

PART II
MODEL RESIDENTIAL CONSERVATION DEVELOPMENT
ZONING REGULATIONS FOR TOWNSHIPS

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Section 100 PURPOSE AND AUTHORITY

The primary objective of conservation development zoning is to promote the health and safety of the community through the application of flexible land development techniques in the arrangement and construction of dwelling units and roads. Such flexibility is intended to maximize the conservation of open space while accepting development and retaining for the property owner the development rights (the number of residential dwelling units) that are permitted under the existing conventional zoning for the property.

COMMENTARY: These objectives should be carefully worded to include the specific characteristics within the community that have been determined to be priorities for conservation.

These regulations are intended to achieve these corollary purposes:

- A. To maximize protection of the community's natural resources by:
 - 1. Avoiding development on and destruction of sensitive natural resource areas;
 - 2. Reducing the quantity and improving the quality of storm water runoff from expected development;
 - 3. Maintaining natural characteristics (such as woods, hedgerows, natural vegetation, meadows, slopes and streams);
 - 4. Reducing the amount of disturbed land, the conversion of natural areas to landscaped areas for lawns, and discouraging the use of plants that are non-native, invasive species; and
 - 5. Conserving areas of prime agricultural soils, to the extent possible.

- B. To conserve (within the framework of natural resource conservation) the quality of ruralness in a community which is characterized by:
 - 1. Large, aggregated, undeveloped land areas;
 - 2. Natural features such as woodlands, steep slopes, floodplains, wetlands, stream and river corridors, hedgerows and rock outcroppings;
 - 3. Scenic vistas and rural views;
 - 4. Significant historic features such as old barns, heritage trees, etc.;

5. Traditional rural settlement patterns characterized by clusters of compact groupings of development in otherwise wide open spaces; and/or
 6. Appropriate topographic or vegetative screening.
- C. To encourage more efficient use of land and public services through unified development.
 - D. To establish development review criteria which promote creative design solutions in a manner which best conserves the area's resources.
 - E. To establish a review process which maintains local review and approval of the overall development plan and which results in the timely consideration of an application.
 - F. To ensure that the proposed Conservation Development complies with the objectives of _____ Township as expressed in the _____, _____ and _____ Plans.

COMMENTARY: These may include an Open Space Plan, a Comprehensive Plan or other existing document(s) that establish priority areas for open space conservation, environmental resource protection or other community considerations related to conservation development.

These regulations are established under the authority of the Ohio Revised Code Section 519.021, Planned Unit Development.

Section 110 DEFINITIONS

For the purpose of these regulations the following terms, whenever used in these regulations, shall have the meaning herein indicated:

COMMENTARY: Since these regulations are intended to be incorporated in the Zoning Resolution, IT IS RECOMMENDED THAT THESE DEFINITIONS BE LOCATED within the Resolution's overall Definitions article. Many of these terms may already be defined in the Zoning Resolution, in which case care must be taken to ensure that conflicting definitions are eliminated and terms are used consistently throughout the Resolution. In the case of a "floating" or "overlay district", it is possible that two sets of definitions could apply to one district, which must be avoided by incorporating all of the definitions into one set.

- A. **ACTIVE RECREATION:** Leisure time activities characterized by repeated and concentrated use of land, often requiring equipment and taking place at prescribed places, sites or fields. Examples of active recreation facilities include golf courses, tennis courts, swimming pools, softball, baseball, and soccer fields. For the purpose of these regulations, active recreation facilities do not include paths for bike riding, hiking, and walking and picnic areas.
- B. **ASSOCIATION:** A legal entity operating under recorded land agreements or contracts through which each unit owner in a conservation development is a member and each dwelling unit is subject to charges for a proportionate share of the expenses of the organization's activities such as maintaining restricted open space and other common areas and providing services needed for the development. An association can take the form of a homeowners' association, community association, condominium association or other similar entity.
- C. **BUILDING ENVELOPE:** An area within a conservation development that is designated as a location within which a dwelling unit is to be placed in compliance with the building setback and spacing requirements established by the township zoning regulations. A building envelope may or may not be located within a subplot and may or may not have frontage on a public street.
- D. **BUFFER:** A designated area between uses or adjacent to the perimeter of natural features designed and intended to provide protection and which shall be permanently maintained.
1. **LAND USE BUFFER:** Land area used to separate or visibly shield and/or screen one use from another.
- E. **COMMON AREA:** Any land area, and associated facilities, within a conservation development that is held in common ownership by the residents of the development through a Homeowners' Association, Community Association or other legal entity, or which is held by the individual members of a Condominium Association as tenants-in-common.
- F. **COMMON DRIVE:** A private way which provides vehicular access to at least two but not more than _____ dwelling units.
- COMMENTARY: Common drives need to be defined by the maximum number of units to be excluded from the definition of private street. Therefore, a private street is a private way serving more units than permitted to be served by a common drive.*
- G. **CONSERVATION DEVELOPMENT:** A contiguous area of land to be planned and developed as a single entity, in which housing units are accommodated under

more flexible standards, such as building arrangements and setbacks, than those that would normally apply under single-family district regulations, allowing for the flexible grouping of houses in order to conserve open space and existing natural resources.

