

**BOARD OF SUPERVISORS  
TRANSPORTATION AND LAND USE COMMITTEE  
ACTION ITEM**

**# 4**

**SUBJECT:** Transportation and Land Use Committee Action Item  
Permanent Pump & Haul Request /Fricols , LC for Crosstrail  
Industrial Land Condominium  
LCTM : /61/E/1CM/PH9; PH3; PH6; PH 7; PH4, PH8  
PIN: 150270553; 150279990; 150369787; 150372312;  
150268040; 150373700

**ELECTION DISTRICT:** Catoctin

**STAFF CONTACT(S):** Joe Lock, Rural Supervisor, Loudoun County Health Department  
Dr. David Goodfriend, Loudoun County Health Department

**CRITICAL ACTION DATE:** At the Board's Pleasure

**RECOMMENDATION:**

**Staff:** Staff recommends the Transportation and Land Use Committee recommend that the Board of Supervisors not enter into a contractual agreement with the Virginia Department of Health and Fricols, LC to provide permanent pump and haul services for Crosstrail Industrial Land Condominium to six (6) land units. The proposal does not meet the Health Department's practice for pump and haul or the current Comprehensive Plan Policy regarding permanent pump and haul in the Leesburg Joint Land Management Area (JLMA).

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**BACKGROUND:**

At the October 19, 2011 Transportation and Land Use Committee meeting, the Committee requested that staff research information concerning future sewer connections for the existing condominium lots. Staff was requested to return to the November 16, 2011 Transportation and Land Use Committee meeting with information concerning the conditions by which the property will ultimately be served by sewer to be constructed by the Town of Leesburg. It is staff's understanding that the Town's currently planned construction of the Lower Sycolin/Tuscarora Creek sewer line would extend the sewer line only to a point south of the WO&D trail, more than 750 feet from the subject property at the closest point.

The applicant and their legal representative met with staff and Committee Chair Burk on October 28, 2011, to clarify issues and to address the following specific items;

- 1) The applicability of the condominium documents that were referred to by the applicant at the Committee meeting, and their binding nature on future condominium owners to connecting to sewer when available,

- 2) The timing of construction and distance required for future connection to the Town sanitary sewer project,
- 3) Additional specifications on potential wastewater flows from future industrial condominium users.

Attachment 3b outlines the applicant's position that the condominium documents are binding and will require future users to connect when available. Further, existing agreements between the Town and the applicant also require the applicant to connect to sewer when completed *and* available. However, staff notes that the 2009 Agreement between the Town and Fricols does not state that Fricols enters into the Agreement on behalf of its successors and assigns. In addition, the Agreement does not define what is meant by completed and available, both of which terms are subject to interpretation. As of staff's recent communication with the Town of Leesburg, staff is advised that the Lower Sycolin/Tuscarora Creek sewer project proposed by the Town has been scaled back by action of the Town Council to construct the project only to a location in the vicinity of the intersection of the WO&D trail and Cochran Mill Road. This location is further from the Fricols property than the 750 feet established in the condition of approval of the most recent pump and haul approval for the property in 2009. As of this date, staff has no further information regarding the date that sewer will be available, but note only that the existing agreement between the Town and Fricols requires connection of the Fricols property to the Lower Sycolin/Tuscarora Creek sewer within six months of "completion and availability". Staff does not support the pump and haul request because the request does not meet Health Department practice and Revised General Plan policies that limit pump and haul approvals to repair of existing failing sewage disposal systems and support only public sewer for development in the Joint Land Management Areas.

According to the applicant (Attachment 3a), proposed wastewater flows will be based on usage by between a total of 18 to 35 employees for each of the six typical land units. The land units are proposed and expected to have office and operational space distinct from warehouse and storage space. Fricols, LC and its legal counsel have submitted proposed terms and conditions that are to be adhered to concerning the pump and haul applications for the referenced Crosstrail Industrial Land Condominium lots. (Attachment 3c) These conditions are proposed to be a part of the pump and haul permits and the draft motion, if approved.

## **ISSUES:**

### **1. Health Department Practice:**

The Health Department has historically recommended approval of permanent pump and haul applications only for existing occupied structures that have failing or substandard sewage disposal systems and not for new construction as is the case for this application. This request does not meet this practice.

