

ZONING ORDINANCE COMMITTEE

February 16, 2022
ELECTRONIC MEETING
9:00 AM TO 11:00 AM

NOTICE OF ELECTRONIC MEETING: Due to the ongoing COVID-19 pandemic, this [Zoning Ordinance Committee](http://www.loudoun.gov/remoteparticipation) meeting will be conducted as an Electronic Meeting pursuant to the adopted Continuity Ordinance adopted by the Board of Supervisors on March 16, 2021. Members of the public are strongly encouraged to view and participate in the meeting by electronic or other means, in furtherance of the Governor's Executive Orders and social distancing directives. This meeting will be conducted in the WebEx Events platform. Login/call-in information will be posted to www.loudoun.gov/remoteparticipation prior to the meeting.

1. Call to Order/Review Agenda
2. Public Input
3. Disclosures
4. Approval of Action Report for February 2, 2022
5. Status Updates on Other Zoning Ordinance Amendmentsⁱ (ZOAM)

Staff contact: Ryan Reed

a) ZOAM-2018-0001: Short-term Residential Rentals

Outreach sessions have begun; organizations that would like to participate should contact Ethan Strickler directly, committee members can confirm those they know of with him as well; staff anticipates holding a public meeting in either late February or early March 2022.

Staff contacts: Ethan Strickler

b) ZOAM-2021-0002: Airport Impact Overlay District

Staff has issued a referral for inter-agencies and the committee; The Board of Supervisors will consider a Resolution of Intent to Amend the Zoning Ordinance at its March 1, 2022, business meeting; staff anticipates providing an update to the committee on March 2.

Staff contacts: Josh Peters

- c) ZOAM-2021-0003: Traffic Data Collection and Warrant Study Fees
Draft text has been sent to inter-agencies for comments; an update was provided to the committee on February 2 and comments were received; staff continues to refine draft language.

Staff contacts: Jaspreet Sethi and Brian Wegener

6. ZOAM-2020-0002: Prime Agricultural Soils and Cluster Subdivision Regulations

- a) Review of Draft Text

Staff contact: Jacob Hambrick

7. ZOAM-2020-0001: Zoning Ordinance Rewrite

- a) Historic Overlay District

Staff contact: Kate McConnell

- b) Nonconformities

Staff contact: Steve Goodrich

8. Upcoming Meetings

- a) Electronic meeting. Wednesday, March 2, 2022, 9:00 AM.

9. Adjourn

¹ View project documents at www.loudoun.gov/lola.

ACTION REPORT
ZONING ORDINANCE COMMITTEE
February 2, 2022

The content of any statements, updates, or discussions associated with the items and actions noted below can be obtained by listening to the meeting via the following link: https://loudoun.granicus.com/player/clip/6874?view_id=78&redirect=true

CALL TO ORDER/REVIEW AGENDA (ADDITIONS/DELETIONS)

Chair Kevin Ruedisueli moved that the Zoning Ordinance Committee convene the February 2, 2022, meeting as an electronic meeting pursuant to the Virginia Freedom of Information Act in response to the COVID-19 Pandemic. (13 members participating remotely at time of motion.)

Chair Ruedisueli welcomed new committee member Russ Forno who replaced Jean Ault. Mr. Forno will serve in the same capacity: Subject Matter Expert – Urban Land Use Planner.

PUBLIC INPUT

Written comments were provided by: Sterling resident Katie Shupe who was concerned about clearcutting construction projects in the east; Chair John Ellis of Save Rural Loudoun regarding the prime agricultural soils and cluster subdivision regulations zoning ordinance amendment; and western Loudoun resident Teresia Scott who was concerned about the “proliferation of wineries, breweries...in the AR-1 zoning areas”.

Related documents: www.loudoun.gov/zoningordinancecommittee

Committee Member Eric Zicht suggested staff contact Teresia Scott to explain the committee does not comment on individual projects. Committee Member Maura Walsh-Copeland stated she had spoken with Ms. Scott. She explained her comments were intended for the zoning ordinance rewrite. Interim Assistant Director Judi Birkitt stated that staff would contact Ms. Scott.

Committee Member Charles Houston complimented groups like Save Rural Loudoun and the Farm Bureau for their comments. He asked them and the Zoning Ordinance Committee to switch from “What do you want?” to “What can you live with?” to assist in working towards a compromise.

DISCLOSURES

Committee Member Bridge Littleton received a call from Brook Middleton.

Committee Member Maura Walsh-Copeland received an invite from Donnie Walker to visit his short-term residential rentals in the Waterford area. She stated that she declined the invitation.

APPROVAL OF ACTION REPORT FOR JANUARY 19, 2022

Committee Member Matt Lawrence asked staff to correct the name for Mike Hummell under Disclosures.

Committee Member John Merrithew moved that the Zoning Ordinance Committee approve the Action Report for January 19, 2022. (Seconded by Matt Lawrence as amended. The motion passed via roll call vote 10-0-4-4: Michael Capretti, Colleen Gillis, Ben Keethler, and Ross Stevens absent for the vote; Packie Crown, Charlie Houston, Russ Forno, and Eric Zicht abstained.)

STATUS UPDATES ON OTHER ZONING ORDINANCE AMENDMENTS (ZOAM)

Deputy Zoning Administrator Ryan Reed provided the following status updates:

a) ZOAM-2018-0001: Short Term Residential Rentals

Staff contact: Ethan Strickler

Outreach sessions and community meetings have begun; organizations that would like to participate should contact Ethan Strickler, committee members can confirm those they know of with him as well; staff anticipates a general public outreach session in late February/early March.

b) ZOAM-2020-0002: Prime Agricultural Soils and Cluster Subdivision Regulations

Staff contact: Jacob Hambrick

Draft text for referral was distributed on January 3 to inter-agencies and the committee; staff anticipates providing an update to the committee on February 16.

c) ZOAM-2021-0002: Airport Impact Overlay District

Staff contact: Josh Peters

Staff working on revised draft text; a comprehensive plan amendment and zoning map amendment will be included in the referral for inter-agencies and the committee; staff anticipates providing an update to the committee on March 2.

ZOAM-2021-0003: TRAFFIC DATA COLLECTION AND WARRANT STUDY FEES

Staff contacts: Brian Wegener, Jaspreet Sethi, and Lou Mosurak

Committee questions and topics generally involved the following: Understanding the current process, why it was changing, and what the process would be moving forward, including the escalator clause associated with the new fees.

Committee members suggested the following:

- Reviewing how the legislative application timeline would be affected and clarifying draft language,
- To consider allowing scoping before the pre-application conference, and
- Revisiting fees on a more regular basis.

Link to full discussion:

https://loudoun.granicus.com/player/clip/6874?meta_id=205283

ZOAM-2020-0001: ZONING ORDINANCE REWRITE

Chapter 8, Attainable Housing

Staff contact: Kate McConnell

Committee questions and topics generally involved the following: Staff providing data on the success of the current program, dispersion of projects and impacts, meeting the goals - data and analysis, effects of the commercial whole house, concern about designating affordable dwelling units on site plans, addressing house sizes - working with developers to encourage a reduction in square footage, area median income, state code and the optional density increase, minimizing prescriptive requirements, encouraging land versus cash.

Link to full discussion:

https://loudoun.granicus.com/player/clip/6874?meta_id=205285

UPCOMING MEETINGS

Electronic meeting. Wednesday, February 16, 2022, at 9:00 AM.

MEETING ADJOURNED

Chair Ruedisueli adjourned the February 2, 2022, Zoning Ordinance Committee meeting.

MEETING ATTENDANCE

PLANNING COMMISSIONER PRESENT:

John Merrithew, Sterling District

ZOC MEMBERS PRESENT:

Kevin Ruedisueli, Subject Matter Expert - Architect, **Chair**

Gem Bingol, Environmental Organization
Rich Brittingham, Dulles Area Association of Realtors
Jeff Browning, Rural Economic Development Council
Packie Crown, Citizen-At-Large
Russ Forno, Subject Matter Expert – Urban Land Use Planner
Charles Houston, Citizen-At-Large
Matt Lawrence, Northern Virginia Building Industry Association
Bridge Littleton, Coalition of Loudoun Towns
Joe Paciulli, Economic Development Advisory Commission
Tia Walbridge, Farm Bureau
Maura Walsh-Copeland, Preservation/Conservation Organization
Eric Zicht, Citizen-At-Large

ZOC MEMBERS ABSENT:

Michael Capretti, Citizen-At-Large, ***Vice-Chair***
Colleen Gillis, Loudoun County Chamber of Commerce
Ben Keethler, Loudoun Coalition of Homeowners and Condominium Associations
Ross Stevens, Commercial Real Estate Development Association*

**Position to be transferred.*

MEMORANDUM

To: Zoning Ordinance Committee
From: Jacob Hambrick, Senior Planner, Zoning Administration
Ryan Reed, Deputy Zoning Administrator
Date: 2/16/2022
Re: February 16, 2022, ZOC Meeting
**ZOAM-2020-0002 Prime Agricultural Soils and Cluster
Subdivisions – ZOC Referral Comments and Discussion**

Zoning Administration staff last met with the Zoning Ordinance Committee (ZOC) on December 1, 2021 and provided members with draft text concepts pertaining to ZOAM-2020-0002 and received ZOC comments. Based on the comments received from ZOC and other stakeholder groups during the outreach conducted prior to preparing the draft text, Staff prepared and distributed the initial draft text language via email to ZOC on January 3, 2021.

Staff will attend the ZOC meeting on February 16, 2022, to discuss the draft text language, provide needed clarification, and answer ZOC member questions. Staff will also document additional comments from ZOC members. The draft text language includes amendments to Article 2 (AR-1, AR-2) and Article 8, Definitions.

Objectives of the ZOAM

In preparing the proposed draft text, staff was guided by the following objectives:

- Adhere to the Board direction contained in the June 16, 2020, Board Member Initiative;
- Adhere to the Board direction contained in the September 1, 2020, ZOAM Work Plan
- Implement the relevant policies of the 2019 GP;
- Incorporate ZOC and Stakeholder input that is consistent with the 2019 GP and Board direction;
- Add new requirements to the Cluster Subdivision Option in the AR-1 and AR-2 that preserve a percentage of prime farmland soils;
- Retain the financial incentives for landowners to preserve prime farmland soils and other environmental features by placing their land in conservation easements;
- Retain cluster subdivision requirements intended to allow a variety of rural economy uses, in addition to farming activities;
- Retain cluster subdivision requirements intended to preserve sensitive environmental resources.

Summary of Proposed Amendments

The following is a summary of the proposed initial draft text amendments based on input received and is subject to change based on additional input received from referral agencies and stakeholders.

- Revise the Purpose and Intent to include the preservation of prime farmland soils and to reflect the policies of the 2019 GP;
- Revise the "Use List" to include uses for the specific lot types of the Cluster Subdivision Option, to include Residential Cluster Lot, Preservation Farm Lot, Rural Economy Cluster Lot, and Open Space Lot.
- Retain the requirement that 70% of the gross land area of the originating tract must be comprised of non-residential cluster lots;
- Revise the 70% land area requirement to include at least 1 preservation farm lot when the subdividing tract contains 5 acres or more of prime farmland soils;
- Reduce the number of residential cluster lots that can be allowed in separate groups from 25 lots to 15 lots to allow greater flexibility of design to preserve prime farmland soils
- Reduce the distance between groupings of residential cluster lots from 500 feet to 250 feet to allow greater flexibility of design to preserve prime farmland soils;
- Reduce the maximum lot size of Residential Cluster Lots from 4 acres to 3 acres to allow greater flexibility of design to preserve prime farmland soils;
- Add a requirement for the delineation of prime farmland soils;
- Add requirements for a new Preservation Farm Lot
 - Require a minimum of 50% of prime farmland soils to be located on a Preservation Farm Lot when the originating tract being subdivided contains 5 or more acres of prime farmland soils,;
 - Limit the uses on the lot to agriculture, horticulture, animal husbandry, and a dwelling associated with such uses;
 - Add requirement prohibiting private agreements from limiting permitted uses;
 - Require a minimum lot size of 10 acres;
 - Require lots to be contiguous, unless the prime farmland soils are not contiguous;
- Revise the requirements for the Rural Economy Cluster Lot(s):
 - Only require a Rural Economy Lot for cluster subdivisions of less than 100 acres if a Preservation Farm Lot is not required;
 - Exclude areas of Major Floodplain, very steep slopes and highly sensitive areas of the MDOD from counting towards the minimum 15-acre size;
 - Delete the maximum length/width ratio lot requirement;

- Add requirement prohibiting private agreements from limiting permitted uses under the Agriculture, Horticulture or Animal Husbandry Use Category permitted in Table 2-102 and Table 2-202;
- Add Open Space requirement prohibiting private agreements from limiting permitted uses under the Agriculture, Horticulture or Animal Husbandry Use Category
- Move uses permitted in the Open Space to Table 2-102 and Table 2-202;
- Add of a pre-submission meeting requirement for developments using the Cluster Subdivision Option.
- Add advisory design guidelines for developments using the Cluster Subdivision Option; and
- Revise definitions in Article 8:
 - Revise the definition of "Cluster Development (AR Districts Only)"
 - Revise the definition of "Rural Economy Uses";
 - Revise the definition of "Rural Economy Conservation Lands";
 - Revise the definition of "Rural Economy Lot";
 - Add a definition of "Preservation Farm Lot"
 - Add a definition of "Prime Farmland Soils."

Discussion Aids

To aid the draft text language discussion, staff has provided ZOC Comments received as of February 2, 2022 in a spreadsheet and included as Attachment 1. Each comment is accompanied with a brief staff response. Additionally, County agency comments received by Zoning Administration staff have been included as a single document as Attachment 2. It should be noted that staff has also received several written comments from stakeholder groups such as Save Rural Loudoun, Rural Economic Development Council, Farm Bureau, and individuals within the Conservation Easement group. These comment documents have been forwarded to ZOC as they have come in via email and have been combined in a single document and included as Attachment 3. Staff response to these comments will be provided to ZOC at a later date.

Next Steps after February 16th ZOC Meeting

Staff will review the received comments from ZOC, County Agencies, and Stakeholder groups and amend the initial draft text to address the concerns, recommendations, and questions raised by these groups. Following the completion of the revised draft text based on comments received, Zoning Administration will again seek input from County Agencies, ZOC, and Stakeholders groups. Comments not addressed in the revised draft text will be identified as an issue for discussion with the Planning

Commission (PC) and Board of Supervisors (Board). Outstanding ZOC comments will be highlighted in the PC and Board Staff Reports.

An abbreviated version of the ZOC Work Plan is shown below. Please be advised that the workplan schedule is tentative and subject to change.

Tentative Zoning Ordinance Committee Work Plan

Zoning Ordinance Committee - Pre-Referral Work Plan		
Topic	Meeting Date	Packet Distribution
Standalone ZOAM: Short Term Residential Rentals	10/20/2021	10/13/2021
Zoning Districts (and VCOD)	11/3/2021	10/27/2021
Zoning Districts (and VCOD)	11/17/2021	11/10/2021
Standalone ZOAM: Cluster Subdivision Regulations	12/1/2021	11/24/2021
Signs	12/15/2021	12/8/2021
Development Standards (5.03, 5.06, 5.07)	1/5/2022	12/29/2021
Subcommittees Assignments and Schedules	1/5/2022	12/29/2021
Development Standards (remaining sections)	1/19/2022	1/12/2022
Attainable Housing	2/2/2022	1/26/2022
Standalone ZOAM: Traffic Data Collection and Warrant Study Fees	2/2/2022	1/26/2022
Historic Overlay District & Nonconformities	2/16/2022	2/9/2022
Standalone ZOAM: Prime Ag Soils and Cluster Subdivision Regulations - revisit	2/16/2022	2/9/2022
Procedures	TBD	TBD
Neighborhood Transition Standards	3/2/2022	2/23/2022
Subcommittee Expectations and Outcomes	3/2/2022	2/23/2022
NOTE: EnCode changes to be released to public beginning in April 2022		
NOTE2: Draft chapters to be reviewed as part of April 2022 referral package: Ch. 1 Introduction, Ch. 10 Officials, Boards and Commissions, Ch. 11 Rules of Interpretation		
NOTE3: ZOC Work Plan subject to change		

Attachments

1. ZOAM-2020-0002 ZOC Draft Text Comments Matrix, received as of February 2, 2022.
2. County Referral Agencies Combined Comments – Initial Draft Text
3. Stakeholder Combined Comments – Initial Draft Text

	A	B	C	D	E	F
1	ZOAM-2020-0002 Prime Agricultural Soils and Cluster Subdivision Amendments Summary of Zoning Ordinance Committee Comments (Received as of February 2, 2022)					
2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
3	K. Ruedisueli	2-103(C)(3)(a)	Req. for Residential Cluster Lots	Sets maximum number of homes in a cluster to 15. How does this contribute to the preservation of prime soils and farmland in general? I’d suggest eliminating this, as putting all the homes of a development in one cluster of any size may provide the best opportunity to preserve useable land. Also doing so can create more of a community than a collection of disparate clusters. Think ‘cluster’ = ‘village’. Consider Waterford, which is largely surrounded at its edges by farmland.	The initial thought was to lower the number of homes in a cluster in an attempt to provide more flexibility in placing cluster groups to preserve more prime farmland soils knowing that prime farmland soils are not always in one large contiguous grouping. Staff will consider further amendments to this Section, to include deleting the requirement.	Also applies to AR-2
4	K. Ruedisueli	2-103(C)(3)(c)	Req. for Residential Cluster Lots	Establishes distances between clusters. This is useful if it saves prime soils. Say as much. Otherwise, allowing clusters to be closer may be more effective in conserving prime soils.	Staff's premise of reducing the distance between cluster groupings is to conserve more prime farmland soils. Staff will consider eliminating or further reducing the setback.	Also applies to AR-2
5	K. Ruedisueli	2-103(C)(3)(f)	Req. for Residential Cluster Lots	Limiting lot coverage to 15% on small lots is problematic as it will require smaller size homes. If we wish to encourage small lots to preserve prime soils, then raise the coverage percentage so that larger homes can be constructed on smaller lots. In truth, why have the coverage limits at all—simply allow the setbacks to be the control. An example: a 10,000 sf lot could only have 1500 sf of coverage, of which at least 500 sf could be a garage, which leaves only 1,000 sf for other lot coverage areas. This is too restrictive.	As proposed, it is an increase for those lots less than 40,000 SF, as the original max. lot coverage for those lots was 8%. Staff will consider increasing the lot coverage requirement.	Also applies to AR-2
6	K. Ruedisueli	2-103(C)(4)(b)	Req. for Preservation Farm Lots	I find this section very hard to understand. It seems others have interpreted it correctly, though I am still unclear as to what this means. Can it be reworded to be more understandable?	If this language remains for the Preservation Farm Lot, staff will look at rewording the text for clarity.	Also applies to AR-2
7	K. Ruedisueli	2-103(C)(10)(b)(i)	Utility Req.	What is the reason for a maximum of 70% of the lots being permitted to have septic systems in the open space? Why not 100%?	Staff will consider increasing the percentage of lots that can have sewage systems in the open space.	Also applies to AR-2
8	K. Ruedisueli	2-103(C)(15)(a)	Advisory Cluster Subdivision Siting and Design Guidelines	Is the intention here to minimize site disturbance? If so, say it. If not, it should be said elsewhere in this section—i.e. encourage working with the topography rather than rearranging the ground in a wholesale manner.	The intention is to encourage the use of the existing topography without rearranging the ground in a wholesale manner. Staff will work to clearly state the intent of this section.	Also applies to AR-2

	A	B	C	D	E	F
2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
9	K. Ruedisueli	2-103(C)(15)(d)	Advisory Cluster Subdivision Siting and Design Guidelines	I know berms are commonly used in suburban-style development. They seem very out of place in rural areas. Encourage just the planting of naturalized buffers instead.	Staff will amend the Ordinance to address the comment.	Also applies to AR-2
10	K. Ruedisueli	2-103(C)(15)(f)	Advisory Cluster Subdivision Siting and Design Guidelines	Given that all our ash trees are being killed-off by insects, we probably should not suggest planting them until someone solves the problem.	Staff will amend the Ordinance to address the comment.	Also applies to AR-2
11	G. Bingol	General		<p>The considerations from the BMI that directly support the 2019 Comp Plan strategies priorities are:</p> <ul style="list-style-type: none">•Require a percentage of the rural economy lot to be in active agriculture use. In order to make rural economy lots more productive for farming and food production, additional guidance needs to be provided within the ordinance.•Require rural economy lots to contain a certain percentage of prime agricultural soils (as depicted in the prime agricultural soils map).•Encourage contiguous rural economy lots for larger farmable areas.•Require a minimum percentage of the gross area of a cluster subdivision development in a rural economy lot. <p>These should be recommended to the BOS as top priorities for measuring the success of this ZOAM initiative.</p> <p>Without this kind of detail, it's hard to evaluate how well the proposed measures meet the Board's intent.</p>	<p>The draft text takes into consideration these strategy priorities by providing an additional lot type (Preservation Farm Lot (PFL)), in addition to the Rural Economy Cluster Lot (RECL), set aside to preserve prime farmland soils while limiting the uses on the PFL to those that are agriculture related.</p> <p>The intent of the draft text is to encourage large contiguous farmable lots (PFLs), although the requirements also speak to a minimum PFL lot size which addresses comments concerning the desire to make PFLs affordable to the small scale farmer.</p> <p>Current Zoning Ordinance language does not require any preservation of prime soils, however, the PFL requires at least 50% preservation of prime soils. Depending on the subdividing tract characteristics and the amount of prime soils on the tract, all of the prime soils may be preserved.</p>	Also applies to AR-2
12	G. Bingol	General		Are there additional, unstated goals intended, but not explicit in staff's draft language, and should there be more built-in performance standards to accomplish them?	Staff believes the goals stated in the BOS BMI have been incorporated into the initial draft text language. However, staff is aware of concerns raised by members of ZOC as well as those from Outreach groups and County agencies, and will continue to revise draft text language, as necessary, to address concerns where draft language fall short of the stated BOS goals for this ZOAM	Also applies to AR-2

	A	B	C	D	E	F
2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
13	G. Bingol	General		How much of the prime soils should be protected for the long-term goal of food security protection and would a ranking of most desirable prime soils for farming be helpful or counter-productive? The prime soil protection percentage should be 100% or much closer than the proposed 50%.	Ranking the most desirable prime soils for farming has not been considered by staff but will be discussed with the County Soil Scientists. Concerning the need to preserve more than 50% prime soils, staffs proposed 50% requirements takes into consideration the development potential of the residential cluster lots that can be developed, thereby impacting the financial incentive to put the land into a permanent conservation easement that would preserve 100% of the tract in perpetuity.	Also applies to AR-2
14	G. Bingol	General		Will this ordinance make food production farming more accessible and affordable for those who want to do this kind of farming?	The intent of the draft language is to preserve those areas best for agricultural activities to include food production. Regarding affordability, the draft text does allow for smaller PFLs (min. 10 acres), but this may change given other comments calling for a larger minimumlot size.	Also applies to AR-2
15	G. Bingol	General		What is the relative benefit of having multiple small farms versus a limited number of both large and small farmland preservation lots, i.e. 1 smaller lot and 1 larger lot? Need conversations with young and a variety of farmers for more feedback. And importantly, what are possible unintended consequences?	The size and number of the PFL's is something that staff continues to explore, whether the PFL be limited to 1 large PFL or multiple smaller contiguous PFLs or a combination of both. Further information will be sought from Outreach groups.	Also applies to AR-2
16	G. Bingol	General		Once the goal and priorities have been determined, then an analysis template would be useful to determine the best combination of regulations to accomplish them.	The general goals and objectives that staff used in preparing the draf ttext was included in the referral cover memo. Staff will consider a possible analysis template once the draft text is further refined in subsequent drafts.	Also applies to AR-2
17	G. Bingol	General		In my review so far, it has proven to be extremely difficult to evaluate the ordinance language without more tools to illustrate the examples. The 3 maps of the prime soils in Loudoun don't include any lot lines, meaning that the prime soils amount and location have no frame of reference with on-the-ground development potential.	The Story Maps within the GeoHub Application Tool provide prime soils acreage for individual lots. See https://loudoungis.maps.arcgis.com/apps/MapSeries/index.html?appid=233448bc0092400aa381afe5fca8ea92 . If further help navigating this tool is needed, feel free to reach out for help.	Also applies to AR-2

	A	B	C	D	E	F
2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
18	G. Bingol	General		Although one case study has been shared, more are needed, such as: ☐prime soils cover the majority of the parcel with and without sensitive environmental features ☐a very limited amount of prime soils exist (5-10% of the parcel) ☐a moderate amount of prime soils are scattered around the parcel	Staff continues to work on "Case Studies" for the application of the draft text for different parcels with certain characteristics.	Also applies to AR-2
19	G. Bingol	Article 8	Definitions	Prime Farmland Soils. Staff have included a list of all prime agricultural soils in the county. Have farming interests raised any discussion of prioritizing those prime soils? In my limited review, in the Loudoun Valley (historically known to have a high percentage of Loudoun’s best farm soils) north of Rt 7 at least, the largest acreage of prime soils would appear to be 23B and 17B, which are often found together on undeveloped lots. But the 17B soils are often scattered around the parcel and include soil drains. •☐Have staff consulted with Loudoun S&WCD to get further specificity on the prime soils of highest value and should there accordingly be further definition in performance standards? •☐Has there been any analysis of the most prevalent and valuable prime soils and where they are located? Prime soil types appear to vary by geographic location.	Comments from the Loudoun Soil and Water Conservation District, the Farm Bureau and other outreach groups to date have not commented on further specificity of the prime soils with highest value. Prime Farmland soils have been mapped but an analysis of where the most prevalant soil mapping units types are located has not been done to our knowledge. The intent is to preserve at least 50% or more of the prime soils on any subdividing tract no matter the prime soils type designation.	
20	G. Bingol	2-101(B)	Purpose and Intent	Insert: farming and to support local food security (instead of rural economy)	Staff will revise the draft text to address this comment, but may retain the reference to the rural economy.	Also applies to AR-2
21	G. Bingol	2-101(C)	Purpose and Intent	Insert: farming (instead of rural economy uses).	Staff will revise the draft text to address this comment, but may retain the reference to the rural economy.	Also applies to AR-2
22	G. Bingol	2-102	Use Table	A fair amount of current production farming appears to occur on secondary cropland or a mix of prime and secondary farmland. Are there any related statistics? Assuming that we do want to preserve prime farmland for food security and production, should we reconsider and shift the definition and focus of Rural Economy (cluster lots) to secondary cropland preservation instead of other non-soil-based rural economy uses.	Staff has not gathered any related statistics of current production farming on secondary cropland soils. The intent of the Preservation Farm Lot (PFL) is to preserve those soils that are most conducive for farming activities, understanding that secondary cropland soils may be included within the PFLs. However, the main focus of the ZOAM is the preservation of those prime farmland soils which are most productive for farming activities.	Also applies to AR-2
23	G. Bingol	2-102	Use Table	Change Farmland Preservation Lot to Prime Soils Preservation Lot Change Rural Economy Lot (cluster) to Farmland Preservation Lot	Staff will consider revising the naming of these lots to those that best describe the intended purpose of the lots.	Also applies to AR-2

