




ZONING ORDINANCE AMENDMENT: ZOAM-2020-0002

SUBDIVISION/PRIME AG SOILS ZONING – 1ST ROUND INPUT

 <p style="text-align: center;">1ST OUTREACH INPUT</p>	<p style="text-align: center;">ZOAM-2020-0002: SUBDIVISION/PRIME AG SOILS ZONING</p> <p style="text-align: center;">SUBMITTED BY: <u>MAURA WALSH-COPELAND, ZOC Member & LCPCC Representative</u></p>
QUESTIONS	COMMENTS
<p>1. What do you see as being the major OPPORTUNITIES and ADVANTAGES that this proposed amendment will provide?</p>	<p>ZOAM-2020-0002 will provide the opportunity to implement the goals of the 2019 Comprehensive Plan by redefining regulations that harm Loudoun’s valuable rural areas, impacting both quality of life and rural tourism. Such regulations should apply to all parcels (residential and business) impacting prime agricultural soils.</p> <p>As was proven in the August, 2019 LCPCC Case Study – protection for RPA “Prime Ag Soils,” “farmland,” and “farming” have been Comprehensive Plan policies and goals for decades. However, these policies and goals were <u>never implemented</u> in the three ordinance documents (Zoning Ordinance, Facility Standards Manual, Land Subdivision Development Ordinance) over the past 15-18 years.</p> <p>Protections were therefore also not included in the checklists and procedures required to evaluate a site plan to implement the RGP Comp Plan goals. This has resulted in continued false positive comments quoting the RGP and 2019 Comp Plan that</p> <p style="padding-left: 40px;"><i>“rural clusters remain the preferred residential development pattern in the RPA because these designs better preserve the natural features and open character of the land . . . so that a majority of the land is available for rural economy uses, agriculture, and/or open space.”</i></p> <p>This stated goal requires the implementation of regulations to match. The advantage of this proposed ZOAM will be to correct the regulation errors of omission.</p>



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August, 2019 Case Study -- Summary

Comp Plans vs. Ordinances: Aug, 2019 Review Conflicts in Documentation Usage & Reference

Loudoun County Document	# Pages	"Prime" Ag Soils/Farmland	"Farming"	
Revised General Plan	304	24 - total 22 - reference Ag soils	103 - "Farm" total 13 - "Farming"	
2019 Comprehensive Plan (Interim final)	361	20 - total 11 - Ag soils/farmland	145 - "Farm total" 15 - "Farming"	
Zoning Ordinance	1025	1 reference (p. 745)	288 total ("Farm" uses) 12 Farming/Mgmt Plan	5-702 Rural Hamlet Option (A3/A10)
Land Subdivision ordinance (LSDO)	47	No references	1 reference "Farming"	
Facilities Standards manual (FSM)	332	No references	5 "Farm"	"Right to Farm Act" references

2. What do you see as being the major **CONCERNS** or **ISSUES** that this proposed amendment will need to address?

A major concern is making this ZOAM "*all about density*," either by direct or indirect impacts required to implement the 2019 Comp Plan policies in the ordinance documents. Forgotten or overlooked are the following facts:

- ZOAM 2002-0003 was legally reviewed and agreed by Staff, Planning Commission and the BOS, but was kicked out due to a newspaper posting error.
- In 2004-2006 the County reevaluated the cluster density as part of [CPAM 2005-0005](#), [ZOAM 2005-0002](#), [DOAM 2005-0003](#). A detailed analysis was performed by Staff (see below), discussed at the Planning Commission, and BOS and determined the Cluster density for AR-1 would be 1/10 (20 acre minimum) and for AR-2 would be 1/20, (40 acre minimum).
- The detailed analysis was done to show exactly what the "Potential New Housing Units" were for the "Differing Alternatives."
- However, a last-minute change in density to 1/5, 20 acre minimum was made by the members of the BOS at that time.



