



ZOAM-2020-0001-Zoning Ordinance Rewrite -- OVERLAY DISTRICT STANDARDS Draft Text

INTRODUCTORY COMMENTS:

Section 4.2100. VILLAGE CONSERVATION OVERLAY DISTRICT (VCOD). It is understood that VCOD has been separated from the other ZOR Overlay Districts in review, and will have separate consideration during the development of Village Small Area Plans. However, to avoid an overall delay in mitigating current issues there are changes being recommended BEFORE or IN PARALLEL WITH Village Small Area Plan development.

USE EXCLUSIONS FOR OVERLAY DISTRICTS. This week is another example of the progressive overlap of draft text sections. First was USES, then use STANDARDS, now OVERLAY DISTRICTS that include requests to MODIFY the list of Uses in an overlay district. With input from LCPCC member orgs I've prepared a list of Uses for Exclusion to submit. I've asked in prior meetings HOW that would be done, but there is no indication in the text to answer that or HOW this will be discussed and determined.

Covered Activities (Submitted): 4.03.D MDOD Uses and Activities. Even with the reference to the "Covered Activities" definition, and "2. Permitted Uses" the regulations are insufficient for the protection of MDOD. LCPCC member organizations are preparing a clear list of Uses that should NOT be permitted for MDOD, Villages and Clusters. HOW can/will Staff incorporate review, consideration and implementation of separate use lists AS DISCUSSED during the Use Table Matrix and Use-Specific Standards ZOC discussions?

ZOC meetings have become more like "book club." See remarks @ 1 Hr, 25 minutes, ZOC "participation" compared to "Book Club."

*LCPCC Participating Organizations: Aldie Heritage Association, Bike Loudoun, Bluemont Citizens Association, Blue Ridge Mountain Civic Association, Catoclin Coalition, Farm Bureau of Loudoun, Friends of the Blue Ridge Mountains, Goose Creek Association, Goose Creek Scenic River Advisory Committee, LCPCC Executive Committee, LCPCC Finance Cte, Leesburg Garden Club, Loudoun Climate Project, Loudoun County Equine Alliance, Loudoun Historic Village Alliance, Loudoun Preservation Society, Loudoun Rural Landfills, Loudoun Soil & Water, Loudoun Walking Club, Loudoun Wildlife Conservancy, Piedmont Environmental Council, Potomac Heritage Trail Association, Save Rural Loudoun, Sterling Foundation, Transition Area Alliance, Unison Preservation Society, Virginia Native Plant Society (Piedmont Chapter), and Virginia Piedmont Heritage Area Association

