

MODEL CONSERVATION SUBDIVISION / OPEN SPACE DEVELOPMENT ORDINANCE

Description:

The model ordinance provides for conservation subdivisions in residential zones. This type of development can provide for the preservation of open space and greenspace for watershed protection and the nonstructural management of stormwater runoff.

Table of Contents

- **Section 1. Purposes**
- **Section 2. General Regulations**
- **Section 3. Application Requirements**
- **Section 4. Open Space**

Note: Italicized text with this symbol ➡ should be interpreted as comments, instructions, or information to assist the local government in tailoring the ordinance. This text would not appear in a final adopted ordinance. Text in [brackets] indicates terms that need to be written specifically for the local jurisdiction, such as the jurisdiction name. Definitions are generally not included, but may need to be added to the appropriate portion of the local code if they are not elsewhere used or if they are used in a different context. Depending on the structure of the local code, some elements of the ordinance may need to be inserted into the zoning code and others may need to be added to the subdivision or development ordinance.

Section 1. Purposes

➡ *This ordinance is being recommended as a tool for water quality and watershed protection. However, there are multiple and complementary benefits and purposes of a Conservation Subdivision ordinance which a local jurisdiction may wish to acknowledge.*

- A. To provide for the preservation of greenspace as a nonstructural stormwater runoff and watershed protection measure.
- B. To provide a residential zoning district that permits flexibility of design in order to promote environmentally sensitive and efficient uses of the land.
- C. To preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat.
- D. To permit clustering of houses and structures on less environmentally sensitive soils which will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for residential development.
- E. To reduce erosion and sedimentation by minimizing land disturbance and removal of vegetation in residential development.
- F. To promote interconnected greenways and corridors throughout the community.
- G. To promote contiguous greenspace with adjacent jurisdictions.
- H. To encourage interaction in the community by clustering houses and orienting them closer to the street, providing public gathering places and encouraging use of parks and community facilities as focal points in the neighborhood.
- I. To encourage street designs that reduce traffic speeds and reliance on main arteries.
- J. To promote construction of convenient landscaped walking trails and bike paths both within the subdivision and connected to neighboring communities, businesses, and facilities to reduce reliance on automobiles.
- K. To conserve scenic views and reduce perceived density by maximizing the number of houses with direct access to and views of open space.

- L. To preserve important historic and archaeological sites.

Section 2. General Regulations

A. **Applicability of Regulations.** This Conservation Subdivision option is available in the following [list of applicable zoning districts and conditions] as a use by right. Applicant shall comply with all other provisions of the zoning code and all other applicable laws, except those that are incompatible with the provisions contained herein.

B. **Ownership of Development Site.** The tract of land to be subdivided may be held in single and separate ownership or in multiple ownership. If held in multiple ownership, however, the site shall be developed according to a single plan with common authority and common responsibility.

C. **Housing Density Determination.** The maximum number of lots in the Conservation Subdivision shall be determined by either of the following two methods, at the discretion of the local jurisdiction:

- (1) **Calculation:** The maximum number of lots is determined by dividing the area of the tract of land by the minimum lot size specified in the underlying zoning. In making this calculation, the following shall not be included in the total area of the parcel:
 - a. slopes over 25 percent of at least 5,000 square feet contiguous area;
 - b. the 100-year floodplain;
 - c. bodies of open water over 5,000 square feet contiguous area;
 - d. wetlands that meet the definition of the Army Corps of Engineers pursuant to the Clean Water Act; or,
 - e. anticipated right-of-way needs for roads and utilities.
- (2) **Yield Plan:** The maximum number of lots is based on a conventional subdivision design plan, prepared by the applicant, in which the tract of land is subdivided in a manner intended to yield the highest number of lots possible. The plan does not have to meet formal requirements for a site design plan, but the design must be capable of being constructed given site features and all applicable regulations.

Section 3. Application Requirements

A. **Site Analysis Map Required.** Concurrent with the submission of a site concept plan, Applicant shall prepare and submit a site analysis map. The purpose of the site analysis map is to ensure that the important site features have been adequately identified

prior to the creation of the site design, and that the proposed Open Space will meet the requirements of this article. The preliminary site plan shall included the following features:

- (1) Property boundaries;
- (2) All streams, rivers, lakes, wetlands and other hydrologic features;
- (3) Topographic contours of no less than 10-foot intervals;
- (4) All Primary and Secondary Conservation Areas labeled by type, as described in Section 4 of this Article;
- (5) General vegetation characteristics;
- (6) General soil types;
- (7) The planned location of protected Open Space;
- (8) Existing roads and structures; and,
- (9) Potential connections with existing greenspace and trails.

B. Open Space Management Plan Required. An open space management plan, as described in Section 4, shall be prepared and submitted prior to the issuance of a land disturbance permit.

C. Instrument of Permanent Protection Required. An instrument of permanent protection, such as a conservation easement or permanent restrictive covenant and as described in Section 4, shall be placed on the Open Space concurrent with the issuance of a land disturbance permit.

D. Other Requirements. The Applicant shall adhere to all other applicable requirements of the underlying zoning and the [subdivision code].

Section 4. Open Space

A. Definition. Open Space is the portion of the conservation subdivision that has been set aside for permanent protection. Activities within the Open Space are restricted in perpetuity through the use of an approved legal instrument.

