



COUNTY COMMISSIONERS
Karen Howard, Chair
Franklin Gomez Flores, Vice Chair
Mike Dasher
Diana Hales

COUNTY MANAGER: Dan LaMontagne

AN ORDINANCE AMENDING THE SUBDIVISION REGULATIONS AND CONSERVATION SUBDIVISION GUIDELINES FOR CONSERVATION SPACE SELECTION OF CHATHAM COUNTY

WHEREAS, the Chatham County Board of Commissioners has considered the request to amend the Subdivision Regulations and Conservation Subdivision Guidelines for Conservation Space Selection, and finds that the amendments are consistent with the comprehensive plan of Chatham County, Plan Chatham, and finds that the same is reasonable and public interests are furthered; and

WHEREAS, the Board finds the amendments set forth in the attachment are consistent with the following Plan Chatham goals, Goal 1. Preserve the rural character and lifestyle of Chatham County and Goal 5. Conserve natural resources; and

WHEREAS, the Chatham County Board of Commissioners finds that the request set forth in the public hearing and incorporated herein by reference, if approved as pursuant to the provisions of the county, would be suitable; and

BE IT ORDAINED by the Chatham County Board Commissioners as follows:

1. The request to amend the Subdivision Regulations and Conservation Subdivision Guidelines for Conservation Space Selection of Chatham County, as described in Attachment A, is approved and the regulations and guidelines amended accordingly.
2. This ordinance shall become effective upon its adoption.

Adopted this the 18th day of January 2022

Karen Howard, Chair
Chatham County Board of Commissioner

ATTEST:

Lindsay K. Ray, NCCCC Clerk to the Board
Chatham County Board of Commissioners



ATTACHMENT A

AMENDMENTS TO THE SUBDIVISION REGULATIONS AND CONSERVATION SUBDIVISION GUIDELINES FOR CONSERVATION SPACE SELECTION

1.13 Variances and Appeals

A. General

Any applications for variances to the Chatham County Subdivision Regulations or appeals of staff interpretations shall follow the procedure outlined in Section 18 of the Chatham County Zoning Ordinance, except as otherwise provided in these regulations.

5.2 B Concept Plan

(1) Purpose

The concept plan is a process by which the applicant engages the community in discussion regarding the goals of the development. Environmental documentation showing existing site conditions will be required. Data layers available from the Chatham County GIS office will meet this requirement, unless additional documentation is required to show existing site conditions.

There are two types of major subdivisions: The developer has the choice to design conventionally, or present a and conservation. Conventional subdivisions follow a standard process outlined in the regulations. Conservation subdivisions differ from conventional subdivisions in several ways including design with incorporation of Conservation Subdivision Guidelines, coordination with the NC Natural Heritage Program, and approval by the Chatham County Watershed Protection Director for conservation space. Low Impact Development (LID) and Best Management Practice (BMP) features. A Conservation Subdivision (see Section 7.7) encourages-requires the preservation of open space. This voluntary preservation allows for a density bonus giving the applicant more lots than would be allowed under conventional patterns.

5.2 C (2)(b) *Environmental Impact Assessment Review Process*

An Environmental Impact Assessment is required to be submitted for all major subdivisions consisting of 50 or more lots, or which meet one of the other criteria established in Section 6.2(B) for submittal of an Environmental Impact Assessment. See Section 6.2(A).

- (1) The applicant shall submit the Environmental Impact Assessment to the Watershed Protection Department for review.
- ~~(2)~~ The Environmental Impact Assessment shall be forwarded to the Environmental Review Advisory Committee to review the adequacy of the document. They shall have 45 days to complete their review.
- ~~(2)~~(3) The Watershed Protection Department will forward the Environmental Impact Assessment to an environmental consultant hired by the County for a peer review. The cost of this peer review shall be paid by the applicant prior to submittal of the First Plat to the Planning Department.
- ~~(3)~~
(4) Within 60 days, the ~~Environmental Quality~~ Watershed Protection Department shall forward a report to the applicant and Planning Department.

