UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,	)	
	)	Civil Action No.
Plaintiff,	)	
	)	**COMPLAINT**
v.	)	
	)	
STAFFORD COUNTY, VIRGINIA,	)	
	)	
Defendant.	)	

The United States of America, by its undersigned attorneys, files this Complaint against Stafford County, Virginia, and alleges:

INTRODUCTION

1. The United States of America brings this civil action against Stafford County, Virginia ("County" or "Defendant"), for imposing restrictive zoning requirements that preclude the All Muslim Association of America ("All Muslim Association") from establishing an Islamic cemetery on land it owns, thereby impeding its religious practice of providing low-cost burial services to persons of the Islamic faith. The County's actions constitute a substantial burden on the free exercise of the religion of the All Muslim Association, in violation of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc–2000cc-5.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 2000cc-2(f).

3. Venue is proper under 28 U.S.C. § 1391(b) because the events giving rise to this action occurred in the Eastern District of Virginia.

DEFENDANT STAFFORD COUNTY

4. Defendant Stafford County is a governmental unit in the Commonwealth of Virginia.

5. The County is governed by, and acts through, an elected seven-member Board of Supervisors. The Board of Supervisors is a legislative body, responsible for enacting and applying zoning ordinances. The seven elected Board Supervisors serve four-year terms, and each represents one of seven districts in Stafford County.

6. The Planning Commission of Stafford County ("Planning Commission") is an agency of the County. It consists of seven citizens appointed by the Board of Supervisors. There is a Planning Commissioner assigned for each of the County's seven districts corresponding to an elected Board Supervisor from the same district. The Planning Commission reviews and makes recommendations to the Board of Supervisors regarding changes to the County's zoning ordinances, text amendments, and conditional use permits.

7. The Planning and Zoning Department of Stafford County is an agency of the County. It provides guidance to the Board of Supervisors and the Planning Commission in land use and zoning and planning matters. According to the County's website, such guidance is intended to ensure future orderly development and economic growth. The Planning and Zoning Department also provides assistance and recommendations to the Planning Commission and Board of Supervisors on revisions to the County's zoning code.

8. The Board of Zoning Appeals of Stafford County is an agency of the County that determines whether to grant use variances.

9. The County is a "government" under RLUIPA, 42 U.S.C. § 2000cc-5(4)(A), and is responsible for the acts and omissions of its agents and agencies, including the Board of Supervisors, the Planning Commission, the Planning and Zoning Department, and the Board of Zoning Appeals.

FACTS

The All Muslim Association Bought Land in the County to Establish a Cemetery

10. The All Muslim Association is a non-profit organization formed in 1989 to provide low-cost burial services to members of the Islamic faith who live in the Commonwealth of Virginia, State of Maryland, District of Columbia, and other regions of the country. The All Muslim Association is a "religious assembly" or "institution" for RLUIPA purposes. 42 U.S.C. §2000cc(a)(1).

11. The religious tradition observed by the All Muslim Association requires that members of the Islamic faith who lack financial means have a place to be buried, and that the burial area be alongside other members of the Islamic faith.

12. According to the religious tradition observed by the All Muslim Association, a burial must take place as soon as possible after a person dies. After a body is ritually cleansed, it is wrapped in a shroud, and prayers are recited upon burial.

13. The All Muslim Association operates the only all-Islamic cemetery in Virginia. Its cemetery is approximately 7.5 acres, and is located at 1112 Brooke Road in Fredericksburg, which is within Stafford County, Virginia (the "Brooke Road Cemetery"). The All Muslim Association has operated this cemetery since 1994. Families as far away as Michigan and Pennsylvania have come to bury their loved ones at the Brooke Road Cemetery.

14. The All Muslim Association does not use any chemicals in the burial process at the Brooke Road Cemetery. Its practice is to place the body of a deceased person in a poly-vault, which is a plastic vault that protects a body against moisture. The poly-vault is lowered into the grave. These poly-vaults are shipped to Virginia from North Carolina.

15. Because the Brooke Road Cemetery is near capacity, the All Muslim Association needs an additional burial site to serve the Islamic community. Accordingly, on June 3, 2015, it bought property at 1508 Garrisonville Road in Stafford County. A portion of the site, identified

as Tax Parcel 19-3E and consisting of at least 25 acres (hereinafter the "Garrisonville Property"), is ideal for a cemetery, because it is relatively flat, cleared of vegetation, and accessible, being off of a state highway known as State Highway 610.

16. The Garrisonville Property is in Stafford County's A-1 (agricultural) zoning district.

17. The All Muslim Association bought the Garrisonville Property after it received confirmation through County representatives that Tax Parcel 19-3E was permitted "by-right" to be used as a cemetery under the Stafford County Zoning Code.

18. In June 2015, cemeteries were a "by-right" use in A-1 (agricultural) zoning districts under the Stafford County zoning code. Stafford County Zoning Code, Section 28:35, Table 3.1 and County Code, Article II, Section 8-17.

19. In June 2015, the Stafford County Zoning Code contained no "separation requirement," providing that cemeteries be separated or located at a minimal distance away from certain water sources. There was no requirement in the Stafford County Zoning Code that cemeteries be separated by a certain distance from private wells or that they be separated by a certain distance from terminal reservoirs or perennial streams.

20. At or near the time the All Muslim Association purchased the Garrisonville Property, it conformed to all applicable County zoning requirements pertaining to cemeteries.

21. At or near the time the All Muslim Association purchased the Garrisonville Property, it conformed to all applicable laws and regulations of the Commonwealth of Virginia pertaining to cemeteries.

22. At or near the time the All Muslim Association purchased the Garrisonville Property, it had obtained the consent of landowners who were within 250 yards on the same side of the Garrisonville Property satisfying the consent provisions in the Virginia State Code § 57-26.

