

ARTICLE 7  
CONSERVATION DESIGN REGULATIONS

7.01 Purpose

The Conservation Design Regulations require the use of techniques by which natural landforms determine the design and character of new development. These regulations are designed to protect the environment and natural resources and preserve and enhance the unique character of the county while allowing the development of creative and unique living and working environments.

7.02 Applicability

Applicability of the provisions of this Article is as follows:

- A. All subdivisions shall be developed according to Conservation Design Regulations, as set forth in this Article. Single lot developments split from larger parcels consistent with the provisions of the AG zoning district, or pre-existing subdivision lots consistent with the provisions of the RR-2 zoning district, are not required but are encouraged to conform to the provisions of this Article.
- B. All other development shall require conformance with the provisions of this article.
- C. Farmstead lot splits, consistent with the provisions of section 4.12(C) of the AG zoning district, are not required, but are encouraged, to conform to the provisions of this article).

7.03 Submittals/Process Required

A. Natural Features Assessment. The Natural Features Assessment should be completed prior to any conceptual design work and shall include at a minimum a contour map of the parcel to be developed with the following features identified:

- (1) Waterbodies, waterways, and wetlands. The delineation of these features shall include a 50 foot buffer.
- (2) Floodplains
- (3) tree canopy, individual specimen trees, or small stands of significant trees
- (4) Class I and Class II farmlands
- (5) 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

- (6) slopes in excess of 9%
- (7) ridgelines, view corridors, watershed divides
- (8) Land with soils that do not support residential development.

#### B. Conceptual Plan

A Conceptual Plan for all proposed conservation developments shall first be submitted to the Zoning Coordinator before submission of a formal preliminary plat or site plan application. A Conceptual Plan presents a conceptual layout for greenway and open lands, house/building sites, and street/drive alignments. Each Conceptual Plan shall follow a four-step design process, as described below.

- 1) *Step One: Designating the Open Space.* During the first step, all potential open space areas are identified, using the Natural Features Assessment (refer to 7.03.A.).
- 2) *Step Two: Location of House/Building Sites.* During the second step, potential house/building sites are located. Applicants shall identify tentative house/building sites on the Conceptual Plan. House/building sites should generally be located not closer than 50 feet from open space areas to enjoy views of the open space without negatively affecting the open space.
- 3) *Step Three: Street/Drive and Lot Layout.* The third step consists of aligning proposed streets or drives to provide vehicular access to each house/building in the most reasonable and economical way. When lots and access streets/drives are laid out, they shall be located in a way that avoids or at least minimizes adverse impacts on the open space areas. To the greatest extent practicable, wetland crossings and streets traversing existing slopes over 14% shall be strongly discouraged. Street connections shall generally be encouraged to minimize the number of new cul-de-sacs and to facilitate easy access to and from homes in different parts of the property (and on adjoining parcels). Where cul-de-sacs are necessary, those serving six or fewer homes may be designed with "hammerheads" facilitating three-point turns.
- 4) *Step Four: Lot Lines.* The fourth step is simply to draw in the lot lines (where applicable). These are generally drawn midway between house or building locations.

#### Review and Comments.

The Zoning Coordinator shall return written comments on the Conceptual Plan to the applicant within 30 days of submittal. These comments should recommend changes to be made prior to submittal of a Preliminary Plat or site plan application.

### Application Checklist

An Application Checklist provided by Douglas County provides the applicant with the relevant items to be included in the Natural Features Assessment, other features to be identified, and other items necessary for preliminary plat or site plan application submittal.

#### C. Preliminary Plat or Site Plan Application.

- 1) For subdivisions, a Preliminary Plat Application will be required and must follow the Douglas County Subdivision Regulations.
- 2) For development that is not a subdivision, a Site Plan Application is generally required and the procedure in Article 13 of these Zoning Regulations must be followed.

D. Subdivision or Development Agreement. Such agreement shall be required to be approved by the County Board prior to the commencement of development. Agreement can be waived by the Zoning Coordinator if, in the judgment of the Zoning Coordinator, a site plan review or building permit review provides adequate information and documentation as to the installation of required infrastructure and other items relevant to the development.

### 7.04 Intent and Evaluation Criteria

Development applications should follow the intent as identified in the following statements. The Zoning Administrator, Planning Commission, and County Board will utilize these intent statements as criteria for evaluating design appropriate to the site's natural, historic, and cultural features, and meeting the purposes of these regulations.

A. Conservation development should cluster houses and other structures in order to provide the maximum amount of open space that is used to help protect the natural features included in that designated open space.