Section	COMMENTS TO DRAFT TEXT -- OVERLAY DISTRICT STANDARDS
4.00	<p>4.00. OVERLAY DISTRICTS -- GENERAL. There are general concerns about the exemption for 'agriculture' uses in the floodplain, mountainside and limestone districts. Given the broad definition used by the county for "agriculture" uses that are primarily tourist/agritourism/event venues, there is concern that the exemption may be used to open a use in an inappropriate location that, in operation, would be contrary to the regulations for these Overlay Districts.</p> <p>The general request that applies to these Overlay Districts is to identify and apply a more detailed exemption list AND/OR, Uses that are NOT permitted in certain Overlay Districts. There are too many loop holes for high-intensity operations that would harm the environment, nature, wildlife and quality of life for neighbors (these things include clear cutting, excavating I grading etc.) and thereby violate the intent of the Comprehensive Plan. Will Overlay District Use restrictions be applied?</p>
4.00	<p>4.00. OVERLAY DISTRICTS -- GENERAL. The following list of terms have raised questions about the definitions and the ability to enforce them, or enforce stipulations they may trigger. Can the following terms be made less ambiguous?</p> <ul style="list-style-type: none"> -- slight or limited, moderate, and severe environmental and public safety impacts (from MDOD section 4.03.C when defining different types of sensitive environmental areas - it's the definition of the category, which itself is not actually defined) -- "good and sufficient cause" (this was in regards to allowing a special exception in FOD section 4.02.K) -- "exceptional hardship" (this was also in regards to allowing a special exception in FOD section 4.02.K) -- inconsistency between a term that was used versus what was defined: "Substantial damage" is defined but not "significant damage"
4.02	<p>4.02. FLOOD PLAIN OVERLAY. After many years in telecom, I'm a stickler for first reference of acronyms. Unless you enable hyperlinks for all (soon):</p> <p>D.2.f. Where is the first full reference of "FEMA?"</p> <p>d.2.i The first full reference for the acronym "FIRM" does not appear until D.3. Deliniation of the FOD. Should have first reference of acronym at first appearance.</p> <p>E.1.a. Acronym "CLOMR" (Conditional Letter of Map Revision) is not defined at first reference.</p>
4.02	<p>4.02 FLOOD PLAIN OVERLAY. How much of this entire section is being considered to move to the FSM? If it moves to the FSM, what are the communication issues with non-development professionals (e.g., farmers, rural businesses) that will need to be aware of the requirements before application and/or construction?</p>
4.02	<p>4.02 FLOOD PLAIN OVERLAY. E.1.i. Permitted Uses. Why is the text "temporary structure associated with Special Events" highlighted in red? An addition? To be deleted? To be discussed?</p>
4.02	<p>4.02 FLOODPLAIN OVERLAY DISTRICT. Should there be a River Stream Corridor Overlay District? This could also include elements to implement the Linear Parks and Trails Framework Plan.</p>
4.05	<p>4.05 QUARRY NOTIFICATION OVERLAY DISTRICT. The concept and requirements for "Full Disclosure Statement," for QNOD are similar in concept as requested for the Use of "Stockpiling." Can the same or similar notice to neighboring land uses and owners within 3,000 feet of a Stockpiling application be development and included in ZOR?</p>

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4.02.D	4.02.D FLOODPLAIN OVERLAY DISTRICT. D. Administration. What is the County doing to address FEMA required floodplain studies to be able to adequately restart riparian buffer plantings to benefit protecting water quality?
4.02.E	4.02.E FLOODPLAIN OVERLAY DISTRICT. E. Permitted Uses. Has the definition for passive and active recreation uses been reviewed for further clarification?
4.02.E	4.02.E FLOODPLAIN OVERLAY DISTRICT 1.b. Why are active recreation uses allowed at all within the FOD major floodplain? Recreation uses that need facilities built will often result in a rise in base floodplain elevation and require an alteration of the floodplain application. To better protect water quality, rather than modifying portions of the floodplain, those uses should not be allowed.
4.02.E	4.02.E FLOODPLAIN OVERLAY DISTRICT 1.h. Why are accessory parking areas a permitted use?
4.02.E	4.02.E FLOODPLAIN OVERLAY DISTRICT 1.i. What is the definition of bulk storage of gasoline, chemicals, fuels, or similar substances? Since those chemical are a threat to water quality, why are incidental structures that would store machines that utilize those chemicals allowed in the FOD at all? Shouldn't incidental structures just be removed from permitted uses?
4.02.E	4.02.E FLOODPLAIN OVERLAY DISTRICT 2.e. Why are basketball or tennis courts, and swimming pools permitted uses in the minor floodplain? They unnecessarily add impervious surfaces.
4.02.E	4.02.E FLOODPLAIN OVERLAY DISTRICT 2.f. Why are parking lots permitted uses? Regardless of following best practices, it would be simpler (and provide better water quality benefits) if they were not allowed.
4.02.F	4.02.F FLOODPLAIN OVERLAY DISTRICTS 2-6 Why are these uses allowed by special exception? Except for passive recreation uses (such as trails for the linear parks and trails system), these uses are unnecessary in a minor floodplain and do not contribute to protecting water quality.
4.02.F.5	4.02 FLOOD PLAIN OVERLAY. F.5 Special Exception Uses. How can the county/FEMA continue to allow the 840 square foot structure allowance without any engineering study or CLOMAR, but deem tree planting or woven wire fencing an impact requiring these measures?
4.02.G	4.02.G FLOODPLAIN OVERLAY DISTRICT G. Standards for Special Exceptions. Why aren't requirements included to look at cumulative impacts of special exceptions and development in general? Handling this decisions on a case by case basis has led to a cumulative negative impact on the watersheds in the area. Why don't these standards include impacts to wildlife, native vegetation, and wetlands that may occur within the floodplain? Beyond being addressed in Chapter 5 for Development Standards, native vegetation has positive impacts on reducing stormwater flows, velocities, and other impacts to the floodplain.
4.02.G	4.02.G FLOODPLAIN OVERLAY DISTRICT G.7. "Substantial damage" is defined but not "significant damage," which is the term used here. Can this be clarified and/or defined?
4.02.H	4.02.H FLOODPLAIN OVERLAY DISTRICT H.2.b. Why isn't there priority to protect natural features (wetlands, native plants, etc), that benefit water quality and have flood water runoff benefits, required for floodplain alterations?
4.02.I	4.02.I FLOOD PLAIN OVERLAY. I.1.a. acronym "MPOD*" -- is this incorrectly identifying MDOD? and what is the asterisks representing?

