



DATE: December 5, 2019

CASE: Executive Summary for Proposed Section 9.13 – Conservation Subdivisions

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BACKGROUND

This memorandum is intended to serve as a summary to describe the proposed revision to Article 9 (conservation subdivisions). The City adopted the 2030 Land Use Plan (LUP) in 2018 and this revision is part of a wholesale rewrite of the Concord Development Ordinance (CDO) to align the ordinance with the recommendations contained in the LUP. Furthermore, the last wholesale revision of the CDO occurred in 2007 and this effort is intended to modernize the development standards and to make the ordinance more user-friendly.

One of the recommendations of the Plan is to develop a set of development standards in the “Conservation Residential District”, which is one of the Community Character Areas as shown on the 2030 Growth Concept Map. This area is generally geographically defined as the area between NC 49, Flowes’s Store Road, Rocky River Road and Pine Grove Church Road,

This area is also subject to the Central Area Plan (CAP), which was adopted by Cabarrus County and the City of Concord. The City, through an agreement with the County, has agreed to administer the CAP for the areas within the Concord City limits. Some of the area encompassed by the CAP is served by public water and sewer but in order to preserve the rural character of the area, conventional subdivision development is not necessarily appropriate. This zoning district is intended to provide a mechanism for the preservation of prime agricultural land as well as the long term preservation of the required common open space.

Much of the land area within the Conservation Residential District is not within the City limits and the zoning would be applied after an annexation is approved.

CONTENTS OF SECTION 9.13

This section is a simplified summary/explanation of the contents of the Ordinance.

1. The ordinance creates an additional special purpose zoning district which is the Conservation Subdivision (CS) district. CS is a site plan controlled district (which requires approval of a specific plan with the rezoning). If an applicant were to not wish to pursue the CS designation in the

Conservation Residential Character Area, one of the lower density districts such as Residential Estate (RE) or Residential Low (RL) could be requested. These districts would be consistent with both the 2030 Plan and the CAP.

2. The initial step in applying for the CS designation is for the applicant to conduct a pre-application meeting with the Planning Department. The applicant is then required to submit maps and data regarding the presence of geologic resources, water bodies, tree cover and critical habitat.
3. After review of the above, and discussions with the staff, the applicant shall develop a concept plan based upon the design principles contained in the ordinance.
4. The ordinance requires certain physical features to be retained, and they are divided into primary and secondary conservation areas. Examples of primary conservation areas include floodplains, wetlands and very steep slopes. Secondary conservation areas include historic sites, trees larger than eight (8) inches in diameter and prime agricultural lands.
5. The common open space may have no more than 50% of the total in primary or secondary conservation areas to ensure that the open space may be utilized
6. Major requirements of the CS district include a requirement that 80 percent of the lots abut open space.
7. Maximum density is governed by the CAP and the amount of required open space is determined on a sliding scale (Table 9.13-1) based upon the proposed gross density. Minimum open space ranges from 30-50% of the land area of the site, whereas minimum open space for traditional subdivision is 12%.
8. The CS district minimizes the use of curb and gutter and maximize the use of swales (to maintain rural character).
9. The ordinance requires a management plan to ensure that the open space is protected in perpetuity. The open space may be owned and managed by a homeowner's association, a non-profit conservation organization, or if it furthers a long range planning or recreational goal, dedication to the City. The open space may also be owned by an individual and utilized for uses permissible in a conservation easement (such as agriculture).

SUMMARY

The CS district is a district which requires approval of a site plan with the rezoning. Any proposed development would be required to comply with this ordinance, and the petition would be further evaluated as to consistency with the 2030 Land Use Plan, most particularly Section 4.3.7 which addresses the Conservation Residential Character Area.

9.13 CONSERVATION SUBDIVISIONS (CS) DISTRICT.

9.13.1 Intent.

Conservation subdivisions provide the opportunity for property owners to achieve more efficient development than can be achieved through conventional development, while retaining significant open areas that may be used for agriculture, forestry or environmental purposes.