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RPA PRESERVATION: OPTIONS

IMPLEMENTATION PROPOSALS (Multiple Communities of Interest)	Zoning Ord ZOAM	FSM/LSDO DOAM	Comp Plan CPAM
1. Revise Cluster Development Acre Calculations (Subtraction prime soils, floodplain, forest, etc. from "gross acreage")	Y	Y	N
2. Reinstitute "Rural Hamlet" requirements (Min. 40 ac. Minimum 86% permanent open space easements)	Y	Y	N
3. Change/Remove Cluster <i>increased density option</i> In ZO (change to 1/10ac, 1/15ac or remove—not legally required)	Y	Y	Likely
4. Consolidate AR-1 / AR-2 Districts to AR-2 (Create single District for Rural North, Rural South)	Y	Y	Likely
5. Establish/reinstitute Cluster Design guidelines (Incorporate guidelines discussed with Staff / 2003 RGP)	Y	Y	N
6. Ramp up TDR, reconsider PDR Programs	Y	Y	Likely

REPORT Requirements

Update
2005 report with
new scenarios

**AVOID
LSDO §1242.04
"arbitrary and
capricious" appeal**

Attachment I-1
Potential New Housing Units in the Rural Policy Area for Differing Alternatives

Parcel Size (Acres)	Alternative 1: 1 Unit per 5 acres	Alternative 2: AR1 and AR2 as adopted in Revised 1993 Zoning Ordinance, June 2003	Alternative 3: AR1 and AR2 Modified (20/5 and 50/10)	Alternative 1-A: A1 Pattern with Environmental Constraints	Clem/Burton Proposal May 24, 2005: AR1(20/7.5 with rezoning); AR2 (40/15 with rezoning)	Tulloch/Stanton Plan June 1, 2005: AR10 (10/5); AR-20 (20/10)
<5.00	1,595	1,595	1,595	1,595	1,595	1,595
5.00 to 9.99	1,766	589	589	1,129	589	589
10.00 to 14.99	6,257	923	923	4,432	923	923
15.00 to 19.99	2,293	795	795	1,781	583	971
20.00 to 24.99	2,084	130	130	1,671	499	922
25.00 to 29.99	1,725	103	103	1,398	447	791
30.00 to 34.99	1,511	299	647	1,203	457	727
35.00 to 39.99	1,025	181	471	825	300	509
40.00 to 44.99	970	195	418	795	272	477
45.00 to 49.99	1,019	178	431	809	319	488
50.00 to 54.99	1,259	236	503	1,023	365	607
55.00 to 59.99	938	189	435	765	292	478
60.00 to 64.99	691	144	396	580	198	306
65.00 to 69.99	670	141	318	547	203	318
70.00 to 99.99	3,794	815	1,789	3,136	1,152	1,789
100.00 to 499.99	17,139	3,940	8,253	14,188	5,403	8,253
500.00 to 999.99	774	206	401	588	271	401
1000.00 +	346	51	103	296	68	103
Total	45,876	10,110	17,610	36,761	13,936	20,247

Source: Departments of Management & Financial Services and Economic Development, June 13, 2005

Parcel Size	Scenario 1	Scenario 2	Scenario 3	Scenario 4
<5 to 1000 in increments	AR-1: Cluster 10 ac vs. 5 ac	Apply AR-2 cluster to AR-1	Subtract unbuildable from gross ac	Subtract Prime Ag soils from gross ac.

In comparison – no disclosure of an update to the 2005 analysis has been provided to determine whether the proposals for this ZOAM will adequately define regulations needed to be in compliance with the 2019 Comp Plan.
This, along with 15 years of delay in implementing the RGP policies and goals for farmland protection, demonstrate the **concerns and issues** with continued requests for delay by organizations or entities negating the need for this ZOAM.



