

STAFF REPORT

PREPARED BY CODE DEVELOPMENT AND COMPLIANCE

- PROPOSED COUNTY CODE AMENDMENT
- PROPOSED PFM AMENDMENT
- PROPOSED ZONING ORDINANCE AMENDMENT
- APPEAL OF DECISION
- WAIVER REQUEST

Proposed Amendments to Chapter 101 (Subdivision Ordinance), Chapter 112 (Zoning Ordinance), and Chapter 118 (Chesapeake Bay Preservation Ordinance) of *The Code of the County of Fairfax (Code)*, and the Public Facilities Manual (PFM) Regarding Codifying the Delineation of Buildable Areas on Plans of Development, Adding Running Bamboo to Noxious Weeds and Other Editorial Changes

PUBLIC HEARING DATES

Authorization to Advertise:	October 30, 2018
Planning Commission Hearing:	December 5, 2018 at 7:30 p.m.
Board of Supervisors Hearing:	January 22, 2019 at 4:30 p.m.

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Staff Report

STAFF RECOMMENDATION

Staff recommends that the Board of Supervisors (Board) adopt the proposed amendments to Chapter 101 (Subdivision Ordinance), Chapter 112 (Zoning Ordinance) and Chapter 118 (Chesapeake Bay Preservation Ordinance) of the Fairfax County Code and to the PFM. The proposed amendments implement recommendations by the Virginia Department of Environmental Quality (DEQ) following their compliance evaluation of Fairfax County's (County) program in 2017.

DISCUSSION

Coordination

The proposed amendments have been prepared by LDS and coordinated with the Department of Planning and Zoning and the Office of the County Attorney.

Background

In 2017, DEQ conducted a Compliance Review of the County's Chesapeake Bay Preservation Ordinance and Program (Program) in accordance with § 62.1-44.15:69 and § 62.1-44.15:71 of the Chesapeake Bay Preservation Act and 9VAC25-830-260 of the Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations). DEQ staff recommended one condition regarding how the County implements the program. DEQ staff recommended that the County amend its local ordinances to include requirements for the delineation on plans of the buildable areas on each lot as required by 9VAC25-830-190(a)(5) of the Regulations. DEQ staff notes that this requirement is only applicable to plans, not plats. The proposed amendments implement the recommended change, as well as other minor changes and editorial corrections.

Summary of Proposed Amendments

The proposed amendment to Chapter 118 adds a specific statement to delineate the buildable areas allowed on each lot. The buildable areas must be based on the performance criteria specified in Chesapeake Bay Preservation Ordinance §118-3 et seq., the minimum required yards of the district in which located in accordance with the Zoning Ordinance, and any other relevant easements or limitations regarding lot coverage. The proposed amendments to Chapters 101, 112, and 118 and the PFM revise the submission requirements for certain plans of development. The requirement will apply to Site Plans (SPs), Minor Site Plans (MSPs), Preliminary Plans (PLs), Subdivision Plans (SDs), Infill Lot Grading Plans (INFs), Conservation Plans (CONs), Rough Grading Plans (RGPs) and Public Improvement Plans (PIs).

There are additional changes proposed to the Chesapeake Bay Preservation Ordinance: edit §118-1-6(r) to add running bamboo to the definition of noxious weeds, correct §118-1-9(d)(1) by deleting an extraneous sentence, edit § 118-3-2 and § 118-3-3 to update the reference to the National Soil Survey Handbook and Virginia Administrative Code, and edit § 118-5-3(c) to update the reference to the Virginia Department of Forestry's Best Management Practices for Water Quality Technical Manual. In addition, the term "shall" is changed to "must" in those sections included in the amendment.

Regulatory Impact

The impact of proposed amendments will be minimal. Currently, submitted plans of development demonstrate that the proposed development complies with the various requirements, which determine the buildable area, that are scattered throughout the applicable codes and regulations. The proposed amendment codifies the requirement for SPs, MSPs, PLs, SDs, INFs, CONs, RGP, and PIs.

The proposed amendment to add running bamboo to the list of noxious weeds will qualify the removal of running bamboo from the RPA for a simpler administrative approval process.