	A	B	C	D	E	F
2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
24	G. Bingol	2-102	Use Table	Animal Husbandry for Residential Cluster Lot should not prohibit size-appropriate farm animals (i.e. chickens, bee-keeping) on residential cluster lots.	Chickens and bee-keeping would not fall under the Animal Husbandry category but would fall under the Agriculture category which is a permitted use within the Residential Cluster Lots (RCL).	Also applies to AR-2
25	G. Bingol	2-102	Use Table	Wetland mitigation banking should be a permitted use on Open Space Lots.	Staff will continue to review uses for all lots associated with a Cluster Subdivision.	Also applies to AR-2
26	G. Bingol	2-102	Use Table	Public school should be eliminated as a SPEX use for REL	Staff will continue to review uses for all lots associated with a Cluster Subdivision.	Also applies to AR-2
27	G. Bingol	2-102	Use Table	Parks should be limited to OSLs if preservation of farmland is the goal.	Staff will continue to review uses for all lots associated with a Cluster Subdivision.	Also applies to AR-2
28	G. Bingol	2-102	Use Table	Why should utilities be allowed on REL lots for the same reason? Suggest deleting.	Staff will continue to review uses for all lots associated with a Cluster Subdivision.	Also applies to AR-2
29	G. Bingol	2-102	Use Table	Many of the uses—i.e. Conference centers and Rural retreats and the recreational/entertainment, guest farms/ranch uses are likely to create conflicts with clustered residential lot neighbors. Suggest eliminating the uses to avoid the problems.	Staff will continue to review uses for all lots associated with a Cluster Subdivision. Staff continues to discuss these uses and others that may have more impact on residential lots.	Also applies to AR-2
30	G. Bingol	2-103(C)(1)	General Req.	In order to ensure the long-term purpose and need for open space, farmland preservation/rural economy lots, shouldn't these be required to be placed in conservation easement to preserve their intended uses?	Staff continues to explore the possibility of requiring the PFL (at a minimum) be placed within a conservation easement or open space easement. Given that the cluster subdivision cannot be further subdivided and given that the permitted uses are specified by the zoning district, it is not clear on what further protections an easement would provide.	Also applies to AR-2
31	G. Bingol	2-103(C)(2)(h)	Characteristics of Cluster Subdivision Option	Referenced table 2-103 is not done yet?	This was an error in the Draft Text Language which has since been noted and will not be included in subsequent drafts .	Also applies to AR-2
32	G. Bingol	2-103(C)(3)(c)	Req. for Residential Cluster Lots	If the goal is maximum protection of prime soils AND sustainable water and wastewater systems for clustered units, even smaller lots could be part of the answer, but sustainability is also a consideration. What's more important for water and wastewater system function over time—distance between clusters or the number of houses on small lots where wells could interfere with each other and become problematic over time, or use of communal systems?	The intent of reducing the distance between groups of clusters is to allow more flexibility for cluster design. Staff will continue to explore ways to allow for flexible cluster design while focusing on the preservation of sensitive areas such as prime farmland soils.	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
33	G. Bingol	2-103(C)(3)(d)	Req. for Residential Cluster Lots	<p>If the goal is maximum protection of prime soils AND sustainable water and wastewater systems for clustered units, even smaller lots could be part of the answer, but sustainability is also a consideration. What’s more important for water and wastewater system function over time—distance between clusters or the number of houses on small lots where wells could interfere with each other and become problematic over time, or use of communal systems?</p> <p>Could required open space for the clustered lots provide the needed support for long-term sustainability of the cluster lots? Or does this create more incursion into the prime soils than onsite systems?</p>	With the proposed draft language, individual waste water systems (drainfields) could still be located on Open Space Lots (OSL). Typically the drainfields are located on those soils that are best suited for the intended use. Either way, the drainfields could impact prime soils whether they are on the cluster lots themselves or on OSLs. If located within the OSL then those areas of the OSL wouldn't be open to farming activities, rather it would just be open areas .	Also applies to AR-2
34	G. Bingol	2-103(C)(3)(e)	Req. for Residential Cluster Lots	In looking at the lot sizes in cluster subdivisions, most lots are already below 3 acres in size. Does this change really help? Should it be less, and what’s the best size lot and open space combination to allow for prime soil preservation: smaller lots with reserved drainfield areas on the open space lot to ensure long-term sustainability could help, as could communal systems.	Staff will consider further revisions to the maximum lot size for RCLs.	Also applies to AR-2
35	G. Bingol	2-103(C)(4)(d)	Req. for Preservation Farm Lots	<p>Shouldn’t the minimum PFL lot size be somewhat larger (11-15 acres) to allow for a house and farm structures?</p> <p>Confusing; could be problematic. Does this mean that the minimum lot size would be equal to the total of all non-contiguous areas of prime soil? If not, what if the multiple areas of prime soil are all nominal by themselves (greater or less than an acre and very scattered)?</p>	<p>If this language remains for the Preservation Farm Lots, staff will consider increasing the minimum lot size of the PFL.</p> <p>The intent of requiring a smaller lot size for the PFLs is to allow flexibility to address those instances where the prime farmland soils are not contiguous and are located in "pockets". It also allows for smaller PFLs to address comments, provided during the public outreach sessions, pertaining to not making the PFLs so large that they would not be affordable to the smaller scale farmers.</p>	Also applies to AR-2
36	G. Bingol	2-103(C)(2)(a)	Characteristics of Cluster Subdivision Option	Typo—trat vs tract	Staff will make revisions to address this comment.	Also applies to AR-2
37	G. Bingol	2-103(C)(4)(e)	Req. for Preservation Farm Lots	If 90% of prime soils must be protected on a Farmland Preservation Lot in AR2, it should also be the case in AR1.	This was an error in the Draft Text Language which has since been noted and will not be included in the subsequent drafts to follow.	Also applies to AR-2
38	C. Houston	2-102	Use Table	Cluster lots, figuring that these are small lots and many uses are just too big for them. Examples: Farm machinery sales or a rural resort. A cluster is essentially a small residential subdivision, and some uses do not seem appropriate for that environment: such as a brewery, a restaurant or a commercial restaurant.	Staff will consider revisions to remove uses from certain lot types that may not be appropriate within a cluster subdivision.	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
39	C. Houston	2-103(C)(3)(d)	Req. for Residential Cluster Lots	<p>The draft text permits cluster lots to be as small as 20,000 sq. ft. if there is offsite water and wastewater. These lots should have a maximum size of 1.5 acres and can use either onsite or offsite areas for water and wastewater.</p> <p>Because of required setbacks between wells and discharge areas, the ZO should acknowledge that either wells or wastewater discharge can be located on one or more easement areas within Preferred Farm Lots, Rural Economy Lots or Open Space Lots. It’s likely that it will be wells that are put in offsite easements areas. (For one thing, wells do not impact agricultural use nearly as much as discharge areas do.)</p> <p>With these provisions in place, it is no longer necessary to specify that at least 70% of the property be comprised of Preferred Farm Lots, Rural Economy Lots and Open Space Lots. This is because with a 1.5-acre maximum cluster lot size, the preserved area will always be more than 70%.</p>	<p>Staff will continue to explore the maximum lot size requirement for RCLs.</p> <p>It should be noted that the current Ordinance requires all new private individual wells to be located on the lot it serves unless the lot(s) are served by a communal water system.</p>	Also applies to AR-2
40	C. Houston	2-103(C)(3)(d)	Req. for Residential Cluster Lots	Why not use the language in ZOR "Utilities" subsection (4.a.1.a, Hamlets) stating, Hamlet lots must be served either by: "Individual well on or off each lot, ..."	Staff will consider further revisions to address individual utilities on and off the lot. However, It should be noted that private water supply systems must be located within the boundary of the lot it serves, unless the lot is served by a communal water system.	Also applies to AR-2
41	C. Houston	2-102	Use Table	Clusters are single-family residential and need to be viewed that way. With that context, many uses are too big, too intense, or intrusive for a small residential neighborhood. Examples: Regional parks (too big.) Feedlot (too intense.) Mausoleum (not appropriate.)	Staff will consider removing uses from certain lot types that may not be appropriate within a cluster subdivision.	Also applies to AR-2
42	C. Houston	2-102	Use Table	Some zoning categories, such as Country Inns, are being abused by promoters. Rather than disallow such uses, just require more oversight, usually by requiring a SPEX.	Staff will consider further revisions to the Use Table, to include requiring SPEX approval for certain uses on certain lot types.	Also applies to AR-2
43	C. Houston	2-102	Use Table	In general, there should be more legislative oversight, especially for new Breweries, Restaurants, Country Inns, Event facilities, Camps, Campgrounds and Outdoor Recreation.	Staff will consider revisions to the Use Table that would require SPEX approval of certain uses on certain lot types. It should be noted that the Code of Virginia mandates that Virginia Farm Wineries, Limited Breweries and Limited Distilleries be permitted in agricultural zoning districts.	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
44	C. Houston	2-103(C)(3)	Req. for Residential Cluster Lots	<p>Small Cluster Lot approach:</p> <ol style="list-style-type: none">1. Set a maximum size for a cluster lot at 35,000 square feet. Generally, this will have an alternative septic system.2. Septic discharge areas (1,500 sq. ft. + 1,500 sq. ft. reserve) will be on the cluster lot with the house. Wells will be on very small easements on PFLs, RELs and OSLs.3. With small lots, much more land can be saved for PFLs, RELs and OSLs, perhaps 85% - 90% of the overall property.4. Prime ag soils can more easily be preserved.5. This should save 10,000 to 20,000 acres in the RPA. <p>Importantly, this maintains the density at 5 acres per house. Thus, there is no economic change for land value, developers, land owners or conservation easement donors.</p> <p>Alternative systems do cost more than traditional septic systems, but the added cost would be less than 2% of the overall cost of the cluster houses that are being sold today. I can send you a detailed letter from an eminent realtor who states that homebuyers would not even care or notice.</p>	Staff will consider revisions to the maximum lot size requirement for RCL's. The proposed 3 acre maximum lot size provides an opportunity for those homeowners that want a lot size that will allow for small scale agriculture uses.It should be noted that the current Ordinance requires all new private individual wells to be located on the lot it serves unless the lot(s) are served by a communal water system. It should be noted that the 2019 General Plan specifies the 70% to be set aside for in the cluster option for agricultural uses, other rural economy uses, and open space. To be consistent with the Plan, staff does not propose increasing the 70%.	ZOC\Recorded Comments\Small-lot clusters presentation.docx
45	C. Houston	2-103(C)(3)(e)	Req. for Residential Cluster Lots	Change the maximum size of cluster lots to 35,000 SF.	Staff will consider revisions to the maximum lot size requirement for RCLs.	Also applies to AR-2
46	C. Houston	General		When houses in cluster subdivisions are placed on smaller lots, more open land will be saved, the clusters will be more neighborly and appealing, there will be no change in density, landowners' by-right values won't change, incentives for conservation easements will be the same and developer profits won't be affected.	Staff continues to consider other options that will preserve prime farmland soils while maintaining the ability for flexible cluster lot development.	Also applies to AR-2
47	C. Houston	General		Small Lot Cluster Subdivisions compromise should save 10-20,000 acres of open space while meeting the fundamental goals of stakeholders such as farmers, land owners, easement donors, developers and their engineers, realtors and conservationists.	Staff continues to consider other options that will preserve prime farmland soils while maintaining the ability for flexible cluster lot development.	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
48	C. Houston	General		Cluster Design Problems: They waste land. They lack quality design. Most clusters look like generic subdivision streets. Houses sit on the middle-front of the lots. The rears of the lots are generally unused and sometimes not even maintained. There are no sidewalks and no sense of the neighborliness that’s characteristic of Loudoun’s traditional villages.	Staff will consider further revisions to Section 2-103(C)(15), "Siting and Design" guidelines. Staff is concerned that too many prescriptive design requirements may inhibit the flexibility needed for the placement of the RCLs to preserve the most prime farmland soils and may incur more costs associated with the cluster design.	Also applies to AR-2
49	C. Houston	2-103(C)(15)	Advisory Cluster Subdivision Siting and Design Guidelines	Clusters are often aesthetic disasters that look like generic subdivision streets with cookie-cutter houses. Make them look better, ideally like traditional settlements such as a miniature Waterford: Have cross streets every 300 feet of primary roadway. This makes for a village feel as opposed to looking like a subdivision street. 2. The main road should curve and turn, not be linear, and be narrow. This enhances the feel of a traditional village. 3. Clusters should be at an edge of the property, thus making the open area have a shape that’s more conducive to agriculture. 4. Cluster lots can be as small as ½ acre. No lots over ¾ acre. (In existing clusters, one rarely sees maintenance – e.g., lawns – other than right at the house.) I’ll discuss small-lot clusters in a separate email. 5. Require sidewalks. Encourage front porches. (From an academic viewpoint, the ideal design should be New Urbanism as practiced by the firm of DPZ CoDesign, formerly Duany-Plater-Zyrbeck. I’d be receptive to density bonuses to projects that followed this sensibility.) 6. Front yard setbacks should vary from 30 feet to 80 feet. This lets the facades of houses vary instead of forming an unbroken line. Putting them closer to the street encourages neighborly communication and spirit. 7. State that no more than 3 or 4 houses may be painted the same color. If brick, the variation in design shall come from differing shutters and doors. (Many developments offer houses that are identical in every respect, and to be blunt, they suck.) 8. Architecture should be traditional. The primary building material of the front should also be on all sides. Design elements (porch railings, mailboxes, light fixtures, etc.) should be freely chosen by residents and not follow rigid developer rules.	Staff will continue to explore more options regarding the "Siting and Design" guidelines. Staff will not consider including text language that speak to architectural elements or color schemes given that these components lack State enabling legislation for regulating in the Zoning Ordinance, unless the property is located withn an historic district. Typically, architectrual standards are found within the HOA Covenants and enforced by the HOA.	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
50	P. Crown	Article 8	Definitions	Preservation Farm Lot definition - requiring 90% prime farmland on the parcel does not look achievable. See attached map of 2 farms in the county that shows how broken up the soil types specified are on the map. Not sure how you can draw a Lot that would include 50% of the farmland soils but would contain 90% prime farmland soil. These sites only have around 50% as it is but it is broken up.	This has been addressed. The 90% prime soils requirement should not have been part of the initial draft text. This was an oversight of staff. The subsequent drafts will not have a requirement pertaining to 90% of the PFL containing prime farmland soils.	
51	P. Crown	2-103(C)(4)(b)	Req. for Preservation Farm Lots	I think it is trying to say you need to preserve 50% of the prime soils, or 50% of the original parcel, whichever is less, but it is not well worded. Then is says you can't get credit for the drain field, driveway or house on that lot. Then numbers don't work the definition. Need to ask staff to draw up a real world example.	<p>A example of this section:</p> <ul style="list-style-type: none">•Originating Tract being subdivided = 100AC•Amount of Prime Soils on Originating Tract = 75AC•Minimum amount of Prime Soils to be preserved = 50 AC (based on 50% of the Originating Tract being subdivided is 50 AC) Therefore, 50 AC of the 75 AC must be preserved. <p>The Preservation Farm Lot definition in Article 8 states that 90% of the PFL must contain prime farmland soils. Staff will revise the definition to delete language pertaining to the 90% requirement.</p> <p>If this language remains for the Preservation Farm Lot, staff will look at rewording the text for clarity.</p>	Also applies to AR-2
52	P. Crown	2-103(C)(15)	Advisory Cluster Subdivision Siting and Design Guidelines	This section is subjective and does not belong in the ordinance. It is a list of goals, not requirements. It is not possible to achieve all goals (a) thru (f). Several of the goals conflict with each other. Just as an example, if the property has a field by the road and hardwood forest in the back. Sections (c) says you should avoid views from the road so the cluster should go in the back, but section (f) says you are supposed to preserve trees so the cluster should go in the front, but section (b) says clusters are to minimize disturbance of prime farmland soils so the cluster should go in the back.	If this language remains for the "Siting and Design" guidelines, staff will revise the language to remove ambiguous or subjective wording to make sure the purpose for the guidelines are clearly stated. These guidelines were modeled after those included in the Rural Hamlet Option.	Also applies to AR-2
53	E. Zicht	2-103(C)	Cluster Subdivision Option	<ul style="list-style-type: none">•The "one or more lots" language does not work. <p>There may not be any prime farmland soils, and so there might not be any Preservation Farm Lots.</p> <p>Aren't you creating an exemption if the area of prime soils is less than 5 acres?</p> <p>It would take a minimum of 25 acres if both a 10-acre Farm Lot and a 15-acre rural economy lot were required.</p>	Staff will consider revisions to this Section for clarity. This section generally describes the allowable components of the cluster option. Subsequent sections provide the specific requirements applicable to the cluster subdivision and the lot types.	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
54	E. Zicht	2-103(C)(2)(a)	Characteristics of Cluster Subdivision Option	This is confusing. Plural cluster and rural economy lots; singular Farm Lots. Can't have more than one Farm Lot?	The PFL designation in this section is plural, not singular.	Also applies to AR-2
55	E. Zicht	2-103(C)(2)(b)	Characteristics of Cluster Subdivision Option	This had been a problem with the original language. Need to be able to subdivide adjoining parcels or tracts without a boundary line adjustment to consolidate tracts/parcels.	Staff will consider revisions to the draft language to address this comment.	Also applies to AR-2
56	E. Zicht	2-103(C)(2)(c)	Characteristics of Cluster Subdivision Option	Why not allow a Preliminary Plat and then phased development – maybe a cluster at a time?	Staff will consider revisions to the draft language to address this comment.	Also applies to AR-2
57	E. Zicht	2-103(C)(2)(d)	Characteristics of Cluster Subdivision Option	This will allow homeowners to adjust lines between their tracts to accommodate unforeseen events – say one needs more land for a swimming pool, deck, or stable.	Staff acknowledges the support for this amendment.	Also applies to AR-2
58	E. Zicht	2-103(C)(2)(e)	Characteristics of Cluster Subdivision Option	If the requirement is in section 2-104, why is it need here? Redundant.	Staff will consider deleting this section, however, this section is intneded to provide a general overview of the characteristics of the Cluster Subdivision option.	Also applies to AR-2
59	E. Zicht	2-103(C)(2)(f)	Characteristics of Cluster Subdivision Option	This is standard operating procedure, and more properly covered by the LSDO and FSM. Not needed here.	Staff will consider revising or deleting requirements that are similarly stated in the FSM and LSDO.	Also applies to AR-2
60	E. Zicht	2-103(C)(2)(g)	Characteristics of Cluster Subdivision Option	Not any different from other setbacks and yards. This is standard operating procedure, and more properly covered by the LSDO. Not needed here.	Staff will consider revising or deleting requirements that are similarly stated in the FSM and LSDO.	Also applies to AR-2
61	E. Zicht	2-103(C)(2)(h)	Characteristics of Cluster Subdivision Option	Tracts?	Staff will consider revisions to address the inclusion of multiple "tracts" in calculating the "gross acreage" as mentioned in Section 2-103(C)(2)(b).	Also applies to AR-2
62	E. Zicht	2-103(C)(2)(h)(i)	Characteristics of Cluster Subdivision Option	What if there is no prime farmland, or area falls within the 5-acre exemption?	Based on the draft test in Section 2-103(C)(5)(a), If there are less than 5 acres of prime farmland soils present on the originating tract, then a PFL is not required but a minimum of one (1) RECL will be required..	Also applies to AR-2
63	E. Zicht	2-103(C)(2)(h)(ii)	Characteristics of Cluster Subdivision Option	What if there is insufficient area remaining after creating the Farm Lot?	See Section 2-103(C)(3)(a) for requirements when a RECL is required.	Also applies to AR-2
64	E. Zicht	2-103(C)(3)(a)	Req. for Residential Cluster Lots	<ul style="list-style-type: none">•Large clusters require large areas of soils suitable for drainfields. Such soils are typically also well-suited for farming. Consequently, large clusters of homes will eat up the larger areas suitable for farming. Thus, it might be better to allow more but smaller clusters of houses, that might be able to be located on more marginal lands.•No objection to having as many as 25 lots in a cluster as provided in the original cluster regulations.•The key is not limiting the number of clusters. but to allow more and smaller clusters. If there are 15 cluster lots, let them be distributed among 2 or 3 clusters, not making them all be in a single cluster.•Consider allowing clusters as small as 3 lots.	Staff will consider revisions to the number of cluster lots within a grouping, keeping in mind the goal of preserving prime farmland soils but also not fragmenting larger areas that could be part of a larger PFL.	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
65	E. Zicht	2-103(C)(3)(a)(iii)	Req. for Residential Cluster Lots	Who is going to go into a small project that requires such a discretionary approval?	Staff will consider revisions to for exceptions pertaining to clusters with less than 5 lots.	Also applies to AR-2
66	E. Zicht	2-103(C)(3)(b)	Req. for Residential Cluster Lots	Intent may be good, but needs to be clarified.	Staff will consider revisions to clarify the number of groupings and when multiple groupings would be acceptable.	Also applies to AR-2
67	E. Zicht	2-103(C)(3)(c)	Req. for Residential Cluster Lots	250 feet is certainly better than 500 feet, but 200 feet would be better yet (2x the perimeter setback).	Staff's premise of reducing the distance between cluster groupings is to conserve more prime farmland soils. Staff will consider eliminating or further reducing the setback.	Also applies to AR-2
68	E. Zicht	2-103(C)(3)(d)(i)	Req. for Residential Cluster Lots	A 40,000-sf lot would have to be nearly ideal – great soils, rectangular, etc. Well requires 50’ buffer Septic drainfield typically requires about 80’ x 100’ with a 10’ buffer to property lines, 20’ to basements, and 50’ to wells. House site typically 4,000 sf +/- Pool, decks, sheds, etc.	Staff will consider revisions to minimum lot size requirements. Although, the 40,000 sf minimum is a number that has been stated by the Health Dept. snf can be exceeded.	Also applies to AR-2
69	E. Zicht	2-103(C)(3)(d)(ii)	Req. for Residential Cluster Lots	Few people moving to the country want such a small lot (no limit).	Staff will consider revisions to the minimum lot size requirements. Although, the 20,000 minimum lot size can be exceeded.	Also applies to AR-2
70	E. Zicht	2-103(C)(3)(d)(iii)	Req. for Residential Cluster Lots	Few people moving to the country want such a small lot (no limit	Staff will consider revisions to the minimum lot size requirements. Although, the minimum lot size can be exceeded.	Also applies to AR-2
71	E. Zicht	2-103(C)(3)(e)	Req. for Residential Cluster Lots	Why reduce the maximum lot size? This prevents the developer from creating larger lots, which only serve to reduce the practical density, at the developer’s discretion.	Staff will consider revisions to the maximum lot size for RCLs.	Also applies to AR-2
72	E. Zicht	2-103(C)(3)(f)	Req. for Residential Cluster Lots	The previous regulation had this lot coverages backwards. Even on modest rural residential lots, about 2,000 sf of first floor area is needed. That would be 20% FAR for a 10,000 sf lot, and possibly much higher for even smaller lots.	Staff will consider revisions to the maximum lot coverage for RCLs.	Also applies to AR-2
73	E. Zicht	2-103(C)(4)	Req. for Preservation Farm Lots	This conflicts with language elsewhere that requires Farm Lots regardless of the acreage of prime farm soils.	This statement is incorrect. PFL's are only required when the originating tract being subdivided contains 5 acres or more of prime farmland soils. Clarification is needed on conflicts with this requirement? Staff will consider revisions for clarity.	Also applies to AR-2
74	E. Zicht	2-103(C)(4)(a)	Req. for Preservation Farm Lots	Soils are already required to be depicted. Covered in FSM.	Staff will consider revising or deleting requirements that are similarly stated in the FSM and LSDO. However, Chapter 6.120 does not specifcally require that prime farmland soils (Class I Soils) be delineated.	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
75	E. Zicht	2-103(C)(4)(a)(i)	Req. for Preservation Farm Lots	These Preliminary Soils Reviews are not useful. Of the past dozen, I requested (and client paid the County to conduct), we never heard again let alone received a report.	The purpose of the PSR is to identify the location of the prime farmland soils with greater accuracy than what is depicetd on the County Soil Map.	Also applies to AR-2
76	E. Zicht	2-103(C)(4)(a)(iii)	Req. for Preservation Farm Lots	These just seem a mechanism to punish the developers. What are the objective criteria for requiring supplemental material?	Staff will consider revisions to clarify and identify the additional information needed. The intent is not to punish developers, rather it is to have the best information available to make an accurate report pertaining to the soils on the originating tract being subdivided. Supplemental informataion may not be needed.	Also applies to AR-2
77	E. Zicht	2-103(C)(4)(a)(iv)	Req. for Preservation Farm Lots	The FSM requires a soil certification in any case – for almost all developments.	Staff will consider revising or deleting requirements that are similarly stated in the FSM and LSDO.	Also applies to AR-2
78	E. Zicht	2-103(C)(4)(a)(v)	Req. for Preservation Farm Lots	With the regulation in the FSM (where it belongs) this technical matter is appealed to the Director of B&D and the FSM committee. Anything in the zoning ordinance can be appealed to the Board of Zoning appeals. The clause is not needed here. The BZA process is lengthy and expensive.	Staff will consider revising or deleting requirements that are similarly stated in the FSM and LSDO, and will designate the appropriate body for hearing appeals.	Also applies to AR-2
79	E. Zicht	2-103(C)(4)(b)	Req. for Preservation Farm Lots	I don’t understand this. The Farm Lot has to 50% of the original lot? (50% of a 120-acre tract) regardless of the amount of farm soil? What if there are no farm soils? What if 50% FOD, Very Sensitive MDOD, and Very Steep Slopes? House and appurtenances are allowed on Farm Lot? But if Farm Lot is 90% prime farmland, all this will then be on the prime farmland, reducing the prime farmland preserved.	If this language remains for the PFL, staff will revise to clarify/simplify the requirement. If there are less than 5 acres of prime farmland soils within the originating tract, a PFL will not be required. If there is less than 50% of prime farmland soils on the originating tract, then only the percentage that exist will be required to be in a PFL. The PFL does permit a single family detached home. The 90% requirement mentioned in the PFL definition in Article 8 , is incorrect and will be addressed.	Also applies to AR-2
80	E. Zicht	2-103(C)(4)(c)	Req. for Preservation Farm Lots	Section is missing.	Staff will make revisions to ensure the proper numbering and lettering of sections is correct.	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
81	E. Zicht	2-103(C)(4)(d)	Req. for Preservation Farm Lots	I don't understand this. The area of non-contiguous farmland is really the total of all prime farmland. The minimum farm lot then has to equal the total area of all the prime farmland, even though much of it will not be prime farmland. (Thus, violating the 90% prime farmland requirement. What about the exemptions? (<5 acres per Section??)	If this language remains as part of the PFL, staff will revise for clarity. During community outreach efforts prior to drafting text, staff received public input that the minimum size of Preservation Farm Lots should be small enough to maintain land affordability for smaller scale farmers. The minimum Preservation Farm Lot size of 10 acres addresses these concerns and allows greater flexibility in cluster subdivision design. If there are less than 5 acres of prime farmland soils, a PFL is not required.	Also applies to AR-2
82	E. Zicht	2-103(C)(4)(e)	Req. for Preservation Farm Lots	With all the requirements and questionable marketability, why would anyone create more than the required one farm lot?	The draft text is designed for flexibility to allow more than one PFL of a smaller size to address the affordability comment staff received during the pre-drafting outreach. Staff will consider revisions to the minimum lot size of the PFL.	Also applies to AR-2
83	E. Zicht	2-103(C)(4)(g)	Req. for Preservation Farm Lots	How will the minimum width be measured? 175 feet does not make sense at the end of a cul-de-sac or at the end of a private access easement. What if the prime farm soils is narrow?	Staff will consider revising or deleting the minimum lot width requirement for PFLs. However, the intent for maintaining the minimum lot width for PFLs is to ensure proper access to the lot for farm equipment. The PFLs would be measured for lot width based on Section 1-205, Limitations and Methods for Measurements of Lot, Yards and Related Terms.	Also applies to AR-2
84	E. Zicht	2-103(C)(4)(h)	Req. for Preservation Farm Lots	Do you need this reference to be reported under the regulations for each type of parcel (4 times), or can you have just one section that applies to all (same as having one use list for all development alternatives)?	Staff will consider deleting this section referencing the "Use Table" in Section 2-102.	Also applies to AR-2
85	E. Zicht	2-103(C)(4)(h)(i)	Req. for Preservation Farm Lots	Is this provision legal? Enforceable?	Staff will consider revising or deleting this requirement, based on further input from the County Attoreny's Office.	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
86	E. Zicht	2-103(C)(5)(b)	Req. for Rural Economy Cluster Lots	<ul style="list-style-type: none">o This provision affects density, economics and the feasibility of cluster subdivision (the favored development scenario according to both the recently adopted comprehensive plan and its 20-year-old predecessor) and conservation easements (the acknowledged most effective way to preserve prime farm soils).o The extent of such excluded lands can be very large.o Violates the BOS – stated objectives by reducing densities.o The excluded lands can then not practicably be included in any of the marketable lots.o The cluster lots are too small to include undevelopable land.o Such lands cannot be included on the Farm Lots.o And this provision excludes these lands from being created as part of rural economy lots.o Land owners receive no reward or compensation for preserving environmentally sensitive property.o Unconstitutional requirement of public purpose at landowner’s expense.	<p>Staff will consider revisions for the minimum lot size of RECL, specifically language excluding certain environmentally sensitive areas.</p> <p>Initial comments from Stakeholder groups expressed concern that all of the bad soils, and environmental features, such as floodplain, and steep slopes, were being placed on the RELs which severely limited the intended use of the RELs while all of the good soils (prime) were used for the RCLs. With the introduction the PFL this requirement may not be necessary, although staff will continue to evaluate the placement of these features on certain lot types.</p>	Also applies to AR-2
87	E. Zicht	2-103(C)(5)(c)	Req. for Rural Economy Cluster Lots	<ul style="list-style-type: none">•Why not use the same standards as for base density for rural economy and farm lots?•Why less than the 15% allowed on a farm lot?•Why not use the 10% residential/commercial with a bump-up to 25% for agricultural standard adopted by the BOS to accommodate greenhouses and the like?	Staff will consider revisions to the maximum lot coverage for RECLs.	Also applies to AR-2
88	E. Zicht	2-103(C)(5)(d)	Req. for Rural Economy Cluster Lots	<p>How will the minimum width be measured?</p> <p>175 feet does not make sense at the end of a cul-de-sac or at the end of a private access easement.</p> <p>What if the prime farm soils is narrow?</p>	<p>Staff will consider revising or deleting the minimum lot width requirement for RECLs.</p> <p>The RECLs would be measured for lot width based on Section 1-205, Limitations and Methods for Measurements of Lot, Yards and Related Terms.</p>	Also applies to AR-2
89	E. Zicht	2-103(C)(5)(m)	Req. for Rural Economy Cluster Lots	Elimination of the Max. Length/Width Ratio. Too difficult to measure and no real benefit	Staff acknowledges support for deleting the maximum length/width ratio requirement.	Also applies to AR-2
90	E. Zicht	2-103(C)(5)(f)	Req. for Rural Economy Cluster Lots	Is this provision legal? Enforceable?	Staff will consider revising or deleting this requirement, based on further input from the County Attorney's Office..	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
91	E. Zicht	2-103(C)(6)	Req. for Open Space	<ul style="list-style-type: none">•Do we call these “Open Space Parcels” or “Open Space Lots”?☑I like “parcels” because they do not count as “lots” toward development potential/density.•Why require ownership by HOA? Defeats purpose of eliminating the “Common” descriptor.☑Conflict with proposed re-write section that would define the types of open space.☑Still requires HOA maintenance.☑Keeps open space from being transferred to a beneficial user (farmer, adjoining landowner to be used to keep horses or cattle).☑Does not address HOA complaints.	<p>Staff will revise "Open Space" to "Open Space Lot" as indicated in the Use Table of Section 2-102.</p> <p>Staff will continue to consult with appropriate County staff regarding the Open Space provisions to include staff working on the ZOR.</p>	Also applies to AR-2
92	E. Zicht	2-103(C)(6)(e)	Req. for Open Space	<ul style="list-style-type: none">•Is this provision legal? Enforceable? <p>For land actively used by the HOA for specific purposes, they should be allowed to restrict allowable uses. (Keeping pigs on an open space parcel created for an entrance sign.)</p>	Staff will consider revising or deleting this requirement, based on further input from the County Attoreny's Office.	Also applies to AR-2
93	E. Zicht	2-103(C)(7)(a)	Setbacks	This does not seem different from standards that apply to rural development in general. Can it be eliminated here?	Similar sections are also stated in the Base Density option and Principal/Subordinate option. It should be noted that the 25' setback from any other road right of way, private access easement, and/or prescriptive easement is different than the other options mentioned above. This was changed to allows more flexibility for the RCLs.	Also applies to AR-2
94	E. Zicht	2-103(C)(8)	Yards	<ul style="list-style-type: none">•Should there be different standards for the larger farm and rural economy lots? (Match the standards for base density and principal/subordinate options?)•Allow easements for water and sewer service lines to cross other cluster (as is the case with Hamlet Lots). Currently only allow sewer lines to cross open space. Consider allowing utility lines to cross rural economy lots as well (but not Farm Lots?).	<p>The front and rear yards were decreased in order to allow more design flexibility for the lots.</p> <p>Staff will consider revisions to yards for each lot type. Staff will also explore the possibility of easements crossing over other lot types to access needed drainfields on OSLs.</p>	Also applies to AR-2
95	E. Zicht	2-103(C)(10)(a)(i)	Utility Req.	Why not allow wells on Open Space parcels? Less problematic than off-site drainfields.	<p>Staff will not consider revisions for allowance of private wells to be located off the lot it serves.</p> <p>Staff's understanding is that all new private wells must be located on the lot the well is intended to serve. Chapter 1040.9.e of the County Codified Ordinance.</p>	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
96	E. Zicht	2-103(C)(10)(b)(i)	Utility Req.	•Why state that the open space needs to be owned by the HOA? Already addressed in Section 2-103(C)(6) if that is the intent. But if allow private ownership, would unnecessarily restrict. If the desire is to have smaller lots, then more septic systems will have to be off-site.	Staff will consider revisions to clarify or delete duplicate language contained in other sections.	Also applies to AR-2
97	E. Zicht	2-103(C)(11)(a)	Maintenance of Water and/or Sewage Disposal Systems	Is this needed in the Zoning Ordinance? I believe it is already addressed by the County Code for septic systems.	Staff will consider revising or deleting requirements that are similarly stated in the Codified Ordinance, FSM and LSDO.	Also applies to AR-2
98	E. Zicht	2-103(C)(11)(b)	Maintenance of Water and/or Sewage Disposal Systems	Seems unnecessarily wordy. Why not just leave it at “must be owned and operated by LCSA?”	Staff will consider revisions to clarify or simply the maintenance responsibility requirement for communal syatems.	Also applies to AR-2
99	E. Zicht	2-103(C)(12)(a)	Lot Access	Is it necessary to say that the access easements must comply with the FSM? Doesn’t the FSM apply anyway?	Staff will consider revising or deleting requirements that are similarly stated in the FSM and LSDO.	Also applies to AR-2
100	E. Zicht	2-103(C)(12)(b)	Lot Access	Is this language clear? (I understand that there is an on-going dispute, which could be avoided in the future with a better description.)	Staff will consider revising the Lot Access language for private access easements.	Also applies to AR-2
101	E. Zicht	2-103(C)(12)(c)	Lot Access	Isn’t this required anyway for ALL private access easements? FSM and/or LSDO? Not needed here.	Staff will consider revising or deleting requirements that are similarly stated in the FSM and LSDO.	Also applies to AR-2
102	E. Zicht	2-103(C)(13)	Fire Protection	This is a provision of the FSM, and would apply in any case. Clause not needed here.	Staff will consult with the appropriate staff regarding the necessity of this language as well as duplication of requirements with other County codes and ordinances.	Also applies to AR-2
103	E. Zicht	2-103(C)(14)	Pre-Submission Meeting	•I object to requiring a Pre-Submission meeting. ☒Staff generally lack accreditation (PE, LS, LA) to prepare development plans. ☒Staff lacks experience in design, development, sales related to development. ☒Guidance, other than objective measurable standards, is subjective and unenforceable. ☒Creates unrealistic expectations. ☒May create adversarial review process if developer chooses to ignore staff suggestions. There is no enabling legislation for such in State Code, and generally violates the Code requirements for timely review. Not that I would avoid voluntary pre-submission meetings, but expectations need to be controlled.	Staff will consider revisions to the Pre-Submission meeting to clarify expectations of both County staff and the Applicant.	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
104	E. Zicht	2-103(C)(15)	Advisory Cluster Subdivision Siting and Design Guidelines	While the goals may be admirable, these are not measurable standards and amount to discretionary, subjective review – which is not permissible.	If this language remains for the Siting and Design guidelines, staff will revise the language to remove ambiguous or subjective wording to make sure the purpose for the guidelines are clearly stated. These "Siting and Design" guidelines were brought over from the Rural Hamlet provisions.	Also applies to AR-2
105	E. Zicht	2-104	HOA and Responsibilities	This Section likely conflicts with the new chapter proposed in the Zoning Ordinance Re-Write.	Staff will consider revisions to this section to ensure that the revisions proposed with the Zoning Ordinance Re-write do not conflict with one another.	Also applies to AR-2
106	E. Zicht	2-104 (A)	HOA and Responsibilities	Could be clarified that HOA is only required to address items (1) through (7). Not required to administer privately owned Open Space.	Clarification of this comment is needed in order for staff to properly address the concern.	Also applies to AR-2
107	E. Zicht	2-104 (A)(1)	HOA and Responsibilities	I like the “Common” modifier here, as it distinguishes from privately owned open space, which would not require an HOA.	Staff may consider revisions to ensure consistent terms are used to identify open space lots.	Also applies to AR-2
108	E. Zicht	2-104 (A)(3)	HOA and Responsibilities	Private roads, driveways or access easements (& pipestems) that serve just a few lots should be maintained by the lot owners served, not by the owners of lots throughout the subdivision.	Staff will consider revisions to clarify responsibility for maintenance of private roads within the cluster subdivision.	Also applies to AR-2
109	E. Zicht	2-104 (B)	HOA and Responsibilities	Membership by rural economy and especially Farm Lots should be optional. Why should the Farm Lots pay for suburban residential HOA services?	Staff will consider further revisions to specify possible exemptions of certain lots from HOA memberships, if there is state enabling legislation to allow this type of exemption.	Also applies to AR-2
110	E. Zicht	2-104(C)	HOA and Responsibilities	Allow the private road provision to apply even if one of the other 7 criteria apply. Switch order of clauses (B) & (C) (Also D)	Staff will consider revisions to address the allowance of a private road agreement even if other common elements are present within the cluster subdivision.	Also applies to AR-2
111	E. Zicht	2-104(D)	HOA and Responsibilities	Doesn’t this duplicate 2-103(C)(aa)(b)? It is better placed in 2-103 as it only applies in Cluster Subdivisions. Why refer to the State Code. It applies where it applies, in any case. And if it does not apply, the County can’t make it apply.	Staff will consider revising or deleting language referring to the State Code defining other "wastewater" utility.	Also applies to AR-2
112	E. Zicht	2-104(E)	HOA and Responsibilities	All of this appears to be covered in the LSDO and FSM and is redundant and unnecessary here.	Staff will consider revising or deleting requirements that are similarly stated in the FSM and LSDO.	Also applies to AR-2
113	E. Zicht	2-104(E)(1)	HOA and Responsibilities	Question – Are the limitations on HOA prerogatives legal/enforceable. Can you define “bona fide agriculture?”	Staff will delete language restricting HOAs ability to limit agricultural, horticultural, and animal husbandry uses, as there is no state statute that allows the County to prohibit covenants/agreements that place greater restrictions on private property.	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
114	E. Zicht	2-104(E)(2)	HOA and Responsibilities	This will be regulated/determined by Loudoun Water, as they are the sole permitted operator per Section 2-103(c)(11(b). No need to include here.	Staff will consider revising or deleting requirements that are similarly stated in the FSM, LSDO, or other sections within the cluster subdivision option.	Also applies to AR-2
115	E. Zicht	2-104(E)(3)	HOA and Responsibilities	Already covered by LSDO/FSM.	Staff will consider revising or deleting requirements that are similarly stated in the FSM and LSDO.	Also applies to AR-2
116	E. Zicht	2-105	Protection by Right to Farm Act	Unnecessary. Already required by LSDO/FSM and the state code provision cited.	Staff will consider revising or deleting requirements that are similarly stated in the FSM and LSDO.	Also applies to AR-2
117	E. Zicht	2-106(B)	Existing Lots of Record	Is this clause needed? There have been Hamlet Lots created post-2006 where preliminary plats had been approved previously. Hamlet lots can still be created in A-3 subdivisions. Should they be permitted in the AR-1 and AR-2 zoning districts?	Staff will consider revisions to address this comment.	Also applies to AR-2
118	M. Walsh-Copeland	2-103(C)(2)(h)	Characteristics of Cluster Subdivision Option	Would the Open Space would be whatever acres are "leftover" from the total acres allocated to PFLs/RELS/Open Space (= Original tract * .70)? NEW ZOAM CALCULATION Example1: 100 orig tract with 60% prime soils in ARN . *70 = 70 acres for PFL/REL/Open Space -50 acres for PFL (50% of orig tract max) 20 acres -- balance for REL and Open Space -15 acres for REL (1 min. for 100+ tracts) 5 acres "leftover"(?) for Open Space Lot Yield = 100/5 = 20 lots total 1 PFL (50 ac) OR ==> forecasting more PFLs? 1 REL (15 ac) 18 Res Cluster (Avg 1.6 ac)	The amount of open space provided is dependent on the characteristics of the subject property. It is possible to develop a cluster subdivison without open space. Land that is left over after providing required PFL, RECL, or RCL must be placed in open space.	Staff continues to work on the numbers requested pertaining to prime soils acres associated with those parcels that could be combined for cluster development, and other numbers. This information will be provided prior to the the February 16, 2022 ZOC meeting.
119	M. Walsh-Copeland	2-103(C)(2)(h)	Characteristics of Cluster Subdivision Option	One Prime Farmland Lot is "required," but how many PFLs would be likely (forecasted?) for each subdivision? A goal is to have larger farming lots (not a group of 10ac lots), but what assumptions is Staff using for financial forecasting and budgeting?	No financial forecasting or budgeting analysis have been conducted by Zoning Administration staff. Staff will consider revisions to the PFL requirements for larger contiguous PFLs.	Also applies to AR-2
120	M. Walsh-Copeland	2-203(C)(4)(e)	Req. for Preservation Farm Lots	Why is the requirement for a “min. 90% of PFL shall contain prime farmland” only applied to AR-2 (ARS)?	This was an error in the Draft Text Language which has since been noted and will not be included in subsequent drafts .	

