

SECTION 31 - CD CONSERVATION DEVELOPMENT OVERLAY DISTRICT

31.1 Purpose and Application:

The CD Conservation Development Overlay District allows the use of conservation techniques by which new residential developments permanently designate a portion of the total parcel to open space conservation areas. Conservation development standards are encouraged to be used in any development district to preserve significant environmental features on specific sites, and encourage innovative development design. However, within the Policy Tier 8A on Figure 4.5 Policy Tiers, as described in the Sarpy County Comprehensive Plan, compliance with these Conservation Development requirements is mandatory for all subdivisions.

Master Planned Developments are excluded from this requirement, but are encouraged to follow the Conservation Development techniques. Master Planned Developments are generally defined as developments that exceed 160 acres, have hard surfaced roads, and have community water systems and/or community wastewater systems.

31.2 **Process:** Conservation developments follow the subdivision approval procedures outlined in the Subdivision Regulations, establishing the process for preliminary and final plat approval.

31.3 **Permitted Density Yield:** The gross density of conservation developments is set forth by their underlying zoning districts. For the purposes of making any computations under Section 31.3, the result of all equations which are not whole numbers shall be rounded down to the nearest whole number.

Permitted yield in housing units (Y) is calculated by the formula:

$$Y = \frac{TA}{SA}$$

SA

Where:

TA = Total parcel area

SA = Minimum site area per unit for conservation development permitted by the underlying zoning district.

31.4 **Minimum amount of Open Space Conservation Area**

31.5 **Conservation Areas as Open Space:** The minimum amount of open space for the Conservation - Development Overlay District is 40%.

31.5.1 Open space areas shall be in the form of outlots.

31.5.2 The location of open space shall be consistent with the policies contained in Sarpy County's Comprehensive Development Plan, and with the recommendations contained in this section. Examples of conservation areas that should be considered for preservation include:

- (A) A 100-foot deep greenway buffer along all water bodies and watercourses, and a 50-foot greenway buffer alongside wetlands soils classified as "very poorly drained" in the medium intensity county soil survey of the USDA Natural Resources Conservation Service.

- (B) Wetlands not included in the National Wetlands Inventory.
- (C) 100-year floodplains.
- (D) Tree canopy, individual specimen trees, or small stands of significant trees.
- (E) Aquifer recharge areas and areas with highly permeable (“excessively drained”) soil.
- (F) Significant wildlife habitat areas.
- (G) Class I and Class II farmlands.
- (H) Historic, archaeological or cultural features listed (or eligible to be listed) on the National Register of Historic Places, or on inventories developed by the Nebraska State Historical Society.
- (I) Slopes of a gradient that significantly complicate construction or development of a site.
- (J) Land with soils that do not support residential development.
- (K) Native or original growth prairie.

31.6 Location Standards for Open Space

31.6.1 Access to Residential Lots

Open space shall abut the largest practicable number of lots within a conservation subdivision. To achieve this, the subdivision should be designed so that a maximum number of house lots abut undivided open space in order to provide direct views.

31.6.2 Interconnection of Open Spaces

Protected open spaces in each new subdivision are encouraged to adjoin each other when feasible, ultimately forming an interconnected network of Conservation Areas across the county.

31.7 Special Processes for Conservation Developments

The review and approval process for conservation developments is the same as that for conventional subdivisions, as set forth by Sarpy County’s Subdivision Regulations. Additional provisions and approval processes are set forth in this section.

31.7.1 Existing Features Plan

Each subdivision shall submit an Existing Features Plan, analyzing each site’s special features are required for all proposed conservation developments.

The Existing Features Plan shall form the basis for the Conceptual Preliminary Plat, which shall show the tentative location of houses, streets, lot lines, and greenway lands in the new subdivision, according to the four-step process described in the following.

31.7.2 Conceptual Preliminary Plan

A sketch plan or a Conceptual Preliminary Plan shall be submitted for all proposed subdivisions to the Planning Director before submission of a formal preliminary plat application. A Conceptual Preliminary Plan presents a conceptual layout for greenway and open lands, house sites, and street alignments. Each Conceptual Preliminary Plan shall follow a four-step design process, as described below. Applicants shall be prepared to demonstrate to the Planning Director that these four design steps were followed in the preparation of the plan.

- (A) *Step One: Designating the Open Space.* During the first step, all potential conservation areas are identified, using the Existing Features Plan, as referenced in Section 31.5B.
- (B) *Step Two: Location of House Sites.* During the second step, potential building envelopes are located. Subdivision applicants shall identify building envelopes on the Conceptual Preliminary Plan and on preliminary and final plats. On lots where there are Conservation Easements, the building setbacks shall be measured from the Conservation Easement encroachment lines.
- (C) *Step Three: Street and Lot Layout.* The third step consists of aligning proposed streets to provide vehicular access to each house in the most reasonable and economical way. When lots and access streets are laid out, they shall be located in a way that avoids or at least minimizes adverse impacts on the Conservation Areas.
- (D) *Step Four: Lot Lines.* The fourth step is to draw in the lot line (where applicable). These are generally drawn midway between house locations and may include L-shaped "flag lots" meeting the County's minimum standards for the same.
- (E) *Review and Comments.* The Planning Director shall return written comments on the Conceptual Preliminary Plan to the applicant within 30 days of submittal. These comments should recommend changes to be made prior to submittal of a Preliminary Plat application.