9.13.2 Purposes.

This ordinance is adopted for the following purposes:

- A.** To guide the future growth and development consistently with the comprehensive plan;
- B.** To guide site analysis to plan appropriate areas for development and conservation;
- C.** To preserve the rural character through the permanent preservation of meaningful open space and sensitive natural resources;
- D.** To preserve scenic views by minimizing views of new development from existing roads;
- E.** To preserve prime agricultural land by concentrating housing on land that has low agricultural potential;
- F.** To provide commonly-owned open space areas for passive and/or active recreational use by residents of the development and, where specified, the larger community. Active recreation areas are intended to be located on previously cleared lands to minimize new clearing of wooded land;
- G.** To provide for a diversity of lot sizes, housing choices and building densities to accommodate a variety of age and income groups;
- H.** To provide buffering between residential development and non-residential uses;
- I.** To protect and restore environmentally sensitive areas and biological diversity, minimize disturbance to existing vegetation, and maintain environmental corridors;
- J.** To preserve significant archaeological sites, historic buildings and their settings; and
- K.** To meet demand for housing in a rural setting.

9.13.3 Applicability and Compliance.

The conservation subdivision district may be applied to all development within the Conservation Residential District identified in Concord's Land Use Plan. The number of new parcels that can be created shall be consistent with the density established in the Central Area Plan as modified herein. The CS district is a site plan controlled district that requires Planning and Zoning Commission review and approval of the preliminary plat.

9.13.4 Definitions

(Conservation subdivision definitions are illustrated in **Figure 9.13-1**).

- A. **Common open space.** Undeveloped land within a conservation subdivision that has been designated, dedicated, reserved, or restricted in perpetuity from further development and is set aside for the use and enjoyment by residents of the development. Common open space shall not be part of individual residential lots. It shall be substantially free of structures but may contain historic structures and archaeological sites including Native American mounds, and/or such recreational facilities for residents or drainage fields as indicated on the approved development plan.
- B. **Conservation easement.** The grant of a property right or interest from the property owner to a unit of government or nonprofit conservation organization stipulating that the described land shall remain in its natural, scenic, open or wooded state, precluding future or additional development.
- C. **Conservation subdivision.** A housing development in a rural setting that is characterized by compact lots and common open space, and where the natural features of the land are maintained to the greatest extent possible, illustrated in Figure 9.13-2.
- D. **Development envelopes.** Areas within which grading, lawns, pavement and buildings will be located.
- E. **Gross acreage.** The total area of a parcel prior to creation of the conservation subdivision.
- F. **Homeowners association.** A community association incorporated or not incorporated, combining individual home ownership with shared use or ownership of common property or facilities.
- G. **Nonprofit conservation organization.** Any charitable corporation, charitable association or charitable trust (such as a land trust), the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property.

9.13.5 Application Procedure and Approval Process

Conservation subdivisions shall be approved through the following general process, which is more fully described below:

Step 1: Meet with the Planning Department (may be combined with site visit)

Step 2: Inventory and mapping of existing resources for the site, including the identification of primary and secondary conservation areas

Step 3: Calculate development potential based on the applicable density

Step 4: Prepare a concept map of the conservation subdivision for staff review and recommendations

Step 5: Submit the concept plan and preliminary plat for review through the conventional subdivision process with the exception that Planning and Zoning Commission approval of preliminary plat shall be required.

