

**AN AMENDMENT TO THE CITY OF DULUTH ZONING ORDINANCE TO PROVIDE
A NEW ARTICLE 15, CONSERVATION SUBDIVISIONS, WITH A NEW SECTION
ENTITLED SECTION 1501. CSO CONSERVATION SUBDIVISION OVERLAY; AND
OTHER PURPOSES**

WHEREAS, the Mayor and Council of the City of Duluth have adopted and enacted the 2003 City of Duluth Zoning Ordinance of Duluth, Georgia in order to promote the health, safety, morals, convenience, order, prosperity, and general welfare of the present and future inhabitants of the City of Duluth; and

WHEREAS, the City of Duluth Zoning Ordinance provides rules, regulations, requirements and standards for various land uses within the City of Duluth; and

WHEREAS, the 2003 Zoning Ordinance provides that the text and maps thereof may be

specifically Article 15; is hereby amended as follows with any minor renumbering and general editing of the Zoning Ordinance as needed:

Article 15 of the 2003 City of Duluth Zoning Ordinance is hereby amended by inserting the following:

Article 15

Conservation Subdivisions

Section 1501. CSO Conservation Subdivision Overlay District.

A. Purposes.

The purposes of this overlay district are as follows:

1. To provide a residential zoning district that permits flexibility of subdivision design in order to promote environmentally sensitive and efficient uses of the land. A district that permits clustering of houses and structures on less environmentally sensitive soils that will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for residential development.
2. To encourage the development of residential communities, that are density neutral based on standard zoning and development standards, but designed to preserve and protect environmental resources, scenic vistas, and natural and cultivated landscapes.
3. To enhance land, water, air and tree resources by minimizing the area of land disturbance, reducing impervious surface, optimizing stream buffers, preserving tree cover and encouraging the provision of open space.
4. To reduce infrastructure maintenance costs due to efficient community design.
5. To provide open space and pedestrian linkages and wildlife corridors among residential communities and to encourage recreation opportunities.
6. To preserve significant historical and archeological features.
7. To preserve and protect contiguous undeveloped areas within the development.
8. To preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat.

B. General Standards.

1. Applicability. This overlay district may be overlaid only upon the City of Duluth R-100 zoning district utilizing the public sanitary sewer system. The overlay district shall be a

use by right for those properties zoned R-100 as of the effective date of the adoption of this overlay district. Applicant shall comply with all other provisions of the Zoning Ordinance and all other applicable laws, except those that are incompatible with the provisions contained herein. Any conditions of zoning contained within the underlying district shall also be observed (except as otherwise allowed herein).

For properties which are submitted for rezoning to R-100, the applicant shall declare the intent to utilize this overlay district at the time of application and the application shall be accompanied by a Yield Plan and Existing Features Site Analysis meeting the requirements of this section. In the absence of a declaration of intent to use the overlay district with a rezoning application, a development permit shall not be issued for a tract of land utilizing these overlay district standards on rezoned property for at least two (2) years from the date of the resolution adopting a zoning change.

2. Density Determination. The maximum number of lots in the Conservation Subdivision shall be determined by the creation of a Yield Plan or calculation.

- a. Yield Plan: A plan that shows the maximum number of lots a tract can support based on a conventional subdivision design plan, prepared by the applicant, in which the tract of land is subdivided in a manner intended to yield the highest number of lots possible, while meeting all of the standard requirements of the City's normal zoning, development, and other applicable standards.
- b. Calculation: The maximum number of lots is determined by dividing the area of the tract of land by the minimum lot size specified in the R-100 zoning district. In making this calculation, the following shall not be included in the total area of the parcel:
 - i. slopes over 25 percent of at least 5,000 square feet contiguous area;
 - ii. the 100-year floodplain;
 - iii. bodies of open water over 5,000 square feet contiguous area;
 - iv. wetlands that meet the definition of the Army Corps of Engineers pursuant to the Clean Water Act; and,
 - v. anticipated right-of-way needs for roads and utilities.

3. Permitted Uses. Those uses permitted in the underlying district are permitted outside the open space areas. Uses permitted within the Open Space include the following:

- a. Conservation of natural, archeological or historical resources;
- b. Meadows, woodlands, wetlands, wildlife corridors, or similar conservation-oriented areas;
- c. Walking or bicycle trails, provided they are constructed of porous paving materials;
- d. Passive recreation areas;
- e. Active recreation areas, up to 10 percent of the total open space (may include impervious surfaces);

- f. Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are used to minimize environmental impacts, and such activities are not conducted within Primary Conservation Areas;
- g. Easements for drainage, access, and underground utility lines;
- h. Nonstructural stormwater management practices; or
- i. Other conservation-oriented uses compatible with the purposes of this ordinance.

