

# FAIRFAX COUNTY WATER AUTHORITY

## OCOCOQUAN RESERVOIR SHORELINE EASEMENT POLICY

February 5, 2004

### I. Purpose

The Occoquan Reservoir (the "Reservoir"), located in Fairfax and Prince William Counties, Virginia, was constructed for and is maintained and operated as a major drinking water source serving the Northern Virginia community. The purpose of this Occoquan Reservoir Shoreline Easement Policy ("this Policy"), as adopted and as may be amended, is to protect the Reservoir and all related water supply structures and facilities for water supply purposes, through regulation of activities in the Fairfax County Water Authority's ("FCWA's") existing water supply easements (the "Easements") immediately adjacent to the Reservoir.

### II. Authority

The Easements grant FCWA exclusive possession, use, occupancy, and control of the areas within the Easements for water supply purposes. Certain limited activities are permitted in the Easements, but FCWA is expressly authorized to impose reasonable restrictions, rules, and regulations on all such activities within the Easements, after due notice to the owners of the properties on which the Easements are located, as described in the individual deeds by which the Easements were granted (the "Deeds").

### III. Applicability

This Policy applies to all areas within the Easements as defined by the Deeds.

### IV. Regulated Activities

- a. Permitted Structures. Construction and maintenance of piers and floats are permitted as described in the Deeds subject to the provisions of this Policy. All piers and floats shall be subject to review and permission by FCWA in accordance with Section XIII of this Policy. A "pier" as used herein is defined as a rigid structure built on pilings and extending into the water from the shoreline. A "float" as used herein is defined as a platform which floats on the surface of the water and is securely attached to either the shore or to a pier. Any pier, float, or combination pier/float structure (i) shall not exceed 8 feet in width and (ii) shall not extend from the shoreline beyond a point where, when the Reservoir is at full pool, the water is 3 feet deep. Determination of this point shall be the responsibility

of the property owner with guidance from FCWA as to the permitted length of the pier or float. All piers and floats shall be able to withstand 100-year flooding conditions. Wooden piers and floats shall be constructed to resist submersion and wet conditions and shall comply with all current and applicable laws, rules, regulations and guidelines for wood preservatives. Free-standing, movable objects such as chairs, tables, and portable grills are not considered structures and are thus not regulated by this Policy. Permanent grills or other fixed structures are not permitted.

- b. Prohibited Structures. All structures other than the piers and floats permitted in subparagraph a. above are prohibited, including, but not limited to (i) structures that impede Reservoir flow or displace water within the Reservoir, such as concrete pads and sea walls, (ii) pipes and equipment related to withdrawing or discharging water from the Reservoir except for storm drainage facilities approved by Fairfax County or Prince William County, and/or (iii) structures made of tires, rubble, scrap machinery, tree trunks or limbs, guard rail, masonry block, creosote railroad ties, landscaping timbers or similar materials.
- c. Trees and Vegetation. Removal of vegetation or trees located within the Easements, for purposes other than providing a walking path for Reservoir access as described in item d. is prohibited; the area within the Easements shall be left in its natural state. Dead and dying trees may be removed from the Easements, provided that they are removed completely from the Easements and are not placed in the Reservoir. Invasive or non-native species may be removed from the Easements with prior permission of FCWA and approval of other agencies as required, such as the Departments of Public Works of Prince William County or Fairfax County.
- d. Paths and Stairs. Removal of trees and brush within the Easements to allow a walking path is permitted with the prior permission of FCWA in accordance with Section XIII of this Policy. Path width must be consistent with limits in each County for disturbance of Resource Protection Areas under the Chesapeake Bay Preservation Act; i.e., no greater than 4 feet in Fairfax County, and no greater than 6 feet in Prince William County. The path shall be designed to minimize erosion and provide adequate switchbacks to reduce channelization.

Stairs are permitted in steeper areas upon application for an exception by the Authority as described in Section XIII of this Policy. Stairs may be permitted where the natural topography does not allow for safe or convenient access to the Reservoir through use of a path alone. In general, stairs may be permitted when slopes approach 10 percent or greater, or when necessary to minimize erosion and clearing.

- e. Shoreline Stabilization. Shoreline stabilization and erosion control projects are permitted with prior permission of FCWA and approval of local, state, and federal regulatory agencies as required. Vegetative stabilization practices are preferred.
- f. Debris. Debris, trash and vegetative waste (i.e., grass clippings, cut tree limbs) shall not be placed in the Easements at any time.
- g. Fuel Storage. Fuel storage is prohibited within the Easements.
- h. Chemical Use. Storage, manufacture, or application of pesticides, herbicides, fertilizers or any other materials hazardous to a drinking water supply are prohibited within the Easements.
- i. Septic Tanks. Septic tanks and any associated structures are prohibited within the Easements under all conditions.

V. Public Facilities

Due to the unique nature of the Reservoir and its value to the surrounding community, special consideration shall be given to public facilities located within the Easements.

A public facility for the purposes of this Policy is an area or facility that is operated by a governmental entity or authority and open to the public with equal and unobstructed use to all members of the public without regard to race, color, religious creed or national origin. Such uses may be subject to specific operating hours or a reasonable fee for use, or both. Public facilities support various public recreational amenities or areas that are used for the public good, such as regional or county parks located adjacent to the Reservoir. The following public facility activities are permitted within the Easements with prior permission of FCWA:

- Larger piers and floats as necessary to accommodate greater use and public access to boating and fishing;
- Boat ramps;
- Minimal clearing as necessary to access the water or observe activities on the Reservoir.

Other public facility structures such as closed storage, sheds, and buildings shall not be constructed within the Easements.

