



ZOAM-2020-0001-Zoning Ordinance Rewrite -- Round 3 Input

REVIEWER INSTRUCTIONS:

Below are comments submitted to County DPZ/ZOR Staff as public input during Zoning Ordinance Committee review by organizations and citizens, being shared for your public input review.

Comments/questions not addressed can be submitted during Round 3 Public Input through July 18, 2022.

-- Be aware that all comments will become part of the public record after submission via enCodePlus. Please be mindful to use language in an appropriate and professional manner.

-- **Please continue to use the draft text SECTION NUMBER REFERENCE** at the START of each comment, followed by ALL CAPS short heading (see sample on the template)

SORT	ADDRESSED in 4-18-2022 Draft Text?	Section (for sorting only)	CHAPTER 5 -- DEVELOPMENT STANDARDS SECTION 5.04
			PRIORITY SHARED INPUT ITEMS
	NO	5.04.03.B.3 (former 5.04.D.3)	5.04.03.B.3 OPEN SPACE Categories/Private. Is there a requirement for signage designating the area as private to be considered such? Can there be? 2022 Round 3 Input: Staff noted it could be added if there was consensus
	NO, partial	5.04.04.A (former 5.04.E.2)	5.04.04.A OPEN SPACE. PRIORITIES AND BONUS CREDIT. Indicates various "bonus credit" will be applied for various types of open space (e.g., prime ag soils, forest, trails, historic resources, etc.) Please provide an example calculation to show how the "bonus credit" is applied. How will the "bonus credit" be applied for ZOAM-2020-0002 calculation with open space for cluster subdivisions? [OR does 5.04.F.13 override all bonus credit for clustering?] 2022 Round 3 Input: Partially addressed. Bonus credits were clarified, but ZOAM calculation is deferred.
	NO, partial	5.04.04.A.5&6 (former 5.04.E.2)	5.04.04.A.5&6 OPEN SPACE STANDARDS. As noted, shouldn't native vegetation for pollinators be included? Also, in regards to bullet "e", the LPAT Framework Plan includes more than just pedestrian or bicycle trail considerations, shouldn't linear parks and wildlife corridors also be included as part of the LPAT Framework Plan considerations? 2022 Round 3 Input: Partially addressed. Wildlife habitat was addressed, but not LPAT. Though staff mentioned that pollinator habitat would be too specific to maintain, monitor, or describe in protective easement.
	NO, partial	5.04.04.A.6 (contiguous habitats), 5.04.04.B.6 (wetlands) (former 5.04.E.1)	5.04.E.1 OPEN SPACE STANDARDS. Are wetlands mitigation projects defined as a "water feature"? Shouldn't wetlands be explicitly added? Shouldn't wildlife travel corridors and native vegetation for pollinators also be included in contiguous habitats to protect against habitat fragmentation (and not just trees)? 2022 Round 3 Input: Partially addressed . Wetlands were added, but not wildlife corridors, native vegetation, or pollinator habitat. Staff noted a consensus could cause these to be added.
	NO	5.04.06.D&E (former 5.04.F.1.b. 5.04.H.4.d.6.e)	5.04.06.D&E. OPEN SPACE Standards & Type-Specific Open Space Design Standards/Outdoor Gathering Space. Amenities on parcels greater than [TBD] must include restrooms at regular intervals or those must be in close proximity and open the public. PRCS and NOVA Parks, including the W&OD Trail, already are providing this necessary amenity. Have PRCS and NOVA Parks been asked to determine the appropriate interval? 2022 Round 3 Input: Unclear. Mentions of restrooms specifically have been removed.

