

**PART 9 4-900 PUBLIC RESERVOIR MANAGEMENT AND PROTECTION
OVERLAY DISTRICT**

4-901 Purpose and Intent

In accordance with the objectives of the Comprehensive Plan, the establishment of the Public Reservoir Management and Protection Overlay District (PRMPOD) is intended to encourage and promote the protection of the Warrenton Reservoir, Fauquier County's public water supply reservoir.

This Overlay District seeks to protect water quality by providing for the establishment of vegetative buffers along streams, wetlands and water bodies as new development activity takes place, and by prohibiting specific uses that have the potential for water quality impacts. Provisions are included that provide guidance for the establishment, replacement, restoration and management of buffers; assist in the development and management of allowable uses and activities; and assure that structures and uses within the PRMPOD are developed in a manner that will serve the health, safety and welfare objectives of preserving the environmental integrity of the Warrenton Reservoir.

Through the John Marshall Soil and Water Conservation District and other programs, the County encourages voluntary water quality management practices.

4-902 District and Buffer Boundaries Defined

A. District Boundary and Location

The PRMPOD shall include all of that area within the Warrenton Reservoir watershed. The County shall prepare and the Board of Supervisors shall adopt a map showing the boundary of the PRMPOD, which shall not exceed the limits of the reservoir watershed as determined using the most current and best data available. The boundary map shall be established as part of the Official Zoning Map and kept on file in the Office of Zoning, Permitting and Inspections. The Board of Supervisors may modify the PRMPOD boundary, as necessary, as new assessment data becomes available.

B. Buffer Boundaries

The County shall prepare and the Board of Supervisors shall adopt a map showing the general location of buffered streams and waterbodies within the PRMPOD. The Buffer Location Map shall delineate buffers along all perennial and intermittent streams, wetlands, and perennial waterbodies contiguous thereto, and shall be kept on file in the Office of Zoning, Permitting and Inspections. The Zoning Administrator may modify the Buffer

Location Map as necessary as specific assessment data at the parcel level becomes available. The buffers shown on the adopted map shall be deemed "buffer" for purposes of this Section. Site-specific modifications may be made by the Zoning Administrator in accordance with the review set forth in Section 4-905.

C. Buffers are established as follows:

1. Warrenton Reservoir

A two hundred (200) foot wide buffer shall be maintained along the edge of the Warrenton Reservoir. The required buffer width shall be measured from the 450' contour surrounding the normal pool elevation of the Warrenton Reservoir.

2. Airlie Reservoir

A variable width buffer shall be maintained in accordance with the Airlie Reservoir Easement (defined in Section 4-910 (M)). The current buffer, measured from the normal pool elevation of 489 feet to the flood pool elevation of 504 feet, shall be maintained along the edge of the Airlie Reservoir.

3. Perennial Streams and Water Bodies

The buffer shall extend to whichever is greater:

- a. One hundred (100) feet on each side of a perennial stream, perennial water body or contiguous wetland measured horizontally from the edge of the wetland, or the top of the stream bank or water body bank if no wetlands exist; or
- b. The outer limit of the 100-year floodplain.

4. Intermittent Streams

The buffer shall extend to whichever is greater:

- a. Fifty (50) feet on each side of an intermittent stream or contiguous wetland measured from the edge of the wetland or the top of the stream bank if no wetlands exist; or
- b. The outer limit of the 100-year floodplain.

- A. All uses, structures and practices lawfully in existence within the PRMPOD, including non-conforming uses, as of (date of adoption) may remain.
- B. Following the date of adoption of this Section, the buffer requirements outlined in 4-902(C) shall be implemented as set forth in 4-906 at the time of approval of development activity in the PRMPOD. For the purpose of this Overlay District, development activity is defined as:
 - 1. Subdivision of land within all zoning districts, excluding the RA and RC districts;
 - 2. Subdivision of new lots within the RA and RC districts, excluding any large lots or residual parcel over 50 acres, any residual parcel that can be further subdivided and any lots located entirely outside of the buffer;
 - 3. All major site plans;
 - 4. Rezoning to districts other than RA/RC; and
 - 5. New lots created by Family Transfers and Administrative Divisions, excluding the residue parcel and any lots located entirely outside of the buffer.
- C. With the exception of fences and those actions allowed in 4-910, no new building or structure construction shall occur in buffer areas.

