

Section 8.4: Conservation Subdivisions

Section 8.4 Conservation Design

Section 8.41 Purposes

Section 8.42 General Regulations

Section 8.43 Use Regulations

Section 8.44 Dimensional Standards And Density Determination

Option 1 Subdivisions: (Suburban And Urban Community Area)

Conservation Subdivision

Option 2 Subdivisions(Rural Area) *Country Properties*

Density Determination For Options 1 And 2 Subdivisions

Section 8.45 Design Standards For Option 1 And 2

Section 8.46 Greenway Land Use And Design Standards

Section 8.47 Permanent Greenway Protection Through Conservation Easements

Section 8.48 General Subdivision Requirements

Section 8.49 Ownership And Management Of Greenway Land And Common Facilities

Ownership Options

Fee-Simple Dedication to the County

Condominium Association

Homeowners' Association

Private Conservation Organization or County

Dedication of Easements to the County

Non-Common Private Ownership

Maintenance

Appendix Community Wastewater Systems: Ordered List of Preferred Alternative Types

8.41 Purposes

A. In conformance with the Nelson County Comprehensive Plan, the purposes of this Article, among others, are as follows:

- (1) To conserve open land, including those areas containing unique and sensitive natural features such as woodlands, steep slopes, streams, floodplains and wetlands, by setting them aside from development;
- (2) To provide greater design flexibility and efficiency in the siting of services and infrastructure, including the opportunity to reduce length of roads, utility runs, and the amount of paving required for residential development;
- (3) To reduce erosion and sedimentation by the retention of existing vegetation, and the minimization of development on steep slopes;
- (4) To provide for a diversity of lot sizes, building densities, and housing choices to accommodate a variety of age and income groups, and residential preferences, so that the community's population diversity may be maintained;
- (5) To implement adopted municipal policies to conserve a variety of irreplaceable and environmentally sensitive resource lands as set forth in the Nelson County Comprehensive Plan, including provisions for reasonable incentives to create a greenway system for the benefit of present and future residents;
- (6) To implement adopted land use, transportation, and community policies, as identified in the Nelson County Comprehensive Plan;
- (7) To protect areas of the County with productive agricultural soils for continued or future agricultural use, by conserving blocks of land large enough to allow for efficient farm operations;
- (8) To create neighborhoods with direct visual access to open land, with amenities in the form of

Section 8.4: Conservation Subdivisions

- neighborhood open space, and with a strong neighborhood identity;
- (9) To provide for the conservation and maintenance of open land within the County to achieve the above-mentioned goals and for active or passive recreational use by residents;
 - (10) To provide multiple options for landowners in order to minimize impacts on environmental resources (sensitive lands such as wetlands, floodplain, and steep slopes) and disturbance of natural or cultural features (such as mature woodlands, hedgerows and tree lines, critical wildlife habitats, historic buildings, and fieldstone walls);
 - (11) To provide standards reflecting the varying circumstances and interests of individual landowners, and the individual characteristics of their properties; and
 - (12) To conserve scenic views and elements of the County's rural character, and to minimize perceived density, by minimizing views of new development from existing roads.
- B. In order to achieve these purposes, this Section provides for flexibility in designing new residential subdivisions by allowing two forms of development referred to as "options", as summarized below:
- (1) Option One: (Suburban and Urban Community Area) *Conservation Subdivision*, providing for residential uses at the density permitted by the underlying zoning. Greenway lands comprise approximately half the tract and reduced design standards in instances where a permanent conservation easement is offered to maintain such uses. The flexibly-designed layouts work well with septic systems located in the open space, or with sewage treatment facilities. Note: R-1A and R-1B zones in all areas (on public sewers) may alter the provisions of lot size and width in a conservation design with the same density as traditional design on public sewers.
 - (2) Option Two: (Rural Area) *Country Properties*, providing for very low densities appropriate to rural situations, with flexible and reduced design standards in instances where a permanent conservation easement is offered to maintain such uses.
- C. Section 8.44 sets forth the development densities and required open space percentages.

