

## **MODEL ZONING ORDINANCE FOR RURAL CLUSTER DEVELOPMENT**

This model zoning ordinance for rural cluster development, which may also be referred to as open space subdivisions, is intended to be used as a guide to communities in the formulation of local ordinances. Competent legal, planning, and engineering assistance should be sought by communities in developing or modifying local ordinances.

This ordinance is designed as a mapped district to be applied to parcels of 35 acres or larger. The ordinance is designed as a mandatory district, which would require all residential development within the district to be clustered, and to preserve a minimum of 60 percent of the site as common open space. The permitted density is one dwelling unit per five net acres. Because the district requires clustering for residential development, any applicant wishing to develop a conventional subdivision would need to apply for a rezoning to a district that does not require clustering.

It should be noted that this model ordinance is an example of just one way to implement cluster development through a zoning ordinance. Numerous aspects of the regulations may be modified to suit the conditions in a particular municipality. Such aspects would include primarily the principal permitted and conditional uses in Subsections B and D, respectively; the density and dimensional standards in Subsection G; and the calculation of site capacity in Subsection H. Explanatory comments are italicized.

The following regulations are intended to be added to existing local zoning ordinances as an additional residential development district. This section should not conflict with the requirements of any Planned Unit Development (PUD) District, which may exist in the local zoning ordinance; however, the municipality may wish to review its PUD District for a possible duplication of objectives.

Subsections N and O provide regulations for a Density Exchange Option and a Lot Averaging Option that may be included in a cluster zoning ordinance. It is not essential to include either of these sections in a cluster ordinance; however, the use of one or both of these two sections would improve the design flexibility and the possibility of reaching the objectives of the district for rural landscape preservation.

It is assumed that proposed cluster developments would also be reviewed under the local land division ordinance, and would comply with the procedures in that ordinance for the review of preliminary and final plats. The model rural cluster development ordinance therefore contains several references to the land division ordinance. A model land division ordinance is also available from SEWRPC.

Throughout the ordinance, where the word *Town* appears in italics, the word City, Village, or County may be substituted; where the word *Town Chairman* appears, the words Mayor, Village President, or County Board Chairman may be substituted; and where the term *Town Board* appears, the term Common Council, Village Board, or County Board may be substituted.

An earlier version of this model ordinance is included as Appendix C in SEWRPC Planning Guide No. 7, *Rural Cluster Development Guide*, December 1996. Copies of the Guide may be ordered from SEWRPC by calling (262) 547-6721.

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<sup>1</sup> Definitions related to cluster development may need to be added to the list of definitions contained in the zoning ordinance. Sample definitions are provided in this model ordinance.

## SECTION \_\_\_\_\_ RC RURAL CLUSTER DEVELOPMENT DISTRICT

### A. Intent

The purpose of the RC Rural Cluster Development District is to preserve rural landscape character, natural resource areas, farmland, and other large areas of open land, while permitting residential development at low, rural densities, in an open space setting, located and designed to reduce the perceived intensity of development and provide privacy for dwellings. Specific objectives are as follows:

1. To maintain and protect the *Town's* rural character by preserving important landscape elements, including those areas containing unique and environmentally sensitive natural features such as woodlands, hedgerows, stream corridors, wetlands, floodplains, shorelands, prairies, ridge tops, steep slopes, critical species habitat, and natural areas by setting them aside from development. Such areas contained in primary environmental corridors, as identified by the Southeastern Wisconsin Regional Planning Commission, are of particular significance for conservation.
2. To preserve scenic views and to minimize views of new development from existing streets.
3. To provide for the unified and planned development of parcels 35 acres or larger in size for clustered, single-family, low density residential uses, incorporating large areas of permanently protected common open space.
4. To provide for greater design flexibility in the siting of dwellings and other development features than would be permitted by the application of standard district regulations in order to minimize the disturbance of rural landscape elements, scenic quality, and overall aesthetic value of the landscape.
5. To increase flexibility and efficiency in the siting of services and infrastructure, by reducing street length, utility requirements, drainage requirements, and the amount of paving required for residential development, where possible.
6. To create groups of dwellings with direct visual and physical access to common open space.
7. To permit active and passive recreational use of common open space by residents of a cluster development or by the public.
8. To reduce erosion and sedimentation by retaining existing vegetation and minimizing development on steep slopes.
9. To allow for the continuation of agricultural uses in those areas best suited for such activities and when such activities are compatible with adjoining residential uses.
10. To permit various means for owning common open space and for protecting it from development in perpetuity.
11. To create an attitude of stewardship, or caring, for the land within common open space by requiring a land management, or stewardship, plan for the common open space.
12. To implement the objectives of the adopted *Town* Comprehensive Plan, or elements thereof.

B. Principal Permitted Uses

1. Single-family residential uses as follows:
  - a. Clustered single-family detached dwellings, with at least 60 percent of the gross development parcel in common open space.
  - b. Single-family farmstead dwellings with or without associated agricultural structures such as barns, silos, storage sheds, and stables.
2. Agricultural activities including:
  - a. The cultivation, harvesting, and sale of crops and related products produced on the farm.
  - b. The raising and sale of livestock or fowl, with associated pasture and barnyards.
  - c. Orchards, nurseries, greenhouses, and related horticultural uses.
  - d. Growing and sale of Christmas trees.
  - e. Agricultural structures such as barns, silos, storage sheds, and stables.
3. Community living arrangements, and community-based residential facilities (CBRF), which have a capacity for eight (8) or fewer persons, subject to the limitations set forth in Section 62.23(7)(i) of the Wisconsin Statutes.
4. Open space uses, primarily passive in nature, including wildlife sanctuaries, forest preserves, nature centers, trails, picnic areas, and similar uses.
5. Conservation of natural features in their existing state.
6. Stormwater management facilities for the proposed development, including detention and retention basins.
7. Essential services.
8. The following uses are permitted in common open space in cluster development:
  - a. Uses listed above in numbers 2, 4, 5, 6, and 7.
  - b. Water supply and sewerage facilities for individual lots, groups of lots, or the entire development.
  - c. Utility and street rights-of-way except that their land areas shall not count toward the 60 percent minimum open space requirement.
  - d. Parking areas where necessary to serve active recreation facilities.

