Appendix E

Post-Construction Storm Water Management

Article 10 Overlay Districts

Section 10.1 Thoroughfare Corridor Overlay District

10.1.1 *Purpose.* The purpose of the thoroughfare corridor overlay district is to provide orderly development along controlled access highways, to encourage the most appropriate use of adjacent lands, to maintain the scenic natural beauty of the area, and to promote the safe and efficient movement of traffic. These thoroughfares establish an image of the quality of life in Baldwin County for visitors and residents alike. Controlled access is required to enhance trade, capital investment, tourism and the general welfare. These ordinances will facilitate the adequate provision of transportation by promoting the safe and efficient movement of traffic and by encouraging development which reduces or eliminates visual clutter and poor site layout.

As an overlay district, the thoroughfare corridor district does not replace the requirements of the underlying zoning district, but provides additional development requirements and standards which must be met by any development on the property.

10.1.2 *Area of application.* The thoroughfare corridor overlay district applies to roadways located in areas under the planning and zoning jurisdiction of Baldwin County which are designated as controlled access highways by the County Commission specifically for the purpose of enforcing the provisions of this Section.

10.1.3 *Requirements.*

(a) Public and commercial access to highways designated as controlled access highways shall be limited to intersections connecting with county roads and service roadways as defined herein. Access is not permitted by conventional driveways. However, until such time as service roadways are available, driveway access is permitted to and from residential houses and farming activity adjacent to the controlled access highway.

(b) *Service roadways.* A service roadway is intended to service businesses, residential areas, and public enterprise along controlled access highways in order to provide safely spaced and adequately designated exits and entrances to the artery. Transition between the controlled access highway and the service roadways shall be accommodated with appropriate on and off lanes as part of the controlled access highway. These lanes shall be surfaced in a similar manner as the controlled access highways and shall be designed in accordance with good practice for this type of transition.

(c) *Minimum access interval for controlled access highways.* No more than one public access connector and/or crossover per half-mile is permitted for a given side of the controlled access highway. A "connector" in this case includes all intersections with county roads and service roadways. This minimum access interval does not apply between county road intersections that were already in existence before a route was designated a controlled access highway nor does the minimum interval apply to private driveways to and from residential houses and farms before service roadways are available. Private driveway connections directly connecting to the right-of-way of the controlled access highway shall be abandoned when a convenient service road becomes available for access, unless this places an unusual hardship on the owner. All connectors shall be designed and clearly marked in accordance with Alabama Department of Transportation standards. The minimum access interval is not intended to limit the distance between businesses on service roadways or otherwise alter the ordinance of minimum lot sizes covered in other sections herein.

(d) *Permitted service roadway layouts.*

1. *Parallel and contiguous rights-of-way.* If the service roadway right-of-way and the controlled access highway right-of-way are parallel and contiguous, a greenbelt of no less than 15 feet in width shall be maintained between the shoulders or curbs of the two roadways.

2. *Parallel and noncontiguous rights-of-ways.* If commercial or residential lots are included between the service roadway right-of-way and the controlled access highway right-of-way, the businesses or residential buildings shall face the service roadway, not the controlled access highway. In this case, the rear yard setbacks shall include an additional 15 feet, or a total of 25 feet. This rear yard extension shall contain a greenbelt of at least 10 feet in width, or a suitable fence screen, between the controlled access highway right-of-way and the building or use activity on the lot.

3. *Service roadways perpendicular to the controlled access highways.* Commercial or residential lots along these service roadways shall have an additional setback of any side yard adjacent to the right-of-way of the controlled access highway of 15-feet in addition to the side yard setback requirement or a total of 25-feet. This side yard extension shall contain a greenbelt of at least 15- feet in width, or a suitable fence screen between the controlled

access highway right-of-way and the building or use activity on the lot.

Section 10.2 Flood Hazard Overlay District

10.2.1 *Purpose.* The purpose of the flood hazard overlay district is to ensure enforcement of the *Baldwin County Flood Damage Prevention Ordinance* which was adopted to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions intended to:

(a) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities.

(b) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

(c) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters.

(d) Control filling, grading, dredging and other development which may increase erosion or flood damage.