8.42 General Regulations

The design of all new subdivisions in a Conservation Design shall be governed by the following minimum standards:

- A. Ownership: The tract of land may be held in single and separate ownership or in multiple ownership. However, when a tract is held in multiple ownership, it shall be planned as a single entity with common authority and common responsibility.
- B. Site Suitability: The conceptual Preliminary Plan, and the detailed Final Plan, the tract incorporating this design option shall be suitable for supporting development in terms of environmental conditions, its size, and configuration
- C. Combining the Design Options: The various layout and density options described in this Article may be combined at the discretion of the Planning Commission, based upon demonstration by the applicant that such a combination would better fulfill the intent of this Ordinance, in particular the stated purposes of this Article, as compared with applying a single option to the property.
- D. Intersections and Access: New intersections with existing public roads shall be minimized. Although two access ways into and out of subdivisions containing more than 30 (thirty) dwellings are generally suggested for safety, proposals for more than two entrances onto public roads shall be discouraged if they would unnecessarily disrupt traffic flow.

Section 8.4: Conservation Subdivisions

- E. Sensitive Area Disturbance: The proposed design shall strictly minimize disturbance of environmentally sensitive areas. Lands within the 100-year floodplain, or having slopes in excess of 25%, and rock outcroppings constitute such environmentally sensitive areas, where disturbance shall be strictly minimized. Demonstration by the applicant that these features will be protected by the proposed application shall be prerequisite to approval of both the conceptual Preliminary Plan and the detailed Final Plan.
- F. Community Wastewater Systems: In developments that are proposed to be served by community wastewater disposal systems, the selection of wastewater treatment technique shall be based upon the County's local Health Departments "Ordered List of Preferred Alternative Types of Community Wastewater Systems" (from its Sewage Facilities Plan) contained in the Appendix to this ordinance.

8.43 Use Regulations

Land in a Conservation Design may be used for the following purposes:

- A. Single-family detached dwellings in Options 1 and 2 subdivisions;
- B. Greenway land comprising a portion of residential development, as specified above and according to requirements of Section 8.46.
- C. The following non-residential uses in accordance with the standards of Section 8.48.
 - (1) Agricultural uses, including horticultural, wholesale nurseries, and the raising of crops, and buildings related to the same.
 - (2) Woodlots, arboreta, and other similar silvicultural uses.
 - (3) Woodland preserve, game preserve, wildlife sanctuary, or other similar conservation use.
 - (4) Municipal or public uses; public park or recreation area owned and operated by a public or private nonprofit agency; governmental or public utility building or use; not to include business facilities, storage of materials, trucking or repair facilities, the housing of repair crews, private or municipal sanitary landfills.
- D. Accessory Uses. Accessory uses shall be permitted on the same lot with and customarily incidental to any permitted use and not conducted as an independent principal use.
 - (1) Accessory dwelling units (including elder cottages and tenant houses; see accessory dwellings under C.U.P.) proposed in Option 2 subdivisions (Country Properties) are subject to the following provisions.
 - (2) Accessory dwelling units in principal residences or in new traditional outbuildings (such as barns, stables, carriage houses, and spring houses) shall be designed to harmonize with vernacular rural buildings in the County's historic landscape.

8.44 Dimensional Standards And Density Determination

- A. Dimensional Standards for Option 1: Conservation Subdivision
 - (1) Density Factor: One dwelling unit per 20,000 square feet after conservation of 30% of greenway not on public sewers. (R-1A and R-1B on public sewers same density as traditional design)
 - (2) Minimum Required Greenway Land:
 - (a) The subdivision must include at least 30 percent of the acreage as greenway land; (R-1A &

Section 8.4: Conservation Subdivisions

R-1B on public sewers 40% & 25%)Greenway land shall not be used for residential lots, except as provided below.

- (b) Large "conservancy lots" of at least 10 acres, conforming to the standards found in Section 8.44 C, and owned by individuals may occupy up to 80 percent of the Greenway land, with the remainder (not less than 20%) deeded to a homeowners' association, land trust, or the County. However, the Greenway land within each conservancy lot remains subject to the standards for Greenway land in Section 8.46, herein.
- (3) Average Minimum Lot Area: 20,000 square feet, on average. R-1A PUD lots served by public sewer may be reduced to minimum 8,000 square feet in area, and R-1B PUD lots served by public sewer may be reduced to minimum 7,000 square foot in area.
- (4) Minimum Lot Width at Building Line: 100 feet. R-1A PUD lots served by public sewer may be reduced to minimum lot width at the building line of 80 feet, and R-1B PUD lots served by public sewer may be reduced to minimum lot width of 70 feet.
- (5) Yard Regulations: The builder or developer is urged to consider variations in the principal building position and orientation, but shall observe the following minimum standards:
 - Front: 25 feet
 - Rear: If not served by public sewer, 25 feet; if served by public sewer, 20 feet.
 - Side: 20-foot separation between principal buildings, unless otherwise allowed below. Side setbacks may be established at 5 and 15 feet but only if the setbacks are uniform and shown on the recorded plat.
 - If not served by public sewer: 10 feet on each side or 5 and 15 feet
 - If served by public sewer: 8 feet on each side or 5 and 15 feet
- (6) Maximum Impervious Coverage: 25 percent limit on each lot.
- (7) Maximum Height Regulations: 35 feet

