. The Board's deliberations on policies regarding CDAs and other special districts must include an awareness that there are other likely projects on the horizon that will deal with existing conditions and are not limited to new development. There will be additional debt issuance to complete the other major improvements to the Route 28 Tax District. Those issuances will constitute overlapping debt. There appears to be a continuing supply of small sanitary sewer issues, similar to the Tall Oaks project, which will require the County to establish districts that will issue overlapping debt. Should broadband initiatives, utility undergrounding or major transportation improvements require special taxes and districts, they would issue

debt that would be overlapping. This indicates that the County needs to retain some unused capacity for overlapping debt to meet other needs and emergent issues.

Conclusion

Community Development Authorities and other Special Assessment Districts are particularly useful tools for the County's infrastructure development, especially when combined with economic development initiatives. Loudoun can look at the Dulles Town Center CDA and the Route 28 Special Assessment District as remarkable examples of success. The experience, thus far, in the rest of Virginia has been the same. There are some substantial policy and practicality issues that arise when discussing the scale and use of these tools for traditional suburban residential development. The concerns identified in this report have been reiterated by our conversations with other Virginia governments and is reflected in many of their policies. As overlapping debt, the use of these tools, even for commercial/industrial economic development purposes, must be examined in light of the relationship to and impact on the County's ongoing need and ability to issue debt for capital projects. As the Board continues its deliberations, additional information and analysis will be forthcoming.

COUNTY OF LOUDOUN

MEMORANDUM

To: Finance/Government Services Committee
From: Kirby M. Bowers, County Administrator
Date: May 5, 2005
Subject: **Follow-up to Information Requests Regarding Community Development Authorities (CDAs)**

On April 5, the Finance/Government Services conducted an extensive discussion on the topic of Community Development Authorities. A wide range of questions were expressed by the Board Members, most of which were answered by Staff and David Rose with Davenport and Co. at the time.

Below is a paraphrased version of the outstanding questions asked by Board Members, and the response from the Staff following continuing discussions with the County's Financial Advisors, Bond Counsel, and other jurisdictions.

Mr. Tulloch:

- What is the basis for excluding land in the draft policy?
 - ◆ This issue is entirely linked to the provision of additional information. It is meant to highlight if something special or unusual is being offered in addition to the expected deal. There is no intention of requiring any additional contribution, but rather, to highlight if such an additional contribution is contemplated.
- What is the level of CDA debt allowed in the policies of other counties in Virginia? Specifically Prince William, Stafford, Henrico and Hanover Counties?
 - ◆ The following is a list of Counties researched and their levels of CDA debt.
 - Prince William - 0.75% of the total assessed value of taxable property.
 - Hanover - 1% of the total assessed value of taxable property.
 - Henrico - No policy.
 - Anne Arundel - 0.5% of the total assessed value of taxable property; nor represent more than 15% of the outstanding tax supported debt

Percent of Assessed Value

County	% of total assessment	Total Assessed Value	Allowable CDA Debt
Anne Arundel	0.5%	39,116,262,000	195,581,310
Prince William	0.75%	27,555,986,000	206,669,895
Hanover	1.0%	6,707,526,800	67,075,268

Percent of Debt

County	% bonded debt	Bonded Debt	Allowable CDA Debt
Anne Arundel	15%	499,547,461	74,932,119

The objective limits provided in the draft policy were derived from the sample policies above. These samples provided guidelines as the draft plan was prepared, however the purpose was to remain conservative. Staff was particularly interested in seeking a policy that would provide a balance between total assessed value and total outstanding debt. Therefore, these new measurements/ratios used to calculate allowable limits on Special Assessment Debt were aligned to both the percentage of assessed value and the percentage of outstanding tax supported debt. This alignment in turn limited the ratio of percentage of total assessed value of taxable property to 0.25% which is lower than other jurisdictions. These assigned percentages are provided as a beginning basis for discussion and can be adjusted based on direction from the Board. However, note in the following table that the impact of raising the ratio of overlapping debt to assessed value to a higher amount will allow a far greater ratio of outstanding debt to the County's net direct debt.

In FY 06 terms:

Ratio	Overlapping Debt Allowed	% of Existing Debt	Overlapping Debt Per Capita	Overlapping Debt Per Household
0.25%	\$129,685,000	14%	\$493	\$1,380
0.50%	\$259,370,000	28%	\$986	\$2,761
0.75%	\$389,055,000	42%	\$1,479	\$4,141
1.00%	\$518,740,000	56%	\$1,972	\$5,522

- Should we take into consideration other important public infrastructure needs, such as those included in other plans (Countywide Transportation Plan, LCSA Master Plan, School Board Master Plan)?
- ◆ The issue of what public goods or facilities are to be provided by the proposed authority is a significant factor. Draft fiscal policy number 3 was included to insure that any proposed district would be created to further the County's already adopted plans and documents. It would, of course, be appropriate to add any specific transportation related planning documents to this section.

In policy number 4, there was a proposed exception to the debt limits on overall County overlapping debt proposed for those projects that would displace or replace projects in the County's Adopted CIP. This exception would act as an incentive for a CDA to provide capital facilities that are already planned and thereby reduce direct County indebtedness. Because the CIP is the only document that sets an appropriation, it was determined that any replacement from that document would have a corresponding effect on the County's capital spending. This would allow the County to either save financing costs or address other capital needs by freeing resources. This is an especially important concern given the County's Annual Debt Issuance Cap Policy. The ability to "free-up" debt capacity is important in the long range provision of both school and other capital facilities. Policy number 4 is included as a measurement tool governing the amount of debt that will be considered over a distinct time period. If the Board includes and agrees to finance projects for roads in the CIP, then the same case or exception would apply for road improvements financed by a CDA. Limiting exceptions to the policy to those projects that finance CIP-related facilities does not disqualify projects offering other improvements, but limits their use to a total amount linked to the County's overall debt capacity.