- H. CONSERVATION EASEMENT: A legal interest in land which restricts development and other uses of the property in perpetuity for the public purpose of preserving the rural, open, natural or agricultural qualities of the property as authorized by ORC§ 5301.67 through 5301.70.
- I. DEVELOPMENT PLAN: A proposal including drawing(s) and map(s) for a conservation development, prepared in accordance with these regulations, illustrating the proposed design, layout and other features for the development and including all elements set forth in Section 180.
- J. DWELLING, DETACHED SINGLE-FAMILY: A building designed for, or used exclusively for, residence purposes by one family situated on a parcel having a front, side, and rear yard.
- K. DWELLING, SINGLE-FAMILY ATTACHED: Dwelling units that are structurally attached to one another, side by side, and erected as a single building, each dwelling unit being separated from the adjoining unit or units by a party wall without openings extending from the basement floor to the roof with each unit including separate ground floor entrances, services, and attached garages.
- COMMENTARY: This definition requires attached garages; a requirement that may not be desired by every community.*
- L. DWELLING, SINGLE-FAMILY, CLUSTER: A building that is designed and used exclusively by one family and separated from all other dwelling units by air space from ground to sky, which is grouped with other dwellings on a site and which may be located on its own subdivided lot without a front, side and/or rear yard in compliance with the standard zoning district regulations.
- M. FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA): The agency with the overall responsibility for administering the National Flood Insurance Program.
- N. FLOODPLAIN: Any land susceptible to being inundated by water from any source. The base flood is the flood that has a one percent or greater chance of being equaled or exceeded in any given year.
- O. FLOODWAY: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without

cumulatively increasing the water surface elevation more than a designated height.

- P. **INVASIVE SPECIES.** Organisms that harm, or have the potential to harm, the environment, economy, or human health; species so listed shall be as defined by the Ohio Department of Natural Resources.
- Q. **ISOLATED LAND.** Any portion of the subdivision parcel that is separated from the remainder of the parcel by an excessively steep slope, water body, or other feature that would not support a road under normal building standards, rendering the portion unbuildable.
- R. **LAND TRUST:** A non-profit, tax-exempt entity whose primary purpose includes the preservation of open space, natural land, rural land, or agricultural land, and which is permitted to hold conservation easements under ORC§ 5301.68.
- S. **LOT or SUBLOT:** For the purposes of the conservation development regulations, a lot or subplot shall be a parcel of land owned fee simple and intended for a single dwelling unit whether or not such lot or subplot is located with frontage on a dedicated street.
- T. **NATURAL FEATURE:** An existing component of the landscape maintained as a part of the natural environment and having ecological value in contributing beneficially to air quality, erosion control, groundwater recharge, noise abatement, visual amenities, the natural diversity of plant and animal species, human recreation, reduction of climatic stress, and energy costs.
- U. **OPEN SPACE:** An area that is intended to provide light and air. Open space may include, but is not limited to, meadows, wooded areas, and waterbodies. See also Restricted Open Space.
- V. **ORC §:** Ohio Revised Code section number.
- W. **PERENNIAL STREAM:** A natural waterway that contains water throughout the year except in severe drought.

Source: U.S. Geologic Survey.
- X. **PRIVATE STREET:** A local private way which provides vehicular access to _____ or more residential structures that is not and will not be dedicated to public use, but which is owned and maintained by the Association.
- Y. **PROJECT BOUNDARY:** The boundary defining the tract(s) of land that is included in a development project to meet the minimum required project area for a

conservation development. The term “project boundary” shall also mean “development boundary”.

- Z. PUBLIC IMPROVEMENT: Any roadway, sidewalk, pedestrian way, tree lawn, lot improvement, or other facility for which the local government may ultimately assume the responsibility for maintenance and operation, or that may affect an improvement for which responsibility by the local government is established.
- AA. RESTRICTED OPEN SPACE: Open space within a conservation development that is of sufficient size and shape to meet the minimum zoning requirements that is of restricted from further development according to the provisions of this chapter.
- BB. SETBACK: The required distance between a structure and a lot line, street right-of-way, pavement, stream or riverbank, wetland or other delineated site feature.
 - 1. RIPARIAN SETBACK: A naturally vegetated area located adjacent to streams and rivers that is intended to stabilize banks and limit erosion.
 - 2. WETLANDS SETBACK: An area of undisturbed natural vegetation located adjacent to the perimeter of the wetlands.
- CC. STANDARD SUBDIVISION: A major or minor subdivision, as defined by the Ohio Revised Code, in which property is subdivided into lots having the minimum front, side and rear yards as specified by the Zoning Resolution and with each lot having the requisite frontage on a dedicated public street.
- DD. STREAM BANK OR RIVER BANK: The ordinary high water mark of the stream or river, otherwise known as the bankfull stage of the stream or river channel. Indicators used in determining the bankfull stage may include changes in vegetation, slope or bank materials, evidence of scouring, and stain lines.
- EE. WALKWAY: A public way, four or more feet in width, for pedestrian use only, which may or may not be located within the street right-of-way.

COMMENTARY: This is in contrast to sidewalks, which are typically defined as being located in the public right-of-way.
- FF. WETLAND: An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

The three criteria that must exist on a site for an area to be designated a wetland are hydric soils, hydrophytic vegetation, and wetland hydrology.

COMMENTARY: Source: Army Corps of Engineers.

Section 120 PERMITTED USES

The following uses shall be permitted based on the type of development proposed:

A. Conservation Development in accordance with the regulations set forth in Sections 130 through 180, inclusive:

1. Detached single-family dwellings;
2. Single-family cluster dwellings;
3. Single-family attached dwellings;

COMMENTARY: See definition of “dwelling” for more information. It is not necessary at lower densities to permit attached units. However, the more flexibility the applicant has in the arrangement of units, the greater the ability to effectively group the units and conserve meaningful open space and environmental resources, thus achieving the conservation objectives. Attached units are strongly suggested when the permitted density is two units per acre or higher, otherwise it may not be possible to achieve the required open space or to aggregate the open space in a desirable manner.

4. Recreation facilities for use by residents;
5. Restricted open space as required in Section 140.

B. Standard detached single-family dwellings in accordance with the regulations set forth in Chapter _____.

COMMENTARY: This option is the conventional lot-by-lot single-family development currently in the township’s zoning resolution and which typically has no requirement for open space. The reference should be to the existing single-family district regulations. Area and bulk requirements for the standard detached single-family dwelling remain in effect should a property owner choose this option. The existing single-family district standards should be the basis for determining many of the standards for conservation development.