B. Dimensional Standards for Option 2: (Rural Area) *Country Properties*

- (1) Density Factor: Two times the density allowed in the zoning district for the rural area involved as further allowed for in the A-1 district.
- (2) Minimum Required Greenway Land:
 - (a) The subdivision must include at least 60 + percent of the total acreage as greenway land. Greenway land shall not be used for residential lots, except as provided below.
 - (b) Large "conservancy lots" of at least 10 acres, conforming to the standards found in Section 8.44 C, and owned by individuals may occupy up to 80 percent of the Greenway land, with the remainder (not less than 20%) deeded to a homeowners' association, land trust, or the County. However, the greenway land within each conservancy lot remains subject the standards for Greenway land in Section 8.46, herein.
- (3) Average Minimum Lot Area: 30,000 square feet, on average.
- (4) Minimum Lot Width at Building Line: 100 feet
- (5) Yard Regulations: The builder or developer is urged to consider variations in the principal

Section 8.4: Conservation Subdivisions

building position and orientation, but shall observe the following minimum standards:

Front: 25 feet minimum

Rear: 40 feet minimum

Side: 25 foot separation for principal buildings, with no side yard less than 5 feet as platted

(6) Maximum Impervious Coverage: 30 percent limit on each lot.

(7) Maximum Height Regulations: 35 feet

C. Dimensional Standards for Conservancy Lots:

(1) Maximum Density: one dwelling unit per ten acres (gross).

(2) Minimum Lot Area: 10 acres. The lot shapes shall not be irregular, except as allowed for "flag lots", and shall not have a lot depth-width ratio exceeding 5:1 and said lot is permanently protected from future development through a conservation easement.

(3) Minimum Lot Width at Building Line: 200 feet

(4) Yard Regulations:

Front: 150 feet from the right-of-way of existing Township roads, but 40 feet from the right-of-way of new subdivision streets, country lanes, or common driveways (where applicable).

Rear: 50 feet minimum for principal buildings and 10 feet for accessory buildings (except that accessory buildings with a ground floor area exceeding 500 square feet shall conform to the setback requirements for principal structures).

Side: 25 feet.

(5) Maximum Impervious Coverage: 4 percent limit on entire subdivision tract.

(6) Maximum Height Regulations: 35 feet

8.45 Design Standards For Option 1 And 2 Subdivisions

A. Houselots shall not encroach upon Primary Conservation Areas and their layout shall respect Secondary Conservation Areas. See Section 8.48 Four Step Process

B. All new dwellings shall meet the following setback requirements:

- | | |
|---|----------|
| (1) From all external road ultimate right-of-way | 100 feet |
| (2) From all other tract boundaries | 50 feet |
| (3) From cropland or pasture land | 100 feet |
| (4) From buildings or barnyards housing livestock | 300 feet |
| (5) From active recreation areas such as courts or playingfields (not including tot-lots) | 150 feet |

C. Views of houselots from exterior roads and abutting properties shall be minimized by the use of changes in topography, existing vegetation, or additional landscaping buffers.

D. Houselots shall generally be accessed from interior streets, rather than from roads bordering the tract. At least one-half of the lots shall directly abut or face conservation land or greenway land across a

Section 8.4: Conservation Subdivisions

street. Standards pertaining to the quantity, quality, configuration, ownership, and maintenance of the greenway land created under this Article are contained in Sections 8.46 through 8.49 of this Ordinance.