### **2. Comprehensive Plan Policy:**

In the Revised General Plan, as amended, the County envisions the extension of central sewer to serve new development in the Joint Land Management Area (JLMA) as is the case for the Suburban and Transition Policy Areas (Attachment 2). All development in the Joint Land Management Area is planned to be served by public sewer and water. Further, new non-government development is encouraged to locate within the corporate limits of the towns before moving into contiguous designated town JLMAs. County policy for allowing permanent pump and haul in areas to be served by central utilities is limited to existing uses where there is a demonstrated health risk.

The approval of permanent pump and haul for new construction has the potential to encourage premature development in an area where sewerage facilities do not yet exist, thereby removing the incentive to finance the ultimate solution of extending central facilities to the area. The extension of central utilities is dependent on new development financing the extension.

**FISCAL IMPACT:**

The Health Department monitors permitted pump and haul facilities by conducting annual inspections to insure compliance as well as the monitoring of pump outs as required by State Code. These inspections are included in current staff workloads and will have no additional fiscal impact.

**ALTERNATIVES:**

1. The Board may decide **not** to enter into a contractual agreement with Fricols, LC for Crosstrail Industrial Land Condominium and the Virginia Department of Health to permit permanent pump and haul services to serve the six (6) land units.

**-OR-**

2. The Board may decide to enter into a contractual agreement with Fricols, LC for Crosstrail Industrial Land Condominium and the Virginia Department of Health to permit permanent pump and haul services to serve the six (6) land units.

**DRAFT MOTION(S):**

1. I move that the Transportation and Land Use Committee recommend to the Board of Supervisors that the County **not** enter into a contractual agreement with Fricols, LC for Crosstrail Industrial Land Condominium and the Virginia Department of Health to permit permanent pump and haul services to serve the six (6) land units.

**-OR-**

2a. I move that the Transportation and Land Use Committee recommend to the Board of Supervisors that the County enter into a contractual agreement with Fricols, LC for Crosstrail Industrial Land Condominium and the Virginia Department of Health to allow permanent pump and haul services to serve the six (6) land units, designated as Units 3, 4, 6, 7, 8, and 9 of the Crosstrail Industrial Land Condominium, and that all costs associated with the pump and haul operation be borne by Fricols, LC, its successors and assigns, and/or the owner of each land unit so served. The owner of each land unit so served by pump and haul shall also be responsible for insuring that the pump and haul provider submits all required reports, records, and receipts through the Health Department's on-line tracking system.

**-AND-**

2b. I further move that as additional conditions of the approval of this permanent pump and haul application, (i) the owner of any pump and haul system established pursuant to this approval shall be required to connect to public sewer when it becomes available as set forth by the Town of Leesburg Resolution 2009-083 and the executed agreement between the Town of Leesburg and Fricols LC dated August 18, 2009, (ii) the conditions set forth in the letter from John Niccolls,

