

May 5, 2004

AN ORDINANCE AMENDING APPENDIX "A" OF THE CHESAPEAKE CITY CODE, ENTITLED "ZONING," TO REPEAL EXISTING PROVISIONS IN SECTION 6-2200 ET SEQ. IN THEIR ENTIRETY AND TO ADOPT NEW REGULATIONS UNDER SECTION 6-2200 ET SEQ. TO GOVERN RESIDENTIAL CLUSTER DEVELOPMENTS IN THE A-1 AGRICULTURAL DISTRICT, THE RE-1 RESIDENTIAL ESTATE DISTRICT, AND THE R-40s, R-40(a)s, R-25s, R-25(a)s, R-15, R-15(a)s, R-12, R-12(a)s, R-10, R-10s AND R-8 SINGLE-FAMILY RESIDENTIAL DISTRICTS; AND TO AMEND SECTIONS 5-900, 10-501, 10-502, 10-601.C. AND 10-602 TO PROVIDE FOR DENSITY EXCEPTIONS FOR RESIDENTIAL CLUSTER DEVELOPMENTS AND TO PERMIT RESIDENTIAL CLUSTER DEVELOPMENTS IN THE A-1 AGRICULTURAL DISTRICT PURSUANT TO CERTAIN STATED CONDITIONS.

BE IT ORDAINED by the Council of the City of Chesapeake, Virginia that Section 6-2200 et seq. of Appendix "A" of the Chesapeake City Code, entitled "Zoning," be repealed in its entirety and be reordained as follows, and that Sections 5-900, 10-501, 10-502, 10-601.C. and 10-602 thereof be amended and reordained as follows:

§ 5-900. Exceptions for group housing for the elderly certain uses.

A. Group Housing for the Elderly

Unless otherwise specified in this ordinance, group housing for the elderly, as described in Article 13 of this ordinance, shall not be subject to the multifamily density requirements set out above. The density for any such development shall be established by city council upon approval of a conditional use permit authorizing such development; provided that such

densities do not exceed the limitations set out in Section 13-202 of this ordinance.

B. Cluster Developments

Residential cluster developments meeting the requirements in Section 6-2200 of this ordinance and Article VI of Chapter 70 of the City Code may exceed the maximum residential densities set out above with the issuance a conditional use permit by City Council.

§ 6-2200. Residential Cluster Development Standards

§ 6-2201. Purpose and Intent; Application

A. Purpose

In conformance with state enabling legislation, the purposes of this Section, among others, are as follows:

1. To conserve open land, including those areas containing unique and sensitive natural features such as woodlands, streams, floodplains, and wetlands, by setting them aside from development;
2. To provide greater design flexibility and efficiency in the siting of services and infrastructure, including the opportunity to reduce length of roads, utility lines, and the amount of paving required for residential development;
3. To provide for a diversity of lot sizes, building densities, and housing choices to accommodate a variety of age and income groups, and

residential preferences, so that the City's population diversity may be maintained;

4. To implement adopted City policies to conserve a variety of irreplaceable and environmentally sensitive resource lands as designated in the City's Comprehensive Plan, the Chesapeake Bay Preservation Area District Ordinance, the Countryside and Rural Overlay Districts;
5. To provide incentives to create a conservation corridor system for the Southern Watershed Area as defined in the "Memorandum of Agreement to Improve the Coordination of the Wetlands Compensation Process in the Southern Watershed Area," for the benefit of present and future residents;
6. To implement adopted land use, transportation, and community policies, as identified in the City's Comprehensive Plan;
7. To protect areas of the City with productive agricultural soils for continued or future agricultural use by conserving blocks of land large enough to allow for efficient farm operations;
8. To create communities with strong neighborhood identities, visual access to open land, and amenities in the form of neighborhood open space;

9. To provide for the conservation and maintenance of open land within the City to achieve the above-mentioned goals and for active or passive recreational use by residents;
10. To provide multiple options for landowners in order to minimize impacts on environmental resources (sensitive lands such as wetlands and floodplains) and disturbance of natural or cultural features (such as mature woodlands, hedgerows and tree lines, critical wildlife habitats, archeological sites, historic buildings and properties, and breastworks);
11. To provide standards reflecting the varying circumstances and interests of individual landowners and the individual characteristics of their properties; and
12. To conserve scenic views and elements of the City's rural character, and to alter perceived density, by minimizing views of new development from existing roads.

B. Application

This Section 6-2200 et seq. shall apply to all permitted and conditional residential cluster developments that have not received a conditional use permit for cluster development prior to the effective date of this amendment.

§ 6-2202. General regulations.

All cluster developments shall be governed by the following minimum standards:

A. **Ownership:** The tract of land may be held in single and separate ownership or in multiple ownership. However, when a tract is held in multiple ownership, it shall be planned as a single development, with common authority and common responsibility among all property owners.

B. **Site Suitability:** As evidenced by the Existing Resources and Site Analysis Map, the preliminary subdivision plan, and the final subdivision plan, as described in Article VI of Chapter 70 of the City Code, the property incorporating the cluster design shall be suitable for supporting development in terms of zoning, size, configuration and environmental conditions.

