



County of Fairfax, Virginia

MEMORANDUM

DATE: May 17, 2021

TO: Planning Commission

FROM: Stella Koch, Chairman
Environmental Quality Advisory Council

SUBJECT: Zoning Changes Must Not Degrade Fairfax County's Water Supply Protection

Upon the April 2021 advertisement of the proposed agritourism zoning ordinance amendment changes, the Environmental Quality Advisory Council (EQAC) noted the potential to impact the Watershed Protection Overlay District (WPOD). Typically, EQAC would meet with County Staff to discuss the expected environmental impacts of any zoning change that may impact WPOD at an EQAC meeting. The Ordinance change schedule did not allow time to schedule a typical staff presentation; however, we appreciate staff's April briefing of Council members George Lamb and Renee Grebe. The proposed amendment was discussed at EQAC's meeting on May 12, 2021¹.

EQAC is opposed to any change to zoning regulations that compromises the safety and security of the County's drinking water supply. Our interpretation of the proposed changes includes the potential to increase impervious area of the WPOD, particularly in the protected R-C zoned area of the WPOD. Doing so would be a damaging compromise. This WPOD was established in 1982 by Fairfax County BOS to protect the Occoquan Drinking Water Reservoir. We must be vigilant in continuing this protection. After careful consideration, EQAC must oppose the changes proposed without the addition of specific and stringent provisions to prevent any increase in the impervious area of the most critical areas of the R-C areas of the WPOD.

We would be pleased to work with the Planning Commission to develop the specific language needed to make the proposed changes acceptable.

cc: Sara Morgan, Senior Planner, Zoning Administration Division, DPD
Leslie Johnson, Zoning Administrator, Zoning Administration Division, DPD
William Mayland, Deputy Zoning Administrator, Zoning Administration Division, DPD
Kambiz Agazi, Director, Office of Environmental and Energy Coordination

¹ The attached letter provides details of EQACs deliberations.



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

May 17, 2021

Planning Commission members,

This comment letter supplements the May 17, 2021 memo of the Environmental Quality Advisory Council's (EQAC) opposition to the proposed agritourism zoning ordinance amendment changes. The following was discussed at the May 12, 2021 EQAC meeting.

EQAC does not support the zoning ordinance language as written. EQAC opposes any changes to zoning regulations that has the potential to increase impervious surface in the Watershed Protection Overlay District (WPOD) area, with a critical focus in the R-C areas of the WPOD.

EQAC understands the benefits gained from adding clarity to the County's current zoning language to ensure predictability in the overall economic opportunities available to local farms associated with agritourism. Doing so can allow landowners to conserve agricultural land and support their agricultural business. However, the Board must not allow economic options at the expense of Comprehensive Plan and downzoning commitments meant to prevent degrading our regional drinking water.

THE WATERSHED PROTECTION OVERLAY DISTRICT

The most environmentally important area affected by these proposed zoning changes is the Watershed Protection Overlay District, covering primarily large sections of Sully and Springfield Districts¹. Our 2019 EQAC Annual Report on the Environment provides a brief history of the fight the County won to save our drinking water quality:²

In 1982, "...the Board took action to protect the Occoquan watershed. More than 38,500 acres of property were down-zoned from one-acre to five-acre development, "citing a study that predicted the Occoquan reservoir could turn into a smelly swamp if some action is not taken...the Board's 1982 downzoning action was upheld in a landmark 1985 Circuit Court decision. The decision preserved the five-acre zoning of the watershed, helping to protect the water quality of the Occoquan Reservoir. It also reinforced the ability of local governments in Virginia to implement their comprehensive plans and enabled jurisdictions to effectively plan for the future."

¹ Reference map in Appendix 1 at the end of this letter, created using the County's JADE mapping system

² 2019 EQAC Annual Report p. 38: <https://www.fairfaxcounty.gov/environment-energy-coordination/sites/environment-energy-coordination/files/assets/2019%20eqac%20annual%20report%20complete.pdf#page=38>

Furthermore, Fairfax County's Comprehensive Plan for Area III, which encompasses nearly all of the Watershed Protection Overlay District, provides this very clear summary of how the Low Density Residential Areas³ was created to protect our drinking water quality:

“The primary purpose of Low Density Residential Areas is to ensure the preservation of environmental resources by limiting development primarily to low density, large lot residential and open space uses. The loss of natural habitat coupled with the vital role that portions of these areas serve in protecting water quality dictates that development in these areas be minimized. These are stable areas of little or no change.”