ATTACHED DOCUMENTS

Attachment A – Amendment to Chapter 101 (Subdivision Ordinance)

Attachment B – Amendment to Chapter 112 (Zoning Ordinance)

Attachment C – Amendment to Chapter 118 (Chesapeake Bay Preservation Ordinance)

Attachment D – Amendment to the Public Facilities Manual

**PROPOSED AMENDMENTS
TO
CHAPTER 101 (SUBDIVISION)
OF
THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA**

1 **Amend Article 2, Subdivision Application Procedure and Approval Process, Section 101-2-**
2 **2, Minimum Requirements, by revising paragraph (13) to read as follows:**
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4 (13) Stormwater quality. All required Water Quality Impact Assessments, site-specific
5 determinations of water bodies with perennial flow, Resource Protection Area Boundary
6 Delineations and Resource Management Area Boundary Delineations must-shall be submitted
7 and adequate measures must-shall be provided in compliance with Chapters 118 and 124 of the
8 County Code and the Public Facilities Manual. The buildable areas allowed on each lot must be
9 delineated in accordance with the Public Facilities Manual.
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12 **Amend Article 2, Subdivision Application Procedure and Approval Process, Section 101-2-**
13 **3, Preliminary Subdivision Plat, by revising paragraph (15) to read as follows:**
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15 (15) All Resource Protection Area boundaries, ~~and~~ all Resource Management Area boundaries,
16 and delineations of the buildable areas allowed on each lot in accordance with the Public
17 Facilities Manual.

**PROPOSED AMENDMENT
TO
CHAPTER 112 (ZONING ORDINANCE)
OF
THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA**

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of October 30, 2018 and there may be other proposed amendments which may affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment, which other amendments may be adopted prior to action on this amendment. In such event, any necessary renumbering or editorial revisions caused by the adoption of any Zoning Ordinance amendments by the Board of Supervisors prior to the date of adoption of this amendment will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.

1 **Amend Article 17, Site Plans, Part 1, General Requirements, as follows:**

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3 - **Amend Sect. 17-105, Minor Site Plans, by revising Par. 2H to read as follows:**

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5 2. A minor site plan ~~shall~~must be submitted on six (~~6~~) copies of a form provided by the
6 Director and ~~shall~~must be accompanied by six (~~6~~) copies of a plan depicting the
7 existing and proposed uses and improvements. Minor site plans ~~shall be~~are subject to
8 the fees set forth in Sect. 109 below and each plan ~~shall~~must be accompanied by a
9 receipt evidencing the payment of all such required fees. Minor site plans ~~shall~~must
10 include, when applicable, the following information:

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12 H. Delineation of any Resource Protection Area and Resource Management Area,
13 buildable areas on each lot, description of existing/proposed outfall system and
14 how stormwater quality, quantity and detention will be accommodated in
15 accordance with the Public Facilities Manual, Chapter 118 and Chapter 124 of The
16 Code.

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18 - **Amend Sect. 17-106, Required Information on Site Plans, by revising Par. 33 to read as**
19 **follows:**

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21 All site plans ~~shall~~must contain a cover sheet as prescribed by the Director and the following
22 information, where applicable, unless the Director determines, based upon written
23 justification submitted with the plan, that the information is unnecessary for a complete
24 review of the site plan. Site plans ~~shall~~must also be prepared in accordance with the
25 provisions of the Public Facilities Manual and ~~shall~~must be submitted in metric
26 measurements or the English equivalent to metric measurements; provided, however, that in
27 the event of any discrepancy between the English and metric measurements used to express
28 any standard in this Ordinance, the English measure ~~shall~~will control.

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- 1 33. Delineation of Resource Protection Areas and Resource Management Areas, buildable
- 2 areas on each lot, site specific determination of water bodies with perennial flow, and a
- 3 Water Quality Impact Assessment and required measures in accordance with Chapter
- 4 118 of The Code and the Public Facilities Manual.

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**PROPOSED AMENDMENTS
TO
CHAPTER 118 (CHESAPEAKE BAY PRESERVATION ORDINANCE)
OF
THE CODE OF THE COUNTY OF FAIRFAX, VA**

Amend the Chesapeake Bay Preservation Ordinance, Section 118-1-6, Definitions, by revising Paragraph (r) to read as follows:

(r) "Noxious weeds" means Johnson grass, kudzu, poison ivy, ragweed, poison oak, poison sumac, purple loosestrife, ~~and~~ multiflora rose, running bamboo and any other species hereinafter designated by the State as a noxious weed.