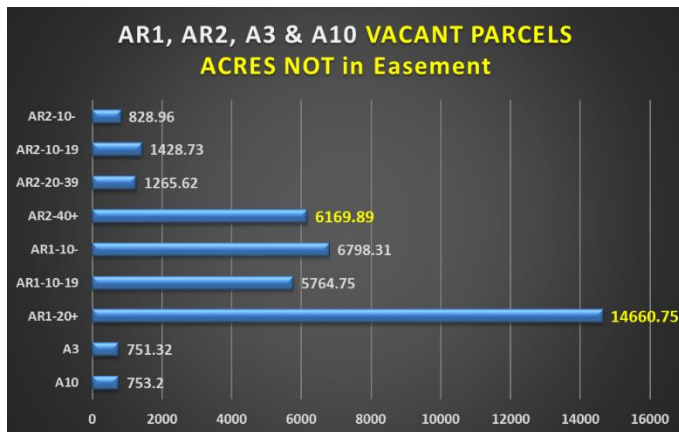
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Staff should use caution and reconfirm quantification being provided by focus groups for various positions and alternatives. It is important to clarify the universe of underlying data, the “as-of date,” and recognize it can be misleading when only using percentages rather than actual values.

For example:

“1) Only about 10% of the existing parcels, north and south, meet the minimum parcel area required to permit subdivision.”

- Did the totals include all vacant and improved eligible (i.e., 20+ and 40+) parcels and as-of what date?
- Were parcels in permanent or development easement excluded?

“2) In the Rural North, 90% of all the existing parcels are smaller than 20 acres. The average (median) is 9.7 acres, 50% are smaller than 3.55 acres (median).”

- Does this include grandfathered A3 and A10 parcels in Rural North, or only AR-1?
- Knowing that there are over 10,500 AR-1 parcels less than 20 acres versus the estimated total of 11,500 it would be obvious that an *average* or *median* calculation would skew smaller than larger.
- In addition to parcel count, important to consider is the estimated acres that would be impacted by this ZOAM over time. As of December, 2020, there were ~14,660 vacant acres and ~38,500 improved acres on 20+ acre parcels not in easements eligible for cluster subdivision, for a total of 53,000 acres.
- A more significant calculation and percentage would be the potential increase in quantity of parcels IF the 20+ acres were clustered (over time), and associated impact to prime agricultural soils. Excluding parcels in easement, that would be approximately 950 parcels that could produce 10,600 cluster parcels, or an 1111% increase.



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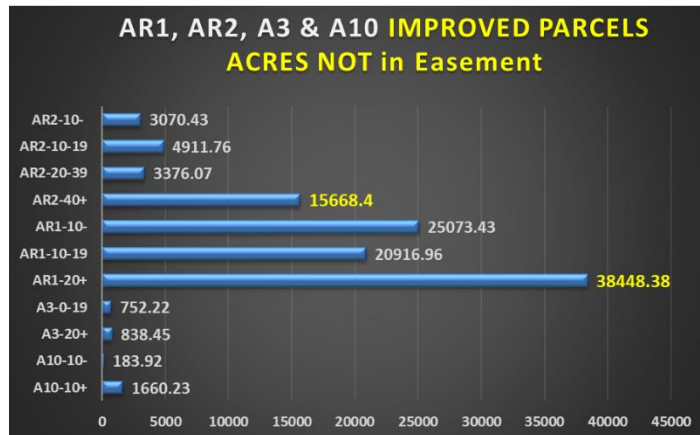
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3) In the Rural South, 86% of all the existing average (median) is 24.63 acres; 50% are smaller than 8.0 acres (median).

- Similarly, does this include grandfathered A3 and A10 parcels in Rural South, or only AR-2?
- Knowing that there are almost 1700 AR-2 parcels less than 40 acres versus the estimated total of 1900 it would be obvious that an *average* or *median* calculation would skew smaller than larger.
- In addition to parcel count, important to consider is the estimated acres that would be impacted by this ZOAM over time. As of December, 2020, there were ~6,150 vacant acres and ~15,700 improved acres on 40+ acre parcels eligible for cluster subdivision, for a total of 21,850 acres.
- A more significant calculation and percentage would be the potential increase in quantity of parcels IF the 40+ acres were clustered (over time), and associated impact to prime agricultural soils. Excluding parcels in easement, that would be approximately 180 parcels that could produce almost 1500 cluster parcels, or an 800% increase.
- Lastly, considering only 20+ and/or 40+ parcels eligible for clustering understates the potential total acres at risk. Also to be considered are parcels greater and less than 20 or 40 acres under common ownership that can be recombined for a cluster application.
 - As of December 2020, there were approximately 400 parcels (2800 acres) still vacant within an existing subdivision. As planned, this ZOAM would NOT protect prime soils for these parcels/acres.
 - Of more significance is that there are approximately 1300 parcels, almost 42,000 acres under common ownership. If these parcels develop “as is” this ZOAM would not protect soils. However, if the parcels “as is” apply for a cluster application calculation – will the regulations for this ZOAM apply?