- Do other counties in Virginia require CDA bonds to be investment grade? What other CDA bonds in Virginia have been investment grade?
- ◆ The language in the draft policy was derived from the existing Special Assessment District policy in the County's Adopted Fiscal Policies. The new policy was amended to retain some of its original purpose, but to also provide a method that CDAs and other Districts could use if the Board found the project to be of public benefit. The policy was expanded to allow the proposed District to "demonstrate some other form of financial safeguard to the bond purchasers." This would allow a potential District a different, and expanded avenue than is provided with the current policy.

Most jurisdictions researched did not require CDAs to be investment grade. The language in the proposed policy was in keeping with the Loudoun's current policy and expanded. However, most jurisdictions set stipulations on the limits of debt a District could issue. The calculations used entailed the appraised value of the

property or adjusted appraised value on partial development. They also require a credit enhancement device acceptable to sufficiently guarantee payment of the debt service in the event of default until the CDA is close to completion. The research conducted, thus far, did not find any CDAs within Virginia that were issued an investment grade rating.

Mrs. Waters:

- Can you provide us with 2-3 examples of successful CDAs and unsuccessful CDAs?
 - ◆ Staff has information on the few successful local CDAs. *{See Attachment 4}*. Staff has information on the one local regional unsuccessful CDA. *{also See Attachment 4}* .

Local Jurisdictions and Special Assessment District Uses

James City County - Developed two separate special assessment type districts. The first district dealt with sanitary sewer issues, but never included a special assessment on property. The revenue stream to cover the cost of the district came in the form of hook-up fees. The second district consisted of a transportation type district for road projects. This district added a special assessment of \$0.10 on each home within the project area. The project cost of \$12M came in the form of a VDOT (0% interest rate) loan and an advance from the developer. The district had a 10-year life span, but due to issues the special assessment on property was ended in the 7th year and the County absorbed the debt payments. The County also fielded two other CDA proposals over the past five years one was for a mixed use development, while the other was an age restricted housing project. However, both proposals failed to move forward.

Henrico County – Established two special assessment type districts with the first being a sanitary district for the purpose providing street lighting in specific areas of the County. The size and scope of these projects were relatively small in financing costs. The 2nd assessment district was a CDA project - Short Pump Town Center. The project is an upscale pedestrian mall with stores similar to those found in Chicago and New York. The total shopping center development costs were estimated at \$250 million and resulted in multiple lawsuits. The CDA sold bonds to investors to raise up to \$22 million for the developers to build the roads, sewers, and other infrastructure needed for the center. Tax revenues generated from the mall will be used to reimburse the developers for the cost of the bonds. Currently, there is no formal special assessment district policy nor are there any future projects on the horizon.

Culpeper County – Has had very little activity in the area of Special Assessment type districts/CDA projects or proposals. To date, one minor district has been established to address water and sewer issues. The County has no formal CDA policy and at this time have no future projects on the horizon.

Virginia Beach – The current development project underway in Virginia Beach is a mixed use development, of hotel, office, parking garages and apartment living. In Phase 1 of this development the City used Tax Increment Financing for the following projects; Parking Garage under office building - \$22.5 million funded by incremental real estate tax revenue increases in the Tax Increment Financing District, Land for public plaza - \$483,085 funded by incremental real estate tax revenue increases in the Tax Increment Financing District, and utilities, streets, streetscapes and other infrastructure - \$6.3 million funded by Economic Development Investment Program and the city's Capital Improvement Program. Virginia Beach has not used CDA's and has not planned any future projects using a CDA for in the coming future.

Fairfax County - Fairfax has completed some projects to assist in rebuilding and improving some distressed areas, but they were not CDAs. They have not entertained any proposals for CDAs, either for commercial or residential.

Prince William County – Has completed 2 CDAs, Virginia Gateway a mix of retail, light industrial, and office space. The other created in 1999 named Heritage Hunt, consisting of commercial and residential uses, with most of the residential being age-restricted dwellings. The Virginia Gateway created in 1998, had \$13.6 million in outstanding bonds at June 30, 2004 and included 363 acres. Reports received by PW County indicate this CDA is progressing satisfactorily. The second CDA known as Heritage Hunt was created in 1999, consisted of 810 acres and at the June 30, 2004 date has \$6.7 million in outstanding bonds. There is a pending project which is going to be for \$80+ million which will fund some water/sewer but will primarily fund transportation to include the building of a train station. See copy of presentation presented to their Board dated February 15, 2005 – attachment

Montgomery County, Maryland – Montgomery County has issued \$25 million to develop 2 residential parcels. The developers were required to place a Letter of Credit with the County until the projects were 80% built out, which is the same as saying the transaction must be accepted by their bank's credit committee as a good quality transaction. Montgomery actually issues the bonds themselves as a "Special Obligation Bond". They did indicate that these are difficult to administer. Indications are that there may be one or two small developments that may go forward.

Hanover County – Created one CDA project, Bell Creek Development, with debt issuance of \$17 - \$19 million. The mixed use project consisted of 550 residential units, 170 acres of commercial development including 20 acres of retail and 150 acre business park and 100 acre historic district.

Stafford County – Two active CDAs. Widewater Community Development Authority – an independent entity created for financing the construction of the Widewater Parkway and related road improvements on the Widewater Peninsula. The second CDA – "Celebrate Virginia South Community Development Authority" recently created for recreational projects and road improvements of Route 17 within the district. Currently Stafford County has no formal CDA policy.

Prince Edward County – Created one CDA project, Poplar Hill. The development is a commercial district to include 18-hole golf course, convention center and retail shopping. No written CDA policy.

**Prince William County
Policy Guidelines for Approval of the Creation of a Community Development
Authority
March 2005**

The Board of County Supervisors (the "Board") has determined that under certain circumstances, the creation of a Community Development Authority ("CDA") can further the economic development or community development growth goals of the County. Of equal importance to the Board is that no public monies be at risk. These guidelines are designed to insure that these Board goals are met.