(e) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

As an overlay district, the flood hazard district does not replace the requirements of the underlying zoning district, but provides additional development requirements and standards which must be met by any development on the property.

10.2.2 *Area of application.* The flood hazard overlay district applies to lands under the planning and zoning jurisdiction of Baldwin County which are subject to either tidal or fluvial flooding as determined by the Federal Emergency Management Agency (FEMA) and delineated on the Flood Insurance Rate Map(s) (FIRM) of Unincorporated Baldwin County.

10.2.3 *Requirements.* Areas which lie in flood hazard districts as determined by FEMA and delineated on the FIRM are subject to the requirements of the *Baldwin County Flood Damage Prevention Ordinance* adopted February 17, 1987 (as amended).

Section 10.3 Historic Resource Overlay District

10.3.1 *Purpose.* The purpose of the historic resource overlay district is to ensure enforcement of the rules and ordinances adopted pursuant to Act No. 80-497 as amended by Act No. 89-960 of the Legislature of Alabama which authorizes Baldwin County to protect the historical architectural character of the County.

As an overlay district, the historic resource district does not replace the requirements of the underlying zoning district, but provides additional development requirements and standards which must be met by any development on the property.

10.3.2 *Area of application.* The historic resource overlay district applies to lands under the planning and zoning jurisdiction of Baldwin County which are designated as historic districts or preservation districts by the County Commission under the authority of Act No. 80-497 as amended by Act No 89-960. Historic districts or preservation districts designated by the County Commission are:

(a) Magnolia Springs Preservation District

(b) Montrose Preservation District

(c) Battle's Wharf / Point Clear Preservation District

10.3.3 *Requirements.* Areas which lie in historic districts or preservation districts as designated by the County Commission are subject to the requirements of the Architectural & Preservation District Review Board of Baldwin County and any and all rules and ordinances adopted pursuant to Act No. 80-497 as amended by Act No. 89-960 of the Legislature of Alabama (refer to *Standards for Architectural Review and Development in Baldwin County Historic Districts*).

Section 10.4 Wetland Protection Overlay District

10.4.1 *Purpose.* The wetlands within Baldwin County, Alabama are indispensable and fragile natural resources with significant development constraints due to flooding, erosion and soils limitations. In their natural state, wetlands serve man and nature. They provide habitat areas for fish, wildlife and vegetation; water quality maintenance and pollution control; flood control; erosion control; natural resource education; scientific study; and open space and recreational opportunities. In addition wise use of forested wetlands is essential to the economic well-being of Baldwin County. A considerable number of these important natural resources have been lost or impaired by draining, dredging, filling, excavating, building, pollution and other acts. Piecemeal or cumulative losses will, over time, destroy additional wetlands. Damaging or destroying wetlands threatens public safety and the general welfare. It is therefore

necessary for Baldwin County to ensure maximum protection for wetlands by discouraging development activities that may adversely affect wetlands.

The purpose of the wetland protection overlay district is to promote wetland protection, while taking into account varying ecological, economic development, recreational and aesthetic values and to protect wetlands from alterations that will significantly affect or reduce their primary functions for water quality, floodplain and erosion control, groundwater recharge and wildlife habitat.

10.4.2 *Area of application.* The wetland protection overlay district applies to wetlands under the planning and zoning jurisdiction of Baldwin County. The Generalized Wetland Map adopted as part of these zoning ordinances shows the general location of wetlands and should be consulted by persons contemplating activities in or near wetlands. The Generalized Wetland Map, together with all explanatory matter thereon and attached thereto, is hereby adopted by reference and declared to be a part of these zoning ordinances. The Generalized Wetland Map shall be kept on file in the offices of the Planning & Zoning Department.

10.4.3 *Wetland protection district boundaries.* The Generalized Wetland Map is a general reference document and wetland boundaries indicated on the map are approximations. The Generalized Wetland Map is to alert developers/landowners if they are within proximity to a wetland, which means that there is a high likelihood of the presence of a jurisdictional wetland and a need for the developer/landowner to seek U.S. Army Corps of Engineers guidance as to whether a Section 404 permit will be required prior to any activity. The Generalized Wetland Map does not represent the boundaries of jurisdictional wetlands within the jurisdiction of Baldwin County and cannot serve as a substitute for a delineation of wetland boundaries by the U.S. Army Corps of Engineers, as required by Section 404 of the Clean Water Act, as amended. Any local government action under this section does not relieve the land owner from federal or state permitting requirements.

