

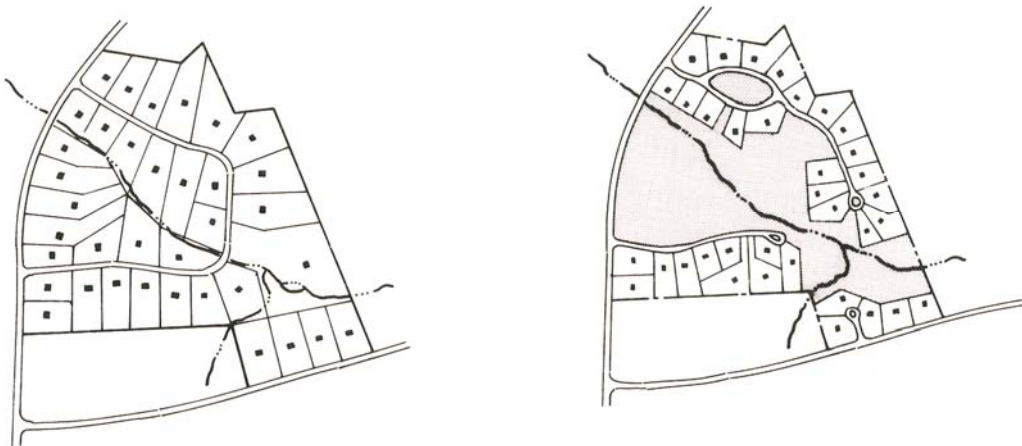
**ARTICLE 11
CONSERVATION SUBDIVISIONS**

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Section 1101. Purpose and Intent.

This Article is intended to provide for residential subdivisions that are designed based first and foremost on the preservation of open space, but that accommodate the full extent of development that would otherwise be legally possible under conventional subdivision designs, and that:

- (a) Minimize the environmental and visual impacts of new development on critical resources and historically and culturally significant sites and structures.
- (b) Contribute to an interconnected network of permanent open space in the community and provide for undivided or relatively undivided open spaces within new developments.
- (c) Create a greater diversity of living environments than is possible with conventional residential subdivision developments.
- (d) Foster informal social interaction among neighborhood residents in common open spaces.
- (e) Reduce the demand on public expenditures for open space, parkland, play fields, and other areas for active and passive recreation.
- (f) Encourage compact patterns that reduce capital costs by requiring less linear footage distances of roads and utilities than conventional subdivision development.
- (g) Offer greater opportunities to implement environmentally sensitive sewage treatment and disposal systems.
- (h) Meet design requirements and guidelines established in this Article for the protection of conservation areas, the subdivision of land, the location and orientation of homes and structures, and the installation of improvements.
- (i) Permit open space conservation subdivisions “by right” so that they are no more difficult to gain approval from the Governing Body than are conventional subdivisions.



Source: Arendt, Randall G. 1996. Conservation Design for Subdivisions: A Practical Guide to Creating Open Space Networks. Washington, DC: Island Press. p. 128.

Conventional Subdivision

Open Space Conservation Subdivision

Section 1102. Definitions.

Conservation areas, primary: Any property qualifying as conservation use property under O.C.G.A. Section 48-5-7.4; and any steep slopes, floodplains, wetlands, water bodies, upland buffers around wetlands and water bodies, critical wildlife habitat, and sites of historic, cultural, or archaeological significance, located outside of building envelopes and lots established for building purposes.

Conservation areas, secondary: Prime farmland, natural meadows, mature woodlands, farm fields, localized aquifer recharge areas, and lands containing scenic views and sites, located outside of building envelopes and lots established for building purposes.

Conservation easement: A legally enforceable agreement between a property owner and the holder of the easement, with content meeting requirements of Georgia law and in a form acceptable to the City Attorney of a participating municipality with jurisdiction and recorded in the office of the Clerk of Superior Court of Decatur County. A conservation easement restricts the existing and future use of the defined tract or lot to conservation use, agriculture, passive recreation, or other use approved by the Governing Body of a participating municipality with jurisdiction and prohibits further subdivision or development. Such agreement also provides for the maintenance of open spaces and any improvements on the tract or lot. Such agreement cannot be altered except with the express written permission of the easement holder and any other co-signers. A conservation easement may also establish other provisions and contain standards that safeguard the tract or lot's special resources from negative changes.