C. **Intersections and Access:** New intersections with existing public roads shall be minimized. Although two access ways are generally required to ensure emergency access to subdivisions containing more than 150 dwellings, proposals for more than two entrances on public roads shall be discouraged and denied if the Department of Public Works determines that more than two accesses would unnecessarily disrupt traffic flow or result in traffic hazards.

D. **Sensitive Area Disturbance:** The cluster development shall strictly minimize disturbance of environmentally sensitive areas shown on the Existing Resources and Site Analysis Map. Lands containing wetlands; threatened, rare or

endangered species; or CBPA Resource Protection Areas constitute such environmentally sensitive areas, where disturbance shall be strictly minimized. Demonstration by the applicant that these features will be protected by the proposed cluster development shall be prerequisite to approval of both the preliminary subdivision plan and the final subdivision plan.

E. Private Sewer Disposal Systems: In cluster developments that are to be served by private sewer disposal systems, the selection of a wastewater treatment technique shall conform with Section 70-141 and Section 70-142 of the City Code. Private sewer disposal systems, whether serving the community or individual lots shall be provided where public utilities are not available or required by the City Code or under applicable policies relating to availability and extension, including, but not limited to the HRSD service area and franchise area policies.

F. Adequate Levels of Service for Conditional Use: Cluster developments which propose increases in allowable density beyond that permitted in the underlying zoning district require a conditional use permit pursuant to Section 6-2210 of this ordinance. All conditional use permits shall be subject to Article 17 of this ordinance and a finding of sufficient service levels in each category specified in the City's level of service tests in the Planning and Use Policy or similar policy approved by City Council. A conditional use permit shall also be required for more than five (5) lots in the A-1 Agricultural District in accordance with Section 6-2210 below.

§ 6-2203. Use regulations.

Property in residential cluster developments may be used for the following purposes only. All such uses shall be designated on the preliminary subdivision plan and final subdivision plan approved for the cluster development.

A. Residential:

1. Detached single-family dwellings in the A-1, RE-1, R-40, R-40(a)(s), R-25, R-25(a)s, R-15, R-15(a)s, R-12, R-12(a)s, R-10, R-10s and R-8 zoning districts.
2. Residential buildings for attached single-family dwellings in the R-10, R-10s, and R-8 zoning districts, up to a maximum of forty (40) percent of the total number of allowable units. Attached single-family residential buildings shall use equivalent materials to detached single-family homes and be of compatible design.

B. Non-Residential:

Conservation land shall be provided and used for nonresidential purposes only in accordance with the requirements of Section 6-2205 below entitled, "Conservation Land Use and Design Standards." Nonresidential uses of designated conservation land shall be subject to the standards in Section 6-2208 below entitled, "Ownership and Maintenance of Conservation and Common Facilities."

C. **Accessory Uses:**

Accessory uses shall be permitted on the same lot with, and as customarily incidental to, any permitted principal use. Accessory uses shall not be conducted as an independent principal use, as determined by the Zoning Administrator.

§ 6-2204. Density and Dimensional Standards

All cluster developments shall be subject to the following:

A. **Density Standards**

The maximum allowable residential density for permitted cluster developments shall be calculated by multiplying the total net developable area of the site, as determined in accordance with Section 19-201 and Section 5-600 of this ordinance, by a residential density figure for the zoning district in which the said parcel is located. The residential density figures for each zoning district are as follows:

<i>Zoning District Classification</i>	<i>Density (Dwelling Units per Acre)</i>
A-1	.33 (up to a maximum of 5 lots)
RE-1	.33
R-40s, R-40(a)s	1.0
R-25s, R-25(a)s	1.5
R-15, R-15(a)s	2.2
R-12, R-12(a)s	2.6
R-10, R-10s	3.2
R-8	5.4

Increased densities, and in the case of the A-1 Agricultural District, an increase in the number of lots beyond five, shall only be permitted with the issuance of a conditional use permit by City Council.

B. Dimensional Standards

1. Minimum Overall Tract Size: 10 acres
2. Required Conservation Land: Each cluster development must include a minimum percentage of the total net developable area of the site, determined in accordance with Section 19-201 and Section 5-600 of this ordinance, as conservation land. The required percentage of total net developable area to be preserved as conservation land in each zoning district is as follows:

Zoning District Classification	Required Conservation Land (%)
A-1	40%
RE-1	40%
R-40s, R40(a)s	40%
R-25s, R-25(a)s	40%
R-15, R-15(a)s	35%
R-12, R-12(a)s	35%
R-10, R-10s	35%
R-8	35%

Notwithstanding the foregoing, a minimum of three (3) acres of required conservation land shall be provided. The percentages set out above must be met by areas other than i) CBPA Resource Protection Areas and ii) land excluded from calculation of “residential density” in Section 5-600 of this ordinance. These lands shall be designated as Primary Conservation Areas (PCAs) but shall not be counted toward meeting the required percentage of conservation land set out above. Required conservation land is subject to reduction only through approved credits in accordance with Section 6-2209

below. Conservation land shall not be included in residential lots or used for residential purposes.

