

ZOAM 2020-0002: Second Staff Draft, August 2022

Comments Submitted by Save Rural Loudoun¹

Explanation of our Comments

SRL appreciates the tremendous amount of work that County Staff have put into this draft ZOAM. Staff has made many positive changes that we agree with and support.

We strongly endorse the following improvements:

- a clearer description of the purpose and intent of the rural districts, establishing a direct relationship between the Zoning Ordinance and the place type described in the General Plan;
- the creation of Preservation Farm Lots (PFLs);
- the requirement that prime soils be protected on PFLs;
- the requirement that PFLs be placed under permanent open space easement;
- the requirement of pre-submission meetings for cluster subdivision applications; and
- the inclusion of siting and design guidelines.

In the interest of making efficient use of Staff's time, the following comments focus on elements of the draft with which we disagree or have concerns. We would like to stress that this in no way means that our reaction to the draft is purely negative. All elements of the text that we have not addressed below have our full support.

Summary

1. The definition of "cluster subdivision option" should not be amended to specifically address density.
2. More agriculture and appropriately-scaled tourism uses should be permitted on Preservation Farm Lots (PFLs) and Rural Economy Cluster Lots (RELs).
3. The cluster subdivision maximum lot yield (density) in the Rural North zoning district should be reduced to 1 house per 15 acres (not covered by this ZOAM).
4. 80% of the originating tract should be reserved for PFLs and RELs (vs. 70%).

Common Open Space Lots (OSLs) should not be counted within this percentage (if sewage disposal systems are permitted on OSLs).

5. 85% of the prime soils should be preserved in PFLs (vs. 70%).

¹ Save Rural Loudoun is a non-partisan, non-profit 501(c)(4) citizens organization dedicated to preserving the predominantly agricultural rural place type described in Loudoun County's 2019 Comprehensive Plan.

6. Contiguous areas of prime soils should be preserved on individual PFLs (i.e., they should not be fragmented among multiple lots).
7. Individual sewage disposal systems should not be permitted on OSLs (outside the residential cluster lots they serve).
8. HOA Covenants should not be allowed to restrict farming or other permitted rural economy uses on PFLs and RELs.

Definitions

Cluster Subdivision Option: The draft inserts new text in this definition that describes greater zoning density as a categorical characteristic of this subdivision option.

SRL opposes this addition to the definition.

It is unclear whether the inserted reference to density relates to the maximum lot yield of a cluster subdivision (often described as zoning “density”) or to the fact that residential cluster lots are located closer to each other than in other subdivision options.

There is nothing in the originating Virginia statute that categorically defines the cluster subdivision option in terms of greater density.²

We also note that the Board of Supervisors (BOS) specifically decided not to address density (maximum lot yield) in this ZOAM.

Wastewater Systems: The draft district regulations continue to use a number of different terms to describe wastewater treatment, sewage pumping, sewage disposal, and septic systems.

SRL continues to strongly recommend that these terms be reconciled in the regulations and, if there are any legal distinctions, define them clearly.

There continues to be a conflict between the definition of “sewage disposal systems, individual” in Chapter 8 and the district regulations. The former categorically defines individual sewage disposal systems as being located on the lots they serve. The latter continues to allow individual sewage disposal systems to be located on Common Open Space Lots (OSLs). This raises the potential for legal dispute over the draft district regulations. SRL urges Staff to consult with the County’s Health department on this issue.

SRL continues to urge Staff to reconcile these conflicts between Chapter 8 and the district regulations, in close consultation with the Health department.

² § 15.2-2286.1. Provisions for clustering of single-family dwellings so as to preserve open space. Section C. states that “... a locality may, at its option, provide for the clustering of single-family dwellings and the preservation of open space at a density calculation greater than the density permitted in the applicable land use ordinance.”

Rural District Regulations

NOTE: The following comments are tagged to Section 2-100, the Agricultural Rural 1 district. In all cases except our comments on zoning density (maximum lot yield), they apply equally to the parallel provisions of Section 2-200, the Agricultural Rural 2 district.

2-102 Use Regulations (Permitted Uses Table)

Preservation Farm Lots (PFLs): The draft would limit the permitted uses on PFLs to a small number of agricultural production activities.

SRL supports the intent of tightly limiting the permitted uses to those that are directly related to farming.

However, we remain concerned that some uses that are important to the vitality of the agricultural economy have been removed. We would note that the Board Member Initiative authorizing this ZOAM specifically highlights the intention to support the equine industry.

We recommend that the following accessory uses be permitted on PFLs:

- Nursery (both types)
- Wayside stand
- Stable, private
- Stable, livery (by minor special exception)

Rural Economy Cluster Lots (RELS): The draft would eliminate a large number of uses that may support Loudoun's agricultural and rural tourism economies.

SRL supports the intention of tightly limiting the permitted uses to those that support the rural economy.

However, the creation of the PFLs does not mean that agricultural uses should be prohibited on RELS

We remain concerned that too many uses that are important to the vitality of both agricultural and heritage tourism businesses have been removed.