31.8 **Ownership and Maintenance of Common Open Space**

Section 31.8 provides for both the mandatory and voluntary preservation of common open space. When provided, such common open space within a development shall be owned, administered, and maintained by any of the following methods, either individually or in combination, and subject to approval by the County.

31.8.1 Offer of Dedication

Sarpy County or the Papio-Missouri River Natural Resources District shall have the first and last offer of dedication of undivided open space in the event said land is to be conveyed. Dedication shall take the form of a fee simple ownership. The County or other public agency may, but shall not be required to accept undivided open space provided: (1) such land is accessible to the residents of the county; (2) there is no cost of acquisition other than any costs incidental to the transfer of ownership such as title insurance; and (3) the county agrees to and has access to maintain such lands. Alternatively, a public agency may accept an easement, subject to the above conditions.

31.8.2 Homeowners Association

The undivided open space and associated facilities may be held in common ownership by a homeowners' association. The association shall be formed and operated under the following provisions:

- (A) The developer shall provide a description of the association, including its bylaws and methods for maintaining the open space.
- (B) The association shall be organized by the developer and shall be operated with financial assistance from the developer, before the sale of any lots within the development.
- (C) Membership in the association is mandatory for all owners of lots therein and their successors.
- (D) The association shall be responsible for maintenance of insurance and taxes on undivided open space, enforceable by liens placed by the county on the association. The association may place liens on the homes or house lots of its members who fail to pay their association dues in a timely manner. Such liens may require the imposition of penalty interest charges.
- (E) The members of the association shall share equitably the costs of maintaining and developing such undivided open space. Shares shall be defined within the association bylaws.
- (F) In the event of a proposed transfer, within the methods here permitted, of undivided open space land by the homeowners' association, or of the assumption of maintenance of undivided open space land by a public agency, notice of such action shall be given to all property owners within the development.
- (G) The homeowners' association may lease open space lands to any other qualified person, or corporation, for operation and maintenance of open space lands.

31.8.3 Condominiums

The undivided open space and associated facilities may be controlled through the use of condominium agreements. Such agreements shall be in conformance with the state statute. All undivided open space land shall be held as a "common element."

31.8.4 Transfer of Easements to a Private Conservation Organization.

An owner may transfer easements to a private, nonprofit organization, among whose purposes it is to conserve open space and /or natural resources, provided that:

- (A) The organization is acceptable to the County, and is a bona fide conservation organization with perpetual existence;
- (B) The conveyance contains appropriate provisions for proper reverter or retransfer in the event that the organization becomes unwilling or unable to continue carrying out its functions; and

- (C) A maintenance agreement acceptable to the County is entered into by the developer and the organization.

31.8.5 Private Ownership

Some open land may be maintained in private ownership, subject to deed restrictions and/or easements acceptable to the Sarpy County Attorney that maintain land in an open, undisturbed state. Such agreements shall provide a mechanism for the management of these permanent open spaces.

31.9 Maintenance Standards

31.9.1 Financial Responsibility

The ultimate owner of the open space (typically a homeowners' association) shall be responsible for raising all monies required for operations, maintenance, or physical improvements to the open space through annual dues, special assessments, or other methods. The homeowners' association shall be authorized under its bylaws to place liens on the property of residents who fall delinquent in payment of such dues or assessments.

31.9.2 Maintenance Enforcement

In the event that the association or any successor organization shall, at any time after establishment of a development containing undivided open space, fail to maintain the undivided open space in reasonable order and condition in accordance with the development plan, the County shall serve written notice upon the owner of record, setting forth the manner in which the owner of record has failed to maintain the undivided open space in reasonable condition.

- (A) Failure to adequately maintain the undivided open space in reasonable order and condition constitutes a violation of these regulations.
- (B) Should any bill or bills for maintenance of undivided open space by the County is unpaid, a late fee of fifteen percent shall be added to such bills and a lien shall be filed against the property in the same manner as other county jurisdictional claims.

31.10 Evaluation Criteria

In evaluating the layout of lots and open space, the following criteria will be considered by the Planning Commission and County Board as indicating design appropriate to the site's natural, historic, and cultural features, and meeting the purpose of these regulations:

- (A) Protection of floodplains, wetlands, and steep slopes from clearing, grading, filling, or construction except as may be approved for essential infrastructure or active or passive recreation amenities.
- (B) Preservation and maintenance of tree canopy, native prairie, and significant wildlife habitat areas and sufficient buffer areas to minimize conflicts between residential and agricultural uses.
- (C) Maintenance of buffers adjacent to wetlands and surface waters, including creeks, streams, springs, lakes and ponds.

- (D) Design around existing treelines between fields or meadows, and minimal impacts on large woodlands (greater than five acres), especially those containing many mature trees or a significant wildlife habitat.
- (E) Design around and preserves sites of historic, archaeological, or cultural value, including stone walls, barn foundations, cellar holes, earthworks, and burial grounds as determined by the National Register of Historic Places, or on inventories developed the Nebraska State Historical Society.
- (F) Protection of rural character and improvement of public safety and vehicular carrying capacity by avoiding development fronting directly onto existing public roads.
- (G) Landscaping of common areas if appropriate.
- (H) Provision of active or passive recreational areas in suitable locations that offer convenient access by residents and adequate screening from nearby house lots.
- (I) Inclusion of a pedestrian circulation system providing access between properties, activities, or special features within the neighborhood open space system. All roadside footpaths should connect with off-road trails.
- (J) Provision of open space that is reasonably contiguous, avoiding fragmented open spaces.