4. Minimum Open Space Requirements. A minimum of 40% of a tract's gross land area must be set aside and protected as open space as defined herein.

5. Development Requirements. Subdivisions in this overlay district shall meet the following requirements unless a Special Use Permit is submitted and approved by the Duluth City Council:

- a. Minimum Subdivision Size. Each tract proposed to be developed under the City's Conservation Subdivision Overlay District must be a minimum of 10 contiguous acres. The tract of land to be subdivided may be held in single and separate ownership or in multiple ownership. If held in multiple ownership, however, the site shall be developed according to a single plan with common authority and common responsibility.
- b. Lot Area. No minimum is established, except that each building lot shall not contain more than 20% of its area within the 100-year floodplain elevation.
- c. Average Lot Width. The average width of all building lots, as defined by the City of Duluth Zoning Ordinance, shall be at least 60 feet. Exception: Lots that abut non-overlay properties shall meet the standard width requirement of the underlying district; or, open space at least 50 feet wide shall be provided.
- d. Minimum Road Frontage per Lot. 40 feet. Exception: Road frontage may be reduced to 20 feet for lots with frontage upon cul-de-sac or "eyebrow cul-de-sac" turnarounds.
- e. Minimum Yard Areas (Setbacks).
Front Yard: 20 feet. Exception: The front yard setback may be reduced to 5 feet if dwellings are provided side or rear entry garages. To qualify for the reduced setback on a corner lot, side entry garages must be located to the side adjacent to an abutting lot. Rear Yard: 20 feet. Side Yard: 5 feet.
- f. Exterior Project Street Frontage Open Space Strip. An open space strip that is a minimum of 50 feet in width (not part of any building lot) shall be provided along the tract and any external roadways. Landscape entry features such as fences and walls may be allowed in the open space strip.
- g. Maximum Building Height. 35 feet.

- h. Minimum Floor Area. Each dwelling unit shall have a minimum heated finished living area, excluding a basement, attic, carport or garage, as follows:
One Story Building: 1,600 square feet.
Two Story Building: 1,800 square feet.
- i. Sodded Yards. All yards of dwelling lots shall be sodded.
- j. Garages. Dwellings shall have a minimum of two-car garages.
- k. Street Trees. A minimum of one non-ornamental shade tree with a minimum 3.5" caliper, shall be provided prior to the issuance of a certificate of occupancy for each lot along all roadways.
- l. Underground Utilities. All utilities shall be located underground.

C. Application Requirements

- 1. Yield Plan. At time of development review; or when a zoning action is proposed, a Yield Plan, sealed by a registered engineer or landscape architect, must be presented to identify development potential of a tract under the City's typical zoning and development standards. The plan does not have to meet all of the formal requirements for a site design plan, but the design must be capable of being constructed given site features and all applicable regulations. All standard zoning or development regulations must be met (including lot sizes, right-of-way widths, etc.) At a minimum, the plan must account for and depict standard rights-of-ways, lot information (sizes, widths, and setbacks), drainage and detention areas, easements, floodplain, lakes, wetlands, streams, and stream buffers.
- 2. Existing Features Site Analysis. At time of development review, or if a zoning action is proposed, an Existing Features Site Analysis, sealed by a registered engineer or landscape architect, must be provided to identify areas that are most significant for open space designation.
 - a. Property boundaries.
 - b. Delineation of streams, rivers, lakes, wetlands and other hydrologic features to include the source of this information.
 - c. All primary and secondary conservation areas labeled by type, as described in Section D of this ordinance.
 - d. Topographic contours at intervals no greater than 2 feet. Identification of tree lines, woodlands, open fields or meadows.
 - e. Delineation of vegetation resource areas by type consistent with the City of Duluth Specimen Tree Ordinance.

- f. General soil type.
 - g. Delineation of steep slope areas (i.e. greater than 25% and at least 5,000 square feet contiguous area).
 - h. Proposed locations of open space.
 - i. Identification of historical or archeological features.
 - j. Identification of existing roads, structures and easements.
 - k. Identification of open space in adjacent developments including potential connection to existing trails and greenspace.
3. Concept Plan. At time of development review, or when a zoning action is proposed, an overall Concept Plan showing development of the entire tract shall be submitted by the developer for review and approval in accordance with the requirements and procedures of the Development Regulations. If a zoning action is proposed, the rezoning site plan shall include the following information:
- a. Delineation and specifications of open space including calculations and exclusions, and any "pocket parks," "greens," play areas, or trail system to be constructed.
 - b. A typical detail on the plan indicating dwelling size, lot width, building setback lines, off-street parking, street trees, sidewalks, and street pavement and right-of-way width.
 - c. Lot width average, area and percent of floodplain specifications in tabular form; and density calculations (gross and net).
4. Open Space Management Plan. An open space management plan, meeting the Open Space Requirements described herein, shall be prepared and submitted prior to the issuance of a land disturbance permit.