B. Standards to Determine Open Space.

- (1) The minimum restricted Open Space shall comprise at least 40% of the gross tract area.
- (2) The following are considered Primary Conservation Areas and are required to be included within the Open Space, unless the Applicant demonstrates that this provision would constitute an unusual hardship and be counter to the purposes of this article:
 - a. The regulatory 100-year floodplain;
 - b. Buffer zones of at least 75 ft width along all perennial and intermittent streams;
 - c. Slopes above 25 percent of at least 5,000 square feet contiguous area;
 - d. Wetlands that meet the definition used by the Army Corps of Engineers pursuant to the Clean Water Act;
 - e. Populations of endangered or threatened species, or habitat for such species; and,
 - f. Archaeological sites, cemeteries and burial grounds
- (3) The following are considered Secondary Conservation Areas and should be included within the Open Space to the maximum extent feasible.
 - a. Important historic sites;
 - b. Existing healthy, native forests of at least one acre contiguous area;
 - c. Individual existing healthy trees greater than 8 inches caliper, as measured from their outermost drip line;
 - d. Other significant natural features and scenic viewsheds such as ridge lines, peaks and rock outcroppings, particularly those that can be seen from public roads;
 - e. Prime agricultural lands of at least five acres contiguous area; and,
 - f. Existing trails that connect the tract to neighboring areas.
- (4) Above-ground utility rights-of-way and small areas of impervious surface may be included within the protected Open Space but cannot be counted towards the 40 percent minimum area requirement (exception: historic structures and existing trails may be counted). Large areas of impervious surface shall be excluded from the Open Space.
- (5) At least 75 percent of the Open Space shall be in a contiguous tract. The Open Space should adjoin any neighboring areas of Open Space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of a future area of protected Open Space.

- (6) The Open Space shall be directly accessible to the largest practicable number of lots within the subdivision. Non-adjoining lots shall be provided with safe, convenient access to the Open Space.

C. Permitted Uses of Open Space. Uses of Open Space may include the following:

- (1) Conservation of natural, archeological or historical resources;
- (2) Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas;
- (3) Walking or bicycle trails, provided they are constructed of porous paving materials;
- (4) Passive recreation areas;
- (5) Active recreation areas, provided that they are limited to no more than 10 percent of the total Open Space and are not located within Primary Conservation Areas. Active recreation areas may include impervious surfaces. Active recreation areas in excess of this limit must be located outside of the protected Open Space;
- (6) Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are used to minimize environmental impacts, and such activities are not conducted within Primary Conservation Areas;
- (7) Nonstructural stormwater management practices;
- (8) Easements for drainage, access, and underground utility lines; or
- (9) Other conservation-oriented uses compatible with the purposes of this ordinance.

D. Prohibited uses of Open Space

- (1) Golf courses;
- (2) Roads, parking lots and impervious surfaces, except as specifically authorized in the previous sections;
- (3) Agricultural and forestry activities not conducted according to accepted Best Management Practices; and,

- (4) Other activities as determined by the Applicant and recorded on the legal instrument providing for permanent protection.

E. Ownership and Management of Open Space.

- (1) Ownership of Open Space. The applicant must identify the owner of the Open Space who is responsible for maintaining the Open Space and facilities located thereon. If a Homeowners Association is the owner, membership in the association shall be mandatory and automatic for all homeowners of the subdivision and their successors. If a Homeowners Association is the owner, the Homeowners' Association shall have lien authority to ensure the collection of dues from all members. The responsibility for maintaining the Open Space and any facilities located thereon shall be borne by the owner.
- (2) Management Plan. Applicant shall submit a Plan for Management of Open Space and Common Facilities ("Plan") that:
 - a. allocates responsibility and guidelines for the maintenance and operation of the Open Space and any facilities located thereon, including provisions for ongoing maintenance and for long-term capital improvements;
 - b. estimates the costs and staffing requirements needed for maintenance and operation of, and insurance for, the Open Space and outlines the means by which such funding will be obtained or provided;
 - c. provides that any changes to the Plan be approved by the Board of Commissioners; and,
 - d. provides for enforcement of the Plan.
- (3) In the event the party responsible for maintenance of the Open Space fails to maintain all or any portion in reasonable order and condition, [the jurisdiction] may assume responsibility for its maintenance and may enter the premises and take corrective action, including the provision of extended maintenance. The costs of such maintenance may be charged to the owner, Homeowner's Association, or to the individual property owners that make up the Homeowner's Association, and may include administrative costs and penalties. Such costs shall become a lien on all subdivision properties.

F. Legal Instrument for Permanent Protection.

- (1) The Open Space shall be protected in perpetuity by a binding legal instrument that is recorded with the deed. The instrument shall be one of the following:
 - a. A permanent conservation easement in favor of either:
 - (i) a land trust or similar conservation-oriented non-profit organization with legal authority to accept such easements. The organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for retransfer in the event the organization becomes unable to carry out its functions; or
 - (ii) a governmental entity with an interest in pursuing goals compatible with the purposes of this ordinance. If the entity accepting the easement is not [the jurisdiction], then a third right of enforcement favoring [the jurisdiction] shall be included in the easement;
 - b. A permanent restrictive covenant for conservation purposes in favor of a governmental entity; or,
 - c. An equivalent legal tool that provides permanent protection, if approved by [the jurisdiction].
- (2) The instrument for permanent protection shall include clear restrictions on the use of the Open Space. These restrictions shall include all restrictions contained in this article, as well as any further restrictions the Applicant chooses to place on the use of the Open Space.