



712.10 Conservation Subdivision Overlay District (CSO)

A. Purpose and Intent.

The Conservation Subdivision Overlay (CSO) District is intended to allow flexible site planning and building arrangements under a unified plan of development so that innovative land planning methods may be utilized which foster natural and cultural resource conservation. This may permit buildings to be clustered or arranged in an unconventional manner to maximize open space, create pedestrian scale and other public benefits. The CSO district is intended to:

1. Provide for the preservation of greenspace as a nonstructural stormwater runoff and watershed protection measure.
2. Provide a residential zoning district that permits flexibility of design in order to promote environmentally sensitive and efficient uses of the land.
3. Preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat.
4. Permit clustering of houses and structures on less environmentally sensitive soils, which will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for residential development.
5. Reduce erosion and sedimentation by minimizing land disturbance and removal of vegetation in residential development.
6. Promote interconnected greenways and corridors throughout the community.
7. Promote contiguous greenspace with adjacent jurisdictions.
8. Encourage interaction in the community by clustering houses and orienting them closer to the street, providing public gathering places and encouraging use of parks and community facilities as focal points in the neighborhood.
9. Encourage street designs that reduce traffic speeds and reliance on main arteries.
10. Promote construction of convenient landscaped walking trails and bike paths both within the subdivision and connected to neighboring communities, businesses, and facilities to reduce reliance on automobiles.
11. Conserve scenic views and reduce perceived density by maximizing the number of houses with direct access to and views of open space.
12. Preserve important historic and archaeological sites.

B. Definitions.

The following definitions are intended for use with the Conservation Subdivision Overlay District, in addition to those expressly defined in Section 724.02 of the City of Marietta Zoning Ordinance.

1. *Impervious Surface* – A man-made structure or surface which prevents the infiltration of storm water into the ground below the structure or surface. Examples are buildings, roads, driveways, parking lots, decks, swimming pools, or paved patios.
2. *Pocket Parks* – A Landscaped Area larger than 0.33 acres constructed for community gathering or play, or visual enhancement.
3. *Greenways* – (1) A linear open space established along either a natural corridor, such as a riverfront, stream valley, or ridge line, or over land along a railroad right of way converted to recreational use, a canal, a scenic road, or other route; (2) Any natural or landscaped course for pedestrian or bicycle passage; (3) An open space connector linking parks, natural reserves, cultural features, or historic sites with each other and with populated areas; and (4) Strips or linear parks designated as a parkway or greenbelt.

4. *Perennial Streams* – Streams which flows throughout the whole year as indicated on a USGS Quad map.
5. *Intermittent Streams* – Streams which do not flow throughout the whole year as indicated on a USGS Quad map.
6. *USGS Quad Map* – The most recently published U.S. Geological Survey 7.5 minute topographic map prepared at a scale of 1:24,000.
7. *Wetlands* – Areas that are flooded or saturated by surface or groundwater often and long enough to grow vegetation adapted for life in water-saturated soil. A wetland does not have to be flooded or saturated for more than one week of the year in order to develop the vegetation and soil characteristics that qualify it as a wetland.
8. *Open Space* – The portion of the conservation subdivision that has been set aside for permanent protection.
9. *Passive Recreation* – Activities that involve relatively inactive or less energetic activities, such as walking, sitting, pick-nicking, card games, chess, checkers, and similar table games.
10. *Active Recreation* – Leisure-time activities, usually of a formal nature and often performed with others, requiring equipment and taking place at prescribed places, sites or fields.
11. *Horticulture* – The cultivation of a garden or orchard.
12. *Silviculture* – The development and/or maintenance of a forest or wooded preserve.

C. General Regulations.

1. Applicability of Regulations.

The Conservation Subdivision Overlay option is available in the R-1 and R-2 zoning districts, which utilize the public sanitary sewer system. This district shall be a use by right for those properties zoned R-1 and R-2 which are located within any areas deemed environmentally sensitive by the City of Marietta Comprehensive Plan or the Department of Natural Resources, such as Groundwater Recharge Areas, Floodplain, Wetlands, Streams, Steep Slopes, Woodlands and Wildlife Habitats, as of the date of adoption of this ordinance. Any stipulations of zoning, conditions, or special use approval of the underlying district shall be observed. All applications which are submitted for rezoning to the R-1 or R-2 zoning district shall declare their intent in writing to utilize this ordinance at the time of application and the application shall be accompanied by a Concept Plan, Existing Features and Open Space Management Plan, which meet the requirements of this ordinance.

2. Compatibility with Other Regulations

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or provision of law, whichever provision is more restrictive or imposes higher protective standards for human health, welfare, or the environment shall control.

3. Severability

It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses, and phrases are severable and if any section, paragraph, sentence, clause, or phrase of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases of this Ordinance.

