

Etowah HCP Model Conservation Subdivision Ordinance

Note: Text in **[brackets]** indicates terms that need to be written specifically for the local jurisdiction, such as the jurisdiction name. Strikethrough text indicated deletions from the MNGWPD model ordinance. Underlined text indicates additions to the text of the MNGWPD model ordinance. Text sections in *italics* are annotations meant to provide guidance, and local governments should not adopt these sections as part of their ordinances. 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.

CONSERVATION SUBDIVISIONS

SECTION 1. PURPOSES

- A. To provide for the preservation of greenspace as a nonstructural stormwater runoff and watershed protection measure.
- B. To provide for preservation of greenspace as a habitat protection measure and a water quality protection measure in connection with the Etowah Habitat Conservation Plan.
- C. To provide a residential zoning district that permits flexibility of design in order to promote environmentally sensitive and efficient uses of the land.
- D. To preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat.
- E. 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.
- F. To reduce erosion and sedimentation by minimizing land disturbance and removal of vegetation in residential development.
- G. To promote interconnected greenways and corridors throughout the community.
- H. To promote contiguous greenspace with adjacent jurisdictions.
- I. 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.
- J. To encourage street designs that reduce traffic speeds and reliance on main arteries.
- K. 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.

- L. To conserve scenic views and reduce perceived density by maximizing the number of houses with direct access to and views of open space.
- M. To preserve important historic and archaeological sites.

SECTION 2. DEFINITIONS

- A. **Infiltration.** The process of percolating stormwater runoff into the subsoil.
 - *For the sake of consistency, this definition of “infiltration” is the same definition found in the Etowah HCP Stormwater Ordinance.*
- B. **Open Space.** 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.
- C. **Large impervious area.** An area of impervious surface including, but not limited to, a parking lot of any size, large building, street, cul-de-sac, large amenities complex and other similar impervious area.
- D. **Small impervious area.** An area of impervious surface such as a small swimming pool, or one small basketball court, or one tennis court, or a small maintenance building, or an historic home site, or an existing or new trail system, or some other similar impervious area.
- E. **Stream.** Any stream, beginning at:
 1. The location of a spring, seep, or groundwater outflow that sustains streamflow; or
 2. A point in the stream channel with a drainage area of 25 acres or more; or
 3. Where evidence indicates the presence of a stream in a drainage area of less than 25 acres, the [local permitting authority] may require field studies to verify the existence of a stream.
 - *For the sake of consistency, this definition of “stream” is the same definition found in the Etowah HCP Stream Buffer Ordinances.*
- F. **Package plant for sewage treatment.** Any plant which: (a) consists of units or modules designed for construction, assembly, connection and installation at the site for treatment of sewage; and (b) is privately owned and will be operated to treat wastewater and sewage for a limited area. The term does not include septic systems comprised of single or multiple septic tanks and leach fields.
- G. **Nonstructural Stormwater Management Practice.** Any natural or planted vegetation or other nonstructural component of the stormwater management plan that provides for or enhances stormwater quantity and/or quality control or other stormwater management benefits, and includes, but is not limited to, riparian buffers, open and greenspace areas, overland flow filtration areas, natural depression, and vegetated channels.

SECTION 3. GENERAL REGULATIONS

A. Applicability of Regulations. This Conservation Subdivision option is available in the following ~~[list of applicable zoning districts]~~ all residential and agricultural districts 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 (Recommended). 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~~ applicant:

- *While the following methods for calculating density are recommended, jurisdictions are required to include some method or methods for determining density in their ordinances.*

(1) Calculation: The maximum number of lots is determined by dividing the ~~area of the tract of land~~ adjusted tract acreage 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% of at least 5000 square feet contiguous area;~~
- b. ~~the 100-year floodplain;~~
- c. ~~bodies of open water over 5000 square feet contiguous area;~~
- d. ~~wetlands that meet the definition of the Army Corps of Engineers pursuant to the Clean Water Act;~~
- e. ~~anticipated right-of-way needs for roads and utilities; and~~

The adjusted tract acreage equals 85% of the gross tract area to account for unbuildable lands.

