



## **TOPIC:**

**Discuss whether conservation easement acreage should count toward residential cluster subdivision density yield.**

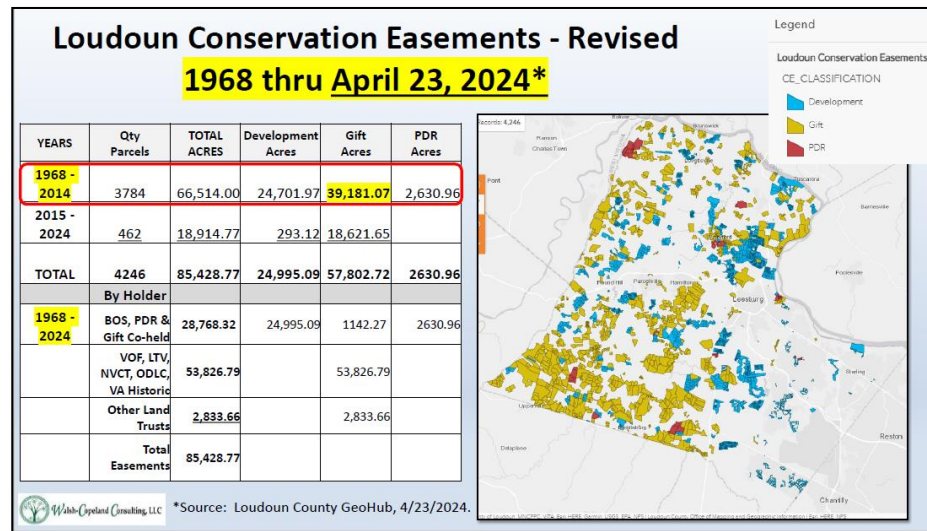


## TOPIC:

**Discuss whether conservation easement acreage should count toward residential cluster subdivision density yield.**

## ISSUE SUMMARY

- Attempts have been made<sup>9</sup> to include existing conservation easement parcels as part of an Originating Tract for a cluster subdivision option to be included in the cluster density calculation.
- Conservation easement contracts control the development rights permitted, therefore the total acreage cannot be used toward a cluster subdivision originating tract density calculation. Land trusts are on record objecting to the inclusion of conservation easement acres in a cluster subdivision density calculation application.<sup>10</sup>
- Loudoun County easement contracts signed after approximately 2014 contain specific language prohibiting the use of easement land in cluster density calculation. *However, contracts signed between 1968 and 2014 do not contain the language and therefore place over 39,000 conservation easement acres at risk if the regulation is not tightened.*



## PROPOSED CORRECTIONS

- PROPOSAL 1:** Land Trust stakeholders proposed clarification to the Originating Tract definition. However, Staff rejected this proposal (June 2024) as they have eliminated regulatory language from definition throughout ZOR text.

<sup>9</sup> PMTG-2023-0077, ZCOR-2023-0010

<sup>10</sup> Land Trust of Virginia, Northern Virginia Conservation Trust, Virginia Outdoors Foundation, Piedmont Environmental Council, among others.



- **PROPOSAL 2:** A table clarification to Chapter 2 Lot Yield was proposed to add a footnote for Lot Yield to be consistent with Code of VA §15.2-2286.1. This would effectively exclude conservation easement land in the calculation of lot yield.

Table 2.04.01-1. AR-1 Zoning District Dimensional Standards				
	Standard	Base Density Division Option	Principal/Subordinate Subdivision Option	Cluster Subdivision Option
<b>Density Requirements</b>				
1	Lot Yield (max)	1 lot per 20 acres	1 lot per 10 acres	1 lot per 5 acres

**TABLE KEY:** ft = feet, sf = square feet, min = minimum, and max = maximum  
**TABLE NOTES:**  
<sup>1</sup>Except when a greater Road Corridor Setback or Buffer is required by Section 7.04.02.  
<sup>2</sup>Setback and yard requirements may be modified in accordance with Section 10.03.  
<sup>3</sup>All dwelling units within the Cluster Subdivision must be set back a minimum of 100 feet from any lot line adjoining parcels not located within the subdivision.  
<sup>4</sup>Except when building height is exempt pursuant to Section 7.01.06.B.3.

**ADD:** <sup>5</sup> In compliance with Code of Virginia Section 15.2-2286.1

## WLRUS DISCUSSION POINTS FOR PROPOSAL 2

- County Staff do not believe this would accomplish the intended purpose stating, “There is no clear prohibition in Section 15.2-2286.1 against including land in a conservation easement as part of the density calculation for a cluster subdivision.”<sup>11</sup>
- Based on review of Section 15.2-2286.1, and consultation with Land Trust Attorney, Stephen Price, Staff’s comment does not appear to be correct. Section B, clearly states, “unimproved land” shall not include . . . land subject to a conservation easement.”