8.46 Greenway Land Use And Design Standards

Protected greenway land in all subdivisions shall meet the following standards:

A. Uses Permitted on Greenway Lands

The following uses are permitted in greenway land areas:

- (1) Conservation of open land in its natural state (for example, woodland, fallow field, or managed meadow);
- (2) Agricultural and horticultural uses, including raising crops or livestock, wholesale nurseries, associated buildings, excluding residences that are specifically needed to support an active, viable agricultural or horticultural operation. Specifically excluded are commercial livestock operations involving swine, poultry, mink, and other animals likely to produce highly offensive odors.
- (3) Pastureland for horses used solely for recreational purposes. Equestrian facilities shall be permitted but may not consume more than half of the minimum required greenway land.
- (4) Silviculture, in keeping with established standards for selective harvesting and sustained-yield forestry.
- (5) Neighborhood open space uses such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses specifically excluding motorized off-road vehicles, rifle ranges, and other uses similar in character and potential impact as determined by the Commission.
- (6) Active non-commercial recreation areas, such as playingfields, playgrounds, courts, and bikeways, provided such areas do not consume more than half of the minimum required greenway land or five acres, whichever is less. Playingfields, playgrounds, and courts shall not be located within 100 feet of abutting properties. Parking facilities for the same shall also be permitted, and they shall generally be gravel-surfaced, unlighted, properly drained, provide safe ingress and egress, and contain no more than ten parking spaces.
- (7) Golf courses may comprise up to half of the minimum required Greenway land, but shall not include driving ranges or miniature golf. Their parking areas and any associated structures shall not be included within the 50 percent minimum Greenway requirement; their parking and access ways may be paved and lighted.
- (8) Water supply and sewage disposal systems, and stormwater detention areas designed, landscaped, and available for use as an integral part of the Greenway.
- (9) Easements for drainage, access, sewer or water lines, or other public purposes;
- (10) Underground utility rights-of-way. Above-ground utility and street rights-of-way may traverse conservation areas but may not count toward the minimum required Greenway land.

B. Greenway Design Standards

- (1) Greenway lands shall be laid out in general to ensure that an interconnected network of open space will be provided. The required greenway land consists of a mixture of Primary Conservation Areas (PCAs), all of which must be included, and Secondary Conservation Areas (SCAs). SCAs should include special features of the property that would ordinarily be overlooked or ignored during the design process. Examples of such features are listed and described in Section 8.48 (I)(Greenway Design Review Standards)
- (2) The Greenway land comprises a minimum of 30% and greater. This land shall generally remain undivided and may be owned and maintained by a homeowners' association, land trust, another

Section 8.4: Conservation Subdivisions

conservation organization recognized by the County, or by a private individual (typically as part of the original farmhouse). However, in no case shall less than 30% of the land comprising the subdivision be available for the common use and passive enjoyment of the subdivision residents. These ownership options may be combined so that different parts of the greenway land may be owned by different entities.

- (3) Up to five percent of the total tract acreage in any of the options may be subject to the County's public land dedication requirement (typically to provide potential connections with the municipal long-range trail network).
- (4) **Buffers for Adjacent Public Parkland:** Where the proposed development adjoins public parkland, a natural greenway buffer at least one-hundred-fifty (150) feet deep shall be provided within the development along its common boundary with the parkland, within which no new structures shall be constructed, nor shall any clearing of trees or under growth be permitted (except as may be necessary for street or trail construction). Where this buffer is unwooded, the Commission may require vegetative screening to be planted, or that it be managed to encourage natural forest succession through "no-mow" policies and the periodic removal of invasive alien plant and tree species.

C. Other Requirements

- (1) No portion of any building lot may be used for meeting the minimum required conservation land, except as permitted with "conservancy lots" of at least 10 acres. However, active agricultural land with farm buildings, excluding areas used for residences, may be used to meet the minimum required greenway land.
- (2) Pedestrian and maintenance access, excluding those lands used for agricultural or horticultural purposes, shall be provided to greenway land in accordance with the following requirements:
 - (a) Each neighborhood shall provide one centrally located access point per 20 lots, a minimum of ten (10) feet in width.
 - (b) Access to greenway land used for agriculture may be appropriately restricted for public safety and to prevent interference with agricultural operations.

8.47 Permanent Greenway Protection Through Conservation Easements

A. Conservation Subdivisions

- (1) In Option 1, and 2 subdivisions, the Greenway land that is required to be reserved and created through the subdivision process shall be subject to permanent conservation easements prohibiting future development (in favor of Nelson Fiscal Court /Planning Commission) and defining the range of permitted activities. (For example, the clearing of woodland habitat shall generally be prohibited, except as necessary to create trails, active recreation facilities, and to install subsurface septic disposal systems or spray irrigation facilities. The determination of necessity shall lie with the Commission.