3. Minimum Residential Lot Area: Cluster residential lots shall have a minimum lot area of 7,000 square feet, except that lots in the RE-1 Residential Estate District and the A-1 Agricultural District must have a minimum lot area of one (1) acre.

4. Minimum Residential Lot Width Measured at Required Front Yard: 75 feet, except that in the RE-1 Residential Estate District and the A-1 Agricultural District, the minimum residential lot width, measured at the required front yard, shall be 125 feet.

5. Minimum Residential Lot Street Frontage: 20 feet as measured from the reservation line, or if no reservation line, then from the right-of-way.

6. Minimum Residential Lot Yards: Variations in the principal building position and orientation are encouraged, but all residential development shall meet the following minimum standards:

a. Required Front Yard: 20 feet, except that in the RE-1 Residential Estate District and the A-1 Agricultural District, the minimum required front yard shall be 40 feet. Required front yards shall be measured from the reservation line, or if no reservation line, then from the right-of-way.

- b. Required Rear Yard: 20 feet if the rear yard is adjacent to designated conservation land, 25 feet if not. In the RE-1 Residential Estate District and the A-1 Agricultural District, a minimum 50 foot rear yard is required, with a 10 foot reduction if the rear yard abuts designated conservation land.
 - c. Required Side Yard: 10 feet on each side, except that in the RE-1 Residential Estate District and the A-1 Agricultural District, a 25 foot side yard is required on each side.
 - d. Accessory Structures: 5 feet from side and rear property lines. In the RE-1 Residential Estate District and A-1 Agricultural District, a 10 foot setback from side and rear property lines shall be required. In no event shall an accessory structure be placed in front of an established front yard, unless otherwise provided in this ordinance in the case of secondary front yards of through lots and corner lots.
 - e. Additional Setbacks: Additional setbacks are provided in Section 6-2206 below.
7. Maximum Height of Buildings and Structures: 35 feet throughout the cluster development, unless a conditional use permit is issued by City Council under Section 19-205 of this ordinance.

C. Other Regulations

All cluster developments shall meet all other development standards, use restrictions, and supplemental regulations applicable in the underlying zoning district not inconsistent with this Section 6-2200. Where a conflict exists, the requirements of this Section 6-2200 shall govern.

§ 6-2205. Conservation Land Use and Design Standards

Designated conservation land in all cluster developments shall meet the following minimum standards:

A. Permitted Uses

Only the following uses are permitted on designated conservation land:

1. Conservation of open land in its natural state, including woodlands, arboreta, fallow fields, wildlife sanctuaries, game preserves, or managed meadow.
2. Agricultural and horticultural uses, including raising crops; grazing of certain livestock, including horses, cows, and sheep; wholesale nurseries; and buildings and structures, excluding residences and accessory residential structures, that are specifically needed to support an active, viable agricultural or horticultural use. Specifically excluded are livestock operations involving swine, poultry, mink, and dairy.

3. Pastureland and equestrian areas for horses used for recreational purposes are permitted but may not consume more than three-quarters of the minimum required conservation land.
4. Silvicultural activities in keeping with standards established by the Virginia Department of Forestry for selective harvesting and sustained yield forestry.
5. Neighborhood open space uses such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses, specifically excluding buildings, motorized off-road vehicles, shooting ranges, and other uses similar in character and potential impact, as determined by the Planning Director or designee.
6. Public parks and other noncommercial active recreational uses, including playing fields, playgrounds, courts, and impervious bikeways, provided such facilities do not cover more than fifty percent (50%) of the minimum required conservation land. Playing fields, playgrounds, and courts shall not be located within 100 feet of abutting property lines. Buildings and structures incidental to playing fields, playgrounds and courts shall not exceed 3,000 square feet in total combined area. Playground equipment shall be of neutral or earth-tone colors. Parking areas for approved noncommercial

recreational use shall also be permitted, if gravel-surfaced, unlighted, and properly drained. Such parking areas shall contain no more than ten (10) parking spaces, with sufficient area for safe ingress and egress, as determined by the Department of Public Works.

7. Commercial and public golf courses, including cart barns, parking areas, club houses and other accessory structures, as determined by the Zoning Administrator, may constitute up to one-half of the minimum required conservation land but shall not include driving ranges or miniature golf facilities. Parking areas and accessory buildings and structures shall not count toward meeting the minimum required conservation land. Such excluded parking areas and access lanes may be paved and lighted.
8. Storm water management areas shall be designed, landscaped, and made available for use as an integral part of the designated conservation land as follows:
 - a) Retention and detention areas shall meander through the subdivision as a greenbelt, rather than as a single basin. Retention areas shall be improved so as to be useable and accessible for recreational purposes. Retention areas shall not inundated to the extent that they are unusable for their designated recreational purposes.

b) Retention and detention areas shall be designed with a natural character and shall be constructed of natural materials.

Terracing, berming, and contouring is required in order to naturalize and enhance the aesthetics of the basin. Such features shall be approved by the Director of Planning or designee. Basin slopes shall not exceed a three to one slope.

These areas shall not be counted toward required conservation land.