4-904

Use Limitations

- A. The following uses are prohibited within the PRMPOD:
 - 1. The storage, production, or disposal of hazardous wastes as defined in either or both of the following:
 - a. Superfund Amendment and Reauthorization Act of 1986, as amended; and
 - b. Identification and Listing of Hazardous Wastes, C.F.R., Title 40, Part 261.
 - 2. Treatment of hazardous material, except emergency spill cleanup operations or rehabilitation programs authorized by a government agency to treat hazardous material present at a site prior to the adoption of this Section;

3. Any business or commercial activity that stores, uses, or disposes of hazardous material, including but not limited to dry cleaning, dyeing, printing, photo processing, unless all facilities and equipment are designed and operated to prevent the release or discharge of hazardous materials and, if required by other applicable law, have been certified to be in compliance with hazardous material regulations;
4. Automobile service stations;
5. Junkyard/automobile graveyard;
6. Land applications of industrial wastes to exclude animal waste applications;
7. Animal waste storage with the exception of those facilities designed in accordance with federal standards and approved by the appropriate agency;
8. Sewage treatment systems and private water purification plants or facilities, which discharge into an open ditch or water body, except as otherwise approved for remediation efforts;
9. Sanitary landfill; and,
10. Sewage sludge storage facilities.

B. The following uses are prohibited within buffers

In addition to those uses prohibited in 4-904(A), the following uses shall be prohibited within the buffer areas delineated in 4-902(C):

1. On-site wastewater treatment and disposal systems;
2. Kennels;
3. Confined animal feeding operations;
4. Animal waste storage;
5. Commercial or community trash containers and dumpsters;
6. Activities involving the storage, manufacture, or any type of distribution of petroleum, chemical or asphalt products or any materials hazardous to a water supply (as defined in the 4-904(A)(1) above) including specifically the following general classes of materials:

- a. Oil and oil products;
- b. Radioactive materials;
- c. Any material transported and stored in large quantities (drums of 5 gallons or more) which is a very soluble acid or base, causes abnormal growth of an organ or organism, or is highly biodegradable with a strong oxygen demand;
- d. Biologically accumulative poisons;
- e. The active ingredients of poisons that are, or were ever, registered in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (Federal Environmental Pesticide Control Act); and
- f. Substances lethal to animal and aquatic life.

4-905

Site Specific Delineation of Buffer Location

- A. A site-specific buffer delineation is a plan that identifies and locates:
 - 1. Perennial and/or intermittent streams;
 - 2. Perennial water bodies;
 - 3. Wetlands delineation as confirmed by the U. S. Army Corps of Engineers;
 - 4. Hydric soils;
 - 5. The 100-year floodplain, as determined by the Federal Emergency Management Agency (FEMA) or a Letter of Map Revision (LOMR);
 - 6. Buffers as required by 4-902(C);
 - 7. Existing topography;
 - 8. Type and extent of existing vegetation;
 - 9. Soils mapping, involving a Type 1 Soils Report or preliminary soils map and report meeting the standards of the County Soil Scientist; and
 - 10. An overlay of any proposed development including the location of storm water management/ best management facilities.

- B. The Zoning Administrator shall approve the site specific delineation based upon the data presented by the applicant and the recommendation of the County Soil Scientist.
- C. The PRMPOD Buffer Location Map shall be adjusted periodically to reflect assessment changes based upon the site-specific delineations approved by the Zoning Administrator.
- D. Any property owner or applicant for development may at any time request refinements to the buffer delineated on the County's official map by submission of a site-specific delineation consistent with the above provisions.

4-906 Vegetative Buffer Establishment and Management

With new development activity, the location of any buffer required pursuant to 4-903 shall be shown on preliminary plats, final plats, site plans and the certified plat associated with a rezoning.