10.4.4 *Permit requirements.* A U.S. Army Corps of Engineers wetlands jurisdictional determination if the proposed planned development contains wetlands or if the Zoning Administrator or his/her designee determines potential wetlands from the Generalized Wetland map as defined herein, or through a site visit by County Staff. The setback for development from a wetland must be a minimum of 30 feet.

If the area proposed for development is located in or within the wetland protection district boundary, as determined from the Generalized Wetland Map, a U.S. Army Corps of Engineers jurisdictional determination shall be required prior to the issuance of a Land Use Certificate. If the Corps determines that wetlands are present on the proposed development site and that a Section 404 Permit or Letter of Permission is required, a Land Use Certificate will be issued only following issuance of the Section 404 Permit or Letter of Permission. Any

application for subdivision approval on property which contains wetlands or if the Zoning Administrator or his/her designee determines potential wetlands from the Generalized Wetland map defined herein through a site visit by County Staff, will have to obtain a U.S. Army Corps of Engineers wetlands jurisdictional determination. If the Corps determines that wetlands are present and that a Section 404 Permit or Letter of Permission is required, development may not proceed until the Section 404 Permit or Letter of Permission is issued.

10.4.5 *Subdivisions in the Wetland Protection Overlay District.* Where a parcel of land proposed to be subdivided contains an area of wetlands delineated as jurisdictional by the Army Corps of Engineers, said wetlands shall be subject to Section 404(b)(1) guidelines concerning fill material disposal into wetlands. Lots may be platted where sufficient upland areas exist to provide a building site for the principal structure and necessary ancillary facilities. Fill may be used where necessary to provide access to lots where approval for such fill has been received from the Army Corps of Engineers and other appropriate governmental agencies.

Wetlands delineated as jurisdictional by the Army Corps of Engineers and not permitted for fill shall be set aside as common area or shall be contained within an easement dedicated to protect the wetland. Said common area or maintenance easement shall extend a minimum of 30-feet beyond the limits of the wetland. Maintenance responsibility shall be vested in the trustees of the subdivision, by virtue of the trust indenture.

Section 10.5 Gulf Beach Overlay District

10.5.1 *Purpose.* The Gulf Beach Overlay District is implemented to protect the natural environment, to encourage open space development design and to protect the public health, safety and welfare of the public. This overlay district shall only apply in Planning District 25 in the area herein defined in *Section 10.5.2.*

10.5.2 *Established boundaries.* The Gulf Beach Overlay District boundaries shall be as depicted on the Planning District 25 Official Zoning Map. Changes to said boundary shall constitute a zoning map amendment.

10.5.3 *Applicability.* The Gulf Beach Overlay District relaxation of maximum building heights shall be applicable only to Planned Residential Developments (PRD) lawfully approved before May 4, 2004.

10.5.4 *Development standards.*

(a) *Building height.* Building heights may lawfully exceed the maximum building height contained in applicable sections of the Zoning Ordinances.

(b) *PRD site plan minor changes.* Minor changes defined in *Section 9.9.1* may be made to an approved PRD site plan.

(c) *PRD site plan substantial changes.* Substantial changes defined in *Section 9.9.1* which requires PRD amendment or modification shall be subject to applicable maximum height ordinances of 8 habitable stories in Planning District 25.

(d) *PRD site plan approval period.* Site plan approval periods and extensions given in *Section 9.10: Approvals*, shall be in full force and effect in the overlay district. Expiration of a PRD site plan shall require subsequent site plans to be in full compliance with all applicable ordinances.

(e) *Compliance with ordinances.* The overlay district shall only relax the maximum building heights of 8 habitable stories in the area defined in *Section 10.5.2.* This section shall in no way remove, modify or supersede other applicable County ordinances which may apply.