C. Agriculture in accordance with Section ____.

COMMENTARY: Reference should be made to the existing section of the zoning resolution that regulates agriculture. If no such section exists, then reference should be made to ORC § 519.21. This use may not be appropriate in developed communities where agriculture is no longer an existing use. This is especially true in areas where the density is two or more units per acre.

Section 130 MINIMUM PROJECT AREA FOR CONSERVATION DEVELOPMENT.

The gross area of a tract of land proposed for development according to the conservation development option shall be a minimum of 25 acres, but shall not include area within any existing public street rights-of-way.

The area proposed shall be in one ownership or, if in multiple ownership, the application shall be filed jointly by all the owners of the properties included in the conservation development.

COMMENTARY: A minimum project size ensures that at least a minimum amount/size of open space will be conserved. The appropriate size may vary from community to community depending on the patterns of lot ownership, the extent of existing development, etc. However, a larger minimum project size is preferred over a smaller minimum not only because of the potential for larger contiguous areas of open space but also to ensure that the homeowners' association is large enough to sustain itself and fulfill its open space management and maintenance responsibilities.

A smaller project size may be appropriate, especially when the restricted open space for the project is a targeted component of the Township's overall open space plan.

Section 140 PERMITTED DENSITY/RESTRICTED OPEN SPACE

- A. The minimum restricted open space shall be _____ percent of the total project area.

COMMENTARY: The amount of open space that can realistically be set aside as "restricted" open space is related to the density and type of units permitted. The higher the density, the more difficult it is to achieve a large percentage of open space unless sufficient flexibility is available in terms of dwelling types and setback requirements (i.e., allowing attached single-family units).

However, in order to meet minimum Countryside Program criteria for a conservation development, the restricted open space

requirement must be at least 40%. It has been found that less open space does not allow the developer the flexibility to accomplish both resource protection and open space adjacency goals for individual lots. Appendix A provides a more detailed discussion regarding the open space requirement.

In contrast, when the permitted density is very low (i.e. one unit for every 10 acres), it may be possible to set aside upwards of 80% of the site as open space.

- B. The maximum density shall be ____ dwelling units per acre. The maximum number of dwelling units permitted in a conservation development shall be calculated by:
1. Deducting the following from the total project area:
 - a) Any public right-of-way within the project boundary existing at the time the development plan is submitted; and
 - b) Where the underlying minimum lot size exceeds 1/2 acre: The area of a floodway, designated wetlands, isolated land, slopes exceeding 25%, or waterbody that exceeds the minimum acreage required for restricted open space as set forth in Section 140A above. Where floodways and wetlands overlap, they shall be counted only once. **OR**
 - c) Where the underlying minimum lot size is less than 1/2 acre: The area of a floodway, designated wetlands, isolated land, slopes exceeding 25%, or waterbody
 2. Multiplying the result of subsection 1 by the maximum density permitted per acre as set forth in this Section above.

COMMENTARY: Each community needs to establish the precise density for conservation development based on the prevailing characteristics in the community. NORMALLY, THIS WILL BE THE ACTUAL DENSITY OF THE SINGLE-FAMILY ZONING DISTRICT NOW IN PLACE IN THE AREAS WHERE CONSERVATION DEVELOPMENT IS DESIRED. The actual density of a subdivision is usually lower than the statistical density (which is derived from the minimum lot area divided by one acre or 43,560 square feet) because of land area devoted to roads and the fact that some of the lots are larger than the minimum required. A detailed discussion of the distinctions between the actual density and the statistical density is included in the Background Sheet titled Determining Density in the Handbook.

One of the principles of the conservation development regulations is to be density neutral when comparing the number of potential units under the conservation development regulations to the number of potential units under the conventional standard detached single family development option. However, it is recognized that floodways, wetlands and waterbodies are natural features that affect the development capacity of a site. At the same, it is possible that in a standard subdivision, especially a larger lot subdivision, much of the area within floodways, wetlands and smaller ponds could be included in the rear yards of individual lots, thereby not reducing or only moderately reducing the overall development capacity of the site.

Therefore, the Model recommends that there be a reduction in density for projects, particularly those with overall lot sizes less than 1/2 acre, that are substantially impacted by floodways, wetlands, isolated land, excessively steep slopes, and/or waterbodies. ~~When the area of these key environmental open space components exceeds the number of open space acres that are required to be set aside, the acreage that is in excess of the open space requirement is to be deducted from the total project area, and the density is to be based on the net area. See Appendix A for an example of how this deduction is calculated.~~

More complex formulas are possible to determine the extent to which these natural features impact a site, such as requiring the applicant to prepare a “yield plan”. The Handbook includes more detail about how the extent of natural features impacts the density of a project as well as a discussion of the pros and cons of requiring a “yield plan”. Additional natural resource characteristics (i.e. steep slopes, prime farmland, drainage courses outside designated floodways, etc.) could also be deducted depending on the priorities of the community.

Section 150 REGULATIONS FOR RESTRICTED OPEN SPACE

- A. General standards: The restricted open space required in Section 140 shall comply with the following:
1. Restricted open space shall be designed and located to conserve significant natural features and historical and cultural elements located on the site.

COMMENTARY: Actual areas designated as restricted open space need not specifically conform to the geographic extent of each of the elements and features identified above. However, the development standards in Section 160 need to adequately address building

setbacks, etc. in the event such elements or features are located in individual lots.