8.48 GENERAL SUBDIVISION REQUIREMENTS

Four Step Design Process; Greenway Design Review Standards; and other general requirements:

Four-Step Design Process for Subdivisions Conservation Design

All *Conceptual Preliminary Plans* in the Conservation Design shall include documentation of a four-step

Section 8.4: Conservation Subdivisions

design process in determining the layout of proposed Greenway lands, house sites, streets and lot lines, as described below.

A. Step 1: *Delineation of Greenway Lands*

- (1) The minimum percentage and acreage of required Greenway Lands shall be calculated by the applicant and submitted as part of the *Sketch Plan* or *Conceptual Preliminary Plan* in accordance with the provisions of this ordinance and of the zoning ordinance. Greenway lands shall include all Primary Conservation Areas and those parts of the remaining buildable lands with the highest resource significance, as described below and in Section I (a and b)
- (2) Proposed Greenway lands shall be designated by using the Primary and Secondary Conservation Areas.
- (3) In delineating Secondary Conservation Areas, the applicant shall prioritize natural and cultural resources on the tract in terms of their highest to least suitabilities for inclusion in the proposed Greenway, in consultation with the Planning Commission and in accordance with Section I (a and b) herein (“Prioritized List of Resources to be Conserved” and “Other Design Considerations”).
- (4) On the basis of those priorities and practical considerations given to the tract’s configuration, its context in relation to resources areas on adjoining and neighboring properties, and the applicant’s subdivision objectives, Secondary Conservation Areas shall be delineated to meet at least the minimum area percentage requirements for Greenway Lands and in a manner clearly indicating their boundaries as well as the types of resources included within them.

B. Step 2: *Location of House Sites*

Potential house sites shall be tentatively located, using the proposed Greenway lands as a base map as well as other relevant data such as topography and soils. House sites should generally be located not closer than 100 feet from Primary Conservation Areas and 50 feet from Secondary Conservation Areas, taking into consideration the potential negative impacts of residential development on such areas as well as the potential positive benefits of such locations to provide attractive views and visual settings for residences.

C. Step 3: *Alignment of Streets and Trails*

Upon designating the house sites, a street plan shall be designed to provide vehicular access to each house, and bearing a logical relationship to topographic conditions. Impacts of the street plan on proposed Greenway lands shall be minimized, particularly with respect to crossing environmentally sensitive areas such as wetlands and traversing slopes exceeding 15%. Street connections shall generally be encouraged to minimize the number of new cul-de-sacs to be maintained by the County and to facilitate access to and from homes in different parts of the tract (and adjoining parcels). Provisions for standard subdivision requirements may be altered by the Planning Commission, if alternative methods are provided. The subdivider shall be required to request the waiver in writing. In addition , the subdivider must provide along with the written waiver request a letter of waiver approval from the appropriate legislative body.

D. Step 4: *Drawing in the Lot Lines*

Upon completion of the preceding three steps, lot lines are drawn as required to delineate the boundaries of individual residential lots. Applicants shall be prepared to submit four separate sketch maps indicating the findings of each step of the design process, if so requested by the Planning Commission or the Commission.

Section 8.4: Conservation Subdivisions

E. *Community Association Document*

- (1) A *Community Association Document*, also known as a Homeowner's Association Document or a Condominium Association Document, shall be provided for all subdivision and land development applications which propose lands or facilities to be used or owned in common by all the residents of that subdivision or land development and not deeded to the County.
- 2) The elements of the *Community Association Document* shall include, but shall not necessarily be limited to the following:
 - (a) A description of all lands and facilities to be owned by the Community Association. This description shall include a map of the proposal highlighting the precise location of those lands and facilities.
 - (b) Statements setting forth the powers, duties, and responsibilities of the Community Association, including the services to be provided.
 - (c) A Declaration of Covenants, Conditions, and Restrictions, giving perpetual easement to the lands and facilities owned by the Community Association. The Declaration shall be a legal document which also provides for automatic Association membership for all owners in the subdivision or land development and shall describe the mechanism by which owners participate in the Association, including voting, elections, and meetings. Furthermore, it shall give power to the Association to own and maintain the common property and to make and enforce rules.
 - (d) Statements prescribing the process by which Community Association decisions are reached and setting forth the authority to act.
 - (e) Statements requiring each owner within the subdivision or land development to become a member of the Community Association.
 - (f) Statements setting cross covenants or contractual terms binding each owner to all other owners for mutual benefit and enforcement.
 - (g) Requirements for all owners to provide a *pro rata* share of the cost of the operations of the Community Association.
 - (h) A process of collection and enforcement to obtain funds from owners who fail to comply.
 - (i) A process for transition of control of the Community Association from the developer to the unit owners.
 - (j) Statements describing how the lands and facilities of the Community Association will be insured, including limit of liability.
 - (k) Provisions for the dissolution of the Community Association, in the event the Association should become inviable.