Article 11 Conservation Developments

Section 11.1 Purpose and Intent

To provide a development option that permits flexibility of design in order to promote environmentally sensitive and efficient uses of the land; to preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands, and wildlife habitat; to preserve important historic and archaeological sites; to permit clustering of houses and structures on less environmentally sensitive soils which will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for residential development; to reduce erosion and sedimentation by minimizing land disturbance and removal of vegetation in residential development through a reduced building footprint; to promote interconnected greenways and corridors throughout the community; to promote contiguous green space with adjacent jurisdictions; to encourage interaction in the community by clustering houses and orienting them closer to the street, providing public gathering places and encouraging use of parks and community facilities as focal points in the neighborhood; to encourage street designs which reduce traffic speeds and reliance on major arteries; to promote construction of convenient landscaped walking trails and bike paths both within the subdivision and connected to neighboring communities, businesses, and facilities to reduce reliance on automobiles; to conserve scenic views and reduce perceived density by maximizing the number of houses with direct access to and views of open space; to preserve prime agricultural and forest lands and reduce the economic pressures for converting such land to urbanized uses.

Section 11.2 Definitions

Words and phrases used in this article shall have the meanings as set forth in this section. Words and phrases not defined in this section but defined elsewhere in the zoning ordinances shall be given the meanings as set forth in such ordinances. All other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise.

> *Conservation Development*: A development of land, occupying 10 contiguous acres or more, that is under unified control and is planned and developed as a whole in a single development operation or programmed series of development stages. The development may cover more than one parcel as long as all parcels are contiguous, but the entirety of each included parcel shall be included in the gross area of the development. The requirements for approval are similar to those for subdivisions of the same size according to the *Baldwin County Subdivision Regulations*, with the only differences being contained in this article. A Conservation Development requires a certain amount of permanently protected Open

Space and does not require minimum lot or yard sizes. A Conservation Development must be clearly indicated as such on its Preliminary and Final Plats.

Open Space: The portion of the Conservation Development that has been set aside for permanent protection. Activities within the Open Space are restricted in perpetuity through the use of an approved legal instrument.

Buildable Area: The approximate acreage in a Conservation Development available for development as calculated according to Section 11.5 of this article. This figure does not represent the true acreage available for development; it is instead used only as an input to other calculations, such as a calculation to determine the minimum acreage of Open Space.

Section 11.3 General Ordinances

11.3.1 *Applicability of Ordinances.* This Conservation Development option is available as a use by right in all residential zones (ER, R-1(a), R-1(b), R-2(a), R-2(b), R-3, R-4, and R-6) and in the Rural (RR) zone and the Rural Agriculture (RA) zone. The Applicant shall comply with all other provisions of the zoning code and with all other applicable laws, except those that are expressly addressed by and inconsistent with the provisions contained herein. A Conservation Development does not require amending or adjusting the Zoning Map.

11.3.2 *Unified Control.* The parcel or parcels of land for a Conservation Development shall be in unified control, and shall be owned or controlled by either a single person, corporation, agency, group of individuals, or like organizations. The Applicant shall provide the County appropriate and necessary documents to indicate ownership. No application shall be considered until this section is fully complied with. An application must be filed by the owner or authorized agent of all property included in the project. In the case of multiple ownership, the approved final development plan shall be binding on all owners and any successors. The developer shall maintain and provide for unified control of the Conservation Development until the project is complete. The entity designated to provide unified control shall ensure that all conditions of development are met. Individual properties may be sold after appropriate approvals and recordings have been completed and the proper recordings have been made which ensures the continuance of the Conservation Development as approved. Responsibility for unified control shall be assigned to a Homeowners Association that will provide for the maintenance of any common property and Open Space and for improvements.

11.3.3 *Development Area.* A Conservation Development shall have a minimum development area of 10 contiguous acres.

11.3.4 *Lot and Yard Size.* No minimum areas or widths are required by these ordinances for lots, and no minimum areas are required by these ordinances for yards.

11.3.5 *Building Setbacks.* The minimum side yard setback shall be a minimum of 3 feet for a single family designation. The front and rear setbacks shall be a minimum of 20 feet.