Conservation (open space) subdivision: A subdivision, as defined by this Article, where open space is the central organizing element of the subdivision design and that identifies and permanently protects all primary and all or some of the secondary conservation areas within the boundaries of the subdivision.

Habitat for endangered or threatened species: An area verified by the Georgia Department of Natural Resources as 1) actually containing naturally occurring individuals

of a species that has been listed as endangered or threatened under the Federal Endangered Species Act, as amended, and 2) being likely to support the continued existence of that species by providing for a significant portion of that species' biological requirements, and that meets the definition of "natural conditions" as defined by this Article.

Open space: Any combination of primary conservation areas and secondary conservation areas, as defined in this Article, that together form a permanent, undivided or relatively undivided, undeveloped area. As much as twenty five percent of the open space may be devoted to active recreational facilities, as defined. Easements for electric transmission lines or any other above-ground improvement shall not be considered open space except as may be otherwise provided by this Article. Stormwater management features, such as lakes, ponds, and ways, may be considered open space at the discretion of the Administrative Officer, provided that such areas are designed and maintained in a manner that contributes to open space and the aesthetics of the subdivision or land development.

Recreation, active: Leisure activities that are facility oriented, such as swimming pools, tennis courts, and ball fields.

Recreation, passive: Leisure activities that are natural resource oriented, such as hiking trails, conservation areas, and nature preserves.

Scenic views and sites: Those geographic areas containing visually significant or unique natural features, as identified in a Comprehensive Plan of a participating municipality, or by other reasonable means.

Sensitive natural areas: Any area, as identified now or hereafter by the Georgia Department of Natural Resources, which contains one or more of the following: habitat, including nesting sites, occupied by rare or endangered species; rare or exemplary natural communities; significant landforms, hydroforms, or geological features; or other areas so designated by the Department of Natural Resources; and which is sensitive or vulnerable to physical or biological alteration.

Section 1103. Relationship to Other Regulations.

- (a) Zoning Districts and Permitted Uses. Conservation subdivisions as described and regulated in this Article are permitted as a "by right" permitted use in all residential zoning districts. They are considered appropriate in exurban, rural, suburban, and urban areas. Use restrictions of the zoning district shall continue to apply.
- (b) Zoning District Densities. Conservation subdivisions shall not exceed the residential density in units per acre as established for the residential zoning district in which it is located.
- (c) Lot Size and Width. Minimum lot sizes, minimum lot widths, and building setbacks of the residential zoning district in which the conservation subdivision is located, may be reduced to no less than fifty percent (50%) of the required lot size or lot width for the zoning district in which it is located.
- (d) Building Setbacks. Building setbacks shall be proposed on the preliminary plat and shall be subject to the approval of the Governing Body.
- (e) Subdivision Regulations. Conservation subdivisions shall be considered and processed in accordance with preliminary and final plats requirements as

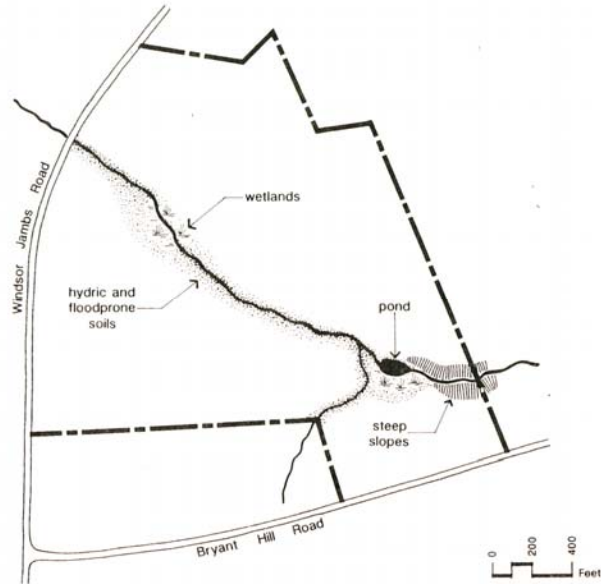
specified in this Ordinance, except that in addition the criteria for approval and grounds for disapproval as provided in this Article shall also apply to decisions on preliminary plats.