We recommend that the following uses be permitted on RELS.

In all cases, zoning regulations should ensure that the scale of these uses (including number of permitted guests and number of parking spaces) is controlled to ensure compatibility with the rural character of western Loudoun.

- Agritainment
- Virginia Farm Winery
- Farm-based tourism
- Farm co-op
- Farm machinery repair
- Limited brewery

- Nursery (both types)
- Sawmill
- Agricultural research facility
- Animal care business
- Central farm distribution hub for agricultural products
- Commercial winery (both types)
- Farm machinery repair
- Feed and farm supply center
- Stable, livery
- Stable, private
- Kennel (both types, by exception)
- Teahouse, coffeehouse (with appropriate scale regulations)
- Banquet, event facility (by special exception)
- Restaurant (by special exception)
- Ecotourism
- Rural recreational establishment, outdoor (by special exception)
- Antique shop (with appropriate scale regulations)
- Art gallery or studio (with appropriate scale regulations)
- Craft shop (with appropriate scale regulations)

Common Open Space Lots (OSLs): The draft would continue to permit two uses that may not be appropriate.

Sewer and water pumping stations: **SRL is concerned that this may be construed to permit “sewage disposal systems, individual” to be located outside the lots they serve, contrary to the definition of those systems in Chapter 8.**

Portable dwelling/trailer construction: **This should not be permitted on OSLs in rural areas.**

Section 2-103(C) Cluster Subdivision Option

Lot Yield, 2-103(C)(1)(b): The draft maintains a maximum lot yield of 1 lot per 5 acres.

SRL continues to strongly oppose this maximum density, recognizing that the BOS decided not to address it in this ZOAM. The projected build-out at this density is fundamentally incompatible with the stated purpose and intent of this zoning district.

Minimum Percentage of Originating Tract Required for Non-Residential Cluster Lots, 2-103(C)(1)(d): The draft requires that a minimum of 70% of the originating tract be composed of a combination of PFLs, RELs, and OSLs.

SRL recommends re-naming this section “Minimum Percentage of Originating Tract to be Preserved for Farming and Rural Economy Uses.” Since residential uses are permitted on PFLs and RELs, it is confusing to refer to them as “non-residential cluster lots.”

To better preserve Loudoun’s remaining rural land, SRL recommends increasing the percentage of land to be preserved to 80% of the originating tract.

SRL opposes the inclusion of OSLs as one of the lots that is intended to be preserved from the impacts of residential development. If sections 2-103(C)(1)(d), 2-103(C)(5)(b), and 2-103(C)(9)(b) were revised so that individual sewage disposal systems would not be allowed to be sited on OSLs, then SRL would have no objection to including OSLs in the calculation of the percentage of land preserved from residential development.

Residential Cluster Lots, Minimum Lot Size, 2-103(C)(2)(c): Sub-sections (ii) and (iii) assume that wastewater treatment systems may be sited outside the lots they serve.

For both rural preservation and public health reasons, SRL opposes allowing any type of individual sewage system to be located outside the lot it serves.

Minimum Number of Preservation Farm Lots and Percentage of Prime Soils to be located within Preservation Farm Lot(s), 2-103(C)(3)(a): Requires that a minimum of 70% of the prime soils be preserved on PFLs. Does not require that contiguous areas of prime soils be retained with individual PFLs (i.e., allows contiguous areas to be broken up by lot lines).

SRL opposes the 70% minimum for preservation of prime soils. This would allow the destruction of about 13,000 more acres of prime soils (30% of the remaining 44,000 acres). Thousands of acres of prime soils have been lost in recent decades, when it was the County’s policy to preserve them. Given past neglect, the standard must be higher now. **The Ordinance should protect at least 85% of the County’s remaining prime soils.**

SRL continues to believe that contiguous areas of prime soils must be preserved on individual PFLs. Prime soils are less productive when fragmented into different lots. The County should seek to maximize the productivity of its remaining prime soils.

Permitted Accessory Uses on Common Open Space Lots, 2-103(C)(5)(b): The draft would allow infrastructure serving Residential Cluster Lots (RCLs) to be located on OSLs, while counting OSLs as part of the originating tract being preserved from residential development.

SRL opposes allowing individual sewage disposal systems serving RCLs to be located on OSLs.

Utility Requirements, Sewer, 2-103(C)(9)(b): The draft would allow individual sewage disposal systems serving RCLs to be located on OSLs.

SRL opposes allowing individual sewage disposal systems serving RCLs to be located on OSLs. It is puzzling why the regulations would require water supply systems, which have minimal impact on rural uses, to be located on the lots they serve, while allowing sewage disposal systems that are not under professional management and have potentially much greater negative impact on rural uses to be located outside the lots they serve.

Homeowners Association and Responsibilities, 2-103: This section does not prevent HOA covenants from restricting farming and other rural economy uses permitted by the Zoning Ordinance.

SRL strongly recommends a specific requirement that HOA covenants may not restrict farming and other rural economy uses permitted on PFLs and RELs. It was our understanding that Staff had specifically committed to the BOS that such a provision would be included.