*NOTE: The list of principal permitted uses may be expanded or shortened as appropriate for the local municipality.*

C. Accessory Uses

1. Attached and detached private garages and storage structures, provided that:
  - a. One detached garage, not exceeding 800 square feet, shall be permitted.
  - b. One detached storage structure, not exceeding 500 square feet, shall be permitted on a lot, in addition to any attached or detached garage.
2. Home occupations which are clearly incidental to the principal residential use, provided that the requirements of Section \_\_\_ are met.

*NOTE: The accessory use regulations in a local zoning ordinance should include regulations governing home occupations. Such regulations would apply to all residential development, including cluster development.*

D. Conditional Uses

The following conditional uses may be permitted by the Plan Commission, provided the proposed use shall not adversely impact the rural character of the district and shall be consistent with the overall objectives of the district as listed in Subsection A.

1. Agricultural uses requiring the installation of new buildings or other structures in the common open space of a cluster development. The total building coverage of such new agricultural buildings or structures shall not exceed 10,000 square feet.
2. Commercial storage or other adaptive reuse of barns in order to provide for an adaptive and compatible reuse and promote the preservation of such structures, provided such barns have existed for at least 20 years prior to the effective date of this Ordinance.
3. Recreational uses requiring the installation of new buildings or other structures in the common open space of a cluster development. The total building coverage of such new buildings or structures shall not exceed 10,000 square feet.

*NOTE: The list of conditional uses may be expanded or shortened as appropriate for the local municipality. Typical uses that may be added include: camps and campgrounds, public and private recreation areas for non-intensive uses, hunting or fishing preserves, game farms, and golf courses.*

E. Prohibited Uses

1. The use of non-recreational motor vehicles except on public streets and parking areas. Maintenance, law enforcement, emergency, and farm vehicles are exempt from this limitation.
2. Cutting of healthy trees, re-grading, topsoil removal, altering, diverting, or modifying water courses or bodies, except in compliance with an approved land stewardship plan, as described in Subsection L.
3. Intensive animal feed lot operations.

*NOTE: The restrictive covenants that are part of the legal documents for a homeowners or condominium association will typically contain many more restrictions on use. The section above should list those that are important to the interests of the local government.*

F. Inventory and Site Analysis

To aid the *Town* in determining whether the applicant has accomplished the intent and objectives as described in Subsection A and the design standards for cluster groups and common open space as described in Subsections I and J, the initial application for any development shall include an inventory and site analysis of the parcel. The specific requirements for such inventory and site analysis are fully described in the *Town* Land Division Control Ordinance.

*NOTE: See Section 4.02 of the SEWRPC Model Land Division Control Ordinance for site analysis requirements.*

G. Density and Dimensional Standards

1. The following density and dimensional standards shall apply to residential cluster development:

	Lots or Parcels Served by Private Onsite Waste Treatment Systems	Lots or Parcels Served by Centralized Sewerage Facilities
Minimum Site Area	35 acres	35 acres
Maximum Density <sup>a</sup>	1 dwelling unit per 5 net buildable acres	1 dwelling unit per 5 net buildable acres
Minimum Lot Area <sup>b</sup>	40,000 square feet	20,000 square feet
Minimum Lot Width: Measured at Building Setback Line	125 feet	90 feet
Measured at Front Lot Line	50 feet	50 feet
Minimum Front Yard	50 feet	40 feet
Minimum Rear Yard	50 feet	40 feet
Minimum Side Yard	20 feet one side; 50 feet total	15 feet one side; 35 feet total
Accessory Building Setback <sup>c</sup> From Side Lot Lines	10 feet	10 feet
From Rear Lot Line	10 feet	10 feet
Minimum Common Open Space (percentage of net acres)	60%	60%
Maximum Height Principal Structure	35 feet	35 feet
Non-agricultural Accessory Structures	18 feet	18 feet
Agricultural Accessory Structures	100 feet	100 feet
Maximum Building Coverage Per Lot	10 percent	15 percent

<sup>a</sup> Existing dwellings that will remain on the site shall be included in the calculation of maximum density.

<sup>b</sup> For an existing farmstead on a parcel used for cluster development, the minimum lot area shall be 5 acres or a lot large enough to accommodate all structures within a building envelope created by a 100 foot setback from all sides of the lot, whichever is larger. For farmsteads with livestock, the setback shall be increased to 200 feet.

<sup>c</sup> Accessory buildings shall not be permitted within the front yard.

2. Separation distances for cluster groups.

a. The outer boundaries of all cluster groups shall conform to the following separation distances:

- (1) From existing or proposed arterial street rights-of-way as defined in the Town Comprehensive Plan or the Regional Transportation System Plan: 100 feet.
- (2) From existing scenic highways or rustic roads: 100 feet.
- (3) From all perimeter subdivision boundaries: 100 feet.
- (4) From cropland or pasture land: 100 feet.
- (5) From buildings or barnyards housing livestock: 300 feet.
- (6) From other cluster groups: 100 feet.
- (7) From wetlands, floodplains, or water courses: 50 feet.