B. All development that is required to comply with the provisions of this Article 7 (see 7.02 Applicability) shall designate a minimum of 30% of the total parcel area, or in the case of a development with multiple parcels, a minimum of 30% up to a maximum requirement of 50%, of the total area to be developed, as common open space that will be protected from disturbance and future development. This designated open space shall include the features identified in the following Item 1. Should the total area of the features in Item 1 below not meet the minimum 30% requirement, then additional open space shall be designated in order to meet the 30% minimum requirement. This designated open space will also provide areas for the development of additional stormwater best management practices and/or the reestablishment of natural features. The maximum open space requirement shall generally be 50% of the total parcel area, except where the total area of the features listed under Item 1 exceed 50% and/or if the zone district requirements exceed 50%.

The 30% minimum is based primarily on development that will occur in the Urban Residential area designated in the Comprehensive Development Plan. The minimum percentage of open space in zoning districts outside of that Urban Residential area should be higher and in proportion to proposed lot size. Refer to Article 4 and the respective zoning district sections for the minimum percentages for open space in those districts (if noted). In general, development should designate open space that is reasonably contiguous and avoid fragmented open spaces.

#### 1. Designated Open Space

Designated open space must include the following (even if such features total greater than 50% of the entire parcel area):

- a. Waterbodies, waterways, and wetlands. In all cases a 50 foot buffer shall also be included in the delineation of these features.
- b. Floodplains may be developed consistent with Stormwater Management Policies and applicable regulations. It is preferred however, that no development takes place within the designated floodplain, based on full build-out conditions.
- c. Tree canopy, individual specimen trees, or small stands of significant trees
- d. Native prairies and prairies that have been reestablished. In all cases a 50 foot buffer shall also be included in the delineation of these features.
- e. Historic, archaeological or cultural features, including but not limited to stone walls, earthworks, and burial grounds listed (or eligible to be listed) on the National Register of Historic Places, or on inventories developed by the Nebraska State Historical Society.
- f. Steep slopes in excess of 15%; land with soils that do not support residential development.

Land within the proposed development that falls within one or more of the aforementioned categories must be included in the open space designation. The intent is to protect these natural, environmental, historical, and/or cultural features while allowing site-appropriate development.

#### 2. Open Space Requirements

- a. The open space areas shall generally be designated as undivided open space, to facilitate easement monitoring and enforcement, and to promote appropriate management by a single entity according to approved land management standards.
- b. These open space areas shall be restricted from further subdivision through one of several alternative mechanisms identified in Section 3.C, in a form acceptable to the County and duly recorded in the Douglas County Register of Deeds Office.

- c. The required open space may be used, without restriction, for individual or community septic systems, if such systems are allowed in the base zone district and do not negatively impact the features within the open space that are being protected.
- d. Stormwater best management practices (BMPs) may be included as part of the minimum required open space, if the BMPs are part of the development's overall stormwater management plan and the BMPs are consistent with the provisions of Section 7.04.
- e. Land within the rights-of-way for underground pipelines, high tension power lines, telecommunication towers, and other utilities may also be included as part of the minimum required open space.
- f. The location of open space shall be consistent with the policies contained in Douglas County's Comprehensive Plan, the recommendations contained in this section, and Section 7.04 Intent.
- g. Access to Residential Lots

Undivided open space shall be directly accessible to the largest practicable number of lots within a conservation subdivision. To achieve this, the majority of house lots should abut undivided open space in order to provide direct views and access. Safe and convenient pedestrian access to the open space from all lots not adjoining the open space shall be provided (except in the case of farmland, or other resource areas vulnerable to trampling damage or human disturbance). The intent is to have open space that allows connectivity throughout a subdivision and connectivity to other open space in other subdivisions where applicable and practical. If the open space is designated as separate, noncontiguous parcels, an effort should be made to provide direct views and access to the maximum number of house lots.

- h. Interconnection of Open Spaces

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

### 3. Ownership and Maintenance of Open Space

Conservation developments shall provide for ownership and maintenance of common open space.

- a. Maintenance - Financial Responsibility

The owner of the open space (for example, 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.

b. Maintenance Enforcement

- (1) 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 may 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.
- (2) Failure to adequately maintain the undivided open space in reasonable order and condition constitutes a violation of these regulations.
- (3) Should any bill or bills for maintenance of undivided open space by the County be unpaid, the County may file a special assessment, including an administrative charge. Such special assessment shall be made equally against all properties in the development.

c. Ownership

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. All such common open space shall be restricted from further subdivision through one of these methods, in a form acceptable to the County and duly recorded in the Douglas County Register of Deeds Office.

(1) Offer of Dedication

Douglas County, the Papio-Missouri River Natural Resources District (NRD), or other appropriate public entity 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 entity 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, NRD, or other public entity agrees to and has access to maintain such lands. Alternatively, a public entity may accept an easement, subject to the above conditions.