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
121	M. Walsh-Copeland	2-103(C)(4)(d)	Req. for Preservation Farm Lots	<p>How does this take into account areas of prime soils that are or are not contiguous? The requirements are for 10 ac minimum and contiguous, however, the goal expressed during Round 1 and Round 2 input is for larger parcels for bona fide ag farming. What if all the prime soils on an original tract are in less than 10 ac “pockets”? How small or large would a “pocket” need to be to not be excluded from the 50% of the tract to create a PFL? How "contiguous" would "pockets" of prime farmland soils need to be? A demonstration map may be very useful to clarify the new requirements</p>	<p>If this language remains as part of the PFL, staff will revise for clarity.</p> <p>During community outreach efforts prior to drafting text, staff received public input that the minimum size of Preservation Farm Lots should be small enough to maintain land affordability for smaller scale farmers. The minimum Preservation Farm Lot size of 10 acres addresses these concerns and allows greater flexibility in cluster subdivision design.</p> <p>If there are less than 5 acres of prime farmland soils, a PFL is not required.</p>	Also applies to AR-2
122	J. Merrithew	2-102	Use Table	<p>The PFL does not permit uses that would normally be accessory to and support a farm or forestry operation. Such uses include farm processing, wayside stands or markets, sawmill, commercial nursery. The PFL does permit dwellings without stipulating the dwelling be associated with a farm operation</p> <p>Recommendation: Add supportive farm uses. Remove dwellings. Otherwise the PFL becomes a conservancy lot with a large house and fence. If the house were associated with a farm management plan or some surety offered that the property would become a farm.</p>	<p>Staff will consider removing uses from certain lot types that may not be appropriate within a cluster subdivision or on certain lot types. Staff does not support removing dwelling units from PFLs.</p>	Also applies to AR-2
123	J. Merrithew	2-103C(2)(a)	General Req.	<p>Seems to repeat (C). Both sections seem to imply that you may have one type of lot but not the other “and/or” is confusing.</p> <p>Recommendation: Suggest: ” ...may include RCL, PFL, REL, and OSL”</p>	<p>Staff will consider revisions to clarify language describing the characteristics of the cluster subdivision.</p> <p>Depending on the characteristics of the originating tract, certain lot types may not be required. For example, if the originating tract being subdivided has less than 5 acres of prime farmland soils, then a PFL is not required but a RECL would be required. Open space is only required if there is land remaining that is not with a RCL, PFL, or RECL.</p>	Also applies to AR-2
124	J. Merrithew	2-103(C)(2)(b)	General Req.	<p>How do you interpret a proposal to cut a 100-acre tract from a 1,000-acre tract and create a cluster subdivision on the 100-acre tract? Would the “originating” lot permit 199 lots?</p> <p>Recommendation: Does “originating lot” have a broader land development meaning? Suggest text change to ...“from the gross acreage of the subdivision”.</p>	<p>Staff will continue to use "Originating Tract", as this term is defined in Article 8. Staff will consider revising the definition "originating tract" to clarify the term.</p>	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
125	J. Merrithew	2-103(C)(2)(d)	General Req.	<p>This subsection seems unnecessary. Lots are required to meet certain standards and are managed by the LSDO, which I assume says lots must comply with the Zoning Ordinance.</p> <p>Recommendation: Suggest deleting.</p>	Staff will consider revising or deleting requirements that are similarly stated in the FSM and LSDO.	Also applies to AR-2
126	J. Merrithew	2-103(C)(2)(f)	General Req.	<p>Seem to repeat requirements of the LSDO</p> <p>Recommendation: Suggest deleting</p>	Staff will consider revising or deleting requirements that are similarly stated in the FSM and LSDO.	Also applies to AR-2
127	J. Merrithew	2-103(C)(2)(g)	General Req.	<p>Seem to repeat requirements of the LSDO</p> <p>Recommendation: Suggest deleting</p>	Staff will consider revising or deleting requirements that are similarly stated in the FSM and LSDO.	Also applies to AR-2
128	J. Merrithew	2-103(C)(2)(h)	General Req.	<p>The word “may” seems to make the 70% provision voluntary.</p> <p>Recommendation:Suggest reword to “70% of the gross land area in the subdivision will be comprised of PFL, REL, or OSL lots or a combination thereof depending on soils conditions.</p>	<p>Staff will revise this section to clarify that the 70% is required and not optional.</p> <p>The word "may" in this section was to indicate the possible lot types to make up the 70%, not to indicate that the 70% requirement is optional.</p>	Also applies to AR-2
129	J. Merrithew	2-103(C)(3)	Req. for Residential Cluster Lots	<p>Seem to repeat requirements of the LSDO.</p> <p>Recommendation: Delete</p>	Staff will consider revising or deleting requirements that are similarly stated in the FSM and LSDO.	Also applies to AR-2
130	J. Merrithew	2-103(C)(3)(a)	Req. for Residential Cluster Lots	<p>Agree with Kevin in that there needs to be flexibility in layout and number of lots. The 5-15 lots is based on a 1980’s objective of recreating the English village design concept and has no value beyond design. It also makes communal utilities more expensive.</p> <p>Recommendation: The cluster size and configuration should reflect the goal of preserving soils and sensitive areas and may be a single cluster or multiple clusters. The statement about fewer than 5 lots seems unnecessary.</p>	If the language of this section remains, staff will consider revisions to allow flexibility in the designing of RCLs and the grouping of clusters.	Also applies to AR-2
131	J. Merrithew	2-103(C)(3)(a)(i)	Req. for Residential Cluster Lots	<p>These subsections become unnecessary if changes are made to 2-103(C)(3)(a) regarding lots within a cluster.</p> <p>Recommendation: Delete</p>	If the language of this section remains part of the RCLs, staff will consider revisions to allow flexibility in the designing of RCLs and the grouping of clusters.	Also applies to AR-2
132	J. Merrithew	2-103(C)(3)(a)(ii)	Req. for Residential Cluster Lots	<p>These subsections become unnecessary if changes are made to 2-103(C)(3)(a) regarding lots within a cluster.</p> <p>Recommendation: Delete</p>	If the language of this section remains part of the RCLs, staff will consider revisions to allow flexibility in the designing of RCLs and the grouping of clusters.	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
133	J. Merrithew	2-103(C)(3)(a)(iii)	Req. for Residential Cluster Lots	These subsections become unnecessary if changes are made to 2-103(C)(3)(a) regarding lots within a cluster. Recommendation: Delete	If the language of this section remains part of the RCLs, staff will consider revisions to allow flexibility in the designing of RCLs and the grouping of clusters.	Also applies to AR-2
134	J. Merrithew	2-103(C)(3)(b)	Req. for Residential Cluster Lots	Repeats Section 2-103(C)(3)(a) and is unnecessary if change is made to the number of lots a mentioned in 2-103C)(3)(a). Recommendation: Delete	If the language of this section remains part of the RCLs, staff will consider revisions to allow flexibility in the designing of RCLs and the grouping of clusters.	Also applies to AR-2
135	J. Merrithew	2-103(C)(3)(c)	Req. for Residential Cluster Lots	Distance between clusters should not be fixed. Recommendation: Distance should reflect the best protection for prime soils and environmental features	Staff's premise of reducing the distance between cluster groupings is to conserve more prime farmland soils. Staff will consider eliminating or further reducing the setback.	Also applies to AR-2
136	J. Merrithew	2-103(C)(3)(d)	Req. for Residential Cluster Lots	Minimum lot size should be determined by the utility system and allowed to be much smaller than one acre. Recommendation: Suggest remove the minimum.	Staff will consider revisions to minimum lot size requirements. Although, the 40,000 sf minimum is a number that has been stated by the Health Dept. as necessary to provide on-site well and septic.	Also applies to AR-2
137	J. Merrithew	2-103(C)(3)(e)	Req. for Residential Cluster Lots	Three acres seems excessive. Recommendation: Suggest 40,000 sf maximum	Staff will consider revisions to reduce the maximum lot size for RCLs.	Also applies to AR-2
138	J. Merrithew	2-103(C)(3)(g)	Req. for Residential Cluster Lots	Redundant. Recommendation: Delete	Staff will consider revising or deleting requirements that are similarly stated in the FSM and LSDO.	Also applies to AR-2
139	J. Merrithew	2-103(C)(4)	Req. for Preservation Farm Lots	The statement does not explicitly state that prime farmland is to be protected by a PFL. Recommendation: Suggest we state that any prime farm land 5 acres or more must be encompassed by a PFL.	If this language remains for the Preservation Farm Lot, staff will look at rewording the text for clarity.	Also applies to AR-2
140	J. Merrithew	2-103(C)(4)(a)(i)	Req. for Preservation Farm Lots	This seems to make preservation of prime land difficult and expensive. Unless the soils review is required for other reasons, what is the purpose of the study if the County has prime lands mapped. Recommendation: Suggest the Preliminary soils review be an option if the owner wants to contest the County's map.	The intent of requiring a preliminary soils review is to verify and augment the detail of the most recent Loudoun County Soil Survey and determine the general constraints related to the suitability of an area for some use or combination of uses. Staff will consider revisions to the PSR requirements.	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
141	J. Merrithew	2-103(C)(4)(a)(ii)	Req. for Preservation Farm Lots	<p>This seems to make preservation of prime land difficult and expensive. Unless the soils review is required for other reasons, what is the purpose of the study if the County has prime lands mapped.</p> <p>Recommendation: Suggest the Preliminary soils review be an option if the owner wants to contest the County’s map.</p>	<p>The intent of requiring a preliminary soils review is to verify and augment the detail of the most recent Loudoun County Soil Survey and determine the general constraints related to the suitability of an area for some use or combination of uses.</p> <p>Staff will consider revisions to only require the preliminary soils review, if the Owner wants to contest the County soils map.</p>	Also applies to AR-2
142	J. Merrithew	2-103(C)(4)(a)(iii)	Req. for Preservation Farm Lots	<p>This seems to make preservation of prime land difficult and expensive. Unless the soils review is required for other reasons, what is the purpose of the study if the County has prime lands mapped.</p> <p>Recommendation: Suggest the Preliminary soils review be an option if the owner wants to contest the County’s map.</p>	<p>The intent of requiring a preliminary soils review is to verify and augment the detail of the most recent Loudoun County Soil Survey and determine the general constraints related to the suitability of an area for some use or combination of uses.</p> <p>Staff will consider revisions to only require the preliminary soils review, if the Owner wants to contest the County soils map.</p>	Also applies to AR-2
143	J. Merrithew	2-103(C)(4)(b)	Req. for Preservation Farm Lots	<p>What is the relationship between 70% PFL, REL, or OSL, and the 50% prime soils. Would we not want to save all 70% if it is prime soils?</p> <p>Recommendation:Require all prime land to be enclosed in a PFL or OSL up to 70% of the subdivision. If prime soils is less than the entire 70% area, then the remainder may be used for REL.</p>	<p>The 70% requirement pertains to the amount of land set aside from the originating tract being subdivided for PFL, RECL, or OS, depending on the certain characteristics of the originating tract.</p> <p>The 50% req. pertains to the amount of prime farmland soils to be preserved within the PFL(s) (Originating Tract).</p> <p>Staff will continue to explore options for the PFL as well as clarify and simplify requirements for ease of interpretation.</p>	Also applies to AR-2

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2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
144	J. Merrithew	2-103(C)(4)(d)	Req. for Preservation Farm Lots	<p>Numbering: should be (c). Not clear what this intends. Sounds like a PFL may be smaller than 10 acres depending on the area of prime soils in the subdivision.</p> <p>Recommendation: Suggest the minimum lot area must be 10 acres whether it is all prime soils or not. But with prime soils the minimum lot area is based on the prime soils and may be larger than 10 acres.</p>	<p>If this language remains as part of the PFL, staff will revise to clarify the requirement.</p> <p>During community outreach efforts prior to drafting text, staff received public input that minimum size of Preservation Farm Lots should be small enough to maintain land affordability for smaller scale farmers. The minimum Preservation Farm Lot size of 10 acres addresses these concerns and allows greater flexibility in cluster subdivision design.</p>	Also applies to AR-2
145	J. Merrithew	2-103(C)(4)(e)	Req. for Preservation Farm Lots	<p>Why contiguous? Since you can have OSL and REL in the same subdivision, could you have 10-acre PFLs mixed with RELs and OSLs?</p> <p>Recommendation: Suggest removing the term “contiguous”.</p>	<p>Yes, you could have PFLs, RECLs, and OSLs as part of the 70% requirement, if the characteristics of the originating tract allow for all 3 lot types.</p> <p>If this language remains as part of the PFL, staff will revise the language to clarify and simplify the requirements.</p>	Also applies to AR-2
146	J. Merrithew	2-103(C)(4)(g)	Req. for Preservation Farm Lots	<p>The 175 feet is arbitrary. Fixed design parameters are environmentally impactful and suggest a standardized development pattern inconsistent with the classic rural pattern.</p> <p>Recommendation: Delete</p>	Staff will consider revising or deleting the minimum lot width requirement for PFLs. However, part of the intent for maintaining a minimum lot width for PFLs is to ensure proper access to the lot for larger farm equipment.	Also applies to AR-2
147	J. Merrithew	2-103(C)(4)(h)	Req. for Preservation Farm Lots	<p>Redundant</p> <p>Recommendation: Delete</p>	Staff will consider deleting this section referencing the "Use Table" in Section 2-102.	Also applies to AR-2
148	J. Merrithew	2-103(C)(4)(i)	Req. for Preservation Farm Lots	<p>Redundant</p> <p>Recommendation: Delete</p>	Staff will delete this language given that there is no state statute that allows the County to prohibit covenants/agreements that place greater restrictions on private property.	Also applies to AR-2
149	J. Merrithew	2-103(C)(5)(a)	Req. for Rural Economy Cluster Lots	<p>Why is a REL a requirement? This seems to be a carryover when REL was the only lot type.</p> <p>Recommendation: Suggest requiring a PFL over all prime soils and make REL an option on the remaining [conservation] area.</p>	<p>A RECL will only be required when there are 5 acres or less of prime farmland soils, which then a PFL is not require, or when the originating tract being subdivided is 100 acres or more.</p> <p>Staff will continue to explore the RECL lot type and how to best incorporate this lot type within the cluster subdivision option.</p>	Also applies to AR-2

	A	B	C	D	E	F
2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
150	J. Merrithew	2-103(C)(5)(b)	Req. for Rural Economy Cluster Lots	Why not be consistent with the PFL? Recommendation: Consistency among the REL and PFL would in theory mean easier administration and design.	Staff will continue to explore the RECL lot type and how to best incorporate this lot type within the cluster subdivision option.	Also applies to AR-2
151	J. Merrithew	2-103(C)(5)(c)	Req. for Rural Economy Cluster Lots	Why not be consistent with the PFL? Recommendation: Consistency among the REL and PFL would in theory mean easier administration and design.	Staff will continue to explore the RECL lot type and how to best incorporate this lot type within the cluster subdivision option.	Also applies to AR-2
152	J. Merrithew	2-103(C)(5)(d)	Req. for Rural Economy Cluster Lots	The 175 feet is arbitrary. Fixed design parameters are environmentally impactful and suggest a standardized development pattern inconsistent with the classic rural pattern.	Staff will consider revising or deleting the minimum lot width requirement for RECLs to allow for a more flexible cluster subdivision design.	Also applies to AR-2
153	J. Merrithew	2-103(C)(5)(e)	Req. for Rural Economy Cluster Lots	Redundant Recommendation: Delete	Staff will consider deleting this section referencing the "Use Table" in Section 2-102.	Also applies to AR-2
154	J. Merrithew	2-103(C)(5)(f)	Req. for Rural Economy Cluster Lots	Redundant Recommendation: Delete	Staff will delete this language given that there is no state statute that allows the County to prohibit covenants/agreements that place greater restrictions on private property.	Also applies to AR-2
155	J. Merrithew	2-103(C)(6)(a)	Req. for Open Space	Redundant Recommendation: Delete	Staff will consider deleting this section referencing the "Use Table" in Section 2-102.	Also applies to AR-2
156	J. Merrithew	2-103(C)(6)(b)	Req. for Open Space	Redundant Recommendation: Delete	Staff will consider deleting this section referencing the "Use Table" in Section 2-102.	Also applies to AR-2
157	J. Merrithew	2-103(C)(6)(c)	Req. for Open Space	Redundant Recommendation: Delete	Staff will delete this language given that there is no state statute that allows the County to prohibit covenants/agreements that place greater restrictions on private property.	Also applies to AR-2

	A	B	C	D	E	F
2	ZOC Member	Proposed Z.O. Section	Section Title	Comment	Staff Response	Notes
158	J. Merrithew	2-103(C)(7)	Setbacks	Arterials and collector roads in western Loudoun are typically lower volume, two-lane roads. Setbacks seem excessive. Recommendation: Suggest smaller minimum.	Staff will consider revisions to the setbacks from right of ways and private access easements. However, similar sections are also stated in the Base Density option and Principal/Subordinate option. It should be noted that the 25' setback from any other road right of way, private access easement, and/or prescriptive easement is different than the other options mentioned above. This was changed to allow more flexibility for the RCLs.	Also applies to AR-2
159	J. Merrithew	2-103(C)(7)(b)	Setbacks	Not clear why a 100-foot perimeter is required. Recommendation: Suggest no additional setback against like uses.	Staff will consider revisions to reduce or delete this setback in order to allow for a more flexible cluster design as well as the preservation of more prime farmland soils.	Also applies to AR-2
160	J. Merrithew	2-103(C)(10)(a)	Utility Req.	Both subsections us “shall”. Recommendation: "Must"	Staff will revise the text to change "shall" to "must" to maintain consistency throughout the cluster subdivision text.	Also applies to AR-2
161	J. Merrithew	2-103(C)(10)(b)	Utility Req.	Both subsections us “shall”. Recommendation: "Must"	Staff will revise the text to change "shall" to "must" to maintain consistency throughout the cluster subdivision text.	Also applies to AR-2
162	J. Merrithew	2-103(C)(15)	Advisory Cluster Subdivision Siting and Design Guidelines	Don’t understand the terms “nestle” or “blend in a subordinate way”.	If this language remains for the "Siting and Design" guidelines, staff will revise the language to remove ambiguous or subjective wording to ensure the purpose for the guidelines are clearly stated.	Also applies to AR-2
163	J. Merrithew	2-104	HOA and Responsibilities	Concerned this repeats what is in the LSDO or FSM Recommendation: Delete	Staff will consider revising or deleting requirements that are similarly stated in the FSM and LSDO.	Also applies to AR-2
164						

DATE: February 1, 2022
TO: Jacob Hambrick, Sr. Planner, Zoning Administration
FROM: Buddy Rizer, Executive Director, DED
PREPARED BY: Katy Lowitz, Development Process Manager, DED
SUBJECT: **Cluster Subdivision and Prime Agricultural Soil Amendment**
ZOAM-2020-0002

The Department of Economic Development's (DED) analysis of the above application is detailed below in the following sections.

Applicant Proposal

A Zoning Ordinance Amendment to guide all future cluster residential subdivision applications in the Agricultural Rural – 1 (AR-1) and Agricultural Rural – 2 (AR-2) zoning districts with amendments to improve the design of clustered residential development by incorporating natural features, protecting, and conserving agriculturally productive prime agricultural soils, allowing for equine and rural economy uses, and further implementing the policies of the 2019 GP with respect to clustered rural residential development.

DED Response and Evaluation

Overall, we support the ZOAM's purpose and intent to identify and protect prime agricultural lands and promote consistency between residential development and rural economy uses. As discussed below, we recommend adding agricultural processing, custom operators, direct market business and nursery production as allowed uses for the Preservation Farm Lot (PFL) since these uses may be necessary to maintain economically viable agricultural activities on these lots. We also recommend that when identifying/delineating the PFL, the lot should contain those soil types that have the greatest potential for agricultural production and economic return as discussed below.

It should be noted that soils mapped as prime farmland may not always produce the highest yield. For example, Comus silt loam (3A), Morven silt loam (13B), and Middleburg, silt loam (17B) are designated as a Class 1 soils by the USDA and are recognized as prime farmland soils in Loudoun County. However, based on their landscape position and potential for seasonal high-water tables, these soils may not always be optimal for agricultural production without modification - which can have significant costs. Including these soil types in the PFL may meet the minimum requirements for prime soils on the parcel but may not necessarily contribute to the parcel's productivity. In addition, prime farmland soils may not always provide the optimal environment for some of Loudoun's important crops such as vineyards and orchards, which appear to fare well on Class 2 and

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Class 3 soil types. Therefore, focusing entirely on prime farmland soils may not achieve the desired outcome which is to maintain healthy, economically viable soils for our varied farming activities. An alternative approach may be to rely on the County's Horticultural Suitability Map (development in progress) to identify PFLs as part of the cluster development process. This mapping tool considers a number of factors besides soil types when determining the production potential for a parcel of land for a variety of production scenarios.

General Notes

1. What is the purpose of (PFL) and how does it differ from "Rural Economy Lot" (REL)?
2. What is the purpose and definition of "Open Space Lot"? Is it the same as 6-1404?
3. When there is a certain percentage of prime farmland in an original parcel, would the Hamlet option be the better alternative for preservation of prime farmland?
4. Are clusters required to have both REL and PFL lots?

Article 8

5. "Residential Cluster Lot" is missing a definition and is spelled incorrectly.
6. "OSL = Open Space Lots" is missing a definition.

Article 2: Table 102

7. R93ZO Definition: *"Agricultural Processing: The processing, preparation, and/or manufacturing of agricultural products, including but not limited to changes to the physical state or form of the agricultural product, as an accessory use to an agricultural use. A minimum of 51% of the agricultural products used for the processing, preparation, and/or manufacturing shall be derived from the agricultural use."* Specialty crops and those that require some level of processing and value to be added (i.e., fruit into jam, wool into scarves, etc.) should be permitted on the REL and the PFL to ensure that these lots provide economically viable agricultural options.
8. Related to this topic, recent business encounters with zoning suggest that the harvesting of a crop and preparing the items for market by washing and/or placing into packaging for market or delivery to wholesale/retail customers constitutes "Agricultural processing". These examples are part of normal agricultural activities and attempts to regulate them as agricultural processing will negatively impact Loudoun's producers.
9. Custom Operators provide services primarily off-site at other agricultural properties. We recommend allowing custom operators in the RCL and PFL.

10. R93ZO Definition: *"Direct Market Business: A commercial enterprise in which agricultural products produced on a site are marketed and sold directly to consumers without an intermediate wholesaler or distributor, other than a farm co-op organization. Direct market business may include enterprises such as PYO (pick-your-own) operations, and operations in which delivery of products is made directly to consumers, such as "farm share" arrangements under which periodic delivery of farm products is made for a subscription fee."* Per this definition, a small farm would not be able to sell direct to consumer, even online and/or for delivery as is usual and customary for CSA and direct sales operations common around the Nation and in Loudoun. Based on a review of information from our LoudounFarms website, we have 19 CSAs, 10 on-farm Wayside Stands, and 77 vendors who have established accounts on our Loudoun Made Loudoun Grown Marketplace (e-commerce platform) who, at a minimum, fall into this category. We recommend allowing Direct Market Business in the RCL and PFL.
11. R93ZO Definition: *"Nursery, Production: An agricultural enterprise where plants are grown for resale on a retail or wholesale basis for only those plant materials grown on-site."* Given the reliance upon prime agricultural soils and the generally small specialty farms that grow nursery products (list may be found here: https://nifa.usda.gov/sites/default/files/resources/definition_of_specialty_crops.pdf) it would seem appropriate for "Nursery, Production" use to be compatible within the RCL and PFL lots.

Article 2: Line 278

12. "...that may include one or more lots containing prime farmland soils suitable for farming activities." The use of "may" here suggests that the inclusion of prime farmland soils is optional. Recommend a change to "shall" since that is the intent of the ZOAM.

Article 2: Line 405

13. Ensure that the mapping is up-to-date and accurate with latest data and field observations.

Article 2: Line 724

14. The use of earth berms suggests increased site disturbance and is not in-keeping with the natural/rural character of the area. Suggest eliminating berms and only allowing the use of plant material.

Article 2: Table 2-202

15. Allow the following uses as a "P" or permitted use in PFL in direct support of ongoing agriculture: Agricultural Processing, Direct Market Business, Production Nursery, Wayside stand, Custom Operators.

Article 2: Line 1210 – 1213

16. Ensure that the mapping is up-to-date and accurate with latest data and field observations.

DED knows that this has been a long process and we want to thank you for providing us with an opportunity to comment on this application and for all of DPZ's efforts on this Zoning Ordinance Amendment. Please contact Katy Lowitz, katy.lowitz@loudoun.gov or 703-797-8274 for any follow-up questions or concerns.



Environmental Health
Phone: 703 / 777-0234
Fax: 703/771-5023

Loudoun County Health Department


P.O. Box 7000
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Community Health
Phone: 703/777-0236
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January 28, 2022

MEMORANDUM TO: Jacob Hambrick
Senior Planner
Zoning Administration

FROM: Joshua Hepner 
Environmental Health Supervisor
Division of Environmental Health

SUBJECT: Cluster Subdivision and Prime Agricultural Soil Amendments
ZOAM-2020-0002

PIN: N/A

This Department reviewed the associated documents provided with the referral memorandum dated December 30, 2021, and staff supports approval of the amendments with the following comment.

1. It seems that one of the goals of this amendment is to locate the cluster lots on areas that do not compromise prime farmland soils. Approximately 75% of the soils identified in Loudoun County as Prime Farmland Soils are also identified as having good to fair potential for supporting a conventional drainfield. If the current Zoning requirement to have at least 30% of the cluster lots with a drainfield located within the parcel boundary is to remain in effect, it may amplify the use of more alternative systems when a conventional site may have otherwise been available.

If further information or clarification on the above project is required, please contact Joshua Hepner at 703-771-5814.

MEMORANDUM

To: Jacob Hambrick, Sr. Planner, Zoning Administration

From: Pat Giglio, Planner III, Community Planning

Date: January 31, 2022

Re: ZOAM-2020-0002 Cluster Subdivision and Prime Agricultural Soils
Community Planning, 1st Referral

BACKGROUND

At the June 16, 2020, Board of Supervisors (Board) Business Meeting, the Board adopted a resolution of intent to amend (ROIA) the Revised 1993 Loudoun County Zoning Ordinance to amend the cluster subdivision regulations in the Agricultural Rural-1 (AR-1) and Agricultural Rural-2 (AR-2) zoning districts to improve cluster development design, preserve prime agricultural soils, and ensure the success of rural economy uses (9-0). At the direction of the Board and with community input from stakeholders and the Board-appointed Zoning Ordinance Committee (ZOC), County Staff from the Department of Planning and Zoning (DPZ) has developed draft text amendments for AR-1 and AR-2 cluster subdivision regulations. Community Planning Staff has reviewed the proposed zoning ordinance amendment (ZOAM) and is providing the following information and comments to assist Zoning Administration in their development of ZOAM 2020-0002.

CONFORMANCE WITH THE COMPREHENSIVE PLAN

The policies of the Loudoun County 2019 General Plan (2019 GP) provide Comprehensive Plan guidance for the proposed ZOAM. The proposed ZOAM will affect properties located within the Rural Policy Area (RPA), within the Rural North Place Type and Rural South Place Type identified by the 2019 GP (*2019 GP, Chapter 2, RPA Place Types Map*). The 2019 GP is the foundation for amendments to County ordinances to ensure that the County's goals are implemented through the regulatory process. It is intended that these ordinances and the Facilities Standards Manual will be updated so that they are consistent with the policies of the 2019 GP (*2019 GP, Chapter 1, Purpose and Definition, text*). The County's Comprehensive Plan serves as the framework for which ordinances and regulations are adopted and implemented for the physical development of land within the County, which is required by State law and supported by State case law (*RGP, Chapter 1, Policy and Regulatory Context, text*).

The RPA is divided into two areas: the Rural North Place Type, which generally coincides with AR-1 Zoning District, and the Rural South Place Type, which generally coincides with AR-2 Zoning District. The RPA is planned for rural economy uses and limited residential development. The Rural Residential policies of the 2019 GP call for limited development to protect the land resource for agricultural operations, rural

economy uses, and open space uses; minimize traffic impacts; and reduce the demand for additional public facilities and services (*2019 GP, Chapter 2, Rural Residential, Policy 2*). Where residential development does occur in the RPA, it should be designed to preserve the rural character, work with the land form to preserve and protect natural features, and conserve land for agriculture, equine uses, rural economy uses, passive recreation, and open space (*2019 GP, Chapter 2, Rural Residential, Strategy 2.1*).

The draft zoning text amendments to the cluster subdivision regulations in Article 2 (AR-1, AR-2) and Article 8, Definitions carry forward most of the current zoning provisions, with only slight changes to the design standards and the addition of requirements for the Preservation Farm Lot for originating tracts containing 5 or more acres of prime farmland. The addition of the requirement for the creation of a Preservation Farm Lot places an emphasis on the protection of agricultural soils and the utilization of the land for agricultural, horticulture, and animal husbandry uses on larger parcels within a cluster development.

The proposed provisions for the Preservation Farm Lot are in keeping with intent and purpose of the rural cluster as identified in the policies of the 2019 GP. The 2019 GP notes that rural cluster development better preserves the natural and open character of the land by tightly grouping homes on smaller lots so that the majority of the land is available for rural economy uses, agriculture and/or open space (*2019 GP, Chapter 2, Rural Residential, text*). The policies of the 2019 GP also call for an increase in farming activities to maintain the rural character of the RPA and to provide a source of farm products for local consumption (*2019 GP, Chapter 2, Rural Economy, Strategy 3.6, and Action 3.6.A*). The inclusion of the Preservation Farm Lot within rural clusters also supports the County's efforts to preserve and protect prime farmland and agricultural soils, recognizing their importance to the overall health of the rural economy and the contributions of working farms to the community (*2019 GP, Chapter 3, Prime Agricultural Soils, Strategy 3.2*). Community Planning Staff finds the draft zoning text amendments for the inclusion of the Preservation Farm Lot within the rural cluster is supported by the land use and environmental policies of the 2019 GP, which recognize the importance of prime agricultural soils and the contributions of working farms to the rural economy.

While the inclusion of the provisions for the Preservation Farm Lot addresses the Board's direction for the preservation of prime farmland soils and the County efforts to maintain and encourage working farms, the draft zoning text amendments do not capture all the other natural, environmental and heritage resources that may also contribute to the rural character of a cluster development. The 2019 GP Design Guidelines for rural cluster subdivision recommend a holistic approach to preserve the natural features and rural character of a site. The RPA Design Guidelines call for cluster subdivisions to be designed to use existing topography, hedgerows, mature woodlands, and other site features to influence the location of cluster developments

to maintain the rural and scenic quality of the landscape (*2019 GP, Appendix A, RPA Design Guidelines, Guideline 7a.*). Cluster developments should also retain large areas of agricultural soils for farming (*2019 GP, Appendix A, RPA Design Guidelines, Guideline 7b.*). Rural clusters should be sited within the landscape to minimize visibility from roadways and other properties while preserving suitable farmland (*2019 GP, Appendix A, RPA Design Guidelines, Guideline 4*). The proposed draft zoning text amendments to the cluster subdivision regulations include Advisory Cluster Subdivision Siting and Design Guidelines, which are non-binding “suggestions to cluster subdivision designers” which roughly correspond with the Design Guidelines for the RPA in the 2019 GP but provide no assurance that these natural, environmental, and heritage resources will be incorporated into the overall cluster design.

The policies of the 2019 GP support the adoption of regulations and zoning standards that implement a process for identifying natural, environmental, and heritage resources worthy of preservation and developing around those resources as part of all land development (*2019 GP, Chapter 3, Natural, Environmental, and Heritage Resources, Action 1.1C*). The proposed draft zoning language may inadvertently prioritize prime farmland soils over other natural, environmental, and heritage resources that contribute to the design of rural clusters. Such features may include mature forested areas, which have value for animal habitat and act as a visual backdrop to screen homes within the rural cluster. The integration of existing historic farmsteads into the layouts of cluster developments also contributes to the visual quality of property and provides a link to the County agricultural heritage. Community Planning Staff recommends that the draft zoning text amendments be amended to also include regulations and zoning standards that provide for the incorporation of natural, environmental, and heritage resources into the design of rural clusters, in conformance with policies of the 2019 GP.

The rural residential policies of the 2019 GP encourage the provision of publicly accessible and connected open space within the RPA (*2019 GP, Chapter 2, Rural Residential, Action 2.1.A*). The 2019 GP envisions a publicly accessible multi-use trail network (i.e., pedestrian, bicycle, and equestrian) to link private and public lands in the RPA in partnership with nonprofit entities, landowners, and developers of rural properties (*2019 GP, Chapter 2, Rural Residential, Action 3.2.E and Appendix A, RPA Design Guidelines, Guideline 6*). The design of the rural cluster subdivisions provides opportunities to incorporate these types of multi-use trail networks and to provide links other adjoining properties. These types of publicly accessible multi-use trail networks are particularly important to the County’s equestrian community, which is concentrated in the RPA. Community Planning Staff recommends that the draft zoning text amendments be revised to include provisions for the incorporation of multi-use trail networks into the design of cluster developments in conformance with the policies of the 2019 GP.

The Rural Economy policies of the 2019 GP support the development of agricultural rural businesses that are compatible in scale, use, intensity, and design with the rural environment, preserve large areas of land for agricultural and open space uses, and blend with the dominant rural character and adjacent use (*2019 GP, Chapter 2, Rural Economy, Strategy 3.1, and Action 3.1.A*). The draft zoning text amendments to the cluster subdivision regulations carry forward the majority of the Rural Economy Lot provisions and use list from the current zoning ordinance for the Cluster Subdivision option. Community Planning Staff is concerned with the number of permitted uses allowed on the Rural Economy Lot and the overall compatibility of some uses with adjoining residential uses within cluster subdivisions. Community Planning Staff recommends that the district use tables for the Rural Economy Lot be reevaluated to identify those uses currently permitted by-right that may generate increased traffic, noise, and light pollution that may adversely impact residents to assess their compatibility and appropriateness within the cluster development. In some instances, these rural business uses may be deemed inappropriate and/or better identified as permissible by Special Exception (SPEX) within the rural cluster. Requiring certain uses by SPEX would allow for a case-by-case evaluation of the proposed use through the County's legislative review process. The SPEX process would permit public comment on the application and help ensure the proposed scale and intensity of the use is compatible with surrounding residential uses and designed to blend with the character of the rural cluster. The SPEX process allows for conditions of approval by the Board to ensure that adequate buffering, screening, and infrastructure (i.e., roads, water, and wastewater) are provided to support the use within the cluster development.

RECOMMENDATION

Community Planning Staff in the review of the proposed draft zoning text amendments to the cluster subdivision regulations in Article 2 (AR-1, AR-2) and Article 8, Definitions finds that the provisions for the Preservation Farm Lot are in keeping with intent and purpose of the rural cluster as identified in the land use and environmental policies of the 2019 GP. However, Community Planning Staff has identified several site design issues that should be addressed to ensure conformance with the policies of the 2019 GP. Specifically, Community Planning Staff recommends that the draft zoning text amendments for the cluster subdivision incorporate the protection of natural, environmental, and heritage resources and connections to multi-use trail networks into the regulations and zoning standards for rural clusters. Community Planning Staff also recommends that the district use tables for the Rural Economy Lot be reevaluated to reconsider some uses currently permitted by-right that may generate increased traffic, noise, and light pollution; uses that may adversely impact residents should either be removed or be identified as SPEX uses to allow for a case-by-case evaluation of the proposed use through the County's legislative review process.

Community Planning Staff is available to meet with Zoning Administration Staff to discuss any comments or questions.