- (8) From active recreation areas, such as courts or playing fields: 100 feet.
- b. All separation areas for cluster groups along existing streets shall be landscaped in accordance with Subsection K, in order to block views of new residential development, preserve scenic views, and protect rural landscape character.
- c. The dimensional standards specified in Subsection G.1 may be reduced under the following circumstances:
  - (1) The separation distances from existing arterial streets and the perimeter of the subdivision may be reduced to no less than 50 feet if the applicant can demonstrate that existing vegetation or topography or a combination of these form an effective visual screen.
  - (2) All other separation distances may be reduced by 50 percent if the applicant can demonstrate to the satisfaction of the Plan Commission that such reduced setbacks improve the plan's compliance with the cluster group design standards in Section I, the intent of this Ordinance, and the objectives of the *Town* Comprehensive Plan.

H. Calculation of Site Capacity

- 1. For cluster development, the calculation of site capacity, or the number of dwelling units permitted on a site, shall be based on net buildable acreage. The applicant shall determine the net buildable acreage (NBA) using the following method, substantiated by sufficient plans and data to verify the calculations:

Gross Acreage of Site: \_\_\_\_\_ acres

From the gross acreage of the site, subtract the following:

All lands located within existing street rights-of-way: \_\_\_\_\_ acres

All lands located within existing utility and railway rights-of-way: \_\_\_\_\_ acres

All lands located within a floodplain: \_\_\_\_\_ acres

All lands located within a wetland: \_\_\_\_\_ acres

All of the area located within a pond or lake: \_\_\_\_\_ acres

Fifty percent of lands having a slope between 12 and 20 percent: \_\_\_\_\_ acres

All of the land area having a slope of 20 percent or greater: \_\_\_\_\_ acres

Twenty percent of the area located within a woodland: \_\_\_\_\_ acres

The result is the net buildable acreage (NBA): \_\_\_\_\_ acres

- 2. In the calculation in Subsection H.1 above, the following shall apply:
  - a. The elevation of the 100-year recurrence interval floodplain determined through floodplain studies shall be used where available. Where such flood stage data are not

available, the regulatory flood elevation shall be determined by a registered professional engineer and the sealed report of the engineer setting forth the regulatory flood stage and the method of its determination shall be approved by the *Town Engineer*.

- b. Where two or more categories overlap, the overlapping acreage shall be counted only once, using the most restrictive classification.
3. To determine the number of units permitted on a given site, the net buildable acreage shall be divided by 5, rounding to the nearest whole number.

\_\_\_\_\_ acres NBA ÷ 5 = \_\_\_\_\_ dwelling units permitted.

I. Design Standards for Cluster Groups. The following standards shall apply to all cluster groups:

1. All dwelling units shall be grouped into cluster groups, each of which shall be surrounded by common open space.
2. The maximum number of lots in a cluster group may be increased, and cluster groups may be assembled into larger groupings, with the approval of the *Town Board* and provided that the applicant can demonstrate that such an alternative plan is more appropriate for the development parcel and will meet both the general intent and design standards of this Ordinance.
3. A plat may contain one or more cluster groups.
4. Cluster groups shall be defined by the outer perimeter of contiguous lotted areas or abutting streets, and may contain lots, streets, and cluster group open space. When the development does not include individual lots, as in a condominium, the outer perimeter shall be defined as an area encompassed by a line drawn around the units, no point of which is less than 100 feet from any unit.
5. The outer boundaries of each cluster group shall meet the separation distance requirements specified in Subsection G.2.
6. Cluster groups shall be defined and separated by common open space in order to provide direct access to common open space and privacy to individual lot or yard areas. Cluster groups may be separated by streets if the street right-of-way is designed as a boulevard.
7. No cluster group shall contain more than 15 dwelling units.
8. Cluster groups containing 11 or more dwelling units must provide internal open space at a minimum rate of 2,000 square feet per dwelling unit, and shall meet the following standards:
  - a. Common open space located within cluster groups shall be counted toward meeting the overall 60 percent open space requirement.
  - b. The open space shall be configured as a cul-de-sac island, an island within a larger loop or an “eyebrow” (a semi-circular loop), an island in a boulevard street, or a common green area. Common green areas surrounded by lots on up to three sides shall be designed as a space for common use by all residents within the cluster group.
  - c. The open space shall have a minimum street frontage of 125 feet.
  - d. Internal open space may contain parking areas, but parking areas shall not be included in the required 2,000 square feet of internal open space per dwelling unit.
9. All lots in a cluster group shall take access from interior streets.
10. All lots in a cluster group shall abut common open space to the front or rear. Common open space across a street shall qualify for this requirement.
11. In locating cluster groups, disturbance to woodlands, hedgerows, and individual mature trees shall be minimized. However, when the objective is to preserve prime farmland soils and large areas of contiguous land suitable for agricultural use, dwellings may be located within



woodlands, provided that no more than 20 percent of a single wooded lot is cleared for the construction of a dwelling, driveway, garage, storage building, well, and private onsite waste treatment system.