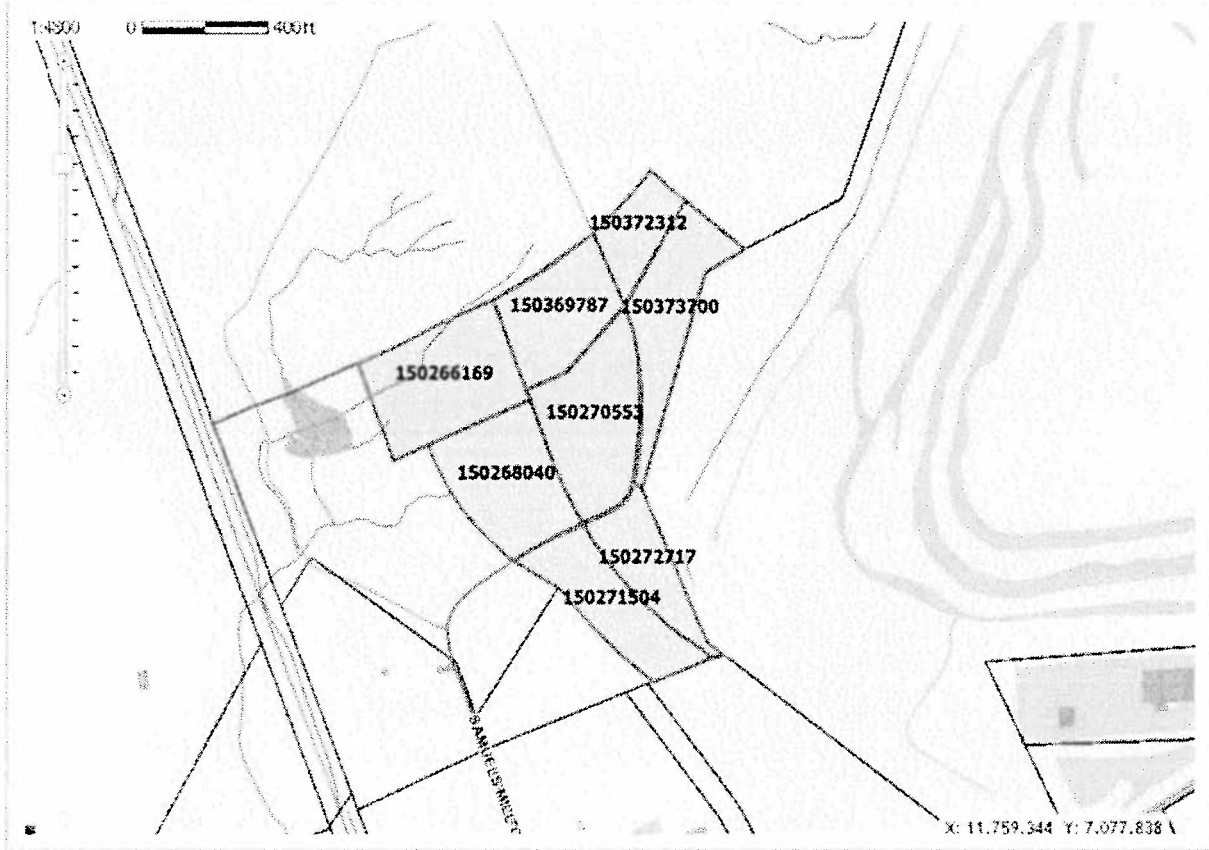
Manager, dated October 31, 2011 and attached to the November 16, 2011, Action Item, shall be complied with, and (iii) all properties within the Fricols property that are served by pump and haul shall connect to the Town of Leesburg public sewer upon completion of, and the validity of the pump and haul permits shall terminate six months after, construction of the Town of Leesburg Lower Sycolin Creek sewer facilities to a point within 750 feet from any point within the subject Fricols property currently comprising the Crosstrail Industrial Land Condominium.

**-OR-**

3. I move an alternate motion.

**ATTACHMENTS:**

1. Vicinity Map
2. Revised General Plan
- 3a. Wasteflow Estimates dated November 1, 2011
- 3b. Letter from Woody Turner dated November 8, 2011
- 3c. Fricols, LC letter dated October 31, 2011



Loudoun Mapping Display of Subject Condominium Lots

Vicinity Map

## **Revised General Plan Policies Relating To The Towns**

**Revised General Plan - 7/23/01, Amended 04/20/04**

**Chapter 9: The Towns**

**Public Utilities**

**Public Utilities Policies**

**P 9-7**

7. All development in the Joint Land Management Areas is planned to be served by public sewer and water. Communal facilities may be used to serve Town and County owned and operated public facilities within JLMAs with the exception of Purcellville.

**Revised General Plan - 7/23/01, Amended 04/20/04**

**Chapter 9: The Towns**

**Growth Management Policies**

**P 9-3**

2. New non-government development is encouraged to locate within the corporate limits of the Towns before moving into contiguous designated Town Joint Land Management Areas (JLMAs) to facilitate the compact and efficient use of resources.

*Fricols, LC*  
Post Office Box 3327  
Leesburg, Virginia 20177-8134  
703 777-5596

j.niccolls@blakelandscapes.com

November 1, 2011

Mr. Charles Yudd, Deputy County Administrator  
County of Loudoun  
1 Harrison Street, SE,  
Leesburg, Virginia 20176

RE PUMP AND HAUL PERMIT APPLICATIONS FOR UNITS 3, 4, 6, 7, 8 AND 9  
CROSSTRAIL INDUSTRIAL LAND CONDOMINIUM

Dear Mr. Yudd:

This follows up on your question at our meeting last Friday regarding the estimated wastewater flows from typical facilities to be developed on the the Fricols, LC, property.

Wastewater flows from industrial buildings, according to an on-line EPA report, range from 7 to 16 gallons per day per employee as shown in Table 3-4 attached. While the state sewage regulations also include sewage flow estimates, they are not applicable for our purposes because they are used as design criteria for subsurface systems—not systems in which wastewater is delivered to a municipal treatment plant.

Based on the typical 1,500 gallon holding tank and using 80 percent of that as the working tank capacity, and further assuming 52 pump-outs per year, the maximum annual flow accommodated by that size holding tank is 62,400 gallons or 246 gallons per day (52 weeks x 5 less 6 holidays).