2. Areas designated for restricted open space purposes may be:
 - a) Preserved in its natural state,
 - b) Designed and intended for the use and/or enjoyment of residents of the proposed development,
 - c) Utilized for farming when authorized in a conservation easement or in the Association's covenants and restrictions.
3. ~~Restricted open space shall be interconnected with open space areas on abutting parcels~~ Where possible, restricted open space shall be connected with open space areas on land adjacent to the development; and also shall be connected within the applicant project.
4. Sewage service, stormwater management, and/or water supply facilities may be located partially or entirely within restricted open space areas. Where such facilities are so located, easements satisfactory to the _____ shall be established to require and enable maintenance of such facilities by the appropriate parties.

COMMENTARY: County Health Department regulations include minimum requirements for area, length, and width of on-site septic systems and minimum spacing of such systems from site elements as well as from other systems. It is recognized that such requirements are likely to require larger lots and greater spacing between buildings, thereby reducing flexibility in the arrangement of units and limiting the conservation of open space.

However, whenever on-site septic systems are required, two approaches are possible: the septic systems is located in the restricted open space and septic easements are granted to homeowners; or conservation easements could be applied over contiguous private yards. In either option, the easement would permit construction and maintenance of the septic system. Otherwise, these areas would be "conserved" and be part of the natural area or restricted open space. In either case, the spacing requirements for the leach fields may not permit the grouping of units to the extent advocated in this Model. For more information refer to the Handbook section on Wastewater Treatment.

In order to maximize rear yard areas for conservation easements, the front building setback should be reduced. The area of the conservation easement should only be disturbed for the construction

and maintenance of septic systems. All other structures, impervious surfaces, tree cutting, grading and similar environmental impacts would be prohibited or discouraged.

Despite this accommodation for individual septic systems on large lots, conservation development principles prefer the restricted open space alternative where possible.

5. In order to encourage the creation of large areas of contiguous open space, areas that shall not be considered restricted open space include:
- a) Private roads and public road rights-of-way;
 - b) Parking areas, accessways and driveways;
 - c) Required setbacks between buildings, parking areas and project boundaries;
 - d) Required setbacks between buildings and streets;
 - e) Minimum spacing between buildings, and between buildings and parking areas;
 - f) Private yards;
 - g) A minimum of 15 feet between buildings and restricted open space; and
 - h) Other small fragmented or isolated open space areas that have a dimension less than ____ feet in any direction.

COMMENTARY: It is recognized that the above land fragments serve important functions to ensure adequate light, air and privacy for units, however, in order to simplify the calculation of and encourage the creation of larger areas of restricted open space, these areas do not count toward the restricted open space requirement. The community needs to decide the minimum acceptable dimension for restricted open space. The typical range is between 50 and 100 feet. The Handbook includes a detailed discussion regarding the benefits of creating larger areas of open space.

6. Any restricted open space intended to be devoted to recreational activities shall be of a usable size and shape for the intended purposes. The maximum percentage of **the total project area** that may be developed for active recreation areas, including a community center, shall be ____.

COMMENTARY: The suggested maximum is about five percent of the total project area.

7. Any area within the restricted open space that is disturbed during construction or otherwise not preserved in its natural state, other common areas such as required setback areas, and both sides of new streets shall be landscaped with vegetation that is compatible with the natural characteristics of the site.
 8. The restricted open space, including any recreational facilities proposed to be constructed in such space, shall be clearly shown on the general development plan.
- B. Prohibition of Further Subdivision of Restricted Open Space. Restricted open space in a conservation development shall be prohibited from further subdivision or development by deed restriction, conservation easement, or other agreement in a form acceptable to the township's Legal Advisor and duly recorded in the office of the Recorder of Deeds of _____ County.
- C. Ownership of Restricted Open Space. Subject to such permanent restriction as set forth above restricted open space in a conservation development may be owned by an association, the township, a land trust or other conservation organization recognized by the township, or by a similar entity, or may remain in private ownership.
1. Offer of Dedication. The township may, but shall not be required to, accept dedication in the form of fee simple ownership of the restricted open space.
 2. Associations. Restricted open space may be held by the individual members of a Condominium Association as tenants-in-common or may be held in common ownership by a Homeowners' Association, Community Association, or other similar legal entity. The township's legal advisor shall determine that, based on documents submitted with the development plan, the association's bylaws or code of regulations specify the following requirements:
 - a) Membership in the Association shall be mandatory for all purchasers of lots in the development or units in the condominium.
 - b) The Association shall be responsible for maintenance, control, and insurance of common areas, including the required open space.

3. Transfer of Conservation Easements. With the permission of the township, the owner(s) of the restricted open space may, in accordance with the provisions of ORC § 5301.67-70, grant a conservation easement to any of the entities listed in ORC § 5301.68, provided that:
 - a) The entity is acceptable to the township;
 - b) The provisions of the conservation easement are acceptable to the township; and
 - c) The conveyance contains appropriate provision for assignment of the conservation easement to another entity authorized to hold conservation easements under ORC § 5301.68 in the event that the original grantee becomes unwilling or unable to ensure compliance with the provisions of the conservation easement.
4. Private Ownership of Restricted Open Space. Restricted open space may be retained in ownership by the applicant or may be transferred to other private parties subject to compliance with all standards and criteria for restricted open space herein.

Section 160 DEVELOPMENT AND SITE PLANNING STANDARDS

Buildings, structures, pavement, and streets shall be located in compliance with the following development and site planning standards.

COMMENTARY: The categories of standards contained in this section are categories for which minimum standards should be established and applied to all conservation developments.

- A. Ownership. Any ownership arrangement, including, but not limited to, fee simple lots and condominiums, is permitted in a conservation development. Regardless of the ownership of the land, the arrangement of the dwelling units shall comply with the spacing requirements of this section.
- B. Lot Requirements.
 1. Units are not required to be on lots. However, when lots for standard detached single-family dwellings or sublots for single-family cluster or attached dwelling units are included as part of a conservation development, such lots or sublots shall be of sufficient size and shape to accommodate dwelling units in compliance with the spacing requirements of this section.