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4.02.I	4.02.I FLOOD PLAIN OVERLAY. I.1.k. The requirement for prior approval from U.S Army Corp of Engineers, Va DEQ and VA Marine Resources Commission should STAY in the Zoning Ordinance for visibility.
4.02.I	4.02.I FLOOD PLAIN OVERLAY I.4. Standards for Subdivision Proposals. That's all? With all the other details this gets only a, b, c?
4.02.I	4.02.J FLOOD PLAIN OVERLAY. J. Density Calculations. With all the specific requirements and restrictions for FOD, why is the land area still being used as part of the land area calculation for density? Will this be at least discussed for ZOAM-2020-0002?
4.02.K	4.02.K FLOODPLAIN OVERLAY DISTRICT K.4.a. What is definition of "good and sufficient cause"?
4.02.K	4.02.K FLOODPLAIN OVERLAY DISTRICT K.4.b. What is definition of "exceptional hardship"?
4.02.K	4.02.K FLOODPLAIN OVERLAY DISTRICT K.4.c. Why isn't degradation of wildlife habitat or other natural features included?
4.03 Definition	4.03 MDOD Definition. Why was the definition of "Ridgeline" modified to remove the text, "A line measured continuously along the highest elevation of a drainage divide for the major watersheds mapped by the County or other prominent mountain ridges visible from the public right-of-way as identified during the land development process."
	4.03 MDOD . Why was the following text that most clearly outlines the establishment of MDOD removed (or moved) from the initial description of MDOD? Can Staff reinstate or confirm where equivalent text is located? The Mountainside Development Overlay District is hereby established as an overlay district, meaning that this district is overlaid upon other districts and the land so encumbered may be used in a manner permitted in the underlying district only if and to the extent such use is also permitted in the overlay district.
	4.03 MDOD -- Procedures as outlined in Current Zoning Section 4-1606. Will these all be included in the Procedures Chapter verbatim? If not, what text changes are/will be made?
4.03.C	4.03.C MDOD. C. Applicability and Exemptions 1.c 1-3 What are the definitions for slight or limited, moderate, and severe environmental and public safety impacts?
4.03.C	4.03.C MDOD. [related to another entry] 2.b. What is being done to protect steep slope areas from being denuded of tree cover and then being graded for high-intensity rural uses tourist venues that require substantial parking?
4.03.C.2	4.03 MOUNTAINSIDE DEVELOPMENT OVERLAY DISTRICT (MDOD). C.2 Exemptions. How will the coordination between applications for Zoning, B&D, Health Dept./ODW, Loudoun County Soil and Water Conservation District (LCSWCD), Natural Resources and Conservation Service (NRCS) be addressed in ZOR to close known loopholes? Example available upon request.