J. Design Standards for Common Open Space

On all parcels developed under the cluster development regulations, 60 percent of the net land area shall be set aside as protected common open space. This open space shall meet the following standards:

1. For the purposes of this Subsection, gross land area includes all lands within the parcel, except existing street, railway, and utility rights-of-way.
2. Common open space shall comply with the following design standards:
  - a. The location of common open space shall be consistent with the objectives of the *Town Comprehensive Plan*.
  - b. All open space areas shall be part of a larger continuous and integrated open space system within the parcel being developed. At least 75 percent of the common open space areas shall be contiguous to another common open space area. For the purposes of this Subsection, areas shall be considered contiguous if they are within 100 feet of each other and there are no impediments to access between the areas.
  - c. Common open space shall, to the greatest extent possible, protect site features identified in the site inventory and analysis as having particular value in the context of preserving rural character, in compliance with the intent of this Ordinance. Primary and secondary environmental corridors and isolated natural resource areas as identified by SEWRPC are of particular significance for protection.
  - d. Natural features shall generally be maintained in their natural condition, but may be modified to improve their appearance, or restore their overall condition and natural processes, as recommended by natural resource professionals and in compliance with an approved land stewardship plan, as described in Subsection L.3. Permitted modifications may include:
    - (1) Woodland management.
    - (2) Reforestation.
    - (3) Meadow management.
    - (4) Wetlands management.
    - (5) Streambank protection.
    - (6) Buffer area landscaping.
  - e. All wetlands, floodplains, wildlife habitat areas, slopes over 12 percent, 100 percent of lowland environmental corridor, and a minimum of 80 percent of upland primary environmental corridors shall be contained in common open space.
  - f. The common open space shall maximize common boundaries with existing or future open space on adjacent lands, as shown in the *Town* or *County Comprehensive Plan*, or the *Comprehensive Plan* of an adjacent municipality.
  - g. To preserve scenic views, ridge tops and hilltops should be contained within common open space wherever possible. Trees shall not be removed from ridge tops or hill tops.
  - h. A minimum of 80 percent of the area of existing woodlands shall be contained within common open space. Up to 20 percent of the area of existing woodlands may be located within lots or used for residential development. This limitation may be exceeded under the following conditions:

- (1) The site is primarily wooded and development at the permitted density would not be possible without encroaching further into the woodlands.
  - (2) Any encroachment on woodlands beyond 20 percent shall be the minimum needed to achieve the maximum permitted density, as determined by the *Town Board*.
- i. No area of common open space shall be less than 30 feet in its smallest dimension or less than 10,000 square feet in area, with the exception of landscape islands as described in Subsection I.8.b. Open space not meeting this standard shall not be counted toward the total required 60 percent common open space.
  - j. The boundaries of common open space shall be marked by natural features wherever possible, such as hedgerows, edges of woodlands, streams, or individual large trees. Where no such natural demarcations exist, additional plantings, fences, or other landscape features should be added to enable residents or the public, if applicable, to distinguish where common open space ends and private lot areas begin. Where structural demarcations, such as fences, are used, they shall be the minimum needed to accomplish this objective.
  - k. Trails in common open space that are located within 50 feet of homes in cluster groups shall be identified by plantings, fences, or other landscape features.
  - l. Under no circumstances shall all common open space be isolated in one area of the development. Common open space shall be distributed appropriately throughout the development to properly serve and enhance all dwelling units, cluster groups, and other common facilities.
  - m. Common open space shall include lands located along existing public streets in order to preserve existing rural landscape character as seen from these streets, and shall, in no case, contain less than the required buffer, setback area, or separation distance.
3. Safe and convenient pedestrian access and access for maintenance purposes shall be provided to common open space areas that are not used for agricultural purposes, in accordance with the following:
    - a. At least one access point per cluster group shall be provided, having a width equal to or greater than the minimum width of a lot within the cluster group. This width may be reduced to no less than 50 feet if the applicant can demonstrate that, due to natural site constraints, meeting the lot width requirement would run counter to the objectives of this Section.
    - b. Access to common open space used for agriculture may be restricted for public safety and to prevent interference with agricultural operations.
  4. The following areas shall not be included in the calculation of common open space areas:
    - a. Private lot areas.
    - b. Street and highway rights-of-way, public or private.
    - c. Railway and utility rights-of-way.
    - d. Parking areas.
    - e. Areas not meeting the requirements of Subsection J.2.i.

K. Landscaping

1. Preservation of Existing Natural Landscape.
  - a. For the purpose of conserving the natural landscape and in recognition of the time value of existing vegetation, the preservation of existing vegetation shall always be preferred to the installation of new plant material.

- b. Existing woodlands and hedgerows shall be retained to the maximum extent possible. Where possible, existing woodlands and hedgerows shall be incorporated into the required separation areas between cluster groups and external streets and site boundaries.
  - c. Suitable existing vegetation shall be credited toward the landscaping requirements of this Section, when, in the opinion of the *Town Board*, it would equal or exceed the visual impact of the new required plant material after two years of growth.
  - d. All new landscaping to be installed and existing vegetation to be preserved shall be protected in accordance with the methods specified in the *Town Land Division Control Ordinance* or other applicable *Town* ordinances.
2. Street Trees
- a. Street trees shall be planted along internal streets within cluster groups.
  - b. Street trees may be planted, but are not required, along internal streets passing through common open space.
  - c. Informal arrangements are encouraged for street trees, to avoid the urban appearance that regular spacing may invoke.
  - d. Street trees shall be located so as not to interfere with the installation and maintenance of utilities and paths, trails, or sidewalks that may parallel the street.
  - e. The species of street trees shall be selected from the “List of Recommended Species for Landscaping” adopted by the *Town Board*.

*NOTE: It is recommended that a “List of Recommended Species for Landscaping” be adopted by each local government and used when approving development projects. It is beyond the scope of this model ordinance to compile such a list; however, it is recommended that street trees be deciduous and native to the Region.*

- f. Street tree plantings shall comply with all applicable regulations in the *Town Land Division Control Ordinance* or other applicable ordinances.
3. Buffers
- a. A planted buffer area at least 25 feet in width shall be established within all required separation areas between external streets and cluster groups.
  - b. Planted buffers within separation areas between cluster groups are encouraged to enhance privacy and a rural appearance between lots.
  - c. Buffers consisting of an informal arrangement of native plant species combined with infrequent mowing are strongly encouraged, to create a low-maintenance, natural landscape.