1. Limited to Projects which Advance Economic or Community Development – The proposed project or purpose for establishing a CDA must advance the County's economic development or community development strategic goal as outlined in its Strategic Plan.
2. Description of Project and CDA Petition – The petitioners shall submit for County staff review, prior to petitioning the Board of County Supervisors for action, a plan of the proposed CDA. This submission must include as a minimum: A draft of the CDA's petition to the Board of County Supervisors, a map of district boundaries and properties served, a general development plan of the district, proposed district infrastructure including probable cost, a preliminary feasibility analysis (showing project phasing, if applicable, and projected land absorption within the district), a schedule of proposed CDA financings and their purpose, a discussion of the CDA's proposed financing structure and how debt service is paid, the methodology for determining special assessments within the district, and a general discussion of the developers and/or property owners like that found in an Offering Memorandum. The petitioner shall respond to and incorporate changes to the draft petition requested by staff. Failure to incorporate changes will result in a staff recommendation against the creation of the CDA.
3. Consistency with County Planning Documents – The petitioner must demonstrate that the project or purpose for establishing the CDA is consistent with the Comprehensive Plan, Zoning Ordinance, and if applicable, the Capital Improvements Program.
4. Impact on County Bond Rating – The CDA, either individually or when considered in aggregate with previously approved CDAs, shall not have a negative impact on the County's debt capacity or

credit rating. Total outstanding overlapping debt within Prince William County, including the aggregate outstanding debt of all CDAs, shall not exceed ¾% of the total assessed value of taxable property within the County.

5. Due Diligence – A due diligence investigation performed by the County or its agents must confirm information regarding the reputation of the developers, property owners, and/or underwriting team, and the adequacy of the developer's or property owner's financial resources to sustain the project's proposed financing.
6. Project Review and Analysis – A financial and land use assessment performed by the County or its agents must demonstrate that the CDA's proposed development and business plan is sound, and the proposed project or purpose for establishing a CDA is economically feasible and has a high likelihood of success. The analysis must confirm why establishing a CDA is superior to other financing mechanisms from a public interest perspective.
7. Petitioner to Pay County Costs – The petitioner shall deposit in advance funds sufficient to cover the County's costs (including staff time) for all review and analysis. The County's estimated costs shall be itemized to show anticipated engineering, legal, consultant and other fees.
8. Agreements – The County will require the petitioner to enter into a Memorandum of Understanding with the County setting forth, as a minimum, the following:
 - The business plan of the CDA.
 - The level, quality and type of public facilities and/or infrastructure to be included.
 - Protections for the benefit of the County with respect to repayment of debt, incorporation and annexation.
 - Protections for the benefit of individual lot owners within the CDA's boundaries with respect to foreclosure and other collection actions should their respective assessment be paid or is current.
 - That, if the CDA requests the County to levy a special tax on its property owners, the CDA will pay the County for the costs to levy and collect the special tax and any other ongoing administrative costs of the County.
9. Credit Requirements – If debt or lease obligations are issued by the CDA to finance or refinance infrastructure of the project:

- The CDA's outstanding debt or lease obligations as compared to the appraised value of property within CDA boundaries, as if the infrastructure being financed was in place, shall not exceed 33% at the time the bonds are issued, and shall not exceed 10% once the development is complete.
 - The CDA shall acquire a credit enhancement device acceptable to the County sufficient to guarantee payment of lease payments or debt service in the event of default until the CDA's outstanding debt or lease obligations, as compared to its estimated taxable assessed value, is estimated to not exceed 10%; or limit its obligations to minimum \$100,000 denominations.
10. Certification of Information in Offering Documents – The ordinance creating the CDA shall include a requirement that the CDA shall not issue bonds or other obligations until the County receives appropriate certifications that all information contained in any offering memorandum or other financial documentation that will be made available to potential investors in connection with the sale of bonds or other obligations is accurate, complete and in compliance with securities laws, and that the County has indicated written satisfaction with this certification.
 11. No Liability to County – The project must pose no direct or indirect liability to the County, and the developer and/or CDA must provide the type and level of surety acceptable to the County to protect the County from actions or inactions of the CDA as specified in the Memorandum of Understanding. All documents relating to the project shall reflect the fact that the County has no financial liability or for present or future improvements connected with the project whether or not contemplated by the ordinance creating the CDA or as that ordinance may be amended.
 12. Covenants – Covenants acceptable to the County shall be attached to the property subject to the CDA which incorporate the salient commitments of the CDA development proposed, and the public benefits. The County must be listed as a beneficiary of any covenant which relates to the public benefits to the County from the CDA or requirements under these guidelines and any changes to the covenants must require approval by the County.
 13. Amendments to CDA Ordinances – No amendment to the ordinance creating the CDA shall dilute either the economic

development/quality growth or other public benefits, or the protections to the County contained in the original ordinance.

14. Annual Review – These guidelines shall be reviewed at least annually, and changes to the guidelines proposed, if necessary, beginning in 1999, in conjunction with the review of the County's Principles of Sound Financial Management.



Prince William County Government

Community Development Authorities

Informational Worksession

February 15, 2005

What is a Community Development Authority (CDA)?

- A CDA is a private entity authorized by the Board of County Supervisors (upon petition by a majority of property owners, or those owning a majority of the assessed value, within the proposed CDA boundaries) for the purpose of providing public infrastructure.
- The CDA is empowered to issue tax-exempt bonds for thirty different kinds of infrastructure improvements including, in part, roads, parks, recreation facilities, educational facilities, water and sewer, and fire prevention and control systems.