Please Note: See also Section 8.49 of the Zoning Ordinance, "Ownership and Management of Greenway Land and Common Facilities".

F. *Preliminary Greenway Ownership and Management Plan*

Using the *Conceptual Preliminary Plan* as a base map, the boundaries, acreage and proposed ownership of all proposed Greenway areas shall be shown. In addition, the applicant shall also submit a *Preliminary Greenway Ownership and Management Plan* detailing the entities responsible for maintaining various elements of the property, and describing management objectives and techniques for each part of the property. Such management plans shall be consistent with the requirements of Section 8.49 of the zoning ordinance ("Ownership and Management of Greenway Land and Common Facilities").

Section 8.4: Conservation Subdivisions

G. *Final Greenway Ownership and Management Plan*

Using the *Detailed Final Plan* as a base map, the precise boundaries, exact acreage, and proposed ownership of all proposed Greenway areas shall be shown. A narrative report shall also be prepared indicating how and by whom such Greenway areas will be managed and demonstrating compliance with the *Zoning Ordinance*.

H. **Rural Road Corridors and Scenic View-sheds**

All applications for subdivision and land development shall attempt to preserve the scenic visual corridors along such roads by incorporating them into Greenway areas or otherwise providing for building setbacks and architectural designs to minimize their intrusion. In instances, where such designs fail to satisfactorily protect corridors, applicants will be required to provide naturalistic landscape buffers to minimize their adverse visual impacts. The species specified for such buffers shall be selected on the basis of an inventory of tree and shrub species found in existing hedgerows and along wooded roadside edges in the vicinity of the development proposal.

I. **Greenway Design Review Standards**

(a) **Prioritized List of Resources to be Conserved.** The design of Greenway lands in any subdivision or land development plan shall reflect the standards set forth herein and, to the fullest extent possible, incorporate any of the following resources if they occur on the tract (listed in order of significance):

- (1) Stream channels, floodplains, wet soils, swales, springs and other lowland areas, including adjacent buffer areas which may be required to insure their protection.
- (2) Significant natural areas of species listed as endangered, threatened, or of special concern.
- (3) Moderate to steep slopes, particularly those adjoining water courses and ponds, where disturbance and resulting soil erosion and sedimentation could be detrimental to water quality.
- (4) Healthy woodlands, particularly those performing important ecological functions such as soil stabilization and protection of streams, wetlands and wildlife habitats.
- (5) Areas where precipitation is most likely to recharge local groundwater resources because of topographic and soil conditions affording high rates of infiltration and percolation.
- (6) Hedgerows, groups of trees, large individual trees of botanic significance, and other vegetational features representing the site's rural past.
- (7) Class I, II and III agricultural soils as defined by the USDA Natural Resource Conservation Service.
- (8) Historic structures and sites.
- (9) Visually prominent topographic features such as knolls, hilltops and ridges, and scenic viewsheds as seen from public roads (particularly those with historic features).
- (10) Existing trails connecting the tract to other locations in the County.

(b) **Other Design Considerations.** The configuration of proposed Greenway lands set aside for common use in residential subdivisions shall comply with the following standards:

- (1) They shall be free of all structures except historic buildings, stone walls, and structures related to Greenway uses. The Governing body may grant approval of structures and improvements required for storm drainage, sewage treatment and water supply within the Greenway provided that such facilities would not be detrimental to the Greenway (and that