D. Application and Procedures for Establishment of a Conservation Subdivision.

1. **CONCEPT PLAN REQUIRED.** A Concept Plan shall be submitted by the Developer for review and approval in accordance with the requirements and procedures of the City of Marietta. The submittal of the Concept Plan shall constitute submittal of the preliminary plat. Fifteen (15) copies of the concept plan (no mylar) shall be submitted. Said plan shall contain such information

and representations required or deemed necessary by the City Council, Public Works Director or Planning and Zoning Director to permit proper review. A Concept Plan shall include all requirements listed in Section 728.05 of the City of Marietta Zoning Ordinance, Data requirements for preliminary plats, as well as architectural elevations, facades and materials used.

2. **EXISTING FEATURES MAP REQUIRED.** Concurrent with the submission of a Concept Plan, applicant shall prepare and submit an existing features map. The purpose of the existing features map is to ensure that the important site features have been adequately identified prior to the creation of the site design, and that the proposed Open Space will meet the requirements of this article. The Existing Features Map shall include the following:
 - a) Delineation of all streams, rivers, lakes, 100-year floodplain, wetlands, ponds and any other hydrologic features;
 - b) Topographic contours of no less than 2-foot intervals;
 - c) All Primary and Secondary Conservation Areas labeled by type, as described in Section G of this Article;
 - d) Identification of tree resource areas and general vegetation characteristics such as tree lines, woodlands, open fields or meadows;
 - e) The location and type of existing buildings and structures proposed to be retained or removed including historical or archeological features by reference to a plan or drawing.
 - f) General soil types and classifications.
 - g) Identification of significant wildlife habitats and scenic vistas as identified by the Georgia Department of Natural Resources and the Comprehensive Plan.
 - h) Location of protected Open Space and any potential connections with greenspace or trails in or adjacent to the proposed development.
 - i) Identify existing roads, structures and easements.
3. **OPEN SPACE MANAGEMENT PLAN REQUIRED.** An open space management plan shall be prepared and submitted for review and approval in accordance with the requirements and procedures of the Planning and Zoning Department. The Open Space Management Plan shall:
 - a) Allocate responsibility and guidelines for the maintenance and operation of the Open Space and any facilities located thereon, including provisions for ongoing maintenance and for long term capital improvements;
 - b) Estimate the costs and staffing requirements needed for maintenance and operation of, and insurance for, the Open Space and outlines the means by which such funding will be obtained or provided;
 - c) Provide that any changes to the Plan be approved by City Council; and
 - d) Provide for enforcement of the Plan.
4. **PLAN REVIEWED.** Said plans shall be reviewed by the Public Works Department and the Department of Planning and Zoning and a determination made as to whether the proposed plan is consistent with the intent and standards of this district and whether the development of the tract serves the public welfare.

E. Instrument of Permanent Protection Required.

1. An instrument of permanent protection of Open Space, such as a conservation easement, shall be placed on the Open Space concurrent with the issuance of a land disturbance permit. The tract of land to be subdivided may be held in single and separate ownership or in multiple ownership. If held in multiple ownership, the site shall be developed according to a single plan with common authority and common responsibility. The deed conveying the open space shall be recorded and delivered to the homeowners association and the individual lot owners within the subdivision prior to the approval of the final plat and shall contain the following statement:
“Open space delineated on this plat is permanently protected and shall remain undeveloped and natural subject to certain exceptions contained in Section 712.10, Subsection G, of the City of Marietta Zoning Ordinance.”
2. The conveyance to the individual lot owners in the subdivision shall be accomplished within the deed, which also conveys an undivided interest in the open space to the mandatory homeowners association. 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 those exceptions strictly outlined in Section 712.10, Subsection G of the City of Marietta Zoning Ordinance for Conservation Subdivisions.”
3. The developers deed to the mandatory homeowners association and each individual lot owner within the subdivision shall contain a statement that the undivided interest conveyed in the deed runs with the land and benefits all future lot owners within the subdivision.

F. Homeowner’s Association Required.

A Mandatory Homeowner’s Association shall be established with bylaws or covenants that contain, at a minimum, the following provisions:

1. Governance of the association by the Georgia Property Owner’s Association Act (PCGA Section 44-3-220 et seq.) or a successor to that Act that grants lien rights to the association for maintenance expenses and tax obligations.
2. Responsibility for insurance and taxes.
3. Automatic compulsory membership of all lot purchasers and their successors; and compulsory assessments.
4. Authority to ensure the collection of dues from all members.
5. Conditions and timing of transferring control of the association from the developer to the lot owners.
6. Guarantee that the association will not be dissolved without the advance approval of City Council.
7. Responsibility for the continuous maintenance of buffers, open space, facilities and recreations areas.
8. In the event that the Homeowner’s Association fails to maintain all or any portion in reasonable order and condition, the City of Marietta may assume responsibility for its maintenance and may enter the premises and take corrective action, including the provision of extended maintenance. The costs of such maintenance may be charged to the owner, Homeowner’s Association, or to the individual property owners that make up the Homeowner’s Association, and may include administrative costs and penalties. Such costs shall become a lien on all subdivision properties.