11.3.6 *Maximum Height.* The maximum height of structures shall be the same number of habitable stories allowed by the zoning district to a Planned Residential Development (PRD), with the exceptions mentioned elsewhere in these zoning ordinances.

11.3.7 *Permitted Uses.* For a Conservation Development, the following uses and structures may be permitted if allowed by the zoning district and specific zoning designation:

(a) Single family dwellings including manufactured housing and mobile homes.

(b) Two family dwellings.

(c) Multiple family dwellings including townhouses.

(d) Non-residential land uses in accordance with limitations and restrictions contained herein.

(e) Maintenance facilities and utility facilities.

(f) Accessory structures and uses.

11.3.8 *Commercial Land Uses.* Commercial land uses including institutional uses, office and professional service uses, local commercial uses, and general commercial uses may not occupy more than ten (10) percent of the gross acreage of the Conservation Development. The commercial land uses shall be centrally located. They shall be designed and operated to serve primarily the needs of the development and, to the extent feasible, shall be located in the interior of the development.

11.3.9 *Maximum Dwelling Units Determination.* The maximum number of dwelling units in the Conservation Development shall be determined by multiplying the gross acreage of the Conservation Development by the maximum density permitted in the zoning designation. For Conservation Developments under more than one zoning designation, the maximum number of dwelling units in the Conservation Development shall be determined by summing the results of, for each zoning designation, multiplying the gross acreage of the Conservation

Development in the zoning designation by the maximum density permitted in the zoning district. Where fractional numbers result for any of these calculations, the figure shall be rounded to the next lower number. Land reserved for commercial uses shall not be included in the gross acreage of the Conservation Development as used in this calculation. For mixed use buildings where the gross floor area used for commercial uses exceeds 10% of the total gross floor area, the entire footprint shall be considered as land reserved for commercial uses.

11.3.10 *Maximum Dwelling Units Bonuses.* The maximum number of dwelling units in the Conservation Development may be increased if Bonus Thresholds (as provided in Section 11.5) are exceeded, provided that the site is capable of accommodating the additional units without compromising the purpose of this ordinance, there is no adverse effect on public safety, the surrounding infrastructure can support the additional units, and adequate efforts were made to arrange the Open Space so that it links to greenways, trails, or other areas of Open Space on nearby parcels. If Bonus Threshold 1 is met, the determined maximum number of dwelling units may be increased by 5%. If Bonus Threshold 2 is met, the determined maximum number of dwelling units may be increased by 10%. These bonuses are not cumulative; rather, the permitted 10% increase for a Conservation Development that achieves Bonus Threshold 2 is measured from the maximum number of dwelling units as determined without applying any other dwelling units bonuses. Where fractional numbers result, the figure shall be rounded to the next lower number. The Applicant may meet with Zoning Administrator to determine whether the local infrastructure can handle the extra units, whether the infrastructure may require upgrading, whether the additional units comport with the purpose of this ordinance, and whether the additional units impact public safety.

11.3.11 *Flexible Standards.* The County encourages and will consider sensible methods to reduce impervious surfaces without compromising stormwater management or public safety. Any applicant requesting such a reduction and/or waiver of pertinent ordinances shall submit a statement of justification for the reduction and/or waiver along with the required site plan and shall obtain the written approval of the County Engineer or his/her designee. The Planning Commission may approve such methods if they:

(a) Improve site design.

(b) Protect the natural features of the site.

(c) Maintain harmony with neighboring uses.

(d) Promote the objectives and purpose of the master plan.

(e) Promote the intent and purpose of these ordinances.

11.3.12 *Conceptual Site Plan.* Where a rezoning is applied for and the Applicant wishes to subsequently develop the rezoned property as a Conservation Development, the Applicant may submit a Conceptual Site Plan in conjunction with the rezoning application for parcels greater than 1000 acres. This Conceptual Site Plan and the process for subsequently amending this Conceptual Site Plan shall follow the guidelines for a Large Scale Planned Residential Development Conceptual Site Plan as described in *Section 9.5 Submittals* and elsewhere in these zoning ordinances. It shall be clearly indicated on the Conceptual Site Plan that the described future subdivision is a Conservation Development. In addition, the Conceptual Site Plan shall show the planned location of protected Open Space and the portions of Open Space that are comprised of buildable area as calculated in Section 11.5 of this Article. It shall also describe the total acreage of buildable area in the Conservation Development and the total acreage of buildable area in the proposed protected Open Space, where "buildable area" is as calculated in Section 11.5 of this Article. Neither approval of this Conceptual Site Plan nor approval of the proposed rezoning shall be construed as ensuring the approval of future Preliminary or Final Plats.