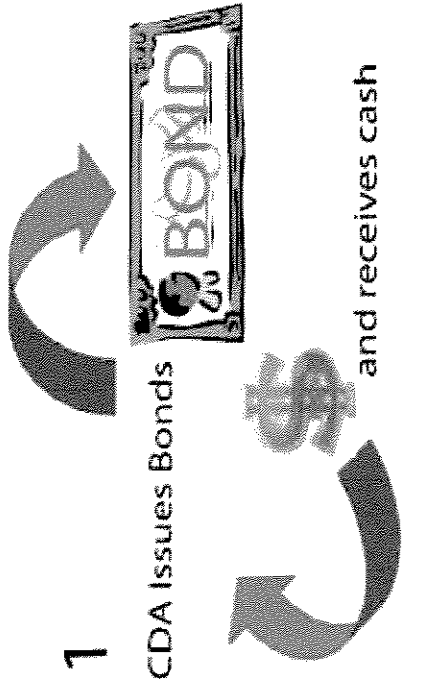


CDA Bond Repayment

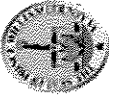
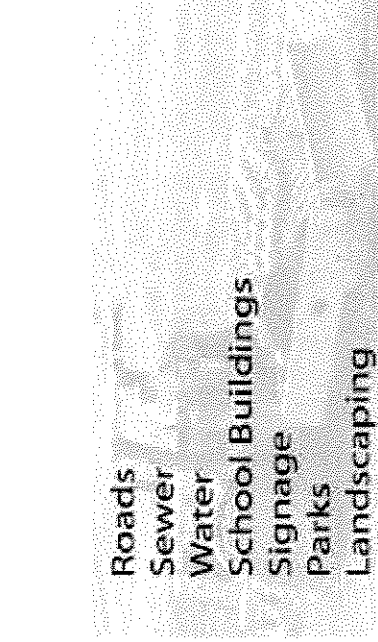
- Any bonds issued by the CDA are repaid through assessments levied upon the property owners within the boundaries of the CDA district.
- Assessments can be levied in two ways.
 - ◆ Ad Valorem Assessments Limited to 25 cents per \$100 unless all property owners agree to a higher rate
 - ◆ Special Assessment based on use and benefit from the improvements. Assessments cannot exceed the cost of the improvements.



CDAs Empowered to Issue Bonds



Special Assessments of property owners within the boundaries of the CDA pay the debt service on the bonds



Potential Benefits of a CDA

- Development incentive
- Accelerate project timing
- Increase development value
- Improve development quality
- Redevelopment tool
- Can assume what otherwise would have been
County expenses



CDA Risks

- Primary concern is default on bonds
 - ◆ Property value decline could reduce the bond repayment revenue stream
 - ◆ Default potential in the development start-up phase when most land in the CDA owned by developer
 - ◆ Insufficient sales to feed bond repayment revenue stream
 - ◆ Cyclical economic downturn could hurt prices and/or sales
 - ◆ Cost overruns could lead to a liquidity problem
- CDA failure could result in pressure on the County to step in
- Higher tax burden on property located within a CDA might make constituency less likely to support and accept general County community initiatives or bond referenda



Board of Supervisors Has CDA Guidelines in Place

- A 14-point guideline document contains specific requirements for a CDA petition addressing the following:
 - ◆ Scope and purpose of the project
 - ◆ Administrative requirements
 - ◆ CDA debt limits (Currently \$252.8 million in the aggregate)
 - ◆ Due diligence and review and analysis
 - ◆ County costs must be covered
 - ◆ Credit requirements and certifications
 - ◆ Memorandum of Understanding requirements
 - ◆ No County liability



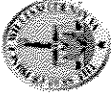
Residential Component of CDAs

- Existing Guidelines do not specifically address residential housing as components of a CDA petition. However, requirement for CDA to further economic development/quality growth strategic goals can be interpreted as excluding residential only projects.
- The County has previously approved a mixed residential/commercial CDA. Residential CDA assessments in that case were paid in full when each sale went to closing.
- Future CDA petitions will likely contain significant residential components. The Board should be aware that the issues attendant to CDAs containing high proportions of residential development will likely present themselves in future petitions.



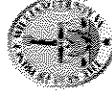
Proffer Issues with CDAs

- A potential policy issue exists with the permissibility of using CDA bond proceeds to satisfy proffer obligations.
- There are a number of reasons to restrict CDA funding from financing proffered improvements. Using CDA funding in this manner results in
 - ◆ A depletion of total available County CDA debt capacity in order to fund improvements that were proffer requirements to begin with
 - ◆ A reduction in funds available for other infrastructure improvements
 - ◆ A shift of responsibility for paying for proffered improvements directly to the property owner
 - ◆ The use of CDA funds to pay the obligations of a third party (developer/petitioner)
 - ◆ The imposition of an additional (and unnecessary) layer of bureaucracy that brings with it additional credit risk
- Should this issue arise in a future CDA petition, it will be addressed based on its own set of facts.



Existing CDAs in Prince William County Virginia Gateway

- Virginia Gateway
 - ◆ The CDA, created in 1998, includes 363 acres of land located on the southeast quadrant of the Route 29 (Lee Highway) and Route 619 (Linton Hall Road) intersection of Prince William County.
 - ◆ The CDA includes a mix of retail, light industrial, and office space. At build-out, the property is expected to include in excess of one million square feet of retail space and approximately 2.5 million square feet of office and industrial space.
 - ◆ At June 30, 2004, the CDA had \$13.6 million in outstanding bonds and reports issued to the County indicate the CDA is progressing satisfactorily. The improvements funded by the CDA bonds include road improvements and sewer and stormwater facilities.