It is also critical to note that on July 22, 1982, a regional water-supply agreement comprised of eight separate contracts⁴ was signed which designates the Occoquan River, along with the Patuxent River in Maryland, as the backup water supply for the entire Washington, DC Region, should the Potomac River suffer insufficient flow. Parties to this agreement include Maryland, Virginia, Washington, DC, and the US. Army Corps of Engineers. Preserving water quality in the Occoquan watershed is, therefore, a matter of National importance.

EQAC is concerned that there is no mention of these important land-use designations and agreements in the staff report, as environmental impacts to this area are important to understand and avoid.

The 40th anniversary of the downzoning is approaching in 2022. Looking back, for the 20th anniversary, the Report of the New Millennium Occoquan Watershed Task Force⁵ was published, providing an overview of where we came from and where we were heading. The forward, by then-Fairfax County Board of Supervisors Chairman Hanley on January 27, 2003, is a chilling reminder about how important this fight to continue to protect the Occoquan Reservoir drinking water:

“We must remain vigilant. Twenty years ago our citizens rallied for an important cause. Because of their dedication, and with continuing community participation and County staff and agency expertise, we have ensured a protected source for safe drinking water. This is an important part of the quality of life we enjoy in Fairfax County today.”

This 2003 report is not mentioned in the agritourism staff report either, despite its explicit

³ Comprehensive Plan for Area III p.7: <https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/comprehensiveplan/planhistoric/2017/area3/overview/10-16-2018.pdf#page=7>

⁴ Sheer, Daniel P., 1985, "Managing Water Supplies to Increase Water Availability." In: National Water Summary 1985, U.S. Geological Survey Water-Supply Paper 2300, p. 101-112: <https://pubs.er.usgs.gov/publication/wsp2300>

⁵ 2003 Report of the New Millennium Occoquan Watershed Task Force: <https://www.novaregion.org/DocumentCenter/View/247/OTFFinalReport12703>

discussion of the impact of “Land Use and Open Space Protection – The Key to Both Reservoir and Watershed Protection”. A section of the 2003 report discusses “The Zoning, Planning, and Existing Land Use Context” and explores how by-right development, such as being sought here through this expanded definition of agritourism, is a threat to this critical regional backup drinking water supply.

OCCOQUAN WATERSHED MONITORY LABORATORY PERSPECTIVE

At the meeting with County Staff, EQAC members asked if any environmental experts had been contacted to help inform the proposed changes. Staff said they met with Dr. Adil Godrej from the Occoquan Watershed Monitoring Laboratory to provide additional context and clarity on topics discussed April 8th, 2021 memo⁶. Staff reported that the impacts would have minimal impact on the environment. EQAC members then requested a meeting with Dr. Godrej who agreed that he met with staff, but that the discussion focused on the environmental impact *if* the recommendations were implemented and that there was no feasible scientific way to measure that impact.

Dr. Godrej’s scientific opinion as expressed to EQAC was that this zoning change should *not* be allowed in the protected, downzoned areas. Anything that removes protections from the downzoned area is a concern and he felt that changes in the zoning language did just that. Please refer to the important letter that Dr. Godrej forwarded to the Board directly. EQAC concurs with his concern about continued encroachment and reduction of protections. While the changes in impervious surface additions from one farm cannot be measured due to the small size, as usage expands over time, the collective impact can in fact be significant: death of the WPOD’s R-C protections by a thousand cuts.

DISCUSSION TOPICS FROM MAY 12, 2021 MEETING

1. **Eliminate by-right, large-scale, one-off events as agritourism**

EQAC members oppose the allowance of by-right, large-scale one-off events as part of the definition of agritourism (as defined by both the loose “not limited to” language as well as the type of events listed in number four of the definition, such as weddings⁷). Including this expanded use of current agritourism facilities goes over and above the State Code definition and jeopardizes the Watershed Protection Overlay District’s R-C areas explicitly mentioned above as requiring protection from expanded development

⁶ Staff Response Memorandum - Follow-up from January 14, 2021 Land Use Process Review Committee: <https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/zoning%20ordinance/proposed%20amendments/agritourism/lupr-memo-4-6-21.pdf#page=2>

⁷ Agritourism staff report: <https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/zoning%20ordinance/proposed%20amendments/agritourism/agritourism-staff-report.pdf#page=7>

due to environmental degradation.

This limitation has been implemented elsewhere in Virginia. Staff provided EQAC a list of comparable Virginia locales and their ordinance language on this topic. EQAC believes that Augusta and Albemarle County's code could serve as a model for Fairfax County.