Section 11.4 Application Requirements

11.4.1 *Site Analysis Features Required.* The Applicant must show the following features on the Conservation Development site plan submitted in accordance with requirements contained in Article IX, Section 9.5.5.5.1. In addition, the Applicant must show the following features on a site analysis map to be submitted concurrent with the submission of Conservation Development Site Plan:

(a) All streams, rivers, lakes, and other hydrologic features.

(b) General vegetation characteristics.

(c) General soil types as determined from the latest soil survey by the Natural Resources Conservation Service of the United States Department of Agriculture.

(d) The planned location of protected Open Space, and the portions of Open Space that are comprised of buildable area as calculated in Section 11.5 of this Article.

(e) The total acreage of buildable area in the Conservation Development and the total acreage of buildable area in the protected Open Space, where "buildable area" is as calculated in Section 11.5 of this Article.

(f) All Primary and Secondary Conservation Areas labeled by type, as described in Section 11.5 of this Article.

(g) Potential connections with existing green space and trails.

(h) Location and total area of proposed impervious surfaces.

Should the Applicant choose to submit a separate site analysis map, it must include the following features as on a Conservation Development Site Plan: exact property boundaries, topographic contours, delineated wetlands, special flood hazard areas and/or coastal high hazard areas, existing roads, and existing structures.

11.4.2 *Open Space Management Plan Required.* An open space management plan, as described in Section 11.5, shall be prepared and submitted with the Conservation Development Site Plan.

11.4.3 *Instrument of Permanent Protection Required.* A conservation easement, as described in Section 11.5, shall be placed on the Open Space no later than the recording of the Final Plat. County Staff shall review and approve the conservation easement to ensure that it meets the minimum guidelines set forth in these ordinances. The conservation easement and the Final Plat shall be filed simultaneously and shall make reference to each other. Each shall not be complete without the other.

11.4.4 *Zoning Administrator Approval.* The Zoning Administrator holds the right to permit or deny the proposed development according to the purposes set forth in this section.

11.4.5 *Other Requirements.* The Applicant shall adhere to all other zoning and subdivision ordinances. A subdivision plat shall be approved in accordance with the procedures established in the *Baldwin County Subdivision Regulations.* It shall be clearly indicated on the Preliminary and Final Plats that the proposed subdivision is a Conservation Development. The Applicant may submit a list of commitments, and approval may be based on the fulfillment of these conditions. Should these commitments not be upheld, the plat shall not be considered as having been approved.

Section 11.5 Open Space

11.5.1 *Standards to Determine Open Space and Buildable Area.*

(a) Buildable area is defined as the gross area of the conservation development minus the Open Space. The minimum restricted Open Space shall comprise all of the Primary Conservation Areas, as defined below. In addition, the minimum restricted Open Space shall

include buildable areas totaling not less than 20% of the total buildable area of the Conservation Development, with emphasis given to Secondary Conservation Areas, as defined below. In making this and other determinations, the buildable area shall include the entire gross area of the Conservation Development except the following:

1. Primary Conservation Areas, as defined below, unless the Applicant has demonstrated that including a particular area would constitute an unusual hardship and be counter to the purposes of this article.

2. Natural bodies of open water including free-flowing streams over 5,000 square feet of contiguous area excluding man-made stormwater detention ponds, impoundments, and amenity lakes.

3. Areas where development would otherwise be prohibited by law, regulation, or
local ordinance, except where variances or permits have been obtained.

(b) The following are considered Primary Conservation Areas and are required to be included within the Open Space, unless the Applicant demonstrates that this provision would constitute an unusual hardship and be counter to the purposes of this article:

1. Riparian zones of at least 75 foot width on each side from the centerline of every perennial and intermittent stream shown on the United States Geological Survey (USGS) quadrangle topographic maps.