23. At or near the time the All Muslim Association purchased the Garrisonville Property, it consulted an engineering firm to ascertain if the soil was appropriate for a cemetery, which concluded that it was.

24. At or near the time the All Muslim Association purchased the Garrisonville Property, its use was within the 100-foot buffer of the Resource Protection Area under the Chesapeake Bay Preservation Act, 9 VAC25-830-140(B).

25. At or near the time the All Muslim Association purchased the Garrisonville Property, its use was within the 100-foot separation requirement to private wells required by the Virginia Department of Health Regulation, 12 VAC5-630-10 *et. seq.* at Table 3.1.

26. At or near the time the All Muslim Association purchased the Garrisonville Property, it was reasonable for it to expect that it would receive all necessary County land use approvals to develop at least 25 acres of its property as a cemetery. The County Zoning Code requires that a cemetery be located on a tract of land at least 25 acres in size.

Neighbors Opposed the Cemetery at the Garrisonville Property

27. At all times relevant to this Complaint, Wendy Maurer served as a Board Supervisor from the Rock Hill District.

28. At all times relevant to this Complaint, Crystal Vanuch was a Planning Commissioner from the Rock Hill District. Planning Commissioner Vanuch lives at 1535 Garrisonville Road in Stafford County, which is across State Highway 610 from the Garrisonville Property, and her residence consists of at least seven acres.

29. On June 9, 2016, a citizen living across State Highway 610 on Skywood Court ("Skywood Court citizen") heard about the All Muslim Association's proposed cemetery on the Garrisonville Property, and expressed concern to his elected County Supervisor, Wendy Maurer, about the safety of his private-well-water, and sought to have the County impose a separation requirement of 900 feet between his and his neighbors' private wells and the proposed cemetery

on the Garrisonville Property. The Skywood Court citizen also shared this concern with his neighbor, Crystal Vanuch, who was a Planning Commissioner on the Planning Commission.

30. Supervisor Maurer and Planning Commissioner Vanuch asked County staff to investigate the Skywood Court citizen's concern. County staff informed both officials that the All Muslim Association bought the Garrisonville Property on June 3, 2015, and that the All Muslim Association owns and operates the Burke Road Cemetery. County staff also shared with Supervisor Maurer a link to the parcel viewer for the Garrisonville Property.

31. In connection with the investigation of the Skywood Court citizen's concern, County staff turned to Tommy Thompson, Environmental Health Supervisor for the Virginia Department of Health, because, as explained in an email dated June 20, 2016, by County staff, "state law and Health Department regulations dictate the location of cemeteries relative to adjacent residences and ground water wells."

32. On or about June 21, 2016, County representatives, including Supervisor Maurer, and Commissioner Vanuch, learned that the Virginia Department of Health had a separation requirement of 100 feet between a cemetery and private wells. They also learned from the Virginia Department of Health's representative, Tommy Thompson, that, after reviewing certain data pertaining to the Skywood Court citizen's specific private well relative to the proposed cemetery on Garrisonville Road, he concluded, that, "in my professional opinion and according to the Regulations, if there is at least 100 feet of separation distance between this existing bored well and the proposed cemetery, there should be no public health problem created by the cemetery being installed." Mr. Thompson was referencing the Virginia Department of Health's regulation, 12 VAC5-630-10 *et. seq*. at Table 3.1, which sets forth a separation distance of 100 feet between a cemetery and private wells. The Garrisonville Property was at least 100 feet away from any of the private wells pertaining to the residents on Skywood Court and/or Garrisonville Road across State Highway 610.

33. In an email dated June 22, 2016, Planning Commissioner Vanuch expressed her concern to Supervisor Maurer regarding the location of the proposed cemetery on the Garrisonville Property backing up to the nearby Aquia Creek. She suggested a meeting with the County Attorney to develop a regulation through the Planning Commission to address the Skywood Court citizen's concern and the effect of the proposed cemetery on the Aquia Creek.

The County Enacted a Cemetery Ordinance with Separation Requirements

34. On or about August 25, 2016, County staff distributed to Supervisor Maurer and Planning Commissioner Vanuch a copy of a draft cemetery ordinance, which contained, among other new cemetery provisions, two separation requirements. One required that "no burial be placed within one hundred feet (100 feet) of any private well used as a water supply," and, the second provided that "no burial be placed within nine hundred (900) feet of any terminal reservoir of [sic] any perennial stream that drains to a terminal reservoir." In proposing the separation of 100 feet to private wells, County staff relied on Virginia Department of Health regulations and Mr. Thompson's professional opinion that 100 feet of separation to private wells is sufficient to protect public safety. County staff explained its reasoning to certain County officials, including Supervisor Maurer and Planning Commissioner Vanuch, in an email dated August 25, 2016, as follows: "We looked at the 100 foot separation requirement from a private well as a defendable standard. It is the maximum distance that the Health Department requires. State code provisions for cemeteries have a separation requirement from municipal wells but there is no separation requirement from private wells. The Health Department standards are more restrictive."

35. County staff provided no written explanation for its proposal to impose a separation distance of 900 feet from any terminal reservoir or any perennial stream that drains into a terminal reservoir.

36. On September 7, 2016, the Board of Supervisors Community and Economic Development Committee (CEDC), whose Chairperson was Supervisor Maurer, considered the

proposed cemetery ordinance, with its provisions for a private well separation requirement from cemeteries of 100 feet, and a terminal reservoir/perennial stream separation requirement from cemeteries of 900 feet. The CEDC voted to send the proposed draft to the Board of Supervisors, with a recommendation to send it to the Planning Commission for a public hearing and recommendation.

37. On September 20, 2016, the Board of Supervisors adopted Resolution R16-295. This Resolution referred the proposed ordinance with the separation requirements described in paragraph 36 (hereinafter "Proposed Ordinance No. O16-39") to the Planning Commission for its review, recommendations, and a public meeting. At Supervisor Maurer's direction, County staff included in Resolution R16-295 an additional clause that authorized the Planning Commission to make changes to the proposed ordinance.