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3. In general, what **LIMITATIONS** or **ALLOWANCES** would you like to see included in the text amendments that would help preserve prime agricultural soils.

CLUSTER SUBDIVISION SYSTEMS “FLAG”

Out of the ~160 total Subdivisions in AR1/AR2, a report provided by Mr. Stultz’s indicated “17” clusters were approved or applied for between 2010 to 2020. Industry experts indicate there have been ~30 **Cluster** subdivisions between 2006 to 2020, covering ~2200 acres and increased the base density lots of 111 to 383 cluster lots, (a 345% increase).

However -- An exact number of clusters and density impacts cannot be confirmed because there is no systems “flag” in Land Management Information System (LMIS) to identify “Cluster Subdivisions.” (*Confirmed at ZOC 2/3/2021*)

- If NEW cluster regulations will ONLY apply to residential cluster applications, and there is no way to track those applications in current systems,
 - will a new FLAG be added to LMIS to enforce the regulations through the process?
 - or will it remain a manual, procedural, therefore unreportable, possibly unenforceable estimate?

Cluster Calculation – Example Methods (Feasible w/ new Zoning via EnCode +)

“GROSS ACRES” SUBTRACTION		“BONUS”																																																	
ALGORITHM EXAMPLE: Route 9 near Hillsboro Total Gross Acres (TA) 107.2 TA - Steep Slopes (SS) -15.4 SS - Floodplain (FP) -25.2 FP - Designated Open Space (OS) -2.5 OS - Right of Way (RoW) -3.0 RoW = Total Potential Farmland (TPF) = 61.1 TPF or Rural Economy Lot - Prime Soils (PS) -49.9 PS = Residual Acreage for Clustering = 11.2 Residual Acreage for Clustering		PARCEL “SCORING” <table border="1"> <thead> <tr> <th>CATEGORY / WEIGHT</th><th>% of Site</th><th>Retained</th><th>Score</th></tr> </thead> <tbody> <tr> <td>Continuity & Retention of Prime Ag Soils & Pastureland</td><td>40%</td><td>35%</td><td>87.50%</td></tr> <tr> <td>Minimize impermeable surfaces</td><td>10%</td><td>9%</td><td>90.00%</td></tr> <tr> <td>Set aside areas for multi-use trails</td><td>5%</td><td>5%</td><td>100.00%</td></tr> <tr> <td>Architectural Styles - Diversity</td><td>10</td><td>8</td><td>80.00%</td></tr> <tr> <td>Building envelopes that control Visibility of non-ag buildings</td><td>10</td><td>8</td><td>80.00%</td></tr> <tr> <td>Retention of farm & other historic buildings</td><td>10</td><td>10</td><td>100.00%</td></tr> <tr> <td>Screening and buffering</td><td>10</td><td>10</td><td>100.00%</td></tr> <tr> <td>Roads & Parking surfaces</td><td>10</td><td>8</td><td>80.00%</td></tr> <tr> <td>Runoff Controls</td><td>10</td><td>9</td><td>90.00%</td></tr> <tr> <td>Overlay Zone (Limestone, Mountain, ...)</td><td>10</td><td>10</td><td>100.00%</td></tr> <tr> <td>SCORE</td><td></td><td></td><td>90.75%</td></tr> </tbody> </table> BONUS over 1/5 acres: 100 acres 20 lots, 4500sf footprint + 2000sf		CATEGORY / WEIGHT	% of Site	Retained	Score	Continuity & Retention of Prime Ag Soils & Pastureland	40%	35%	87.50%	Minimize impermeable surfaces	10%	9%	90.00%	Set aside areas for multi-use trails	5%	5%	100.00%	Architectural Styles - Diversity	10	8	80.00%	Building envelopes that control Visibility of non-ag buildings	10	8	80.00%	Retention of farm & other historic buildings	10	10	100.00%	Screening and buffering	10	10	100.00%	Roads & Parking surfaces	10	8	80.00%	Runoff Controls	10	9	90.00%	Overlay Zone (Limestone, Mountain, ...)	10	10	100.00%	SCORE			90.75%
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As demonstrated in MARCH, 2020, the proposed methods of using “Subtraction” (Farm Bureau) or “Scoring” (FBRM/Unintended Consequences group) may achieve prime ag soils protection, and can be implemented using the Calculator Function of enCodePlus.