**B. Any such locality shall provide in its zoning or subdivision ordinances, applicable to a minimum of 40% of the unimproved land contained in residential and agricultural zoning district classifications, standards, conditions, and criteria for the clustering of single-family dwellings and the preservation of open space developments.**

The **density calculation of the cluster development** shall be based upon the same criteria for the property as would otherwise be permitted by applicable land use ordinances. **As a locality provides for the clustering of single-family dwellings and the preservation of open space developments, it may vary provisions for such developments for each different residential zoning classification within the locality. For purposes of this section, “unimproved land” shall not include land owned or controlled by the locality, the Commonwealth or the federal government, or any instrumentality thereof or land subject to a conservation easement.**

- If Proposal 2 is not accepted by the WLRUS Stakeholder committee, then what is the Loudoun CAO’s recommendation to fix this loophole, and by when?
  - As this is a legal matter of proper application of easement acres in cluster density (versus a policy decision), this should be corrected via the most expedient ZOAM option (WLRUS or the “Clean Up” ZOAM).

<sup>11</sup> ZOAM-2020-0002 Staff Report, June 12, 2024, page 20.



## **APPENDIX V: FULL DEFINITION TEXT**

### **CODE OF VIRGINIA § 15.2-2286.1. Provisions for clustering of single-family dwellings so as to preserve open space.**

*A. The provisions of this section shall apply to any county or city that had a population growth rate of 10% or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census. However, the requirements of this section shall not apply to any such county or city that has a population density of more than 2,000 people per square mile, according to the most recent report of the United States Bureau of the Census.*

**B. Any such locality shall provide in its zoning or subdivision ordinances, applicable to a minimum of 40% of the unimproved land contained in residential and agricultural zoning district classifications, standards, conditions, and criteria for the clustering of single-family dwellings and the preservation of open space developments.** In establishing such standards, conditions, and criteria, the governing body may, in its discretion, include any provisions it determines appropriate to ensure quality development, preservation of open space, and compliance with its comprehensive plan and land use ordinances. A cluster development is otherwise subject to applicable land use ordinances of the locality; however, the locality shall not impose more stringent land use requirements for such cluster development.

The locality shall not prohibit extension of water or sewer from an adjacent property to a cluster development provided the cluster development is located within an area designated for water and sewer service by a county, city, or town or public service authority.

For any "open space" or "conservation areas" established in a cluster development, the locality shall not (i) require in such areas identification of slopes, species of woodlands or vegetation and whether any of such species are diseased, the locations of species listed as endangered, threatened, or of special concern, or riparian zones or require the applicant to provide a property resource map showing such matters in any conservation areas, other than that which may be required to comply with an ordinance adopted pursuant to § 15.2-961 or 15.2-961.1 or applicable state law; (ii) require such areas be excluded from the calculation of density in a cluster development or exclude land in such areas because of prior land-disturbing activities; (iii) prohibit roads from being located in such areas for purposes of access to the cluster development, but the locality may require such roads be designed to mitigate the impact on such areas; (iv) prohibit stormwater management areas from being located in such areas; or (v) require that lots in the cluster development directly abut such areas or a developed pathway providing direct access to such areas.

For purposes of this section, "open space" or "conservation areas" shall mean the same as "open-space land" in § 10.1-1700.

The **density calculation of the cluster development** shall be based upon the same criteria for the property as would otherwise be permitted by applicable land use ordinances. **As a locality provides for the clustering of single-family dwellings and the preservation of open space developments, it may vary provisions for such developments for each different residential zoning classification within the locality.** For purposes of this section, **"unimproved land" shall not include land owned or controlled by the locality, the Commonwealth or the federal government, or any instrumentality thereof or land subject to a conservation easement.**

If proposals for the clustering of single-family dwellings and the preservation of open space developments comply with the locality's adopted standards, conditions, and criteria, the development and open space preservation shall be permitted by right under the local subdivision ordinance. The implementation and approval of the cluster development and open space preservation shall be done administratively by the locality's staff and without a public hearing. No local ordinance shall require that a special exception, special use, or conditional use permit be obtained for such developments. However, any such ordinance may exempt (a) developments of two acres or less and (b) property located in an Air Installation Compatible Use Zone from the provisions of this subdivision.



*C. Additionally, 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. To implement and approve such increased density development, the locality may, at its option, (i) establish and provide, in its zoning or subdivision ordinances, standards, conditions, and criteria for such development, and if the proposed development complies with those standards, conditions, and criteria, it shall be permitted by right and approved administratively by the locality's staff in the same manner provided in subsection A, or (ii) approve the increased density development upon approval of a special exception, special use permit, conditional use permit, or rezoning.*

*D. Notwithstanding any of the requirements of this section to the contrary, any local government land use ordinance in effect as of June 1, 2004, that provides for the clustering of single-family dwellings and preservation of open space development by right in at least one residential zoning classification without requiring either a special exception, special use permit, conditional use permit, or other discretionary approval may remain in effect at the option of the locality and will be deemed to be in compliance with this section. Any other locality may adopt provisions for the clustering of single-family dwellings, following the procedures set out in this section, in its discretion.*

2006, c. [903](#); 2011, cc. [519](#), [549](#).