COMMENTARY: A key to successful conservation development is flexibility in area and yard standards. If the township chooses to

include minimum lot and yard standards, sufficient reductions from the existing lot area, width and yard requirements must be made in order to achieve the open space requirements.

The building regulations in Section 160C and D effectively establish minimum building envelopes, allowing lot line definition to follow after siting decisions have been made.

2. The applicant shall depict on the development plan the maximum parameters, or building envelopes, to indicate where buildings shall be located, and shall demonstrate that such building locations will be in compliance with the spacing requirements of this section.

COMMENTARY: This recognizes that when a general development plan is approved, the applicant may not know the precise size, shape or exact location of each home. See also Section III for the proposed subdivision regulations.

C. Perimeter Building Regulations.

1. The minimum setback from an existing public street shall be _____ feet.

COMMENTARY: The setback from existing public streets should not be more than the front yard setback in the standard single-family district zoning regulations. However, a reduced setback should be considered when natural features are present along the street and provide adequate buffering between the units in the conservation development and houses located across the street. A reduced setback is also desired when the community's priorities dictate that it is more important to conserve natural resources located on the interior of the site than to maintain large building setbacks along the street.

2. The minimum setback from the project boundary shall be _____ feet.

COMMENTARY: The minimum setback from the project boundary serves the same function as the rear yard setback for the standard subdivision. The conservation development setback ought to be less than the typical single-family rear yard setback to allow more flexibility to conserve open space and natural resources. The building setback from the project boundary could be reduced if either adequate natural buffering already exists around the perimeter or if allowing buildings closer to the boundary better conserves more environmentally sensitive areas that may be located

in the interior of the project. See Appendix C for a more detailed discussion regarding perimeter setbacks.

D. Interior Building Setback/Spacing Regulations.

1. The minimum setback from a proposed local public right-of-way shall be ___ feet.
2. The minimum setback from the edge of the pavement of a private street shall be ___ feet.
3. The minimum separation between dwellings shall be _____ feet.

E. Height. The maximum building height shall be ___ feet.

COMMENTARY: The maximum height standard should be the same as the existing regulations governing the height of single-family homes.

F. Resource Protection Regulations.

COMMENTARY: These Model regulations advocate highest priority consideration to the conservation of floodplains, wetlands, and riparian zones. Many communities already have regulations governing floodplains, and other agencies regulate wetlands and possibly other resources. To the extent that regulations for any of the following natural resources already exist, duplication in this document is not necessary or desired in order to avoid potential conflicts. Regulations related to conserving these resources are included in this Section for the purpose of protecting the health and safety of the community.

Beyond protection of floodplains, wetlands and riparian zones, any additional resource conservation priorities MUST BE SPECIFICALLY DETERMINED BY EACH INDIVIDUAL COMMUNITY. What is a high priority in one community (i.e. conservation of woodlands) may not be a high priority in another community. Therefore, Section 170 could include additional criteria for determining when a specific development proposal is appropriate for a specific location. The Handbook in Section Two includes further discussion of additional resource protection measures.

1. Floodway Protection. Within a floodway, all buildings, structures or land shall be permitted to be used only for uses listed below. These restrictions also apply to subsequent erection, alteration, enlargement, repair, moving, or design of structures within the floodway. ~~and buildings or structures~~

~~hereafter shall be erected, altered, enlarged, repaired or rebuilt, moved, or designed to be used, in whole or in part only for a use listed below.~~

- a) Agriculture;
- b) Public or private parks and outdoor recreational facilities including swimming pools, riding academies, playfields, ball fields, courts, trails, etc.;
- c) Fencing that allows the passage of water.
- d) Off-street parking areas accessory to the above uses provided that such areas are improved with pervious pavement materials, such as pervious asphalt or pervious concrete or combinations of geotextiles with sand, gravel and sod.

COMMENTARY: Many communities already have floodplain regulations. Some regulations allow buildings to be constructed within the floodplain provided the first floor of the building is above the flood elevation. However, it is strongly recommended that no construction (except as specified above) be permitted in the floodway portion of the floodplain in a conservation development. Refer to Resource Manual Handbook for more information.

2. Wetlands Protection. Wetlands that are required by the Army Corps of Engineers or the Ohio EPA to be retained shall be protected by the following:
- a) A setback area having a width not less than 20 feet, measured from the edge of the designated wetland. The area within this buffer shall not be disturbed and shall be retained in its natural state; and
 - b) A minimum construction setback of 35 feet, measured from the edge of the designated wetland.

COMMENTARY: The purpose of the setback requirement is to minimize any disturbance to or contamination of the wetlands. The larger building and pavement setback requirement allows room for the surrounding land area to be disturbed by construction vehicles, material storage, etc. during construction of buildings, parking areas and streets.

The appropriate width of the setback could vary based on the size, type, and quality of the wetland. Research is underway by others to substantiate the setback area that is needed to ensure protection of a wetland area while balancing the property rights of landowners. (See also next commentary.)

3. Conservation of Riparian Zones:

- a) A riparian setback shall be provided along the entire length and on both sides of a river or perennial stream channel. The setback area shall have a width not less than _____ feet on each side of the channel, measured from the river or stream bank.

COMMENTARY: Based on research, the minimum recommended width is 50 feet. However, some communities have adopted setback requirements ranging up to 300 feet. Each community needs to determine the appropriate/adequate setback area for rivers and perennial streams based on an actual inventory and logical analysis of the existing resources. The purpose of the setback is to preserve stream ecology and prevent flood damage and bank erosion. A community may want to include a sliding scale for the setback width depending on the type of stream, slope of the stream banks, surrounding soils, vegetation and land uses, and the function of the stream(s).