An annual capacity of 62,400 gallons can accommodate between 18 and 35 employees at the flow rates shown on Table 3-4. The calculations showing this are also attached.

In summary, pump and haul facilities on the six land units would be sufficient for enterprises each employing on site between 18 and 35 persons. Such facilities could be expected to have office and operational space, as distinct from warehouse and storage areas, of between 4,000 and 8,000 square feet.

Sincerely,

John Niccolls  
Manager

c Supervisor Kelly Burk  
Joe Lock, LCHD  
Woodrow W. Turner, Esq.

Attachment 3a A-391

## Typical Wastewater Flow Rates Commercial Sources

Table 3-4. Typical wastewater flow rates from commercial sources<sup>a,b</sup>

Facility	Unit	Flow, gallons/unit/day		Flow, liters/unit/day	
		Range	Typical	Range	Typical
Airport	Passenger	2-4	3	8-15	11
Apartment house	Person	40-80	50	150-300	190
Automobile service station <sup>c</sup>	Vehicle served	8-15	12	30-57	45
	Employees	9-15	13	34-57	49
Bar	Customer	1-5	3	4-19	11
	Employees	10-16	13	38-61	49
Boarding house	Person	25-60	40	95-230	150
Department store	Toilet room	400-600	500	1,500-2,300	1,900
	Employee	8-15	10	30-57	38
Hotel	Guest	40-60	50	150-230	190
	Employee	8-13	10	30-49	38
Industrial building (sanitary waste only)	Employee	7-16	13	26-61	49
Laundry (self-service)	Machine	450-650	550	1,700-2,500	2,100
	Wash	45-55	50	170-210	190
Office	Employee	7-16	13	26-61	49
Public lavatory	User	3-6	5	11-23	19
Restaurant (with toilet)	Meal	2-4	3	8-15	11
	Conventional	8-10	9	30-38	34
	Short order	3-8	6	11-30	23
	Bar/cocktail lounge	Customer	2-4	3	8-15
Shopping center	Employee	7-13	10	26-49	38
	Parking Space	1-3	2	4-11	8
Theater	Seat	2-4	3	8-15	11

<sup>a</sup>Some systems serving more than 20 people might be regulated under USEPA's Class V Underground Injection Control (UIC) Program. See <http://www.epa.gov/safewater/uic.html> for more information.

<sup>b</sup>These data incorporate the effect of fixtures complying with the U.S. Energy Policy Act (EPACT) of 1994.

<sup>c</sup>Disposal of automotive wastes via subsurface wastewater infiltration systems is banned by Class V UIC regulations to protect ground water. See <http://www.epa.gov/safewater/uic.html> for more information.

Source: Crites and Tchobanoglous, 1998.

Source: <http://www.epa.gov/nrmrl/pubs/625r00008/html/625R00008chap3.htm>

November 1, 2011

Attachment 3a A-3a2



Estimated Wastewater Flows  
**Crosstrail Industrial Park**  
 November 1, 2011

	Gallons Per Day		
	Minimum	Maximum	Typical
Industrial use estimated wastewater flow, per employee/day*	7	16	13
Holding tank capacity, gallons	1,500	1,500	1,500
Working tank capacity @ 80%, gallons	1,200	1,200	1,200
Number of pump outs annually (typical)	52	52	52
Wastewater capacity, annual	62,400	62,400	62,400
Operating periods (days) per year (52 x 5 less 6 holidays)	254	254	254
Wastewater flow per operating period (day)	245.7	245.7	245.7
Wastewater flow per employee per day	7	16	13
Capacity of system in number of employees	35.1	15.4	18.9

\* Source: <http://www.epa.gov/nrmrl/pubs/625r00008/html/625R00008chap3.htm>

*Attachment 3a      A-3a-3*

*Fricols, LC*  
Post Office Box 3327  
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j.niccolls@blakelandscapes.com

November 1, 2011

Mr. Charles Yudd, Deputy County Administrator  
County of Loudoun  
1 Harrison Street, SE,  
Leesburg, Virginia 20176

RE PUMP AND HAUL PERMIT APPLICATIONS FOR UNITS 3, 4, 6, 7, 8 AND 9  
CROSSTRAIL INDUSTRIAL LAND CONDOMINIUM

Dear Mr. Yudd:

This follows up on your question at our meeting last Friday regarding the estimated wastewater flows from typical facilities to be developed on the the Fricols, LC, property.