Now that Staff has begun populating enCodePlus,

- Has the County Attorney concluded whether it is LEGAL to exclude soils and/or other natural features in the Cluster calculation?
- Is it legal to apply exclusion or different calculations to ONLY residential “cluster” subdivision applications (versus conventional by-right or other subdivision and application types including rural businesses?) and if so
- WILL the County include the Calculator Function in Loudoun’s enCodePlus to support the ZOAM by excluding soils?

(See appendix for Code of Virginia references)



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Other ZOAM-2020-0002 considerations:

- Conservancy lots should be at the minimum size of the AR-1 or AR-2 base density (i.e. 20 or 40 acres as the minimum conservancy lot size).
- Cluster Subdivisions should be required to have a "Soil and Water" produced Management Plan for the Conservancy lots showing that they have Agriculture, Animal Husbandry, or Environmental Preservation capacity and a developer's commitment to its implementation.
- Uses must be compatible with the residential use.
- Require contiguous rural economy lots to maximize actual farming potential.
- A permanent easement should be on Conservancy Lots, to avoid future subdivision through combining lots.
- Evaluate reinstating the Rural Hamlet criteria (with higher, 85%, open space requirements)
- Evaluate quantitatively the full costs of cluster housing at the current 1/5 and 1/15 density versus the density approved in 2003 (1/10 and 1/20).
- Performance standards to increase setback from main road frontage, require buffering between the lots and main road, and limit entrance sign options to minimum sizes with relevant rural character.
- Increase the separation distance between Clusters on the same property and/or require reforestation to create a strong visual barrier.
- ZOAM analysis and review should include: siting standards, setback requirements, design standards, traffic and congestion standards, soil and open land preservation standards, historic preservation standards, water and discharge standards, community compatibility standards.

4. In general, what text amendments would you be **OPPOSED TO?**

Generally opposed to "picking a position" or "solution" based on politics instead of which alternative and method protects the most prime ag soils and best implements the 2019 Comprehensive Plan.



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This effort is not about preservation of prime soils and farmland by EITHER ZOAM-2020-0002 regulations OR use of conservation easements. The focus should be on preservation of prime soils and farmland by implementing ZOAM regulations AND use of conservation easements.

Not implementing the 2019 Comp Plan policies in order to “protect” conservation easements will continue the 18 years of no farmland/soils protection. Based on the run rate over the past 50 years, conservation easements alone are not sufficient to mitigate the loss of farmland. To retain the character of the RPA, support tourism and implement the 2019 Comp Plan **all** methods will be necessary, with some level of accommodation.

5. Please provide any **ADDITIONAL COMMENTS, QUESTIONS** or **CONCERNS** that you have related to this proposed amendment.

In general, the various Sub-Committee member proposals for this ZOAM have been in discussion for 12 months; the BMI has been approved for 8 months. Originally (2019), there were two competing BMI’s: One requesting change to Cluster density; another requesting protection to Prime Ag Soils. The 2 BMIs were combined in June, 2020.