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4.03.C.2.b	<p>4.03 MOUNTAINSIDE DEVELOPMENT OVERLAY DISTRICT (MDOD). C.2.b Exemptions, Timber Harvesting & Sviculture. Does the County ensure or monitor the requirement below and ENFORCE when presented with KNOWN violations? (Recent examples indicate the answer may be no and need to be addressed.)</p> <p>Section 10.1-1181.2.H of the Code of Virginia. Prior to completion but not later than three working days after the commencement of an operation, the operator shall notify the State Forester of the commercial harvesting of timber. . . . The notification may be verbal or written and shall (i) specify the location and the actual or anticipated date of the activity, (ii) include an owner's name or the owner's representative or agent and contact information, and (iii) be provided in a manner or form as prescribed by the State Forester. If an operator fails to comply with the provisions of this subsection, the State Forester may assess a civil penalty of \$250 for the initial violation and not more than \$1,000 for any subsequent violation within a 24-month period by the operator. Such civil penalties shall be paid into the state treasury and credited to the Virginia Forest Water Quality Fund pursuant</p>
4.03.D	<p>4.03.D MDOD Uses and Activities. As PUBLIC RECORDS (onlinerme.com) show, regulation of high-intensity uses requiring large parking areas formed from clear cutting/land disturbance (with or without a grading permit) has impacted septic fields on the property. This is not only a health, safety and welfare concern for the property owner and patrons, but definitely on a mountainside, a concern for down hill properties. The Covered Activities list is insufficient to ensure protection for citizens and patrons, therefore will high-intensity uses be EXCLUDED from the MDOD Use Matrix list?</p>
4.03.D	<p>4.03.D MDOD Uses and Activities. Even with the reference to the "Covered Activities" definition, and "2. Permitted Uses" the regulations are insufficient for the protection of MDOD. LCPCC member organizations are preparing a clear list of Uses that should NOT be permitted for MDOD, Villages and Clusters. HOW can/will Staff incorporate review, consideration and implementation of separate use lists AS DISCUSSED during the Use Table Matrix and Use-Specific Standards ZOC discussions?</p>
4.03.D	<p>4.03.D MDOD. D.2.b&c This is another example of passive recreation term being used without clear definition.</p>
4.03.E	<p>4.03.E MDOD E. Mountainside Resource Protection Setbacks. 1.a. Crest and Ridgeline Setback. Shouldn't the setback be greater than 100'? Shouldn't this setback be measured from the edge of the ridgeline and not the crest? There are potentially some fairly flat ridgelines and this setback may not necessarily adequately protect the ridgeline.</p>
4.03.F	<p>4.03.F MDOD F. Performance Standards in Somewhat Sensitive and Sensitive Areas. 3. Shouldn't grading plan also consider runoff (direction and velocity) in addition to minimizing erosion?</p>
4.03.F & G	<p>MDOD F.2 and G.4 Performance Standards. There seem to be so many work arounds for getting houses built. Submissions received that recommend against allowing ANY additional clearing beyond what is necessary for the house itself and drainfield. i.e., no additional allowance for "yard." This complies with Commission of Revenue assessment of MDOD properties, correct?</p>
4.03.G	<p>4.03.G MDOD. Performance Standards in Highly Sensitive Areas. G.2. Formatting error</p>
4.03.G	<p>4.03. MDOD. Conflicts/loopholes between C, F and G. What under any other circumstances would require a grading permit is being allowed for a "Forest Management Plan" that has <u>known</u> prior disclosure of SFD development plans. This process loophole is actually even enabled with G.6.b. by not requiring Health Department groundwater (and septic) until the "record plat" stage (for lots after 10/4/95). How will this be addressed?</p>