38. On September 28, 2016, the Planning Commission met and formed a cemetery subcommittee ("Subcommittee") to study and make recommendations regarding Proposed Ordinance No. O16-39. The Subcommittee included Planning Commissioner Vanuch.

39. On or about October 5, 2016, the Subcommittee met and soon thereafter, on or about October 7, 2016, a new version of the cemetery ordinance was drafted providing that there be a private well separation requirement of 900 feet, instead of 100 feet.

40. In a correspondence dated October 10, 2016, Planning Commissioner Vanuch proposed to the County staff that language be included in the proposed ordinance to remove from the Board any authority to grant any exceptions or waivers to the separation requirements in any application that came before it. County staff responded in an email dated October 11, 2016, that relief from the separation requirements would go before the Board of Zoning Appeals, assuming the use was permissible, and that the Board of Zoning Appeals could grant relief only if the application of the requirements were unreasonable and posed a hardship to a cemetery applicant.

41. On October 11, 2016, County staff sent a revised draft ordinance to the Subcommittee, which contained a separation requirement of 900 feet to private wells, as well as the separation requirement of 900 feet to terminal reservoirs or perennial streams draining into such reservoirs.

42. The revised draft for the Subcommittee's review on October 11, 2016, also contained a new procedure requiring an applicant to petition the Board for adoption of an ordinance to establish a cemetery, and the use of a text amendment/rezoning classification process, which was a more expensive and time-consuming procedure than that under the existing cemetery ordinance contained in Chapter 8, Article II of the Stafford County Code. This procedure requires a cemetery applicant to submit to a public hearing before the Planning Commission and then another public hearing before the Board of Supervisors. Engineering fees may cost an applicant as much or more than $50,000, and the process could take an applicant as much or more than a year to complete. The revised draft exempts "churchyards" from the text amendment/rezoning classification process. In addition to the rezoning procedures, the proposed ordinance requires compliance with the separation requirements, and notice of any public hearings to owners of any property located within 900 feet of the proposed cemetery.

43. On October 12, 2016, members of the Subcommittee provided a report to the Planning Commission with the proposed changes described in paragraphs 41 and 42, above. The Planning Commission voted in favor of having a public hearing scheduled on the revised draft.

44. On November 9, 2016, the Planning Commission voted unanimously to recommend the proposed changes described in paragraphs 41 and 42, above to the Board of Supervisors.

45. On December 13, 2016, the Board of Supervisors, at its regularly scheduled public meeting, considered the recommendation of the Planning Commission to enact the revisions to proposed Ordinance No. O16-39, described in paragraphs 41 and 42, above.

46. At the meeting of December 13, 2016, Planning Commissioner Vanuch addressed the Board, recommending that it adopt the Planning Commission's recommendation.

47. It was not the usual procedure for a Planning Commissioner to address the Board in furtherance of revisions to an ordinance.

48. The Board of Supervisors voted unanimously to approve and enact the revisions to the cemetery ordinance.

49. Ordinance No. O16-39 is codified at Section 28-39(o) of the Stafford County Zoning Code (hereinafter the "New Cemetery Ordinance"). It repealed Chapter 8, and moved the bulk of applicable regulations for cemeteries into Chapter 28 of the Stafford County Zoning Code.

50. The New Cemetery Ordinance contains a separation requirement of 900 feet between private wells and cemeteries, and a separation requirement of 900 feet from any terminal reservoir or any perennial stream that drains into a terminal reservoir (collectively and hereinafter, the "900-feet separation requirements"). The pertinent provisions are as follows:

> (o) Cemeteries
>
> (1) Establishment of cemeteries. The following requirements shall apply to the establishment of any cemetery:
>
> a. Restrictions as to location of cemeteries.
>
> (1) … [board authorization provision]
> (2) … [consent within 250 feet of highway provision]
> (3) … [public well provision]
> (4) No cemetery shall be established within 900 feet of any terminal reservoir or any perennial stream that drains into a terminal reservoir. No cemetery shall be located within 900 feet of any private well used as a drinking water supply.
>
> * * *

County Representatives Withhold Certain Key Information

51. At neither the Planning Commission meeting of November 9, 2016, nor the Board of Supervisors meeting of December 13, 2016, did Planning Commissioner Vanuch include

information in her presentation about Mr. Thompson's professional opinion that a separation of 100 feet to a private well was adequate protection for public safety. She did not mention that the state cemetery statute, Va. Code 57-26, had no separation requirements for private wells or terminal reservoir/perennial streams. She also did not mention that the Virginia Department of Health regulations had a separation requirement from private wells to cemeteries of only 100 feet, and that the Chesapeake Bay Preservation Act required only a 100 feet from a cemetery to a perennial stream.

52. At neither the Planning Commission meeting of November 9, 2016, nor the Board of Supervisors meeting of December 13, 2016, did Planning Commissioner Vanuch mention that the issue of revising the County cemetery ordinance had been brought to her attention by a Skywood Court citizen who is her neighbor and had a concern about his own well and those of his neighbors in relation to a proposed cemetery on the Garrisonville Property.

53. At neither the Planning Commission meeting of November 9, 2016, nor the Board of Supervisors meeting of December 13, 2016, did Planning Commissioner Vanuch mention that the Garrisonville Property had been purchased on June 3, 2015, by the All Muslim Association, which was already operating the Brooke Road Cemetery for the Islamic community.

54. At the time of the Board of Supervisors meeting on December 13, 2016, Planning Commissioner Vanuch knew that the 900-feet separation requirements would have an adverse impact on the ability of the All Muslim Association to develop a cemetery on the Garrisonville Property, but she withheld this fact from members of the Board.