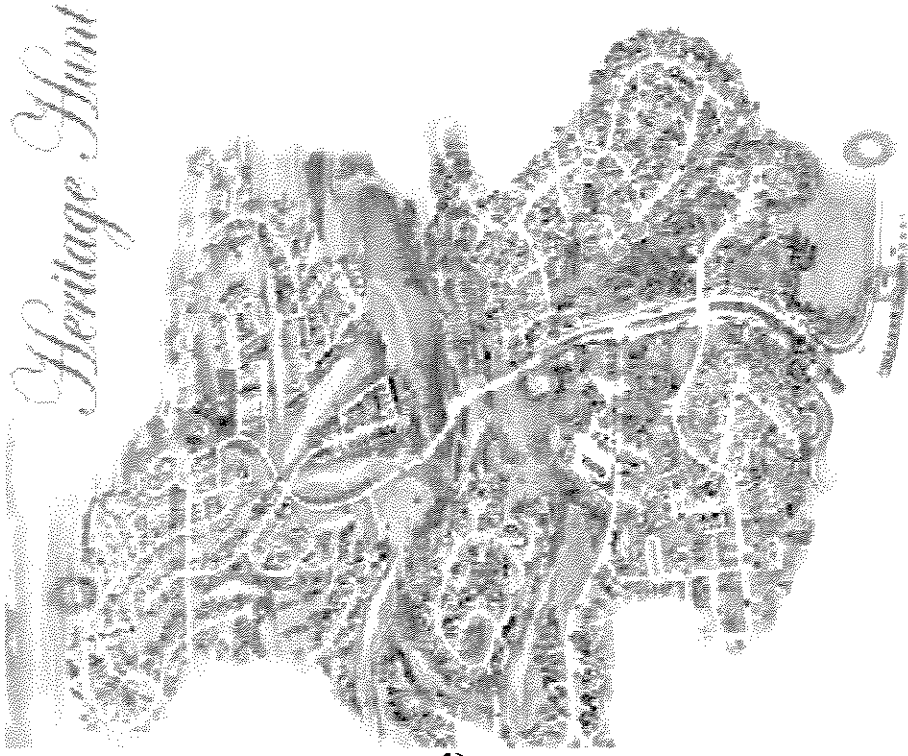


Existing CDAs in Prince William County

Heritage Hunt

□ Heritage Hunt

- ◆ The Heritage Hunt CDA, created in 1999, consists of approximately 810 acres of land in Prince William County and is located on the north side of Interstate 66 and Virginia State Route 29 (Lee Highway).
- ◆ The properties within the CDA are a mix of commercial and residential, with most of the residential being age-restricted dwellings.
- ◆ As of June 30, 2004, the CDA had \$6.7 million in outstanding bonds, and reports issued to the County indicate the CDA is operating satisfactorily. The improvements funded by the CDA bond proceeds include road improvements, water and sewer.



Date: 3/2/2005

Next Steps

- The current CDA Guidelines were last updated in 1998. References in the guidelines to strategic plan goals that have since been changed require review and amendment. Staff will prepare proposed changes to the guidelines for Board consideration.
- Next month the Board will be asked to authorize a public hearing on the most recent CDA petition involving a large project in the Woodbridge District.



Historical Background of the Linganore CDA

Lake Linganore at Eaglehead was originally conceived as a community where residents could enjoy nature in their neighborhood. In the early 1970's, the community's developers, William and Louis Brosius, created several recreational lakes, including 216-acre Lake Linganore, in a setting where future residents could enjoy woodlands and wetlands and the wildlife they attract. The community was laid out with some innovative concepts for the time, including narrower roads that would reduce traffic speed and reduce impervious surface and run-off.

During the economic downturn of the 'oil crisis', the project went bankrupt and was taken possession of by a bank. The property was sold off piece-meal to 'spot-lot' builders. Without the oversight of a developer for the whole community, certain necessary infrastructure was not built properly. The Homeowner's Association lacked the Authority to force builders to construct roads with proper stormwater management, and the county government had no interest in the needs of a community with privately owned roads.

Through the intervening years, the roads built by 'spot-lot' builders deteriorated from stormwater damage. A bridge on one of the major roads, Eaglehead Drive, was washed out by a major storm in the 1970's. The Homeowner's Association needed to construct roads that would both be safe for the residents and have minimum impact on the lakes, especially Lake Linganore, which has been co-opted by Frederick City and County as a major part of their water supplies.

In the 1990's, the Lake Linganore Homeowner's Association worked with the Declarant at the time, Frank Ellis, to write the bill that became the law that allows for the creation of Community Development Authorities in Frederick County Maryland. A Community Development Authority, or CDA, is a type of Special Taxing District. It allows a community to request the right to tax itself to raise funds for specific purposes. In this case, it was to fund the reconstruction of roads in several villages (the Linganore CDA) and rebuild the bridge on Eaglehead Drive (the Eaglehead CDA). Only areas where at least two-thirds of the property owners and at least two-thirds of the property value have petitioned in favor of the CDA could be included in the CDA.

The Lake Linganore Conservation Society, Inc. (LLCS) was formed in 1999 to provide assurance to the community of Lake Linganore at Eaglehead that work being performed under the Community Development Authorities known as the 'Eaglehead CDA' and the 'Linganore CDA' would be done in accordance with the conditions proposed in the petitions for the CDAs and agreed to by the residents. The LLCS is a separate and distinct organization from the Lake Linganore Home Owner's Association (LLA). The Lake Linganore Conservation Society is incorporated in the State of Maryland and is a 501 (c)(3) non-profit corporation. Funding for the LLCS' initial project, the construction of environmentally conscious roads and stormwater management systems within the Lake Linganore at Eaglehead community is being funded by 30-year bonds being issued by Frederick County on behalf of the Society.

The Linganore Community Development Authority (the 'CDA') was created by resolution number 98-15 adopted by the Frederick County Board of County Commissioners and is comprised of 1149 lots in the Lake Linganore Villages of Balmoral, Coldstream, Meadows, Nightingale and sections of Pinehurst in response to petition by 2/3's of the property owners and properties representing at least 2/3's of the property values.

The primary source of payment for the 2001 Bonds are Special Taxes imposed on each parcel of land within the Authority. The Special Taxes are payable and collected in the same manner as ad valorem taxes on real property, and have the same priority, become delinquent at the same time and bear penalties after delinquency as do the general ad valorem taxes on real property. The Special Taxes are due and payable on July 1 of each year. Obligation for the payment of the Special Taxes remains with

Attachment 4C

the parcel of land and is transferred to the new owner in any sale of that parcel.