Figure 9.13-1: Conservation Subdivisions: Definitions

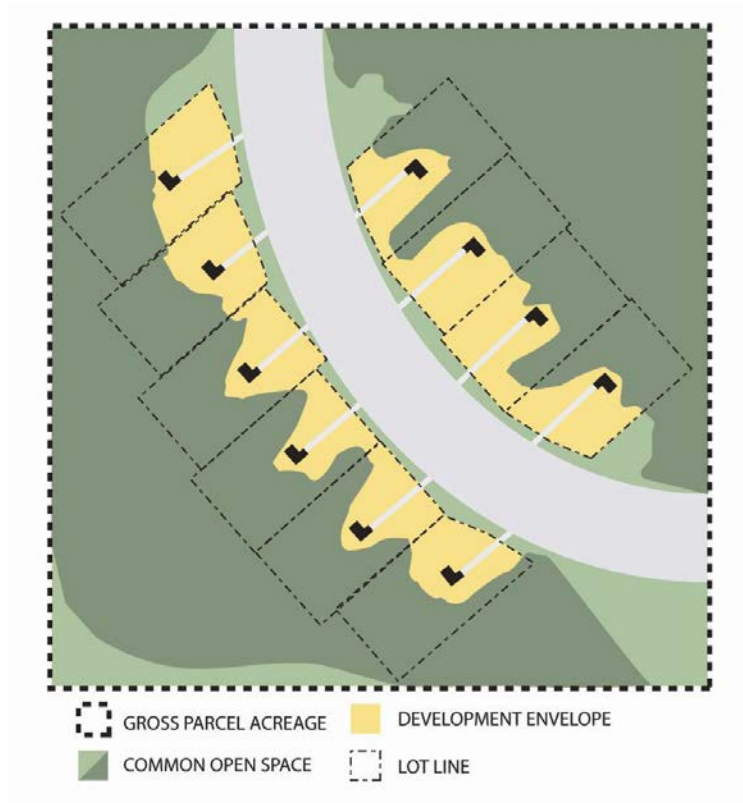
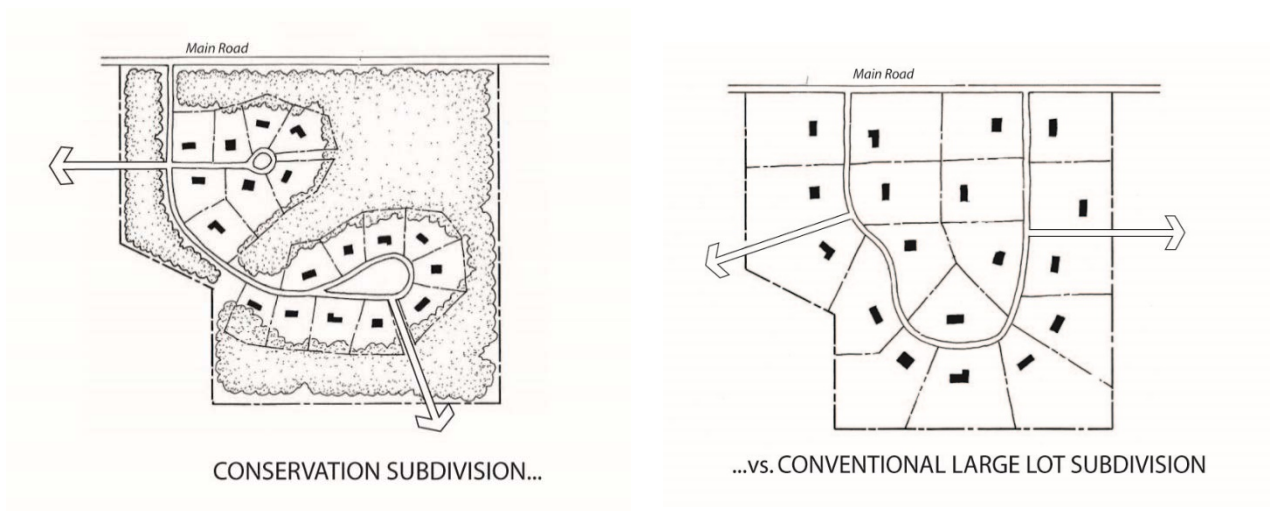


Figure 9.13-2: Conservation Subdivisions: Design



A. Initial Conference.

Before submitting an application for a conservation subdivision, the applicant shall schedule an appointment and meet with the Planning Department to discuss the procedure for approval of a conservation subdivision, including submittal requirements and design standards. After the initial conference, the subdivider shall submit a series of maps and descriptive information to the Planning Director according to the following. Mapping for the initial application can be done in any combination of features if individual map components can be distinguished and the relationship between map components can be determined. The initial conference may be conducted in coordination with a site visit.