55. During the Board of Supervisors meeting on December 13, 2016, Supervisor Maurer did not disclose to other Board Supervisors the facts she knew about the Garrisonville Property. She withheld the fact regarding Mr. Thompson's professional opinion -- that a separation requirement of 100 feet to a private well was adequate protection for public safety. She withheld the fact that the Virginia Department of Health regulations have only a private well

separation requirement of 100 feet, and that the Chesapeake Bay Preservation Act requires only 100 feet of separation between cemeteries and perennial streams.

56. During the Board of Supervisors meeting on December 13, 2016, Supervisor Maurer did not disclose to the Board how the issue of revising the cemetery ordinance came to her attention in the first place, *i.e.*, by a Skywood Court citizen who lives next to Planning Commissioner Vanuch and had a concern about his own well and those of his neighbors in relation to the proposed cemetery on the Garrisonville Property.

57. During the Board of Supervisors meeting on December 13, 2016, Supervisor Maurer did not disclose to other Board Supervisors that the Garrisonville Property was owned by the All Muslim Association, which had acquired it in 2015 and was already operating the Brooke Road Cemetery to serve the Islamic community.

58. At the time of the Board of Supervisors meeting on December 13, 2016, Supervisor Maurer knew that the 900-feet separation requirements would have an adverse impact on the ability of the All Muslim Association to develop a cemetery on the Garrisonville Property, but she withheld this fact from other members of the Board.

59. From June through December 2016, County staff members were in contact with representatives from the All Muslim Association about other land use matters near the Burke Road Cemetery. At no time during this period did these County staff members inform the All Muslim Association that the County was considering changes to its cemetery ordinance.

60. From January 2017 through March 2017, County staff members were in contact with representatives from the All Muslim Association about other land use matters near the Burke Road Cemetery. At no time during this period did these County staff members inform the All Muslim Association that revisions to the County's cemetery ordinance had been issued.

61. By the date of the Board meeting in December 2016, certain County staff members and officials knew that through the imposition of the 900-feet separation requirements, the All

Muslim Association would have insufficient land on the Garrisonville Property upon which to develop a cemetery to serve the Islamic community. None of these County representatives informed the All Muslim Association about the impact of the 900-feet separation requirements on the Garrisonville Property.

The Impact of the New Cemetery Ordinance on the All Muslim Association Is Substantial

62. The imposition of the 900-feet separation requirements removes all land on the Garrisonville Property upon which the All Muslim Association can develop a cemetery.

63. The provisions in the New Cemetery Ordinance imposing 900-feet separation requirements on the Garrisonville Property for the proposed cemetery extend beyond any separation requirements pertaining to cemeteries in the laws and regulations of Virginia.

64. The provisions in the New Cemetery Ordinance imposing 900-feet separation requirements on the Garrisonville Property for the proposed cemetery are not contained in any other county zoning code in Virginia.

65. The provisions in the New Cemetery Ordinance require that a cemetery applicant such as the All Muslim Association undergo a text amendment/rezoning process to develop a cemetery. The New Cemetery Ordinance's text amendment/rezoning process does not apply to "churchyards" and is not contained in any other county zoning code in Virginia. The County has stated that a "churchyard" must have a church located on the same property or associated with the property on a directly abutting parcel. In accordance with All Muslim Association's religious beliefs, however, a cemetery may not be located on the same property as a mosque.

66. Under the New Cemetery Ordinance, the Board has no authority to approve a text amendment for any cemetery applicant who cannot satisfy the 900-feet separation requirements.

67. The provisions in the New Cemetery Ordinance imposing 900-feet separation requirements do not apply to any other by-right use in the A-1 zone allowed under the Stafford

County Zoning Code, including agriculture, feed lot, septic systems, golf courses, waste water treatment facilities, and slaughter and animal processing.

The All Muslim Association Took Steps to Undo the Harm to Its Planned Cemetery

68. In spring 2017, the All Muslim Association learned about the New Cemetery Ordinance.

69. In spring 2017, representatives from the All Muslim Association contacted Supervisor Paul Milde, who was also Chair of the Board of Supervisors at the time, and informed him that the 900-feet separation requirements in the New Cemetery Ordinance prohibit the organization from developing a cemetery on the Garrisonville Property, and asked him what could be done to undo the harm to the organization.

70. Based on the concerns expressed by the All Muslim Association, on October 3, 2017, Supervisor Milde introduced a Resolution to the Board to instruct the Planning Commission to review the New Cemetery Ordinance and provide a recommendation to the Board of Supervisors for revisions. The Board of Supervisors voted in favor of the Resolution 7-0, and the matter was sent to the Planning Commission.

The Board Voted Not to Amend the New Cemetery Ordinance

71. The Planning Commission sent the matter to its cemetery Subcommittee where Planning Commissioner Vanuch continued to preside. The Subcommittee held two public meetings. The first public meeting was on December 6, 2017, and the second was on February 15, 2018. All Muslim Association representatives submitted information and/or participated at these meetings. They explained their methods of internment at the Brooke Road Cemetery and the use of poly-vaults. They also explained that, because of the 900-feet separation requirements, they were prohibited from establishing a cemetery on the Garrisonville Property. Neighbors across State Highway 610 also attended these meetings arguing in favor of the New Cemetery Ordinance

and that changes were unnecessary. Ultimately, the Subcommittee recommended that the Planning Commission recommend to the Board that it make no change to the New Cemetery Ordinance.

72. On May 9, 2018, the Planning Commission held a public meeting. During the public portion of the meeting, representatives from the All Muslim Association spoke, emphasizing their desire to work constructively with the County and the need for changes to the New Cemetery Ordinance, noting that it was far stricter than any other local ordinance, and that it prohibited them from developing an Islamic cemetery on the Garrisonville Property.

73. On May 23, 2018, the Planning Commission voted to recommend that the Board of Supervisors make no change to the New Cemetery Ordinance.

74. On August 21, 2018, the Board of Supervisors held a public meeting where citizens testified in favor of preserving the New Cemetery Ordinance.