The physical implementation of the required vegetative buffer shall be made within 90 days of approval by the County of a final subdivision plat or major site plan, unless otherwise approved and bonded for implementation at a later date.

Each vegetative buffer required pursuant to Section 4-903 shall be managed as provided below. Removal of vegetation from the buffer shall be allowed only as provided herein or as necessary in connection with an activity permitted pursuant to Section 4-910.

- A. Vegetative cover in buffers shall include ground cover, shrub and canopy layers. It shall be retained, if present, or established at the property owner's option, either by planting indigenous species or allowing the buffer to vegetate naturally.
- B. Invasive/non-native species and noxious weeds may be controlled in accordance with federal and state management programs and Virginia Cooperative Extension Service recommendations.
- C. Within twenty-five (25) feet of the top of the water body bank or stream bank and on land classified as non-tidal wetland:
 - 1. Invasive/non-native species, noxious weeds, or diseased, dying and dead trees, shrubbery or vines may be removed, provided that such removal is completed in a manner that does not cause erosion. Where removed, they shall be replaced with indigenous vegetation that is equally effective in retarding runoff, preventing erosion, and filtering non-point source pollution from runoff; and

2. Fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, may be removed where bank erosion is an existing or potential problem that outweighs any positive effects that fallen trees or woody debris may have on the stream's or water body's ecosystem.
- D. Beyond twenty-five (25) feet from the top of the water body bank or stream bank, and outside of non-tidal wetlands, in addition to those conditions in paragraph B, tree thinning may be conducted under the direction of a professional forester, arborist or other qualified professional.
- E. Vegetation may be pruned or removed as necessary to provide for sightlines and vistas, provided that:
1. Where removed, it shall be replaced with woody vegetation that is equally effective in retarding runoff, preventing erosion and filtering non-point source pollution from runoff; and
 2. Vegetation pruning and/or removal is conducted according to guidelines detailed in the Riparian Buffers Modification and Mitigation Guidance Manual, September 2003, as amended.
- F. The Zoning Administrator may approve the removal or pruning of vegetative cover within the buffer beyond the extent allowed herein by administrative permit, in accordance with the following:
1. The permit application shall include:
 - a. The reason for the requested pruning or removal;
 - b. The area in which vegetation is to be pruned or removed;
 - c. The location of all trees six inches or greater in diameter at breast height; and
 - d. The location and type of replacement vegetation proposed.
 2. The plan shall be approved, and the permit issued, upon a determination by the Zoning Administrator that the proposed activity is consistent with the requirements of this district.
- G. Any private pedestrian path within the buffer shall be pervious, constructed and surfaced so as to effectively control erosion and shall be the minimum width necessary to provide reasonable access within the buffer.
- H. The buffer shall be managed to prevent breaching by concentrated flow.

4-907 Minimum Lot Sizes and Setbacks

- A. No land within the buffer may be divided or incorporated into a new building lot unless such a lot also includes at least 20,000 square feet of contiguous area outside the buffer.
- B. Except in the case of an activity otherwise permitted pursuant to Section 4-910, a setback between any principal structure and the buffer shall be provided in order to allow for open area outside the vegetative buffer for construction and maintenance of the structure and the use and enjoyment of the property. In no case shall this setback be less than 10 feet. In any case where the setback defined herein is in conflict with the setback requirement of the zoning district, the more restrictive setback shall apply.

4-908 Submission Requirements for Development Activity Within the PRMPOD

- A. All applications for development activity shall include a plan that displays all streams, wetlands, hydric soils, floodplains and buffer areas as defined in 4-902, as available in Fauquier County's GIS database.
- B. Any application for a major site plan, preliminary subdivision of three lots or more or for any property identified as including a buffer area as defined in 4-902 shall be accompanied by site specific delineation pursuant to Section 4-905 and:
 - 1. A description of the proposed use of the site and structures;
 - 2. The location and extent of impervious surfaces;
 - 3. On-site processes and materials to be used and/or stored;
 - 4. Methods for the containment of any materials, including spills or leachate from any materials stored on the site that could contaminate drinking water sources; and
 - 5. The type and location of all proposed stormwater management facilities and best management practices where needed as determined by the County.
- C. All applicants for land development activity shall hold a pre-submission meeting with County Staff to review the project proposal.
- D. All applications for land development activity shall be forwarded to the agency that owns or manages the reservoir or impoundment for review and comment, within the same review time frame afforded to State agencies.