Cc: Randall Farren, AICP, Community Planning Program Manager (via e-mail)

Referral Agent	Division	ZO Section	Comment
Sauder	Natural Resources	Cluster Subdivision	Table 2-102: Recommend continuing category/column headings on each page for ease of reference, similar to Table 2-202
Sauder	Natural Resources	Cluster Subdivision	Tables 2-102 and 2-202: SWM facilities are listed as permitted only on Open Space Lots. However, while developers are discouraged from placing SWM facilities on residential lots, it may be necessary to do so in order to comply with the stormwater management regulations. In addition, certain types of BMPs tend to be placed on residential lots by nature (Impervious Area Disconnection, for example), and the Stormwater Ordinance specifically contemplates the potential for SWM facilities to be placed on residential lots.
Sauder	Natural Resources	Cluster Subdivision	Tables 2-102 and 2-202: Similar to above, easements and improvements for drainage are permitted only on Open Space Lots. Such easements and improvements may be and often are necessary in order to comply with the stormwater management regulations, even more frequently than stormwater management facilities.
Sauder	Natural Resources	Cluster Subdivision	Tables 2-102 and 2-202 and various places within the text, allow for certain uses, including agricultural activities, in Open Space Areas. Forest/Open Space areas that are permanently preserved (within a VRRM Land Cover Easement) for the purpose of complying with stormwater management regulations are subject to additional restrictions, including prohibition of agricultural activities. Recommend including a statement to that effect for clarity and consistency.
Sauder	Natural Resources	Cluster Subdivision	Sections 2-104(A)(5) and 2-204(A)(5) both require that HOAs maintain "any stormwater management facilities or areas." For consistency with the Codified Ordinance and the FSM, add, "...to the extent such facilities or areas are not maintained by the County pursuant to the Codified Ordinance."

Edmonds	Natural Resources	Cluster Subdivision	Table 2-102 - "Stormwater management facilities" - Concur with Ryan Sauder's comment that the state code allows stormwater management facilities/treatments to be located on residential lots and add that on larger lots, we have approved the use of sheet flow to conserved open space and/or the placement of VRRM (Virginia Runoff Reduction Method) easements to meet the technical criteria. If we desired to totally restrict the placement of structural BMPs and other stormwater treatment measures on residential lots, we would have to secure approval from DEQ (as a result of it representing a more stringent requirement) and then amend Chapter 1096.
Edmonds	Natural Resources	Cluster Subdivision	Table 2-102 - "Easements and improvements for drainage, access, sewer or water lines, or other public purposes" - Related to my previous comment, since stormwater management BMPs (which require storm drainage easements) and protective easements are allowed on residential lots, consideration should be give to expanding the "Permitted" designation.
Edmonds	Natural Resources	Cluster Subdivision	Sections 2-104(A)(5) and 2-204(A)(5) - Concur with Ryan Sauder's comment as requiring HOA to perform the maintenance for <u>all types</u> of stormwater management systems in these areas is not consistent with Section 1096.02 of the LCCO.
Dingus	Natural Resources	Prime Agricultural Soil Amendments	General Comment: Why is forestry excluded?
Hare	Natural Resources	Prime Agricultural Soil Amendments	General Comment: Will the emphasis on preservation of prime agricultural soils push development into areas that should otherwise be preserved, i.e. forested areas, wetlands, MDOD, RSCR, steep slopes.
Hare	Natural Resources	Prime Agricultural Soil Amendments	Lines 23-24 - Recommend clarifying if conference and training center uses must be specifically oriented to agricultural/rural economy uses.
Dougherty	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 Recommend the Use Category be included across the top of the table on all the sheets.
Dingus	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 Please clarify how forestry, commercial forestry and tree farms fall into these uses and add these into the table.
Hare	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 Define "agritainment"

Hare	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 Ag Support and Services Directly Related to On-going Ag: Clarify why a Commercial Nursery requires a special exception. Functionally they do not seem significantly different from farm markets or direct market businesses, and likely do not have the potential to generate significant traffic, noise, or other potential safety concerns that may be associated with some other permitted uses. Recommend that this be considered a permitted use, possibly with size limitations or controls on herbicide/pesticide use (if that is the concern)
Dingus	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 Clarify why there is no square footage requirement for a Commercial Nursery
Hare	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 Define "pet farm"
Hare	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 Clarify why Sawmill is only allowed by special exception use when other agricultural production facilities are allowed.
Hare	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 Recommend enforcement mechanism to ensure that Commercial Winery 20,000 SF or less and Limited Breweries permitted under Agriculture Support and Services Directly Related to On-going Agriculture, Horticulture and Animal Husbandry Activity, On-Site are indeed directly related to onsite agricultural activities (i.e. grain production, viticulture)
Dingus	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 Ag Support and and Services Not Directly Associated with On-Site Ag Activity - why does Commercial Nursery require a special exception and is not a permitted use? See previous comment regarding Commercial Nursery use for on-site ag uses.
Hare	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 The creation of wetlands mitigation banks involves land conversion which takes these lands out of agricultural production, essentially in perpetuity or the life of the bank. This is a potential conflict with the intent of the prime agricultural soil amendment to retain farmland and sustain the rural economy.
Dougherty	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 Group Living Convent or Monastery - how can it be both permitted but also require a special exception?
Hare	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 Clarify why Stormwater Management Facilities and Easements have been added. Do the easements account for VRRMs?
Dougherty	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 Conference and Training Centers: How can they be both permitted and require a special exception. Also, what kind of conference center or training facility is implied for this location? Need clarification.

Dingus	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 Office - Recommend adding forestry
Dingus	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 Recreation and Entertainment: Need definition of eco-tourism
Dingus	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 Recreation and Entertainment: Need definition of rural recreational establishment, outdoor
Hare	Natural Resources	Prime Agricultural Soil Amendments	Table 2-102 Utility. As a general comment, has solar energy production been considered during use discussions? Whether it is a small-scale array on individual lots or large-scale "solar farm".
Dougherty	Natural Resources	Prime Agricultural Soil Amendments	Line 479 2-103(C)(5)(b) Please clarify why these specific areas were called out?
Dingus	Natural Resources	Prime Agricultural Soil Amendments	Line 494 2-103(C)(5)(f) - Recommend adding forestry
Dingus	Natural Resources	Prime Agricultural Soil Amendments	Line 494 2-103(C)(6)(e) - Recommend adding forestry
Ronayne	Natural Resources	Prime Agricultural Soil Amendments	Line 622 2-103(8) - do not recommend reducing yard widths. Reducing yards correlates to reducing tree canopy on site.
Hare	Natural Resources	Prime Agricultural Soil Amendments	Line 690 2-103(C)(14)(a)&(b) recommend that this section specify that the Site Analysis Map and Preservation and Development Areas are scaled maps, legible for review purposes
Hare	Natural Resources	Prime Agricultural Soil Amendments	2-103(C)(15)(B) Lots and locations of building sites should also avoid other important natural resources, including but not limited to wetlands, streams, forested areas, environmental overlays, rare and threatened native plant communities, etc.
Hare	Natural Resources	Prime Agricultural Soil Amendments	2-103(C)(15)(f) Recommend that forest stands must be incorporated into the new cluster subdivision. Preservation of forest resources is equally important. Recommend removing the list of species at the end of this sentence so that the sentence ends after "Piedmont".
Dingus	Natural Resources	Prime Agricultural Soil Amendments	Line 731 2-103(C)(15)(f) Recommend "should be" be changed to "must"

Dingus	Natural Resources	Prime Agricultural Soil Amendments	Line 731 2-103(C)(15)(f) Recommend adding a bullet point about invasive species control during the development process, as this is a major concern in areas with prime soils. Adding invasive species control also eliminates the conflict with the FSM and the requirements of Tree Conservation Areas. Areas with high invasives do not meet the definition of Tree Conservation Areas. By not including this within the ZO, the ZO could be requiring areas of forest cover to be saved that could not be used to meet canopy as those areas would not meet the definition of Tree Conservation Area due to the invasive species.
Dingus	Natural Resources	Prime Agricultural Soil Amendments	Line 770 2-104€(1) add forestry
Hare	Natural Resources	Prime Agricultural Soil Amendments	Line 690 2-203(C)(14)(a)&(b) recommend that this section specify that the Site Analysis Map and Preservation and Development Areas are scaled maps, legible for review purposes
Dingus	Natural Resources	Prime Agricultural Soil Amendments	Line 825 2-200(d) add forestry
Hare	Natural Resources	Prime Agricultural Soil Amendments	Table 2-202 Repeat Comments from Table 2-102
Dougherty	Natural Resources	Prime Agricultural Soil Amendments	2-203(C)(3)(a)(iii) Just a comment that this is good
Dingus	Natural Resources	Prime Agricultural Soil Amendments	Line 1304 2-203(C)(5)(f) recommend adding forestry
Dingus	Natural Resources	Prime Agricultural Soil Amendments	Line 1406 2-203(C)(6)(b) recommend adding forestry
Ronayne	Natural Resources	Prime Agricultural Soil Amendments	Line 1428 2-203(C)(8) Do not recommend reducing yards as this generally results in a loss of canopy
Dougherty	Natural Resources	Prime Agricultural Soil Amendments	Line 1497 2-203(C)(14)(a) and (b) recommend that this section specify that the Site Analysis Map and Preservation and Development Areas are scaled maps, legible for review purposes
Hare	Natural Resources	Prime Agricultural Soil Amendments	2-203(C)(15)(B) Lots and locations of building sites should also avoid other important natural resources, including but not limited to wetlands, streams, forested areas, environmental overlays, rare and threatened native plant communities, etc.

Hare	Natural Resources	Prime Agricultural Soil Amendments	2-203(C)(15)(f) Recommend that forest stands must be incorporated into the new cluster subdivision. Preservation of forest resources is equally important. Recommend removing the list of species at the end of this sentence and ending the sentence at "Piedmont".
Hare	Natural Resources	Prime Agricultural Soil Amendments	2-203(C) Recommend adding a bullet point about invasive species control during the development process, as this is a major concern in areas with prime soils. Adding invasive species control also eliminates the conflict with the FSM and the requirements of Tree Conservation Areas. Areas with high invasives do not meet the definition of Tree Conservation Areas. By not including this within the ZO, the ZO could be requiring areas of forest cover to be saved that could not be used to meet canopy as those areas would not meet the definition of Tree Conservation Area due to the invasive species.
Dingus	Natural Resources	Prime Agricultural Soil Amendments	Article 8 Definitions Line 4 add "forestry" to agricultural and/or horticultural uses.

Article 2 and Article 8

Referral Agent	Division	ZO Section	Comment
T. Stein	Zoning Permits	Article 8	<i>Agriculture Support and Services Not Directly Associated with On-Site Agricultural Activity</i> a term used is "agri-education". Provide a definition or give examples of what qualifies, as opposed to "agritainment".
T. Stein	Zoning Permits	Article 8	<i>Perservation Farm Lot</i> -Capitalize "cluster subdivision" and "prime farmland soils" since they are defined terms. On line 12, if "secondary use" is meant to be accessory simply use the term, otherwise provide a definition of "secondary use".
T. Stein	Zoning Permits	Article 8	<i>Prime Farmland Soils</i> - delete "Prime Farmland is..." on line 14 and change to "Land that is defined by...". Definitions typically do not include the word/phrase being defined. Capitalize the defined term on line 20 and 23 and add "soils". How accurate is the County's identification of Prime Farmland Soils? Can its status change? If there could be contradictory information from USDA-NRCS provide a method to submit a change to the mapping system.
T. Stein	Zoning Permits	Article 8	<i>Rural Economy Uses</i> - the definition is quite broad and subjective. Recommend describing how such use is "dependent on rural land base". Provide examples.
R. Dunbar	Land Planning	Article 8	Does Article 8 contain a definition for tract of land? The ZO currently defines originating tract. Is tract of land the same as an originating tract?
R. Dunbar	Land Planning	Article 8	Line 33: As previously noted, recommend deleting the word "cluster" and retaining the current "Rural Economy Lot" name. Not only will adding the word "cluster" confuse people as to the type/purpose of the lot, but "rural Economy Lots" are a required component of the Principle/Subordinate Subdivision Option. Making this change would necessitate the creation of an additional lot type- Rural Economy Lot- for the Principle Subordinate Option subdivision process.
T. Stein	Zoning Permits	Section 2-101(A) and overall	Suggest capitalizing defined terms to set apart from combination of words that have no particular meaning under the Zoning Ordinance. There is an inconsistent use of capitalizing defined terms. Further, generall speaking, ensure that the use of numbers is consistent with over revisions being made with ZOAM-2020-0001, Zoning Ordinance Rewrite.
R. Dunbar	Land Planning	2-101(D)	Parenthesis are provided for in line 2 that are not needed "...., including (agriculture, horticulture and animal husbandy),..."

R. Dunbar	Land Planning	Table 2-102	In Park and Open Space Category, there is a limit of neighborhood playground in OSL. Suggest addition of "only" as written in the use above for consistency. Otherwise, it suggests there is a difference.
R. Dunbar	Land Planning	Table 2-102	Clarify if "Stormwater management facilities" is the same as "Stormwater Management Improvements" found in Article 8, Definitions. If the terms are not the same, provide a definition that distinguishes the two so there is no confusion. The proposed use "Stormwater management facilities" is only allowed in Open Space Lots (OPL). What is the rationale for the limits of the use. Wouldn't it be appropriate to allow in other areas such as "principal/subordinate option"?
R. Dunbar	Land Planning	Table 2-102	The proposed use "Easements and improvements for drainage, access, sewer or water lines, or other public purposes" is also narrowly allowed. Recommend a broader allowance, even if through the special exception process.
R. Dunbar	Land Planning	Table 2-102 (page 4)	Table 2-102 header: Delete the "s" from the end of "OSL = Open Space Lots". None of the other lot types are plural, so this one should not be. Alternatively, add an "s" to all lot types to make them all plural.
R. Dunbar	Land Planning	Table 2-102 (page 4)	Table 2-102 header: The word "Lot" should be added to the end of both "BDO = Base Density Option" and "PSO = Principal/Subordinate Option". This is a use table indicating permitted uses on six different types of lots and the names of the other four all end in "lot", therefore, these two should also end in "lot".
R. Dunbar	Land Planning	Table 2-102 (page 4)	Table 2-102 header: Delete the word "cluster" from "REL = Rural Economy Cluster Lot". Adding the word "cluster" to the name Rural Economy Lot is confusing and will lead to people thinking that they are normal cluster lots. Additionally, Rural Economy Lots are a required component of the Principle/Subordinate Subdivision Option [see RZO 2-103(B)(2)(i) and 2-103(B)(4)(a)] and as such, should not include the word "cluster" in their name unless two separate types of "Rural Economy Lots" are going to be defined.
R. Dunbar	Land Planning	Table 2-102 (page 8)	Public and Institutional Uses, Utility Category: <i>Easements and improvements for drainage, access, sewer or water lines, or other public purposes</i> : Currently this use is only being proposed to be permitted on open space lots. Would this restrict the creation of drainage, water, sewer, road, fire protection tank, etc., easements on lots other than open space lots? Why are we attempting to regulate what easements may or may not be created on private buildable lots?

R. Dunbar	Land Planning	2-103(C)	Is it the intent of the cluster subdivision option to require the preservation of prime soils for agricultural purposes? If so, should subsection (C) be worded "...residential design that MAY include one or more lots containing prime farmland soils...." or should "may" be revised to "shall"?
R. Dunbar	Land Planning	2-103(C)	Lines 278-281: Residential Cluster Lots need to be added to this section. As currently written, Residential Cluster Lots don't seem to be listed as a permitted component of the cluster subdivision option.
R. Dunbar	Land Planning	2-103(C)(2)(a)	This subsection refers to originating tract while 2-103(C) refers to tract of land.
R. Dunbar	Land Planning	2-103(C)(2)(a)	This subsection is somewhat confusing. It states that one or more Residential cluster lots may be created. Isn't the intent of this subdivision option to create more than one residential cluster lot? How can one residential lot be considered a cluster?
R. Dunbar	Land Planning	2-103(C)(2)(b)	This subsection again refers to originating tract.
R. Dunbar	Land Planning	2-103(C)(2)(d) general	Is the change from "shall" to "must" necessary? "Shall" is more definitive and assertive than "must."
R. Dunbar	Land Planning	2-103(C)(2)(d)	Lines 305-309: This section should be revised to also make clear how boundary line adjustments between one or more lots located within a cluster subdivision and one or more lots outside of the cluster subdivision are handled. We have had people ask about this in the past.
R. Dunbar	Land Planning	2-103(C)(2)(h)	This subsection again refers to originating tract. In addition, "the" is missing between "...land area of..." and "originating tract..."
R. Dunbar	Land Planning	2-103(C)(2)(h)	This subsection states that the "... originating tract being subdivided may be compromised..." Using the word "may" implies that an applicant does not have to follow the proceeding requirements. Is that the intent of this subsection? If not, "may" should be revised to "shall" or "must."
R. Dunbar	Land Planning	2-103(C)(2)(h)	Line 322: Add the words "types of lots" to the end of this section so that it reads "...may be comprised of the following types of lots:"
R. Dunbar	Land Planning	2-103(C)(2)(h)	Line 328: The name "Rural Economy Cluster Lot" is going to confuse people. They will think they are regular cluster lots when they are not. We strongly recommend deleting the word "cluster". Also, see the above comment for Table 2-102 regarding this issue and the fact the Rural Economy Lots are a required component of Principle/Subordinate Subdivisions.
T. Stein	Zoning Permits	2-103(C)(2)(iii)	On line 330, if Open Space refers to Open Space Lot, use the full term.

R. Dunbar	Land Planning	2-103(C)(3)(a)	Lines 340-341: Are we calling these "groups" or "clusters"? Line 340 calls them "groups", but the rest of this section refers to them as "clusters". This needs to be revised to use a single term consistently.
R. Dunbar	Land Planning	2-103(C)(3)(a)	Line 343: What is the intent of decreasing the maximum cluster/group size from 25 to 15? This couple potentially fragment the developed area over a larger portion of the site and require more infrastructure and larger environmental impacts.
R. Dunbar	Land Planning	2-103(C)(3)(c)	This subsection states that "...lots is to be created from a parcel..." To maintain conformity with Article 2, should "parcel" be revised to "originating tract?"
R. Dunbar	Land Planning	2-103(C)(3)(f)	The redline edit is not clear. Is the maximum lot coverage 15%?
R. Dunbar	Land Planning	2-103(C)(4)	This subsection is in direct conflict with the wording provided in 2-103(C)(2)(h) as that subsection states that the applicant "may" provide, and does not require the creation of a Preservation Farm Lot.
R. Dunbar	Land Planning	2-103(C)(4)	Lines 397-399: Revise this section to clarify if Preservation Farm Lots are permitted in cluster subdivisions that contain less than 5 acres of prime farmland soils (or none at all).
R. Dunbar	Land Planning	2-103(C)(4)(a)	Lines 403-404: These lines don't make sense. Is it trying to say that the data must come from the Soils layer in our GIS? If so, that should be more clearly stated.
R. Dunbar	Land Planning	2-103(C)(4)(a)(i)	Lines 411-413: The current text is unclear. We recommend replacing the current text with "the initial submission of any Cluster Subdivision application, in accordance with Chapter 6.130 of the FSM". Alternatively, it could say "AR Cluster Subdivision" to make it more clear that it's just for this section.
R. Dunbar	Land Planning	2-103(C)(4)(a)(ii)	Line 417: In line 417, replace the words "is created" with the words "is being created".
R. Dunbar	Land Planning	2-103(C)(4)(a)(iii)	Lines 422-425: This phrasing is clumsy. We recommend rephrasing these lines to "needed, to supplement the Preliminary Soils Review and assist in determining the locations of the prime farmland soils for the tract of land from which the subdivision is being created".
R. Dunbar	Land Planning	2-103(C)(4)(a)(iii)	This subsection states that "...soils for the tract of land..." To maintain conformity with Article 2, should "parcel" be revised to "originating tract?"

R. Dunbar	Land Planning	2-103(C)(4)(a)(iv)	Lines 426-429: The intent of this requirement is somewhat unclear, both because this statement has to do with Class III and IV soils (not specifically agricultural soils) and also because it's unclear if it is referring to just the "Soils Map Certification" note, or the note plus other required information (soils map, etc.). It may be more clear to simply state that the subdivision plat must include an exhibit sheet containing a soils map, which shall be updated to reflect the approved Preliminary Soils Review, once available.
R. Dunbar	Land Planning	2-103(C)(4)(a)(iv)	Should this soil certification be required regardless of the status of the preliminary soils report? The way this section could be interpreted is that once the preliminary soils report is complete, the certification could be removed from the plat.
R. Dunbar	Land Planning	2-103(C)(4)(b)	Lines 438-445: This entire paragraph is very confusing. Lines 437 and 438 are talking about the minimum amount of prime farmland soils that are required to be located on a preservation farm lot, but then in the same sentence, the end of line 438 and line 439 appear to say that 50% of the entire originating tract must be in the preservation farm lot (or all of the prime soils). That has nothing to do with the beginning of the sentence that indicated it was telling you the minimum amount of prime farmland soils required. This needs to be restated to be more clear. Additionally, this seems to prohibit the creation of more than one Preservation Farm Lot as it states that it's the minimum amount "required to be located on a preservation farm lot". In this context, the "a" implies a singular lot.
R. Dunbar	Land Planning	2-103(C)(4)(b)	Lines 443-445: Why does this section state that "The minimum amount of prime farmland soils on the preservation farm lot excludes areas of prime farmland soil used for a dwelling, driveway, drainfield and well"? Is there some type of required tabulation or minimum percentage that necessitates this information? If this information is needed, then this sentence should be revised to clarify whether or not the land immediately around these excluded uses is also excluded. For example, there are required setbacks from wells and drainfields and people typically have decks, patios, garages, playsets, pools, etc. in close proximity to their homes, many of which may be located in the same prime soils as the house.
T. Stein	Zoning Permits	2-103(C)(4)(b) and (C)(5)(e)	Again, use terms consistently and capitalize. Line 491, Rural Economy Cluster Lots , as well as (f).
R. Dunbar	Land Planning	2-103(C)(4)(d)	Line 447: There is no sub-paragraph "c". It goes directly from sub-paragraph "b" (line 435) to sub-paragraph "d" (line 447). Please correct the pagination.

R. Dunbar	Land Planning	2-103(C)(4)(d)	Lines 447-450: Are these lots required to be buildable? What if the area of prime farmland soils is mostly on an adjoining property but a few thousand square feet come on to the property being developed?
R. Dunbar	Land Planning	2-103(C)(4)(i)	Lines 460-465: Confirm with County Attorney's Office that we can legally require and enforce this on by-right development. What if these covenants are required by a lender or already exist on the site?
R. Dunbar	Land Planning	2-103(C)(5)(a)(ii)	Lines 474-478: This phrasing is awkward. We recommend revising it to "...is less than 100 acres in size and contains less than 5 acres of prime farmland soils." Since cluster subdivisions with less than 5 acres of prime farmland soils do not require a Preservation Farm Lot, there is no need to restate that in this sentence.
R. Dunbar	Land Planning	2-103(C)(5)(f)	Lines 494-500: Confirm with County Attorney's Office that we can legally require and enforce this on by-right development. What if these covenants are required by a lender or already exist on the site?
R. Dunbar	Land Planning	2-103(C)(5)(m)	Staff is concerned that removing the length/width ratio requirement will result in the creation of lots that do not conform to the ZO.
R. Dunbar	Land Planning	2-103(C)(6)	Line 506: We recommend revising line 506 to "owned and maintained by a Homeowner's Association...". This would clarify that the land cannot be owned privately.
R. Dunbar	Land Planning	2-103(C)(6)	Lines 507-508: Does this mean that only a single open space parcel is permitted? It is not uncommon for there to be engineering or geographic reasons that necessitate multiple open space parcels. Additionally, small open space parcels are frequently created to accommodate required rural fire protection tanks, which are sometimes located in the middle of clusters. These tanks generally are not located on private lots, but instead on common parcels owned by the HOA.
R. Dunbar	Land Planning	2-103(C)(6)(e)	Line 600: This should be sub-paragraph "c", not "e". Please correct the pagination.
R. Dunbar	Land Planning	2-103(C)(6)(e)	Lines 600-606: Confirm with County Attorney's Office that we can legally require and enforce this on by-right development. What if these covenants are required by a lender or already exist on the site?
R. Dunbar	Land Planning	2-103(C)(7)(b)	Lines 616-620: Please note, the perimeter setback currently applies to all residential structures on all types of lots. The proposed change (lines 617 and 618) means that it will only apply to the Residential Cluster Lots, not the Rural Economy Cluster Lots or Preservation Farm Lots. Is this the intent?

R. Dunbar	Land Planning	2-103(C)(10)	Lines 629-636: This text does not allow for the use of central water service. This has recently become an issue in the Landfill Water Service Area, an area where central water was extended into the transition and rural policy areas and wells are not permitted due to groundwater contamination from the landfill. This text should be revised to address this discrepancy. The landfill water service area is a defined term in Article 8 of the RZO.
R. Dunbar	Land Planning	2-103(C)(14)	Staff is unsure if a required Pre-Submission meeting would be helpful and could potentially be a burden to both staff and applicant. This would also require revisions to the FSM and potentially the LandMARC project.
R. Dunbar	Land Planning	2-104(E)(1)	Lines 776-783: Confirm with County Attorney's Office that we can legally require and enforce this on by-right development. What if these covenants are required by a lender or already exist on the site?
T. Stein	Zoning Permits	Table 2-202	In the Park and Open Space Category passive recreation is "Limited to neighborhood only in..." however in the next use "only" is missing. Recommend consistency in the use of terms, capitalization, etc.
T. Stein	Zoning Permits	Table 2-202	As with the AR-1 zoning district, the term used is "Stormwater management facilities" while the definition is "Stormwater Management Improvements". Inconsistent use of terms is a distraction and leads the reader to assume a different definition applies. Further, the use of such facilities should be allowed in more subdistricts.
R. Dunbar	Land Planning	Table 2-202	Table 2-202 header: Delete the "s" from the end of "OSL = Open Space Lots". None of the other lot types are plural, so this one should not be. Alternatively, add an "s" to all lot types to make them all plural.
R. Dunbar	Land Planning	Table 2-202	Table 2-202 header: The word "Lot" should be added to the end of both "BDO = Base Density Option" and "PSO = Principal/Subordinate Option". This is a use table indicating permitted uses on six different types of lots and the names of the other four all end in "lot", therefore, these two should also end in "lot".
R. Dunbar	Land Planning	Table 2-202	Table 2-202 header: Delete the word "cluster" from "REL = Rural Economy Cluster Lot". Adding the word "cluster" to the name Rural Economy Lot is confusing and will lead to people thinking that they are normal cluster lots. Additionally, Rural Economy Lots are a required component of the Principle/Subordinate Subdivision Option [see RZO 2-103(B)(2)(i) and 2-103(B)(4)(a)] and as such, should not include the word "cluster" in their name unless two separate types of "Rural Economy Lots" are going to be defined.

R. Dunbar	Land Planning	Table 2-202	Public and Institutional Uses, Utility Category, Easements and improvements for drainage, access, sewer or water lines, or other public purposes. Currently this use is only being proposed to be permitted on an open space lot. Would this restrict the creation of drainage, water, sewer, road, fire protection tank, etc., easements over any lots other than open space lots? Why are we attempting to regulate what easements may or may not be created on private buildable lots?
T. Stein	Zoning Permits	2-202(C)(4)	Line 1205, use numbers consistently. In other places the spelling of the number is eliminated in favor of the number alone. Here, it is both spelled and enumerated. See line 469, 622, 929
R. Dunbar	Land Planning	2-203(C)	This subsection refers to a tract of land. This reference should be revised to originating tract to maintain conformance with previously referenced subsections.
R. Dunbar	Land Planning	2-203(C)	Lines 1090-1093: Residential Cluster Lots need to be added to this section. As currently written, Residential Cluster Lots don't seem to be listed as a permitted component of the cluster subdivision option.
R. Dunbar	Land Planning	2-203(C)(1)(a)	This subsection refers to a tract of land. This reference should be revised to originating tract to maintain conformance with previously referenced subsections.
R. Dunbar	Land Planning	2-203(C)(2)(a)	This subsection refers to "tract being subdivided." This reference should be revised to originating tract to maintain conformance with previously referenced subsections.
R. Dunbar	Land Planning	2-203(C)(2)(d)	Is the change from "shall" to "must" necessary? "Shall" is more definitive and assertive than "must."
R. Dunbar	Land Planning	2-203(C)(2)(d)	Lines 1115-1120: This section should be revised to also make clear how boundary line adjustments between one or more lots located within a cluster subdivision and one or more lots outside of the cluster subdivision are handled. We have had people ask about this in the past.
R. Dunbar	Land Planning	2-203(C)(2)(h)	This subsection states that the "... originating tract being subdivided may be compromised..." Using the word "may" imparts that an applicant does not have to follow the proceeding requirements. Is that the intent of this subsection? If not, "may" should be revised to "shall."
R. Dunbar	Land Planning	2-203(C)(2)(h)	Line 1132: Add the words "types of lots" to the end of this section so that it reads "...may be comprised of the following types of lots:"

R. Dunbar	Land Planning	2-203(C)(2)(h)(ii)	Line 1137: The name "Rural Economy Cluster Lot" is going to confuse people. They will think they are regular cluster lots when they are not. We strongly recommend deleting the word "cluster". Also, see the above comment for Table 2-102 regarding this issue and the fact the Rural Economy Lots are a required component of Principle/Subordinate Subdivisions.
R. Dunbar	Land Planning	2-203(C)(3)	Is the change from "shall" to "must" necessary? "Shall" is more definitive and assertive than "must."
R. Dunbar	Land Planning	2-203(C)(3)(a)	Is the change from "shall" to "must" necessary? "Shall" is more definitive and assertive than "must."
R. Dunbar	Land Planning	2-203(C)(3)(a)	Lines 1146-1147: Are we calling these "groups" or "clusters"? Line 1146 calls them "groups", but the rest of this section refers to them as "clusters". This needs to be revised to use a single term consistently.
R. Dunbar	Land Planning	2-203(C)(3)(a)	Line 1149: What is the intent of decreasing the maximum cluster/group size from 25 to 15? This couple potentially fragment the developed area over a larger portion of the site and require more infrastructure and larger environmental impacts.
R. Dunbar	Land Planning	2-203(C)(3)(c)	Is the change from "shall" to "must" necessary? "Shall" is more definitive and assertive than "must."
R. Dunbar	Land Planning	2-203(C)(4)	Should this soil certification be required regardless of the status of the preliminary soils report? The way this section could be interpreted is that once the preliminary soils report is complete, the certification could be removed from the plat.
R. Dunbar	Land Planning	2-203(C)(4)	Lines 1204-1207: Revise this section to clarify if Preservation Farm Lots are permitted in cluster subdivisions that contain less than 5 acres of prime farmland soils (or none at all).
R. Dunbar	Land Planning	2-203(C)(4)(a)	Lines 1211-1213: These lines don't make sense. Is it trying to say that the data must come from the Soils layer in our GIS??? If so, that should be more clearly stated.
R. Dunbar	Land Planning	2-203(C)(4)(a)(i)	Lines 1219-1221: The current text is unclear. We recommend replacing the current text with "the initial submission of any Cluster Subdivision application, in accordance with Chapter 6.130 of the FSM". Alternatively, it could say "AR Cluster Subdivision" to make it more clear that it's just for this section.
R. Dunbar	Land Planning	2-203(C)(4)(a)(ii)	Line 1225: In line 1225, replace the words "is created" with the words "is being created".

R. Dunbar	Land Planning	2-203(C)(4)(a)(iii)	Lines 1230-1233: This phrasing is clumsy. We recommend rephrasing these lines to “needed, to supplement the Preliminary Soils Review and assist in determining the locations of the prime farmland soils for the tract of land from which the subdivision is being created”.
R. Dunbar	Land Planning	2-203(C)(4)(a)(iv)	Lines 1234-1237: The intent of this requirement is somewhat unclear, both because this statement has to do with Class III and IV soils (not specifically agricultural soils) and also because it’s unclear if it is referring to just the “Soils Map Certification” note, or the note plus other required information (soils map, etc.). It may be more clear to simply state that the subdivision plat must include an exhibit sheet containing a soils map, which shall be updated to reflect the approved Preliminary Soils Review, once available.
R. Dunbar	Land Planning	2-203(C)(4)(b)	This subsection is very confusing and doesn't make sense.
R. Dunbar	Land Planning	2-203(C)(4)(b)	Lines 1246-1253: This entire paragraph is very confusing. It talks about the minimum amount of prime farmland soils that are required to be located on a preservation farm lot, but then in the same sentence appears to say that 50% of the entire originating tract must be in the preservation farm lot (or all of the prime soils). That has nothing to do with the beginning of the sentence that indicated it was telling you the minimum amount of prime farmland soils required. This needs to be restated to be more clear. Additionally, this seems to prohibit the creation of more than one Preservation Farm Lot as it states that it’s the minimum amount “required to be located on a preservation farm lot”. In this context, the “a” implies a singular lot.
R. Dunbar	Land Planning	2-203(C)(4)(b)	Lines 1251-1253: Why does this section state that “The minimum amount of prime farmland soils on the preservation farm lot excludes areas of prime farmland soil used for a dwelling, driveway, drainfield and well”? Is there some type of required tabulation or minimum percentage that necessitates this information? If this information is needed, then this sentence should be revised to clarify whether or not the land immediately around these excluded uses is also excluded. For example, there are required setbacks from wells and drainfields and people typically have decks, patios, garages, playsets, pools, etc. in close proximity to their homes, many of which may be located in the same prime soils as the house.
R. Dunbar	Land Planning	2-203(C)(4)(d)	Lines 1254-1257: Are these lots required to be buildable? What if the area of prime farmland soils is mostly on an adjoining property but a few thousand square feet come on to the property being developed?

R. Dunbar	Land Planning	2-203(C)(4)(i)	Lines 1270-1275: Confirm with County Attorney's Office that we can legally require and enforce this on by-right development. What if these covenants are required by a lender or already exist on the site?
R. Dunbar	Land Planning	2-203(C)(5)	Line 1278: Why is "cluster" being added to the name? This is going to greatly confuse people as they are going to think these are regular cluster lots. We strongly advise retaining the name "Rural Economy Lot" as is. In addition, be aware that Rural Economy Lots are a required component of Principle/Subordinate Subdivisions.
R. Dunbar	Land Planning	2-203(C)(5)(a)	Is the change from "shall" to "must" necessary? "Shall" is more definitive and assertive than "must."
R. Dunbar	Land Planning	2-203(C)(5)(a)(ii)	Lines 1284-1288: This phrasing is awkward. We recommend revising it to "...is less than 100 acres in size and contains less than 5 acres of prime farmland soils." Since cluster subdivisions with less than 5 acres of prime farmland soils do not require a Preservation Farm Lot, there is no need to restate that in this sentence.
R. Dunbar	Land Planning	2-203(C)(5)(f)	Lines 1304-1310: Confirm with County Attorney's Office that we can legally require and enforce this on by-right development. What if these covenants are required by a lender or already exist on the site?
R. Dunbar	Land Planning	2-203(C)(5)(k)	Staff is concerned that removing the length/width ratio requirement will result in the creation of lots that do not conform to the ZO.
R. Dunbar	Land Planning	2-203(C)(6)	Is the change from "shall" to "must" necessary? "Shall" is more definitive and assertive than "must."
R. Dunbar	Land Planning	2-203(C)(6)	Line 1315: We recommend revising line 1315 to "owned and maintained by a Homeowner's Association...". This would clarify that the land cannot be owned privately.
R. Dunbar	Land Planning	2-203(C)(6)	Lines 1316-1317: Does this mean that only a single open space parcel is permitted? It is not uncommon for there to be engineering or geographic reasons that necessitate multiple open space parcels. Additionally, small open space parcels are frequently created to accommodate required rural fire protection tanks, which are sometimes located in the middle of clusters. These tanks generally are not located on private lots, but instead on common parcels owned by the HOA.
R. Dunbar	Land Planning	2-203(C)(6)(c)	Line 1406: This sub-paragraph is indented to far. Please correct the pagination.
R. Dunbar	Land Planning	2-203(C)(6)(e)	Lines 1406-1413: Confirm with County Attorney's Office that we can legally require and enforce this on by-right development. What if these covenants are required by a lender or already exist on the site?