L. Ownership and Maintenance of Common Facilities and Open Space

To ensure adequate planning for ownership, operation, and maintenance of common open space, recreation facilities, storm water management facilities, common parking areas and driveways, private streets, and other common or community facilities (hereinafter referred to as common facilities), the following regulations shall apply:

1. Ownership.
- The following methods may be used, either alone or in combination, to own common facilities. Common facilities shall not be transferred to another entity except for transfer to another method of ownership permitted under this Subsection, and then only when there is no change in the common facilities. Ownership methods shall conform to one or more of the following:
- a. Homeowners Association.

Common facilities shall be held in common ownership as undivided proportionate interests by the members of a homeowners association, subject to the provisions set forth herein:

- (1) The applicant shall provide to the *Town* a description of the organization, including its bylaws, and all documents governing maintenance requirements and use restrictions for common facilities. Such documents shall be approved as to form by the *Town* Attorney.
- (2) The organization shall be established by the owner or applicant and shall be operating, with financial subsidy by the applicant, if necessary, prior to the sale of any dwelling units in the development.
- (3) Membership in the organization shall be mandatory for all purchasers of dwelling units therein and their successors and assigns.
- (4) The organization shall be responsible for maintenance and insurance of common facilities.
- (5) The members of the organization shall share equitably the costs of maintaining, insuring, and operating common facilities.
- (6) The organization shall have or hire adequate staff to administer, maintain, and operate common facilities.
- (7) The applicant for any cluster subdivision or development proposed to contain common facilities shall arrange with the *Town* Assessor a method of assessment of the common facilities which will allocate to each tax parcel in the development a share of the total assessment for such common facilities.
- (8) Written notice of any proposed transfer of common facilities by the homeowners association or the assumption of maintenance of common facilities must be given to all members of the organization and to the *Town* at least 30 days prior to such event.

b. Condominium Agreements.

Common facilities shall be controlled through the use of condominium agreements. Such agreements shall be approved as to form by the *Town* Attorney and shall comply with the requirements of Chapter 703 of the Wisconsin Statutes. All common open space and other common facilities shall be held as "common elements" by the unit owners in the form of undivided percentage interests in accordance with the condominium documents. An association of unit owners shall be formed to govern the affairs of the condominium and membership shall be mandatory.

c. Fee simple dedication to a public agency.

The *Town* or other public agency acceptable to the *Town* may, but shall not be required to, accept any portion of the common facilities, provided that:

- (1) There shall be no cost of acquisition, other than costs incidental to the transfer of ownership, such as title insurance.
- (2) Any facilities so dedicated shall be accessible to the residents of the *Town*, if the *Town* so chooses.
- (3) The *Town* or other public agency shall maintain such facilities.
- (4) The residents of the development shall hold a conservation easement on the land and facilities so dedicated, protecting the common open space from development in perpetuity.

d. Dedication of conservation easements to a public agency.

The *Town* or other public agency acceptable to the *Town* may, but shall not be required to, accept easements for public use of any portion of the common facilities, title of which is to remain in private ownership, provided that:

- (1) There is no cost of easement acquisition, other than costs incidental to the transfer of ownership, such as title insurance.
- (2) A satisfactory maintenance agreement shall be reached between the owner and the *Town*.
- (3) Lands under a *Town* easement may or may not be accessible to residents of the *Town*.

e. Fee simple dedication to a nonprofit conservation organization.

With the approval of the *Town Board*, an owner may dedicate any portion of the common facilities to a nonprofit conservation organization, provided that:

- (1) The organization is acceptable to the *Town*.
- (2) The conveyance contains appropriate provisions for proper reverter or re-transfer in the event that the organization becomes unwilling or unable to continue carrying out its responsibilities.
- (3) A maintenance agreement acceptable to the *Town* is established between the owner and the organization, in accordance with Subsection L.2.

f. Dedication of conservation easements to a nonprofit conservation organization.

With the approval of the *Town Board*, an owner may dedicate conservation easements on any portion of the common facilities to a nonprofit conservation organization, provided that:

- (1) The organization is acceptable to *Town*.
- (2) The conveyance contains appropriate provisions for proper reverter or re-transfer in the event that the organization becomes unwilling or unable to continue carrying out its responsibilities.
- (3) A maintenance agreement acceptable to the *Town* is established between the owner and the organization, in accordance with Subsection L.2.

g. Ownership retained by the original landowner.

Ownership of common open space and facilities may be retained by the original landowner provided that:

- (1) The *Town* and residents of the development shall hold conservation easements on the land protecting it from any further development.
- (2) Resident access to the land is limited only by agreement of the residents of the development, as indicated by documents signed at the time of purchase of individual dwelling units.

h. Other methods acceptable to the *Town Board* upon recommendation by the *Town Attorney*.

2. Maintenance and operation of common facilities.

a. A plan and narrative for the use, maintenance, and insurance of all common facilities, including provisions for funding, shall be provided to and approved by the *Town Board* prior to preliminary plat approval. Such plan shall:

- (1) Define ownership.
- (2) Establish necessary regular and periodic operation and maintenance responsibilities.
- (3) Estimate staffing needs, insurance requirements, and other associated costs and define the means for funding the same on an on-going basis.