- *The jurisdiction may opt to adhere to the calculation method set out in the MNGWPD model ordinance. The jurisdiction may also opt to subtract a different percentage of the gross tract area in order to account for unbuildable lands if it so wishes. A different percentage may more accurately reflect the jurisdiction's specific average lot sizes in traditional neighborhoods and more accurately account for the land features found in the jurisdiction.*

(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 permitted by the underlying zoning classification. 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.

D. Minimum Lot Size (Recommended). There shall be no minimum lot size requirements in a conservation subdivision. However, the density allowed by the underlying zoning limits the maximum tract density.

SECTION 4 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 include the following features:

1. Property boundaries;
2. Relationship of the subject property to natural and man-made features existing within 1,000 feet of the site, noting whether surrounding property is slated for protection as greenspace in the county greenspace plan;
3. All streams, rivers, lakes, wetlands and other hydrologic features;
4. Topographic contours of no less than 10-foot intervals;
5. All Primary and Secondary Conservation Areas labeled by type, as described in Section 1.4 of this Article;
6. General vegetation characteristics;
7. General soil types;
8. The planned location of protected Open Space;
9. Existing roads and structures;
10. Potential connections of protected Open Space with existing greenspace and trails, including adjacent protected areas or adjacent non-protected natural lands that are possible candidates for inclusion as part of a future area of protected greenspace.

- *The Etowah HCP Steering Committee recommends that jurisdictions require a site analysis map for all residential developments, both traditional and conservation. This will have a two-fold effect. First, it will encourage developers to build conservation subdivisions since they have to conduct site analysis regardless of the type of development they build. Second, it will encourage more conservation-oriented traditional developments.*

B. Open Space Management Plan Required. An open space management plan, as described in Section 1.4, 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 1.4, shall be placed on the Open Space concurrent with the issuance of a land disturbance permit.

- *Local governments may wish to require placement of the conservation easement or equivalent on the open space at a different point in the development process other than at the point when the land disturbance permit is issued. For example, local governments may allow for placement of the conservation easement or equivalent legal tool on the open space before final plat approval is granted or the certificate of occupancy is granted.*

D. Four Step Design Process. All sketch plans or conceptual design plans for conservation subdivisions shall include documentation of a four-step design process in determining the layout of proposed Open Space lands, house sites, streets and lot lines, as described below.

a. Step 1: Delineation of Open Space Lands

- 1) The minimum percentage and acreage of required Open Space lands shall be calculated by the applicant and submitted as part of the [concept plan/preliminary plat] plan in accordance with the provisions of this ordinance. Open Space lands shall include all Primary Conservation Areas and those parts of the Secondary Conservation Areas with the highest resource significance, as described in parts 3 and 4 of Step 1 below.
- 2) Proposed Open Space lands shall be designated using the Site Analysis Map as a base map and complying with Section 5.A. herein, dealing with Open Space design standards. The [jurisdiction's] Greenspace Plan shall also be referenced and considered.
- 3) In delineating Secondary Conservation Areas, the applicant shall prioritize natural and cultural resources on the tract in terms of their highest to least suitabilities for inclusion in the proposed Open Space.
- 4) On the basis of those priorities and practical considerations given to the tract's configuration, its context in relation to resources areas on adjoining and neighboring properties, and the applicant's subdivision objectives, Secondary Conservation Areas shall be delineated so that, together with all Primary Conservation Areas, they meet at least the minimum area percentage requirements for Open Space lands. Secondary Conservation Areas should also be delineated in a manner clearly indicating their boundaries as well as the types of resources included within them.

b. Step 2: Location of House Sites

Potential house sites shall be tentatively located, using the proposed Open Space lands as a base map as well as other relevant data on the Site Analysis Map such as topography and soils. House sites should generally be located not closer than 100 feet from Primary Conservation Areas and 50 feet from Secondary Conservation Areas, taking into consideration the potential negative impacts of residential development on such areas as well as the potential positive benefits of such locations to provide attractive views and visual settings for residences.