4-909 Standards for All Uses and Structures

The following requirements apply to all uses and structures within the PRMPOD, unless otherwise exempted pursuant to Section 4-910.

- A. No more land shall be disturbed than is necessary to provide for the proposed use or development.
- B. Existing vegetative cover shall be preserved to the maximum extent consistent with the use or development proposed.
- C. Impervious cover shall be minimized to be consistent with the use, development or redevelopment proposed.

4-910 Exemptions and Encroachments

Provided that all conditions and restrictions of Section 4-400 related to the floodplain ordinance are met, the following uses and activities are allowed by-right as indicated:

- A. In areas other than the buffers surrounding the Warrenton Reservoir and the Airlie Reservoir, agricultural activities may encroach to within thirty-five (35) feet of a perennial or intermittent stream or other water body, as measured from the top of the bank, when:
 - 1. A conservation plan approved by the John Marshall Soil and Water Conservation District Board addressing the primary water quality issues (erosion control or nutrient management) on the adjacent land is being implemented; and
 - 2. The combination of the undisturbed buffer and the best management practice achieves water quality protection, pollutant removal, and water resource conservation equivalent, at least, to the one hundred (100) foot wide natural buffer on a perennial stream or the fifty (50) foot wide buffer on an intermittent stream.
 - 3. If nutrient management is identified as a primary water quality issue, a Nutrient Management Plan, consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15), administered by the Virginia Department of Conservation and Recreation, shall be developed and implemented.
- B. Silviculture activities in buffers are exempt from the requirements of the PRMPOD provided that such operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the

January 1997 edition of "Forestry Best Management Practices for Water Quality in Virginia Technical Guide."

- C. Stream restoration and shoreline erosion control projects shall be allowed consistent with all state and federal requirements. Non-vegetative structural means of stabilization shall be utilized only where it is demonstrated that vegetative techniques cannot be effectively utilized. All such projects shall require a land disturbance permit.

- D. In buffer areas other than the reservoir buffers adjacent to the Warrenton Reservoir and the Airlie Reservoir, the construction, installation, operation and maintenance of electric, gas, telephone and other similar transmission lines, the activities of the Virginia Department of Transportation, and the construction, installation and maintenance of water and sewer lines, including water and sewer lines constructed by private interests for dedication to public agencies, shall be allowed provided that:
 - 1. To the extent practical, the location of all such roads and utilities shall be outside of all buffers;
 - 2. Road and utility crossings will be limited to the shortest path possible and that which causes the least amount of land disturbance and alteration to the natural hydrology of the watershed;
 - 3. No more land shall be disturbed than is necessary to construct, install and maintain such roads and utilities; and
 - 4. Wherever possible, disturbed areas within buffers shall be planted with indigenous trees and shrubs or allowed to re-vegetate naturally.

- E. Except with development activity requiring a buffer pursuant to Section 4-903, lawns in existence within any potential buffer areas, other than that surrounding the Warrenton Reservoir, prior to (date of adoption) may remain as lawn provided that:
 - 1. Existing woody vegetation within the lawn areas remains;
 - 2. Additional lawn area is not created; and
 - 3. Any lawn area allowed to re-vegetate naturally or planted with indigenous species shall not be re-converted to lawn.

- F. With the exception of providing access to parcels for which there is no alternative access, no driveways or private streets shall be constructed in buffers.