9. Public utility buildings, structures and uses essential to the cluster development, although these areas shall not be counted toward required conservation land. Specifically excluded are communication towers, containers, business facilities, storage of materials, trucking facilities, repair facilities, housing of repair crews, solid waste management facilities and activities of similar nature and impact, as determined by the Zoning Administrator.
10. Easements for public and private drainage facilities, sewer and water facilities, public access, emergency vehicle access, fire hydrants, dry hydrants with water supply tanks, and other public purposes. Such easements shall not count toward meeting the minimum required conservation land.
11. Streets may traverse conservation areas but shall not count toward meeting the minimum required conservation land.

B. Design Standards for Conservation Land

The following design standards are required for all designated conservation land:

1. Designated conservation land shall be configured in general accordance with the City's Map of Potential Conservation Lands set out in the Comprehensive Plan to ensure that an interconnected network of open space will be provided to the greatest extent possible.
2. Designated conservation land shall consist of Primary Conservation Areas (PCAs) and Secondary Conservation Areas (SCAs). PCAs must be included in the designated conservation land but shall not count toward meeting the required percentage of conservation land in Section 6-2204 above.
 - a) PCAs shall include all undevelopable lands, including water features, tidal wetlands, and Chesapeake Bay Preservation Area (CBPA) Resource Protection Areas, as well as those areas listed in Section 5-600 of this ordinance as being deducted from the total parcel acreage in calculating residential densities.
 - b) SCAs shall include special features of the property, such as historical structures or sites and nontidal wetlands, that could otherwise be overlooked during the development process.

Examples of such features are listed and described in Section 70-212 of the City Code.

3. To the extent practicable, designated conservation land shall be contiguous. In addition, designated conservation land shall adhere to the following criteria:
 - a) Open areas shall be visible from at least one (1) adjoining arterial or collector street.
 - b) The layout of the designated conservation land shall maximize frontage on a public street. Minimum frontage at the right-of-way line shall be two-hundred (200) feet.
 - c) Designated conservation land shall be maintained for the approved purposes and may not be separately sold, subdivided, or developed, except as expressly provided in subsection d) below.
 - d) Notwithstanding the foregoing or the requirements of any conditional use permit for a cluster development approved prior to the effective date of the 2004 amendment of this ordinance, the City Council may approve the disposal of open space accepted by the City as part of a conditional cluster development, provided that the Directors of Planning and Parks and Recreation jointly find that 1) due to size, shape, location

or condition, the property is not needed for recreational or open space purposes; 2) adequate park and open space is available to the residents of the cluster development; and 3) the property is overly costly to maintain when weighed against the public benefit of retaining the land. In no event shall this subsection authorize the disposal of more than 25% of the open space required by the approved conditional use permit for the cluster development. Additionally, no conveyance of the open space shall be made until City Council has 1) held a duly advertised public hearing; 2) sent written notification of the time, place and purpose of the public hearing to all adjacent property owners and any property owners association for the cluster development at least fourteen (14) days in advance of the public hearing; and 3) approved the conveyance by a three-fourths vote of all members, as required by state law. No conveyance shall be approved or made for private gain. Conveyance shall be limited to grantees recognized under federal tax laws as non-profit organizations and shall be subject to restrictive covenants to use the property for the benefit of the public good.

4. Designated conservation land may be owned and maintained by the City, a property owners association, a conservation land trust, a nonprofit conservation organization approved by the City, or by one or more private individuals under a permanent conservation easement. These ownership options may be combined so that different parts of the conservation land may be owned by different entities. All designated owners must indicate a willingness to accept the conservation land prior to approval of the final subdivision plan for the cluster development.
5. Where a cluster development adjoins public parkland, the designated conservation land shall be situated adjacent to the park to the maximum extent practicable. In cases where conservation land does not adjoin public parkland, a natural conservation buffer at least 150 feet in width shall be provided within the cluster development along its common boundary with adjacent property. No new buildings or structures shall be constructed in the 150 foot buffer; nor shall any clearing of trees or understory growth be permitted unless approved by the Planning Director or designee as necessary for street or trail construction, active recreational facilities, public and private utilities subsurface septic disposal system, spray irrigation systems, or stormwater management facilities. Where the 150 foot buffer is

unwooded or sparsely wooded, the Planning Director or designee may require that vegetative screening be planted or that the buffer be managed to encourage natural forest succession through “no-mow” practices and the periodic removal of invasive alien plant and tree species.

C. Other Requirements

1. No portion of any residential lot may be used for meeting the minimum required conservation land. However, active agricultural land with farm buildings, excluding areas used for residences and residential accessory buildings or structures, may be used to meet the minimum required conservation land.
2. Pedestrian and maintenance access to the designated conservation land, excluding those lands actively used for agricultural or horticultural purposes, shall be provided in accordance with the following requirements:
 - a. One centrally located access point shall be provided for every fifteen (15) lots or dwellings. Said access shall be a minimum of 35 feet in width.
 - b. Access to designated conservation land used for agricultural or horticultural purposes may be appropriately restricted or denied as necessary to promote public safety and prevent interference with agricultural and horticultural operations.