D. Open Space Requirements.

In order to qualify for this overlay district, open space shall meet the following requirements:

- 1. Description. Open Space is the portion of the conservation subdivision that has been set aside for permanent protection. Activities within the Open Space are restricted in perpetuity using an approved legal instrument.
- 2. Primary Conservation Areas. These areas are required to be located within Open Space, unless an unusual hardship is demonstrated. The following constitute Primary Conservation Areas.

- a. The regulatory 100-year floodplain;
- b. 75 foot stream buffers along all perennial and intermittent streams;
- c. Slopes above 25 percent of at least 5,000 square feet contiguous area;
- d. Wetlands as defined by the Army Corps of Engineers;
- e. Habitat for endangered or threatened species; and,
- f. Archeological sites, cemeteries and burial grounds.

3. Secondary Conservation Areas. These areas should be located within Open Space. The following constitute Secondary Conservation Areas.

- a. Historic sites;
- b. Healthy, native forests at least 1 acre contiguous area;
- c. Trees larger than 8 inches caliper (measured along the drip line);
- d. Natural features such as ridge lines, peaks and rock outcroppings;
- e. Agricultural Lands of a least 5 acres contiguous area; and,
- f. Existing trails connecting to neighboring areas

4. Undeveloped and Natural. Open space shall remain undeveloped and natural except for the provision of non-motorized passive recreation opportunities such as running, walking, biking, and similar outdoor activities. Exceptions: "pocket parks," "greens" and storm water management facilities and practices may be constructed and maintained in open space. A "pocket park" or "green" is a landscaped area larger than 0.33 acres constructed for community gathering or play, or visual enhancement. "Pocket parks" or "greens" shall not exceed 10% of the total open space.

5. Exclusions. Excluded from meeting the minimum amount of open space are the following:

- a. Proposed Permanent Lakes. No more than 50% of land area located within a proposed permanent lake may be credited.
- b. Recreation Area Improvements. Impervious surfaces in recreation areas shall not be credited;
- c. Easements. Land area within power or gas pipeline easements shall not be credited;
- d. Other. Land area devoted to public or private streets or any land that has been, or is to be, conveyed to a public agency via a purchase agreement for such uses as parks, schools, or other public facilities shall not be credited;
- e. Roads, parking lots, and other impervious areas unless specifically authorized in another section of this ordinance;
- f. Golf courses;
- g. Agriculture and forestry activities not consistent with Best Management Practices; and,
- h. Other activities as determined by the applicant and recorded on the legal instrument providing for permanent protection.

6. Ownership. Open space shall be owned in fee-simple by a mandatory property owner's association; or other entity approved in advance by the City Council during their normal course of business. The developer shall record the deed to the open space prior to, or concurrent with, the recording of the first final subdivision plat. An access easement following the alignment of future public streets is acceptable. However, "pocket parks" or "greens" may be deeded concurrent with the unit or phase of the final subdivision plat of which it is a part.
7. Concentration of Open Space. At least 75 percent of the Open Space shall be in a contiguous tract. The Open Space should adjoin any neighboring areas of Open Space, other protected area, and non-protected natural areas that would be candidates for inclusion as part of a future area of protected Open Space.
8. Accessibility. The Open Space shall be directly accessible to the largest practicable number of lots within the subdivision. Non-adjoining lots shall be provided with safe, convenient access to the Open Space.
9. Property Management Plan for Property Owner's Association.
 - a. The applicant shall submit a Plan for Management of Open Space and Common Facilities. Said Plan shall be recorded in the mandatory property owner's association bylaws or covenants. Said Plan shall be approved in advance by the Duluth City Council. Said Plan shall address the following:
 - i. Allocates responsibility and guidelines for the maintenance and operation of the Open Space, buffers, recreation areas and any facilities located thereon, including provisions for ongoing maintenance and for long-term capital improvements;
 - ii. Estimates of the costs and staffing requirements needed for maintenance and operation of, and insurance for, the Open Space and outline the means by which such funding will be obtained or provided;
 - iii. Automatic compulsory membership of all lot purchasers and their successors; and compulsory assessment;
 - iv. Conditions and timing of transferring control of association from the developer to the lot owners;
 - v. Governance of the association by the Georgia Property Owners Association Act (OCGA Section 44-3-220) or a successor to that Act that grants lien rights to the association for maintenance expenses and tax obligations.
 - vi. Provide for the enforcement of the Plan.

vii. Any changes to the Plan shall be approved by the City of Duluth Planning Commission.

viii. The association shall not be dissolved without the advance approval of the City of Duluth.