Section 8.4: Conservation Subdivisions

- the acreage of lands required for such uses is not credited towards minimum Greenway acreage requirements for the tract, unless the land they occupy is appropriate for passive recreational use).
- (2) They shall generally not include parcels smaller than three acres, have a length-to-width ratio of less than 4:1, or be less than 75 feet in width, except for such lands specifically designed as neighborhood greens, playing fields or trail links.
 - (3) They shall be directly accessible to the largest practicable number of lots within the subdivision. Non-adjoining lots shall be provided with safe and convenient pedestrian access to Greenway land.
 - (4) They shall be suitable for active recreational uses to the extent deemed necessary by the Governing body, without interfering with adjacent dwelling units, parking, driveways, and roads.
 - (5) They shall be interconnected wherever possible to provide a continuous network of Greenway lands within and adjoining the subdivision.
 - (6) They shall provide buffers to adjoining parks, preserves or other protected lands.
 - (7) Except in those cases where part of the greenway is located within private houselots, they shall provide for pedestrian pathways for use by the residents of the subdivision. Consideration shall be given to providing for public access on such trails if they are linked to other publicly-accessible pathway systems within the County. Provisions should be made for access to the Greenway lands, as required for land management and emergency purposes.
 - (8) They shall be undivided by public or private streets, except where necessary for proper traffic circulation.
 - (9) They shall be suitably landscaped either by retaining existing natural cover and wooded areas and/or according to a landscaping plan to protect Greenway resources.
 - (10) They shall be made subject to such agreement with the County and such conservation easements duly recorded in the office of the County Recorder of Deeds as may be required by the Governing Body for the purpose of preserving the common open space for such uses.

8.49 Ownership and Maintenance Of Greenway Land and Common Facilities

- A. All Greenway land shall be permanently restricted from future subdivision and development. Under no circumstances shall any development be permitted in the open space at any time, except for those uses listed in Section 8.46.

- B. Ownership Options

The following methods may be used, either individually or in combination, to own common facilities; however, Greenway land shall be initially offered for dedication to the County. Common facilities shall not be transferred to another entity except for transfer to another method of ownership permitted under this section, and then only when there is no change in the common facilities or in the open space ratio of the overall development. Ownership methods shall conform to the following:

- (1) Fee Simple Dedication to the County. The County may, but shall not be required to, accept any portion of the common facilities, provided that:
 - (a) There is no cost of acquisition to the County; and
 - (b) The County agrees to and has access to maintain such facilities.
- (2) Condominium Association. Common facilities may be controlled through the use of condominium agreements. Such agreements shall be in accordance with relevant state law. All

Section 8.4: Conservation Subdivisions

open land and common facilities shall be held as "common element."

- (3) Homeowners' Association. Common facilities may be held in common ownership by a homeowners' association, subject to all of the provisions for homeowners' associations set forth in state regulations and statutes. In addition, the following regulations shall be met:
- (a) The applicant shall provide the County a description of the organization of the proposed association, including its by-laws, and all documents governing ownership, maintenance, and use restrictions for common facilities and Greenway land. The same shall be filed of record in the office of the Nelson County Clerk.
 - (b) The proposed association shall be established by the owner or applicant and shall be operating (with financial subsidization by the owner or applicant, if necessary) before the sale of any dwelling units in the development.
 - (c) Membership in the association shall be automatic (mandatory) for all purchasers of dwelling units therein and their successors in title.
 - (d) The association shall be responsible for maintenance and insurance of common facilities.
 - (e) The by-laws shall confer legal authority on the association to place a lien on the real property of any member who falls delinquent in his dues. Such dues shall be paid with the accrued interest before the lien may be lifted.
 - (f) Written notice of any proposed transfer of common facilities by the association or the assumption of maintenance for common facilities must be given to all members of the association and to the County no less than thirty days prior to such event.
 - (g) The association shall have adequate staff to administer, maintain, and operate such common facilities.
 - (h) The County may enforce said restrictions and shall place a lien against the association and the homeowners.
- (4) Private Conservation Organization or the County. With permission of the County, an owner may transfer either fee simple title of the open space or easements on the open space to a private non-profit conservation organization or to the County provided that:
- (a) The conservation organization is acceptable to the County and is a *bona fide* conservation organization intended to exist indefinitely;
 - (b) The conveyance contains appropriate provisions for proper reverted or retransfer in the event that the organization or County becomes unwilling or unable to continue carrying out its functions.
 - (c) The Greenway land is permanently restricted from future development through a conservation easement and the County is given the ability to enforce these restrictions; and,
 - (d) A maintenance agreement acceptable to the County is established between the owner and the organization or County.
- (5) Dedication of Easements to the County. The County may, but shall not be required to, accept easements for public use of any portion of the common land or facilities. In such cases, the facility remains in the ownership of the condominium association, homeowners' association, or private conservation organization while the easements are held by the County. In addition, the following regulations shall apply:
- (a) There shall be no cost of acquisition to the County.
 - (b) Any such easements for public use shall be accessible to the residents of the County.
 - (c) A satisfactory maintenance agreement shall be reached between the owner and the County.