75. At the August 21, 2018 meeting of the Board of Supervisors, County staff members informed the Board that the All Muslim Association owned the Garrisonville Property to operate as a cemetery and that they had "expressed concerns about our County Ordinance relative to their ability to establish a cemetery on their property." County staff members also explained the internment practices of the All Muslim Association and its use of poly-vaults. County staff members noted that the New Cemetery Ordinance had "some additional standards that go above and beyond what the state require," referencing the 900-feet separation requirements.

76. On September 18, 2018, the Board of Supervisors conducted another public meeting. County staff members provided a report to the Board outlining the portions of the New Cemetery Ordinance that "mirror[ed]" state law, and those portions, such as the private well separation requirements that exceeded state law. County staff members explained that in 2017, the All Muslim Association expressed concerns about the effects of the New Cemetery Ordinance on its ability to develop a cemetery on the Garrisonville Property, which prompted the Board to have the Planning Commission revisit the matter. County staff members explained that the Planning

Commission recommended that the separation requirements remain unchanged based on "international studies regarding the potential effects of burials on groundwater drinking sources" that had been reviewed in connection with the issuance of the New Cemetery Ordinance in December 2016. County staff members indicated that there "continues to be some concern over the Ordinance and the provisions that extend beyond the State code requirements without opportunity for relief."

77. At the September 18, 2018, all members of the Board of Supervisors knew that the All Muslim Association owned the Garrisonville Property, intended to use it as a cemetery to serve the Islamic community, and could not do so because of the 900-feet separation requirements.

78. During the September 18, 2018 meeting, County staff members identified two options to the Board to mitigate the harm to the All Muslim Association. These were contained in Resolution 18-228. One option was to have the Board request that the Planning Commission prepare an ordinance that would retain the separation requirement of 900 feet from private wells, but allow a reduction in the distance by approval of a conditional use permit when soil evaluations demonstrate that there is no reasonable likelihood of contamination of wells near a specific property, and maintain all State Virginia Code requirements as currently provided in the Ordinance. The second option was to have the Board request that the Planning Commission prepare an ordinance that removes the separation requirement of 900 feet from private wells, relying on Virginia Department of Health standards, and removes all other requirements that exceed Virginia Code requirements and Virginia Administrative Code regulations, and maintain all Virginia Code requirements as currently provided in the Ordinance.

79. During the September 18, 2018 meeting, County staff members recommended that the Board approve the proposed Resolution R18-228, and adopt either of the two options described in paragraph 78, above, and have the Planning Commission prepare an ordinance and conduct a public hearing to amend the New Cemetery Ordinance. With regard to both options, the

Resolution noted in the whereas clause that the All Muslim Association "expressed concerns about the effects of Ordinance O16-39 on its ability to develop a cemetery on property that it owns at 1508 Garrisonville Road, and that some of the restrictions, such as setbacks to private wells and water resources may be too restrictive." With regard to the option that removed all separation requirements other than those imposed by Virginia, the Resolution noted in the whereas clause that the "Board is concerned that it does not have the capacity to evaluate possible impacts of cemeteries on water quality better than the Virginia Department of Health."

80. Notwithstanding the County staff's recommendation that either of the options described in paragraph 79, above, be approved, Supervisor Maurer moved that the Board approve a motion not to make *any* changes in the New Cemetery Ordinance at the September 18, 2018 meeting.

81. During the September 18, 2018 meeting, Supervisor Shelton made a substitution motion to defer a vote on the issue to give the Board more time to think about it. Supervisor Dudenhefer seconded the motion. Supervisor Cavalier said that another Supervisor (Supervisor Snellings) was away on a family emergency and asked that the vote be deferred as he was one of the four remaining Board members at the time the Ordinance was passed. Supervisor Maurer stated that the Board "needed to give the residents an answer," that "they [the residents] were tired" and the Board should not defer the issue. The vote on the substitution motion for a deferral on the matter was a tie, and therefore it did not carry.

82. During the September 18, 2018 meeting, Supervisor Cavalier remarked on the origins of the New Cemetery Ordinance, when Planning Commissioner Vanuch addressed the Board in favor of its issuance. Supervisor Cavalier stated: "Well, a couple years ago when we – when this issue was first brought to us, we were briefed as this Board by a junior member of the Planning Commission [Crystal Vanuch], which was totally out of normal order. That has rarely if

ever been done, and I don't think that we were given the briefing that we probably deserved at that time. And I don't think we were, uh, afforded the opportunity to make a really informed decision."

83. The Board voted on Supervisor Maurer's motion not to change the New Cemetery Ordinance. Three Board members voted in favor (Maurer, Bohmke, Coen); two voted against (Cavalier, Shelton); and there were two abstentions (Dudenhefer, Snellings). Thus, the New Cemetery Ordinance remained unchanged.

84. At the time the Board enacted the 900-feet separation requirements in December 2016, and left these provisions in the New Cemetery Ordinance unchanged in September 2018, the Board knew of no other religious organization seeking to develop a cemetery in Stafford County other than the All Muslim Association.

The County Denied the All Muslim Association a Variance

85. On December 22, 2018, having no other viable path forward to developing a cemetery on its Garrisonville Property because of the New Cemetery Ordinance, the All Muslim Association filed an application with the Stafford County Board of Zoning Appeals ("BZA") for a partial variance from the 900-feet separation requirements in the New Cemetery Ordinance.