3. All designated conservation land that is not wooded, farmed, or managed as meadows shall be landscaped in accordance with Chapter 70 of the City Code (Subdivision Ordinance) and Article 19 of this ordinance (Landscape Ordinance). Notwithstanding these requirements, active recreational areas shall have a minimum canopy coverage of 10% of total conservation land area and passive recreational areas shall have a minimum canopy coverage of 20% of total conservation land area, as approved by the Director of Planning or designee. Additional buffers are also required as specified elsewhere in this Section 6-2200 and in Chapter 70 of the City Code.
4. Designated conservation land may be credited toward the open space land dedication requirements of Section 19-700 of this ordinance; however, in lieu fees will be assessed unless required improvements are provided.

§ 6-2206. Residential Design Standards for Cluster Development

A. Additional Setbacks for Dwelling Units

In addition to the minimum yard requirements in Section 6-2204 above, all newly constructed dwellings units shall meet the following minimum setbacks:

1. From the ultimate right-of-way of all off-site streets, 100 feet in all residential districts except that in the RE-1 Residential Estate District and the A-1 Agricultural District, a 300 foot setback shall be required.
2. From cropland or pasture land: 100 feet

3. From buildings, barnyards, shelters or pens housing livestock: 300 feet
4. From active recreation areas, such as courts or playing fields (not including “tot-lot” playgrounds): 75 feet
5. From passive recreation areas (including “tot-lot” playgrounds): 50 feet

B. Screening of Residential Development

Views of residential lots from off-site streets and abutting properties shall be minimized by the use of changes in topography, berms, existing vegetation, or additional landscaping that meets or exceeds the landscaping requirements of the Subdivision Ordinance and the Landscape Ordinance, as determined by the Planning Director or designee.

C. Access to Residential Lots

All residential lots shall be accessed from interior streets rather than from streets bordering the cluster development.

D. Location of Residential Lots

At least 75% of the residential lots shall directly abut, or be located directly across the street from, the designated conservation land.

E. Street Buffers

Street buffers shall be required along all off-site existing and reserved arterial streets, as follows:

- (1) The buffer shall be no less than 75 feet in width;

- (2) The buffer shall be exclusive of residential lots and shall be free of buildings, structures, improvements and parking, except for the following allowable improvements:
- (a) an entrance road approved by the Department of Public Works;
 - (b) community or directional signage to the extent permitted by Section 14-700 of this ordinance or by subsection F. below;
 - (c) bicycle, pedestrian and recreational paths;
 - (d) public utility facilities; and
 - (e) retention and detention areas and stormwater management facilities approved by the Department of Public Works.
- (3) In cases where street buffers contain bicycle, pedestrian or recreational trails that provide an approved link to a community trail system or conservation land area, the street buffer area be counted toward meeting the required conservation land. Street buffers with any of the other allowable improvements specified in subsection E(2) above shall not be counted toward meeting the required designated conservation land.
- (4) If the street buffer is non-wooded, or lacks sufficient vegetative screening as determined by the Director of Planning or designee, the applicant shall install vegetation that is twice the required street frontage buffer in the Landscape Ordinance.

F. **Community Entrance Sign**

Notwithstanding anything to the contrary in Section 14-700 of this ordinance, one (1) detached community entrance sign is permitted at each community entrance from an offsite public street, provided that each such sign meets the following criteria.

- (1) Has a maximum area of 32 square feet;
- (2) Has a maximum height of 8 feet;
- (3) Is located at least 50 feet from any residence;
- (4) Is located at least 15 feet from any public street right-of-way line (including, without limitation, alleys and drive aisles) or other property line;
- (5) Is not illuminated; and
- (6) Includes a landscaped area around the base of the sign at least twice the size of the sign area. Such landscaped area shall be a minimum of four (4) feet in width; protected from vehicular encroachment; and planted with a combination of low-growing shrubs and groundcovers (other than grass), including at least four (4) small shrubs as approved by the Planning Director or designee. The vegetation shall be designed and maintained to a maximum a height of four (4) feet above the grade.

G. Trails

The cluster development shall include bicycle, pedestrian and/or recreational trails which connect cul-de-sacs to one another and to designated conservation land. In the alternative, the cluster development shall include the provision of sidewalks on both sides of all internal streets, including the entrance road, or a combination of sidewalks and trails, as approved by the Planning Director or designee. Trails shall be constructed in accordance with Section 70-209 of the Subdivision Ordinance.

H. Street Design

Street layout and design shall meet the requirements in Section 70-210 of the Subdivision Ordinance.

§ 6-2207. Protection of Designated Conservation Land

A. Conservation Easements Required

Conservation land that is required to be designated, established and preserved in cluster developments shall be subject to permanent conservation easements or deed restrictions prohibiting future development and defining the range of permitted activities. The clearing of woodlands shall be prohibited, except as necessary to establish approved streets, trails and active recreational facilities or to install approved public and private utilities, subsurface septic disposal systems, spray irrigation facilities or stormwater management facilities. The determination of necessity for clearing shall be vested in the Planning Director or designee. A list

of permitted uses of designated conservation land is contained in Sections 6-2203 and 6-2205 above.

B. Implementation

The applicant shall record the required permanent conservation easement prior to or simultaneously with the recordation of any final subdivision plat for any portion of a cluster development.