- (4) Include a Land Stewardship Plan specifically focusing on the long- term management of open space lands. A draft Land Stewardship Plan shall be submitted with a preliminary plat, and a final Plan shall be submitted with the final plat. The Land Stewardship Plan shall comply with the requirements of Subsection L.3.
      - (5) At the discretion of the *Town Board*, the applicant may be required to escrow sufficient funds for the maintenance and operation costs of common facilities for up to one year.
    - b. In the event that the association established to own and maintain common areas and facilities, or any successor organization thereto, fails to properly maintain all or any portion of the aforesaid common areas or facilities, the *Town* may serve written notice upon such association setting forth the manner in which the association has failed to maintain the aforesaid common areas and facilities. Such notice shall set forth the nature of corrections required and the time within which the corrections shall be made. Upon failure to comply within the time specified, the association, or any successor organization, shall be considered in violation of this Ordinance, in which case the *Town* shall have the right to enter the premises and take the needed corrective actions. The costs of corrective actions by the *Town* shall be assessed against the properties that have the right of enjoyment of the common areas and facilities.
  - 3. The Land Stewardship Plan shall include a narrative, based on the site analysis required by Subsection F, describing:
    - a. Existing conditions, including all natural, cultural, historic, and scenic elements in the landscape;
    - b. Objectives for each common open space area, including:
      - (1) The proposed end state for the area and the measures proposed for achieving the end state.
      - (2) Proposed restoration measures, including:
        - (a) Measures for correcting increasingly destructive conditions, such as erosion.
        - (b) Measures for restoring historic features.
        - (c) A maintenance and operations plan identifying activities needed to maintain the stability of the resources, including mowing schedules, weed control measures, planting schedules, and clearing and cleanup measures and schedules.
  - 4. Leasing of common open space lands.

Common open space lands may be leased to another person or other entity for use, operation, and maintenance, provided that:

    - a. The residents of the development shall at all times have access to such leased lands, except in the case of lease for agricultural purposes, in which case the residents, with their agreement, may be restricted from accessing the lands.
    - b. The common open space lands to be leased shall be maintained for the purposes set forth in this Section.
    - c. The operation of such leased open space lands may be for the benefit of the residents of the development only, or may be open to the public, if so determined by the residents.
    - d. The lease, and any transfer or assignment thereof, shall be subject to the approval of the *Town Board*.

- e. Lease agreements shall be recorded in the office of the County Register of Deeds within 30 days of their execution, and a copy of the recorded lease shall be filed with the *Town*.
- 5. Conservation.  
Common open space shall be restricted in perpetuity from further subdivision and/or land development by deed restriction, conservation easement, or other agreement in a form acceptable to the *Town Board* upon recommendation of the *Town Attorney* and duly recorded in the office of the County Register of Deeds.

M. Sewerage and Water Supply Facilities

- 1. Sewerage Facilities.
  - a. Sewerage facilities for cluster development may consist of any system meeting the requirements of the County, the *Town*, the Wisconsin Department of Safety and Professional Services, and the Wisconsin Department of Natural Resources.
  - b. If approved by the *Town Board*, sewerage facilities or portions thereof may be located within common open space areas.
  - c. All sewerage facilities shall be consistent with the requirements of the *Town Land Division Control Ordinance*.
  - d. All public community sewerage facilities shall be owned, operated, and maintained by a general or special purpose unit of government.
- 2. Water Supply Facilities.
  - a. Water supply facilities may consist of any of following systems, provided they meet the requirements of the County, the *Town*, the Wisconsin Department of Natural Resources, and Chapters NR 811 and 812 of the Wisconsin Administrative Code:
    - (1) Private, individual wells.
    - (2) Private, community wells.
    - (3) Public water supply system.
  - b. All water supply facilities shall be consistent with the requirements of the *Town Land Division Control Ordinance*.
  - c. All public water supply facilities shall be owned, operated, and maintained by a general or special purpose unit of government.

## ADDITIONAL OPTIONAL REGULATIONS

### N. Density Exchange Option

In exchange for preserving greater areas of farmland or unique environmental resources, and to further increase design flexibility, residential density may be transferred between properties within the RC District. Density may be increased on the receiving parcel, while density is decreased on the sending parcel, in order to achieve the above-stated objectives. The following requirements shall be met:

1. The density exchange option shall be utilized only with residential cluster development. Residential development on the receiving parcels must be clustered, as well as any remaining dwellings on the sending parcel.

*NOTE: Density exchanges or full Transfer of Development Rights programs may be used with either cluster or conventional development. For the purposes of this model ordinance, however, density exchanges are used only with cluster development within the RC District.*

2. Density exchanges may be used in combination with lot averaging.
3. Negotiations for density exchanges shall take place strictly between property owners and developers and shall not involve the *Town*, other than for the approval of the number of units transferred, the resulting densities, and normal plat approval for both the sending and receiving parcels.

*NOTE: Requiring an approved plat for the receiving parcel relieves the Town of the record keeping needed to track unused or "banked" development rights, because all transferred development rights will have been used on the approved plan.*

4. The applicant shall provide documentation at the time of submittal of the preliminary plat indicating that he or she is the owner of the sending parcel or has the authority under the terms of a written contract to make commitments on the sending parcel. Similar documentation must be submitted by the owner of the receiving parcel indicating agreement that the density on such parcel may be increased by the stated number of dwelling units.
5. Sending and receiving parcels must meet the following requirements:
  - a. Sending Parcels.
    - (1) The minimum area shall consist of 35 contiguous acres. For the purposes of this Subsection, parcels separated by a utility right-of-way shall be considered contiguous.
    - (2) Sending parcels may consist of one or more contiguous, smaller parcels that together form at least 35 acres; however, all parcels must be consolidated into one at the time that the final plat and easement agreement for the sending parcel are recorded.
    - (3) The sending parcel shall not be subject to any existing recorded easement or other agreement which restricts its subdivision or development.
    - (4) Sending parcels designated for agricultural use must be consistent with practical requirements for an agricultural activity and be of value for farm use, as determined by the *Town Board* based on information submitted by the applicant. If this requirement cannot be met, the parcel must contribute to the objective of conserving significant environmental areas and rural



landscape character beyond that which could be preserved by cluster development.