Amend the Chesapeake Bay Preservation Ordinance, Section 118-1-9, Chesapeake Bay Preservation Area Boundaries, by revising Paragraph (d)(1) to read as follows:

(1) ~~RPAs shall include any land characterized by one or more of the following features:~~ Any person who submits an RPA boundary delineation study for the purpose of reclassifying a water body from perennial to intermittent ~~must shall~~ submit written proof of notification (copy of written notification letter and white receipts for certified mailings) of all owners of property abutting and immediately across the street from the parcel(s) containing the water body being studied and a minimum of one homeowners' or civic association within the immediate vicinity as approved by Land Development Services. Such notice ~~must shall~~ include notice to owners of properties abutting and immediately across the street which lie in an adjoining county or municipality. This notification must be to a minimum of ten property owners other than the owner of the parcel for which the study is prepared. If there are fewer than ten different owners of property abutting and immediately across the street from the subject property, then additional notices shall be sent to other property owners in the immediate vicinity so that notices are sent to different owners of not less than ten properties. Notice ~~must shall~~ be sent to the last known address of the owner(s) as shown in the current Real Estate Assessment files. Notice to homeowners' or civic associations shall be sent to the registered address kept on file with the State Corporation Commission, or if none is on file, to the address kept on file by the County Office of Public Affairs. All written notice ~~must shall~~ be sent by certified mail, return receipt requested.

Amend the Chesapeake Bay Preservation Ordinance, Section 118-3-2, General Performance Criteria for Resource Management Areas and Resource Protection Areas, by revising Paragraph (h) to read as follows:

(h) Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local government, ~~must shall~~ have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Chesapeake Bay Preservation Act and this chapter.

51 (1) Recommendations for additional conservation practices need address only those
52 conservation issues applicable to the tract or field being assessed. Any soil and water quality
53 conservation practices that are recommended as a result of such an assessment and are
54 subsequently implemented with financial assistance from federal or state cost-share programs
55 must be designed, consistent with cost-share practice standards ~~effective in January 1999~~ in the
56 most recent version of the “Field Office Technical Guide” of the U.S. Department of Agriculture
57 Natural Resources Conservation Service or the most recent version ~~June 2000 edition~~ of the
58 “Virginia Agricultural BMP Manual” of the Virginia Department of Conservation and
59 Recreation, respectively. Unless otherwise specified in this section, general standards pertaining
60 to the various agricultural conservation practices being assessed will ~~shall~~ be as follows:

61 (i) For erosion and sediment control recommendations, the goal will ~~shall~~ be, where
62 feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as “T,” as
63 defined in the most recent version of the “National Soil Survey Handbook” title 430-VI of
64 ~~November 1996 in the~~ “Field Office Technical Guide” of the U.S. Department of Agriculture
65 Natural Resources Conservation Service. However, in no case shall erosion exceed the soil loss
66 consistent with an Alternative Conservation System, referred to as an “ACS”, as defined in the
67 “Field Office Technical Guide” of the U.S. Department of Agriculture Natural Resources
68 Conservation Service.

69 (ii) For nutrient management, whenever nutrient management plans are developed, the
70 operator or landowner must provide soil test information, consistent with the Virginia Nutrient
71 Management Training and Certification Regulations (4 VAC 50-85-5-15).

72 (iii) For pest chemical control, referrals will ~~shall~~ be made to the local cooperative
73 extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative
74 Extension Service. Recommendations must ~~shall~~ include copies of applicable information from
75 the “Virginia Pest Management Guide” or other Extension materials related to pest control.

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78 **Amend the Chesapeake Bay Preservation Ordinance, Section 118-3-2, General**
79 **Performance Criteria for Resource Management Areas and Resource Protection Areas, by**
80 **adding Paragraph (j) to read as follows**

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82 (j) The buildable areas allowed on each lot must be delineated on all preliminary plans, site
83 plans, minor site plans, subdivision plans, infill lot grading plans, conservation plans, rough
84 grading plans, and public improvement plans. The buildable area must be based on: 1) the
85 performance criteria specified in Article 3 of this Code, 2) the minimum required yards of the
86 zoning district in which the lot is located, and 3) any other relevant easements or limitations on
87 lot coverage.