§ 6-2208. Ownership and Maintenance of Conservation Land and Common Facilities

A. Development Restrictions

All conservation land shall be permanently restricted from future subdivision and development by a permanent conservation easement. Under no circumstances shall any development be permitted in the designated conservation land at any time, except for approved uses listed in Sections 6-2203 and 6-2205 above. All conservation easements shall be subject to the approval of the City Attorney.

B. Ownership Options

The following forms of ownership are available, either individually or in combination, for designated conservation land; however, the conservation land shall be initially offered for dedication to the City. Designated conservation land shall not be transferred or conveyed to any individual or entity except as permitted and approved under this Section 6-2200. No transfer or conveyance shall result in a change in the conservation land or in the ratio of the conservation land to the entire cluster development. Ownership options shall include one or more of the following:

1. Fee Simple Dedication to the City: The City may, but is not be required to, accept any portion of the designated conservation land, provided that:
 - a. There is no cost of acquisition to the City; and
 - b. The City agrees to and has access to maintain such conservation land.

2. Property Owners Association: Conservation land may be held in common ownership by a property owners association, formed in accordance with state law, and subject to the following:
 - a. The applicant shall provide the City with a description of the proposed property owners association, including a copy of its bylaws and all documents governing ownership, maintenance, and use restrictions for the designated conservation land.
 - b. The property owners association shall be established and operational (with financial subsidization by the owner or applicant, if necessary) before the sale of any dwelling unit in the cluster development.
 - c. Membership in the property owners association should be automatic for all purchasers of dwelling units in the cluster development and their successors in title.

- d. The property owners association shall be responsible for maintenance, repair, operation and insurance of the designated conservation land.
 - e. The bylaws shall confer legal authority on the property owners association to place a lien on the real property of any member who falls delinquent in dues.
 - f. Written notice of any proposed transfer of the designated conservation land by the property owners association must be given to all members of the association and to the City no less than thirty (30) days prior to such event.
 - g. The property owners association shall have adequate staff and funding to administer, maintain, repair and operate the designated conservation land.
3. Nonprofit Conservation Organization or Land Trust: With permission of the City, an owner may transfer either fee simple title of the designated conservation land on the land to a nonprofit conservation organization or conservation land trust, provided that:
- a. The conservation organization or conservation land trust is acceptable to the City;
 - b. The conservation organization or conservation land trust is established to exist indefinitely;

- c. The conveyance contains appropriate provisions for proper reverter in the event that the conservation organization or conservation land trust becomes unwilling or unable to continue carrying out its functions;
 - d. The conservation land is permanently restricted from future development through a perpetual conservation easement; and
 - e. A maintenance agreement acceptable to the City is established between the owner and the conservation organization or conservation land trust.
4. Dedication of Easements to the City: The City may, but is not required to, accept easements for passive public uses of any portion of the designated conservation land. In such cases, the land remains in the ownership of the property owners association, conservation organization, conservation land trust one or more or individuals while the easements are held by the City. In addition, the following shall apply:
- a. There shall be no cost of acquisition to the City;
 - b. The easement area for passive public use shall be accessible to all residents of the City; and
 - c. A satisfactory maintenance agreement shall be reached between the owner of the conservation land and the City.

5. Individual Ownership: The conservation land may be owned by one or more individuals, provided that it is subject to a permanent conservation easement prohibiting future development or subdivision of the property.

C. Maintenance

1. The cost and responsibility of maintaining the conservation land shall be borne by the fee simple owner or the owner's obligee.
2. The applicant shall, at the time of preliminary subdivision plan submission, provide a Plan for Maintenance of Conservation Land and Operation of Common Facilities ("Plan of Maintenance") in accordance with the following requirements:
 - a. The Plan of Maintenance shall define ownership;
 - b. The Plan of Maintenance shall establish necessary regular and periodic operation and maintenance responsibilities for permitted uses of designated conservation land (e.g., village greens, playing fields, meadows, pastures, croplands or woodlands);
 - c. The Plan of Maintenance shall estimate staff needs, maintenance and operational costs, insurance requirements, and other expenses associated with the conservation land and shall define the means for funding these costs on a perpetual

basis. The Plan of Maintenance shall also include the means for funding anticipated long-term capital improvements.

- d. At the discretion of the final (approval authority the Planning Director or City Council, as the case may be) the applicant may be required to escrow sufficient funds for the maintenance and operation costs for the designated conservation land for up to one year after final approval of the cluster development; and
- e. Any changes to the Plan of Maintenance shall be approved by the Planning Director, or designee, or in the case of a conditional cluster development, by the City Council.

- 3. In the event an owner (other than the City) or other person or entity responsible for maintaining the conservation land, fails to maintain all or any portion thereof in reasonable order and safe condition, the City may temporarily assume responsibility for maintenance and repairs. In such cases, any escrowed funds may be forfeited to the City and any permits or approvals may be revoked, suspended, or delayed until maintenance is resumed by the responsible party. The City may attach or place a lien on such escrowed funds as necessary to recover public monies expended by the City on maintenance, repairs and operational costs, including administrative fees and penalties.