(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 purchasers of homes therein and their successors. The conditions and timing of transferring control of the association from developer to homeowners shall be identified.

(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.

(e) In the event of a proposed transfer of ownership, within the methods here permitted, of undivided open space land by the homeowners' association, or of the proposed assumption of maintenance of undivided open space land by a public agency, notice of such proposed action shall be given to all property owners within the development and to the Zoning Coordinator.

(f) The homeowners' association may lease open space lands to any other qualified person, or corporation, for operation and maintenance of open space lands.

### (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."

### (4) Transfer of Conservation Easements to a Private Conservation Organization

An owner may transfer conservation 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 commission is entered into by the developer and the organization.

(5) Private Ownership

Open land may be maintained in private ownership, subject to agreements or easements acceptable to Douglas County that maintain land within open space areas in an open, undisturbed state. Such agreements shall provide a mechanism for the management of these permanent open spaces.

C. Developments shall minimize disturbance to natural features that are outside of the designated open space. Landscaping of common areas outside the designated open space shall be consistent with the purpose and on-going maintenance of these common areas.

D. Developments shall demonstrate maximum possible use of applicable BMPs including but not limited to those identified in the Douglas County Comprehensive Plan. Projects shall incorporate Low Impact Development (LID) techniques and other stormwater Best Management Practices (BMPs) to ensure no net increase in stormwater runoff, based on pre-development baseline conditions

E. All proposed development activities shall minimize erosion on the site, siltation of water bodies, waterways and wetlands, loss of soils, and deterioration or damage to stormwater BMP structures, and native, sustainable vegetation that protects soils. The applicant shall prepare and submit an erosion control plan in accordance with the provisions of this section and any other applicable regulations. A 50 foot buffer shall be maintained adjacent to any native growth prairie, wetland, or waterway on the site or immediately adjacent to the site. The intent of the buffer is to minimize/mitigate any impacts of the developed areas and these environmentally-sensitive features, whether these features be within the designated open space or not. The buffer is intended to be vegetated and without man-made structures, with the exception of recreational trails or stormwater BMPs that do not compromise the intent of the buffer or conflict with other regulations, including but not limited to, Corps of Engineers 404 permit restrictions.

F. Proposed development activities shall minimize cut and fill necessary to support the land use.

G. Proposed development activities shall preserve as much vegetation and tree canopy as possible. The intent is that vegetation and tree canopy should not be disturbed within the undeveloped open space area(s). Further, development applicants are encouraged to submit plans to address erosion and sediment control issues within these undeveloped areas, (in addition to the erosion/sediment control and grading plans for the areas to be developed). Within the areas proposed for development a maximum of 25% of the tree canopy can be removed and shall require mitigation at a 1:2 ratio (1 acre of canopy removed requires 2 acres to be replanted) or restoration of native prairie shall take place where appropriate. One overstory tree corresponds to 500 square feet of area. Plans shall include submission of a tree mitigation plan.

H. Proposed development shall include a pedestrian circulation system providing access between properties and throughout the development. Circulation system must provide for future access/connections to adjacent development such that connectivity between and among developments is

provided. Roadside sidewalks/trails should connect with off-road trails, including those that are within the designated open space.

I. Provision of active or passive recreational areas in suitable locations that offer convenient access by residents and adequate screening from nearby house lots. Existing park/recreation development plans, including but not limited to the Omaha Suburban Parks Master Plan, Elkhorn Parks Master Plan, and Western Douglas County Trails Plan, should be considered when evaluating proposed development.

#### 7.05 Permitted Density Yield and Development Area

For any development (residential or otherwise) that is required to follow the provisions of this Article (see 7.02 Applicability) there will be a minimum of 30% of the total parcel area (or 30% of the total area of all of the parcels included in the proposed development) that must be designated as open space.

##### A. Residential Development

For residential development the zoning districts (Article 4) define a minimum site area (SA) and a gross density. Permitted yield (gross density) is calculated by the formula:

$$Y = \frac{\text{Site Area (total area of the development)}}{SA}$$

where:

Y = Permitted yield

SA = Minimum site area per unit required by the zoning district (noted in the respective zone district regulator tables).

[Note: Using this calculator will increase the potential density and allow most efficient use of services.]

Minimum site area per unit (SA) does not always equal the minimum lot area. For example, in the RR-1 district, the SA is 2 acres, but the minimum lot area can be 1 acre under certain provisions. Other site development regulators such as lot width and yard setbacks are defined in a table for each zoning district. For example, Table 4.2 identifies the site development regulators for the AG zoning district.

##### B. Non-residential Development

Non-residential development is not constrained by a density regulator but the required site development regulators are still defined for each zoning district.