- G. Maintenance, repair and reconstruction of a driveway or roadway in existence to the limits of their historic boundaries shall be allowed.
- H. On-site wastewater treatment and disposal systems within the buffer having a valid approval permit from the Fauquier County Health Department may be installed so long as the permit remains valid.
- I. All on-site wastewater treatment and disposal systems in existence within the buffer may be maintained, repaired or replaced.
- J. In circumstances where the application of the buffer may result in the effective loss of a reasonable buildable area on a lot or parcel recorded before (date of adoption), an Exemption may be granted by the Zoning Administrator subject to the following standards:
 - 1. The proposed encroachment shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
 - 2. The proposed encroachment shall be located on those portions of the site and in a manner that will be least disruptive to the natural functions of the buffer;
 - 3. Impervious areas shall be limited to the minimum amount necessary to achieve a reasonable buildable area;
 - 4. A vegetated area as defined in Section 4-906(A) that will maximize water quality protection and mitigate the effects of the encroachment shall be established on the parcel. Such area shall be equal in size to the area of the encroachment, be contiguous with the required buffer and hydrologically functional within the buffer area;
 - 5. In no case shall the encroachment be more than 50%, as measured from the landward edge of the buffer; and
 - 6. Low Impact Development practices may be required where applicable, as determined by the County to be needed to reduce impacts to water quality.
- K. A building or structure in existence on the date of adoption of this Section may continue at such location. Such pre-existing building or structure, as well as any new building or structure permitted by this Section to be constructed within a buffer following the adoption of this Section, may be repaired, reconstructed, replaced or expanded provided that:
 - 1. Any reconstruction or replacement occurs within the landward one-half of the buffer;

2. The expansion occurs within the landward one-half of the buffer; and
 - i) Best management practices designed to mitigate the impacts of the expansion into the buffer are installed concurrently with the expansion; or
 - ii) Buffer that is equal to the area of expansion, contiguous with the required buffer, and hydrologically functional within the buffer shall be established concurrent with the expansion.
 3. If a Special Exception or Special Permit is required to perform any expansion, the review shall be limited to the structure or structures identified in the application.
 4. Nothing in this Section shall affect the reconstruction of any structure destroyed or damaged by any casualty if reconstruction thereof is otherwise permitted by law and provided that the reconstructed structure does not encroach into the buffer more than it did previously; provided, however, that the Zoning Administrator may allow minor additional encroachments to the extent made necessary to accommodate building and code requirements not originally applicable to such structure.
- L. Provided that all federal, state and local permits are obtained, water dependant facilities; water wells; passive recreation access, such as pervious pedestrian trails and bike paths; historic preservation; archaeological activities; nature and wildlife monitoring activities, including monitoring stations and platforms shall be allowed.
- M. In the buffer surrounding the Airlie Reservoir, permitted uses shall include those additional uses allowed as part of the agreement between the Town of Warrenton and the Kimmaren Corporation as duly recorded among the Land Records of Fauquier County as amended through April 29, 1991 and as subsequently amended by the Town of Warrenton and the owner of such reservoir (the "Airlie Reservoir Easement").
- N. Development in a buffer may be allowed by the Zoning Administrator in the circumstances described herein provided such development is allowed in the Zoning Ordinance and a site specific delineation is submitted:
1. On a lot of record prior to the adoption of this Section provided all efforts are made to locate the construction on the most landward edge of the buffer;
 2. On a lot on which the development in a buffer will consist of a lake or pond, except in cases where such development will occur in the 100 year

floodplain; and

3. On a lot on which the development in the buffer would consist of the construction of a driveway or roadway, and/or supporting structures (e.g., bridge crossing), and the Zoning Administrator determines that the buffer would prohibit reasonable access to a portion of the lot which is necessary for the owner to have a reasonable use of the lot.
4. Reasonable use of a lot includes any development or other activities that would otherwise be permitted thereon but for the existence of the buffer.

4-911 Non-complying Land Uses and Buildings

Uses and structures prohibited in the PRMPOD that are lawfully in existence on the date of adoption of this Section may continue to be maintained but may not be enlarged or expanded except as allowed in 4-910(K).