R. Dunbar	Land Planning	2-203(C)(10)	Lines 1436-1443: This text does not allow for the use of central water service. This has recently become an issue in the Landfill Water Service Area, an area where central water was extended into the transition and rural policy areas and wells are not permitted due to groundwater contamination from the landfill. This text should be revised to address this discrepancy. The landfill water service area is a defined term in Article 8 of the RZO.
R. Dunbar	Land Planning	2-203(C)(14)	Staff is unsure if a required Pre-Submission meeting would be helpful and could potentially be a burden to both staff and applicant. This would also require revisions to the FSM and potentially the LandMARC project.
R. Dunbar	Land Planning	2-204(E)(1)	Lines 1586-1592: Confirm with County Attorney's Office that we can legally require and enforce this on by-right development. What if these covenants are required by a lender or already exist on the site?

From: dbmcpa@aol.com
To: [Randall, Phyllis](#); [Buffington, Tony](#); [Saines, Koran](#); [Briskman, Juli](#); [Turner, Mike](#); [Glass, Sylvia](#); [Kershner, Caleb](#); [Letourneau, Matt](#); [Umstatt, Kristen](#); [Hambrick, Jacob](#); [Stultz, Mark](#); [Lohr, Michelle](#)
Subject: [EXTERNAL] 2021 Conservation Easement Data/Prime Soils Initiative
Date: Friday, January 14, 2022 10:04:11 AM

Staff & Members of the Loudoun Board,

In 2021, a total of 3,521 acres were permanently protected by conservation easements in Western Loudoun, comprised of:

AR-1 acreage 2,858

AR-2 acreage 663

(Source of information is deeds also verified with Land Trusts.)

2,600 acres were preserved in Loudoun in 2020. This is more than nine square miles permanently protected in the last two years. The conservation easement program is making a significant impact on Western Loudoun County bolstered primarily by the zoning that is currently in place which makes easements economically viable. I am aware of a number of significant conservation easements being considered for 2022 based on the current zoning and appraised values of the donations.

Permanent conservation easements are the best way to protect Western Loudoun.

The prime soils initiative will be detrimental to conservation easements being recorded in Loudoun by adding additional unneeded restrictions and reducing land values. I ask that the staff and members of the board carefully consider this consequence before passing any changes to zoning that may reduce the appraised values of conservation easements.

I would encourage the board to promote voluntary conservation easements and re-establish the Purchase of Development Rights Program in Loudoun.

Respectfully,

D. Brook Middleton, CPA
Virginia Easement Exchange, LLC
540 364 8071

Language in this staff Draft	Farm Bureau's comments
<p>276(C) Cluster Subdivision Option. The Cluster Subdivision Option allows for the subdivision of a tract of land with a more compact residential design plus that may include one or more large lots containing prime farmland soils suitable for rural farming activities., one or more lots suitable for other rural economy uses, and/or common open space.</p>	<p>The word may is inappropriate if the intent of this ZOAM is as stated is truly to preserve prime agricultural soils. "It MUST contain" serves the purpose.</p> <p>Also the intent of this option is to allow for housing density giving the landowner value for his land, yes, but it is also intended to promote the preservation of prime agricultural soils as we have thus far failed to do. Why is this not clearly stated right here?</p> <p>Language should say: Must include one large lot containing 80% of the available prime soils and other soils allowing for one contiguous preserved property</p>
<p>283 (1) General Requirements. (a) Minimum Development Acreage. The Cluster Subdivision Option is permitted for a tract of land consisting of a minimum of 20 acres prior to development.</p>	<p>This the AR1 Base density, allowing subdivision below the base density for the entire subdivision, with no lots larger than 20 acres is counter to the goal of preservation.</p>
<p>(b) Lot Yield The maximum lot yield shall be 1 lot per 5 acres.</p>	<p>Subordinate to the preservation of 80% prime ag soils</p>
<p>(2) Characteristics of Cluster Subdivision Option.</p>	
<p>(a) Depending on the tract size and characteristics of the originating tract being subdivided, the cluster subdivision may include one or more Residential Cluster Lots, Preservation Farm Lot(s) Rural Economy Lots, and/or Open Space Lots.</p>	<p>The rural residential cluster lot groupings should be one total grouping, not multiple and may contain some non prime agricultural soils as well.</p> <p>Preservation Farm lots were intended to replace Rural Economy lots, as is appropriate, this idea first proposed by Farm Bureau, was never intended to add another optional development category.</p>

	<p>If there is no REQUIREMENT for preservation farm lot what is the point of all of this? How will this improve our current position? This must be a requirement.</p>
<p>(b) The lot yield of the cluster subdivision shall be calculated from the gross acreage for the originating tract of land from which the subdivision is created.</p>	<p>The (potential) lot yield following the protection of prime ag soils is better calculated with the rocky regions and steep slopes already removed as was originally proposed by farm bureau and several other stakeholders.</p>
<p>(c) All lots within the cluster subdivision shall be created at one time.</p>	<p>Lot creating or home being built?</p>
<p>(d) The lots created by cluster subdivision must not be further subdivided. However, boundary line adjustments may be permitted between those lots within the cluster subdivision if all other requirements of the cluster subdivision option are maintained.</p>	<p>The Preservation Farm Lot should be placed into permanent Ag easement at the time of its creation to assure no further subdivision regardless of changes in zoning policy.</p>
<p>(e) A Homeowners' Association is required for any subdivision with common elements as described in Section 2-104.</p>	
<p>(f) Each preliminary and record plat for a cluster subdivision shall contain a tabulation of lot yield for the cluster subdivision.</p>	
<p>(g) The perimeter setback required in Section 2-103(C)(7) shall be indicated and clearly labeled on each preliminary and record plat.</p>	
<p>(h) A minimum of 70% of the gross land area of the development originating tract being subdivided may be comprised of the following: (i) One or more Preservation Farm Lot(s), and containing a minimum amount of Prime Farmland Soils of the originating tract as specified in Table 2-103(C)(4) below; (ii) One or more Rural Economy Cluster Lot(s); (iii) Open Space.</p>	<p>Any land used for septic or cluster lot wells shall not be counted towards the open space calculation unless the clustered lots are village style on minimal lots, then utilizing an open space parcel would be appropriate. The Preservation Farm Lot should contain at least 80% of gross prime farmland soils on the originating parcel and there should only be ONE preservation lot, not multiple. Justification being that we already have plenty of 5-10-15 acre lots in AR-1, and we do not need to "create" more of them under the guise of "preserving" prime ag</p>

	<p>soils. We need to preserve the larger contiguous parcels with good quality soil. Farm bureau and other stakeholders have spoken at length on this issue.</p> <p>The Rural Economy lot is not necessary and should not be part of this zoning amendment as there are many lots available outside of cluster subdivisions in the rural policy area that can better accommodate the proposed uses for this lot type.</p> <p>Open space needs to have an upper limit set and should be a % of the total land appropriate to the necessity for common roads and utilities.</p>
334 (3) Lot standards Requirements for Residential Cluster Lots. The site layout of the proposed development must occur in conjunction with preliminary subdivision plat review. Development of the cluster option must comply with all of the following standards, in addition to the LSDO:	
<p>(a) Number of Residential Cluster Lots in a Group. Rural Residential Cluster Lots must be grouped in clusters consisting of a minimum of 5 lots and a maximum of 15 lots, except that a cluster may consist of fewer than 5 lots if any one of the following applies:</p> <p>(i) There will be fewer than 5 lots in the entire subdivision.</p> <p>(ii) In the AR -1 district, The area of the site is less than 50 acres.</p> <p>(iii) It is demonstrated that a cluster of fewer than 5 lots will result in more contiguous land designated for Preservation Farm Lots, and/or more preserved prime farmland soils, or result in less disturbance of land within the Mountainside Development Overlay District (MDOD), Floodplain Overlay District (FOD) lands, and/or land containing steep slopes and/or wetlands.</p>	<p>Why was a 25 lot minimum altered to now be 15? What is the justification for this? Why is there any limit at all? Setting a limit and create multiple cluster groupings only harms the stated goals of preserving farmland and maintaining the rural character of the RPA as the residents have indicated so many times they want maintained.</p> <p>If not enough land exists to create more than 5 cluster lots is it appropriate to allow the cluster option with the exception of a family subdivision of a single farm?</p> <p>We do not support a 15 house maximum for a cluster and prefer no limit as a larger single grouping of clustered homes is more likely to leave a larger portion of preserved land.</p>
(b) Grouping of Residential Cluster Lots. Multiple groupings of Residential Cluster Lots are required where the total number of lots on a site is greater than 15. A single grouping of Residential Cluster Lots must contain all the lots where the total number of lots on a site is 15 or fewer, except that multiple groupings may be allowed where it is demonstrated that multiple	<p>There should be no requirement to spread out the cluster if placing the cluster all in one area leads to more farmland preservation overall. The goal of the ZOAM is to preserve prime ag soils.</p> <p>Again if there is a break why was 15 lots decided instead of the original 25 and why are we placing a cap on this number?</p>

groupings will result in more contiguous land designated for Preservation Farm Lots, and/or more preserved prime farmland soils , or result s in less disturbance of land within the Mountainside Development Overlay District (MDOD), Floodplain Overlay District (FOD) lands, and/or land containing steep slopes and/or wetlands.	
(c) Distance Between Groupings of Residential Cluster Lots . If more than one grouping of Residential Cluster Lots is to be created from a parcel, a minimum of 250 feet must separate the lot lines of the outer boundaries of each grouping of Residential Cluster lots (exclusive of open space and lots 15 acres or greater).	<p>If smaller distance between clusters leads to great preservation of farmland, there should be no arbitrary buffer that “uses up” land.</p> <p>A tight clustering of homes in a village setting is an attractive option which this would limit.</p>
(d) Minimum Lot Size. (i) On -site Water and Wastewater. 40,000 sq.ft., exclusive of major floodplain. (ii) Off-site Wastewater, On -site Water. 20,000 sq. ft., exclusive of major floodplain. (iii) Off-site Water and Off-Site Wastewater. No minimum lot size.	<p>I could see using common open space to allow for wastewater/water/drainfields if the lots were quite small, less than ½ acre and village style. If lots are 3 acres they must contain their own drainfields.</p>
(e) Maximum Lot Size. 34 acres.	<p>Is this for ANY lot within the subdivision or the cluster lots themselves? There should be no upper limit on the size of the Preservation Farm Lot. Also, why would there be a 34 acre cluster lot?</p> <p>Why would we put an upper limit on a preservation farm lot and whose benefit does this limit serve?</p>
(f) Maximum Lot Coverage. 15% (i) Lots less than 40,000 sq. ft.: 8% (ii) Lots 40,000 sq. ft. – 4 acres: 15%	<p>Again, why are we not allowing for smaller or tighter grouped housing within the clusters?</p>
(g) Permitted Uses on Lots. The uses allowed on lots are identified in Table 2-102 and are subject to the Additional Regulations for Specific Uses in Section 5-600.	
397 (4) Requirements For Preservation Farm Lots. Each cluster subdivision that contains 5 or more acres of prime farmland soils must contain at least one (1) Preservation Farm Lot.	<p>Any cluster subdivision that contains ANY prime farmland soils must contain a preservation farm lot, and we do not believe having a separate option for a rural economy lot is the right as the RPA is full of lots which can accommodate the</p>

	proposed rural economy uses, lots located within a neighborhood setting are inappropriate for.
<p>(a) Delineation of Prime Farmland Soils. The original basis for delineation of the prime farmland soils is the "Interpretive Guide to Soils Maps, Loudoun County, Virginia" and must be as shown on the Loudoun County Geographical Information System (WebLOGIS). The prime farmland soils must be further delineated based on the results of a Preliminary Soils Review, as follows:</p> <p>(i) A Preliminary Soils Review must be submitted to the Department of Building and Development for review and approval with any application submission using the Cluster Subdivision Option in accordance with Chapter 6.130 of the FSM.</p> <p>(ii) The Preliminary Soils Review must indicate that the primary purpose is to identify the prime farmland soils for the originating tract of land from which the subdivision is created.</p> <p>(iii) The Zoning Administrator, in consultation with the Director of the Department of Building and Development, may require additional information from the applicant, if needed, to supplement the review to determine locations of the prime farmland soils for the tract of land from which the subdivision is created.</p> <p>(iv) Until the Preliminary Soils Review is approved, the development application must include a Soils Map Certification in accordance with Chapter 6.120 of the FSM.</p> <p>(v) The applicant may appeal the determination resulting from the Preliminary Soils Review to the Board of Zoning Appeals in accordance with the provisions of Section 6 - 434 1700, "Appeals", of the Zoning Ordinance.</p>	
435 (b) Minimum Amount of Prime Farmland Soils to be Preserved on a Preservation Farm Lot. The minimum amount of prime farmland soils required to be located on a Farm Preservation Farm Lot is 50% of the originating tract being subdivided, or the area of the tract of land being subdivided containing prime farmland soils, whichever is less. The minimum amount of prime farmland soils on the Farm Preservation Farm Lot	<p>A minimum of 80 percent of the prime ag soils on the tract being subdivided shall be placed on the singular Preservation Farm Lot.</p> <p>I have no idea where the 50% proposed has come from, which stakeholder group thought that number did anything to accomplish the purpose of this ZOAM, but this undermines the integrity of the work attempted here and allows for business as usual greenfield development in</p>

excludes areas of prime farmland soil used for a dwelling, driveway, drain field and well .	the RPA as the people living here have said over and over they no longer want.
447 (d) Minimum Lot Size. 10 acres. In the case where an area of non -contiguous prime farmland soils is less than 10 acres, then the minimum lot size must equal the area of non - contiguous prime farmland soils.	The Preservation Farm Lot must be at least the base density of originating parcel (20 acres in AR-1, 40 acres in AR-2) unless the tract being subdivided is too small to accommodate this acreage, in which case the Preservation Farm Lot shall constitute whatever acreage amounts of 80 percent of the prime ag soils on the original tract.
(e) Contiguous Lots. All Preservation Farm Lots must be contiguous unless the location of the prime farmland soils are not contiguous.	There should be one preservation farm lot consisting of the required acreage of preserved prime ag soils and some non prime ag soils in order to give priority to a single contiguous lot. This plot should not be smaller than the base density for the region.
(f) Maximum Lot Coverage. 15%.	This eliminates any option for a village style development that would be very beneficial to the region.
(g) Minimum Lot Width. 175 feet.	Why have this? This would preclude villages and close clustering of homes and flexibility for building the most amount of homes on the least amount of land. Why are we proceeding with business as usual when this has served the needs of the county poorly. We support flexibility in setbacks, lot width, and buffers.
(h) Permitted Uses. The uses allowed on lots are identified in Table 2 -102 and are subject to the Additional Regulations for Specific Uses in Section 5 -600.	
(i) Private Agreements Limiting Permitted Uses Prohibited. Preservation Farm Lots must not be subject to any Homeowners Association (HOA) covenant or any other private agreement that prohibits the uses permitted on the Preservation Farm Lot.	
466 (5)Requirements for Rural Economy Cluster Lots. (a) Each cluster subdivision shall must contain at least one (1) Rural Economy Cluster Lot of a minimum of 15 acres that shall meet the	This is not something we support and many of the uses for a Rural Economy lot are inappropriate in intensity for a neighborhood setting. Our original input to rename the rural economy lot to the Farmland Conservation lot is still the

<p>following standards in the following circumstances:</p> <p>(i) When the originating tract being subdivided is 100 acres or more in size; or</p> <p>(ii) When the originating tract being subdivided is less than 100 acres in size and where the originating tract contains less than 5 acres of prime farmland soils that does not require a Farm Preservation Farm Lot.</p>	<p>most appropriate option for this ZOAMs and many of our members are frustrated at this twisting of our original proposal.</p>
<p>(b) Minimum Lot Size. 15 acres, excluding areas within the Major Floodplain portion of the Floodplain Overlay District (FOD), areas of very steep slopes, and the highly sensitive areas of the Mountainside Development Overlay District (MDOD).</p>	
<p>(c) Maximum Lot Coverage. 8%.</p>	
<p>(d) Minimum Lot Width. 175 feet.</p>	
<p>(e) Permitted Uses on Lots. The uses allowed that are permitted or permissible with the approval of a Minor Special Exception or Special Exception application on a Rural Economy lots are identified in Table 2-102, subject to the Additional Regulations for Specific Uses in Section 5-600.</p>	
<p>(f) Private Agreements Limiting Permitted Uses Prohibited. Rural Economy Lots must not be subject to any Homeowners Association (HOA) covenant or any other private agreement that prohibits the uses permitted under the Agriculture, Horticulture or Animal Husbandry Use Category permitted in Table 500 2-102.</p>	
<p>502(6) Requirements for Open Space. Land that is neither part of a building lot, nor a road right-of-way, a Preservation Farm Lot or Rural Economy Cluster Lot must be placed in open space and must be maintained by a Homeowner's Association as described in Section 2-104. Open Space must be designed to</p>	<p>Open space must have a maximum limit. This is not a work around for a place to put septic systems allowing for business as usual to continue to undermine the desires of the community living in the RPA.</p> <p>If the individual residential cluster lots are 3 acres or more it is not appropriate for septic</p>

constitute a contiguous and cohesive unit of land which may be used as described in Table 2-102 above. Open Space has no minimum or maximum lot size and no lot width regulations. Further, Common Open Space does not count against the lot yield allotted to the subdivision.	systems and wastewater to be run communally and placed on common open space. If the cluster housing lots are village style or less than 3 acres this could be a viable option as long as the open space does not contain prime ag soils. The acreage allotted for open space used to accommodate wastewater and septic systems for residential cluster lots must come from the land allotted to residential clusters not the % needed for preservation farm lots.
(a) Permitted Uses. Uses that are permitted in Open Space are identified in Table 2- 102, subject to the Additional Regulations for Specific Uses in Section 5-600.	
(b) Special Exception Uses. Uses that may be approved in open space by the Board of Supervisors are identified in Table 2-102, subject to the Additional Regulations for Specific Uses in Section 5-600, and if approved, may be subject to certain conditions pursuant to Section 6- 1300.	
(e) Private Agreements Limiting Permitted Uses Prohibited. Open space must not be subject to any Homeowners Association (HOA) covenant or any other private agreement that prohibits the uses permitted under the Agriculture, Horticulture or Animal Husbandry Use Category permitted in Table 2-102.	
607 (7) Setback. (a) Setbacks From Road Rights of Way and Private Access Easements. Structures must not be located within one hundred (100) feet from the right of way of any arterial road; seventy five (75) feet from the right of way of any collector road; or twenty five (25) feet from any other road right of way, private access easement, and/or prescriptive easement. (b) Residential Perimeter Setback. All residential dwellings within the Residential Cluster Lots, must be set back a minimum of 100 feet from any lot line adjoining parcels not located within the cluster subdivision.	Arbitrary setbacks will consume acreage that could be preserved for agriculture or conservation. Structure should be 35 feet from existing roads or 25 feet from an access easement. Lot line setbacks should be 35 feet from neighboring lot lines, no need for 100 foot setbacks.
(8) Yards. (a) Front. 25 feet minimum. (b) Side. 15 feet minimum. (c) Rear. 20 feet minimum.	

<p>(9) Building Requirements.</p> <p>(a) Building Height. Thirty five (35) feet maximum, excluding agricultural, horticultural, and animal husbandry structures.</p>	
<p>(10) Utility Requirements.</p> <p>(a) Water. All lots shall be served by either:</p> <p>(i) Individual water systems, located on the lot served, or</p> <p>(ii) Communal water system, located within Open Space, with maintenance to be provided pursuant to Section 2- 636 103(C)(110).</p>	<p>Any land devoted to wells placed off the parcel utilizing the well shall not count towards the overall preserved acreage on the original tract (25 foot radius around well and 10 foot wide allowance for pipeline to the house)</p>
<p>(b) Sewer. All lots shall be served by either: (i) Individual sewage disposal systems, located on the lot served or in Open Space owned by an HOA. A maximum of seventy percent (70%) of the lots may have primary and/or reserve septic fields within open space. The record plat shall identify the location of all septic fields and shall assign them to lots, or</p> <p>(ii) Communal sewage disposal system that must be located within Open Space with maintenance to be provided pursuant to Section 2- 103(C)(110).</p>	<p>Septic systems shall be placed on the lot using the system unless there is no technological manner in which to perc the land, in which case it can be placed on a communal parcel that would not count towards the preserved "open space" on the originating tract.</p>
<p>(11) Maintenance of Water and/or Sewage Disposal Systems.</p> <p>(a) Individual Systems. Maintenance of Individual Water and Individual Sewage Disposal Systems must be the responsibility of the owner of the lot the system serves.</p> <p>(b) Communal. If the development is served by a communal water and/or sewage disposal system, such systems must be operated and maintained by Loudoun Water, in accord with all Loudoun Water adopted policies. If Loudoun Water policies preclude maintenance by Loudoun Water, then the HOA must contract with a public water or sewer (wastewater) utility as defined in Chapter 10.1 or 10.2 of Title 56 of the Code of Virginia. An access easement must be provided for the entity maintaining the system. All costs of operation and maintenance of such communal systems must be borne as a common expense by the owners of the lots served.</p>	

<p>669 (12) Lot Access.</p> <p>(a) Access to individual lots or open space may be provided by a private access easement which shall comply with the requirements of the Facilities Standards Manual.</p> <p>(b) Private access easements may serve as frontage in lieu of public road frontage for up to 25 lots per easement.</p> <p>(c) The plat of subdivision must contain a note detailing the maintenance provisions of the private access easement.</p>	
<p>680 (13) Fire Protection. The development must satisfy the fire protection standards set forth in the Facilities Standards Manual.</p>	
<p>683 (14) Pre-Submission Meeting. Prior to any application submission for a Cluster Subdivision, the applicant must request and attend a pre-submission meeting with County agencies to discuss the proposed development. The applicant must submit the following information as part of the meeting request, in addition to other required information needed to process the pre-submission meeting request:</p> <p>(a) Site Analysis Map. The applicant must prepare a site analysis map that provides information about existing site conditions and context to include prime farmland soils, environmental features, and that comprehensively analyzes existing conditions on the proposed development site. It is the intent of this section that the information required to be presented in the site analysis map be produced primarily from existing sources, maps, and data.</p> <p>(b) Preservation and Development Areas Map. The applicant must prepare a map to identify primary preservation farm areas, open space areas, and development areas.</p>	
<p>703 15. Advisory Cluster Subdivision Siting and Design Guidelines. Loudoun County recognizes that every cluster subdivision design will be a custom response to the unique assets and constraints of each tract. However, the County does wish to encourage design consistent with Loudoun's past in rural Loudoun and appends the following general design guidelines as a suggestion to cluster subdivision designers.</p>	<p>Many of the guidelines already included in this ZOAM are counter to the statement the "every cluster subdivision design will be a custom response" and instead promote the same prescriptive subdivision that has eaten up our farmland up until now in the RPA. Gigantic houses dotting the landscape with very little consideration of their impact on the viewshed or the wishes of the existing residents. Today</p>

	<p>looking at a home search for non-pending houses in the Harmony School District valued at \$700,000 or less and 3 bed rooms or more produces only 2 total properties. There is zero question of "building to what people want to buy" people are buying whatever is available so it is time for the county to build to suit the character we wish to see maintained in this unique region.</p>
<p>(a) Cluster subdivisions should be sited so as to nestle, or blend in a subordinate way, into the existing landscape.</p> <p>(b) Lots and the location of building sites should be designed to minimize development on, and the disturbance of prime farmland soils.</p> <p>(c) Existing views from public thoroughfares should be preserved to the maximum extent practicable.</p> <p>(d) In those circumstances where natural contours, subsurface conditions and tract boundaries prevent discreet cluster subdivision placement, designers should seek to reduce the development's apparent presence by locating earth berms near adjacent roadways and/or planting screens of trees adjacent to existing roads and tract boundaries.</p> <p>(e) Lots should be designed to minimize necessary grading or filling, and to take advantage of the existing topography and landforms to the extent practicable.</p> <p>(f) Existing stands of trees and hedgerows should be incorporated in the new cluster subdivision whenever possible. New plantings of evergreen and deciduous trees should be native to the northern Piedmont, such as yellow poplar, northern red and white oak, hickory, white ash, black gum, hemlock, spruce and eastern red cedar among others.</p>	<p>A-The highest goal should be to preserve the largest area of farmland and natural resources as possible, all other considerations such as "nestling into landscapes" or "blending" should be subordinate to this goal. B should take priority over A.</p> <p>F-Two of the tree species mentioned (ash and hemlock) are currently being decimated by pests. Until resistant cultivars are found, these should not be part of required plantings.</p>
<p>738 2-104 Homeowners' Association and Responsibilities.</p> <p>(A) If the subdivision contains any of the common areas or improvements listed below, the development must have an incorporated Homeowners' Association ("HOA"). The HOA shall have the responsibility to maintain the following areas or improvements:</p>	

<p>(1) Common open space areas within the development that are not part of an individual lot.</p> <p>(2) Lot(s), if owned by the HOA;</p> <p>(3) Private roads, if any, within or serving the development, except as provided in Section 2-104(C);</p> <p>(4) Communal water and/or sewage disposal systems, except as 750 provided in Section 2-104(D);</p> <p>(5) Any stormwater management facilities or areas;</p> <p>(6) Fire protection pond(s), dry mains, or other improvements;</p> <p>(7) Such other common facilities or improvements as may be designated in the bylaws of the HOA.</p>	
<p>(B) Membership in the HOA shall must be required for all purchasers of lots in the subdivision and their successors in title.</p>	
<p>(C) Notwithstanding the requirements of Section 2-104(A) above, if the only common element is the private roads or easements, then such private roads or easements must either be maintained by an HOA or pursuant to a private road maintenance agreement. If such roads are to be maintained pursuant to a private road maintenance agreement, then the terms thereof shall be included on each record plat of subdivision for the development.</p>	
<p>(D) Notwithstanding the requirements of Section 2-104(A) above, 765 communal water or sewage disposal systems must be 766 maintained by Loudoun Water or a public water or sewer (wastewater) utility as defined in Chapter 10.1 or 10.2 of Title 56 of the Code of Virginia.</p>	
<p>(E) Prior to approval of a record plat of subdivision for the cluster:</p> <p>(1) If an HOA is to be established, the landowner shall must submit documents for the creation of the HOA to the County for review and approval, including its bylaws, and all documents governing ownership, maintenance, and use restrictions for common areas, including a legal description of</p>	

<p>such areas and a description of restrictions placed upon the use and enjoyment of the land. HOA bylaws must not restrict bona fide agricultural, horticultural, animal husbandry uses or those agricultural support uses directly or Section 2-100 not directly related to ongoing bona fide agricultural, horticultural, or animal husbandry uses on the Preservation Farm Lots and/or Open Space parcels and shall enjoy the protection of the Right to Farm Act (Va. Code 783 Section 3.2-300 et seq.).</p> <p>(2) If a communal water and/or sewage disposal system is to be maintained by a third party, a minimum two year maintenance contract must be submitted for review by the County.</p> <p>(3) If the subdivision is served by private roads and there is no HOA for the subdivision, the developer must submit a private road maintenance agreement to the County for review and approval.</p>	
<p>793 2-105 Recognizing Protection by Right to Farm Act. Record plats and deeds authorized pursuant to this section must include a statement that agricultural operations enjoy the protection of the Right to Farm Act (Va. 796 Code Section 3.2-300 et seq.) .</p>	
<p>797 2-106 Existing Lots of Record.</p> <p>(A) Lots existing as of December 6, 2006 shall be permitted the uses identified in Table 2-102: AR-1 Agricultural Rural-1 District Use Table and shall follow the lot and building requirements for the Base Density Division option as identified in Section 2-103(A).</p> <p>(B) Hamlet Lots. For lots recorded prior to December 6, 2006 and developed under a hamlet subdivision, in accordance with the zoning ordinance in effect at the time of subdivision, such lots shall follow the Rural Hamlet requirements, including uses, as set forth in this Ordinance.</p>	
<p>AR2</p>	

<p>1088 (C) Cluster Subdivision Option. The Cluster Subdivision Option allows for the subdivision of a tract of land with a more compact residential design that may include one or more lots containing prime farmland soils suitable for farming activities, and may include one or more lots suitable for rural economy uses, and/or open space.</p>	
<p>(1) General Requirements. (a) Minimum Development Acreage. The Cluster Subdivision Option is permitted for a tract of land consisting of a minimum of 40 acres prior to development. (b) Lot Yield. The maximum lot yield shall be 1 lot per 15 acres</p>	
<p>(2) Characteristics of Cluster Subdivision Option. (a) Depending on the size and characteristics of the tract being subdivided, the cluster subdivision may include one or more Rural Cluster Lots, at least one Rural Preservation Farm Lot(s) and may include one or more Rural Economy Lot(s) and/or Open Space Lots(s). (b) The lot yield of the cluster subdivision shall be calculated from the gross acreage for the originating tract of land from which the subdivision is created. (c) All lots within the cluster subdivision shall be created at one time. (d) The lots created by cluster subdivision must not be further subdivided. However, boundary line adjustments may be permitted between those lots within the cluster subdivision if all other requirements of the cluster subdivision option are maintained. (e) A Homeowners' Association is required for any subdivision with common elements as described in Section 2-204. (f) Each preliminary and record plat for a cluster subdivision shall contain a tabulation of lot yield for the cluster subdivision. (g) The perimeter setback required in Section 2-203(C)(6) shall be indicated and clearly labeled on each preliminary and record plat. (h) A minimum of 70% of the gross land area of the development originating tract being subdivided may be comprised of the following: (i) One or more Preservation Farm Lot(s) containing a minimum amount of Prime</p>	<p>Similar to AR-1 requirement, The Preservation Farm lot shall contain 80 percent of the prime agricultural soils of the original tract. Other lots should be created only after this acreage has been dedicated. The goal should be to create one large preserved lot with the greatest acreage possible for future agricultural production.</p> <p>There should be ONE preservation farm lot, not multiple lots to ensure the contiguous acreage is as large as possible.</p>

<p>Farmland Soils of the originating tract as specified in Table 2-203(C)(4) below;</p> <p>(ii) One or more Rural Economy Lots(s);</p> <p>(iii) Open Space.</p>	
<p>(3) Requirements for Residential Cluster Lot(s). The site layout of the proposed development must occur during preliminary subdivision plat review. Development of the cluster option must comply with all of the following standards in addition to the requirements of the LSDO:</p>	
<p>(a) Number of Residential Cluster Lots in a GroupCluster(s). Residential Cluster Lots must be grouped in clusters consisting of a minimum of 5 lots and a maximum of 15 lots, except that a cluster may consist of fewer than 5 lots if any one of the following applies:</p> <p>(i) There will be fewer than 5 lots in the entire subdivision.</p> <p>(ii) In the AR-2 district, the area of the site is less than 100 acres.</p> <p>(iii) It is demonstrated that a cluster of fewer than 5 lots will result in more contiguous land designated for Preservation Farm Lots, and/or more preserved prime farmland soils, or result in less disturbance of land within the Mountainside Development Overlay District (MDOD), Floodplain Overlay District (FOD) lands, and/or land containing steep slopes and/or wetlands.</p>	<p>Should be no arbitrary limits on number of lots in clusters...whatever enables the largest area of preserved land.</p>
<p>(b) Grouping of Residential Cluster Lots. Multiple groupings of Residential Cluster Lots are required where the total number of lots on a site is greater than 15. A single grouping of Residential Cluster Lots must contain all the lots where the total number of lots on a site is 15 or fewer, except that multiple groupings may be allowed where it is demonstrated that multiple groupings will result in more contiguous land designated for Preservation Farm Lots, and/or more preserved prime farmland soils, or results in less disturbance of land within the Mountainside Development Overlay District (MDOD), Floodplain Overlay District (FOD) lands, and/or land containing steep slopes and/or wetlands.</p>	<p>Why? What is the justification for this? How does this further the goal of the ZOAM. See the comments from AR1.</p>

(c) Distance Between Groupings of Residential Cluster Lots. If more than one grouping of Residential Cluster Lots is to be created from a parcel, a minimum of 250 feet must separate the lot lines of the outer boundaries of each grouping of Residential Cluster Lots (exclusive of common open space and lots 25 1188 acres or greater).	No arbitrary buffers between lots/clusters that will consume land that could be preserved for agriculture or natural resource conservation.
(d) Minimum Lot Size. (i) On -site Water and Wastewater. 40,000 sq. ft., exclusive of major floodplain. (ii) Off-site Wastewater, On -site Water. 20,000 sq. ft., exclusive of major floodplain. (iii) Off-site Water and Off-Site Wastewater. No minimum lot size.	
(e) Maximum Lot Size. 4 3 acres .	Again, what does this maximum acreage apply to? The cluster lots or the preservation farm lot? The preservation farm lot should not have a maximum acreage.
(f) Maximum Lot Coverage. 15% (i) Lots less than 40,000 sq. ft.: 8%. (ii) Lots 40,000 sq. ft. – 4 acres: 15%.	See comments from AR1
(g) Permitted Uses on Lots. The uses allowed on lots 1201 are identified in Table 2 - 202 and are subject to the Additional Regulations for Specific Uses in Section 5-600	
1204 (4) Requirements For Preservation Farm Lots. Each cluster subdivision that contains five (5) acres or more of prime farmland soils must contain at least one (1) Preservation Farm Lot.	Any originating tract that contains ANY prime ag soils should contain a preservation farm lot.
(a) Delineation of Prime Farmland Soils. The original basis for delineation of the prime farmland soils is the "Interpretive Guide to Soils Maps, Loudoun County, Virginia" and must be as shown on the Loudoun County Geographical Information System (WebLOGIS). The prime farmland soils must be further delineated based on the results of a Preliminary Soils Review, as follows: (i) A Preliminary Soils Review must be submitted to the Department of Building and Development for review and approval with any application	