- Augusta County⁸ (Staunton/Waynesboro) and Virginia Beach⁹, both explicitly *do not include* these activities in their by-right definition of agritourism. Augusta County's code also includes: "An activity shall not be deemed an agritourism activity solely by reason of its taking place on a farm or ranch."
- Albemarle County (Charlottesville) does not specifically include events such as weddings in their definition of agritourism¹⁰ and their FAQ¹¹ indicates that large-scale events such as weddings are unusual and not allowed by-right.
- Henrico County (City of Richmond area), did not include events and weddings in their April 2021 proposed agritourism activities definition¹² and their language restricts the definition to only include events "that are directly associated with and incidental to on-going agricultural activity on-site."

Events such as weddings or corporate events are materially different than smaller scale and/or more distributed activities such as farm tours and harvest-your-own activities. They are more formal in nature and require larger concentrations of people at a facility in a narrow window of time. The reason this is important environmentally is that the facilities wishing to hold these events would thus be more likely to provide a parking area large enough to hold the maximum number of attendees, per day (as laid out by the ordinance), all at one time. This leads to our second recommendation.

2. **Explicitly prohibit paved parking on agritourism sites within the R-C areas of Watershed Protection Overlay District, with the exception to support limited paved parking for accessibility purposes**

Staff's guidance that "the standards do not require parking spaces to be designated or paved" does not go far enough to protect areas of highest environmental concern in terms of threats to our regional water supply: paved parking should be prohibited in the

⁸ August County agritourism definition on p. 3: <https://www.co.augusta.va.us/home/showdocument?id=185>

⁹ Virginia Beach definition of "Agritourism activity":
https://library.municode.com/va/virginia_beach/codes/code_of_ordinances?nodeId=CO_APXAZOOR_ART4AGDI

¹⁰ Albemarle County's definition of agritourism
https://library.municode.com/va/albemarle_county/codes/code_of_ordinances?nodeId=CH18ZO_ARTIGEPR_S3DE_S3.1DE

¹¹ Albemarle County's FAQ: <https://www.albemarle.org/home/showdocument?id=238#page=2>

¹² Henrico County proposed agritourism definition on p. 477: https://zoningupdate.henrico.us/assets/hen_ch24-phd_21-04-28.pdf#page=477

R-C part of the WPOD. EQAC has documented the connection of Impervious Surfaces and Damaged Streams¹³ in our annual report. Increased impervious surface will ultimately negatively impact our drinking water. And while compaction will remain an issue even if parking areas remain unpaved, staff could provide maintenance recommendations to ensure parking areas remain as permeable as possible to help ensure minimal impacts on our drinking water.

3. Explicitly include environmental impacts to drinking water supply as a consideration of “health and general welfare of the public”

The Code of Virginia states that no locality shall regulate agritourism activities at an agricultural operation unless there is a substantial impact on the health, safety, or general welfare of the public¹⁴. However, as the staff report mentions, the code does not identify any criteria by which to measure those impacts.

EQAC members recommend the County include environmental impacts to drinking water quality as part of the definition of “health and general welfare” when examining “health, safety, or general welfare of the public.” Degradation of environmental assets and increased impervious surfaces needed to support large-scale events will degrade regional drinking water quality. Clean water is necessary to ensure both the health and general welfare of the public.

4. Revisit the concept of by-right tiers of use

Staff provided a range of the total number of attendees per day, for each of the four agritourism tiers defined, for Board consideration. EQAC asked for clarification of how these ranges were selected and was told they are based on estimates of current and expected future uses. EQAC suggests the tiers include environmental protection considerations that discourage large-scale commercial development in the R-C and ensures the influx of people does not pollute ground water (e.g. due to increase septic usage). If they must be designated, the tier maximum should be as small as possible and should require permits for special large uses.

ADDITIONAL ISSUES

Staff discussed with EQAC the nature of operations at Paradise Springs, Bull Run Winery, and Cox Farms. The environmental impacts of these commercial developments in the R-C do not appear to have been taken into consideration when crafting this new zoning ordinance

¹³ EQAC Annual Report p. 97: <https://www.fairfaxcounty.gov/environment-energy-coordination/sites/environment-energy-coordination/files/assets/2019%20eqac%20annual%20report%20complete.pdf#page=97>

¹⁴ VA state code on agritourism: <https://law.lis.virginia.gov/vacode/title15.2/chapter22/section15.2-2288.6/>

amendment language. Consideration of how this broadened definition of agritourism opens the door to *more* environmental impacts also does not appear to have been considered. EQAC members believe these negative environmental impacts of continued impervious surface via parking lots and possible expanded road networks to support this expansion will continue to compound if we allow this by-right commercial development in the WPOD's R-C.