- B. Inventory and mapping of existing resources including the following mapped at a scale of no less than one inch 50 feet:
1. Topographic contours at 2-foot intervals.
 2. United States Department of Agriculture, Natural Resource Conservation Service soil type locations and identification of soil type characteristics such as agricultural capability, depth to bedrock and water table, and suitability for wastewater disposal systems.
 3. Hydrologic characteristics, including surface water bodies, floodplains, groundwater recharge and discharge areas, wetlands, natural swales, drainage ways, and steep slopes.
 4. Land cover on the site, according to general cover type (pasture, woodland, etc.), and stand-alone trees with a caliper of more than thirty-two (32) inches measured four and one-half (4.5) feet off the ground. The inventory shall include comments on the health and condition of the vegetation.
 5. Current and past land use, all buildings and structures on the land, cultivated areas, brownfields, waste sites, and history of waste disposal practices, paved areas, and all encumbrances, such as easements or covenants.
 6. Known critical habitat areas for rare, threatened or endangered species.
 7. Views of the site, including views onto the site from surrounding roads, public areas and elevated areas, including photographs with a map indicating the location where the photographs were taken.
 8. Unique geological resources, such as rock outcrops.
 9. Cultural resources: brief description of historic character of buildings and structures, historically important landscapes, and archeological features. This includes a review of existing local, state and national inventories for historic buildings, archaeological sites, and burial sites.
- C. Site analysis and concept plan. Using the inventory provided in subsection 9.13.5B and applying the design standards specified in ~~7.1.1.D7-11.9.D~~ of this ordinance, the subdivider shall submit a concept plan and site analysis on one or more sheets that shall include at least the following information at a scale of no less than one inch to fifty (50) feet and shall be reviewed in accordance with City subdivision regulations for sketch plans:
1. Open space areas indicating which areas are to remain undeveloped and trail location.
 2. Boundaries of areas to be developed and proposed general street and lot layout.
 3. Number and type (e.g., single family detached, town home, etc) of housing units proposed.
 4. Proposed methods for and location of water supply, stormwater management, water quality and sewage treatment.

5. Inventory of preserved and disturbed natural features and prominent views.
6. Preliminary building envelopes showing areas for lawns, pavement, buildings,
7. Proposed methods for ownership and management of open space.
8. General location map showing the general outlines of existing buildings, land use, and natural features such as water bodies or wooded areas, roads and property boundaries within 500 feet of the tract. This information may be presented on an aerial photograph at a scale of no less than 1 inch: 400 feet.
9. Boundary line of the proposed site and all property to be subdivided. Include all contiguous land owned or controlled by the subdivider.
10. Location, width, and names of all existing platted streets and rights-of-way to a distance of 100 feet beyond the site.
11. The type, width and condition of street improvements; railroad or major utility rights-of-way; parks and other public open spaces; location and widths of existing trails; and permanent buildings and structures to a distance of 100 feet beyond the site, if any.
12. Location, widths, and names of all existing public and private easements to a distance of 100 feet beyond the site.
13. Name and ownership boundary lines of all adjoining lands within 100 feet of the proposed plat.
14. Topographic data including contours at vertical intervals of not more than two feet.
15. Identification of sensitive land preservation areas and common open spaces.
16. Existing soil classifications, including hydric soils.
17. Legal description of the property.
18. Existing zoning classifications for land in and abutting the subdivision.
19. Total acreage of the proposed site.
20. Graphic scale, north arrow, and date.

D. Subdivision Design Features.

The following information shall be included with the Preliminary Plat submittal in addition to other preliminary plat information:

1. Layout of proposed streets, showing right-of-way widths, types of improvements, street surface widths, and proposed street names.
2. Locations and type of proposed public easements (i.e. drainage, utility, pedestrian, public access to waterways, etc.); and all conservation easements.
3. Layout of proposed blocks and lots within the plat.
4. Basic data regarding proposed and existing (if applicable) lots and blocks, including numbers, dimensions, area.
5. Minimum front, side and rear yard building setback lines for all lots.
6. Indication of the use of any lot.
7. Location and size of all proposed and existing sanitary sewer lines and water mains, proposed community sewer and water system, or individual on-site septic systems and potable water sources.
8. Location and size of all proposed and existing storms sewers (lines, drain inlets, manholes), culverts, retention ponds, swales, infiltration practices and areas, and other stormwater facilities within the plat and to a distance of 100 feet beyond the site.
9. Development envelopes showing areas for grading, lawns, pavement and buildings.
10. Open space areas, other than pedestrian ways and utility easements, intended to be dedicated or reserved for public use, including the size of such area or areas in acres. Provide information on the conditions, if any, of the dedication or reservation.
11. Management plan for restoration and long-term management of the open space areas.