- Is it true that any or all regulations resulting from this ZOAM will **ONLY** be applied to CLUSTER Subdivision applications -- not to base density, primary/subordinate or any rural business developments applications in AR1 and AR2?
 - *Response received at 2/17/2021 ZOC meeting: It’s Staff’s understanding that the ZOAM regulations would **ONLY** apply to residential cluster applications. Will this be confirmed with BOS?*
- If so, **WOULD** the regulations apply to any application requesting a change/refiling or recombining an original A3/A10 subdivision reengineered to or requesting AR1/AR2 Cluster subdivision density? If not, then can/will Staff quantify the estimated prime soils/farmland acres protected for residential cluster applications only **VERSUS** estimated prime soils/farmland acres NOT protected for all other residential and rural business applications not requiring the ZOAM regulations when approved?
- Are other ratios/formulas under consideration for change in the ZOAM regulations, such as 70% open space or Rural Economy lot size acreage?
 - *Response received at 2/17/2021 ZOC meeting: Yes. Will this be confirmed with BOS?*





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LEGAL REVIEW: (See appendix for questions with references)

Code of VA § 15.2-2286.1 Requires counties to provide a “clustering option” AND enables Counties to make changes in land use ordinances. Counties are NOT REQUIRED to provide increased density for cluster options.

1. Of the Cluster/prime soils alternatives proposed by stakeholders to date, which have been evaluated by Staff to confirm which provisions it has determined appropriate to
 - a. ensure quality development,
 - b. preservation of open space and
 - c. compliance with the 2019 Comp Plan and current land use ordinances?
2. What percentage of unimproved land contained in residential and agricultural zoning districts have been used in Cluster developments since 2005?
3. What percentage of unimproved land contained in residential and agricultural zoning districts are currently available for Cluster developments?
4. Has the County Attorney concluded whether Loudoun **CAN or CANNOT** impose land use requirements for cluster development that are based on excluding
 - a. MDOD/slopes areas? Floodplain? Limestone?
 - b. prime ag soils or other criteria (e.g., trails,)?
5. Has the County Attorney determined whether Density calculations and “Provisions” **CAN** be varied based on the zoning classifications or Rural North, Rural South, and Overlay Districts? (MDOD, Limestone, etc.), and if so, **WILL** varying provisions be considered for this ZOAM?
6. Loudoun is not REQUIRED to have a density greater than the base density for AR-1 and AR-2. **WILL** a change in density be considered for this ZOAM, and if so, how will it be evaluated?
7. Has the County Attorney determined whether as part of this ZOAM the above language regarding “optional” cluster applications at a “density greater than” the BASE density permitted by right would qualify for “special exception, special use or conditional use permit” to protect prime ag soils?



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6. What **EXISTING DATA, REPORT OR ANALYSIS** is available to support your Organization's proposal? Describe existing material and source (for possible display at meeting).

Instead of primarily reviewing only past information, data, mapping, and quantification should be used to support Sub-Committee member proposals to move the ZOAM forward more efficiently and effectively. See examples provided on LCPCC Zoning Committee page.

7. What **NEW DATA, REPORT OR ANALYSIS** would you request from County sources to support your Organization's proposal? Describe data, analysis, & format (e.g., graph, table, report).

Due to County Staff's continuity of government priorities during the pandemic it was understandable that analysis was delayed. LCPCC can and will assist County Staff any way necessary to ensure a thorough analysis is performed before final recommendations and decisions are made to determine which proposals and methods protect the most farmland and soils.

- Assistance will include but not be limited to using County data to create the following maps to assist Staff review:
 - differentiate gift easements from development easements
 - vacant parcels over 20 ac (AR-1) and 40 acres (AR-2)
 - improved parcels with one house over 20 ac (AR-1) and 40 acres (AR-2)
 - contiguous parcels under one ownership that could be combined to create a cluster proposal greater than 20 ac (AR-1) and 40 acres (AR-2).