The roads will be designed to minimize impervious surface and use open sections (no curbs) where possible and grassed swales. These are low cost means to minimize the roads' impact on the watershed. In order to provide independent oversight of the project, the Lake Linganore Conservation Society (LLCS), an organization independent of the Homeowner's Association, is to ensure that the roads and stormwater management systems are constructed in an environmentally friendly manner according to the concepts approved by the residents when they chose to tax themselves.

HOME

Loudoun County Capital Improvement Program Impact on Future Debt Ratios (1)

	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10
Beginning Net Tax Supported Debt	\$783,583,991	\$853,733,177	\$925,487,711	\$1,002,499,430	\$1,073,740,607	\$1,082,648,313
New Debt Issued (2)	127,513,969	142,401,000	155,810,000	158,850,000	110,210,000	120,125,000
Retired Debt (Old)	57,364,783	61,836,466	58,683,281	56,023,823	57,392,294	45,494,500
Retired Debt (New)	0	8,810,000	20,115,000	31,585,000	43,910,000	53,485,000
Outstanding Net Tax Supported Debt	\$853,733,177	\$925,487,711	\$1,002,499,430	\$1,073,740,607	\$1,082,648,313	\$1,103,793,813
Population (3)	247,293	263,036	278,778	291,896	305,014	318,132
Public School Enrollment (4)	44,014	47,467	51,002	54,982	59,024	63,247
Assessed Property Value (Estimated) (in Millions) (5)	\$43,940	\$51,874	\$58,704	\$65,352	\$71,877	\$78,476
Per Capita Income (6)	\$46,729	\$48,895	\$51,175	\$53,570	\$56,098	\$58,768
Expenditures (in Thousands) (7)	\$1,360,000	\$1,650,000	\$1,900,000	\$2,185,000	\$2,513,000	\$2,890,000
Debt Service	\$87,890,482	\$112,697,190	\$124,757,404	\$137,956,661	\$154,404,644	\$153,611,102
Debt Per Capita (\$2,500)	\$3,452	\$3,518	\$3,596	\$3,679	\$3,550	\$3,470
Debt to Estimated Value (3.0%)	1.94%	1.78%	1.71%	1.64%	1.51%	1.41%
Debt to Per Capita Income (7.5%)	7.39%	7.20%	7.03%	6.87%	6.33%	5.90%
Debt Service to Expenditures (10.0%)	6.46%	6.83%	6.57%	6.31%	6.14%	5.32%
Maximum Outstanding Overlapping Debt:						
% of Assessed Property Value (.25%)	\$109,850,000	\$129,685,000	\$146,760,000	\$163,380,000	\$179,692,500	\$196,190,000
% of Outstanding Tax Supported Debt (15%)	\$128,059,977	\$138,823,157	\$150,374,915	\$161,061,091	\$162,397,247	\$165,569,072

Note: Numbers in parentheses represent generally accepted, or fiscal policy target ratios.

(1) Debt includes appropriation based capital lease obligations. Does not include revenue bonds.

(2) Issued debt retirement rate assumes 20 year maturity on general obligations and capital lease obligations (level principal).

(3) Estimated population provided by the Department of Economic Development.

(4) Public school enrollment from the School Board Adopted Capital Improvements Program.

(5) Estimated property value provided by the Department of Management and Financial Services, and the Commissioner of the Revenue is an estimate of the fair market value of all taxable real and personal property in the County, exclusive of fair market deferrals resulting from Real Property Land Use Assessments (non-taxable base), as of January 1 for each Fiscal Year ending June 30.

(6) Estimated per capita income provided by the Department of Economic Development.

(7) Estimated expenditures provided by the Department of Management and Financial Services.

Loudoun County
Special Assessment & Other Overlapping Debt

<u>Agency Issuing Debt</u>	<u>Total Debt Outstanding</u>	<u>Loudoun County Portion</u>
<u>Direct Debt</u>		
Loudoun County - Through Virginia Revolving Loan Fund (VRLF) County-Wide On-Site Wastewater Systems	\$499,792	\$499,792 (1)
<u>Overlapping Debt</u>		
Commonwealth of Virginia Department of Transportation Route 28 Development	79,765,000	42,275,450
Peumansend Creek Regional Jail Authority	6,615,000	1,653,750
Northern Virginia Criminal Justice Academy	2,895,000	955,350
Loudoun County Sanitation Authority Broad Run Farms Wastewater System Village of Aldie Wastewater System	1,294,965 315,980	1,294,965 315,980
Town of Hamilton - Through VRLF Hamilton Wastewater System	1,873,383	1,873,383
Dulles Town Center Community Development Authority (CDA)	36,735,000	36,735,000
TOTAL	<u>\$129,994,120</u>	<u>\$85,103,878</u>

(1) This loan is direct debt requiring recordation in the financial statements of the County.
This is because the VRLF loan was made directly to the County.

**COMMUNITY DEVELOPMENT
AUTHORITIES - A TOOL FOR ACCELERATING
CRITICAL PUBLIC INFRASTRUCTURE PROJECTS**

**A PRESENTATION TO
THE FINANCE COMMITTEE OF
THE LOUDOUN COUNTY BOARD OF SUPERVISORS**

MAY 9, 2005

1. CDA Overview - Keenan Rice, MuniCap, Inc.

Mr. Rice will provide background information on CDAs and explain how CDAs can serve as a valuable tool to help Loudoun County meet the challenge of providing the critical public infrastructure the County needs. CDAs provide opportunities to accelerate the construction of that infrastructure without requiring expenditures from the County's general fund or general obligation bonds to pay for it. They represent a way to have growth pay for growth. Mr. Rice will also discuss some recent examples of successful CDA projects in the Washington, D.C. metropolitan area.