IN CONCLUSION

EQAC opposes the current zoning language as written and asks that the Planning Commission consider the above recommendations for changes that would better preserve the County's most delicate environmental resources in the Watershed Protection Overlay District. The Comprehensive Plan for the Pohick Planning District¹⁵ (which encompasses a large area of the

Occoquan downzoned areas) underscores the importance of mitigating impacts to health while preserving the area's environmental integrity:

"Preservation of the water quality is of significant value to the public health and welfare."

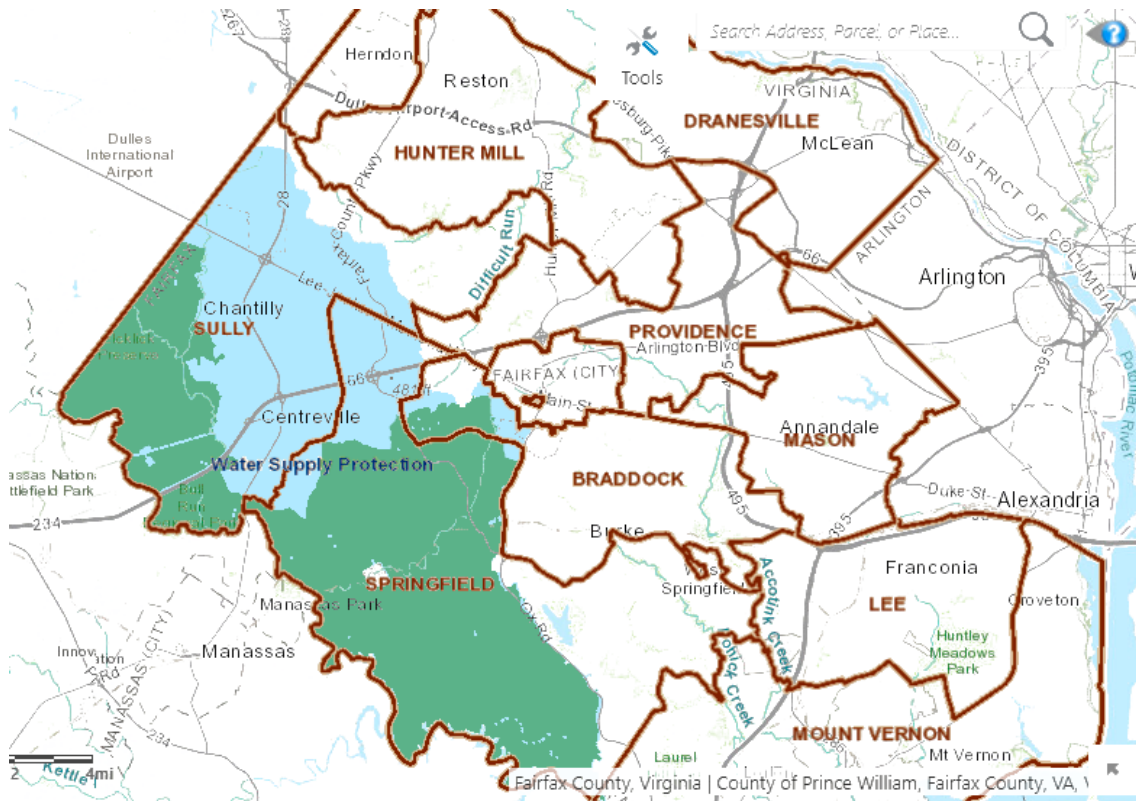
Thank you for your consideration of these comments on the proposed agritourism zoning amendment. We would be pleased to work with the Planning Commission to develop the specific language needed to make the proposed changes acceptable.

Sincerely,
Stella Koch, Chairman

Attached: Appendix 1

¹⁵ Pohick Planning District Comp Plan: <https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/compplan/area3/pohick.pdf>

Appendix 1: Map of the Watershed Protection Overlay District (light blue) and the *overlaid* portion of the County's R-C (green), encompassed by the WPOD.¹⁶



¹⁶ Map produced using JADE:

<https://www.fairfaxcounty.gov/GeoApps/Jade/Index.html?configBase=https://www.fairfaxcounty.gov/GeoApps/Geocortex/Essentials/REST/sites/Jade/viewers/Jade/virtualdirectory/Resources/Config/Default>