7.7 Conservation Subdivision—Alternative Standards for Development

As an alternative to conventional layouts, Chatham County encourages the preservation of large, contiguous blocks of land, herein referred to as Conservation Space. Conservation Space shall consist of Open Space and Natural Space. When a project voluntarily preserves Conservation Space in accordance with this Section, a project can increase the number of units that would be allowed on the overall property by ten (10) percent. Calculation of the density bonus shall be based on the applicable underlying land use regulation(s) dictating allowable development density. Prior to designing a layout for the site, the applicant must follow the steps outlined in The Chatham County Conservation Subdivision Guidelines for Conservation Space Selection to identify the conservation space, prepare the On-Site Inventory and Fragmentation Maps, and have those maps approved by the Watershed Protection Director or their designee. The On-Site Inventory and Fragmentation Maps must be approved by the Watershed Protection Director prior to submitting a Concept Plan application to the county. Failure to follow these steps will result in delays and require a redesign of the site.

The requirements for this option are detailed below.

A. Conservation Space Requirement

A minimum of 40 percent of the project area shall be retained as Conservation Space for a conservation subdivision design. Land required to be protected under other regulatory provisions, such as riparian buffers and floodplain, are not permitted to be included in the Conservation Space calculation.

B. Composition of Conservation Space

A maximum of 20% of the required Conservation Space shall be Open Space and a minimum of 80% of such Conservation Space shall be Natural Space, ~~unless it can be demonstrated that no practical alternative exists for preserving that amount of Natural Space.~~ See The Chatham County Conservation Subdivision Guidelines for Conservation Space Selection.

C. Connectivity of Conservation Space

At least 50 percent of the proposed Conservation Space shall consist of a contiguous tract. The Conservation Space should adjoin any neighboring areas of Conservation Space on other parcels whenever practicable.

D. Permitted Uses of Conservation Space

Provided it includes the required divisions of Open Space and Natural Space and otherwise conforms with the Chatham County Conservation Subdivision Guidelines, uses of Conservation Space may include the following:

(1) Conservation

Conservation of natural resources, archeological resources or historical resources

(2) Agriculture

Existing and ongoing bona fide agriculture ~~or, horticulture, or silviculture,~~ provided that all applicable best management practices are used to minimize environmental impacts. Silvicultural operations cannot be included in Conservation Space.

(3) Recreation

Active recreational uses of Open Space are permitted, given that active uses such as tennis courts, swimming pools, ball fields, playgrounds, et cetera are limited to a maximum of 5 percent of the total Conservation Space area.

(4) Stormwater Management

Use for stormwater management is permissible within Open Space consistent with the Chatham County Stormwater Ordinance requirements.

(5) Utility Easements

Easements for drainage, access to utilities, and underground utility lines within Open Space.

(6) Water, Septic, and Sewer Systems

Shared water, septic and sewer infrastructure is allowed in Open Space, but not in Natural Space ~~areas unless approved by the Environmental Quality Department.~~

(7) Trails

All trails, provided that Best Management Practices and an approved Trail Management Plan are employed for recreational purposes, such as pedestrian, mountain biking, general recreation and equestrian uses.

(8) Community Gardens

Community Gardens are permitted consistent with this definition: A community garden is any piece of land where plants are grown and maintained by a group of individuals from the community. Community gardens may produce food for individual consumption or for sale, may be designed for beautification of the community, and may be used for educational purposes. (from Public Health Law Center "Community Garden Policy Reference Guide"). These are allowed in Open Space, but not Natural Space.

E. Prohibited Uses of Conservation Space

(1) Use of Motor Vehicles

(Except for maintenance purposes as provided for in the Open Space Management Plan).

(2) Roads, Parking Lots and Impervious Surfaces

(Except when necessary for access. to active recreational uses).

F. Ownership of Conservation Space

The applicant must identify the current and intended future owner(s) of the Conservation Space who is/are responsible for maintaining such area/facilities. The responsibility for maintaining the Conservation Space and any facilities located thereon shall be borne by the owner unless otherwise specified in a Conservation Space Management Plan approved by the County.