4. The City may enter the premises and take corrective action, including maintenance, repairs and operations. The costs of such corrective action, including administrative fees and penalties, may be charged to the property and to the property owners. Such costs shall become a lien on said properties. Notice of such lien shall be filed by the City in the Office of the Clerk of the Circuit Court. Where the owner is a property owners association, the City may recover the cost of corrective action from individual unit owners based on their pro rata share of ownership.

§ 6-2209. Credit for Enhanced Architectural Design Features and Community Enhancements

A. Allowable Credit

In all zoning districts other than the A-1 Agricultural District, the applicant may reduce the amount of conservation land required in Section 6-2204 above by a maximum of ten percent (10%) in exchange for incorporating certain community enhancements and architectural design features in the proposed cluster development. In no event shall the required conservation land be reduced below three (3) acres in size; nor shall more than five (5) lots be added in the area of reduced conservation land. The following is a table of qualifying criteria with a corresponding number of points assigned to each enhancement.

Design Element	Points (0 for None)
Not less than three (3) residential elevations shall be offered which have differences in the choice of facades, roof lines, and exterior colors.	1
No two (2) residential structures with the same front façade shall be located on the same side of the street within three (3) building lots of each other. Façade reversal shall be considered dissimilar appearance.	1
All garages on residential structures are side or rear-loading.	1
All homes include a front porch with a minimum width of six (6) or eight (8) feet.	1 point for a minimum width of 6 feet, and 2 points for a minimum width of 8 feet.
All homes provide primary entryways and landings that are visible from the street, are at least 6 feet in length, and are at least 24 square feet in area.	1
All exterior materials and finishes include brick, stone, wood, clapboard, cedar shake, hardboard, fiber cement or similar material on at least 75% or 100% of all exterior elevations.	1 point for 75% and 2 points for 100%

All skirting consists of brick, stone, or stone-faced block.	1
All exterior chimneys are constructed of brick or stone.	1
A customized entrance is provided at the entry street intersecting the arterial or major collector and includes signage and landscaping in accordance with Section 6-2206.	3
All homes are constructed on a minimum of 16-inch raised slab or crawlspace. Credit shall not be given to those houses constructed in a floodzone.	2
Exceptional streetscape improvements, such as planted medians in cul-de-sacs, landscaped medians, brick walls, decorative fencing (except chain link and privacy fencing), landscaped traffic circles, and special pavers.	3
Canopy coverage in addition to minimum landscape standards.	1 point for each 10% additional canopy coverage, for a maximum of 8 points
At least 2 types of the following improvements to passive recreational facilities: decorative trash	2

receptacles, benches, bridges, picnic shelters with tables or mini-shelters, overlook facilities, and gazebos, as approved by the Parks and Recreation Department.	
Use of bioretention areas, fountains, and landscaped buffers (G-1 BMP buffer standards) for stormwater management facilities.	3
Other innovative site or architectural features as approved by the Planning Director.	1
Voluntary reservation of public right-of-way shown on Master Road Plan or Transportation Plan, approved by the Public Works Director.	1
Voluntary dedication of public right-of-way shown on Master Road Plan or Transportation Plan, approved by the Public Works Director.	3

B. Implementation

The total number of architectural design feature points shall correspond to the following reduction in the percentage of required conservation land:

- 2 to 15 points = 2% reduction in required conservation land
- 15 to 25 points = 5% reduction in required conservation land
- Greater than 25 points = 10% reduction in required conservation land

Each enhancement or design feature to be included in the proposed development for which the applicant seeks reduction in required conservation land shall be included and approved in the initial cluster development site plan or, if applicable, conditional use permit applications.

§ 6-2210. Discretionary Density Bonuses

Increased density may be permitted by City Council, including approval of more than five (5) lots in the A-1 Agricultural District, through the approval of a conditional use permit pursuant to Article 17 of this ordinance, provided that one or more of the following public benefits is proposed and stipulated:

A. Endowment for Conservation Maintenance

1. When conservation land is to be donated to and accepted by the City or by an approved nonprofit conservation organization or conservation land trust, City Council may allow up to a ten (10) percent density bonus. This density bonus is intended to generate additional income to the applicant for the purpose of endowing a permanent fund to offset the costs of maintaining the designated conservation land. The endowment shall be funded in a reasonable amount determined by City Council. Funds shall be used exclusively for maintenance activities such as managing meadows, removing invasive vines, paying insurance premiums, and defraying costs associated with active or passive recreation facilities. Spending from this fund should be restricted to interest so that the principal of the fund may be preserved to the

extent possible. Assuming an annual average interest rate of five percent, the amount designated for the endowment fund shall be at least twenty (20) times the estimated annual maintenance costs. Such estimate should be prepared by an agency, firm, or organization acceptable to City Council, having experience in managing conservation land and recreational facilities.