- (f) Improvement Requirements. Open space conservation subdivisions shall meet the improvement requirements of this Ordinance. Where design considerations for lots and blocks as more specifically recommended in this Article, they shall be considered applicable recommendations in lieu of those found in other Articles of this Ordinance which would otherwise be applied.

Section 1104. Primary Conservation Areas.

Primary conservation areas on lands in conventional subdivisions are permitted to be platted and included in adjacent residential lots. In contrast, a conservation subdivision incorporates, and shall include, all primary conservation areas into undivided or relatively undivided, permanent, open spaces.

Primary conservation areas, as defined by this Article, include the following: habitats for endangered or threatened species, wetlands, aquifer recharge areas, flood plains, water bodies, shorelines, and adjacent riparian zones or upland buffers, historic, cultural, and archaeological sites, and steep slopes.

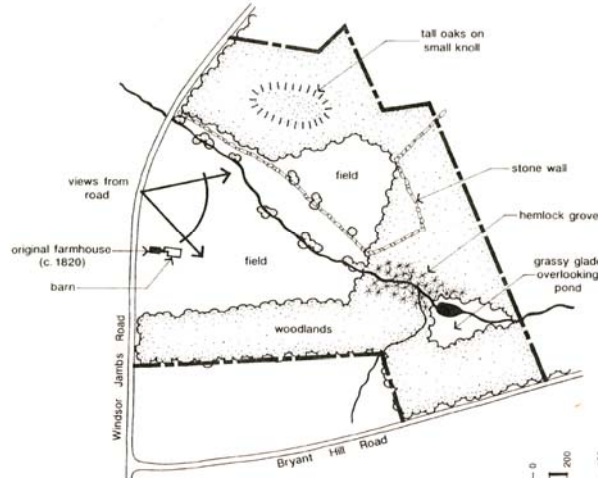


Source: Arendt, Randall G. 1996. Conservation Design for Subdivisions: A Practical Guide to Creating Open Space Networks. Washington, DC: Island Press. pp. 72.

Primary Conservation Areas

Section 1105. Secondary Conservation Areas.

Secondary conservation areas on lands in conventional subdivisions are rarely identified and conserved. In contrast, a conservation subdivision identifies, and shall identify, secondary conservation areas and shall integrate all or a portion of them into undivided or relatively undivided, permanent, open spaces.



Source: Arendt, Randall G. 1996. Conservation Design for Subdivisions: A Practical Guide to Creating Open Space Networks. Washington, DC: Island Press. pp. 72.

Secondary Conservation Areas

Section 1106. Required Open Space Specifications.

- (a) **Minimum Percent of Site Area.** Each open space conservation subdivision shall provide a minimum of forty percent (40%) of its total land area as open space, as defined by this Article. Areas of above ground utility right-of-way and impervious surfaces must be excluded from the minimum 40%.
- (b) **Minimum Size.** The minimum amount of open space required to qualify for an open space conservation subdivision shall be one and one-half (1.5) contiguous acres. The purpose of this minimum open space acreage is to avoid development proposals where minor subdivisions are used simply to reduce lot sizes and development costs or that provide only small, scattered open spaces that would not functionally contribute to the overall open space network of the surrounding area.
- (c) **Permitted Uses.** In the case of farmland conversion, part of the open space within a conservation subdivision may be permitted to be retained in the hands of the original farmer/landowner or leased to a farmer for agricultural, pasture, or horticulture uses, so long as the activity is undertaken using best management practices to reduce environmental impacts to the extent possible. Open space may not be used for golf courses, roadways, or water impoundments. No more than 25% of the open space may be used for active recreation spaces. Uses not expressly authorized via the preliminary plat process are prohibited.
- (d) **Open Spaces Shall Be Named.** Each open space shall be given a name appropriate to its purpose and design. Acceptable identifying types of names for open spaces include but are not limited to "Common," "Park," "Green," "Meadow," "Woods," "Farm," and "Historic Site."