G. Management of Conservation Space

The applicant shall submit a management plan for all proposed Conservation Space. Upon initial approval of the management plan by the County, changes to the plan shall be allowed only when approved by the County Board of Commissioners. The plan shall be referred to as the "Conservation Space Management Plan" and shall include:

- (1)** A statement allocating maintenance responsibilities and establishing guidelines for the upkeep of Conservation Space and all associated facilities;

- (2) Cost estimates for all maintenance, operation and insurance needs for the Conservation Space, as well as a plan that outlines the means by which funds will be obtained for such expenses;
- (3) Establishment of criteria for enforcement of the plan.
- (4) Prior to any clearing or grading of the site, protective fencing should be established around all Natural Space areas. Fencing shall be placed outside the critical root zone or dripline, whichever is greater, of any trees.

H. Legal Instrument for Permanent Protection

Conservation Space proposed for a conservation subdivision shall be protected in perpetuity by a binding legal document that is recorded with the deed upon review and approval by the County. The document shall be one of the following three (3) options:

(1) Permanent Conservation Easement.

A permanent conservation easement in favor of either:

- A land trust or similar conservation-oriented non-profit organization with legal authority to accept such easements. The organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for retransfer in the event the organization becomes unable to carry out its functions; or
- A governmental entity with an interest in pursuing goals consistent with the intentions of this Section.

(2) Permanent Restrictive Covenant.

A permanent restrictive covenant for conservation purposes.

(3) Alternative Land Use Restriction.

An equivalent legal tool that provides permanent protection, if approved by the County Attorney. The instrument for permanent protection shall include all use restrictions contained in this section, as

well as any additional reasonable restrictions the applicant chooses to place on the use of the open space.

I. Density Bonuses

The base density for a conservation subdivision is determined by the underlying land use regulation, establishing otherwise allowable unit density (minus any regulated floodplain, where building is prohibited under Chatham County ordinances) in which the development parcel is located. Permitted housing densities shall not exceed the maximum allowances of any applicable water supply watershed requirements.

~~J. **Reserved Agricultural Preservation Density Bonus**~~

~~J. Conservation subdivisions proposed for the purposes of sustaining existing on-site bona fide agricultural operations are entitled to a five (5) percent increase in permitted density (this in addition to the ten (10) percent density bonus). Ideally, residential lots in such developments should be located in areas less suitable for agricultural production, while prime farmland areas of the property should be reserved as Conservation Space. It is strongly recommended that development parcels be located where agricultural operations do not interfere with the safety and/or well being of potential future residents. Upon completion such agricultural uses, all lands previously occupied by those uses shall be preserved in perpetuity as natural space, and shall not qualify for future development.~~

K. Lot Size, and Structure Placement, and Perimeter Buffer

(1) Lot Size

There is no minimum size for lots in a conservation subdivision; however the lot size shall be adequate to provide for minimum setbacks and any required infrastructure or services.

(2) Structure Placement.

a. Setbacks

Structures within a conservation subdivision should be placed as closely to internal roads as practical. The reviewing agency may reduce the front yard setback to a minimum of five (5) feet when necessary. In such cases, the reviewing agency must take into consideration sound engineering, public safety concerns and community character when applying standards. Vegetative buffers should be left between new development and existing residential development ~~where possible.~~

a. *Separation*

Structures within conservation subdivisions may be located in the side yard setback required by the zoning district regulations. Structures may be placed as closely together as permitted by the North Carolina State Building Code.

(3) Lot Proximity to Open Space.

Open space shall be accessible to the largest possible number of lots within the development. To achieve this, the majority of lots should abut open space to provide residents with direct views and access. Safe and convenient pedestrian access to the open space from all adjoining lots shall be provided, except in the case of farmland or other resources areas vulnerable to human disturbance.

(4) Perimeter Buffer

A 50-foot undisturbed buffer shall apply to the entire project boundary and shall remain undisturbed. Road and utility crossings are permitted but must be designed to minimize impacts to the buffer and cannot run parallel within the buffer. The buffer area can count towards the density bonus calculation, except in areas where the perimeter buffer overlaps -an area that is excluded from the density bonus calculation.