2. Slopes above 25% of at least 5000 square feet contiguous area.

3. Wetlands determined to be jurisdictional by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act except for minor road crossings necessary for access to other upland buildable areas.

4. Land seaward of the coastal construction zone limit, except where a variance has been obtained from the appropriate state and County authorities.

5. Total area of jurisdictional wetlands filled within 5 years prior to the submittal of the application on the parcel or parcels.

(c) The following are considered Secondary Conservation Areas and should be included within the Open Space to the maximum extent feasible:

1. Non-jurisdictional wetlands that meet the definition of a wetland given in the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual.

2. Existing healthy, native forests (e.g. longleaf pine) of at least one acre contiguous area.

3. The 100-year floodplain.

4. Important historic sites, archaeological sites, cemeteries, and burial grounds.

5. Other significant natural features such as individual healthy trees of significant size and scenic viewsheds such as ridge lines, peaks, and rock outcroppings, particularly those that can be seen from public roads.

6. Prime agricultural lands of at least five acres contiguous area.

7. Existing trails that connect the Conservation Development to neighboring areas.

8. Populations of endangered or threatened species, or habitat for such species.

9. Beach access in coastal areas.

(d) Above-ground utility rights-of-way, small areas of impervious surface, and areas within 10 feet of a road surface or building may be included within the protected Open Space but cannot be counted towards the 20% minimum buildable area requirement (exception: historic structures and existing trails may be counted). Large areas of impervious surface such as roads and parking lots shall be excluded from the Open Space, except as specifically authorized in other sections.

(e) At least 60% of the total required Open Space, which includes any Open Space required to attain Bonus Thresholds, shall be in a contiguous area. Where feasible, the Open Space shall adjoin any neighboring areas of Open Space in other parcels, any other protected areas, and any non-protected natural areas that would be candidates for inclusion as part of a future area of protected Open Space. Two

sections of Open Space on either side of a roadway are considered to be contiguous, provided that each of the two sections of Open Space comprises at least 15% of the total Open Space.

(f) The Open Space shall be directly accessible to the largest practicable number of lots within the development. Non-adjoining lots shall be provided with safe, convenient access to the Open Space.

(g) Conservation Developments may meet certain Bonus Thresholds by protecting additional Open Space. This Open Space is subject to the same rules and conditions as described elsewhere in these ordinances. The buildable area of the Conservation Development shall be as calculated above. And, as above, all Primary Conservation Areas shall be included in the Open Space. The Bonus Thresholds are as follows:

1. *Bonus Threshold 1.* The minimum restricted Open Space shall include buildable area totaling not less than 35% of the total buildable area of the Conservation Development.

2. *Bonus Threshold 2.* The minimum restricted Open Space shall include buildable area totaling not less than 50% of the total buildable area of the Conservation Development.

11.5.2 *Permitted Uses.*

(a) At the discretion of the Applicant, uses of Open Space may include the following:

1. Conservation of natural, archaeological or historical resources.

2. Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas.

3. Walking or bicycle trails, provided they are constructed of porous paving materials.

4. Passive recreation areas, such as open fields.

5. Active recreation areas, provided that they are limited to no more than 10% of the buildable Open Space and are not located within Primary Conservation Areas. Active recreation areas may include impervious surfaces. Active recreation areas in excess of this limit must be located outside of the protected Open Space.

6. Agriculture, horticulture, silviculture, or pasture uses, provided that all applicable best management practices are used to minimize environmental impacts, provided such activities are not conducted within Primary Conservation Areas (except where minimal management practices are necessary for the maintenance of a healthy, viable forest or wetland), and provided such uses do not involve the clearing of forests, the filling of wetlands, or the conversion of forests to monocultures or plantations.