Section 1107. Conservation Easement Required.

All primary conservation areas, and all secondary conservation areas shown on the preliminary plat and required to be retained as open space, shall be permanently

protected from further subdivision, development, and unauthorized use by a conservation easement. A conservation easement, as defined, shall be approved by the city and 1) co-signed by the city and donated to a conservation organization or land trust; or 2) co-signed by the city, donated to a homeowners association and co-signed by a conservation organization or land trust; or 3) donated to the city if accepted by the city and co-signed by a conservation organization or land trust. In the case of farmland conversion, part of the open space within a conservation subdivision may be permitted to be retained in the hands of the original farmer/landowner if subject to a conservation easement meeting the requirements of this Article.

Section 1108. Guidelines for Drafting Conservation Easements.

The following guidelines are offered for drafting conservation easements and may be required by the Governing Body:

- (a) The easement recognizes and describes in a statement of purpose the special qualities of the property subject to the easement. The easement must include a map of the tract noting all significant features within the area. The easement clearly identifies the owner of the property subject to the easement, the holder of the easement, and co-signer, and the responsibilities of the property owner, easement holder, and co-signer.
- (b) The easement specifically and clearly identifies the boundaries of the property subject to the easement, preferably by metes and bounds legal description and survey plat.
- (c) The easement contains restrictions as to what the owner may do with the property and specifically delineates what may not be done with the property. Limitations may include but may not be confined to prohibitions against subdivision, earthmoving, dumping, signs, utility lines, construction, changes to existing structures, and uses made of the property.
- (d) The easement provides for the right of the easement holder and co-signer to inspect the property to assure observance of restrictions. It also provides for enforcement procedures.
- (e) The easement provides for the maintenance of property.
- (f) The easement contains provisions governing its amendment, including provisions that the easement shall not be altered except with the express written permission of the easement holder, property owner, and any co-signers.

Section 1109. Homeowners Association.

Open spaces may be owned and managed in common by a homeowners association, subject to compliance with the provisions of this Article and the following requirements:

- (a) The developer of the conservation subdivision shall provide to the Administrative Official for approval, prior to the approval of a preliminary plat, a description of the homeowners association, including bylaws and methods for maintaining open space. The developer of the open space conservation subdivision shall provide a property management plan or an estimate of the costs and staff requirements for the maintenance, operation, and insurance of the open space and any facilities it includes in the description of methods for maintaining the subdivision's open space.

- (b) The homeowners association shall be established by the conservation subdivision developer and endowed with a financial subsidy from the developer prior to the approval of a final plat on the property involving an open space conservation subdivision.
- (c) Homeowners association membership of each non-open space lot owner in the open space conservation subdivision shall be mandatory (required) and automatic.
- (d) Unless maintenance is assigned to a conservation organization or land trust, the homeowners association shall be responsible for maintenance, insurance, and taxes on the open space within the open space conservation subdivision. In such cases, the association shall be required to assess dues for the maintenance of open space, purchase of insurance, and payment of taxes, unless another income source is proven to be available. Members of the association shall share equitably the costs of open space maintenance as indicated in bylaws. The association shall be empowered with the legal ability to place liens on non-open space lot owners for failure to pay association dues.
- (e) Said homeowners association shall not be dissolved without the consent of the Governing Body. If common ownership of open spaces by a homeowners association is proposed and approved, then open spaces shall be subject to permanent deed and final plat restrictions or covenants on the future use, development, and subdivision of open spaces, in addition to the requirement of a conservation easement.
- (f) The Governing Body may, upon recommendation of the Administrative Officer, require that the homeowners association establish a minimum amount of funds to be initially deposited and maintained in a maintenance account.

Section 1110. Fee Simple Dedication to the City.