The following are good resources:

*Chagrin River Watershed Partners.
Ohio Department of Natural Resources
Ohio Environmental Protection Agency*

It is possible that setback requirements are already in place in a county stormwater management regulation or separate riparian setback regulations. A community may choose to adopt separate wetland and/or riparian setback regulations. In these cases, the requirements should not be repeated in this section.

Intermittent streams may also be a critical factor regarding the overall water quality of a community. Research is underway to substantiate the appropriate setback area needed for these types of streams. Each community needs to decide if protection of these streams is a priority. Many current setback regulations include both intermittent and perennial streams.

- b) Walkways may be permitted to be located within riparian setbacks when the Zoning Commission determines that such will create minimal change to the riparian setback.

COMMENTARY: A township may want to allow other uses that create only temporary or minimal changes to riparian setbacks. Some communities choose to only permit pervious surfaces (such as wood chips, gravel, pervious asphalt or pervious concrete) within the setback.

- G. General Street Design Criteria.
1. Street alignments should follow natural contours and be designed to conserve natural features.
 2. Locations of streets should be planned to avoid excessive stormwater runoff and the need for storm sewers.
 3. The area of the project devoted to streets and related pavement should be the minimum necessary to provide adequate and safe movement through the development.
- H. Pedestrian Circulation Systems.
1. A pedestrian circulation system shall be included in the conservation development and shall be designed to ensure that pedestrians can walk safely and easily throughout the development. The pedestrian system shall provide connections between properties and activities or special features within the restricted open space system and need not always be located along streets.
 2. Trails for which public right of passage has been established should be incorporated in the pedestrian circulation system.
- I. Sewage Disposal. Development shall be served by individual or public sewage disposal structures consistent with the _____ County systems. Individual sewage disposal systems shall comply with all applicable regulations of the _____ County Health Department and may be located within restricted open space areas when approved by the township and the _____ County Health Department.
- COMMENTARY: New sewage disposal systems are being developed that may permit houses to be located closer together than otherwise currently permitted by many county health departments. See also the commentary for Subsection 150.A.4, starting on page 15 and the Wastewater Treatment section of the Handbook, and legal commentary in the Resource Manual appendix, for more information.*
- J. Waivers. In the event the Zoning Commission, determines that certain standards set forth in this section do not or should not apply specifically to the circumstances of a particular project and an alternative method of achieving the objectives of the numerical standard is equal to or better than the strict application of the specified standard, the Township Zoning Commission may relax such standard to an extent deemed just and proper, provided that the granting of such

relief shall be without detriment to the health and safety of the community and without detriment to or impairment of the intent of this Section.

COMMENTARY: This paragraph is often misunderstood. The Board of Township Trustees is authorized in ORC Section 519.021 to conduct such a review. They may designate the Zoning Commission to conduct the review at their discretion.

This provision does not address the need for variances to accommodate necessary hardship, but does provide the reviewing board the discretion to relax numeric standards where an alternative method will achieve equal or better objectives.

Some communities choose to use alternative language such as an “Equivalency Provision”, which is given in Appendix G.

For more information, also see the legal analysis provided in the Resource Manual Appendix.

Section 170 DEVELOPMENT DESIGN CRITERIA

In addition to the development and site planning standards set forth in Section 160, all elements of a conservation development, particularly the restricted open space areas, shall be designed in accordance with the following criteria to ensure that the project is appropriate for the site’s natural, historic and cultural features and meets the objectives of this district.

COMMENTARY: The primary purpose of this Model is to encourage the conservation of those features on a particular piece of land that contribute to the character of the community. Since a portion of the site needs to be set aside as open space, there should be sufficient latitude to ensure that the areas most desirable to be conserved are located in the restricted open space. However it is important to remember that IT IS NOT POSSIBLE TO EQUALLY CONSERVE ALL NATURAL RESOURCES WHILE PERMITTING REASONABLE DEVELOPMENT OF THE LAND. Therefore, each township must decide, through a systematic planning process and evaluation of existing resources, the relative importance of and need for each of the following categories. The following represent examples of design criteria to be considered as the township evaluates the importance of each category and establishes criteria appropriate for the local community. Additional discussion on each of the

categories is included in the Handbook, while Appendix D provides more detailed criteria for each of the categories.

Through the planning process, the township should determine whether the categories have a high, medium, or low priority. Some categories may not be applicable for the community and therefore should not be included at all. Once the categories are prioritized, they should be listed in order of importance from high to low priority. Such ranking gives guidance to both the applicant in his/her design of a project and the Zoning Commission in their review.

In communities with diverse landscapes, priorities may differ for different areas. In this case, the development of a resource analysis and map identifying priority conservation areas, or outlining desirable areas for designation as open space within development projects, is useful. Ideally this would be done as part of a comprehensive plan process.

- A. Conservation of Sloping Land. The road system and buildings should be located to minimize changes to the topography and the need for cutting and filling.
- B. Conservation of Woodlands, Vegetation and other Natural Areas. The design and layout of the development should conserve, maintain, and incorporate existing wooded areas, meadows, and hedgerows and treelines between fields or meadows, especially those containing significant wildlife habitats.
- C. Conservation of Wildlife Habitats. Wildlife habitat areas of species listed as endangered, threatened, or of special concern by the U.S. Environmental Protection Agency and/or by the Ohio Department of Natural Resources should be protected.
- D. Conservation of Prime Farmland. Farmland that satisfies the USDA definition of “prime” or “locally unique” farmland should be conserved.
- E. Conservation of Existing Scenic Vistas and Visual Quality of the Environment. ~~Buildings should be located to ensure that scenic views and vistas are unblocked or uninterrupted.~~ Scenic views and vistas shall be unblocked and uninterrupted to the extent possible, particularly as seen from existing and proposed public thoroughfares. New construction shall be hidden from view to the extent possible through the use of vegetative and landform buffers. Building setbacks along the project boundary shall be sufficient to provide visual protection for existing residences. Buildings shall not be located on prominent hilltops and ridges.