E. Requirements for Design and Improvements.

1. **Primary Conservation Areas.** The following lands shall be retained as common open space unless the applicant demonstrates that this provision would constitute an unusual hardship or be counter to the purposes of this article:
 - a. The 100-year floodplain
 - b. Stream buffers
 - c. Slopes above 25 percent of at least 5,000 square feet contiguous area
 - d. Wetlands
 - e. Habitats of endangered or threatened species
 - f. Archaeological sites, cemeteries and burial grounds
2. **Secondary Conservation Areas.** The following are considered Secondary Conservation Areas and shall be included in the retained common open space to the maximum extent feasible.
 - a. Important historic sites, structures or features
 - b. Healthy native forests of at least one contiguous acre

- c. Individual existing healthy trees greater than eight (8) inches caliper
- d. Significant natural features and scenic viewsheds such as ridgelines, peaks and rock outcroppings and scenic pastures, meadows and hedgerows
- e. Prime agricultural lands of at least five contiguous acres
- f. Existing trails that connect to adjacent areas
- g. Performance Standards

A. General

1. Tree preservation standards shall consider the entire development area rather than being applied upon a lot-by-lot basis.
2. Grading plans shall show all finished floor or pad elevations, general and individual lot drainage patterns and other information to assure compliance with City stormwater management and water quality standards.

B. Residential Lot Requirements

1. Minimum lot sizes shall comply with the RC zoning district standards (see Section 7.6).
2. Setbacks shall be consistent with the RM-1 zoning district, except as modified through the subdivision approval process.
3. All lots shall take access from interior streets. Existing farmsteads to be preserved may have a driveway as part of the historic landscape that does not access a local street.
4. At least 80 percent of residential lots shall abut common open space.
5. Lots shall be configured to minimize the amount of road length required for the subdivision.
6. Building lots shall be configured to minimize loss of woodlands.
7. If agricultural uses are being maintained, lots shall be configured in a manner that maximizes the usable area remaining for such agricultural uses with appropriate buffers between agricultural uses and residential structures.
8. Building lots should not be located along public roads peripheral to the development or in other visually prominent areas.
9. Residential structures shall be oriented to maximize solar gain in the winter months.
10. A thirty (30) foot native vegetation buffer shall be maintained around ponds and lakes, grassed areas dams, maintenance easements and other areas approved by the City.
11. Stormwater and water quality management shall comply with State and City standards. Conservation subdivisions shall minimize the use of curb and gutter and maximize the use of open swales. (See Figure 9.13-3)

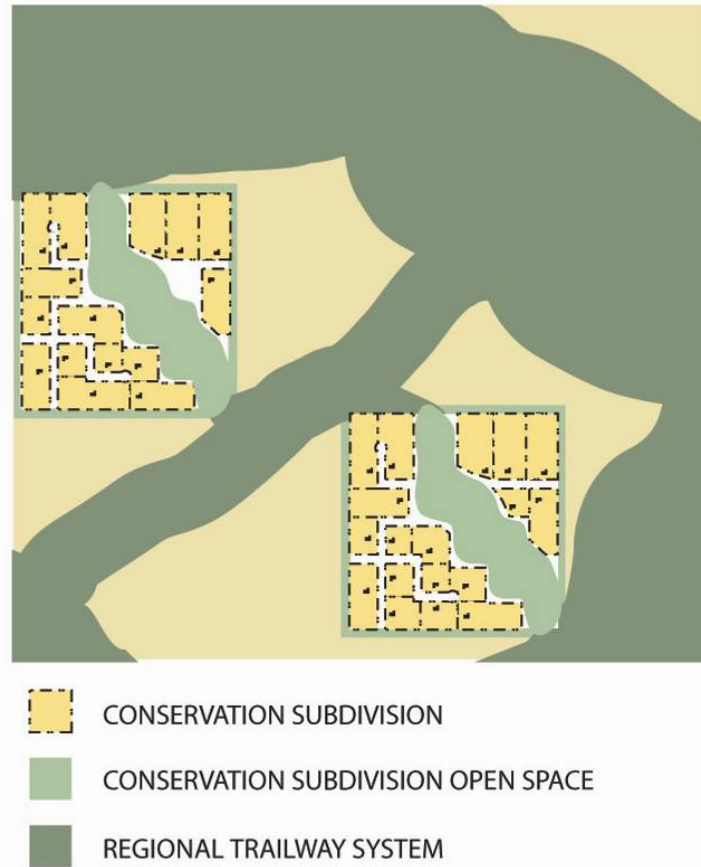
Figure 9.13-3: Conservation Subdivision Standards: Stormwater Management