G. Open Space Requirements.

1. The open space shall remain undeveloped and natural except for the provision of recreational uses such as pocket parks, community greens, and multi-use trails for walking, running, biking and similar outdoor activities. Additional activities shall be restricted in perpetuity through the use of an approved legal instrument.

2. The minimum restricted Open Space shall comprise at least 40% of the gross tract area.
3. 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 areas, and non-protected natural areas that would be candidates for inclusion as part of a future area of protected Open Space.
4. 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.
5. The following are considered Primary Conservation Areas and are required to be included within the Open Space, unless the Applicant demonstrates that this provision would constitute an unusual hardship and be counter to the purposes of this article:
 - a. The regulatory 100-year floodplain;
 - b. Buffer zones as shown on a map filed with the City Clerk's Office.
 - c. Slopes above 25 percent of at least 5,000 square feet contiguous area;
 - d. Wetlands that meet the definition used by the Army Corps of Engineers pursuant to the Clean Water Act;
 - e. Populations of endangered or threatened species, or habitat for such species; and,
 - f. Archaeological sites, cemeteries and burial grounds.
6. The following are considered Secondary Conservation Areas and should be included within the Open Space to the maximum extent feasible.
 - a. Important historic sites and structures;
 - b. Existing healthy, native forests of at least one acre contiguous area;
 - c. Individual existing healthy trees greater than 8 inches caliper, as measured from their outermost drip line;
 - d. Other significant natural features and scenic viewsheds such as ridge lines, peaks and rock outcroppings, particularly those that can be seen from public roads;
 - e. Prime agricultural lands of at least five acres contiguous area; and,
 - f. Existing trails that connect the tract to neighboring areas.
 - g. Proposed pocket parks, greenways, multi-use trails and stormwater management facilities.
7. The following items cannot be credited toward the 40% Minimum Open Space Requirement:
 - a. Above ground utility rights-of-way and small areas of impervious surface may be included within the protected open space but can not be counted towards the 40 percent minimum area requirement (except historic structures and existing trails may be counted);
 - b. 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;
 - c. No more than 50% of the land area devoted to proposed permanent lakes may be credited;
 - d. Large Areas of impervious surfaces.
8. Permitted Uses of Open Space. Uses of Open Space may include the following:
 - a. Conservation of natural, archeological or historical resources;
 - b. Meadows, woodlands, wetlands, wildlife corridors, game preserves, 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, provided that they are limited to no more than 10 percent of the total Open Space and are not located within Primary Conservation Areas. Active Recreation Areas in excess of this limit must be located outside of the protected Open Space;
 - 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. Nonstructural storm water management practices;

- h. Easements for drainage, access, and underground utility lines; or
 - i. Other conservation-oriented uses compatible with the purposes of this ordinance.
9. Prohibited uses of Open Space
- a. Golf Courses;
 - b. Roads, parking lots and impervious surfaces, except as specifically authorized in the previous sections;
 - c. Agricultural and forestry activities not conducted according to accepted Best Management Practices; and
 - d. Other activities as determined by the Applicant and recorded on the legal instrument providing for permanent protection.

H. Housing Density Determination.

1. *Calculation:* The maximum number of lots in the CSO is determined by dividing the area of the tract of land by the number of lots in the subdivision. Such density calculations shall include:
- a. R-1 1.0 units per acre with 40% open space.
 - b. R-2 2.0 units per acre with 40% open space.
- In making this calculation, the following shall not be included in the total area of the tract of land:
- a. Slopes over 25 percent of at least 5,000 square feet contiguous area;
 - b. The 100-year floodplain;
 - c. Standing bodies of water;
 - d. Wetlands that meet the definition of the Army Corps of Engineers pursuant to the Clean Water Act.
2. *Yield:* The maximum number of lots is based on a conventional subdivision design plan, prepared by the Developer, in which the tract of land is subdivided in a manner intended to yield the highest number of lots possible. The plan does not have to meet formal requirements for a site design plan, but the design must be capable of being constructed given site features and all applicable regulations.

I. Bulk and Area Regulations.

All CSO districts shall meet the following general development standards:

- 1. Minimum Tract Size: 5 acres
- 2. Minimum Lot Size: No minimum, except that each building lot shall not contain more than 20% of its area within the 100-year floodplain elevation.
- 3. Accessibility: No access shall be allowed to individual lots from exterior project streets.
- 4. Minimum Floor Area: Underlying zoning district determines floor area.
- 5. Maximum Building Height: 35 ft.
- 6. Front Setback: 15 ft.
- 7. Side Setback (major): 15 ft.
- 8. Side Setback (minor): 10 ft.
- 9. Rear Setback: 15 ft.
- 10. Maximum Impervious Surface: 60%
- 11. Minimum Open Space: 40%

J. Landscape and Buffer Requirements.

A 10-foot landscape strip shall be required along all exterior project street frontages (not part of any building lot). Landscape entry features such as fences and walls may be allowed in the landscape strip.