L. Private Driveway Easements

Private driveway easements may be used in place of public and/or private roads where proposed to provide access to two (2) or fewer lots. The minimum required easement width is 30 feet and shall have a centerline length of no more than 200 feet. Proposed driveway easements should be clearly identified on all plans and plats with a description of what lots the easement is proposed to serve. Final Plats creating driveway easements must contain a note that conveys maintenance responsibility of the easement to the home owners utilizing it to access their property. The note shall specifically state that the easement(s) must be maintained to allow clear passage for emergency response vehicles. Driveway easements are not subject to the requirements for public or private roads.

M. Public and Private Road Standards

All conservation subdivisions with proposed roads and rights-of-way shall follow the standards in Section 7.2.

- (1) The Planning Department may accept public rights-of-way in conservation subdivisions of 15 or fewer lots.
- (2) Conservation subdivisions of 15 or fewer lots shall follow the provisions of Section 3 in order to record a final plat prior to completion of the required improvements.

N. Review and Approval

(1) Conservation subdivisions of fifteen (15) or fewer Lots are reviewed and approved by the Planning Department using the following process:

- a. The applicant shall submit the required number of prints of the plat to the Planning Department. Applicants shall pay any administrative fee established by the County at the time of the application or request. The staff shall inform the applicant of necessary modifications to the plat. Conservation Subdivisions involving access to more than two lots shall have the access road name approved by the Emergency Operations Center (EOC) and Board of Commissioners.
- b. Where public service is available, public sewer shall be provided and installed in such a manner as to serve adequately all lots within the subdivision. Where public service is not available, a soil scientist, licensed in North Carolina, shall certify that suitable soils are available for each lot in accordance with applicable state and local rules. The Chatham County Environmental Health Department will review soil scientist reports and maps and indicate its' adequacy prior to proceeding with final plat approval. Installation of all sewage disposal systems shall conform to appropriate regulations of any governmental agency having jurisdiction thereof.
- c. The Planning Department shall review the plat and if everything is in order, the Director of Planning or his/her authorized agent shall approve the plat. (See Appendices)
- d. The plat shall be submitted for recording by the applicant within the time limit specified in these regulations.
- e. In order for a subdivision to be processed under these provisions, the following requirements must be met:

(1) The plat must meet all requirements and standards for Final Plats as required in section 6.4.

(2) There can be no variances requested from the subdivision regulations.

(3) There cannot be, as a result of such subdivision, a creation of any lots which fail to meet all requirements of the subdivision regulations.

- (4) No subdivider may use the this procedure in the same immediate location (approximately fifteen hundred [1,500] feet) for a period of twelve (12) months after getting subdivision approval using said procedure in said location, if he/she owns, has an option on, or has any legal interest in any property adjacent to the property to be subdivided.
- (5) Additional street right-of-way dedication shall be shown on the plat in cases where the existing right-of-way does not meet the present minimum right-of-way width.
- (6) If a conservation subdivision does not meet the above listed requirements it shall be reviewed as a major subdivision, unless otherwise provided.

f. Any appeals of a staff decision regarding a Conservation Subdivision shall follow the process in Section 5.2(F).

- (2)** Conservation subdivisions in excess of fifteen (15) lots shall be reviewed as a major subdivision.

Chatham County Conservation Subdivision Guidelines for Conservation Space Selection

This guidance document addresses the Conservation Space requirements in Section 7.7, Conservation Subdivision, for developing a conservation subdivision. Conservation Space should be selected with consideration of adjacent properties. The goal of Section 7.7 is to provide an incentive for development in a manner that will establish current, or enable future, connections with other conservation areas. The long term goal is to create large, continuous areas of natural space across Chatham County for the benefit of both human and natural environments.

A. Conservation Subdivision Instructions

- Steps 1-6 are for Applicants and Consultants to be used in conjunction with the other provisions included in these guidelines.
- Please be advised that two maps are required to be reviewed and approved by the Watershed Protection Director prior to your Concept Plan submittal.
- These maps and review process are separate from the Environmental Impact Assessment. Conservation space submittals cannot be bundled with the Environmental Impact Assessment and should be provided per the process below.