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4.03.G	4.03.G MDOD. For clarity for ALL zoning ordinance users (not just developers), can/will you better describe and/or provide links to explain G.6.c. language intent: "Such other standards which are relevant, including Section 6-1310 7.09 Issues for Consideration and Section 1-102 1.02, Purposes of Zoning Goals, Purpose, and Intent."
4.03.H	4.03.H MDOD Supplemental Application Materials. 1. Administrative Applications and Proposed Covered Activities. This whole section justifies the earlier request for coordination between departments beyond Building & Development. The July 2021 change in Code of VA will allow LOCAL county management of the Health Department (vs. as a State agency). As it was requested by Loudoun County and will be likely to be adopted by Loudoun, it would be prudent (required?) to consider the departmental coordination and requirements NOW to close the known loopholes. Therefore, will all planning ZOR regulations anticipate this change in the event it is implemented by Loudoun County by formal ZOR adoption?
4.03.H	4.03.H MDOD H. Supplemental Application Materials 1.a.7. Shouldn't forest cover also include requirement for contiguous canopy coverage and wildlife habitat with neighboring lots per the Comp Plan?
4.04.C.1	4.04 Limestone Overlay District. C. Applicability. Why was the second sentence* deleted, when a similar sentence was left for the FOD 4.02.E (and MDOD 4.03.D.1)? * <i>The LOD is established as an overlay district, meaning that this district is overlaid upon other districts and the land so encumbered may be used in a manner permitted in the underlying district only if and to the extent that such use is also permitted in the overlay district.</i>
4.04.C.2	4.04.C.2 Limestone Overlay Districts. C.2. If this list is to be considered comprehensive for Administrative Applications, AND ensure loopholes are closed (see next post), then shouldn't applications for Wells be added?
4.04.C.3	4.04 Limestone Overlay Districts. C.3.d. and C.f.4. Exemptions. The coordination between applications for Zoning, B&D and Health Dept./ODW MUST be addressed in ZOR to close known loopholes. F.2 Site grading permit requirements and F.5 reference to Wells regulations have been proven insufficient to avoid abuse and conscious loophole bypass between Zoning, B&D and Health Dept. How will new ZO address the egregious bypass of zoning requirements for well construction in the LOD? How can/will a zoning permit be REQUIRED for review and/or approval before well approval in LOD?
4.04.D	4.04.D Limestone Overlay Districts. D.1. Geophysical Study. To ensure the same issues as now evident in Lucketts be not permitted, will the requirement for geophysical study "for all land development applications and land disturbing activities" also be EXTENDED to any applications for wells or septic?
4.04.D	4.04.D Limestone Overlay Districts D.1 Identification of Karst/Sensitive Environmental Features and Required Setbacks. Why aren't vernal pools included (as they may not necessarily occur where there are sinkholes or other geophysical features)?

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4.04.E	<p>4.04.E LIMESTONE OVERLAY DISTRICTS. E.5. Why (in the world) were the following Pollution Sources REMOVED from the list prohibited within the LOD?</p> <p>c. Automobile service stations;</p> <p>d. Gas pumps accessory to convenience food store;</p> <p>e. Motor vehicle service and repair; Automotive Use Category uses identified in Section 3.02;</p> <p>g. Landfills and waste sites. Waste-related Use Category uses identified in Section 3</p>
4.04.F	<p>4.04.F LIMESTONE OVERLAY DISTRICTS F. Development Standards for the LOD. In addition to inclusion of vernal pools as a sensitive environmental feature, why aren't the evaluation of obligate vernal pool species considered during the development process? Amphibians and other vernal pools species are some of the most sensitive wildlife species and need special considerations to adequately protect.</p>
4.04.G	<p>4.04.G LIMESTONE OVERLAY DISTRICT. G.2.a. Ineligibility for Density Increases. SO -- if an applicant "may not" be eligible for density increases otherwise permitted under the clustering provisions," for LOD, why can't (or won't) the same requirement apply for other overlay districts (specifically, FOD and MDOD)?</p>
4.04.G	<p>4.04.G LIMESTONE OVERLAY DISTRICTS G. Mitigation Measures for LOD. This may be a semantic issue for what is allowed, but why aren't all of these mitigation measures standard for all development applications in the LOD?</p>
4.04.G	<p>4.04.G LIMESTONE OVERLAY DISTRICT. G. Mitigation Measures for the LOD. In addition to those measures listed, the following should also be included as recommended by LOD experts:</p> <ul style="list-style-type: none"> -- The intent is to characterize a flood plain as a dynamic system with parameters that can change. Due to changing weather patterns with resulting changes in runoff parameters and due to increasing coverage/density of impermeable paving within the Limestone Overlay District. -- After an initial study to review the footprint of flood plains, ephemeral stream courses, and sinkhole appearances in the Limestone Overlay District, review periodically, every two years or less, and after an exceptionally large flood event. -- Amend the Limestone Overlay District map to identify systematic increase in rainfall/runoff and its effect on stream course and sinkhole development. -- Prioritize County staff to become informed and make initial recommendations based on antecedent measurable events to set the stage for future adjustments.
4.04.H	<p>4.04.H LIMESTONE OVERLAY DISTRICT H.2. Administrative Applications. Beyond only applications submitted to B&D and/or Zoning for permits, how can it be expanded to include coordination, copy and/or approval of applications to the Health Dept or ODW to close the loopholes being abused due to lack of communication between department?</p>