C. Residential Siting Standards

1. Residences shall be located to minimize negative impacts on the natural, scenic and cultural resources of the site and conflicts between incompatible uses.
2. Residences shall avoid encroaching on rare, threatened or endangered species habitats.
3. Whenever possible, open space shall connect with existing or potential open space lands on adjoining parcels and with local or regional recreational trails and the City's Greenways Plan, as illustrated in Figure 9.13-4.
4. Residences shall be located and designed to achieve the following goals, to the extent practicable:
5. Minimize impacts to prime farmland soils and large tracts of land in agricultural use and avoid interference with normal agricultural practices.
6. Minimize disturbance to woodlands, wetlands, grasslands, and mature trees.
7. Prevent downstream impacts due to runoff through adequate on-site storm water management practices.
8. Protect scenic views of open land from adjacent roads. Visual impact should be minimized through use of landscaping or other features.
9. Protect archaeological sites and existing historic buildings or incorporate them through adaptive reuse.
10. Landscaping around residential areas may be necessary to reduce off site views of residences.

Figure 9-13.4: Conservation Subdivision Standards: Open Space Connectivity



- D. **Density determination within the Conservation Subdivision District.**
To promote the retention of open space, the density ranges established in the following table shall apply to development within the conservation subdivision zoning districts that retains open space or agricultural land. Agricultural land shall be limited to limited to pasture or crop production, with the exception that a single homestead may be retained on any agricultural tract encompassing 20 or more acres. Land retained as open space or limited to agricultural uses shall be designated as a separate parcel or parcels on the subdivision plat and shall be protected by conservation easement. If an existing homestead is retained on an agricultural tract, it shall not be counted when calculating the gross density of the conservation subdivision. The sliding density scale for the Conservation Subdivision District is established in **Table 9.13-1**.

Table 9.13-1: Open Space Sliding Scale

Maximum Gross Density ¹	Minimum Percentage of Gross Acreage Retained for Open Space, Pasture or Crop Production ²	Sample Development (100 Acre Site),
2.5 dwellings per acre	50%	250 Lots 50 Acres Open Space
2 dwellings per acre	40%	200 Lots 40 Acres Open Space
1dwelling per acre	30%	100 Lots 30 Acres Open Space

Table Notes:

(1) Gross density is the number of dwellings divided by the total number of acres within the boundaries of the subdivision.

(2) Not more than 50 percent of required open space shall be comprised of primary or secondary conservation areas.

E. Sewage and Water Facilities

1. Water for a conservation subdivision shall be provided by the City's water system.
2. All conservation subdivisions shall be served by the City's sewer system.

F. Connectivity Standards. Conservation subdivisions shall have at least two access points that provide connections to distinct roadways and/or an adjacent development. The Planning and Zoning Commission may approve the use of a stubbed out road for future connection as a secondary access if the subdivision has fewer than 50 residences.

9.13.6 Ownership and Maintenance of Open Space and Common Facilities

A. Alternatives. The designated common open space and common facilities may be owned and managed by one or a combination of the following:

1. A homeowners' association.
2. A non-profit conservation organization.
3. Public dedication to the City (upon agreement by the City).
4. An individual who will use the land for open space or agricultural purposes allowed by the conservation easement.