10. Protection. Open space delineated in the concept plan shall be permanently protected by one of the methods listed below. Whichever instrument for permanent protection is used shall include clear restrictions on the use of Open Space. These restrictions shall include all restrictions contained in this article, as well as any further restrictions the applicant chooses to place on the use of the Open Space.

a. The deed conveying the open space pursuant to this paragraph shall be recorded and delivered to the property owner's association within the subdivision prior to the approval of the final plat for the first phase of the subdivision. In addition, the final plat for each phase of the Subdivision shall contain the following statement:

"Open space delineated on this plat is permanently protected and shall remain undeveloped as defined under Georgia law OCGA 36-22-1 et seq., having the following Greenspace goals: protection of streams, floodplains, wetlands, steep slopes, woodlands, open fields and meadows, historical or archeological features, significant wildlife habitats, scenic vistas, passive recreation and connectivity to open spaces. The following uses shall be allowed within said open spaces: passive recreational amenities, such as pervious-surface paths and minimal amounts of parking, picnic facilities and restroom facilities. Constructed facilities shall not exceed 15 percent of the protected property. This covenant is intended to benefit said area to the use of the public, and it shall run in perpetuity as provided by law under OCGA section 44-5-60(c)."

In addition, the deed conveying the open space shall contain the following language:

"The land conveyed herein shall remain permanently protected open space and shall not be cleared or developed except in accordance with OCGA 36-22-1 et seq., having the following Greenspace goals protection of streams, floodplains, wetlands, steep slopes, woodlands, open fields and meadows, historical or archeological features, significant wildlife habitats, scenic vistas, passive recreation and connectivity to open spaces. The following uses shall be allowed within said open spaces: passive recreational amenities, such as pervious-surface paths and minimal amounts of parking, picnic facilities and restroom facilities. Constructed facilities shall not exceed 15 percent of the protected property. This covenant is intended to benefit said area to the use of the public, and it shall run in perpetuity as provided by law under OCGA section 44-5-60(c)."

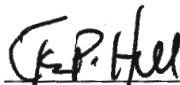

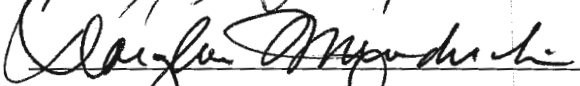
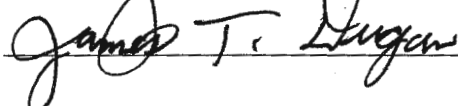
The developer's deed to the mandatory property owner's association shall contain a statement that the undivided interest conveyed in the deed runs with the land for a similar benefit;

- b. Open space delineated in the Concept Plan, except for "pocket parks" or "greens," or developed recreation areas, shall be permanently protected by the conveyance of (i) a covenant or scenic easement which runs in perpetuity under OCGA Section 44-5-60 in favor of any corporation, trust, or other organization holding land for the use of the public or certain governmental entities; or (ii) a conservation easement running in perpetuity to a third party "qualified organization" recognized by Federal Treasury Regulation Section 1.170A-14(c)(1). Qualified organizations recognized by this Treasury Regulation include, but may not be limited to, governmental entities, certain publicly supported charities, local and national land trusts, or other conservation groups that are organized or operated primarily or substantially for one of the conservation purposes specified in the Internal Revenue Code. Governmental entities that qualify to be named in covenants under OCGA Section 44-5-60 or to receive conservation easements under the Treasury Regulation referred to above for purposes of this ordinance shall include the Federal government, the State of Georgia, Gwinnett County, City of Duluth, or authorities of the State of Georgia, Gwinnett County or City of Duluth. If a covenant or conservation easement is recorded in favor of a governmental entity, the written acceptance of the covenant or conservation easement by the governmental entity shall be obtained prior to the recording of the covenant or easement. The developer shall record the necessary legal instrument to accomplish protection of the open space prior to, or concurrent with, the recording of the final subdivision plat; and
- c. An equivalent legal tool that provides permanent protection may be provided, if approved by the City of Duluth.

IT IS SO ORDAINED this 22nd day of March, 2004.


Mayor Shirley Fanning Lasseter

Those councilmembers voting in favor:

Deis Kinnear

Those councilmembers voting in opposition:

Attest:

Teresa S. Lynn
Teresa S. Lynn, City Clerk