86. In support of its variance application, the All Muslim Association demonstrated that it met all applicable Virginia laws and regulations. It showed that: (a) it obtained the consent of landowners who were within 250 yards on the same side of the Garrisonville Property; (b) its development on the Garrisonville Property would be more than 250 feet away from the residences across State Highway 610, thereby obviating the need for the consent of those landowners; (c) its development on the Garrisonville Property would be at least 100 feet away from the nearest private wells, as required by the Virginia Department of Health regulations; and (d) its development would be at least 100 feet away from the Resource Protection Area, required by the Chesapeake Bay Preservation Act, Virginia Code § 62.1-44.15:67 *et. seq.* The All Muslim Association also submitted with its variance application an affidavit of an environmental expert with a background

in water contamination who testified that there was no significant threat of contamination from the proposed cemetery on the Garrisonville Property to nearby public and private water sources, including private wells, and that Virginia Department of Health regulations provided adequate protection for water quality.

87. The All Muslim Association submitted an exhibit with its variance application showing that the 900-feet separation requirements would prohibit it from using any of the land as a cemetery

88. The All Muslim Association submitted an exhibit with its variance application that showed the demarcation of the cemetery at more than 250 feet from the residences at their nearest points across State Highway 610.

89. On February 26, 2019, at a public hearing, the BZA denied the variance.

The County Contemplates Reducing the 900-Feet Separation Requirements to 750 Feet and Adding Additional Regulatory Hurdles to Developing a Cemetery

90. During its regularly scheduled March 18, 2020 meeting, the Board voted to refer a proposal (Resolution R20-85) to the Planning Commission for review and recommendation.

91. Resolution R20-85 proposes to amend the New Cemetery Ordinance, section 28-39(o) of the County Code, to, among other things, require that all applications to develop cemeteries "except churchyard or family cemeteries" go through an extensive conditional use permit process (CUP), defined in County Code § 28-185. It also decreases the 900-feet separation requirements to 750 feet and provides that a cemetery could be developed less than 750 feet from private wells or perennial streams if its proponent demonstrates that there is "no reasonable likelihood of adverse water quality impacts on drinking water supplies."

92. Resolution R20-85 also defines a "churchyard" as "[a]n area on a lot surrounding a place of worship (as exempted from zoning regulation by Virginia Code § 57-26)." The All

Muslim Association, because of its religious beliefs and customs, cannot locate a cemetery on or adjacent to the same parcel of land with a mosque.

93. To obtain a CUP under County Code § 28-185, an applicant must comply with expensive and time-consuming requirements, including the filing of an application, development plan, nonrefundable fees, an impact statement, and at least two public hearings, one before the Planning Commission and one before the Board. The CUP process can take months, if not years to complete, and tens of thousands of dollars in engineering, expert, legal, and other fees. The Board has the ultimate discretion of whether to grant or deny a CUP and can consider myriad factors, including, but not limited to, purported impact on adjacent and nearby properties and whether the proposed use "will be detrimental to the public welfare." Further, once granted, a CUP may include additional conditions on the use, and may also be revoked by the Board.

94. Resolution R20-85 is merely a proposal. Before it becomes law, it must go through the County's extensive legislative process, which requires, at a minimum, two public hearings, including a recommendation from the Planning Commission

The County's Actions Imposed and Continue to Impose a Substantial Burden on the All Muslim Association

95. The All Muslim Association has been and continues to be substantially burdened in the exercise of its religion because of the County's imposition of the 900-feet separation requirements contained in section 28-39(o) of the County Code on the Garrisonville Property.

96. The 900-feet separation requirements contained in section 28-39(o) of the County Code, prohibited and continues to prohibit the All Muslim Association from developing a cemetery on the Garrisonville Property.

97. Maps prepared by the County show that the All Muslim Association has been and remains precluded from developing a cemetery on the Garrisonville Property by virtue of the 900-

feet separation requirements. True and correct copies of these County maps are attached as Exhibits 1 and 2.

98. Exhibit 1, prepared by the County, shows that the All Muslim Association has been and is left with less than 4 acres in the southeast quadrant of the parcel to develop a cemetery on the Garrisonville Property by operation of the private well separation requirement of 900 feet contained in the New Cemetery Ordinance.

99. Exhibit 2, prepared by the County, shows that the All Muslim Association has been and is left with less than 4 acres in the northwest quadrant of the parcel to develop a cemetery on the Garrisonville Property by operation of the terminal reservoir and perennial stream separation requirement of 900 feet contained in the New Cemetery Ordinance.

100. Exhibits 1 and 2 together, prepared by the County, show that the All Muslim Association has been and is left with no land upon which to develop a cemetery on the Garrisonville Property by virtue of the operation of the 900-feet separation requirements.

101. The County cannot demonstrate that the 900-feet separation requirements contained in Section 28-39(o) of the County Code imposed on the Garrisonville Property advance a compelling government interest.

102. The County cannot demonstrate that the cemetery proposed by the All Muslim Association on the Garrisonville Property poses a health or safety risk to the private wells and perennial streams that are more than 100 feet from the proposed cemetery on the Garrisonville Property.

103. The County cannot demonstrate that there are no less restrictive means to accomplish its alleged interests than by imposing the 900-feet separation requirements contained in Section 28-39(o) of the County Code on the Garrisonville Property.

104. The County's actions described in this Complaint have created considerable delay, expense and uncertainty for the All Muslim Association in its efforts to develop a cemetery.

105. The All Muslim Association conducted an extensive search of land in the County to meet the burial needs of the Islamic community before deciding to purchase the Garrisonville Property. A new search for an alternative property in the County that is suitable for its needs and that comports with the 900-feet separation requirements will impose additional delay, expense, and uncertainty on the All Muslim Association.

106. The County's actions described in this Complaint have caused the All Muslim Association to suffer significant financial loss, including, but not limited to, engineering fees, expert fees, attorneys' fees and professional fees.

107. In drafting and enacting the New Cemetery Ordinance, considering the All Muslim Association's request to revise the New Cemetery Ordinance, and in voting to maintain the New Cemetery Ordinance as originally drafted, the County did not have in place procedures or practices to ensure that County officials were able to satisfy their obligations under RLUIPA including, but not limited to, providing RLUIPA training to County officials and staff involved in religious land use determinations, and having established procedures to address complaints of denial of rights under RLUIPA.