- F. Conservation of Cultural Resources. Sites of historic, archaeological, or cultural value and their environs should be protected insofar as needed to safeguard the character of the feature, including stone walls, spring houses, barn foundations, underground fruit cellars, earth mounds and burial grounds.

COMMENTARY: Communities should determine which sites within the community have value. Sites do not necessarily need to be officially designated as “historical” or “archeological” to have community value. See the Handbook for a detailed discussion on the importance of cultural resources.

A careful and detailed site analysis is critical in view of both the flexibility of development design available under these provisions and the resource protection objectives which might be achieved. Thorough site analysis provides the necessary base of information for the planning and design process, allows for meaningful plan review, and can preclude unnecessary engineering expense on behalf of the applicant.

Section 180 PROJECT REVIEW PROCEDURES

Under the authority established in ORC §519.021, the Township Zoning Commission shall review and approve development plans for a proposed conservation development according to the procedures set forth in this Section.

COMMENTARY: The model regulations have been drafted to allow conservation development as a permitted use, utilizing whichever of the three alternative procedures specified in §519.021 (planned unit development) the township chooses. The Countryside Program recommends that townships utilize the procedures specified in ORC §519.021(C). Under this procedure, the township would amend its zoning resolution by adopting conservation development regulations and rezoning specific areas for conservation development at the same time. This procedure provides for public input as part of the rezoning process. Once rezoned to permit conservation development the approval of a particular conservation development project would NOT REQUIRE A PUBLIC HEARING. However, in the event a township desires to permit conservation development as a conditional use, the conditional use procedures would be followed including the holding of a public hearing and approval by the Board of Zoning Appeals.

- A. Submission of General Development Plan. The applicant shall submit a General Development Plan application to the township Zoning Inspector. The application shall include documentation illustrating compliance with the standards and

criteria set forth in this Article. The application and documentation shall include, but not necessarily be limited to:

1. Identification of existing site characteristics, including a general depiction of:
 - a) Boundaries of the area proposed for development, dimensions and total acreage;
 - b) Contour lines at vertical intervals of not more than 5 feet, highlighting ridges, rock outcroppings and other significant topographical features.
 - c) Location of wetlands (and potential wetlands), the floodway boundary and floodway elevation as delineated by the Federal Emergency Management Agency, rivers and streams and their related river or stream bank, ponds, and water courses;

COMMENTARY: Not all floodplains have been mapped by FEMA, especially in rural areas. In some cases, FEMA information is outdated and incorrect in areas where the floodplain has been altered by substantial development that has occurred since the FEMA study. Alternate sources should be required when the FEMA data is known to be incorrect. See the Handbook section on Floodplains for more information.

- d) Existing soil classifications;
- e) Locations of all wooded areas, tree lines, hedgerows, and specimen trees;
- f) Delineation of existing drainage patterns on the property, existing wells and well sites;
- g) Description of significant existing vegetation by type of species, health, quality, etc.;
- h) Existing buildings, structures and other significant man-made features on the site and within 200 feet of the project boundary;
- i) Description of all structures and areas of known or potential historical significance; and
- j) Existing viewsheds and identification of unique vistas.

2. The preliminary site plan shall be drawn at a scale not less than 1" = 100', except that projects over 200 acres may be drawn at a scale of 1" = 200', and shall include:
 - a) A summary of the proposed development including the total acreage, number of residential units, type of dwellings, density by type of dwelling, and acreage of restricted open space to be conserved;
 - b) A sketch layout of standard single family lots, if any;
 - c) The location of the restricted open space and any proposed recreational facilities;
 - d) Natural features to be conserved and any required buffer areas;
 - e) Natural features to be altered or impacted by the development and areas where new landscaping will be installed, etc.;
 - f) General location of public street rights-of-way; and
 - g) Proposed utility easement locations.

COMMENTARY: The preliminary site plan illustrates the conceptual layout of the open space, buildings, density, and street alignments and identifies the environmental features that are to be conserved. This is the stage where the general design and layout is approved before expensive engineering costs are incurred.

3. An outline of the method/structure to perpetually preserve the required restricted open space which indicates:
 - a) The structure of the Association;
 - b) Membership requirements;
 - c) Financial responsibilities; and
 - d) The relationship of the entity to public agencies having responsibilities related to the project.

COMMENTARY: This is to be reviewed by the Township's legal advisor. The final covenants/contracts, etc. would be approved with the final development plan for each construction phase.

4. A description of the project phasing including the phased construction of open space improvements.

- B. Review For Completeness. Within five business days of receiving the application, the Zoning Inspector shall review the application to determine that the application includes all the items required in subsection A above. If the application is deemed complete and the application fee paid, the Zoning Inspector shall officially accept the application on that date.
- C. Review of General Development Plan by Others. The Township Zoning Inspector shall distribute the general development plan application to the following for review and comment.
1. Regulatory agencies which have statutory authority to subsequently review and approve any aspect of the development, including but not limited to the County Planning Commission, the County Health District, the County Sanitary Engineer, The County Soil and Water Conservation District, and the Ohio _____.
 2. Other agencies which, at the discretion of the township, may have appropriate technical expertise.
 3. Appropriate local township administrative officials, including the township's legal advisor and emergency services personnel.
 4. Consultants retained by the township.

All comments shall be returned to the township within 30 days from the date distributed.

COMMENTARY: This review period could be as short as two weeks. Through this review, the application will be evaluated against the design criteria in the conservation development regulations and the applicable standards and criteria of the reviewing agencies.

- D. Site Visit. The Township Zoning Commission shall, together with the applicant and the applicant's consultant(s), visit the site to gain a thorough understanding of the characteristics of the site.

