

DRAFT REVISION
SUBDIVISION ORDINANCE
SECTION 5-26

5-26. *Conservation/Cluster Subdivision*, Open Space and Recreation Areas.

The subdivision design shall reflect the community's need *for variety and flexibility in land development, for protection of environmentally sensitive and/or historic areas*, for open space sites for public facilities and recreation area as indicated in the comprehensive plan and as may be anticipated by the demand created through development of the subdivision.

(A) *Conventional Subdivision* - All subdivisions containing ~~more than 15 lots~~ **10 or more lots**, averaging five acres or less in area, shall provide common open space, natural areas and/or recreation areas equal to at least ~~ten~~ **thirty** percent of the total area of the subdivision.

(B) *Conservation/Cluster Subdivision* - *All single-family subdivisions, with a total of 10 lots or more, may be designed utilizing an administratively approved cluster plan of development with reduced lot sizes and setbacks and increased open space requirements in accordance with the following criteria:*

(1) *The total number of clustered residential units shall not exceed the number of units allowed in the base zoning district using conventional subdivision.*

(2) *Clustered residential units shall only front on collector or local streets.*

(3) *Lot size may be reduced from the base zoning district, but shall not be smaller than 10,000 square feet.*

(4) *Lot widths and setbacks for primary structures may be reduced to fifty percent (50%) of the dimensions allowed in the base zoning district subject to the following:*

(a) *Lot width shall be no less than 50 feet.*

(b) *Front yard setbacks shall be no less than 25 feet.*

(c) *Rear yard setbacks shall be no less than 25 feet.*

(d) *Side yard setbacks shall be no less than 10 feet.*

(e) *Corner lot side yard setbacks shall be no less than 25 feet.*

(5) *Open Space, natural areas and/or recreation areas shall be provided by zoning district as follows:*

(a) *A-1, Agricultural Limited - no less than 70% open space.*

(b) *A-2, Agricultural General - no less than 60% open space.*

(c) *R-1, Residential General - no less than 50% open space*

(d) *R-3, Residential Medium General - no less than 40% open space.*

(6) *Conservation/Cluster Subdivision shall not be allowed within 800 feet of tidal shores.*

(C) ~~This~~ *Open* space is to be used for ~~residents of the subdivision and shall include~~ such things as *farms, forests*, parks, playgrounds, general recreation areas and natural areas for habitat protection. Land providing community or public waterfront access shall be considered as contributing to this requirement. Such open space shall not be in tracts of less than one acre, ***shall not be comprised of more than twenty five percent (25%) of flood plains, wetlands, above ground utility uses (including stormwater management facilities) or slopes in excess of twenty-five percent (25%) grades***, and shall be suitable for its designated use as to location and topography, and shall be maintained, as appropriate, by the subdivider, homeowners' association or other approved ~~agency~~ ***entity***.

(D) All new residential subdivisions on the shoreline that include non-riparian lots shall insure community access to public waters by means of, at a minimum, a pedestrian right-of-way to a community open space along the water.

(E) Recreational and open space areas, whether publicly or privately owned, which are provided in conformance with approval of ~~any form of cluster, lot averaging, multifamily, townhouse, or planned unit development~~ ***subdivision***, and which equal or exceed the requirements for dedication as set forth herein, may completely and fully satisfy the above requirements provided the subdivider shall satisfy the agent and board of supervisors that there are adequate provisions to assure retention and future maintenance of said areas.

(F) Any lands dedicated for open space purposes shall contain appropriate covenants and deed restrictions to insure that:

- (1) The open space will not be further subdivided.
- (2) The use of the open space will continue in perpetuity for the purpose specified.
- (3) Appropriate provisions are made for the maintenance of the open space.
- (4) Common undeveloped open space shall not be turned into commercial enterprise admitting the public at a fee.

(G) If the open space is owned and maintained by a homeowners' ~~or condominium~~ association, the developer shall file a declaration of covenants and restrictions that will govern the association, to be submitted with the application for preliminary approval. The provisions shall include, but are not limited to the following:

- (1) The homeowners' association must be established before the homes or lots are sold.
- (2) Membership must be mandatory for each home/lot buyer and any successive buyer.
- (3) The open space restrictions must be permanent, not just for a period of years.
- (4) The association must be responsible for liability insurance, local taxes and the maintenance of a recreation and other such facilities.

(5) Homeowners must pay their pro rata share of the cost; the assessment levied by the association may become a lien on the property, if allowed in the master deed establishing the homeowners' association.

(6) The association must be able to adjust the assessment to meet changing needs and demands.