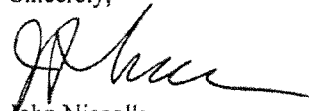
Wastewater flows from industrial buildings, according to an on-line EPA report, range from 7 to 16 gallons per day per employee as shown in Table 3-4 attached. While the state sewage regulations also include sewage flow estimates, they are not applicable for our purposes because they are used as design criteria for subsurface systems—not systems in which wastewater is delivered to a municipal treatment plant.

Based on the typical 1,500 gallon holding tank and using 80 percent of that as the working tank capacity, and further assuming 52 pump-outs per year, the maximum annual flow accommodated by that size holding tank is 62,400 gallons or 246 gallons per day (52 weeks x 5 less 6 holidays).

An annual capacity of 62,400 gallons can accommodate between 18 and 35 employees at the flow rates shown on Table 3-4. The calculations showing this are also attached.

In summary, pump and haul facilities on the six land units would be sufficient for enterprises each employing on site between 18 and 35 persons. Such facilities could be expected to have office and operational space, as distinct from warehouse and storage areas, of between 4,000 and 8,000 square feet.

Sincerely,



John Niccolls  
Manager

c Supervisor Kelly Burk  
Joe Lock, LCHD  
Woodrow W. Turner, Esq.

Attachment 39 A-39-4

# Herring & Turner, P.C.

November 8, 2011

John Niccolls  
Manager  
Fricols, LC  
Post Office Box 3327  
Leesburg, Virginia 20177

Via Email

Re: Pump and Haul Permits

Dear John:

As a follow up from our meeting on October 28, 2011 with Supervisor Kelley Burk, Charles Yudd and Joe Lock, I was requested to prepare two legal opinions for you: one dealing with Article 11 of the Condominium Declaration, and the other dealing with assumptions about timing and distance for connection to the Town's sanitary sewer system.

## **Article 11 of the Crosstrail Industrial Land Condominium Declaration**

The question is whether Article 11 of the Declaration will bind future owners of the condominium units to abandon the use of a "pump and haul" system and connect to the Town's sanitary sewer system in accordance with the Agreement with the Town of Leesburg dated August 18, 2009. The answer is "Yes"; such future owners will be bound by the Agreement for both practical and legal reasons. Practically speaking, the Pump and Haul permits may be revoked six months after the conditions to connect with the Town's sanitary system have occurred and as a result, unless unit owners connect to the Town's system, they will have no legal sewer disposal facilities. In addition, from a legal standpoint, under Article 11 of the Declaration, future unit owners do not have the option to "opt out" of Town of Leesburg sewer service and provision is made in the Article to assure that the facilities are constructed from the property line to the individual units.

## **Timing and distance for connection to the Town's Sanitary sewer system.**

The question is whether the change in the assumptions about when and where the sewer line will be brought necessitate an amendment to the Agreement with the Town.

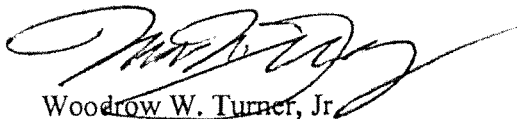
Attachment 36 A-36-1

The answer is "No". There are no specific references or limitations pertaining to when or where sewer will be available in the agreement with the Town. The only reference to time is the requirement in Section 2 that the owners abandon the pump and haul and connect to the sewer "within six months of its completion and availability for connection."

Inasmuch as there is no specific reference in the agreement as to when or where the sewer facilities will be available, such conditions can be controlled exclusively by the County in its agreement with Fricols and in the conditions imposed on the pump and haul permits. Accordingly, the County has the ability to deal with the specifics of timing and distance and there is no need to amend the agreement with the Town. The changes that have been suggested by the County Staff are incorporated in the draft motion for approval.

Let me know if there are additional questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Woodrow W. Turner, Jr.", written in a cursive style.

Woodrow W. Turner, Jr

cc: Charles Yudd

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October 31, 2011

Mr. Charles Yudd, Deputy County Administrator  
County of Loudoun  
1 Harrison Street, SE,  
Leesburg, Virginia 20176

RE PUMP AND HAUL PERMIT APPLICATIONS FOR UNITS 3, 4, 6, 7, 8 AND 9  
CROSSTRAIL INDUSTRIAL LAND CONDOMINIUM

Dear Mr. Yudd:

Thank you for meeting with us last week to discuss the Fricols LC applications for pump and haul permits. I have summarized the topics we discussed in the meeting.