c. Step 3: Alignment of Streets and Trails

Upon designating the house sites, a street plan shall be designed to provide vehicular access to each house, and bearing a logical relationship to topographic conditions. Impacts of the street plan on proposed Open Space lands shall be minimized, particularly with respect to crossing environmentally sensitive areas such as wetlands and traversing slopes exceeding 15%. Street connections shall generally be encouraged to minimize the number of new cul-de-sacs to be maintained by the municipality, when reasonable based upon the site features, and to facilitate access to and from homes in different parts of the tract (and adjoining parcels).

d. Step 4: Drawing in the Lot Lines

Upon completion of the preceding three steps, lot lines are drawn as required to delineate the boundaries of individual residential lots.

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

SECTION 5. 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.~~

A. Standards to Determine Open Space.

1. The minimum restricted Open Space shall comprise at least 40% of the gross tract area.
 - *Local governments are encouraged to require a minimum amount of open space as high as 80% of the gross tract area so as to provide for as much opportunity to protect open space as possible in their jurisdictions without discouraging developers from building conservation subdivisions rather than traditional subdivisions.*
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;
 - *Jurisdictions that are not members of the MNGWPD may opt to require 50 ft. stream buffers rather than 75 ft. buffers as part of the primary conservation areas. However, because one the purposes of the conservation subdivision ordinance is to “preserve in perpetuity unique or sensitive natural resources such as groundwater...streams...and wildlife habitat,” these jurisdictions are encouraged to require at least a 75 ft. buffer as part of the primary conservation area.*
 - c. Slopes above 25% of at least 5000 square feet contiguous area;
 - *Jurisdictions that feature many steep slopes above 25% within their boundaries may wish to include only slopes above 35% of at least 5000 sq. ft. in the primary conservation areas instead of slopes above 25% of at least 5000 sq. ft.*
 - 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 dbh, 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~~ small impervious areas may be included within the protected Open Space but shall not count towards the 40% minimum area requirement. (exception: historic structures and existing trails, defined as small impervious areas, may be counted). ~~Large areas of impervious surface~~ Large impervious areas shall be excluded from the Open Space.
5. ~~At least 75% of the Open Space shall be in a contiguous tract. The Open Space shall 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.~~

B. 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~~ with pervious materials;
4. Passive recreation areas, such as open fields;
5. **(Recommended)**. 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. Active recreation areas may include small impervious areas. These small impervious areas shall not count towards the minimum open space requirement. Active recreation areas shall not include large impervious areas.
6. **(Recommended)**. 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 and structural stormwater management practices that allow for infiltration, such as bioretention areas;
8. Septic systems comprised of single or multiple septic tanks and leach fields located on soils particularly suited to such uses;
9. Easements for drainage, access, and underground utility lines; or
10. Other conservation-oriented uses compatible with the purposes of this ordinance.

C. 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. Impoundments;
5. Package plants for sewage treatment;
 - *Local governments that are members of the NMGWPD are strongly encouraged to disallow package plants within the open space in order to comply with the NMGWPD conservation subdivision ordinance. Non-member local governments may choose to allow package plants within the open space at their discretion.*
6. Use of motorized vehicles, except for maintenance purposes as provided for in the Open Space Management Plan; and,
7. Other activities as determined by the Applicant and recorded on the legal instrument providing for permanent protection.

D. 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~~ **[local governing body]**; 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 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.

E. 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.

Optional Provisions

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.

At least 75% of the Open Space shall be in a contiguous tract. The Open Space shall 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.

Tax Assessment of Open Space. Once a legal instrument for permanent protection has been placed upon the Open Space, [the jurisdiction's tax assessment office] shall be directed to reassess the Open Space at a lower value to reflect its more limited use. If the Open Space is used purely for passive recreational purposes and the terms of the instrument for permanent protection effectively prohibit any type of significant economic activity, then the assessment shall be at a value of zero.