B. Homeowners' Association. A homeowners association shall be established if the common open space is proposed to be owned by a homeowners association. Membership in the association is mandatory for all purchasers of homes in the development and their successors. The homeowners' association bylaws, guaranteeing continuing maintenance of the open space and other common facilities, and the declaration of covenants, conditions and restrictions of the homeowners association shall be submitted for approval to the City as part of the information required for the preliminary plat. The homeowners' association bylaws or the declaration of covenants,

conditions and restrictions of the homeowners association shall contain the following information:

1. The legal description of the common land;
 2. A description of common facilities;
 3. The restrictions placed upon the use and enjoyment of the lands or facilities;
 4. Persons or entities entitled to enforce the restrictions;
 5. A mechanism to assess and enforce the common expenses for the land or facilities (e.g., utility systems, private roads and other public or quasi-public improvements) including upkeep and maintenance expenses, real estate taxes and insurance premiums;
 6. A mechanism for resolving disputes among the owners or association members;
 7. The conditions and timing of the transfer of ownership and control of land facilities to the association;
 8. Any other matter the developer deems appropriate.
- C. A Nonprofit Conservation Organization.** If the common open space is to be held by a nonprofit conservation organization, the organization must be acceptable to the City. The conveyance to the nonprofit conservation organization must contain appropriate provisions for reversion in the event that the organization becomes unwilling or unable to uphold the terms of the conveyance.
- D. Public Dedication of Open Space and Streets.** The City may at its discretion accept the dedication of fee title or dedication of a conservation easement to the common open space. The City may accept the common open space provided that:
1. The common open space is accessible to the residents of the City and part of the Comprehensive Parks and Recreation Master Plan or Open Space and Connectivity Analysis. (OSCA)
 2. The City agrees to and has access to maintain the common open space.
 3. Streets or other public ways which have been designated on a duly adopted official map or element of the comprehensive plan shall be dedicated or reserved by the subdivider to the City. The street or public way shall be made a part of the plat in the locations and dimensions indicated in the comprehensive plan and as set forth in this ordinance.
- E. Individual Ownership.** An individual may hold fee title to the land while a nonprofit or other qualified organization holds a conservation easement uses for the common open space.

9.13.7 Management Plan.

Every conservation subdivision must include a plan that provides evidence of a means to properly manage the common open space in perpetuity and evidence of the long-term means to properly manage and maintain all common facilities, including any storm water and water quality facilities. A management plan shall not be required for land that is retained for pasture or crop use. The plan shall be approved by, the City prior to final plat approval.

- A.** The plan shall do the following:
1. Designate the ownership of the open space and common facilities.
 2. Establish necessary regular and periodic operation and maintenance responsibilities.
 3. Estimate staffing needs, insurance requirements, and other associated costs and define the means for funding the same on an on-going basis.
 4. Include a land stewardship plan specifically focusing on the long-term management of common open space lands, and describing:
 5. Existing conditions including all natural, cultural, historic, and scenic elements in the landscape.
 6. The proposed end state for each common open space area; and the measures proposed for achieving the end state.
 7. Proposed restoration measures, including: measures for correcting increasingly destructive conditions, such as erosion; and measures for restoring historic features and habitats or ecosystems.
 8. The operations needed for maintaining the stability of the resources, including: stormwater management facilities; mowing schedules; weed control; planting schedules; clearing and cleanup; at the City's discretion, the applicant may be required to place in escrow sufficient funds for the maintenance and operation costs of common facilities for a maximum of one year.
- B.** In the event that the organization established to own and maintain the open space and common facilities, or any successor organization, fails to maintain all or any portion of the common facilities in reasonable order and condition upon the residents and owners of the open space and common facilities, setting forth the manner in which the organization has failed to maintain the common facilities in reasonable condition. Such notice shall set forth the nature of corrections required and the time within which the corrections shall be made. Upon failure to comply within the time specified, the organization, or any successor organization, shall be considered in violation of this Section, in which case the bond, if any, may be forfeited, and any permits may be revoked or suspended. The City may enter the premises and take corrective action.
- C.** Management plans can be amended by the owner with the approval of the City.