- (5) The sending parcel shall be restricted from development through a conservation easement held by the *Town*. Such easement shall be recorded in the office of the County Register of Deeds. The conservation easement shall specify the degree of restriction by the number of dwelling units that have been transferred from the site.
- (6) Density may be transferred from a sending parcel at a maximum rate of one dwelling unit per 5 net acres as calculated in accordance with Subsection H. All or some of the number of units permitted on the sending parcel may be transferred.
- (7) When the density exchange option is used, at least 50 percent of the permitted units on a sending parcel must be transferred.
- (8) All dimensional and design standards in Subsections G, I, and J shall apply to any residual residential development on the sending parcel.
- (9) The landscaping regulations of Subsection K shall apply to all remaining residential development on sending parcels.

b. Receiving Parcels.

- (1) The minimum area shall consist of a minimum of 35 contiguous acres. For purposes of this Subsection, parcels separated by a utility right-of-way shall be considered contiguous.
- (2) The receiving parcel shall not be subject to any existing recorded easement or other agreement which restricts its subdivision or development.
- (3) A minimum of 45 percent of the receiving parcel shall be dedicated to common open space.
- (4) Density.
  - (a) The base density of a receiving parcel shall be one dwelling unit per 5 net buildable acres (NBA).
  - (b) The final density of a receiving parcel shall be one dwelling unit per 3 NBA, provided that each additional unit above base density is acquired from a sending parcel.
- (5) The following dimensional standards shall apply to development on receiving parcels:
  - (a) For lots: Subsection G.1.
  - (b) For separation distances: 50 percent of all dimensions in Subsection G.2, except that separation distances from all streets and cluster development boundaries shall be no less than 50 feet.
- (6) The landscaping regulations of Subsection K shall apply to all residential development on receiving parcels.

6. Procedures for use of the density exchange option.

The exchange of density within the RC Rural Cluster District shall take place as a private exchange between property owners, subject to approval by the *Town Board* in accordance with the procedures set forth below.

- a. An application for use of the density exchange option on a receiving parcel shall be made to the *Town Board* and shall include the following:
  - (1) A sketch plan of the proposed subdivision;
  - (2) A calculation of the number of dwelling units to be acquired from the sending parcel and the resulting net density on the receiving parcel.

- b. The *Town Board* shall tentatively approve the use of the density exchange option on the receiving parcel and allow the applicant to proceed with the subdivision process if:
  - (1) The receiving parcel meets the criteria of Subsection N.5.b; and
  - (2) The sketch plan for the receiving parcel represents a subdivision which can be accommodated on the property, while protecting at least 45 percent of the gross site area in common open space, and preserving sensitive environmental features such as steep slopes, wetlands, floodplains, critical species habitat and natural areas, and stream corridors.

*NOTE: The approval of a subdivision plat for the receiving parcel is required because the transfer of density depends on the ability to successfully accommodate the added number of dwelling units on the receiving parcel.*

- c. An application for approval of a subdivision plat for the sending parcel shall include the following:
  - (1) Documentation that the parcel meets the requirements of Subsection N.5.a.
  - (2) A calculation of the maximum number of dwelling units which are to be transferred from the sending parcel.
  - (3) If any residual lots remain on the sending parcel, a sketch plan of the proposed cluster subdivision. The subdivision shall meet all of the requirements for cluster development specified in this Ordinance.
- d. Subdivisions on a receiving parcel may be recorded in phases. A final subdivision plat shall not be approved for the receiving parcel until the final subdivision plat for one or more sending parcels are approved, which provide the necessary number of additional dwelling units for the lots shown on the final subdivision plat. If one sending parcel provides the additional dwelling units for more than one receiving parcel, the final subdivision plats for all of the receiving parcels must be approved at one time.
- e. Following approval of the final subdivision plat(s) for the receiving parcel(s,) the following documents shall be recorded at the same time in the office of the County Register of Deeds:
  - (1) A final plat for each sending parcel, designating the property as a sending parcel, indicating the number of dwelling units which have been transferred from the parcel.
  - (2) A conservation easement for each sending parcel restricting it from further development in perpetuity, held by the *Town*, or a deed restriction held by the owner, his successors and assigns.
  - (3) A final plat for each receiving parcel. The final plat for a portion of a receiving parcel may consist of large “holding” lots that are recorded as unbuildable until further subdivision occurs. Final plats for cluster subdivisions on the holding lots shall follow all the requirements of Subsection N.5.b above.
- f. Plats on sending and receiving parcels shall follow all the requirements of the *Town* Land Division Control Ordinance.