Loudoun Conservation Easements

- Development
- Gift or Partially Purchased

Existing Residential Communities = color polygons

Parcels

AR1 20+ Vacant



AR1 20+ Improved



AR2 40+ Vacant



AR2 40+ Improved

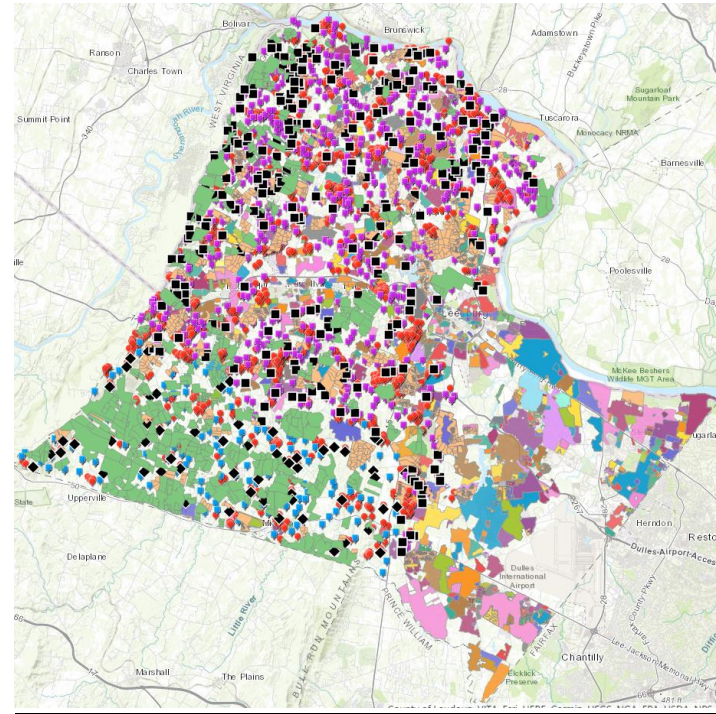


AR1-AR2 RECOMBINED



(Recombined = parcels under one ownership)

What's at Risk:



LEGAL REVIEW: APPENDIX

Code of VA § 15.2-2286.1 Requires counties to provide a “clustering option” AND enables Counties to make changes in land use ordinances. Counties are NOT REQUIRED to provide increased density for cluster options

1. Of the Cluster/prime soils alternatives proposed by stakeholders to date, which have been evaluated by Staff to confirm which provisions it has determined appropriate to
 - a. ensure quality development,
 - b. preservation of open space and
 - c. compliance with the 2019 Comp Plan and current land use ordinances?
2. What percentage of unimproved land contained in residential and agricultural zoning districts have been used in Cluster developments since 2005?
3. What percentage of unimproved land contained in residential and agricultural zoning districts are currently available for Cluster developments

§ 15.2-2242. Optional provisions of a subdivision ordinance.

A subdivision ordinance **may** include:

8. Provisions for **clustering of single-family dwellings and preservation of open space developments**, which provisions **shall comply** with the requirements and procedures set forth in § **15.2-2286.1**.

§ 15.2-2286.1. Provisions for clustering of single-family dwellings so as to preserve open space.

B. Any such locality **shall** provide in its zoning or subdivision ordinances, applicable to a **minimum of 40% of the unimproved land contained in residential and agricultural zoning district classifications, standards, conditions, and criteria for the clustering of single-family dwellings and the preservation of open space developments**.

In establishing such standards, conditions, and criteria, the governing body **may**, in its discretion, include any provisions it determines appropriate to ensure quality development, preservation of open space, and compliance with its comprehensive plan and land use ordinances.

A cluster development is otherwise subject to applicable land use ordinances of the locality; however, the locality **shall not** impose more stringent land use requirements for such cluster development.

4. Has the County Attorney concluded whether Loudoun **CAN or CANNOT** impose land use requirements for cluster development that are based on excluding
 - a. MDOD/slopes areas? Floodplain? Limestone?
 - b. prime ag soils or other criteria (e.g., trails,)?

For any **"open space"** or **"conservation areas"** established in a cluster development, the locality **shall not**

- (i) **require in such areas identification** of slopes, species of woodlands or vegetation and whether any of such species are diseased, the locations of species listed as endangered, threatened, or of special concern, or riparian zones or require the applicant to provide a property resource map showing such matters in any conservation areas, other than that which may be required to comply with an ordinance adopted pursuant to § [15.2-961](#) or [15.2-961.1](#) or applicable state law;
- (ii) **require such areas be excluded from the calculation of density in a cluster** development or exclude land in such areas because of prior land-disturbing activities;
- (iii) **prohibit roads** from being located in such areas for purposes of access to the cluster development, but the locality may require such roads be designed to mitigate the impact on such areas;
- (iv) prohibit stormwater management areas from being located in such areas; or
- (v) require that lots in the cluster development directly abut such areas or a developed pathway providing direct access to such areas.