4-912 Enforcement

- A. Any building erected or improvements constructed contrary to any of the provisions of this Overlay District and any removal of vegetation in buffer areas contrary to any of the provisions of this Overlay District shall be and is hereby declared to be unlawful.
- B. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this Overlay District, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or uses any building or land in violation of the provisions of this Overlay District shall be subject to the enforcement provisions of this Article.
- C. Upon becoming aware of any violation of any provisions of the PRMPOD, the Zoning Administrator shall serve a notice of violation on the property owner, the person committing or permitting the same either in person or by registered or certified mail to the property or the owner's address. Such notice shall specify the provisions of the PRMPOD which have been violated, the measures needed to remedy the violation, and a reasonable time in which to remedy the violations. Failure to take steps to comply with such notice within the time provided for therein shall constitute a separate violation of the provisions of the PRMPOD.
- D. Restoration of the buffer shall be performed as necessary to meet the intent of the PRMPOD and the requirements herein. Trees illegally removed from the buffer shall be replaced by indigenous species trees of a type and caliper determined by the Virginia Department of Forestry to be viable in the affected area.

- E. The Zoning Administrator may require the submission of a Water Quality Impact Assessment (WQIA) as a condition for remedying a violation. In addition, a restoration plan acceptable to the Zoning Administrator for any removal of vegetation from the buffer may be required.
- F. The Zoning Administrator may apply to the Fauquier County Circuit Court for injunctive relief to enjoin a violation or a threatened violation of any provision of this Section.

4-913

Appeal

Any person aggrieved by the decision of the Zoning Administrator in regard to this Part may appeal the decision to the Board of Zoning Appeals pursuant to the process outlined in Section 13-300, et seq., of the Fauquier County Zoning Ordinance.

Definitions

Best Management Practice: Practice, or combination of practices, determined by the Commonwealth of Virginia or designated agency to be the most effective, practicable means of preventing or reducing the amount of pollution generated by non-point sources to a level compatible with water quality goals.

Biosolids:

Class A: Class A biosolids undergo a "Process to Further Reduce Pathogens (PFRP)." Pathogens are reduced to a level similar to the native soil and environment. Class A biosolids products can be used on home lawns and gardens, parks and golf courses, and other places where public contact is likely. Class A biosolids products available include composted biosolids, lime pasteurized biosolids, and fertilizer pellets. Class A biosolids products are sometimes ingredients in soil amendments, potting soils, and slow-release fertilizers.

Class B: Class B biosolids undergo a "Process to Significantly Reduce Pathogens (PSRP)." This means that while pathogens are significantly reduced to levels which are often below those found in animal manures, additional best management practices ("BMPs") are required at the site where they are used. In many States, Class B biosolids are used in bulk as fertilizers in agriculture and forestry and to reclaim barren lands. Site specific permits are required for Class B

Confined Animal Feeding Operations : A lot or facility together with any associated treatment works where the following conditions are met:

1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in a 12 month period; and
2. Crops, vegetation forage growth, or post-harvest residues are not sustained over any portion of the operation of the lot or facility.

Intermittent Stream: The natural stream or portion of a natural stream that has a defined bed and defined banks within which water flows in response to precipitation , through near surface groundwater flow, or from springs, and which is not a perennial stream.

Lawn: A plot of grass of variable dimensions, usually tended or mowed, as one around a residence or in a park or estate.

Noxious Weeds: Johnson grass, kudzu, poison ivy, ragweed, poison oak, poison sumac, purple loosestrife and multiflora rose and other species hereinafter designated by the Commonwealth as a noxious weed.

Perennial Stream and Waterbody: A body of water flowing in a natural or man-made channel year-round, except during periods of drought. Lakes and ponds that form the source of a perennial stream, or through which the perennial stream flows, are a part of the perennial stream. Generally, the water table is located above the streambed for most

of the year and groundwater is the primary source for stream flow. In the absence of pollution or other manmade disturbances, a perennial stream is capable of supporting aquatic life.

Septage: The mat of grease and scum on the surface of the septic tank, the accumulated sludge at the bottom of tanks and the sewage present at time of pumping.

Sewage Sludge: solids separated from wastewater, including both Class A and Class B sewage (septage).

Silviculture: Forest management activities including, but not limited to, the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under § 58.1-3230 of the Code of Virginia.

Water Quality Impact Assessment: A formal evaluation of the anticipated effects, and recommended mitigation practices, of a proposed action or encroachment on existing and required buffers and the protected water body as conducted and interpreted by a qualified professional.