108. Resolution R20-85, if adopted, imposes requirements far beyond those in place when the All Muslim Association purchased the Garrisonville Property and will cause additional delay, uncertainty and expense. The Resolution does not remedy the substantial burden that has been imposed by the County on the All Muslim Association.

109. The All Muslim Association has a "property interest" in the Garrisonville Property within the meaning of 42 U.S.C. § 2000cc-5(5).

110. The All Muslim Association's efforts to establish a cemetery constitutes "religious exercise" within the meaning of 42 U.S.C. § 2000cc-5(7).

111. The All Muslim Association's efforts to establish a cemetery and the County's actions described in this Complaint, which prevents the establishment of the proposed cemetery, affects "commerce among the several States" within the meaning of 42 U.S.C. § 2000cc(a)(2)(B).

112. Section 28-39(o) of the County Code includes several provisions that contemplate an "individualized assessment" within the meaning of 42 U.S.C. § 2000cc(a)(2)(C).

113. Section 28-39(o) and the County's Zoning Code are "land use regulation[s]" within the meaning of 42 U.S.C. § 2000cc-5(5).

VIOLATION OF RLUIPA: SUBSTANTIAL BURDEN

114. The allegations set forth in the preceding paragraphs are incorporated by reference.

115. The County's actions described in this Complaint have and continue to impose a substantial burden on the religious exercise of the All Muslim Association in violation of RLUIPA, 42 U.S.C. § 2000cc(a).

116. The County's imposition of the burden on the All Muslim Association does not further a compelling governmental interest using the least restrictive means. 42 U.S.C. § 2000cc(a).

WHEREFORE, the United States seeks that this Court enter an order that:

1. Declares that the Defendant's actions in prohibiting the All Muslim Association from developing its cemetery on the Garrisonville Property have substantially burdened its religious exercise and violate RLUIPA;
2. Enjoins the Defendant from imposing burdensome requirements in section 28-39(o) of the County Code on the All Muslim Association's efforts to develop a cemetery at the Garrisonville Property;
3. Enjoins the Defendant from violating RLUIPA, including treating the All Muslim Association differently from other religions and/or from imposing a substantial burden

on the religious exercise of the All Muslim Association and its members that is not narrowly tailored to serve a compelling governmental interest;

4. Enjoins the Defendant from denying any approvals to the All Muslim Association for the purpose of developing a cemetery dedicated to persons of the Islamic faith on the Garrisonville Property;
5. Requires the Defendant, its officers, employees, agents, successors, and all other persons in concert or participation with them, to:
    a. Take actions necessary to restore, as nearly as practicable, the All Muslim Association and its members to the position they would have been in but for the Defendant's unlawful conduct, including, but not limited to, granting exemptions to the All Muslim Association to comply with the 900-feet separation requirements contained in section 28-39(o) of the County Code, and to grant to it all necessary approvals for the use the Garrisonville Property as a cemetery; and
    b. Take actions necessary to prevent the recurrence of such unlawful conduct in the future; and
6. Awards such additional relief as the interests of justice may require, together with the United States' costs.

Respectfully Submitted

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ATTORNEYS FOR THE UNITED STATES