Dedication in fee-simple ownership to the public for recreational and/or open space use is a possible mechanism for the permanent retention and maintenance of open spaces within the conservation subdivision, at the sole discretion of the Governing Body, and subject to the following in addition to other applicable provisions of this Article:

- (a) Dedication to the city shall only be approved if the Governing Body finds that the size, shape, location, type of open space, or cost of development or maintenance of such open space or the availability of open space would make public ownership desirable or necessary.
- (b) The decision to accept open spaces for fee simple public ownership shall be at the sole discretion of the Governing Body but guided by recommendations of the Administrative Officer, Planning Commission, and the comprehensive plan as it pertains to open space acquisition.
- (c) The Governing Body generally will require dedication of all open space or park and recreation areas indicated for acquisition in the comprehensive plan or capital improvement program.

The Governing Body may require a maintenance bond or other financial security with duration of twelve (12) months following public acceptance in an amount sufficient to ensure that such lands do not cause unwarranted public expenditures because of faulty conditions or construction. The Governing Body shall have authority to cash said bond

in the event substandard conditions are evident. Otherwise, following the one-year period following public dedication, with satisfactory performance, the Governing Body shall return the performance bond to the subdivider.

In addition to the required conservation easement, a deed for open space lands in a form acceptable to the City Attorney in favor of the city shall be signed and recorded prior to the approval of any final plat pertaining to land within the conservation subdivision.

Section 1111. Application.

As a part of the preliminary plat application, the applicant for a conservation subdivision shall in addition to the requirements for preliminary plats specified in this Ordinance, submit an analysis of existing features on the site, which shall minimum include the following:

- (a) Significant wildlife habitats, if any. If information on habitats is not available, the wildlife potential of various soil types on the site shall be identified and examined.
- (b) Soils, including analysis of suitability for septic tanks, erosion potential, prime farmland, and identification of hydric soils.
- (c) Wetlands.
- (d) Floodplains. Areas of 100-year flood plains as identified on flood hazard boundary maps or flood insurance rate maps developed by the Federal Emergency Management Agency.
- (e) Steep slopes.
- (f) Historic, archaeological, and cultural features.
- (g) Tree cover/woodlands.
- (h) Views into and out from the site, and any scenic qualities.
- (i) Groundwater recharge areas.
- (j) Property boundaries.
- (k) Existing roads and structures.
- (l) Greenspaces and trails traversing or adjacent to the site.
- (m) Planned boundaries of open space.

Section 1112. Consideration.

Approval or denial of a preliminary plat for a conservation subdivision shall, in addition to criteria specified elsewhere in this Ordinance for consideration of preliminary plats, be based on the extent to which the plat meets the following criteria:

- (a) All primary conservation areas are protected as permanent open space.
- (b) A sufficient amount of secondary conservation areas are protected as permanent open space, as opposed to being devoted to lots and other uses.
- (c) The configuration of the open space tract is contiguous and undivided, or open space is provided in relatively undivided tracts that cannot reasonably be reconfigured into one contiguous, undivided tract.
- (d) The open space conservation subdivision meets the regulations specified in this Article.

Section 1113. Justifiable Grounds for Denial.

Reasons for the denial of a preliminary plat of a conservation subdivision include but are not limited to the following:

- (a) The application fails to fully identify primary and secondary conservation areas.
- (b) The proposed method of sewage treatment is inappropriate for the site or found to be potentially dangerous to public health.
- (c) One or more of the lots within the open space conservation subdivision are too small to meet the minimum lot size established by this Article or even if compliant are out of character with residences on adjoining or nearby properties.
- (d) One or more of the lots are significantly large or wide, such that their design contributes to an unnecessary decrease in the amount of open space retained on site.
- (e) The street configuration does not provide for connectivity, or preserve natural features, or it is found to be inconsistent with the open space character of the subject property and its surroundings.
- (f) The proposed open space network is divided, not functional, inconsistent with open space plans of the city with jurisdiction, or does not provide for the protection of the most valuable secondary conservation areas on the site given the natural and scenic properties inherent on the site.
- (g) The proposed open space network fails to maximize the length of the common boundary between conservation areas on site and conservation areas or parkland abutting the open space conservation subdivision site.
- (h) The preliminary plat appears to be submitted for the major purpose of circumventing minimum lot size or minimum lot width requirements or improvement requirements that would otherwise be required for conventional subdivisions pursuant to the City Zoning Ordinance.