	No, partial	5.04.12 (former 5.04.N.2.)	5.04.12 OPEN SPACE. MODIFICATIONS. e. states, "permission to locate uses in open space must be governed by the zoning district within which the site, parcel or development is located." This indicates that it IS possible and feasible to assign different Uses permitted in Open Space by zoning district, correct? Staff Response: Maybe. Section has been updated. Staff answered that it was possible. 2022 Round 3 Input: Direct request for the capability and applicability to assign different Uses permitted in Open Space by zoning districts and/or existing overlay district.
ADDITIONAL ROUND 3 INPUT ITEMS			
5.04 OPEN SPACE			
	NO	5.04.03.A.1 (former 5.04.C.1)	5.04.05.A.1.c. OPEN SPACE STANDARDS. Recreation. These definitions are different from previous definitions. Have other sections been updated to reflect these changes? While the added language could be helpful in defining these uses, there is still room for ambiguity. For example, would hiking along a boardwalk be a passive recreation use? While hiking is a passive recreation use, a guided nature walk would be a group activity that would require "equipment designed specifically for the activity" - with the equipment being the boardwalk. It seems that more clarity may be needed to avoid confusion. Also, how do these definitions, and uses listed, conform to the LPAT Framework Plan (in relation to defining the terms, but also allowing particular uses)?
	NO	5.04.03.A.3.a (former 5.04.C.3.a)	5.04.03.A.3.a OPEN SPACE STANDARDS. Natural, Environmental, and Heritage. How will man-made landscapes that have "gained importance" be defined? Shouldn't wildlife and/or habitat evaluations be used as criteria (to be evaluated by ecologists and biologists)? This would help define "exemplary natural communities, habitats, and ecosystems" mentioned in the 2019 GP NHR 6.2. At the least, shouldn't wetlands mitigation projects be included? Shouldn't this also include species of greatest concern from the Virginia Wildlife Action Plan?
	NO	5.04.03.B.3 (former 5.04.D.3)	5.04.03.B.3 OPEN SPACE Categories/Private. Is there a requirement for signage designating the area as private to be considered such? Can there be? 2022 Round 3 Input: Staff noted it could be added if there was consensus
	No	5.04.03.B.3 (former 5.04.D.3)	5.04.03.B.3 OPEN SPACE CATEGORIES. PRIVATE. Why is privately owned land to which access is prohibited considered open space? Staff Response: staff noted that farmland would be open space with prohibited access.
	NO, partial	5.04.04.A (former 5.04.E.2)	5.04.04.A OPEN SPACE. PRIORITIES AND BONUS CREDIT. Indicates various "bonus credit" will be applied for various types of open space (e.g., prime ag soils, forest, trails, historic resources, etc.) Please provide an example calculation to show how the "bonus credit" is applied. How will the "bonus credit" be applied for ZOAM-2020-0002 calculation with open space for cluster subdivisions? [OR does 5.04.F.13 override all bonus credit for clustering?] 2022 Round 3 Input: Partially addressed. Bonus credits were clarified, but ZOAM calculation is deferred.
	NO, partial	5.04.04.A.5&6 (former 5.04.E.2)	5.04.04.A.5&6 OPEN SPACE STANDARDS. As noted, shouldn't native vegetation for pollinators be included? Also, in regards to bullet "e", the LPAT Framework Plan includes more than just pedestrian or bicycle trail considerations, shouldn't linear parks and wildlife corridors also be included as part of the LPAT Framework Plan considerations? 2022 Round 3 Input: Partially addressed. Wildlife habitat was addressed, but not LPAT. Though staff mentioned that pollinator habitat would be too specific to maintain, monitor, or describe in protective easement.
	NO, partial	5.04.04.A.6 (contiguous habitats), 5.04.04.B.6 (wetlands) (former 5.04.E.1)	5.04.E.1 OPEN SPACE STANDARDS. Are wetlands mitigation projects defined as a "water feature"? Shouldn't wetlands be explicitly added? Shouldn't wildlife travel corridors and native vegetation for pollinators also be included in contiguous habitats to protect against habitat fragmentation (and not just trees)? 2022 Round 3 Input: Partially addressed . Wetlands were added, but not wildlife corridors, native vegetation, or pollinator habitat. Staff noted a consensus could cause these to be added.