- 1) **Identify Conservation Space**- Site surveys must be conducted to identify features/areas for Primary and Secondary Natural Space selection. This includes, but is not limited to, the NC Natural Heritage Program (NCNHP) classification of State Natural Heritage Natural Areas and Element Occurrences. **Contact NCNHP directly to schedule the site evaluation.** Obtain the report and Element Occurrence data for use in mapping exercise below.
- 2) **Generate Maps**- Data gathered through records research, GIS, and site reports should be compiled to generate maps that are the foundation for the planning of the development envelope and overall site design. This involves a thorough reading and implementation of the concepts laid out in the guidelines.
 - a. **Fragmentation Map** drives general conservation selection (i.e. surrounding landscape and potential connections between conservation spaces in a broader context).
 - b. **On-site Inventory Map** is the driving decision making tool for conservation space selection and the areas set aside for development. **THE SITE LAYOUT CANNOT BE DESIGNED BEFORE THE ON-SITE INVENTORY MAP.**
- 3) **Design the Site**- The layout should reflect the Onsite Inventory Map and design the development envelope in areas that are not Primary or

Secondary Natural Space (in order listed) or needed to create connections to Natural Space when more than 40% of the site qualifies as Natural Space. Keep in mind that septic fields should only be shown in the development envelope.

- 4) **Provide Maps and Analysis-** Schedule a pre-submittal meeting with the Watershed Protection Director to demonstrate consideration of conservation space selection is in keeping with the guidelines. If the Director agrees the layout is ready for formal review, proceed to step five.
- 5) **Submit-** Provide the Fragmentation and On-site Inventory maps and the site plan to the Watershed Protection Director for review and approval at least 60 days prior to Concept Plan submittal.
- 6) **Appeal-** If no staff approval is issued, an appeal can be submitted as described in the Subdivision Regulations.

Note: The data sets required for the Fragmentation and On-site Inventory Maps are extensive. It is recommended that multiple exhibits be used in aggregate, especially for the On-site Inventory.

B. Conservation Space Identification and Mapping Provisions

1) Conservation Space Required

Conservation space is comprised of two categories of space to be preserved — Open Space and Natural Space. Open space, as defined in the Subdivision Ordinance, allows amenities such as recreational uses and some non-intrusive common uses ~~(e.g. when land application is not the preferred means of wastewater disposal, community septic systems are allowed in Open Space areas)~~. Open space should be located as close to proposed development as practicable, taking into account considerations such as public safety and soil suitability. Natural space is unimproved land in its naturally occurring state, or preserved to regenerate to in its naturally occurring state, unaltered by human activity, and preserved to maintain or improve the natural, scenic, ecological, cultural, hydrological, or geological values of an area.

1.1) Open Space: Regarding the required minimum 40% Conservation Space for a Site, a maximum of 8% of the site (20% of Conservation Space) shall consist of Open Space.

Areas to Place in Open Space

- Active and/or Passive Recreation.
- ~~Community Septic Systems, or Sewer system~~ land application areas (excluding septic systems).
- Other Shared Infrastructure Such as Community Wells

1.2. Natural Space: Regarding the required minimum 40% Conservation Space for a Site, a minimum of 32% of the site (80% of Conservation Space) shall consist of Natural Space.

The below prioritization of natural areas was compiled by the Chatham County Environmental Review and Planning boards, and is provided to guide natural space selection. The natural areas are listed in order of value under two categories, Primary and Secondary. Each type of primary and secondary natural area should be considered in order of its listing. Continuity of natural space is of most importance (i.e., many isolated pockets of primary area are less valuable than several primary areas all connected with secondary areas).

It is expected that secondary and non-identified areas will be required to ensure continuity between primary areas.

On site inventory and fragmentation maps must follow a required field survey and consultation with the NC Natural Heritage Program, and NHP priority areas must be submitted for consideration with the site plan.

~~Chatham County understands that site constraints may be too restrictive for the intended uses (e.g. septic fields) on some properties. In these instances, some of the required Natural Space may be used to satisfy these requirements. The Chatham County Watershed Protection Director will allow less Natural Space preservation when it can be demonstrated that no practicable alternative exists (although at least 40% of the site must still be retained as Conservation Space). In making this decision, the Watershed Protection Director will take into consideration soil suitability, slopes, and alternative means of achieving compliance (e.g., when soil suitability dictates that additional land is needed to accommodate septic fields, whether on-site treatment and land application be feasible in lieu of septic).~~

Primary Natural Areas (Preserve these first – listed in order of value)
<ul style="list-style-type: none"> ● State Natural Heritage Areas and Natural Heritage Element Occurrences ● NC Wildlife Action Plan (WAP) Upland Systems* (≥ 5,000 ft² must exist) ● Historic and Cultural Resources (as defined by SHPO and Chatham Historic Assn.)