## VI. Existing Structures

Structures existing as of January 1, 2004 that do not comply with this Policy, including piers and floats not meeting the criteria established in Section IV a, and other structures not expressly permitted by this Policy, may remain in place provided they otherwise comply with all applicable federal, state, and local laws. This includes but is not limited to securing required zoning approval, building permits, wetlands permits, and other relevant reviews and approvals. All such structures shall be repaired as needed to maintain their integrity. The existing footprint of the non-complying pier, float, or other structure shall not be expanded.

When it becomes necessary to replace the non-complying structure, the new structure must comply with the requirements in effect at the time of replacement. Replacement shall be considered repairs of more than 51 percent of the total structure. In the case of natural disaster, damaged structures may be replaced within the existing footprint with the prior permission of FCWA within 1 year, only if it is not feasible to relocate the structure outside the Easements, with the exception of enclosed storage or housing facilities. Enclosed storage or housing facilities, such as buildings or sheds, may not be replaced after a natural disaster if more than 51 percent of the structure must be replaced. If it is not so replaced, any remaining portion of such structure shall be removed and the area on which such structure was located shall be stabilized and revegetated in accordance with this Policy.

Notwithstanding the foregoing, nothing in this Policy shall prevent the FCWA from requiring the immediate removal of any structure that is not allowed under the terms of the applicable easement if the Board determines that the structure poses a safety hazard, a danger to the Reservoir, or a threat to the FCWA's water supply operations.

## VII. Previously Cleared Areas

Areas which are not in compliance with item IV c, Trees and Vegetation, or which have been cleared or thinned prior to the effective date of this Policy, may be maintained. Revegetation and/or stabilization of these areas to increase the buffering capability of the area is encouraged. FCWA will provide guidance on available resources to support revegetation efforts but will not be responsible for any costs incurred by the property owner during this restoration. Property owners shall not use invasive or non-native species for revegetation efforts pursuant to this Policy.

VIII. Coordination with Other Agencies and Regulations

This Policy shall not relieve the property owner from compliance with all applicable local, state, and federal laws and regulations, including but not limited to local Chesapeake Bay Ordinances, National Pollutant Discharge Elimination System permitting requirements, erosion and sediment control ordinances, local boating ordinances, and construction permits.

IX. Reservoir Inspections

FCWA may from time to time perform a visual inspection of the Reservoir, by boat, along the Reservoir shoreline to identify structures or activities which may not be in compliance with this Policy. If structures or activities are identified which may not be in compliance with this Policy, FCWA may exercise its rights to enter upon the Easements for the purpose of further documenting the condition and extent of the encroachments and to conduct property surveys as may be necessary to protect the Easements and FCWA's rights.

X. Exceptions

Exceptions to this Policy are allowed only with the prior written permission of FCWA. Exceptions that are generally consistent with the goals of this Policy may be granted to accommodate unique circumstances.

XI. Non-Compliance

If a structure or activity is found to be in non-compliance with this Policy and confirmed to be within the Easements, the property owner will be notified and required to remedy the situation in a manner consistent with this Policy. The property owner shall comply with the request within 90 days, unless this timeframe is extended with written permission of FCWA. After the allowable timeframe has expired, FCWA has the right, independently or with other applicable governing agencies, to take such actions as are available to it to enforce its rights under the Easements and/or to restore the safety and integrity of the drinking water supply.

XII. Disclaimer

FCWA shall not be responsible for structures constructed pursuant to this Policy, including, without limitation, for damages to such structures resulting from storms or variations in the water level of the Reservoir. Permission pursuant to this Policy shall be granted subject to the property owner agreeing to defend, indemnify and hold FCWA and FCWA's agents, employees, officers and directors, harmless from and against all claims, demands, obligations, losses, fines, penalties, liabilities, damages (including

consequential damages), costs, expenses, and suits, including, without limitation, reasonable attorneys' fees and costs of defense, imposed upon, incurred by or asserted against FCWA as a result of the activities permitted by this Policy.

Nothing in this Policy shall be construed to restrict rights or privileges that are specifically authorized under a particular Easement.

### XIII. Obtaining Permission and Requesting an Exception

Property owners shall obtain the permission of FCWA before commencing within the Easements any of the activities permitted in Section IV of this Policy. Requests for permission or exceptions pursuant to Section X of this Policy shall be made by submitting the required information to:

Fairfax County Water Authority  
ATTN: Chief, Source Water Protection and Planning  
P.O. Box 1500  
Merrifield, VA 22116

- a. Permission shall be obtained before proceeding with any construction, clearing, or other land-disturbing activities, to ensure that the proposed project is in compliance with this Policy. To obtain permission for a specific project, the following information must be provided, in writing, to FCWA:
  - The address of the property where the work is proposed to be done
  - The name and signature of the property owner
  - A daytime telephone number where the property owner may be reached
  - The timeframe in which the work will be accomplished
  - A plan-view drawing showing the dimensions, materials, and location of the proposed project, preferably on the property plat.
  - For proposed piers or floats, please provide the ground elevation where each of the footers or pilings will be located, and the ground elevation beneath the extents of the pier or float
  - A description of all federal, state, and local permits for which the property owner has applied, and the status of any action on such permits.
  - Any other relevant or appropriate information about the project
- b. To request an exception, please provide the information required above to request permission, in addition to justification of why an exception should be granted.

XIV. License

To the extent this Policy or any decisions made hereunder allow any structures or activities in the Easements that are not permitted by the terms of the Easements, such authorization creates no vested rights in the continuation of that activity or structure, and such authorization by this Policy constitutes merely a license that may be revoked by FCWA in the future.

XV. Modifications

FCWA may modify this Policy subject to the applicable requirements of the Easements.