Dated: June 19, 2020

Estimated* Well Locations with 900 Ft. Buffer

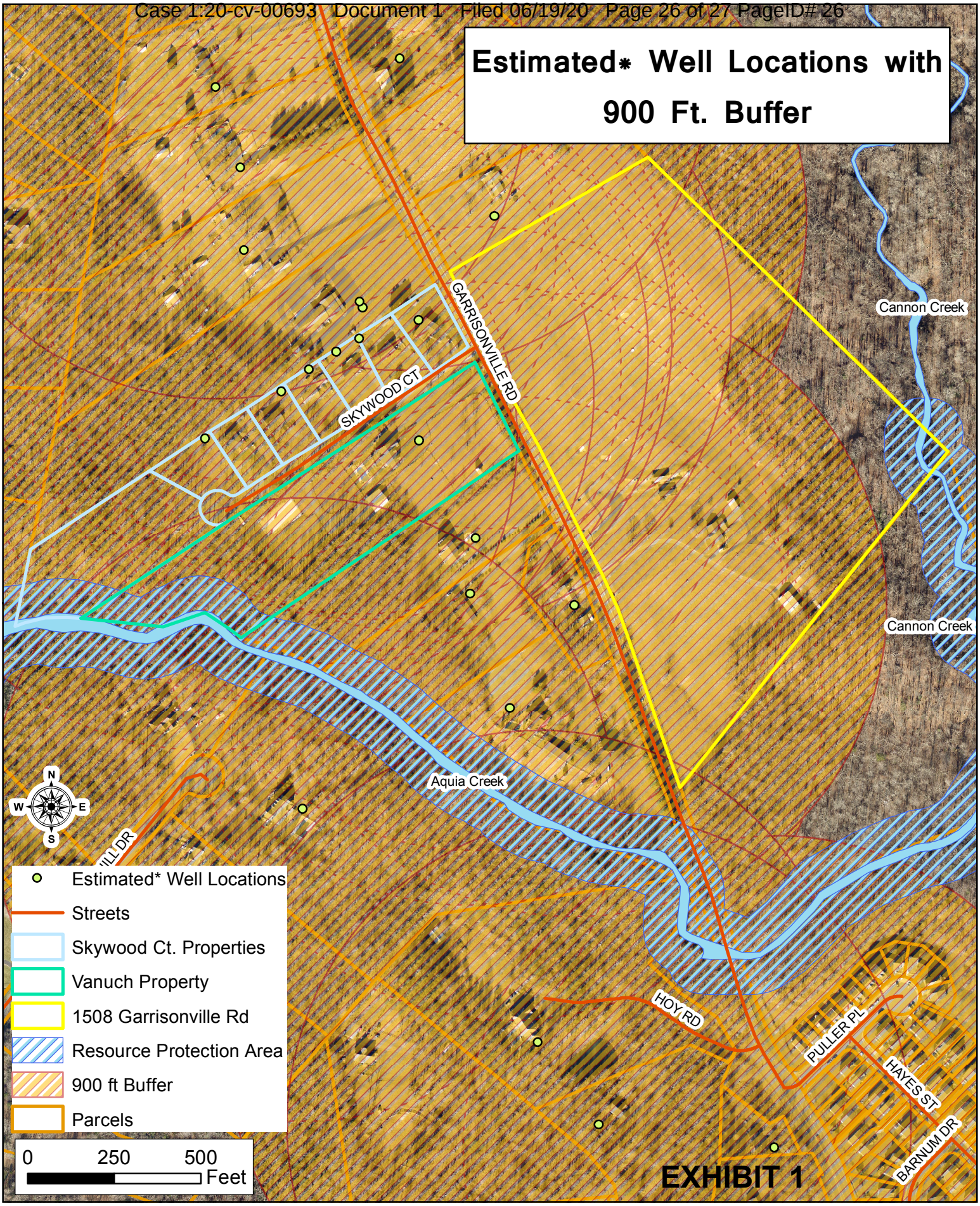

EXHIBIT 1

Produced: 4/30/2018

Coordinate System: NAD 1983 HARN StatePlane Virginia North FIPS 4501 Feet

*Stafford County does not maintain data on private well locations. These locations are approximate only.
Data layers are compiled from various sources and are not to be construed or used as a "legal description." Data layers are believed to be accurate, but accuracy is not guaranteed.

Perennial Streams with 900 Ft Buffer

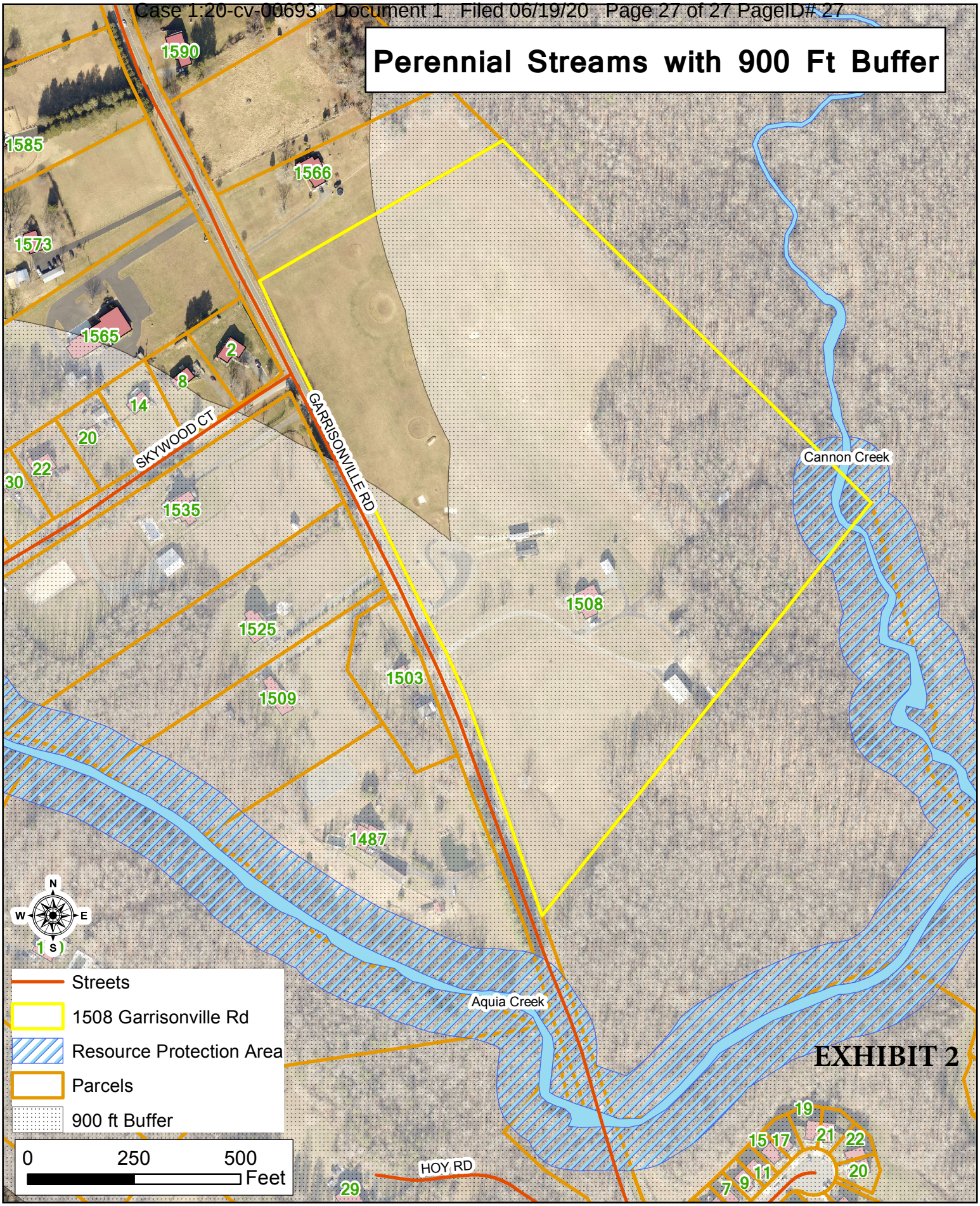

EXHIBIT 2

Produced: 4/30/2018

Coordinate System: NAD 1983 HARN StatePlane Virginia North FIPS 4501 Feet

Data layers are compiled from various sources and are not to be construed or used as a "legal description." Data layers are believed to be accurate, but accuracy is not guaranteed.