NO	5.04.05 (former 5.04.F)	5.04.05.F OPEN SPACE STANDARDS. General Open Space Design Standards. Aside from one reference to RSCR, why are there no standards pertaining to wildlife travel corridors, native vegetation, or ecological services that open space should provide (to comply with the 2019 GP)? Why is the only consideration for landscaping (bullet 2.b) for "enjoyment and shade"? Shouldn't landscaping be required to incorporate ecological value (ie native plants)? Staff Response: staff noted standards are too specific for ZO
NO	5.04.06 (former 5.04.H.1-5)	5.04.06 OPEN SPACE STANDARDS. Type specific open space standards. Why don't these type specific standards include mentions of contiguous habitat, wildlife travel corridors, native plant vegetation, etc. to achieve 2019 GP NEHR policies? At the least, shouldn't Section 3 "Passive Recreation Use" have these ecological considerations? The standard to "contain a variety of natural features" is extremely weak language considering that passive recreation uses are typically intended to connect people with nature. Staff Response: No, despite staff acknowledged "No intention to exclude. Language can be strengthened." 2022 Round 3 Input: Second request for language to be strengthened.
NO	5.04.06.D&E (former 5.04.F.1. b. 5.04.H.4.d.6.e)	5.04.06.D&E. OPEN SPACE Standards & Type-Specific Open Space Design Standards/Outdoor Gathering Space. Amenities on parcels greater than [TBD] must include restrooms at regular intervals or those must be in close proximity and open the public. PRCS and NOVA Parks, including the W&OD Trail, already are providing this necessary amenity. Have PRCS and NOVA Parks been asked to determine the appropriate interval? 2022 Round 3 Input: Unclear. Mentions of restrooms specifically have been removed.
NO	5.04.07 (former 5.04.H.6)	5.04.07 OPEN SPACE Design Standards. Trails. Why does this section not include or reference equestrian trail requirements?
NO	5.04.07 (former 5.04.H.6)	5.04.H OPEN SPACE STANDARDS. Type specific open space standards. Trails. Why doesn't this section include any considerations for the linear parks portions of the Linear Parks and Trails plan? Why doesn't this section include any of the LPAT design elements related to wildlife corridors, native vegetation, and environmental protection? Staff Response: Staff noted "Even though they are not mentioned they are not prohibited. Design elements are included in the LPAT with a conscious decision not to reproduce them here."
NO	5.04.07.A.3 (former 5.04.H.6. c.)	5.04.07.A.3 OPEN SPACE STANDARDS. Type specific open space standards. Trails. Could this language be clarified? It appears that if land is not dedicated to the county, or it is not included within the boundary of the parcel owned by an HOA or individual, then the path must be provided by an easement. Is that correct? If so, would that preclude land within an HOA from providing a path via an easement? Staff Responses: Staff noted "Interpretation is correct and it would NOT preclude land within HOA from providing a path via an easement."
No	5.04.08.B.5&6 (former 5.04.I.1.)	5.04.08.B.5&6. USES IN OPEN SPACE. The list of uses permitted in open space under private ownership and HOA ownership include agriculture. However, as discussed with Uses and Use-specific standards, some uses categorized as "Agricultural uses" are significantly more "high-intensity" than others. Blanket permitted use on open space for some uses should be consistent with the Use and Use-specific standards requests to evaluate based on HIGH-INTENSITY USE impacts (traffic, noise, lighting, etc.). How will high-intensity uses be addressed?
No	5.04.08.B&F (former 5.04.I)	5.04.08.B&F OPEN SPACE STANDARDS. Uses in Open Space. Why are botanical gardens or nature study areas permitted on HOA land, but not the other land types mentioned? Shouldn't they also be allowed on private parcels?
No	5.04.09 (former 5.04.J.)	5.04.09 OPEN SPACE STANDARDS. Comprehensive Open Space Plan. Shouldn't these plans also include linear parks? This section raises another question, are linear parks defined within the new Zoning Ordinance, as defined by the Linear Parks and Trails Plan? As mentioned previously, only design standards including trails, and not linear parks, of the Linear Parks and Trails plan have been included in this section of the zoning ordinance.
No	5.04.10 (former 5.04.K.3.)	5.04.10 OPEN SPACE STANDARDS. Maintenance and Management of Open Space. These requirements do not seem to reflect the flexibility to manage and maintain pollinator meadow habitat. Given that most habitats in Loudoun County would grow into a forest if given the chance, shouldn't flexibility be given to actively manage for pollinator meadow habitat? This may result in native trees being taken down in order to maintain it as a meadow. In order to enforce this, there may need to be further definitions within the zoning ordinance or FSM on what defines a pollinator meadow (to be included in CDPs), so more standards in regards to native vegetation requirements may need to be created, but this would help implement priorities regarding native vegetation in the 2019 GP. Staff Response: Staff noted too specific for ZO, defers to NRT.