5. Has the County Attorney determined whether Density calculations and “Provisions” **CAN** be varied based on the zoning classifications or Rural North, Rural South, and Overlay Districts? (MDOD, Limestone, etc.), and if so, **WILL** varying provisions be considered for this ZOAM?

For purposes of this section, "open space" or "conservation areas" shall mean the same as "open-space land" in § [10.1-1700](#).

*The **density calculation** of the cluster development **shall be based** upon the same criteria for the property as would otherwise be permitted by applicable land use ordinances. As a locality provides for the clustering of single-family dwellings and the preservation of open space developments, it **may vary provisions** for such developments for each **different residential zoning classification within the locality**. For purposes of this section, "unimproved land" shall not include land owned or controlled by the locality, the Commonwealth or the federal government, or any instrumentality thereof or land subject to a conservation easement.*

*If **proposals** for the clustering of single-family dwellings and the preservation of open space developments **comply with the locality's adopted standards**, conditions, and criteria, the development and open space preservation **shall be permitted by right** under the local subdivision ordinance. The **implementation and approval of the cluster development and open space preservation shall be done administratively** by the locality's staff and without a public hearing. No local ordinance shall require that a special exception, special use, or conditional use permit be obtained for such developments. However, any such ordinance may exempt (a) developments of two acres or less and (b) property located in an Air Installation Compatible Use Zone from the provisions of this subdivision.*

6. Loudoun is not REQUIRED to have a density greater than the base density for AR-1 and AR-2. **WILL** a change in density be considered for this ZOAM, and if so, how will it be evaluated?

*C. Additionally, a locality **may, at its option**, provide for the clustering of single-family dwellings and the preservation of open space at a **density calculation greater than the density permitted** in the applicable land use ordinance. To implement and approve such increased density development, the **locality may, at its option**,*

*(i) **establish and provide**, in its zoning or subdivision ordinances, **standards, conditions, and criteria for such development**, and if the proposed development complies with those standards, conditions, and criteria, it shall be permitted by right and approved administratively by the locality's staff in the same manner provided in subsection A, or*

*(ii) **approve the increased density development upon approval of a special exception, special use permit, conditional use permit, or rezoning.***

*D. Notwithstanding any of the requirements of this section to the contrary, any local government land use ordinance in effect as of **June 1, 2004**, that provides for the clustering of single-family dwellings and preservation of open space development by right in at least one residential zoning classification without requiring either a special exception, special use permit, conditional use permit, or other discretionary approval **may remain in effect** at the option of the locality and will be deemed to be in compliance with this section. Any other locality may adopt provisions for the clustering of single-family dwellings, following the procedures set out in this section, in its discretion.*

7. Has the County Attorney determined whether as part of this ZOAM the above language regarding “optional” cluster applications at a “density greater than” the BASE density permitted by right would qualify for “special exception, special use or conditional use permit” to protect prime ag soils?

§ 15.2-2288.1. Localities may not require a special use permit for certain residential uses.

No local ordinance shall require as a condition of approval of a subdivision plat, site plan, or plan of development, or issuance of a building permit, that **a special exception, special use, or conditional use permit** be obtained for the development and construction of residential dwellings at the use, height and density permitted by right under the local zoning ordinance.

Nothing herein shall restrict the use of the special exception, special use, or conditional use permit process on application of a property owner for

*(i) a **cluster** or town center **as an optional form of residential development at a density greater than that permitted by right**, or otherwise permitted by local ordinance;*

*(ii) use in an area designated for **steep slope mountain development**;*

(iii) use as a utility facility to serve a residential development; or

*(iv) **nonresidential uses** including but not limited to home businesses, home occupations, day care centers, bed and breakfast inns, lodging houses, private boarding schools, and shelters established for the purpose of providing human services to the occupants thereof.*