O. Lot Averaging

*NOTE: Lot averaging increases design flexibility by permitting a wider range of lot sizes, and may be applicable to both cluster and conventional development.*

For the purpose of providing additional design flexibility beyond that already gained by the use of cluster development, lot averaging shall be permitted as follows:

1. The area of a lot may be reduced below the minimum provided that the area by which it is reduced is added to another lot, and further provided that, in all cases, proper water supply and sewerage facilities shall be provided.
2. Lot areas, widths, and setbacks shall not be reduced below the following minimums:
  - a. Lots served by centralized sanitary sewerage systems:
    - (1) Minimum lot area: 10,000 square feet.
    - (2) Minimum lot width: 60 feet.
    - (3) Minimum front yard: 25 feet.
    - (4) Minimum side yard: 10 feet.
    - (5) Minimum rear yard: 25 feet.
  - b. Lots served by private onsite waste treatment systems:
    - (1) Minimum lot area: 20,000 square feet
    - (2) Minimum lot width: 90 feet.
    - (3) Minimum front yard: 25 feet.
    - (4) Minimum side yard: 15 feet.
    - (5) Minimum rear yard: 25 feet.
3. All other density and dimensional standards of this Section shall apply to lots whose areas are averaged.
4. All lots that are large enough to be further subdivided shall be deed restricted against further subdivision designating the owner, his heirs, successors, and assigns as the grantee of the easement. The *Town* shall hold a conservation easement on such lots. The restrictions of the easement shall be enforceable either by the grantee, his heirs, successors, and assigns, or by the *Town*.

**DEFINITIONS RELATING TO CLUSTER DEVELOPMENT**

This list of definitions includes only those terms or phrases that are particular to cluster zoning ordinances and may not already be included in typical current local zoning ordinances. These terms or phrases should be added to any existing list of definitions contained in zoning ordinances to which these model cluster development provisions might be added. It should be noted that these definitions are particular to this model. If provisions of the ordinance are changed, some definitions will also need to be changed. For example, the maximum number of units in a “cluster group” may be reduced or increased; similarly, the amount of required open space may be reduced or increased.

*Italicized* words within definitions are further defined in this section.

Cluster Development. A form of residential development that concentrates buildings or lots on a part of the site to allow the remaining land to be used for common open space, recreation, and preservation of environmentally sensitive features. The concentration of lots is facilitated by a reduction in lot size. A cluster development will consist of one or more *cluster groups* surrounded by common open space.

Cluster Group. A group of single-family detached dwellings within a cluster development, surrounded by common open space that comprises at least 60 percent of the gross parcel area. The outer boundary of a cluster group shall be defined by the rear lot lines of the lots within the group.

Common Element. The *common facilities* in a *condominium*.

Common Facilities. All the real property and improvements set aside for the common use and enjoyment of the residents of a cluster development, including, but not limited to, buildings, open space, private streets, parking areas, walkways, recreation areas, drainage easements, and any utilities that service more than one unit, such as sewerage and water supply facilities.

Common Open Space. Undeveloped land within a cluster development that has been designated, dedicated, reserved, or restricted in perpetuity from further development and is set aside for the use and enjoyment by residents of the development. Common open space shall not be part of individual residential lots, and shall be substantially free of structures, but may contain such recreational facilities for residents as are shown on the approved development plan.

Community Association. A *condominium* or *homeowners association*.

Condominium. A form of ownership combining individual unit ownership with shared use and ownership of common property or facilities, established in accordance with the requirement of the Chapter 703 of the Wisconsin Statutes. Common areas and facilities are owned by all members of the condominium association on a proportional, undivided basis. A condominium is a legal form of ownership and not a specific building type or style.

Condominium Association. An association, whose members consist of owners of units in a condominium, which administers and maintains the common property and common elements of a condominium.

Conservation Easement. The grant of a property right or interest from the property owner to another person, agency, unit of government, or organization stipulating that the described land shall remain in its natural, scenic, open, or wooded state, precluding future or additional development.

Deed Restriction. A restriction on the use of a property set forth in the deed.

Density Exchange Option. An optional transfer of density between parcels within the RC Rural Cluster District.

Density Transfer. See *Density Exchange Option*.

Development Rights. A broad range of less than fee-simple ownership interests. An owner may keep fee-simple rights to his land and sell the development rights to another. The owner retains the title, but agrees to keep the land natural and undeveloped, with the right to develop resting with the holder of the development rights. See *Transfer of Development Rights*.

Farmstead. A group of existing buildings with accessory structures used for agricultural purposes, such as barns, silos, storage sheds, cribs, and coops, and which may or may not include a dwelling.

Floodplains. Those lands, including the floodplain, flood fringe, floodway, and channel, subject to inundation by the 100-year recurrence interval flood or, where such data are not available, the maximum flood of record.

Hedgerow. A row of shrubs or trees planted for enclosure or separation of fields.

Height of Building. The vertical distance measured from the average elevation of the existing grade of the building to the highest point of a flat or multi-level roof or, for gable or hip roofs, to the mean height between the eaves and the ridge. Chimneys, spires, towers, mechanical penthouses, tanks, and similar projections not intended for human occupancy shall be excluded.

Homeowners Association. An association combining individual home ownership with shared use, ownership, maintenance, and responsibility for common property or facilities, including private open space, within a land division or cluster development.

Net Buildable Acreage or Net Buildable Area (NBA). A calculated area upon which the density for cluster development is computed. Net buildable acreage is the area of a site remaining after subtracting all or a percentage of the following areas from the site's gross area: existing street rights-of-way, floodplains, wetlands, woodlands, ponds and lakes, steep slopes, and utility and railway rights-of-way.

Nonprofit Conservation Organization. A nonprofit corporation, charitable trust, or other nonprofit organization described in Section 501(c)(3) of the Internal Revenue Code, which includes the “acquisition of property or rights in property for conservation purposes” as part of its mission, as reflected in the bylaws, charter, or incorporation papers of the organization.

Restrictive Covenant. See *Deed Restriction*.

Separation Distance. The required dimensional distance between the outer boundary of a cluster group and another specified feature of the development.

Transfer of Development Rights. The conveyance by deed, easement, or other legal arrangement of the right to develop or build from one parcel to another, expressed in number of dwelling units, where such transfer is permitted by the zoning ordinance.

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