<p>submission using the Cluster Subdivision Option in accordance with Chapter 6.130 of the FSM.</p> <p>(ii) The Preliminary Soils Review must indicate that the primary purpose is to identify the prime farmland soils for the originating tract of land from which the subdivision is created.</p> <p>(iii) The Zoning Administrator, in consultation with the Director of the Department of Building and Development, may require additional information from the applicant, if needed, to supplement the review to determine locations of the prime farmland soils for the tract of land from which the subdivision is created.</p> <p>(iv) Until the Preliminary Soils Review is approved, the development application must include a Soils Map Certification in accordance with Chapter 6.120 of the FSM.</p> <p>(v) The applicant may appeal the determination resulting from the Preliminary Soils Review to the Board of Zoning Appeals in accordance with the provisions of Section 6 - 1700, "Appeals", of the Zoning Ordinance.</p>	
<p>(b) Minimum Amount of Prime Farmland Soils to be Preserved on a Preservation Farm Lot. The minimum amount of prime farmland soils required to be located on a Preservation Farm Lot is 50% of the originating tract being subdivided, or the area of the tract of land being subdivided containing prime farmland soils, whichever is less. The minimum amount of prime farmland soils on the Preservation Farm Lot excludes areas of prime farmland soil used for a dwelling, driveway, drainfield and well.</p>	
<p>(c) Minimum Lot Size. 10 acres. In the case where an area of non -contiguous prime farmland soils is less than 10 acres, then the minimum lot size must equal the area of non -contiguous prime farmland soils.</p>	<p>Minimum acreage for preservation farm lot must be the base density of the zoning district. If there are not that many acres of prime soils, Class II or Class III soils may be added to the parcel to achieve the required acreage.</p>
<p>(d) Contiguous Lots. All Preservation Farm Lots must be contiguous unless the location of the prime farmland soils are not contiguous.</p>	<p>There should be ONE preservation farm lot containing at least 80 percent of the prime ag soils of the original tract.</p>

(e) Prime Farmland Soils. A minimum of 90% of a Preservation Farm Lot shall contain prime farmland soils.	Unless there is not enough prime soils to make this possible and have the preservation farm lot meet the minimum base density acreage.
(f) Maximum Lot Coverage. 15%.	
(g) Minimum Lot Width. 175 feet.	
(h) Permitted Uses. The uses allowed on lots are identified in Table 2 -202 and are subject to the Additional Regulations for Specific Uses in Section 5 -600.	
(i) Private Agreements Limiting Permitted Uses Prohibited. Preservation Farm Lots must not be subject to any Homeowners Association (HOA) covenant or any other private agreement that prohibits the uses permitted on the Preservation Farm Lot.	
<p>1277 (5) Requirements for Rural Economy Cluster Lots.</p> <p>(a) Each cluster subdivision must contain at least one(1) Rural Economy Cluster Lot in the following circumstances:</p> <p>(i) When the originating tract being subdivided is 100 acres or more in size; or</p> <p>(ii) When the originating tract being subdivided is less than 100 acres in size and where the originating tract contains less than 5 acres of prime farmland soils that does not require a Preservation Farm Lot.</p> <p>(b) Minimum Lot Size. 25 acres, excluding areas within the Major Floodplain portion of the Floodplain Overlay District (FOD), areas of very steep slopes, and the highly sensitive areas of the Mountainside Development Overlay District (MDOD).</p> <p>(c) Maximum Lot Coverage. 8%.</p> <p>(d) Minimum Lot Width. 175 feet.</p> <p>(e) Uses. Uses that are permitted or permissible with the approval of a Minor Special Exception or Special Exception application on a Rural Economy</p>	<p>Rural Economy lots should be sized after preservation farm lots have been created and should not have an arbitrary acreage to meet.</p> <p>Furthermore, where an originating tract contains ANY prime farmland soils, a Preservation Farm Lot should be required, and should encompass 80% of the prime farmland soils of the originating tract.</p>

<p>lot are identified in Table 2-202, subject to the Additional Regulations for Specific Uses in Section 5-600.</p> <p>(f) Private Agreements Limiting Permitted Uses Prohibited. Rural Economy Lots must not be subject to any Homeowners Association (HOA) covenant or any other private agreement that prohibits the uses permitted under the Agriculture, Horticulture or 1309 Animal Husbandry Use Category permitted in Table 2-202.</p>	
<p>1311 (6)Requirements for Open Space. Land that is neither part of a building lot, nor a road right-of-way, a Preservation Farm Lot or Rural Economy Cluster Lot must be placed in common open space and must be maintained by a Homeowner's Association as described in Section 2-204. Open Space must be designed to constitute a contiguous and cohesive unit of land which may be used as described in Table 2-202 above. Open Space has no minimum or maximum lot size and no lot width regulations. Further, Open Space does not count against the lot yield allotted to the subdivision.</p>	<p>See comments above from AR1</p>
<p>(a) Permitted Uses. Uses that are permitted in Open Space are identified in Table 2-202, subject to the Additional Regulations for Specific Uses in Section 5- 600.</p>	
<p>(b) Special Exception Uses. Uses that may be approved in open space by the Board of Supervisors, are identified in Table 2-202, subject to the Additional Regulations for Specific Uses in Section 5-600, and if approved, may be subject to certain conditions pursuant to Section 6-1300.</p>	
<p>(c) Private Agreements Limiting Permitted Uses Prohibited. Open Space must not be subject to any Homeowners Association (HOA) covenant or any other private agreement that prohibits the uses permitted under the Agriculture, Horticulture or Animal Husbandry Use Category permitted in Table 2- 202.</p>	
<p>(7) Setback.</p> <p>(a) Setbacks From Road Rights of Way and Private Access Easements. Structures must not be located within one hundred (100) feet from the right of way of any arterial road; seventy five (75) feet from the right of way of any collector</p>	<p>Minimum road setback should be 35 feet to enable the largest amount of preserved land possible. Likewise for lot line setbacks.</p>

<p>road; or twenty five (25) feet from any other road right of way, private access easement, and/or prescriptive easement.</p> <p>(b) Residential Perimeter Setback. All residential dwellings within the subdivision, must be set back a minimum of 100 feet from any lot line adjoining parcels not located within the cluster subdivision.</p>	
<p>(8) Yards.</p> <p>(a) Front. 325 feet minimum.</p> <p>(b) Side. 15 feet minimum.</p> <p>(c) Rear. 3520 feet minimum.</p>	Again, See comments from AR1
<p>(9) Building Requirements.</p> <p>(a) Building Height. Thirty five (35) feet maximum, excluding agricultural, horticultural, and animal husbandry structures.</p>	
<p>(10) Utility Requirements.</p> <p>(a) Water. All lots shall be served by either:</p> <p>(i) Individual water systems, located on the lot served; or</p> <p>(ii) Communal water system, located within an Common Open Space, with maintenance to be provided pursuant to Section 2- 203(C)(11).</p> <p>(b) Sewer. All lots shall be served by either:</p> <p>(i) Individual sewage disposal systems. Such system shall be located on the lot served or in Open Space owned by an HOA. A maximum of seventy percent (70%) of the lots may have primary and/or reserve septic fields within open space. The record plat shall identify the location of all septic fields and shall assign them to lots, or</p> <p>(ii) Communal sewage disposal system that must be located within Open Space with maintenance to be provided pursuant to Section 2-203(C)(11).</p>	Unless not technologically feasible, drainfields and wells should be placed on the lot that they serve. For properties where that is not possible, the drainfield and land around wells and pipeline shall not count towards the required preserved open space.
<p>(11) Maintenance of Water and/or Sewage Disposal Systems.</p> <p>(a) Individual Systems. Maintenance of Individual Water and Individual Sewage Disposal Systems must be the responsibility of the owner of the lot the system serves.</p> <p>(b) Communal. If the development is served by a communal water and/or sewage disposal system, such systems must be operated and maintained by Loudoun Water, in accord with all Loudoun Water adopted policies. If Loudoun Water policies preclude maintenance by Loudoun</p>	

Water, then the HOA must contract with a public water or sewer (wastewater) utility as defined in Chapter 10.1 or 10.2 of Title 56 of the Code of Virginia. An access easement must be provided for the entity maintaining the system. All costs of operation and maintenance of such communal systems must be borne as a common expense by the owners of the lots served.	
<p>(12) Lot Access.</p> <p>(a) Access to individual lots or common open space may be provided by a private access easement which shall comply with the requirements of the Facilities Standards Manual.</p> <p>(b) Private access easements may serve as frontage in lieu of public road frontage for up to 25 lots per easement.</p> <p>(c) The plat of subdivision must contain a note detailing the maintenance provisions for the private access easement.</p>	
(13) Fire Protection. The development must satisfy the fire protection standards set forth in the Facilities Standards Manual.	
<p>(14) Pres-Submission Meeting. Prior to any application submission for a Cluster Subdivision, the applicant shall request and attend a pre-submission meeting with County agencies to discuss the proposed development. The applicant shall submit the following information as part of the meeting request, in addition to other required information needed to process the pre-submission meeting request:</p> <p>(a) Site Analysis Map. The applicant shall prepare a site analysis map that provides information about existing site conditions and context to include prime farmland soils, environmental features, and that comprehensively analyzes existing conditions both on the proposed development site and on adjacent properties. It is the intent of this section that the information required to be presented in the site analysis map be produced primarily from existing 1506 sources, maps, and data.</p> <p>(b) Preservation and Development Areas Map. The applicant shall prepare a map to identify primary preservation farm areas, common open space areas, and development areas.</p>	

<p>(15) Advisory Cluster Subdivision Siting and Design Guidelines. Loudoun County recognizes that every cluster subdivision design will be a custom response to the unique assets and constraints of each tract. However, the County does wish to encourage design consistent with Loudoun's past in rural Loudoun and appends the following general design guidelines as a suggestion to cluster subdivision designers.</p>	
<p>(a) Cluster subdivisions should be sited so as to nestle, or blend in a subordinate way, into the existing landscape.</p> <p>(b) Lots and the location of building sites should be designed to minimize development on, and the disturbance of prime farmland soils.</p> <p>(c) Existing views from public thoroughfares should be preserved to the maximum extent practicable.</p> <p>(d) In those circumstances where natural contours, subsurface conditions and tract boundaries prevent discreet cluster subdivision placement, designers should seek to reduce the development's apparent presence by locating earth berms near adjacent roadways and/or planting screens of trees adjacent to existing roads and tract boundaries.</p> <p>(e) Lots should be designed to minimize necessary grading or filling, and to take advantage of the existing topography and landforms to the extent practicable.</p> <p>(f) Existing stands of trees and hedgerows should be incorporated in the new cluster subdivision whenever possible. New plantings of evergreen and deciduous trees should be native to the northern Piedmont, such as yellow poplar, northern red and white oak, hickory, white ash, black gum, hemlock, spruce and eastern red cedar among others.</p>	<p>Same comments as AR-1. Primary goal should be to preserve prime ag soils. All other development goals are subordinate.</p> <p>Same comments on tree species at AR-1</p>
<p>2-204 Homeowners' Association and Responsibilities.</p> <p>(A) If the subdivision contains any of the common areas or improvements listed below, the development must have an incorporated Homeowners' Association ("HOA"). The HOA shall have the right and responsibility to maintain the following areas or improvements:</p> <p>(1) open space areas within the development that are not part of an individual lot;</p>	

<p>(2) Lot(s), if owned by the HOA;</p> <p>(3) Private roads, if any, within or serving the development, except as provided in Section 2-204(C);</p> <p>(4) Communal water and/or sewage disposal systems, except as provided in Section 2-204(D);</p> <p>(5) Any stormwater management facilities or areas;</p> <p>(6) Fire protection pond(s), dry mains, or other improvements;</p> <p>(7) Such other common facilities or improvements as may be designated in the bylaws of the HOA.</p> <p>(B) Membership in the HOA must be required for all purchasers of lots in the subdivision and their successors in title.</p> <p>(C) Notwithstanding the requirements of Section 2-204(A) above, if the only common element is private roads or easements, then they must either be maintained by an HOA or pursuant to a private road maintenance agreement. If such roads are to be maintained pursuant to a private road maintenance agreement, then the terms thereof shall be included on each record plat of subdivision for the development.</p> <p>(D) Notwithstanding the requirements of Section 2-204(A) above, communal water or sewage disposal systems must be maintained by Loudoun Water or a public water or sewer (wastewater) utility as defined in Chapter 10.1 or 10.2 of Title 56 of the Code of Virginia.</p> <p>(E) Prior to approval of a record plat of subdivision for the cluster:</p> <p>(1) If a Homeowner's Association is to be established, the landowner must submit documents for the creation of the HOA to the County for review and approval, including its bylaws, and all documents governing ownership, maintenance, and use restrictions for common areas, including a legal description of such areas and a description of restrictions placed upon the use and enjoyment of the land. HOA bylaws must not restrict bona fide agricultural, horticultural, animal husbandry uses or those agricultural support uses directly or not directly related to ongoing bona fide agricultural, horticultural, or animal husbandry uses on the Preservation Farm Lots and/or Common Open Space parcels and</p>	
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<p>shall enjoy the protection of the Right to Farm Act (Va. Code Section 3.2-300 et seq.).</p> <p>(2) If a communal water and/or sewage disposal system must be maintained by a third-party, a minimum two year maintenance contract is to be submitted for review by the County.</p> <p>(3) If the subdivision is served by private roads and there is no HOA for the subdivision, the developer must submit a private road maintenance agreement to the County for review and approval.</p>	
<p>2-205 Recognizing Protection by Right to Farm Act. Record plats and deeds authorized pursuant to this section must include a statement that agricultural operations enjoy the protection of the Right to Farm Act (Va. 1604 Code Section 3.2-300 et seq.).</p>	
<p>2-206 Existing Lots of Record.</p> <p>(A) Lots existing as of December 6, 2006 shall be permitted the uses identified in Table 2-202: AR-2 Agricultural Rural-2 District Use Table and shall follow the lot and building requirements for the Base Density Division option as identified in Section 2-203(A).</p> <p>(B) Hamlet Lots. For lots recorded prior to December 6, 2006 and developed under a hamlet subdivision, in accordance with the zoning ordinance in effect at the time of subdivision, such lots shall follow the Rural Hamlet requirements, including uses, as set forth in this Ordinance.</p>	

From: Norman Myers
To: [Hambrick, Jacob](#)
Cc: [KEVIN RUEDISUELI](#); [Charles Houston](#); [Eric Zicht](#); [Buffington, Tony](#); [Kershner, Caleb](#); [Bridge Littleton](#)
Subject: [EXTERNAL] AR-1 Clusters
Date: Thursday, January 13, 2022 10:47:46 PM
Attachments: [ARTICLE2 Working Text Amend DRAFT 12-30-21.pdf](#)

Jacob,

With reference to our prior discussions pertaining to the effect of changes to the cluster ordinance on the valuation of conservation easements, this email is an (unsolicited) response to "Article2 Working Text Amend Draft 12-30-21, attached. The state has a generous program to incentivize the land owner to place their land into a conservation easements, which does an excellent job in maintaining the agricultural culture of Loudoun County. With that in mind, I glanced over the draft. Some of the suggested changes in the draft enhance land values overall by creating more palatable developments and uses that are appropriate for the RPA. I noted below (in red) which regulations will have a significant negative impact on value:

1. Approximately 3,500 acres of conservation easements were recorded in Loudoun County in 2021. About 2,850 acres are in AR1. The average residential density for properties in an easement is one main house per 50 to 100 acres. How many acres were developed as subdivisions in the AR1 zone? I don't know, but for sure, not nearly that much.
2. Not including step slopes and floodplain in the 15 acres required for the rural economy lot will have a **negative impact** on value for conservation easements.
3. I don't believe, at this point, that the modifications to permitted uses will have an adverse effect on values. Further consideration would be required for a final determination.
4. I do not know (or yet understand) the effect of introducing the Preservation Farm Lot. Every parcel is unique, so I will withhold my opinion if the idea is further developed.
5. Over regulation for locating the cluster lots will have a **negative impact** on value by requiring more intensive sanitary disposal systems.
6. The required 70% open space, rural economy lots, Preservation lot, whatever, is fine.
7. A decrease in the maximum number of lots in a cluster is detrimental and does not serve a purpose in enhancing the subdivision. It drives costs up, so will have a **negative impact** on the value of conservation easement and create more impervious surfaces. I do not see any advantage or enhancement to this change.
8. I see no reason to create separation between the clusters based on the number in the cluster.

I understand the complexity of the job at hand. I hope this email finds you

well and helps the discussion on clusters.
Best Regards,
Norman

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**LOUDOUN COUNTY
RURAL ECONOMIC
DEVELOPMENT COUNCIL**

January 28, 2022

Jacob Hambrick
Loudoun County Department of Planning and Zoning
1 Harrison Street, SE 3rd Floor
Leesburg, VA 20177

RE: Cluster Subdivision and Prime Agricultural Soil Amendment ZOAM-2020-0002

Dear Mr. Hambrick,

Below are REDC comments based on the January 25, 2022 meeting of the REDC ZOR Ad Hoc Committee, which also included County Staff:

The overall goal as far as REDC is concerned should be to preserve as much prime soils as possible and at least 80% of prime soils. We are more in favor of combining the Rural Economy Lot (REL) and the Preservation Farm Lot (PFL) as one type of lot rather than differentiating. The permitted uses would be that of the PFL. These lots should be as large as possible and preferably contiguous, and if not contiguous then easily accessible by easement/ open space etc. These lots could also contain some Class 2 and 3 soils in order to increase the parcel size.

Specific REDC comments from the meeting are provided below:

In the overall purpose section 2101E and 2102E, need to include historic attractions.

Table 2-101 and 2-102 Agricultural Rural District Use Table - Recommend that stable livery and stable private be allowed within PFL (but not equestrian event or any other event oriented use). However, occasional farm tours including informational dinners would be allowed but could not be the primary use/business income

Open space used for drain fields should not be counted toward open space requirements.

We want to thank you for providing us with an opportunity to comment on this application.

Respectfully,



Kelly S. Foltman, DVM
Chair
Rural Economic Development Council

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biz.loudoun.gov/REDC



Save Rural Loudoun

Comments on draft ZOAM-2020-0002 (draft dated Dec. 30, 2021) Preservation of Prime Soils and Design of Rural Cluster Subdivisions

Summary

The following comments are organized as follows:

1. Aspects of the draft that we support.
2. A summary of our principal concerns.
3. A summary of our recommendations relating to those concerns.
4. Detailed comments in tabular format.

Acronyms:

RCL – Residential Cluster Lot
PFL – Preservation Farm Lot
REL – Rural Economy Lot
OSL – Open Space Lot
RPA – Rural Policy Area

1. We Support:

2. Incorporation of 2019 Comprehensive Plan language under “Purpose and Intent.”
3. Re-organization of the Permitted Uses Table (Section 2-102) and inclusion of a column for Open Space Lots.
4. Establishment of Preservation Farm Lots (PFLs)
5. Permitted uses on PFLs tightly limited to farming and related activities (although we believe a few additional agriculture-related uses should be permitted, see below).
6. Explicit mapping and planning requirements to identify and preserve prime soils.
7. Explicit requirements for preserving prime soils on PFLs.
8. Prohibiting HOAs from restricting uses permitted by the Ordinance.
9. Requiring a pre-submission meeting.
10. Including advisory siting and design guidance.

2. Our Concerns:

1. Unlike the current ZO, the draft does not require that cluster subdivision developers preserve a specified percentage of rural land.
2. The draft allows contiguous areas of prime soils to be broken up in small lots.

3. The draft sets no limit on the amount of land that can be occupied by stormwater management, septic drain fields, and other residential development infrastructure.
4. The draft does not permit some important farming uses on PFLs, including direct marketing, central farm distribution hubs, agricultural processing, and equine facilities.
5. Unlike in other zoning districts, the draft does not require that cluster subdivisions in the RPA include trails or passive recreation opportunities.
6. The draft continues to allow for over 10,000 more residences to be built in the RPA, which would generate over 100,000 more vehicle trips per day from western Loudoun.

3. Our Recommendations:

1. The ZO should require that, when rural properties are subdivided to create clustered residential subdivisions, 80% of the land must be preserved from development.
 - a. In Section 2-103(C)(2)(h), the ZO must require that a specified percentage of land be preserved from residential development.

The current ZO requires that a specific percentage of a cluster subdivision property be preserved. Replacing "shall" with "may" would make preservation of rural land optional, subject only to the presence of prime soils. This would be a major step back for rural preservation.

The fundamental rationale for the cluster subdivision option is that it is intended to ensure that the majority of rural land will be preserved for agriculture and other rural economy uses.

- b. In draft Section 2-103(C)(2)(h), require that only PFLs and RELs may be counted as part of the portion of the tract to be preserved.

Both the draft ZOAM and the current ZO allow OSLs to be considered as part of the land conserved, while allowing stormwater management, RCL septic systems, and other residential infrastructure to be located on OSLs and setting no maximum acreage for OSLs. This means that the amount of land actually preserved for agriculture and other rural economy uses may be significantly less than the percentage stated in this sub-section.

- c. In draft Section 2-103(C)(2)(h), increase the amount of land to be preserved from 70% to 80%.

By reducing the size of RCLs and promoting the use of alternative sewage management systems, the County may realistically preserve 80% of the land in rural cluster subdivision properties without reducing properties' development potential. See Recommendations #4 and #5, below.

2. The ZO should prioritize the concentration and preservation of large, contiguous tracts of prime soils within PFLs. To avoid fragmentation of prime soils and other farmland, it should:

- a. limit the number of PFLs that may be created to one lot on each tract, covering a minimum of 50% of the gross acreage.

Versus allowing an unlimited number of potentially small and fragmented PFLs: sections 2-103(C)(2) and 2-103(C)(4) of the draft.

- b. establish a 20-acre minimum lot size for PFLs.

Versus 10 acres or the smallest area of contiguous prime soils: Section 2-103(C)(4) of the draft.

- c. Require that any contiguous area of prime soils of 5 acres or more be fully preserved on a PFL, unless it can be shown that it is not physically possible to locate all such areas of prime soils on a single PFL covering 50% of the gross acreage of the tract being subdivided.

Draft Section 2-103(C)(4) would allow large, contiguous areas of prime soils to be broken up among multiple PFLs and would allow RCLs and OSLs to be created on any area of prime soils exceeding 50% of the gross acreage of the tract.

3. Include direct market businesses, central farm distribution hubs, agricultural processing, and equestrian event facilities as permitted, by right uses (P) on PFLs.

Versus not permitting these uses on PFLs in Section 2-102 of the draft.

4. In draft Sections 2-103(C)(2) and 2-103(C)(3), establish a maximum lot size of 1 acre for RCLs and limit the acreage used by RCLs and OSLs used for residential infrastructure to no more than 20% of the gross acreage of the tract.

Versus a proposed maximum RCL lot size of 3 acres and an unspecified maximum proportion of the tract that may be occupied by OSLs containing infrastructure to support the RCLs.

5. The cluster subdivision regulations relating to OSLs should be consistent with the ZO's general Open Space Standards, addressed in Section 5.04 of the draft performance standards provided to the ZOC, with the dimensional standards tables for the ARN and ARS districts in Chapter 2 of the draft ZO, and with the definitions currently provided in Article 8 of the ZO.

In particular, the priorities identified in draft Section 5.04.E should be reflected in the cluster subdivision regulations. This would help implement the Quality Development chapter of the GP.

We recommend the following:

- a. OSLs containing sewage management, stormwater management, and other residential infrastructure as part of the land used for residential development should not be counted as part of the land preserved in Section 2-103(C)(2)(h).

Alternatively: In the table in Section 2-102, exclude stormwater management systems, septic systems serving RCLs, and other residential infrastructure from the permitted uses on OSLs.

- b. In draft Section 2-102 and Section 2-103(C)(10), require that all privately-owned, individual sewage management systems be located on the lots they serve (RCLs, RELs and PFLs).

Versus allowing private, individual systems to be located on OSLs. Chapter 8 defines a private, individual system as one that is located on the lot served – the current ZO and draft ZOAM contradict this definition.

Individual systems were defined as being on the lots served because systems outside an individual landowner's property are less likely to be properly monitored and maintained and more likely to become a public health hazard.

- c. Require that all cluster subdivisions include a minimum amount of land on OSLs that is devoted to passive recreation.

This would make the regulations on rural cluster subdivisions more consistent with the general Open Space Standards in Section 5.04 and the requirements in other zoning districts.

- d. Require that all rural cluster subdivisions include a pedestrian and bicycle trail network.

Ditto. See SRL's comments on draft Section 5.04.G.5 of Staff's draft Open Space Standards.

- e. Require that any lot adjoining the County's planned system of linear parks and trails include an easement for the potential development of interconnecting public-access trails.

To maximize the benefit of rural preservation to all County citizens, cluster subdivision zoning should facilitate the development of the planned linear parks and trails system.

- 6. (For future reference) Reduce the maximum permitted lot yield in cluster subdivisions to one residence per 15 acres.

Versus one residence per 5 acres: Section 2-103(C)(1) of the draft. We continue to be concerned that the cumulative impact of the currently permitted lot yields (density) in cluster subdivisions in the Rural North will overwhelm planned public infrastructure, destroy rural characteristics the County wishes to preserve, and impose large, new fiscal burdens on taxpayers.

We recognize that the Board of Supervisors has excluded this from consideration under the current ZOAM.

4. Detailed Comments in Tabular Form

Section (1993 Ordinance)	Draft Revision	Comments
2-101. "Purpose and Intent"	Adds para on importance of prime soils.	Support
	Modifies paras to reflect Comp Plan language, including County policy of "limiting residential development."	Support
2-102. Permitted Uses Table (general organization)	Adds columns for "base density/principal subordinate" option lots (BDO/PSO), preservation farm lots (PFM), and "open space lots" (OSL). Retain columns for "residential cluster lots" (RCL) and "rural economy lots" (REL).	Support. Table clearly shows permitted uses in each type of rural lot. Current ZO doesn't have a column for OSLs.
2-102. Preservation Farm Lots – permitted uses	Very few non-ag permitted uses.	Support.
	Does not include a few important agricultural uses	Slightly expand. Include direct market businesses, central farm distribution hubs, agricultural processing, and equestrian event facilities as permitted, by right uses (P) on PFLs.
	Permits (by right) "portable dwelling/trailer construction"	Question. Is this a reasonable use of a "farm lot?" Could it affect preservation of prime soils? If permitted, should it only be by special exception?
	Permits B&Bs but not "inns" or event centers.	Support.
2-102. Open Space Lots – permitted uses	Does not list communal or individual sewage management systems as a permitted use in OSLs.	Likely an oversight. If drainfields are permitted on OSLs, then OSLs should not be counted as part of the land intended for preservation.
	Allows stormwater management facilities "For the proposed development or for a larger area in compliance with a watershed stormwater management plan."	Oppose. This is a potentially large reduction in the area reserved for PFLs, RELs and prime soils.
	Continues to allow sewer and water pumping stations	Ok, provided that such OSLs are not counted as part of the land intended for preservation.

Section (1993 Ordinance)	Draft Revision	Comments
	Adds "Easements and improvements for drainage, access, sewer or water lines, or other public purposes."	Ok, provided that such OSLs are not counted as part of the land intended for preservation. Add reference to multi-purpose trails?
	Does not allow any non-ag commercial uses in OSLs.	Support.
2-102. Rural Economy Lots – permitted uses	Maintains most permitted uses in current ZO.	Ok
	Drops some uses that are inappropriate for RPA: airport/landing strip, child/adult day care, fairground, cemetery, mausoleum, crematorium, fire/police stations, church etc., sewage/water treatment, conference centers, event centers, country club, dirt stockpiling	Support
	Drops some permitted uses that may be worth keeping, e.g.: art gallery, craft shop, restaurants (if limited to size of wineries).	Question. Do these businesses make important contributions to the rural economy?
2-102. Use category: "Limited Brewery"	Continues to include this in the category "Agriculture Support and Services Directly Related to On-going Agriculture, Horticulture and Animal Husbandry Activity, On-Site."	Question. Limited breweries are not required to be directly related to ongoing agriculture. Most existing operations do not use local inputs and some rely on off-site production. Unless standards for "Limited Brewery" are strengthened to require operations to be directly related to on-site agriculture, this use should be moved to the "Food and Beverage" category
2-102, 2-103 and Chapter 8. Use categories: "Sewer System, Communal," "Sewage Disposal System, Individual" and various other similar terms	The uses "Sewer System, Communal" and "Sewage Disposal System, Individual" are defined in Ch. 8 but not included in the permitted uses table (both current ZO and draft rewrite). The draft revision retains "sewage treatment plant" and "sewer pumping station" as permitted uses (by right) in RCLs, OSLs, and RELs, although "sewer pumping station" is not defined in Ch. 8.	Oppose. Only "Sewage Disposal System, Individual" (as currently defined in Ch. 8) should be permitted on RCLs, PFLs, and RELs. Locating septic systems outside the lots of the users increases health risks which could affect local water systems and farming on adjacent lots. The lack of consistency between the Uses Table (2-102), the cluster subdivision regulations (2-103), the Definitions chapter (Ch. 8), and the

Section (1993 Ordinance)	Draft Revision	Comments
	<p>Section 2-103(C)(3)(d) refers to on-site and off-site "water and wastewater," which also are not defined in Ch. 8.</p> <p>Section 2-103(C)(10) allows individual septic systems to be located on OSLs, which contradicts the definition of individual septic systems in Ch. 8 (defined as being on the lot served).</p>	<p>general Open Space Standards (Section 5.04) may create confusion and potential legal disputes about which types of sewage systems are permitted on which types of rural lots. We recommended that the terminology be harmonized across all these sections of the Ordinance.</p>
2-103(C)(1). Cluster Subdivision Option, General Requirements	Maintains the minimum lot size of 20 acres.	Ok. If our recommendations are adopted, a 20-acre cluster subdivision would consist of one PFL and a cluster of three houses.
	Maintains the maximum lot yield (density) of one lot per 5 acres.	<p>Oppose (recognizing the BOS decided not to address this issue in the current ZOAM).</p> <p>The maximum lot yield in all rural cluster subdivision should be one residence per 15 acres, as is the current standard in the ARS district and all of Loudoun's neighboring counties.</p>
2-103(C)(2). Characteristics of Cluster Subdivision Option	Adds possibility of subsequent boundary line adjustments as long as other requirements continue to be met.	Ok.
	Replaces the current requirement that 70% of the tract be preserved by making the preservation standard optional (replaces "shall" with "may")	Strongly Oppose. The fundamental rationale for the cluster subdivision option is that it requires development to be concentrated so as to preserve rural land. Making the percentage of land to be preserved optional would be a major step back for the County.
	Retains the rule that 70% of the property consist of PFLs, RELs, and OSLs. Does not establish a limit on how much of this portion may be occupied by OSLs.	<p>Oppose. <u>The portion of land to be preserved should be increased to 80% of the gross acreage of the tract, and this portion should consist entirely of PFLs and RELs.</u> OSLs containing residential infrastructure should be located on the remaining 20%.</p> <p>This section should establish a maximum proportion of the gross acreage that may be occupied by</p>

Section (1993 Ordinance)	Draft Revision	Comments
		<p>OSLs containing residential infrastructure.</p> <p>The draft rule would allow stormwater management and septic systems on OSLs to occupy an unlimited portion of the property outside the housing cluster, reducing the land available for farming and other rural economy uses below 70%. The division of the entire tract should be: 80% for PFLs and RELs, 15% for CSLs, and 5% for OSLs (see annexed model cluster subdivision dimension standards).</p>
2-103(C)(3). Residential Cluster Lots	Heading of this and other sub-sections changed from "Lot standards" to "Requirements."	Support. Makes it clear that these are legal requirements and are different from the advisory standards in the LSDO.
	Reduces the maximum size of a cluster from 25 to 15 houses.	Question. Larger clusters may have a greater impact, but a greater number of smaller clusters may contribute to fragmentation of farmland and wildlife habitat.
	Retains the minimum number of houses per cluster (5), but allows for fewer than 5 if that allows for more contiguous farmland or less disturbance of MDOD and FOD.	Ok
	Increases the minimum distance between clusters from 50 to 250 feet.	Ok
	Reduces the maximum size of RCLs from 4 to 3 acres and increases the maximum "lot coverage" the proportion of the land that may be covered by buildings.	Question. Is it necessary to specify the size of RCLs or restrict the proportion of RCLs that may be occupied by buildings?
2-103(C)(4). Preservation Farm Lots	Requires PFLs only when tract contains more than 5 acres of prime soils.	<p>Oppose. The draft appears to be based on the premise that prime soils are the only type of land that is valuable for farming. Livestock can be raised on non-prime soils. Forestry and vineyards are also possible.</p> <p>PFLs should be required on all cluster subdivisions unless the developer can</p>

Section (1993 Ordinance)	Draft Revision	Comments
		demonstrate that the land is useless for any kind of farming.
	Requires developer to map prime soils.	Support.
	Subsection (a) does not require the developer to map contiguous sections of prime soils. (However, subsection (d) assumes this has been done.)	Oppose. Section (a) should require developers to identify contiguous sections of prime soils. Contiguous sections are more valuable for farming than isolated pockets. This is necessary for the calculation required in subsection (d) – minimum lot size.
	Establishes a minimum amount of prime soils to be protected as the lesser of: 50% of the entire tract or the actual amount of prime soils (when less than 50% of the tract).	Oppose. As we understand it, this formula preserves small pockets of prime soils while allowing for development on large, contiguous areas of prime soils when those soils exceed 50% of the entire tract. The latter are much more valuable for farm preservation. The actual impact depends on the characteristics of each tract. Rather, the regulations should require that all contiguous areas of prime soils of 5 acres or more must be located on a PFL.
	Establishes a minimum lot size for PFLs that is the lesser of: 10 acres, OR, the smallest area of non-contiguous prime soils.	Oppose. Effectively, this may mean that there is no minimum lot size for PFLs (if there are very small pockets of prime soils). The minimum lot size for a single PFL should be the base density (20 acres) and PFLs should occupy a minimum of 50% of the tract.
	Requires PFLs to be contiguous if the areas of prime soils are contiguous.	Support.
	Establishes a maximum lot coverage of 15% (this is the portion of the lot that can be occupied by permanent structures).	Question. Is this too much? It means that permanent structures could cover up to 3 acres on a 20-acre PFL. But does it matter if the permitted uses are limited to farming?
	Prohibits HOAs from restricting farming on PFLs.	Support!
2-103(C)(5). Rural Economy Lots	Retains the minimum lot size of 15 acres.	Oppose. A minimum lot size of 10 acres would be reasonable and would create more flexibility to

Section (1993 Ordinance)	Draft Revision	Comments
		include both a PFL and one or more RELs.
	Establishes a maximum lot coverage of 8%.	Question. It's unclear why the County would allow much greater lot coverage on PFLs (see above) than on RELs. Since many more uses are permitted on RELs, perhaps there should be more flexibility on REL lot coverage.
	Prohibits HOAs from restricting uses permitted by the Ordinance.	Support.
2-103(C)(6). Open Space Lots	Confusing terminology retained.	The heading of the section refers to "Open Space" rather than "Open Space Lots." For clarity and consistency with the Permitted Uses Table, the heading should refer to OSLs. The following text refers to "building lots," a term that isn't used anywhere else in the draft. For clarity and consistency, this should be replaced with "cluster subdivision lot."
	Does not establish any maximum area for OSLs.	Oppose. This means that stormwater retention, drainfields and other residential infrastructure could occupy an unlimited portion of the tract beyond the minimum lot sizes for PFLs and RELs. The Ordinance should establish a maximum lot size for OSLs that is reasonable and sufficient for the permitted uses. A maximum of 5 acres or 5% of the tract would be reasonable. The division of the entire tract should be: 70% for PFLs and RELs, 25% for CSLs, and 5% for OSLs.
	Deletes the sub-sections listing permitted uses in OSLs and refers to the Permitted Uses Table.	Support!
2-103(C)(10). Utility Requirements	Continues to permit individual and communal sewage disposal systems to be located in Open Space Lots, which are counted as part of the 70% of the land to be preserved.	Oppose. <u>This section should be revised to require that sewage disposal systems serving individual RCLs (and residences on PFLs and RELs) must be located on the lots they serve.</u> The draft retains an internal consistency in the Ordinance. Ch. 8 (definitions) defines

Section (1993 Ordinance)	Draft Revision	Comments
		<p>a "Sewage Disposal System, Individual" as a system that is located on the lot it serves. That definition was adopted to ensure that private sewage disposal systems are properly monitored by their owners and do not become a health hazard.</p> <p>This section contradicts that approach by allowing individual systems to be located outside the lots served, creating room for confusion and legal dispute. It also creates a health hazard, since homeowners are less likely to carefully monitor septic systems located outside their own lots.</p>
2-103(C)(14). Pre-Submission Meeting	Establishes a new requirement that developers have a pre-submission meeting with County staff before submitting a cluster subdivision application.	Support!
2-103(C)(15). Advisory Site and Design Guidance	Adds guidelines for siting and design of cluster subdivisions.	Support! This adopts the approach used in the Hamlet zoning regulations (have not yet done a direct comparison).
2-104. HOAs	Adds language prohibiting HOAs from restricting farming activities on PFLs and OSL.	Support (with caveat)! This provision should apply to RELs as well.