2. Virginia Law - Benton Burroughs, Jr., Esquire, Reed Smith

Mr. Burroughs will discuss the statutory framework governing CDAs in Virginia. He specifically will explain the express provision in the Virginia enabling statute that CDA debt shall not be debt of the Commonwealth of Virginia nor of the political subdivision that creates the CDA. Mr. Burroughs will include a brief synopsis of the procedure for creating a CDA in Virginia and the services and facilities that can be financed by CDAs.

3. Rating Agencies/Bond Markets - Nathan S. Betnun, Legg Mason Wood Walker, Incorporated

Mr. Betnun will address the important question of how CDAs and the bonds issued by CDAs are viewed by the three bond rating agencies - S&P, Moody's and Fitch. He will relate his experience that CDAs do not have a negative impact on the ratings of local government issued debt, and in fact, can have a positive effect to the extent they are used to enhance a jurisdiction's ability to provide infrastructure needed by the citizens and essential to sustaining local economic development. Mr. Betnun will also address the expectations that investors in CDA bonds would have of the host community in the event of a default.

4. **CDAs in Other High Growth Counties - Robert C. Burch, Banc of America Securities**

Mr. Burch will describe his direct experience and knowledge as a member of Banc of America Securities' Nationwide "CDA Group." Mr. Burch will provide a national perspective on CDAs. He will include a particular case study of a jurisdiction that has utilized CDA financing successfully to achieve its growth management and economic development goals.

5. **CDA Policy for Loudoun - John D. O'Neill, Jr., Esquire, Hunton & Williams LLP**

Mr. O'Neill will wrap-up the presentation by offering a few suggested modifications to the County Staff's draft CDA policy. The revisions are intended to refine the draft to give the Board of Supervisors the flexibility to utilize CDAs, as other jurisdictions in Virginia and throughout the country have, to accelerate public infrastructure projects that are essential to the quality of life of its citizens and the competitive demands of its businesses.

A package of information relating to the topics covered by the presenters will be distributed at the conclusion of the presentation. These materials are intended to serve as a resource for the Questions/Comments part of the meeting and for future reference by the meeting participants. The presenters will also remain available to answer any questions.

BOARD OF SUPERVISORS
FINANCE/GOVERNMENT SERVICES COMMITTEE

ACTION ITEM

#8

SUBJECT: FISCAL POLICY AMENDMENT: SECTION 11; CRITERIA FOR ESTABLISHMENT OF SPECIAL ASSESSMENT DISTRICTS

ELECTION DISTRICT: County-wide

CRITICAL ACTION DATE: At the pleasure of the Board

RECOMMENDATION:

Staff: Staff recommends that the Finance/Government Services Committee recommend that the Board of Supervisors amend Section 11 Criteria for Establishment of Special Assessment Districts of the County's Fiscal Policy as contained in Attachment 1.

BACKGROUND: The County of Loudoun (the "County") and its governing body, the Board of Supervisors (the "Board"), is responsible to the County's citizens to carefully account for all public funds, to manage County finances wisely and to plan for the adequate funding of services desired by the public, including the provision and maintenance of facilities. The Board's policies of the Board are designed to establish guidelines for the fiscal stability of the County and to provide guidelines for the County's chief executive officer, the County Administrator. These policies are reviewed and updated periodically and are presented to the Board for approval. The last update was approved by the Board on March 15, 2005.

ISSUES: The County's current fiscal policy addressing Special Assessment Districts has not been amended in 15 years. The original policy never contemplated the potential magnitude of the special assessment/CDA financing requests that are currently being proposed. Due to the increased interest in Special Assessment Districts/CDAs, the County has the opportunity to adopt a more comprehensive policy. This proposed policy change was developed in consultation with the County's Financial Advisors and will provide residents, developers and the public with more detailed guidance as to information requirements, process, financial and credit limitations, and steps required prior to submitting a petition to the Board of Supervisors. The new policy should tie directly to the overall growth management policies and provide a purely financial assessment of the particular district financing. This assessment would include the likelihood for successful repayment and its impact on County debt levels.

FISCAL IMPACT: Review process - Without a comprehensive policy that requests detailed information on a Special Assessment District, the amount of staff time reviewing and analyzing the differing proposals will greatly increase.

ATTACHMENT 8

County's Financial Health - Without a comprehensive policy that requests detailed information and sets specific requirements on a Special Assessment District, the County's fiscal health and credit rating could be jeopardized.

ALTERNATIVES:

1. The Committee can recommend that the Board of Supervisors revise the Fiscal Policy language that is outlined in the item.

or

2. The Committee can revise which amendment as deemed appropriate by the Committee.

or

3. The Committee can recommend keeping the Fiscal Policy language as written.

DRAFT MOTION: I move that the Finance/Government Services Committee recommend that the Board of Supervisors amend Section 11 Criteria for Establishment of Special Assessment Districts of the County's Fiscal Policy as provided in Attachment 1.

ATTACHMENT: 1) Proposed Criteria for Establishment of Special Assessment Districts.

STAFF CONTACT: Kirby Bowers, County Administrator

Jack Roberts, County Attorney

Linda Neri, Deputy County Administrator

Mark Adams, Director, Management & Financial Services

Paul N. Arnett, Comptroller

Ben Mays, Deputy Chief Financial Officer

Loudoun County Fiscal Policy – Proposed Comprehensive Policy

The existing County policy is shown in italics below.

Section 11 - Criteria for Establishment of Special Assessment Districts

The following criteria are set forth as the minimum requirements that must be satisfied for the Board to lend its support to the creation of a special assessment district. As such, proposed districts that cannot meet these minimum requirements will have their requests for support rejected by the Board on the basis that it endangers the County's own credit worthiness in the financial markets. The Board takes this opportunity to emphasize that other considerations also may apply. In effect, these criteria are set forth only as the minimum standards for the establishment of a district. However, the ability to meet the criteria described below will carry considerable weight with the Board.