Section 8.4: Conservation Subdivisions

- (6) Non-Common Private Ownership. Up to 80 percent of the required Greenway land may be included within one or more large "conservancy lots" of at least 10 acres provided the open space is permanently restricted from future development through a conservation easement, except for those uses listed in Section 8.46, and that the County is given the ability to enforce these restrictions.

C. Maintenance

- (1) Unless otherwise agreed to by the Commission, the cost and responsibility of maintaining common facilities and Greenway land shall be borne by the property owner, condominium association, homeowners' association, or conservation organization.
- (2) The applicant shall, at the time of preliminary plan submission, provide a *Plan for Maintenance of Greenway Lands and Operation of Common Facilities* in accordance with the following requirements. (This Plan may be based on the model prepared for Lower Merion Township, Montgomery County, PA by the Natural Lands Trust) which has been adopted by the Commission as a guide for maintenance of conservation subdivisions in Nelson County).
- (a) The Plan shall define ownership;
 - (b) The Plan shall establish necessary regular and periodic operation and maintenance responsibilities for the various kinds of open space (i.e. lawns, playing fields, meadow, pasture, cropland, woodlands, etc.);
 - (c) The Plan shall estimate staffing needs, insurance requirements, and associated costs, and define the means for funding the maintenance of the greenway land and operation of any common facilities on an on-going basis. Such funding plan shall include the means for funding long-term capital improvements as well as regular yearly operating and maintenance costs;
 - (d) At the County's discretion, the applicant may be required to escrow sufficient funds for the maintenance and operation costs of common facilities for up to one year; and,
 - (e) Any changes to the maintenance plan shall be approved by the Commission
- (3) In the event that the organization established to maintain the greenway lands and the common facilities, or any successor organization thereto, fails to maintain all or any portion thereof in reasonable order and condition, the County may assume responsibility for maintenance, in which case any escrow funds may be forfeited and any permits may be revoked or suspended.
- (4) The County may enter the premises and take corrective action, including extended maintenance. The costs of such corrective action may be charged to the property owner, condominium association, homeowners association, conservation organization, or individual property owners who make up a condominium or homeowners' association and may include administrative costs and penalties. Such costs shall become a lien on said properties. Notice of such lien shall be filed by the County in the office of the Nelson County Clerk.

Section 8.4: Conservation Subdivisions

Additional Definitions

Conservancy Lot. A large, privately-owned lot comprising part of an area of open land. The purpose of the conservancy lot is to provide surrounding residents with visual access to greenway land, while keeping the land under private ownership and maintenance. Only a small portion of such lots may be developed; the remainder must be protected through conservation easements and used in conformance with standard for greenway land. Public access to conservancy lots is not required.

Greenway Land. That portion of a tract that is set aside for the protection of sensitive natural features, farmland, scenic views, and other unique features. Greenway land may be accessible to the residents of the development and/or the County, or it may contain areas of conservancy lots which are not accessible to the public.

Appendix

Community Wastewater Systems: Ordered List of Preferred Alternative Types

The following four types of wastewater treatment systems are ranked in descending order reflecting the County's official preferences, as stated by the Nelson County Health Department. Applicants for new development proposals involving community sewage treatment systems shall be required to demonstrate to the Commission that they cannot utilize preferred types of wastewater treatment before they may be permitted to utilize a less-preferred alternative that ranks lower on the ordered list below:

1. Package Plant/Direct Discharge to Groundwater Lagoon Treatment/Spray Irrigation
2. Package Treatment/Spray Irrigation
3. Community Septic Tank/Subsurface
4. Lagoon Treatment/Spray Irrigation

Amended City of Bardstown, Ordinance B2012-14, July 24, 2012; City of Bloomfield, Ordinance 2012-84, September 14, 2012; City of Fairfield, Ordinance 2012-P&Z 02, August 24, 2012; and, City of New Haven, Ordinance #430, Series 2012, September 30, 2012; Nelson Fiscal Court, August 10, 2012.