Section	COMMENTS TO DRAFT TEXT -- OVERLAY DISTRICT STANDARDS
	<p>4.04. LIMESTONE OVERLAY DISTRICT. It is difficult to regulate land use on areas with foundation stability problems, aquifer contamination potential, or actual damage to ground water resources. We should now know enough to know what we don't know. We should now know enough to know that engineering strategies for remediation have significant potential for failure and/or may not be cost effective. Remediation may negate or avoid initial failure, but a fix on the fix approach can prove to be both an environmental and economic failure. How can/will the ordinance deal with potential problems and solutions, including costs, in this rewrite?</p> <p>Specifically, the ordinance should be clear as to who picks up the pieces when remediation is required? In anticipation of these liabilities, who pays for delineating a sinkhole fed groundwater system? Who pays for drilling, geophysical profiling, pump tests, dye tests? Do you proceed knowing that the unknowable—that with a wetter climate, new instabilities, new sink holes, and new flow paths may occur? Can you anticipate where they will be?</p>
	<p>4.04. LIMESTONE OVERLAY DISTRICT. Loudoun's land-use ordinance—especially in the sensitive limestone underlay areas should provide prudent land use policies which provide for the safety and quality of life for the citizens—those who reside here, and those who will be coming—now and into the future.</p> <p>Can a County “business model” structured to increase the tax base be of value if the County ends up with a disaster that makes a train wreck of the budget?</p>
Section 4.2100	<p>Section 4.2100. VILLAGE CONSERVATION OVERLAY DISTRICT (VCOD).</p> <p>It is understood that VCOD has been separated from the other ZOR Overlay Districts in review, and will have separate consideration during the development of Village Small Area Plans. However, to avoid an overall delay in mitigating current issues there are changes being recommended BEFORE or IN PARALLEL WITH Village Small Area Plan development.</p> <p>They include but are not limited the following that should be INCLUDED in current review PRIOR to Village Small Area Plans as they apply to Villages (to get the discussions started):</p>
	<p>Section 4.2100. Consideration/discussion for which ZOR-defined uses should be EXCLUDED from Village Place Types until after Village Small Area Plans are finalized. A list of Uses to be excluded has been prepared and will be submitted separately.</p>
	<p>Section 4.2100. An overlay district for our historic villages is very important to maintain their identity and preservation</p>
4.2101	<p>4.2101. Each village is unique so will benefit from each having Small Area Plan. Support from the county will be necessary to accomplish this.</p>
4.2102	<p>4.2102. Need to add other villages: Morrisonville, Unison, Willisville. Delete Ashburn. Change Aldie Mt to Bowmantown. How would new ones be added in the future?</p>
4.2103	<p>4.2103. Underlying zoning must be flexible to allow adaptive reuse of historic properties. At the same time, there can be no damage to historic fabric (Sec Standards of Rehab used). Recommend new zoning districts be created for historic villages. Density needs to be unique to each village: there are small lots in Waterford but larger ones in St Louis. also, RC zoning density will not work in all villages</p>

Section	COMMENTS TO DRAFT TEXT -- OVERLAY DISTRICT STANDARDS
4.2104.A2	4.2104.A2. Height of new building no greater than height of any building on same side of street within 150 yards
4.2104.A3	4.2104.A3. If current parcels on well and septic, water studies must be done to ensure availability of these resources after new development complete
4.2104.B1a	4.2104.B1a. Extending existing streets good as long as cul de sac does not result
4.2104.B3a	4.2104.B3a. Sidewalks allowed if appropriate in specific village....some villages have, some do not
4.2104.B5	4.2104.B5. Only detached garages should be permitted.