Connection to Public Sewer - 750 feet from property: The existing permit serving the Blake Landscapes facility requires connection when the public sewer becomes available within 300 feet of the property. Because of the unique circumstances of this property in relation to the sewer line location a suggestion was made that the usual policy requiring connection to the sewer when it is within 300 feet of the property should be changed to 750 feet. We accept that change and point out that allowing us to develop additional businesses on the property will permit us to spread among more users the greater cost that the change from 300 to 750 feet imposes.

Here is the proposed motion with the added condition No 5 regarding when connections are required. The words "or contracts" were added to the first sentence.

The Transportation and Land Use Committee finds the application of Fricols, LC, for six pump and haul permits on its property identified as Crosstrail Industrial Land Condominium is consistent with county plans and policies and therefore recommends approval of a contract or contracts between Fricols, LC, and the Virginia Department of Health to allow permanent pump and haul services for developments situated on Units 3, 4, 6, 7, 8 and 9 of the property with the following conditions:

1. In accordance with Virginia Code Section 55-79.43, as amended, future development of the property shall be subject to the Loudoun County Zoning Ordinance and site plan requirements.
2. All costs associated with the pump and haul operations shall be borne by Fricols, LC, its successors and assigns.
3. Fricols, LC, its successors and assigns shall be responsible for operation of the pump and haul systems in compliance with Virginia Department of Health regulations including the maintenance and submission of records required by the department.
4. Town of Leesburg Resolution 2009-083 and the August 18, 2009, contract between Fricols, LC, and the Town of Leesburg are made a part of these conditions as if fully set out herein.
5. The validity of permits issued pursuant to this approval shall terminate six months after completion of the Town of Leesburg Lower Sycolin Creek sewer facilities provided the facilities are available for connections from the said units and are within 750 feet of any point within the property formerly described as Parcel 1-A, CBRE Holding Company Subdivision, and now known as the Crosstrail Industrial Land Condominium.

Attachment 3c A-3c-1

Status of the town's Lower Sycolin Creek sewer extension project: Bids are being requested by the town for the first phase which includes gravity sewer and force main from within the corporate limits southeasterly to within about 650 feet of Cochran Mill Road.

Mr. Yudd indicated he would contact the town to learn more about the timing of future extensions of the Lower Sycolin Creek sewer system.

Town of Leesburg/Fricols, LC agreement: Mr. Turner will review the agreement and prepare an opinion as to whether the agreement requires revision when the added permits are approved with the conditions suggested. Also, he will review Article 11 of the condominium documents and provide an opinion as to whether all land units within the property are bound by the Leesburg/Fricols, LC, agreement.

Uses on the Fricols, LC, property: Mr. Yudd asked if Fricols, LC, could provide information about the types of uses which would benefit from the permits. In response, we think that the current PD-GI zoning adequately defines potential uses. Those interested in the property to date have been contractor services. The purchaser of Unit 5 is a contractor who will develop a second office and operations center. Two prospects are also contractors.

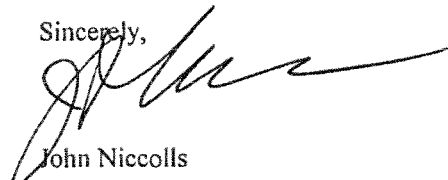
Intensity of sewer utilization: With respect to the size of the pump and haul systems, the types of development most likely to occur on the property will be low intensity contractor service establishments, not high water-using businesses. And, as a practical matter, the capacity of pump and haul systems is limited by the types of equipment installed (1,500 gallon storage tanks) and the service providers' equipment, generally 1,500 gallon septic tank service trucks which operate on Loudoun roads daily. Accordingly, these practical constraints will limit the amount of sewer flows that can be utilized.

In addition, in order to provide the County with more detailed information on potential utilization, I will send additional information on estimated sewer flows from the land units.

Requiring engineering plans be completed prior to issuance of a building permit. Mr. Lock indicated that part of the staff's recommendation (regarding a moratorium on building permits throughout the property) has been withdrawn. The proposed condition cannot be satisfied in any event because no engineering plans can be drawn until the next phase of the sewer extension is ready for construction. And, as written, it would prohibit the use of the property for any purpose.

I trust that this is an accurate reflection of our discussions during the meeting and the agreed-upon follow up actions. Once again thank you for your time and the time of your staff and the Committee members in helping to resolve issues and bring this forward to the Board.

Sincerely,



John Niccolls  
Manager

c Supervisor Kelly Burk  
Joe Lock, LCHD  
Woodrow W. Turner, Esq.