No, partial	5.04.12 (former 5.04.N.2.)	5.04.12 OPEN SPACE. MODIFICATIONS. e. states, "permission to locate uses in open space must be governed by the zoning district within which the site, parcel or development is located." This indicates that it IS possible and feasible to assign different Uses permitted in Open Space by zoning district, correct? Staff Response: Maybe. Section has been updated. Staff answered that it was possible. 2022 Round 3 Input: Direct request for the capability and applicability to assign different Uses permitted in Open Space by zoning districts and/or existing overlay district.
NO	5.04.A.5.a	5.04.A.5.a OPEN SPACE. APPLICABILITY. How do and will these standards apply to ZOAM-2020-0002 for consistent application? Staff Response: Staff noted ZOAM decisions have been deferred.
NO	5.04.B.1	5.04.B OPEN SPACE, CALCULATION. States, "Open Space is calculated by multiplying the required percentage as provided in the district requirements specified in Chapter 2, Zoning Districts by the gross acreage of the subject parcel or combined parcels." However, ZOAM-2020-0002 (Cluster/Prime Ag Soils) is proposing an overall 70% that is split between farming lots (PFLs) Rural Economy Lots (RELS) and Open Space -- which appears to get the "leftover" area after PFL and REL. How will that ZOAM be compliant with this ZO requirement? Staff Response: Staff noted ZOAM decisions have been deferred.
NO	5.04.H.5	5.04.H.5. OPEN SPACE PEDESTRIAN & BICYCLE NETWORK. Why isn't a pedestrian and bicycle network, or similar amenity, required in the Rural Policy Area? Staff Response: "Pedestrian and bicycle trails were initially specified in district requirements and only recently determined appropriate for inclusion here. They are not a district requirement. There is also a concern for conflict with FSM requirements in rural areas."
No	5.04.I.1.	5.04.I.1., 3 & 4. USES IN OPEN SPACE. How will Uses in open space be applied for ZOAM-2020-0002, specifically, will the restrictions and standards only apply to "open space lots" or will PFLs (prime farmland lots) and RELs (Rural Economy Lots) have similar or the same requirements? Staff Response: Staff waiting on ZOAM
No	5.04.L.1.b	5.04.L.1.b OPEN SPACE. Ownership, Operation & Management. b states that membership in the HOA/corp/trust/etc. must be mandatory for all residential property owners. How will this apply to ZOAM-2020-0002 lots categorized as PFL and REL? Will they be considered "residential" and be required to be a member of the HOA or equivalent? Staff Response: Staff waiting on ZOAM
Addressed	5.04.03.B.1 (former 5.04.D.1)	5.04.03.B.1 OPEN SPACE CATEGORIES. COMMON. Given the stated purpose of the open space standards, why are sewer facilities considered common open space and calculated as open space in development?
Addressed	5.04.03.B.2 (former 5.04.D.2)	5.04.03.B.2. OPEN SPACE Categories/Public. While the categories apply to all Open Space, this one only applies to HOAs and "comparable" which rules out the public lands owned by the county and comparable governmental entities. Can this definition be expanded to include all public open space?
Addressed	5.04.05.A.1.c (former 5.04.C.3)	5.04.05.A.1.c OPEN SPACE STANDARDS. Natural, Environmental, and Heritage. In addition to contiguous forests, shouldn't wildlife travel corridors, and native plant and pollinator habitat also be included to comply with 2019 GP policies (especially NHR 6.2, but also FTV 4 and NEHR 1)? Shouldn't this also include language to protect viewsheds the County's scenic rivers (2019 GP HASR 5.2.O)?
Addressed	5.04.06 (former 5.04.H.1.d)	5.04.06 OPEN SPACE DESIGN STANDARDS. Why must open space be centrally located? How is centrally located measured? 5.04.H.2.a OPEN SPACE. Commercial or Employment Districts. Why must open space be centrally located? How is centrally located measured? 5.04.H.3.a. OPEN SPACE. Passive Recreation Space. Why must open space be centrally located? How is centrally located measured?
Addressed	5.04.10.C.6 (former 5.04.K.3. f.)	5.04.10.C.6. OPEN SPACE. Add "Maintenance of any prepared surface, e.g., multi-use path or trail, or sidewalk." Any of these features present must be maintained too.
Addressed	5.04.H.5	5.04.H.5. OPEN SPACE. Type-Specific Open Space Design Standards/Pedestrian and Bicycle Network. Glad to see inclusion of the LPAT Plan in the ZO. This reinforces the County's commitment! Kudos.

		5.04.A.5.a	5.04.A.5.a OPEN SPACE. APPLICABILITY. States, "Piecemeal applications that result in the approval of more than 4 dwelling units without the required open space when it would have otherwise been required if the applications had not been submitted separately, will be required to provide the required amount of open space on any future development application." This looks like a known loophole. What is the enforcement/consequences other than, "Don't do it again next time?"
		5.04.B.2	5.04.B.2. OPEN SPACE, CALCULATION. States that "any portion of the parcel that may be included in an easement" would be excluded from the gross acreage used in calculation. Can you be more specific for what TYPES of easement (utility, conservation, development, open space, etc.)?
		5.04.C.1	5.04.C.1. OPEN SPACE Types/Recreation. Definitions of Active and Passive Open Space were majorly changed from current ZO. Focus proposed is now on the activities involved (versus the amount of land development involved for the activity). Kudos.
		5.04.F.5	5.04 F. 5 OPEN SPACE STANDARDS. Why is a credit for meeting minimum open space requirements given for meeting other requirements of the zoning code?
		5.04.H.1.g	5.04.H.1.g OPEN SPACE Design Standards. Is there a parameter somewhere for "well-drained?"
		5.04.H.4.d.5.c	5.04.H.4.d.5.c. OPEN SPACE. Add to end "or sidewalk." Emphasis should be on all acceptable accessibility.