MEMORANDUM

To: Zoning Ordinance Committee

From: Steve Goodrich, Senior Planner
Kate McConnell, Principal Planner
Ryan Reed, Deputy Zoning Administrator
Judi Birkitt, Interim Assistant Director

Date: 2/8/2022

Re: February 16, 2022 ZOC Meeting
**Review Chapter 4, Section 4.07, Historic Overlay District and
Chapter 9, Nonconformities**

The Zoning Ordinance Committee (ZOC) is reviewing Zoning Ordinance Rewrite (ZO Rewrite) Chapter 4, Section 4.07 – Historic Overlay District (HOD) and Chapter 9 - Nonconformities. This is consistent with the ZOC bylaws that state, “at the discretion of the Planning Commission, County staff, or Board of Supervisors (Board), ZOC may be asked to provide input on proposed amendments prior to the initiation of the referral process.” The following excerpt from the ZOC bylaws provides guidance on how to review draft Zoning Ordinance (ZO) text.

Recommendations may include, but are not limited to:

- a. Correcting errors and inconsistencies;
- b. Clarifying regulations;
- c. Simplifying the Zoning Ordinance to make it more user friendly;
- d. Keeping the Zoning Ordinance current to reflect changes in the state code, the market, economic, fiscal and land use conditions and the emergence of new uses;
- e. Addressing a specific issue;
- f. Identifying when proposed Zoning Ordinance amendments are inconsistent with the Comprehensive Plan and may require a Comprehensive Plan amendment (Board of Supervisors, October 6, 2020).

Please keep in mind that the ZO Rewrite team is at the beginning stages of socializing draft concepts and text in a public forum, and the ZOC is the first stop of many as we progress towards Board review and adoption hopefully next year. ZOC review of these draft documents will not only provide essential input regarding proposed revisions but will also help to capture unintentional errors and omissions in these draft documents.

What is included in Chapter 4 – Historic Overlay Districts?

The following is a summary of work completed on the Historic Overlay District (HOD) for review and comment by the Zoning Ordinance Committee (ZOC). Draft language can be found in Attachment 1.

The HOD regulations are primarily the result of reorganizing Sections 6-1800 and 6-1900, the Historic District regulations of the *Revised 1993 Zoning Ordinance*. Currently, the regulations implement a zoning overlay district; however, they are not included with the other zoning overlay districts. This relocation reinforces that HODs are zoning overlay districts. The HOD regulations in the overlay district section are those that apply in an established HOD. Other changes include locating regulations for establishing an HOD under Zoning Amendment Review procedures and Certificate of Appropriateness (CAPP) application process in the Procedures chapter. Other than relocation of these sections, the language of the regulations is largely unchanged.

General text revisions are further described below, as well as applicable *2019 General Plan* policies.

Summary of General Historic Overlay District Text Revisions

- Relocated regulations that implement an established HOD to become a section in the Overlay Districts chapter. (In current Zoning Ordinance, this section is a portion of Section 6-1900.) Includes the Purpose, Certificate of Appropriateness (CAPP) (including Certificate of Appropriateness – Administrative for Minor Actions (CAPA) and Demolition requests), Maintenance Demolition by Neglect, Enforcement, and Appeal language.
- Made minor revisions to text to follow consistent formatting and edits made during the ZO Rewrite, such as but not limited to, making long paragraphs into lists, using tables where appropriate, and making language easier to understand.
- In general, revised language for clarity and internal consistency.
- Reorganized sections by removing Certificate of Appropriateness – Administrative for Minor Actions (CAPA) from a subheading of CAPP and making it a separate subsection to clarify it is an administrative approval process different from the CAPP application process.
- Reorganized the Right to Raze or Demolish section so that it is easier to understand.
- Grouped Minimum Yard and Setback Reductions (formerly Modifications) with the other regulations addressing approvals in HODs.

Summary of Revisions to Section 7.08.03 – Establishing a Historic Overlay District

- Carried forward from existing ZO to draft ZO Rewrite:
 - Regulations for establishing an HOD, which is an amendment to the Official Zoning Map
 - Purpose and Authority
 - Application requirements
 - Criteria for Establishment of HODs
 - Removal from Existing HODs
 - Maintenance of Inventory for Buildings and Structures
 - Appeals (to establishment or removal).
- Relocated to be a subsection of Section 7.08, Zoning Amendment Review under Chapter 7, Procedures since it is a type of zoning map amendment. Chapter 7 is under development (Section 6-1800 in the current Zoning Ordinance).
- Clarified the items required in an application to establish an HOD and criteria for establishing the district and how to determine HOD boundaries.
- Deleted the requirement for a Recordation of Resolutions Creating Historic Districts, which requires filing a copy of the resolution establishing or removing parcels from an HOD with the Clerk of Court. This requirement was identified as unnecessary.

The following sections are not part of the HOD regulations and will be reviewed with other chapters at a future date.

- Certificate of Appropriateness Review Section remains under Chapter 7, Procedures, which is under development. (In current Zoning Ordinance, this section is a portion of Section 6-1900.) Includes the process for applying for a Certificate of Appropriateness (CAPP), as well as Criteria for CAPPs to be used by the HDRC for considering applications, and the CAPP/CAPA Period of Validity.
- Historic District Review Committee (HDRC) is included as Section 10.04, remaining under Officials, Boards, and Commissions, which is Chapter 10 of the ZO Rewrite.

Applicable 2019 General Plan Policies - Historic Overlay Districts

Natural, Environmental, and Heritage Resources Policy 1, Chapter 3. Provide protection for natural, environmental, and heritage resources.

Action 1.1.C. Adopt zoning regulations and development standards that implement a process identifying natural, environmental, and heritage resources worthy of preservation and developing around those resources as part of all land development.

What is included in Chapter 9 – Nonconformities?

The following is a summary of work completed on Chapter 9 – Nonconformities, for review and comment by the Zoning Ordinance Committee (ZOC). Draft language can be found in Attachment 2.

The nonconformities regulations were previously found in Section 1-400 of the Revised 1993 Zoning Ordinance. This revision serves to create a chapter dedicated to nonconformities. Aside from the relocation of these sections into a chapter, revisions are limited to formatting and a few additions listed below. Otherwise, the language of the regulations is largely unchanged.

Summary of Text Revisions

- Carried forward Section 1-400 – Nonconformities from the existing ZO to Chapter 9 of the draft ZO Rewrite.
- Added “Nonconforming Conversion or Convertible Condominium” per the County Attorney Office’s (CAO) recommendation. This is a new section (B.4.)
- Added “Historic Structures” to the Nonconforming Structures section. This is a new section (C.5.)
- Broke down large paragraphs into numbered lists or subparagraphs to improve clarity.
- Changed “shall” to “must” based upon the CAO’s counsel.

Summary of Work to Do

- Revise Section C.4. Pre-existing Structures in Subsequently Created Setback Areas.
- Reply to and incorporate comments.
- Update section references.

Next Steps after the February 2nd ZOC Meeting

An abbreviated version of the remaining ZOC Work Plan is shown below. This is the first and only scheduled meeting regarding Chapter 4, Section 4.07, and Chapter 9. If further time is needed, this can be added to the next meeting on March 2, 2022. Please be advised that the Work Plan schedule is tentative and subject to change.

Tentative Zoning Ordinance Committee Work Plan

Zoning Ordinance Committee - Pre-Referral Work Plan		
Topic	Meeting Date	Packet Distribution
Standalone ZOAM: Short Term Residential Rentals	10/20/2021	10/13/2021
Zoning Districts (and VCOD)	11/3/2021	10/27/2021
Zoning Districts (and VCOD)	11/17/2021	11/10/2021
Standalone ZOAM: Cluster Subdivision Regulations	12/1/2021	11/24/2021
Signs	12/15/2021	12/8/2021
Development Standards (5.03, 5.06, 5.07)	1/5/2022	12/29/2021
Subcommittees Assignments and Schedules	1/5/2022	12/29/2021
Development Standards (remaining sections)	1/19/2022	1/12/2022
Attainable Housing	2/2/2022	1/26/2022
Standalone ZOAM: Traffic Data Collection and Warrant Study Fees	2/2/2022	1/26/2022
Historic Overlay District & Nonconformities	2/16/2022	2/9/2022
Standalone ZOAM: Prime Ag Soils and Cluster Subdivision Regulations - revisit	2/16/2022	2/9/2022
Procedures	TBD	TBD
Neighborhood Transition Standards	3/2/2022	2/23/2022
Subcommittee Expectations and Outcomes	3/2/2022	2/23/2022
NOTE: EnCode changes to be released to public beginning in April 2022		
NOTE2: Draft chapters to be reviewed as part of April 2022 referral package: Ch. 1 Introduction, Ch. 10 Officials, Boards and Commissions, Ch. 11 Rules of Interpretation		
NOTE3: ZOC Work Plan subject to change		

Attachments:

1. Draft Chapter 4, Section 4.07 – Historic Overlay District
2. Draft Chapter 9 - Nonconformities

4.07 Historic Overlay District

Purpose. *The purpose of these Historic Overlay District (HOD) regulations is to:*

- *Protect the historic character and resources of established HODs in the County.*
- *Foster civic pride and preserve an appreciation for the historic values on which the County and the Nation were founded.*
- *Maintain and improve property values.*
- *Protect and enhance the County's attraction to tourists and visitors.*
- *Provide for the education and general welfare of the people of the County.*
- *Protect against destruction of or encroachment upon historic areas.*
- *Otherwise accomplish the general purposes of this Zoning Ordinance, the General Plan, and the provisions of Chapter 22, Title 15.2, Code of Virginia of 1950, as amended.*

A. **Authority.** To promote the general welfare through the preservation and protection of historic places and areas of historic interest in the County, HODs are regulated in accordance with the provisions §§ 15.2-2306 and 15.2-2283 of the Code of Virginia of 1950, as amended.

B. **Applicability.** The requirements of Section 4.07 apply to each parcel located in a Historic Overlay District in the County established pursuant to Section 7.07.07. HODs are regulated in accordance with the provisions of:

1. Section 4.07, Section 10.03, and Section 7.07.07 of this Zoning Ordinance; and
2. The individual Historic District Guidelines for any established HOD, which are hereby incorporated into, and adopted as part of, this Zoning Ordinance.

C. **Certificate of Appropriateness-Administrative for Minor Actions (CAPA).** The Zoning Administrator, or the Zoning Administrator's designee, has the authority to review the following minor actions if the CAPA application is in conformance with the Historic District Guidelines. The Zoning Administrator, or the Zoning Administrator's designee, must approve a CAPA application if it is in conformance with the Historic District Guidelines.

1. Minor amendments to a previously approved CAPP where the work authorized by the previously approved CAPP has not been completed and the proposed modification is in substantial conformance with the previously approved CAPP.
2. Installation, removal, or replacement of fences and gates.
3. Installation, removal, or replacement of signs, pursuant to Chapter 6.
4. Removal of non-contributing material.
5. Minor alteration of a non-contributing structures or structures.
6. Construction of accessory structures of that are 250 square feet or less.
7. Replacement of windows and doors replacement.
8. Installation or replacement of storm windows and storm doors installation.
9. Replacement of siding.
10. Replacement of roofs replacement.
11. Minor alteration to small architectural details, to include, without limitation, shutters, lighting fixtures, gutters, and downspouts.
12. Screening of utilities, trash cans, and dumpsters.

D. **Certificate of Appropriateness (CAPP).** The HDRC has the authority to issue CAPPs for the following purposes:

1. **Erection, Reconstruction, Alteration, Moving, Restoration, or Demolition.** No building or structure, including signs, is permitted to be erected, reconstructed, altered, moved, restored, or demolished within an HOD unless and until the HDRC has approved a CAPP, except as otherwise provided below. In addition, within all Historic Roadway (HR) Districts, fences, walls, and signs cannot be altered, erected, reconstructed, moved, restored, or demolished unless and until the HDRC has approved a CAPP.
 - a. **Exemption.** Ordinary repairs and/or maintenance of an exterior feature that do not involve a significant change in design, material, or outer appearance do not require HDRC approval of a CAPP.
 - b. **Exception.** A farm building or structure does not require HDRC approval of a CAPP, unless otherwise so required by the Zoning Administrator or the Zoning Administrator's designee, if the work to be completed meets the following criteria:
 1. The work to be completed is to a bona fide farm building or structure; and
 - a. For the purposes of Section 4.07.C, a "bona fide farm building or structure" is a building or structure primarily used for agricultural, horticultural, or animal husbandry purposes as defined in this Zoning Ordinance, and located on a parcel that is subject to a farm plan approved by the Loudoun County Soil and Water Conservation District, or classified by the Office of the County Assessor under the land use tax assessment program as Agriculture.
 2. The Zoning Administrator, or the Zoning Administrator's designee, determines, in conjunction with the application for a zoning permit, that the proposed work would not have a clear and substantial detrimental impact on the character of the HOD.
2. **Razing or Demolition.** No permit to raze or demolish a building or structure within an HOD will be approved unless and until the HDRC has approved a CAPP. No fence, walls, or signs located within HR Districts is permitted to be razed or demolished unless and until the HDRC approves a CAPP,
 - a. **Exception.** Buildings, structures, fences, wall, or signs within an HOD may be razed or demolished without a CAPP as otherwise provided in Sections 4.07.C., 4.07.E., or 4.07.F.
3. **Minimum Yard and Setback Reductions in HODs.** No reduction in the minimum yard or setback for a building or structure in an HOD is permitted unless and until the following criteria are met. Upon meeting the criteria, the Zoning Administrator will grant a reduction of minimum yard and setback requirement for the building or structure located within HOD.
 - a. The HDRC must approve a CAPP that includes the reduction of the minimum yard and/or setback requirements and make a finding that the yard and/or setback reduction is consistent with the existing streetscape and adopted Historic District Guidelines for said HOD, and
 - b. The reduction of the yard and/or setback requirement does not violate sight distance regulations of Section 5.11 and of the Virginia Department of Transportation.
- E. **CAPP and CAPA Application and Procedures.** All CAPP and CAPA requests must follow the application and procedures requirements of Section 7.12.
- F. **Required Maintenance and Demolition by Neglect.** The owner of any building or structure located within an HOD must:
 1. Maintain such building or structure in accordance with Chapter 1410 of the Codified Ordinances of Loudoun County, as amended; and
 2. Prevent any deterioration to such building or structure that may result in a loss of its structural integrity, cause any unsafe or hazardous condition, or produce a detrimental effect upon the character of the HOD or the life and character of the building or structure. Such deterioration includes, without limitation, the following:
 - a. Deterioration of any exterior appurtenance or architectural feature.
 - b. Deterioration of any exterior wall or other structural support.

- c. Deterioration of any roof or element of the roof support system.
 - d. Deterioration of any chimney.
 - e. Deterioration or crumbling of exterior stucco, plaster, or mortar.
 - f. Ineffective waterproofing of, or lack of a protective coating on any exterior wall, roof, and foundation, to include, without limitation, broken windows and doors.
 - g. Poorly maintained landscaping or plant overgrowth, to include, without limitation, any dead overhanging trees or limbs, roots, or invasive tendrilled climbing vines, causing, or which may cause, damage or deterioration.
3. The owner of any fence, wall, or sign within a HR District must maintain such fence, wall, or sign in good condition and reasonably protected against decay and deterioration.
- G. The County may institute appropriate procedures for the acquisition of any building or structure that remains in a substantially deteriorated or deteriorating condition following notice to the owner thereof that the owner is in violation of Section 4.07.D of this Ordinance.
- H. **Right to Raze or Demolish.** The owner of any historic landmark, building, or structure located within an HOD is, as a matter of right, entitled to raze or demolish such historic landmark, building, or structure provided that the following conditions are met.
- 1. The owner has submitted an application for a CAPP to raze or demolish such historic landmark, building, or structure in accordance with Section 7.12;
 - 2. The owner has, for a period of time set forth in Table 4.07-1 and at a price reasonably related to its fair market value, made a bona fide offer to sell such historic landmark, building, or structure and the land pertaining thereto to any person, firm, corporation, government, or agency thereof, or political subdivision or agency thereof, which gives reasonable assurance that it will preserve and restore the historic landmark, building, or structure and the land pertaining thereto; and
 - 3. No bona fide contract, binding upon all parties thereto, has been executed for the sale of any such historic landmark, building, or structure, and the land pertaining thereto, prior to the expiration of the applicable time period as set forth in Table 4.07-1.
 - a. Any appeal that may be taken to the Court, in accordance with Section 4.07.F. of this Zoning Ordinance will not affect the right of the owner to make a bona fide offer to sell.
 - b. No offers to sell are permitted to be made more than 1 year after a final decision by the HDRC, but thereafter the owner may renew their request to the HDRC to approve the razing or demolition of the historic landmark, building, or structure.

Table 4.07-1. Required Sales Period by Offering Price for Historic Resource Proposed for Demolition

Offering Price	To Sell Period
Less than \$25,000	3 months
\$25,000 or more but less than \$40,000	4 months
\$40,000 or more but less than \$55,000	5 months
\$55,000 or more but less than \$75,000	6 months
\$75,000 or more but less than \$90,000	7 months
\$90,000 or more	12 months

4. **Bona Fide Offer to Sell and Procedures for Filing Notice of Offer.** Before making a bona fide offer to sell as provided for in this Section, an owner must first file a notice with the Zoning Administrator or the Zoning Administrator's designee.
- a. The notice must include the following information:

1. Property identification.
 2. Offering price.
 3. Date the offer of sale is to begin.
 4. Name and address of the listing real estate agent, if any.
- b. Reasonable assurances that the historic landmark, building, or structure will be preserved.
- c. No time period set forth in the time schedule contained in Table 4.07-1 will begin to run until said notice has been filed.
- d. Within 5 days of receipt of a notice, copies of the notice must be delivered to the HDRC.
5. **Question as to Price.** Questioning whether a historic landmark, building, or structure has been offered for sale at a price reasonably related to its fair market value is permitted in accordance with the following process:
 - a. A written petition signed by at least 5 persons owning real estate in the vicinity of property offered for sale must be filed with the HDRC on or before 15 days after the offer of sale has begun; or
 - b. The HDRC may question said price on its own motion.
 - c. Upon receipt of the petition referenced in 5.a., or upon its own motion, the HDRC must, at the expense of the County, appoint 3 disinterested real estate appraisers, familiar with property values in Loudoun County, who will forthwith make an appraisal of the historic landmark, building, or structure in question and file a written report with the HDRC stating whether or not the offer to sell the historic landmark, building, or structure is at a price reasonably related to its fair market value.
 1. The concurring opinion of any 2 of the 3 appraisers will be final and binding.
 - a. In the event the opinion is that the offer to sell the historic landmark, building, or structure is at a price reasonably related to its fair market value, the owner may continue to offer the property for sale pursuant to this Section 4.07.E.
 - b. In the event the opinion is that the offer to sell the historic landmark, building, or structure is not at a price reasonably related to its fair market value, the date of the offer to sell first established pursuant to this Section is void, and if the owner wishes to take advantage of the right provided in Section 4.07.E, must re-file the notice pursuant to Section 4.07.E.4.
 - d. Notwithstanding an adverse opinion by the appraisers, if an owner has entered into a binding bona fide contract as provided in this Section 4.07.E prior to the date the appraisers have filed their report with the HDRC, the price is deemed reasonably related to the fair market value.
- I. **Hazardous Conditions.** Nothing in Section 4.07 prevents razing or demolition without HDRC approval due to unsafe conditions that would endanger life or property as follows:
 1. **Landmarks, Buildings, or Structures.** A Building Official determines and verifies in writing the unsafe conditions necessitating the razing or demolition in accordance with Chapter 1410 of the Codified Ordinances of Loudoun County, as amended of a historic landmark, building, or structure within an HOD.
 2. **Walls, Fences, and Signs.** The Zoning Administrator, or the Zoning Administrator's designee determines and verifies in writing the unsafe conditions necessitating the razing or demolition of a wall, fence, or sign within an HOD.
- J. **Enforcement.** In addition to the remedies provided in Section 10.01 et seq. of the Zoning Ordinance, the Zoning Administrator, or the Zoning Administrator's designee, has the authority to order that work be stopped and that all CAPPs, CAPAs, or other permits for the work being performed on a building or structure located within an HOD be revoked, or if no CAPP, CAPA, or other permit has been approved, to require the approval of the necessary CAPP or CAPA prior to the continuation of work on said building or structure.

K. Appeals.

1. **Appeal from Zoning Administrator to HDRC.** In lieu of any appeal pursuant to Section 7.11 et seq., any person aggrieved by any decision of the Zoning Administrator, or the Zoning Administrator's designee, in the administration or enforcement of Section 4.07 et seq., may appeal such decision to the HDRC.
 - a. Appeals must be filed within 30 days from the date of the decision by filing with the Zoning Administrator, or the Zoning Administrator's designee, a notice of appeal specifying the grounds of the appeal, submitted in accordance with Section 7.11.G of the Zoning Ordinance.
 - b. The Zoning Administrator, or the Zoning Administrator's designee, must forthwith forward to the chairman of the HDRC all materials constituting the record upon which the decision appealed was taken.
 - c. In considering an appeal of a decision of the Zoning Administrator, or the Zoning Administrator's designee, the HDRC must review the decision as if the decision had come before it in the first instance.
 - d. In an appeal, the HDRC may consider any information or opinions relevant to the application, including, without limitation, those provided by the Zoning Administrator, or the Zoning Administrator's designee.
2. **Appeals from HDRC to Board of Supervisors (Board).** Appeals to the Board may be taken by any person aggrieved by any final decision of the HDRC in the administration or enforcement of Section 4.07 et seq.
 - a. Appeals must must be filed within 30 days from the date of the decision by filing with the Zoning Administrator, or the Zoning Administrator's designee, a notice of appeal specifying the grounds of the appeal, in accordance with Section 7.11.G of the Zoning Ordinance.
 - b. The Zoning Administrator, or the Zoning Administrator's designee, must forthwith forward to the Clerk of the Board all the materials constituting the record upon which the action appealed from was taken.
 - c. A notice of appeal properly filed as herein provided stays the final decision of the HDRC; provided, however, that the appellant is prohibited from taking any action for which approval is sought pending the outcome of the appeal to the Board.
 - d. Within 90 days after the notice of appeal has been filed, the Board must hold a public hearing, give public notice thereof as required by § 15.2-2204 of the Code of Virginia, as amended, as well as due notice to the parties in interest.
 - e. In exercising its powers, the Board must give due consideration to the decision of the HDRC and Sections 4.07 et seq., 7.07.07 et seq., and 7.12 et seq. of the Zoning Ordinance, and may reverse or affirm, wholly or partly, or may modify the decision appealed from.
 - f. The Zoning Administrator, or the Zoning Administrator's designee, must provide a copy of the decision to the appellant and upon each other person who was a party of record at the hearing.
3. **Appeals from Board to Circuit Court.** Any person aggrieved by any final decision of the Board made pursuant to Section 4.07.F.2 of the Zoning Ordinance, may appeal to the Circuit Court for the County of Loudoun, in accordance with § 15.2-2306 of the Code of Virginia of 1950, as amended.
 - a. The filing of a petition of appeal with the Circuit Court stays the decision of the Board pending the outcome of the appeal to the Circuit Court.
 1. *Exception.* The filing of such petition does not stay the decision of the Board if such decision denies the right to raze or demolish a historic landmark, building, or structure.

Section 6-1900.07 Historic Districts Regulations, Overlay District

Contents:

6-1901 Purpose. *The purpose of these Historic Overlay District (HOD) regulations is to:*

- Protect the historic character and resources of established HODs in the County.
- Foster civic pride and preserve an appreciation for the historic values on which the County and the Nation were founded.
- Maintain and improve property values.
- Protect and enhance the County's attraction to tourists and visitors.
- Provide for the education and general welfare of the people of the County.
- Protect against destruction of or encroachment upon historic areas.
- Otherwise accomplish the general purposes of this Zoning Ordinance, the General Plan, and the provisions of Chapter 22, Title 15.2, Code of Virginia of 1950, as amended.

Authority.

- A. In order to To** promote the general welfare through the preservation and protection of historic places and areas of historic interest in the County, ~~Historic Districts shall be HODs are~~ regulated in accordance with the provisions of this Section, Section 6-300 et seq., and Section 6-1800 et seq., and Sections §§ 15.2-2306 and 15.2-2283 of the Code of Virginia of 1950, as amended, ~~and the individual Historic District Guidelines for any established Historic District which are hereby incorporated into, and adopted as part of, this Zoning Ordinance. For the purposes of Section 6-1800 et seq. and Section 6-1900 et seq., the term "contributing" shall mean helping, assisting, or adding to the historical integrity, historic architectural qualities, or archaeological qualities of the subject Historic District and/or the said Historic District's historic associations; and the term "non-contributing" shall mean not helping, not assisting, nor adding to the historical integrity, historic architectural qualities, or archaeological qualities of the subject Historic District and/or the said Historic District's historic associations.~~
- B. 6-1902 Applicability.** The requirements of Section 4.07 apply to each parcel located in a Historic Overlay District in the County established pursuant to Section 7.08.03. HODs are regulated in accordance with the provisions of:
1. Section 4.07, Section 10.03, and Section 7.08.03 of this Zoning Ordinance; and
 2. The individual Historic District Guidelines for any established HOD, which are hereby incorporated into, and adopted as part of, this Zoning Ordinance.

Certificate of Appropriateness (~~CAPP~~). [Note: This section relocated to Chapter 7 – Procedures]

~~The Historic District Review Committee (HDRC) shall have Administrative for Minor Actions (CAPA). The Zoning Administrator, or the Zoning Administrator's designee, has the authority to issue Certificates of Appropriateness for the review the following purposes. Any CAPP approved by the HDRC shall become invalid minor actions if the authorized work is not commenced within five (5) years of the date of approval. For the purposes of Section 6-1902, commencement of the authorized work is defined as the placing of construction materials in a permanent position and fastened in a permanent manner and work carried on diligently, or, where excavation for, or demolition or removal of, an existing building has been substantially begun prior to building or rebuilding, such excavation or demolition or removal shall be deemed to be actual commencement of the work, provided that work shall be carried on diligently.~~

- 1. Erection, Reconstruction, Alteration, Moving, or Restoration.** No building or structure, including signs, shall be erected, reconstructed, altered, moved, or restored within a Historic District unless and until a CAPP has been approved by the HDRC, except as otherwise provided below. In addition, within all Historic Roadway

~~Districts, fences and walls cannot be altered, erected, reconstructed, moved or restored unless and until a CAPP has been approved by the HDRC. CAPA application is in conformance with the Historic District Guidelines. The~~

~~○ **Exemption.** Ordinary repairs and/or maintenance of an exterior feature which do not involve a significant change in design, material, or outer appearance thereof.~~

~~○ **Exceptions.** The following uses and activities shall not require a CAPP approval by the HDRC, unless otherwise so required by the Zoning Administrator, or the Zoning Administrator's designee.~~

~~* **Farm Building or Structure.** The work to be done is to a bona fide farm building or structure and the Zoning Administrator, or the Zoning Administrator's designee, determines, in conjunction with the application for a zoning permit, that the proposed work would not have a clear and substantial detrimental impact on the character of the Historic District. For the purposes of Section 6-1902, a "bona fide farm building or structure" shall mean a building or structure primarily used for agricultural, horticultural, or animal husbandry purposes as defined in this Zoning Ordinance, and that is located on a parcel that is subject to a farm plan approved by the Loudoun County Soil and Water Conservation District; or that is classified by the Office of the County Assessor under the land use tax assessment program as Agriculture.~~

~~○ **C. Certificate of Appropriateness Administrative for Minor Actions (CAPA).** The following minor actions shall require review by only the Zoning Administrator, or the Zoning Administrator's designee, and shall be approved if must approve a CAPA application if it is in conformance with the Historic District Guidelines.~~

~~1. Minor amendments to a previously approved CAPP where the work authorized by the previously approved CAPP has not been completed and the proposed modification is in substantial conformance with the previously approved CAPP.~~

~~2. Fences Installation, removal, or replacement of fences and gates.~~

~~3. Signs Installation, removal, or replacement of signs, pursuant to Section 5-1200 Chapter 6.~~

~~4. Removal of non-contributing material.~~

~~5. Minor alteration of a non-contributing structures or structures.~~

~~6. Construction of accessory structures of that are 250 square feet or less.~~

~~7. Window Replacement of windows and door doors replacement.~~

~~8. Storm window Installation or replacement of storm windows and storm door doors installation.~~

~~9. Replacement of siding.~~

~~10. Roof Replacement of roofs replacement.~~

~~11. Minor alteration to small architectural details, to include, without limitation, shutters, lighting fixtures, gutters, and downspouts.~~

~~12. Screening of utilities, trash cans, and dumpsters.~~

~~**D. Certificate of Appropriateness (CAPP).** The HDRC has the authority to issue CAPPs for the following purposes:~~

~~1. **Erection, Reconstruction, Alteration, Moving, Restoration, or Demolition.** No building or structure, including signs, is permitted to be erected, reconstructed, altered, moved, restored, or demolished within an HOD unless and until the HDRC has approved a CAPP, except as otherwise provided below. In addition, within all Historic Roadway (HR) Districts, fences, walls, and signs cannot be altered, erected, reconstructed, moved, restored, or demolished unless and until the HDRC has approved a CAPP.~~

~~• **Exemption.** Demolition of non-contributing accessory structures.~~

~~a. Ordinary repairs and/or maintenance of an exterior feature that do not involve a significant change in design, material, or outer appearance do not require HDRC approval of a CAPP.~~

b. **Exception.** A farm building or structure does not require HDRC approval of a CAPP , unless otherwise so required by the Zoning Administrator or the Zoning Administrator’s designee, if the work to be completed meets the following criteria:

1. The work to be completed is to a bona fide farm building or structure; and

a. For the purposes of Section 4.07.C, a “bona fide farm building or structure” is a building or structure primarily used for agricultural, horticultural, or animal husbandry purposes as defined in this Zoning Ordinance, and located on a parcel that is subject to a farm plan approved by the Loudoun County Soil and Water Conservation District, or classified by the Office of the County Assessor under the land use tax assessment program as Agriculture.

2. The Zoning Administrator, or the Zoning Administrator’s designee, determines, in conjunction with the application for a zoning permit, that the proposed work would not have a clear and substantial detrimental impact on the character of the HOD .

2. **Razing or Demolition.** No permit to raze or demolish a building or structure within a Historic District shall be approved an HOD will be approved unless and until the HDRC has approved a CAPP, . No fence, walls, or signs located within HR Districts is permitted to be razed or demolished unless and until the HDRC approves a CAPP,

B-a. **Exception.** Buildings, structures, fences, wall, or signs within an HOD may be razed or demolished without a CAPP being approved by the HDRC, except as otherwise provided in Sections 6-1902, 6-1906, or 6-1907. Further, no fences, walls or signs located within HR Districts shall be razed or demolished without a CAPP being approved by the HDRC, except as otherwise provided in Sections 6-1902, 6-1906, or 6-1907 4.07.C., 4.07.E., or 4.07.F.

6-1903 Applications and Procedures. [Note: This section relocated to Chapter 7 – Procedures]

A. ~~All applications for Certificates of Appropriateness shall be made to the Zoning Administrator, or the Zoning Administrator’s designee, and shall be referred to the HDRC.~~

B. ~~The HDRC shall hold at least one public meeting before approving or denying a CAPP, at which time any interested party, including, without limitation, the applicant or the applicant’s representative, shall be heard.~~

C. ~~All approvals by the HDRC shall include findings stating those aspects of the application which are in conformance with the Historic District Guidelines. All denials by the HDRC shall include findings stating those aspects of the application which are not in conformance with the Historic District Guidelines and recommendations whereby the application could be brought into conformance with the Historic District Guidelines.~~

D. ~~No reapplication for essentially the same purpose shall be reviewed by the HDRC within one (1) year of denial of any applications hereunder except in cases where the application has been brought into compliance with the Historic District Guidelines pursuant to the recommendations set forth by the HDRC in an earlier denial of said application.~~

6-1904 Criteria for Certificate of Appropriateness.

~~The HDRC shall base its decision to approve or deny a CAPP on whether the proposals therein are architecturally compatible with the other buildings, structures, sites, or landmark located within the subject Historic District. In applying such standard, the HDRC shall not consider interior arrangement, but shall consider factors to include, without limitation, the following:~~

~~I. Exterior architectural features, including all signs.~~

~~J. General design, scale, and arrangement.~~

~~K. Texture and material.~~

~~L. The relationship of (A), (B), and (C), above, to other structures and features of the subject Historic District.~~

~~M. The purposes for which the subject Historic District was created.~~

~~N. The relationship of the size, design, and siting of any erected, reconstructed, altered, moved, or restored structure to the landscape of the subject Historic District.~~

~~O. The extent to which the denial of the Certificate of Appropriateness would constitute a deprivation to the owner of a reasonable use of his property.~~

~~P. The extent to which the proposal adheres to the Historic District Guidelines for the subject Historic District~~

3. ~~6-1905~~ Minimum Yard and Setback Reductions in HODs. No reduction in the minimum yard or setback for a building or structure in an HOD is permitted unless and until the following criteria are met. Upon meeting the criteria, the Zoning Administrator will grant a reduction of minimum yard and setback requirement for the building or structure located within HOD.

a. The HDRC must approve a CAPP that includes the reduction of the minimum yard and/or setback requirements and make a finding that the yard and/or setback reduction is consistent with the existing streetscape and adopted Historic District Guidelines for said HOD, and

b. The reduction of the yard and/or setback requirement does not violate sight distance regulations of Section 5.11 and of the Virginia Department of Transportation.

E. CAPP and CAPA Application and Procedures. All CAPP and CAPA requests must follow the application and procedures requirements of Section 7.13.

Required Maintenance and Demolition by Neglect.