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90 **Amend the Chesapeake Bay Preservation Ordinance, Section 118-3-3, Additional**
91 **Performance Criteria for Resource Protection Areas, by revising Paragraph (e) to read as**
92 **follows:**

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94 (e) On agricultural lands, the buffer area must ~~shall~~ be managed to prevent concentrated flows of
95 surface water from breaching the buffer area and appropriate measures, as recommended by the
96 Northern Virginia Soil and Water Conservation District, may be taken to prevent noxious weeds
97 from invading the buffer area. Agricultural activities may encroach into the buffer area as
98 follows:

99 (1) Agricultural activities may encroach into the landward 50 feet of the 100-foot wide
100 buffer area when at least one agricultural best management practice which, in the opinion of the
101 Northern Virginia Soil and Water Conservation District Board, addresses the more predominant
102 water quality issue on the adjacent land (erosion control or nutrient management) is being
103 implemented on the adjacent land, provided that the combination of the undisturbed buffer area
104 and the best management practice achieves water quality protection, pollutant removal, and water
105 resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient
106 management is identified as the predominant water quality issue, a nutrient management plan,
107 including soil tests, must be developed consistent with the Virginia Nutrient Management
108 Training and Certification Regulations (4 VAC ~~50-85-5-15~~) administered by the Virginia
109 Department of Conservation and Recreation.

110 (2) Agricultural activities may encroach within the landward 75 feet of the 100-foot wide
111 buffer area when agricultural best management practices which, in the opinion of the Northern
112 Virginia Soil and Water Conservation District Board, address erosion control, nutrient
113 management, and pest chemical control, are being implemented on the adjacent land. The erosion
114 control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as
115 "T," as defined in the most recent version of the "National Soil Survey Handbook" title 430-VI ~~of~~
116 ~~November 1996 in the "Field Office Technical Guide"~~ of the U.S. Department of Agriculture
117 Natural Resource Conservation Service. A nutrient management plan, including soil tests, must
118 be developed, consistent with the Virginia Nutrient Management Training and Certification
119 Regulations (4 VAC ~~50-85-5-15~~) administered by the Virginia Department of Conservation and
120 Recreation. In conjunction with the remaining buffer area, this collection of best management
121 practices must ~~shall~~ be presumed to achieve water quality protection at least the equivalent of
122 that provided by the 100-foot wide buffer area.

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125 **Amend the Chesapeake Bay Preservation Ordinance, Section 118-5-3, Additional**
126 **Exemptions, by revising Paragraph (c) to read as follows:**

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128 (c) *Silvicultural activities*, provided that such operations adhere to water quality protection
129 procedures prescribed by the Virginia Department of Forestry in the most recent January 1997
130 edition of *Forestry Best Management Practices for Water Quality in Virginia* as determined by
131 the Virginia Department of Forestry.

**PROPOSED AMENDMENT
TO
THE PUBLIC FACILITIES MANUAL
OF
THE COUNTY OF FAIRFAX, VIRGINIA**

This proposed Public Facilities Manual (PFM) amendment is based on the PFM in effect as of October 30, 2018 and there may be other proposed amendments which may affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment, which other amendments may be adopted prior to action on this amendment. In such event, any necessary renumbering or editorial revisions caused by the adoption of any PFM amendments by the Board of Supervisors prior to the date of adoption of this amendment will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.

1 **Amend PFM 2-0200, Plat and Plan Preparation, Section 2-0212, General Required**
2 **Information on Plans and Profiles, by adding Paragraph 22 to read as follows:**

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4 2-0212.22 The buildable areas allowed on each lot must be delineated on all preliminary
5 plans, site plans, minor site plans, subdivision plans, infill lot grading plans, conservation
6 plans, rough grading plans and public improvement plans. The buildable areas must be based
7 on: 1) the performance criteria specified in Article 3 of Chapter 118 of the Code, 2) the
8 minimum required yards of the zoning district in which the lot is located, and 3) any other
9 relevant easements or limitations on lot coverage.