

Section 107-050 Open Space Ownership and Preservation

1. The open space preserved as Conservation Open Space under a Cluster Conservation Subdivision shall be maintained in a natural state and used for the following purposes only:
 - a. Protection of areas with unique or environmentally sensitive features.
 - b. Protection of the quality and quantity of underground and surface waters.
 - c. Conservation of soils, wetlands or marshes.
 - d. Protection of natural drainage systems for assurance of safety from flooding.
 - e. Preservation of sites or areas of scenic beauty or historic interest.
 - f. Conservation of forest, wildlife, agricultural and other natural resources.
 - g. Pedestrian pathways.

2. Small areas of conservation open space scattered throughout the development shall be avoided. To the extent possible, a contiguous system of open space areas shall be achieved by linking open space areas with pedestrian pathways. Where there exists a contiguous development with an area of open space and when possible, the area of conservation open space for the proposed Cluster Conservation Subdivision shall be designed to abut the open space of an adjoining development.

3. Open Space Provisions. The land not allocated to building lots and streets shall be permanently reserved as open space and shall be transferred to a common interest association of the homeowners. Membership in said association shall be mandatory. The owner of each lot in the subdivision shall own an undivided interest in the open space proportionate to the total number of lots in the subdivision. Each homeowner and/or the association so formed shall be liable for all necessary maintenance costs of the open space. Maintenance costs incurred by the Town because of default on the part of the homeowner and/or the association shall be liened on the property of the homeowner and/or the association and said lien may be foreclosed by the Town in exactly the same manner in which unpaid real estate taxes due the Town are liened and foreclosed. Open space transferred to an association of homeowners shall be transferred in accordance with the standards established by the Commission to include, but not be limited to the following:
 - a. Creation of the homeowners association before any lots are sold.
 - b. Mandatory membership by the original homeowner and any subsequent buyer.
 - c. Powers to assess and collect from each homeowner a fair share of the associated costs.
 - d. Permanent Restrictions of the use and development of such open space ensuring that the open space will not be subdivided further in the future and the use of open space shall continue in perpetuity for the specified purpose.

- e. Responsibility for liability insurance, local taxes, and the adequate maintenance of recreational and other facilities.
 - f. Approval of Articles of Incorporation and deed restrictions by the Commission attorney.
4. Deed Restrictions: Any land dedicated for open space purposes shall contain appropriate covenants and deed restrictions (approved by the Town Attorney for Town dedicated property) ensuring that:
- a. The open space area will not be further subdivided in the future.
 - b. The use of open space will continue in perpetuity for the purpose specified.
 - c. Appropriate provisions will be made for the maintenance of the open space.
 - d. Rights of public access to the open space are provided when appropriate.
5. Subdivision Open Space: In addition to the Conservation open space, additional open space may be designated for use by the residents of the subdivision for recreation buildings, pools, tennis courts, school bus shelters, parks, playgrounds or other outdoor recreation facilities, stormwater management systems and other such common use structures as may be approved by the Planning and Zoning Commissions. All deed restrictions and open space provisions found in this section shall also apply to Subdivision Open Space.