Secondary Natural Areas (If the above have been preserved and there is still conservation area left, or if needed to connect several primary areas)
<ul style="list-style-type: none"> ● NC Wildlife Action Plan Lowland Systems** (≥ 5,000 ft² must exist) ● Active Farms and/or Prime Farmland Soils ● Wildlife Resources Commission and Forest Service Hunting and Burn Buffers

* Upland Pool; Upland Depression Swamp Forest; Rock Outcrops; Piedmont Monadnock Forest; Dry-mesic Oak-Hickory Forest; Dry Oak-Hickory Forest; Xeric hardpan Forest; Basic Oak-Hickory Forest; Mesic Mixed Hardwood Forest; Basic Mesic Forest; and, Piedmont Longleaf Pine Forest.

WAP Systems require identification by an Environmental Professional. Upland Pools and Rock Outcrops shall be preserved on a site by site basis. Approvals shall be based on the written opinion of the Environmental Professional and recommendation of the Environmental Review Board to the Board of Commissioners.

Upland pools to receive protection include natural depressions which seasonally retain water, either by direct precipitation or through intersection with the water table. Abandoned agricultural or other manmade depressions that do not display these characteristics should not receive special protection.

Rock outcrops to receive protection include natural features, of intrusive or extrusive origin, and exist in, or contribute to, a natural community structure that would be expected of the chemical and morphological characteristics of the underlying geological units. Rocks deposited by past human activities should not receive special protection.

**Piedmont Levee Forest; Piedmont Swamp Forest; Piedmont Bottomland Forest; Floodplain Pool; Semi-permanent Impoundment; Rocky Bar and Shore; and, Low-elevation seep

When more than 40% of a site contains Primary and/or Secondary areas, the conservation area shall be selected based on connectivity with adjacent natural space. However, under no circumstances should this section be construed to enable development on otherwise prohibited areas (e.g. watershed buffers, steep slopes, floodplains).

2) Maps Required

During the initial planning of a Conservation Subdivision, the applicant is required to submit two maps to demonstrate that the intent of this incentive is satisfied. These maps include a Fragmentation Map, and an On-site Environmental Inventory Map. These maps must be approved by the Watershed Protection Director prior to any plat approval for both major and minor subdivisions.

2.1) The Fragmentation Map illustrates the project site and all land within one mile of its boundaries. This map will assist the applicant in deciding where Conservation Space should generally be located. Conservation Space should create connections with existing Natural Space, or be located to allow future Natural Space connections on adjacent properties. All information required in the Fragmentation map is available on the Chatham County GIS website (<http://www.chathamgis.com/mapguide/ChathamGISWeb/>), except for Element Occurrences (EOs), which must be obtained from the North Carolina Natural Heritage Program (NCNHP) website (<https://ncnhde.natureserve.org/>). Fees may be required by the NCNHP. The map should illustrate the following information:

- a- Parcel lines, roads, and easements;

- b- Existing Natural Space Areas (as available on Chatham Co. GIS);
- c- NHP Natural Heritage Natural Areas (NHNAs) and Element Occurrences (EOs);
- d- Hydrography, including protected floodplains, streams, lakes, ponds, seeps, springs, and wetlands; and,
- e- Steep Slope Areas

2.2) The On-site Inventory Map will be the primary decision-making tool for the applicant in selecting specific areas to include in Conservation Space, and the County in issuing approvals. Data required to generate this map include existing Chatham County GIS (website provided above), and on-site investigations.

- a- Existing landcover (natural community type, agriculture, developed, fallow field, etc), including all primary and secondary preservation areas;
- b- Proposed natural space preservation locations and acreages;
- c- Topography, using contour intervals of no greater than five feet;
- d- Streams, Wetlands, Floodplains, and required buffers;
- e- Adjacent natural areas ; and,
- f- Cultural and Historic Resources (see Primary Natural Areas above)