Loudoun County (the "County") has determined that under certain circumstances, the creation of a Special Assessment District (a "District") can further the economic development/quality growth management/redevelopment goals of the County. Of equal importance is that the County's financial assets not be at risk. These guidelines are designed to insure that the County goals are met.

1. **Limited to Projects which Advance County's Plans.** The proposed project or purpose for establishing a District must advance the County's adopted comprehensive plan or provide greater benefit to the ultimate property owners utilizing the proposed facilities.
2. **Description of Project and District Petition.** The petitioners shall submit for County staff review, prior to petitioning the County Board of Supervisors for action, a plan of the proposed District. This submission must include as a minimum:
 - The special assessment district's proposed petition to the County Board of Supervisors;
 - A map of district boundaries and properties served;
 - A general development plan of the district;
 - Proposed district infrastructure including probable cost;
 - A preliminary feasibility analysis showing project phasing, if applicable, and projected land absorption with the district;
 - A schedule of proposed special assessment district financings and their purpose;

- A discussion of the special assessment district's proposed financing structure and how debt service is paid;
- The methodology for determining special assessments within the district;
- Background information on the developers and/or property owners like that found in an Offering Memorandum as well as currently proposed or previous involvement with other districts in Virginia and elsewhere; and,
- Level of equity, excluding any land, to be provided and when such equity would be incorporated into the proposed Plan of Finance.

The petitioner shall respond to and incorporate changes to the proposed petition requested by staff. Failure to incorporate changes will result in a staff recommendation against the creation of the special assessment district.

The petition must address:

- Protections for the benefit of the County with respect to repayment of debt, incorporation, and annexation;
- Protections for the benefit of individual lot owners within the District's boundaries with respect to foreclosure and other collection actions should their respective assessment be paid or is current; and
- Payment of the County's costs related to the administration of the District, specifically including the County's costs to levy and collect any special tax or assessment.

3. **Consistency with County Planning Documents.** The petitioner must demonstrate how the project or purpose for establishing the District is/or could be consistent with the Comprehensive Plan, Zoning Ordinance, and if applicable, the Capital Improvement Program, the Capital Needs Assessment and the Adopted Capital Facility Standards.

4. **Impact on County Credit Rating.** The District, either individually or when considered in aggregate with previously approved Districts, shall not have a negative impact upon the County's debt capacity or credit rating. The majority of this debt will be considered and treated as overlapping debt. In order to protect the County's long term fiscal stability and credit standing, the total aggregate outstanding overlapping debt should not exceed 0.25% of the total assessed value of taxable property within the County; nor should the total aggregate outstanding overlapping debt exceed 15% of the County's total outstanding tax supported debt, during any year of the County's Six-Year Capital Improvements Program. Exemptions to this policy may be made if the projects to be financed directly replace capital projects in the current Capital Improvement Program. Maturities of special district debt shall approximate the average of the County's other special assessment debt.

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It is the intent of the County that this debt be self-supporting. Debt is deemed self-supporting when sufficient revenue is generated for at least three consecutive years to pay all of the required debt payments.

5. **Due Diligence.** A due diligence investigation performed by the County or its agents must confirm petition information regarding the developers, property owners, and/or underwriting team, and the adequacy of the developer's or property owner's financial resources to sustain the project's proposed financing.
6. **Project Review and Analysis.** A financial and land use assessment performed by the County or its agents must demonstrate that the District's proposed development, financial, and business plan is sound, and the proposed project or purpose for establishing a District is economically feasible and has a high likelihood of success. The analysis must confirm why establishing a District is superior to other financing mechanisms from a public interest perspective.
7. **Petitioner to Pay County Costs.** The County may require that the Petitioner agree to cover the County's costs for all legal, financial and engineering review and analysis and to provide a suitable guaranty for the payment of these costs. The County's estimated costs shall be itemized to show anticipated engineering, legal, and financial, consultant and other fees.
8. **Credit Requirements.** The debt obligations are issued by the District to finance or refinance infrastructure of the project:
 - *The Board will retain practical and legal control of any debt issued by the district.*
 - *The Board will approve a district debt issuance only after it has been determined the issue can reasonably be expected to receive an investment grade rating from a nationally recognized statistical rating agency (i.e., Fitch, Moody's, Standard and Poor's). If the natural rating is not investment grade, the County will require the district to acquire a credit enhancement (i.e., letter of credit, bond insurance, etc.) or demonstrate some other form of financial safeguard to the bond purchasers.*
 - The District's outstanding debt obligations as compared to the appraised value of property or adjusted appraised value if partial development has occurred within District boundaries as if the infrastructure being financed was in-place will be an important consideration in the ultimate review of the Project. As such, careful detailing of the level of debt as a percentage of the current and future appraisal value will be an important criteria.
9. **Requirement for Approved Financing Plan.** The ordinance creating the District shall include a provision requiring the District to submit a financing plan to the County for approval prior to the issuance of any District obligations. Such financing plan shall include details specific to the financing proposed to be undertaken, including, but not

limited to more complete and detailed information of those applicable items required under Paragraph 2 above.

10. **No Liability to County.** *The County shall not pledge either its full faith and credit or any moral obligation toward the repayment of principal and interest on any debt issued by the district.* The project must pose no direct or indirect liability to the County, and the developer and/or District must provide the type and level of surety acceptable to the County to protect the County from actions or inactions of the District as specified in the letter of intent at time of petition. All documents relating to the project shall reflect the fact that the County has no financial liability for present or future improvements connected with the project whether or not contemplated by the ordinance creating the District or as that ordinance may be amended. The ordinance will contain a provision that acknowledges that the County has no moral or legal obligation to support the debt of the district, but that the County retains the authority and ability to protect the County's credit.

11. **Conditions and Covenants.** Any ordinance creating a special district may include appropriate conditions related to the size and timing of District debt. In addition, the County may require covenants to be attached to the property that incorporate the salient commitments related to the proposed District improvements, the public benefits and the special assessments.

Annual Review. These guidelines shall be reviewed at least annually.