2. Because additional dwellings may reasonably be considered to be net of development costs and represent true profit, 75 percent of the net selling price of the additional lots permitted by the conditional use permit shall be donated by the applicant to the conservation maintenance endowment fund for the conservation lands within the cluster development. This fund shall be transferred by the applicant to the owner at the time the conservation land is also conveyed to the owner.
3. When estimating the projected maintenance costs of the designated conservation land, conservation land that is not accessible by the cluster residents for their common enjoyment need not be included in the calculations. Such excludable lands would typically include areas designated on the final subdivision plan for agricultural, horticultural, silvicultural or equestrian uses, which may be leased or sold to another party for those express purposes, and which are protected from future development by a permanent conservation easement. In such cases, the residential density bonus shall be adjusted proportionately to reflect only that portion of the

acreage that is accessible to the cluster residents for their passive or active recreational enjoyment.

B. Provision of Affordable Housing

A residential density increase is permitted by conditional use permit where the applicant provides on-site or off-site affordable housing opportunities for low-income or moderate-income homeowners. When affordable housing is proposed, City Council shall require a stipulation that the dwellings will in fact be constructed by a date certain. The amount of the residential density increase shall be based on the following standard: For each affordable housing unit provided under this subsection, one additional building lot or dwelling unit shall be permitted, up to a maximum of ten (10) percent increase in the maximum number of dwelling units otherwise permitted. Affordable housing is herein defined as dwelling units sold or rented to households earning eighty (80) percent or less of the City's median household income as determined and published by the Virginia Housing Development Authority.

C. Interior Streets in Rural Areas

A residential density bonus of two (2) additional dwelling units may be granted by conditional use permit in exchange for the construction of an interior street in the A-1 Agricultural District and the RE-1 Residential Estate District, provided that the proposed cluster development fulfills the following criteria:

- (1) The land proposed for residential use is located at least 1,000 feet from any off-site public street or, in the alternative, is completely screened from view from all off-site public streets by a year-round natural screening feature, such as berming or landscaping. In no instance may be this natural feature be less than 300 feet in width;
- (2) No residential use is located within 300 feet of any land which is used for agricultural production purposes, including crops and permitted livestock; and
- (3) Adequate provision by acceptable and appropriate means is made for the provision of potable water, wastewater treatment, and educational facilities to serve the proposed cluster development.

D. Implementation

For each of the foregoing categories of public purposes, residential density bonuses may be implemented by reducing the amount of required conservation land by up to ten (10) percent or by reducing the residential minimum lot area requirement by up to twelve (12) percent, or by a combination of these approaches, at the discretion of City Council. The approved method shall be designated by stipulation to the conditional use permit. Cumulative reductions of required conservation land may be granted for providing two or three of the options described in subsections A - C above. Such cumulative reductions shall not exceed up to 20 percent or 30 percent, respectively, of the original required conservation

land, provided that City Council is satisfied that the required public purposes are being served. Where minimum lot area is reduced, the cumulative reduction shall be 24% or 36%, respectively. Where a combination approach is approved, the cumulative reductions shall correspond to an approved reduction formula.

E. Other Requirements

All requirements of this Section 6-2200 and Article VI, Chapter 70 of the City Code applicable to permitted cluster developments shall also apply to conditional cluster developments. In addition, the level of service tests in the Planning and Land Use Policy, or similar policy, must be applied.

§ 10-500. A-1 Agricultural District.

§ 10-501. Description.

This district is created primarily for the protection of the agricultural industry and rural section of the city from the invasion of urban and suburban uses and to preserve ~~the agricultural lands, and forest lands and open space required for~~ in the interest of the health, safety and welfare of the community. This district is not intended for major residential development; therefore, residential development and subdivisions for residential purposes in the A-1 agricultural district are prohibited except for minor subdivisions, as that term is defined in section 3-403 of this ordinance, and conditional cluster developments approved in accordance with Section 6-2200 et seq. of this ordinance.

§ 10-502. Residential development standards.

A. With the exception of approved cluster developments Residential lots in the A-1 agricultural district shall comply with the requirements set out for lots in the RE-1 residential estate district (see Section 6-300); except, however, that the minimum lot size of three acres may be reduced to one acre or more in the case of property immediately surrounding a residential structure that was in existence and occupied prior to July 20, 1995; provided that, where septic tanks are used, the Chesapeake Health Department certifies that adequate sewage disposal can be assured. Lots less than three acres in size which qualify for residential uses in accordance with this section shall comply with the minimum lot widths, setbacks and maximum lot coverage standards set out in Section 10-503(A) below for nonresidential development of A-1 agricultural districts lots. Such lots shall comply with all other development standards set out in Section 6-300 for residential estates and in section 6-2000 for residential districts.

B. Cluster developments shall comply with all requirements in Section 6-2200 et seq. of this ordinance.

§ 10-600. Table of permitted and conditional uses in conservation and agricultural districts.

§ 10-601. Description.

C. *Special conditions pertaining to specific uses.* In the table below, the numbers shown in the column entitled “condition” shall have the following meaning:

30. Cluster developments are subject to special criteria in Section 6-2200 et seq. of this ordinance and Article VI of Chapter 70 the City Code. Cluster developments with more than five (5) lots shall require a conditional use permit.

TABLES

This ordinance shall be effective July 1, 2004.

ADOPTED by the Council of the City of Chesapeake, Virginia this ____ day of _____, 2004.

APPROVED:

Mayor

ATTEST:

Clerk of the Council