A.F. The owner ~~or the person in charge~~ of any building or structure located within ~~a Historic District shall~~ an HOD must:

4-1. Maintain such building or structure in accordance with Chapter 1410 of the Codified Ordinances of Loudoun County, as amended; and

5-2. Prevent any deterioration to such building or structure that may result in a loss of its structural integrity, cause any unsafe or hazardous condition, or produce a detrimental effect upon the character of the ~~Historic District~~ HOD or the life and character of the building or structure, ~~such~~ Such deterioration ~~to include~~ includes, without limitation, the following:

a. Deterioration of any exterior appurtenance or architectural feature.

b. Deterioration of ~~any~~ exterior ~~walls~~ wall or other structural ~~support~~ support.

c. Deterioration of ~~roofs any roof~~ or ~~element~~ element of the roof support system.

d. Deterioration of ~~chimneys any chimney~~.

e. Deterioration or crumbling of exterior stucco, plaster, or mortar.

f. Ineffective waterproofing of, or lack of a protective coating on, ~~any~~ exterior ~~walls, roofs~~ wall, roof, and ~~foundations~~ foundation, to include, without limitation, broken windows and doors.

g. Poorly maintained landscaping or plant overgrowth, to include, without limitation, any dead overhanging trees or limbs, ~~or~~ roots, or invasive tendrilled climbing vines, causing, or which may cause, damage or deterioration.

B-3. The owner ~~or the person in charge~~ of any fence, wall, or sign within a HR District ~~shall~~ must maintain such fence, wall, or sign in good condition, ~~and~~ reasonably protected against decay and deterioration.

C-G. The County may institute appropriate procedures for the acquisition of any building or structure ~~which that~~ remains in a substantially deteriorated or deteriorating condition following notice to the owner thereof that ~~he the~~ owner is in violation of Section ~~6-1905(A)~~ 4.07.D of this Ordinance.

~~6-1906~~ Right to Raze or Demolish.

A.H. Conditions and Procedures. The owner of any historic landmark, building, or structure located within a ~~Historic District~~ HODis, as a matter of right, ~~be~~ entitled to raze or demolish such historic landmark, building, or structure provided that: the following conditions are met.

1. The owner has submitted an application for a CAPP to raze or demolish such historic landmark, building, or structure in accordance with Section 7.13;
2. The owner has, for a period of time set forth in ~~the time schedule hereinafter contained Table 4.07-1~~ and at a price reasonably related to its fair market value, made a bona fide offer to sell such historic landmark, building, or structure and the land pertaining thereto to any person, firm, corporation, government, or agency thereof, or political subdivision or agency thereof, which gives reasonable assurance that it will preserve and restore the historic landmark, building, or structure and the land pertaining thereto; and
3. No bona fide contract, binding upon all parties thereto, ~~shall have~~ has been executed for the sale of any such historic landmark, building, or structure, and the land pertaining thereto, prior to the expiration of the applicable time period as set forth in ~~the time schedule below. Table 4.07-1.~~
 - a. Any appeal ~~which that~~ may be taken to the Court, in accordance with Section ~~6-1909 4.07.F.~~ of this Zoning Ordinance ~~shall~~ will not affect the right of the owner to make a bona fide offer to sell.
 - ~~3.b.~~ No offers to sell ~~shall are permitted to~~ be made more than ~~one~~ 1 year after a final decision by the HDRC, but thereafter the owner may renew their request to the HDRC to approve the razing or demolition of the historic landmark, building, or structure. ~~The time schedule for offers to sell shall be as follows:~~

Table 4.07-1. Required Sales Period by Offering Price for Historic Resource Proposed for Demolition

Offering Price	To Sell Period
Less than \$25,000	<u>3</u> months
\$25,000 or more but less than \$40,000	<u>4</u> months
\$40,000 or more but less than \$55,000	<u>5</u> months
\$55,000 or more but less than \$75,000	<u>6</u> months
\$75,000 or more but less than \$90,000	<u>7</u> months
\$90,000 or more	<u>12</u> months

4. **Bona Fide Offer to Sell; and Procedures for Filing Notice of Offer and Questioning Price.** Before making a bona fide offer to sell as provided for in this Section, an owner ~~shall~~ must first file a notice with the Zoning Administrator, or the Zoning Administrator's designee.
 - a. The notice ~~shall identify~~ must include the ~~property, state the offering~~ following information:
 1. Property identification.
 2. Offering price, the date,
 3. Date the offer of sale is to begin ~~and name.~~
 4. Name and address of the listing real estate agent, if any. ~~The notice shall provide reasonable~~
 - b. Reasonable assurances that the historic landmark, building, or structure ~~shall~~ will be preserved.
 - c. No time period set forth in the time schedule contained in ~~this Section shall~~ Table 4.07-1 will begin to run until said notice has been filed.
 - ~~B.d.~~ Within ~~five~~ 5 days of receipt of a notice, copies of the notice ~~shall~~ must be delivered to the HDRC.
5. **Question as to Price.** ~~The fact that Questioning whether~~ a historic landmark, building, or structure has been offered for sale at a price reasonably related to its fair market value ~~may be questioned, provided there is filed with the HDRC on or before 15 days after the offer of sale has begun, a~~ is permitted in accordance with the following process:

- a. A written petition ~~in writing~~ signed by at least five persons owning real estate in the vicinity of property offered for sale. ~~Alternatively the~~ must be filed with the HDRC on or before 15 days after the offer of sale has begun; or
- b. The HDRC may ~~question~~ question said price on its own motion.
- c. Upon receipt of ~~such the~~ petition, referenced in 5.a., or upon its own motion, the HDRC ~~shall~~ must, at the expense of the County, appoint ~~three~~ three disinterested real estate appraisers, familiar with property values in Loudoun County, who ~~shall will~~ shall forthwith make an appraisal of the historic landmark, building, or structure in question and file a written report with the HDRC stating whether or not the offer to sell the historic landmark, building, or structure is at a price reasonably related to its fair market value.
 1. The concurring opinion of any ~~two~~ two of the ~~three~~ three appraisers ~~shall will~~ shall be final and binding.
 - a. In the event the opinion is ~~to the effect~~ that the offer to sell the historic landmark, building, or structure is at a price reasonably related to its fair market value, the owner may continue to offer the property for sale pursuant to this Section ~~4.07.E~~.
 - ~~C.b.~~ In the event the opinion is ~~to the effect~~ that the offer to sell the historic landmark, building, or structure is not at a price reasonably related to its fair market value, the date of the offer to sell first established pursuant to this Section ~~shall be~~ void, and if the owner, ~~if he~~ wishes to take advantage of the right provided in ~~said~~ Section 4.07.E, must re-file the notice ~~provided for above pursuant to Section 4.07.E.4~~.
 - d. Notwithstanding an adverse opinion by the appraisers, if an owner has entered into a binding bona fide contract as provided in this Section ~~6-1906 4.07.E~~ prior to the date the appraisers have filed their report with the HDRC, the price ~~shall be~~ deemed reasonably related to the fair market value.

~~6-1907~~ Hazardous Conditions

- I. ~~Landmarks, Buildings, or Structures~~. Nothing in ~~this section shall prevent the~~ Section 4.07 ~~prevents~~ razing or demolition ~~of any historic landmark, building, or structure within a Historic District which is in such an unsafe condition that it~~ without HDRC approval due to unsafe conditions that would endanger life or property as follows:
 - A.1. ~~Landmarks, Buildings, or Structures~~. ~~determined,~~ A Building Official determines and verifies in writing ~~verifying the~~ unsafe conditions necessitating ~~such action, by the Building Official, the razing or demolition~~ in accordance with Chapter 1410 of the Codified Ordinances of Loudoun County, as amended, of a historic landmark, building, or structure within an HOD.
 - B.2. ~~Walls, Fences, and Signs~~. ~~Walls, fences, and signs within a Historic District may be razed or demolished without approval by the HDRC, if it is in such unsafe condition that it would endanger life or property as determined by the~~ The Zoning Administrator, or the Zoning Administrator's designee determines and verifies in writing the unsafe conditions necessitating the razing or demolition of a wall, fence, or sign within an HOD.

~~6-1908~~ Enforcement.

- J. In addition to the remedies provided in Section ~~6-500 10.01~~ et seq. of the Zoning Ordinance, the Zoning Administrator, or the Zoning Administrator's designee, ~~shall have~~ has the authority to order that work be stopped, and that all CAPPs, CAPAs, or other permits for the work being performed on a building or structure located within ~~a Historic District an~~ HOD be revoked, or if no CAPP, CAPA, or other permit has been approved, to require the approval of the necessary CAPP or CAPA prior to the continuation of work on said building or structure.

~~6-1909~~ Appeals.

K.

A. Appeal from Zoning Administrator to HDRC.

1. In lieu of any appeal pursuant to Section ~~6-1700-7.12~~ et seq., any person aggrieved by any decision of the Zoning Administrator, or the Zoning Administrator's designee, in the administration or enforcement of Section ~~6-19004.07~~ et seq., may appeal such decision to the HDRC.
 - a. Appeals ~~shall~~must be ~~taken filed~~ within ~~thirty (30)~~ days from the date of the decision by filing with the Zoning Administrator, or the Zoning Administrator's designee, a notice of appeal specifying the grounds of the appeal, submitted in accordance with Section ~~6-1707.12.G~~ of the Zoning Ordinance.
 - 1.b. The Zoning Administrator, or the Zoning Administrator's designee, ~~shall~~must forthwith forward to the chairman of the HDRC all materials constituting the record upon which the decision appealed was taken.
 - c. In considering an appeal of a decision of the Zoning Administrator, or the Zoning Administrator's designee, the HDRC ~~shall~~must review the decision as if the decision had come before it in the first instance.
 - 2.d. In an appeal, the HDRC may consider any information or opinions relevant to the application, including, without limitation, those provided by the Zoning Administrator, or the Zoning Administrator's designee.

~~B.~~ Appeals from HDRC to Board of Supervisors.

2. **(Board).** Appeals to the Board ~~of Supervisors~~ may be taken by any person aggrieved by any final decision of the HDRC in the administration or enforcement of Section ~~6-19004.07~~ et seq.
 - a. Appeals ~~shall~~must be ~~taken filed~~ within ~~thirty (30)~~ days from the date of the decision by filing with the Zoning Administrator, or the Zoning Administrator's designee, a notice of appeal specifying the grounds of the appeal, in accordance with ~~Section 6-1707~~Section 7.12.G of the Zoning Ordinance.
 - 1.b. The Zoning Administrator, or the Zoning Administrator's designee, ~~shall~~must forthwith forward to the Clerk of the Board ~~of Supervisors~~ all the materials constituting the record upon which the action appealed from was taken.
 - 2.c. A notice of appeal properly filed as herein provided ~~shall stay~~stays the final decision of the HDRC; provided, however, that the appellant ~~shall be~~is prohibited from taking any action for which approval is sought pending the outcome of the appeal to the Board ~~of Supervisors~~.
 - d. Within ~~ninety (90)~~ days after the notice of appeal has been filed, the Board ~~of Supervisors shall~~must hold a public hearing, give public notice thereof as required by ~~Section~~§ 15.2-2204 of the Code of Virginia, as amended, as well as due notice to the parties in interest.
 - e. In exercising its powers, the Board ~~of Supervisors shall~~must give due consideration to the decision of the HDRC and Sections ~~6-1800-4.07~~ et seq., 7.08.03 et seq., and ~~6-19007.13~~ et seq. of the Zoning Ordinance, and may reverse or affirm, wholly or partly, or may modify the decision appealed from.
 - 3.f. The Zoning Administrator, or the Zoning Administrator's designee, ~~shall~~must provide a copy of the decision to the appellant and upon each other person who was a party of record at the hearing.

~~6-1910~~ Appeals from Board ~~of Supervisors~~ to Circuit Court.

3. Any person aggrieved by any final decision of the Board ~~of Supervisors~~ made pursuant to Section ~~6-1909(B)4.07.F.2~~ of the Zoning Ordinance, may appeal to the Circuit Court for the County of Loudoun, in accordance with ~~Section~~§ 15.2-2306 of the Code of Virginia of 1950, as amended.
 - a. The filing of a petition of appeal with the Circuit Court ~~shall stay~~stays the decision of the Board pending the outcome of the appeal to the Circuit Court, ~~except that the~~.
 1. Exception. The filing of such petition ~~shall~~does not stay the decision of the Board if such decision denies the right to raze or demolish a historic landmark, building, or structure.

9: NONCONFORMITIES

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9.01 Nonconformities

9.01 Nonconformities

Purpose. *The purpose of this chapter is to:*

- *Regulate and limit the development and continued existence of uses, structures, and lots established prior to the effective date of this Ordinance that do not conform to the requirements of this Ordinance.*
- *Allow the continuance of nonconformities but curtail substantial investment in the improvement or expansion of nonconformities.*
- *Bring about the eventual improvement of nonconformities to a conforming status or their elimination to preserve the integrity of this Ordinance and the desired character of the County.*
- *Permit the application of this section to certain historic resources as identified in this section and permit limited expansion of those structures.*
- *Require special exception approval by the Board of Supervisors for a conversion condominium that does not conform to the zoning, land use, or site plan regulations.*

A. Applicability.

1. Any nonconforming use, structure, or lot that lawfully existed as of the effective date of this Ordinance and that remains or has become nonconforming as a result of the adoption of this Ordinance or any subsequent reclassification of zoning districts or other amendment to this Ordinance, may be continued or maintained only in accordance with the terms of this chapter.
2. The limitations of this chapter do not apply to structures or lots whose nonconforming features are the subject of a variance that has been granted by the Board of Zoning Appeals or a modification or condition that was approved by the Board of Supervisors.

B. Nonconforming Uses.

1. **Expansion of Nonconforming Use.** Except in those cases approved pursuant to Section 6-1805 (new section # needed) of this Ordinance, a nonconforming use must not be expanded or extended beyond the floor area or portion of the lot area that it occupied on the effective date of this Ordinance.
 - a. Notwithstanding 1 above, a legal, nonconforming residential use on land which, on or after the effective date of this Ordinance, was classified to a nonresidential zone must not be considered to have been expanded or extended within the meaning of this subsection if the addition to an existing structure is less than 50% of the existing square footage on the effective date of this Ordinance and the yard requirements of the zoning classification that applied to the construction of such residences prior to the effective date of this Ordinance are maintained.
2. **Discontinuation of Nonconforming Use.** If a nonconforming use is discontinued or abandoned for a continuous period of more than 2 years, including any period of discontinuation before the effective date of this Ordinance, then that use must not be renewed or reestablished. Any subsequent use of the lot or structure must conform to the regulations of this Ordinance.
3. **Change of Nonconforming Use.**
 - a. If no structural alterations are made, a nonconforming use may, by special exception pursuant to the procedures contained in Section 7.09, be changed to another nonconforming use provided that the Board of Supervisors, upon Planning Commission recommendation, either by general rule or by

making findings in the specific case, finds that the proposed use is equally appropriate or more appropriate to the zoning district than the existing nonconforming use. The Board of Supervisors may impose appropriate conditions in accord with the provisions of this Ordinance.

- b. When any nonconforming use is superseded by a permitted use, the use must thereafter conform to the regulations for the district, and no nonconforming use may thereafter be resumed.

4. **Nonconforming Conversion or Convertible Condominium.** Pursuant to the Code of Virginia 55.1-1905.E, the declarant of a proposed conversion condominium that does not conform to the zoning, land use, and site plan regulations must seek approval of a special exception application following the guidelines set forth in Section 7.09 prior to such property becoming a conversion condominium. The Board of Supervisors must grant approval of such request if the applicant demonstrates to the reasonable satisfaction of the Board of Supervisors that the nonconformities are not likely to be adversely affected by the proposed conversion.

C. Nonconforming Structures.

1. **Repair or Reconstruction of a Nonconforming Structure.** Repairs, restoration, and maintenance, including structural repairs, may be made to a nonconforming structure. Except as provided for in Section 4.02 - Floodplain Overlay District, if a nonconforming structure is damaged or destroyed by a casualty or event beyond the owner's reasonable control, the owner may repair or replace such structure provided the degree of nonconformity is not increased.
 - a. A replacement structure must occupy the same footprint of the damaged or destroyed nonconforming structure unless it is proposed in a location that complies with the current yard and setback requirements.
 - b. Regardless of location, a replacement of the nonconforming structure can not include increased floor area either through an expanded footprint or additional height or stories.
2. **Alteration or Enlargement of a Nonconforming Structure.** A nonconforming structure must not be enlarged, increased, nor extended to occupy a greater area of land than was occupied on the effective date of adoption or amendment of this Ordinance unless such improvements do not increase the degree of nonconformity.
 - a. Improvements that do not enlarge, increase or extend the structure to occupy a greater area of land are permitted.
 - b. Notwithstanding the foregoing, a legal, nonconforming residential structure must not be considered to have been enlarged, increased or extended within the meaning of this subsection if the addition to an existing structure is less than 50% of the existing square footage on the effective date of this Ordinance, and the yard requirements of the zoning classification that applied to the construction of such residences prior to the effective date of this Ordinance are maintained.
3. **Moving a Nonconforming Structure.** A nonconforming structure must not be moved in whole or in part to any other location on or off the parcel of its original location unless every portion of such structure and the use thereof is made to conform with all requirements of this Ordinance and other applicable County Ordinances.
4. **Pre-existing Structures in Subsequently Created Setback Areas.** Residences, accessory structures, and accessory uses built before June 16, 1993 (update) may increase their footprint existing on that date up to 50% and are exempt from the setbacks of Section 5.07.02-1 but must maintain the setback created by the front of the residence even if the setback so created is less than what is required by this Ordinance.
5. **Historic Structures.** A structure existing prior to January 7, 2003, may be used in accordance with this section and is exempt from the minimum lot area and set back from lot line requirements if it is:
 - a. Located within a County Historic Site (HS) District or Historic and Cultural Conservation (HCC) District under Section 7.08.03 et seq. (check for correct section #); or

- b. Listed or eligible for listing in the Virginia Landmarks Register (VLR) or the National Register of Historic Places (NRHP); or
- c. Listed or eligible for listing as a contributing resource to a VLR or NRHP listed or eligible Historic District.
- d. Any expansion or enlargement of a structure that qualifies under a, b, or c above must not exceed 15% of the total floor area existing prior to January 7, 2003. Documentation must be provided to the Zoning Administrator demonstrating that the Virginia Department of Historic Resources has confirmed the listing or eligibility of structure.

D. Nonconforming Lots.

1. **Use of Nonconforming Lots.** If a lot was recorded prior to the effective date of this Zoning Ordinance, or is hereafter created in conformity with Section 1.03(H) Pending Applications, and such lot met the requirements of the Zoning Ordinance in effect at the time of recordation, or complies with Section 1.03(H), then such lot may be used for any use permitted in the Zoning District in which it is located even though it does not meet the lot requirements of the district, provided all the other regulations of this Ordinance can be satisfied.
 - a. Notwithstanding anything to the contrary contained herein, hamlet lots must be governed by the Rural Hamlet Option as contained in Section 5.14.
2. **Establishment of Nonconforming Lots Prohibited.** A lot may only be established after the effective date of this Ordinance, if such lot conforms with all requirements of this Ordinance except as follows:
 - a. A lot not meeting lot area requirements of the zoning district is created by the subdivision of a previously existing lot that is split zoned along the existing zoning district line, and the lot meets all other ordinance requirements; or
 - b. A lot is created for use by LCSA, VDOT, municipal utilities, public utilities as defined in Section 56-232 of the Virginia State Code, or public service corporations as defined in Section 56-1 of the Virginia State Code and meets the requirements of Section 3.06.07.03 Public Utilities; or
 - c. An "outlot" is designated on a subdivision plat as open space. No habitable structures may be built upon an "outlot".
3. **Boundary Line Adjustments.** Notwithstanding the provisions of 9.01(E)(2) above, boundary line adjustments between nonconforming lots or between a conforming and a nonconforming lot must be permitted as follows:
 - a. When the Zoning Administrator finds that the degree of nonconformity for any lot resulting from such boundary line adjustment is not increased due to such adjustment.
 - b. When the Zoning Administrator finds that a boundary line adjustment does not increase nonconformity and where the boundary line adjustment satisfies any of the following conditions:
 1. It makes it possible to rectify a septic system or well failure by providing space for a replacement septic system or well that meets all applicable standards.
 2. It incorporates acreage into a lot that is subject to a permanent conservation easement, with the new acreage added to the protected easement area.
 3. It allows any existing nonconforming lot to meet the 20 acre minimum lot size in the ARN zoning district or the 40 acre minimum lot size in the ARS zoning district. In the ARN and ARS zoning districts, no lot may be decreased to less than 80,000 square feet.
 4. It allows for boundary line agreements to correct survey inconsistencies.

- E. **Highway Realignment or Condemnation.** Any lot, which by reason of realignment of a Federal or State highway or by reason of condemnation proceedings, has been reduced in size to an area less than that required by law, must be considered a nonconforming lot of record subject to the provisions set forth in 9.01(E)(1) above; and

any lawful use or structure existing at the time of such highway realignment or condemnation proceedings which would thereafter no longer be permitted under the terms of this Ordinance must be considered a nonconforming use or structure as that term is used in this Ordinance.

F. Procedure for Removal of Nonconforming Status.

1. **Availability of Procedure.** Notwithstanding any terms of this Section prohibiting the continuation, reconstruction, or expansion of nonconforming uses and structures, a nonconforming use or structure may be deemed to be in conformity with the requirements of this Section and may be allowed to continue and to expand as a lawfully existing use or structure, through the issuance of special exception approval in accordance with the following procedures and standards.
2. **Application.** To establish a nonconforming use or structure as a lawfully existing use or structure, the owner of the property or his or her authorized agent must apply for special exception use approval in accordance with the procedures set forth in Section 7.09.
3. **Board of Supervisors Review.** The Planning Commission must review and recommend, and the Board of Supervisors must review and act upon the application for termination of nonconforming status in accordance with the procedures and standards set forth in Section 7.09 of this Ordinance. In reviewing and acting upon an application, the Planning Commission and Board must also consider whether the nonconforming use or structure can be improved as follows:
 - a. A landscaped buffer could be provided between the nonconforming use or structure and any abutting lot in order to provide the maximum buffering effect for potentially adverse impacts of the use or structure on any abutting properties.
 - b. Off-street parking areas located on the lot could be improved by landscaping sufficient to mitigate adverse impacts on any abutting properties.
 - c. Nonconforming signs, outdoor lighting, off-street parking areas, and other nonconforming accessory structures located on the lot could be removed or brought into conformity with the applicable requirements of this Ordinance.
 - d. A nonconforming structure would not be expanded or enlarged so as to increase the degree of nonconformity.
 - e. Any expansion or enlargement of the use or structure could be limited to no greater than 50% of the floor area or lot area that it occupied on the effective date of this Ordinance or any amendment to this Ordinance which rendered the use or structure nonconforming.
4. **Effect of Approval.** Upon approval of the application for termination of nonconforming status by the Board of Supervisors, the use or structure must no longer be treated as nonconforming and must be allowed to continue as a lawfully existing use or structure unless it is abandoned or discontinued for a continuous period of 1 year. This status as a lawfully existing use applies only to the use or structure for which the special exception approval is issued and not to any other use or structure that may be located on the lot.

Section 1-400 Nonconformities.

9: NONCONFORMITIES

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1-401-9.01 Nonconformities

9.01 Nonconformities

Purpose and Scope.

The purpose of this subsection chapter is to regulate:

- Regulate and limit the development and continued existence of uses, structures, and lots established prior to the effective date of this Ordinance which that do not conform to the requirements of this Ordinance. Many
- Allow the continuance of nonconformities may continue, but the provisions of this subsection are designed to curtail substantial investment in the improvement or expansion of nonconformities and to bring.
- Bring about their the eventual improvement of nonconformities to a conforming status or their elimination in order to preserve the integrity of this Ordinance and the desired character of the County.
- Permit the application of this section to certain historic resources as identified in this section and permit limited expansion of those structures.
- Require special exception approval by the Board of Supervisors for a conversion condominium that does not conform to the zoning, land use, or site plan regulations.

A. Applicability.

- Any nonconforming use, structure, or lot which that lawfully existed as of the effective date of this Ordinance and which that remains nonconforming, and any use, structure, or lot which or has become nonconforming as a result of the adoption of this Ordinance or any subsequent reclassification of zoning districts or other amendment to this Ordinance, may be continued or maintained only in accordance with the terms of this subsection chapter.
- The limitations of this subsection shall chapter do not apply to structures or lots whose nonconforming features are the subject of a variance that has been granted by the Board of Zoning Appeals or a modification or condition that was approved by the Board of Supervisors.

B. 1-402 Nonconforming Uses.

- Expansion of Nonconforming Use.** Except in those cases approved pursuant to Section 6-1805 (new section # needed) of this Ordinance, a nonconforming use shall must not be expanded or extended beyond the floor area or portion of the lot area that it occupied on the effective date of this Ordinance.

A.a. Notwithstanding the foregoing 1 above, a legal, non-conforming nonconforming residential use on land which, on or after the effective date of this Ordinance, was classified to a non-residential nonresidential zone shall must not be considered to have been expanded or extended within the meaning of this subsection if the addition to an existing structure is less than 50% of the existing square footage on the effective date of this Ordinance and the yard requirements of the zoning classification which that applied to the construction of such residences prior to the effective date of this Ordinance are maintained.

B.2. **Discontinuation of Nonconforming Use.** If a nonconforming use is discontinued or abandoned for a continuous period of more than two (2) years, including any period of discontinuation before the effective

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date of this Ordinance, then that use ~~shall~~must not be renewed or ~~re-established and any~~reestablished. Any subsequent use of the lot or structure ~~shall~~must conform to the regulations of this Ordinance.

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G-3. Change of Nonconforming Use.

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1-a. If no structural alterations are made, a nonconforming use may, by special exception pursuant to the procedures contained in Section 7.09, be changed to another nonconforming use provided that the Board of Supervisors, upon Planning Commission recommendation, either by general rule or by making findings in the specific case, finds that the proposed use is equally appropriate or more appropriate to the zoning district than the existing nonconforming use. The Board of Supervisors may impose appropriate conditions in accord with the provisions of this Ordinance.

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2-b. When any nonconforming use is superseded by a permitted use, the use ~~shall~~must thereafter conform to the regulations for the district, and no nonconforming use ~~shall~~may thereafter be resumed.

1-403 Nonconforming Structures.

4. Nonconforming Conversion or Convertible Condominium. Pursuant to the Code of Virginia 55.1-1905.E, the declarant of a proposed conversion condominium that does not conform to the zoning, land use, and site plan regulations must seek approval of a special exception application following the guidelines set forth in Section 7.09 prior to such property becoming a conversion condominium. The Board of Supervisors must grant approval of such request if the applicant demonstrates to the reasonable satisfaction of the Board of Supervisors that the nonconformities are not likely to be adversely affected by the proposed conversion.

C. Nonconforming Structures.

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A-1. Repair or Reconstruction of a Nonconforming Structure. Repairs, restoration, and maintenance, including structural repairs, may be made to a nonconforming structure. Except as provided for in Section 4-~~1500.02 - Floodplain Overlay District~~, if a nonconforming structure is damaged or destroyed by a casualty or event beyond the owner's reasonable control, the owner may repair or replace such structure provided the degree of ~~non-conformity~~nonconformity is not increased.

a. A replacement structure must occupy the same footprint of the damaged or destroyed nonconforming structure unless it is proposed in a location that complies with the current yard and setback requirements.

b. Regardless of location, a replacement of the nonconforming structure can not include increased floor area either through an expanded footprint or additional height or stories.

2. Alteration or Enlargement of a Nonconforming Structure. A nonconforming structure ~~shall~~must not be enlarged, increased, nor extended to occupy a greater area of land than was occupied ~~at on~~ the effective date of adoption or amendment of this Ordinance unless such improvements do not increase the degree of nonconformity.

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a. Improvements that do not enlarge, increase or extend the structure to occupy a greater area of land are permitted.

B-b. Notwithstanding the foregoing, a legal, ~~non-conforming~~nonconforming residential structure ~~shall~~must not be considered to have been enlarged, increased or extended within the meaning of this subsection if the addition to an existing structure is less than 50% of the existing square footage on the effective date of this Ordinance, and the yard requirements of the zoning classification ~~which that~~ applied to the construction of such residences prior to the effective date of this Ordinance are maintained.

G-3. Moving of a Nonconforming Structure. A nonconforming structure ~~shall~~must not be moved in whole or in part to any other location on or off the parcel of its original location unless every portion of such structure and the use thereof is made to conform with all requirements of this Ordinance and other applicable County Ordinances.

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~~D.4.~~ Pre-existing Structures in Subsequently Created Setback areas. Residences, accessory structures, and accessory uses built before June 16, 1993 (update) may increase their footprint existing on that date up to 50% and are exempt from the setbacks of Section 5-1403(B) 07.02-1 but must maintain the setback created by the front of the residence even if the setback so created is less than what is required by this Ordinance.

5. 1-404-Historic Structures. A structure existing prior to January 7, 2003, may be used in accordance with this section and is exempt from the minimum lot area and set back from lot line requirements if it is:

- a. Located within a County Historic Site (HS) District or Historic and Cultural Conservation (HCC) District under Section 7.08.03 et seq. (check for correct section #): or
- b. Listed or eligible for listing in the Virginia Landmarks Register (VLR) or the National Register of Historic Places (NRHP): or
- c. Listed or eligible for listing as a contributing resource to a VLR or NRHP listed or eligible Historic District.
- d. Any expansion or enlargement of a structure that qualifies under a, b, or c above must not exceed 15% of the total floor area existing prior to January 7, 2003. Documentation must be provided to the Zoning Administrator demonstrating that the Virginia Department of Historic Resources has confirmed the listing or eligibility of structure.

D. Nonconforming Lots.

A.1. Use of Nonconforming Lots. If a lot was recorded prior to the effective date of this Zoning Ordinance, or is hereafter created in conformity with Section 1-103(H) 03(H) Pending Applications, and such lot met the requirements of the Zoning Ordinance in effect at the time of recordation, or complies with Section 1-103.03(H), then such lot may be used for any use permitted in the Zoning District in which it is located even though it does not meet the lot requirements of the district, provided all the other regulations of this Ordinance can be satisfied. ~~Notwithstanding anything to the contrary contained herein, hamlet lots shall be governed by the Rural Hamlet Option as contained in Section 5-702.~~

a. Notwithstanding anything to the contrary contained herein, hamlet lots must be governed by the Rural Hamlet Option as contained in Section 5.14.

B.2. Establishment of Nonconforming Lot ~~Lots Prohibited~~. A lot may only be established after the effective date of this Ordinance, if such lot conforms with all requirements of this Ordinance except as follows:

- ~~1-a.~~ A lot not meeting lot area requirements of the zoning district is created by the subdivision of a previously existing lot that is split zoned lot along the existing zoning district line, and the lot meets all other ordinance requirements: or
- ~~2-b.~~ A lot is created for use by LCSA, VDOT, municipal utilities, public utilities as defined in Section 56-232 of the Virginia State Code, or public service corporations as defined in Section 56-1 of the Virginia State Code and meets the requirements of Section 5-6243.06.07.03 Public Utilities: or
- ~~3-c.~~ An "outlot" is designated on a subdivision plat as open space. No habitable structures shall may be built upon an "outlot".

3. Boundary Line Adjustments. Notwithstanding the provisions of paragraph (B) 9.01(E)(2) above, boundary line adjustments ~~shall be permitted~~ between nonconforming lots; or between a conforming and a nonconforming lot, ~~provided must be permitted as follows:~~

- a. When the Zoning Administrator finds that the degree of nonconformity for any lot resulting from such boundary line adjustment is not increased due to such adjustment. In addition,
- b. When the Zoning Administrator shall find finds that a boundary line adjustment does not increase nonconformity and is permitted where the boundary line adjustment satisfies one any of the following conditions: (1) it
 1. It makes it possible to rectify a septic system or well failure by providing space for a replacement septic system or well that meets all applicable standards: (2) it.

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G-2. It incorporates acreage into a lot that is subject to a permanent conservation easement, with the new acreage added to the protected easement area. ~~(3) it allows any existing nonconforming lot to meet the twenty acre minimum lot size in the AR 1 zoning district or the forty acre minimum lot size in the AR 2 zoning district; (4) it allows for boundary line agreements to correct survey inconsistencies; or (5) in the AR 1 and AR 2 zoning districts, no lot shall be decreased to less than 80,000 square feet.~~

3. It allows any existing nonconforming lot to meet the 20 acre minimum lot size in the ARN zoning district or the 40 acre minimum lot size in the ARS zoning district. In the ARN and ARS zoning districts, no lot may be decreased to less than 80,000 square feet.

4. It allows for boundary line agreements to correct survey inconsistencies.

D-E. **Highway Realignment or Condemnation.** Any lot, which by reason of realignment of a Federal or State highway or by reason of condemnation proceedings, has been reduced in size to an area less than that required by law, shall must be considered a nonconforming lot of record subject to the provisions set forth in Section 9.01(E)(1-404(A)) above; and any lawful use or structure existing at the time of such highway realignment or condemnation proceedings which would thereafter no longer be permitted under the terms of this Ordinance shall must be considered a nonconforming use or structure as that term is used in this Ordinance.

F. **1-405 Procedure for Removal of Nonconforming Status.**

A-1. **Availability of procedure** ~~Procedure~~. Notwithstanding any terms of this Section prohibiting the continuation, reconstruction, or expansion of nonconforming uses and structures, a nonconforming use or structure may be deemed to be in conformity with the requirements of this Section, and may be allowed to continue and to expand as a lawfully existing use or structure, through the issuance of special exception approval in accordance with the following procedures and standards:

B-2. **Application.** To establish a nonconforming use or structure as a lawfully existing use or structure, the owner of the property or his or her authorized agent shall must apply for special exception use approval in accordance with the procedures set forth in Section 6-13007.09.

C-3. **Review by Board of Supervisors Review.** The Planning Commission shall must review and recommend, and the Board of Supervisors shall must review and act upon the application for termination of nonconforming status in accordance with the procedures and standards set forth in Section 6-13007.09 of this Ordinance. In reviewing and acting upon an application, the Planning Commission and Board shall must also consider whether the nonconforming use or structure can be improved as follows:

1-a. A landscaped buffer could be provided between the nonconforming use or structure and any abutting lot in order to provide the maximum buffering effect for potentially adverse impacts of the use or structure on any abutting properties.

2-b. Off-street parking areas located on the lot could be improved by landscaping sufficient to mitigate adverse impacts on any abutting properties.

3-c. Nonconforming signs, outdoor lighting, off-street parking areas, and other nonconforming accessory structures located on the lot could be removed or brought into conformity with the applicable requirements of this Ordinance.

4-d. A nonconforming structure would not be expanded or enlarged so as to increase the degree of nonconformity.

5-e. Any expansion or enlargement of the use or structure could be limited to no greater than ~~fifty percent (50%)~~ 50% of the floor area or lot area that it occupied on the effective date of this Ordinance or any amendment to this Ordinance which rendered the use or structure nonconforming.

D-4. **Effect of Approval.** Upon approval of the application for termination of nonconforming status by the Board of Supervisors, the use or structure shall must no longer be treated as nonconforming and shall must be allowed to continue as a lawfully existing use or structure unless it is abandoned or discontinued for a

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continuous period of ~~one (1)~~ year. This status as a lawfully existing use ~~shall apply~~ applies only to the use or structure for which the special exception approval is issued and not to any other use or structure that may be located on the lot.

Section 1-400

Revision Date: January 1, 2020

Draft 2/9/22

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