COMMENTARY: Due to the Sunshine Laws, this meeting would need to be advertised in the same manner as a regular meeting of the Zoning Commission, including public notification. Through this review, the application will be evaluated against the design criteria in the conservation development regulations and the applicable standards and criteria of the reviewing agencies.

- E. Review and Approval by Township. The Township Zoning Commission shall review the general development plan and the comments received from Section C above. The Township Zoning Commission shall take action on the submitted general development plan by either:
1. Approving the general development plan as submitted; or
 2. Approving the general development plan subject to specific conditions not included in the plan as submitted, such as, but not limited to, improvements to the general building layout or open space arrangement; or
 3. Denying approval of the general development plan.

Failure of the Zoning Commission to act within 60 days from the date the application was determined complete, or an extended period as may be agreed upon, shall at the election of the applicant be deemed a denial of the general development plan.

COMMENTARY: This provision is included for the protection of both the applicant and the Township. It provides the applicant with a specific time frame for action, after which he/she may agree to an extension or decide to take the matter to court. On the other hand, it protects the Township in the event unforeseen circumstances make it impossible for the Zoning Commission to reach a decision within the allotted time.

- F. Significance of Approved Plan. Approval of the general development plan shall:
1. Establish the development framework for the project, including the general location of open space, development areas, densities, unit types, recreational facilities, and street alignments.
 2. Be the basis for the application to proceed with detailed planning and engineering in reliance on the approved general development plan.
 3. Provide the benchmark for the Township Zoning Commission to consider and approve amendments to the general development plan when the Township Zoning Commission determines that the amended plan is equal to or better than the approved general development plan.
 4. Authorize the applicant to apply for all other required regulatory approvals for the project or subsequent phases thereof.

COMMENTARY: The applicant can and should pursue applications for other regulatory approvals such as for septic systems, etc. using an approved general development plan to the extent that such plan meets the submission requirements and the regulations of the agency.

- G. Final Development Plan. After a general development plan has been approved, an applicant shall submit for review and approval a final development plan. The final development plan may be submitted either for the entire project or for each construction phase.
1. Submission Requirements. The final development plan shall include:
 - a) A site plan drawn at a scale not less than 1" = 100' indicating:
 - 1) Boundaries of the area proposed for development, accurate dimensions and total acreage;
 - 2) The exact location and dimension of private streets, common drives and public street rights-of-way;
 - 3) Exact location of building footprints or envelopes within which dwelling units are to be constructed, and lot lines with dimensions for all residential units for which individual ownership is proposed;
 - 4) Dimensions of building/unit spacing;
 - 5) The extent of environmental conservation and change and the exact location of all no cut/no disturb zones ; and
 - 6) Designated restricted open space areas and a description of proposed open space improvements.
 - b) A grading plan drawn at a scale of 1" = 100', showing all information pertaining to surface drainage.
 - c) A detailed landscaping plan for new landscaping, including entry features and signs.
 - d) The Declaration, Articles of Incorporation and either Bylaws (for a Condominium Association) or Code of Regulations (for a Homeowners' Association) and any other final covenants and restrictions and maintenance agreements to be imposed upon all

the use of land and pertaining to the ownership, use, and maintenance of all common areas, including restricted open space.

- e) Conditions imposed by other regulatory agencies.
2. Review For Completeness. Within five business days of receiving the application, the Zoning Inspector shall review the application to determine that the application includes all the items required in subsection G.1, above. If the application is deemed complete and the application fee paid, the Zoning Inspector shall officially accept the application on that date.
 3. Distribution of Final Development Plan. The Zoning Inspector shall distribute the final development plan application to the Zoning Commission, the township's legal advisor, and other appropriate administrative departments or professional consultants for review and comment. Any reports, comments, or expert opinions shall be compiled by the Zoning Inspector and transmitted to the Zoning Commission prior to the time of the Commission's review.
 4. Review by the Township's Legal Advisor. The township's legal advisor shall review the Declaration, Articles of Incorporation and either Bylaws (for a Condominium Association) or Code of Regulations (for a Homeowners' Association) and any other final covenants and restrictions and maintenance agreements to be imposed upon the conservation development. He/she shall provide a written opinion to the Zoning Commission documenting that the above demonstrate full compliance with the requirements of this Chapter.
 5. Review and Approval by Township. The Zoning Commission shall review the final development plan and the comments received from Section B.3 and B.4 above. The Zoning Commission shall determine if the final development plan is in compliance with the general development plan and take action on the submitted final development plan by either:
 - a) Approving the final development plan as submitted; or
 - b) Approving the final development plan subject to specific conditions not included in the plan as submitted, such as, but not limited to, improvements to the general building layout or open space arrangement; or
 - c) Denying approval of the general development plan.

Failure of the Zoning Commission to act within 60 days from the date the application was determined complete, or an extended period as may be

agreed upon, shall at the election of the applicant be deemed a denial of the general development plan.

COMMENTARY: See the commentary on pages 21 and 22 regarding review time for the general plan.

If the final development plan is not in full compliance with the approved elements of the general development plan, then the proposal must then be reviewed again by the township according to the procedures specified in Sections 180 C thru E.

The applicant must secure all other necessary approvals from other regulatory agencies such as: final subdivision plat; septic or other sanitary approvals; final engineering, etc.

Contact:

The Countryside Program, Kirby Date, Program Coordinator, P. O. Box24825, Lyndhurst, OH 44124; Phone: 216-295-0511; Fax: 216-295-0527; E-mail: ninmile@en.com; Web: <http://www.countrysideprogram.org/>; See specifically: "Model Regulations for Residential Conservation Development," Draft First Revision April 2003, Section Three of *The Countryside Program: Conservation Development Resource Manual*, pp. 4-32.