7. Subsurface wastewater disposal/reuse systems located on soils particularly suited to such uses and in compliance with Alabama Department of Environmental Management (ADEM) Underground Injection Control (UIC) permitted activities or Chapter 420-3-1 "Onsite Sewage Disposal and Subdivision-Onsite Sewage Systems, Water Supplies and Solid Waste Management" of the *Rules of the State Board of Health Bureau of Environmental Services*. Such facilities shall be located outside of Primary Conservation Areas. They should be naturally attractive and designed to function as native habitats, supporting native flora and fauna. The allowed systems do not include potable water or above-ground sewage treatment plants.

8. Easements for drainage, access, and underground utility lines.

9. Sidewalks.

10. Other conservation-oriented uses compatible with the purposes of this ordinance.

(b) Whether or not to allow public access to the protected Open Space is at the discretion of the Applicant.

11.5.3 *Prohibited Uses.*

(a) The uses of Open Space shall not include the following:

1. Golf courses.

2. Roads, parking lots, and impervious surfaces, except as specifically authorized in the previous sections.

3. Agriculture, horticulture, silviculture, or pasture uses that do not use all applicable best management practices to minimize environmental impacts, that are conducted within Primary Conservation Areas (except where minimal management practices

are necessary for the maintenance of a healthy, viable forest or wetland), or that involve the clearing of forests, the filling of wetlands, or the conversion of forests to monocultures or plantations.

4. Impoundments.

5. Man-made lakes.

6. Commercial uses not specifically authorized in the previous section.
7. Mining uses.

8. Potable water or above-ground sewage treatment plants.

9. Stormwater management facilities and wastewater disposal systems not specifically authorized in the previous section.

10. Other activities as determined by the Applicant and recorded on the legal instrument providing for permanent protection.

(b) These prohibited uses shall be clearly indicated in the legal instrument providing for permanent protection.

11.5.4 *Ownership and Management.*

(a) Ownership of Open Space. A Homeowners Association representing residents of the Conservation Development shall own the Open Space. Membership in the Homeowners Association shall be mandatory and automatic for all homeowners of the development and their successors. The Homeowners Association shall have lien authority to ensure the collection of dues from all members. The responsibility for maintaining the Open Space and any facilities located thereon shall be borne by the Homeowners Association.

(b) Management Plan. The Applicant shall submit a Plan for the Management of Open Space and Common Facilities ("Plan") that:

1. Provides guidelines for the maintenance and operation of the Open Space and any facilities located thereon, including provisions for ongoing maintenance and for long-term capital improvements.

2. Estimates the costs and staffing requirements needed for maintenance and operation of, and insurance for, the Open Space

and outlines the means by which such funding will be obtained or provided.

3. Provides that any changes to the Plan be approved by the Planning Commission.

4. Provides for enforcement of the Plan.

(c) In the event the party or parties responsible for maintenance of the Open Space fail to maintain all or any portion in accordance with the submitted management plan, Baldwin County may enter the premises and take corrective action or cause corrective action to be taken, including the provision of extended maintenance. The costs of such action and/or maintenance shall be chargeable to the said responsible party or parties, and/or to the Homeowners Association, and/or to the individual property owners that make up the Homeowners Association, and may include administrative costs and penalties. Such costs shall become a lien on all development properties.

11.5.5 *Legal Instrument for Permanent Protection.*

(a) The Open Space shall be protected in perpetuity by a binding legal instrument that is recorded with the deed. The instrument shall be a permanent conservation easement in favor of:

1. A land trust or similar conservation-oriented non-profit organization with legal authority to accept such easements. The organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for retransfer in the event the organization becomes unable to carry out its functions.

2. The Baldwin County Commission.

(b) The holders of the conservation easement shall produce a baseline documentation report to establish the condition of the property at the time the easement is transferred and to provide a basis for future monitoring and enforcement. The holders of the conservation easement shall also monitor and enforce the easement and defend it from challenges. The easement holders may request funds from the Applicant to cover or defray these costs, and the Applicant shall pay the requested funds. Such funds must be dedicated to these easement activities. The amount of funding shall be determined by the Applicant and the easement holders no later than the time of transferal.

(c) The instrument for permanent protection shall include clear restrictions on the use of the Open Space. These restrictions shall

include all restrictions contained in this article, as well as any further restrictions the Applicant chooses to place on the use of the Open Space.

(d) For an area to be counted towards the Open Space requirement, the legal instrument for permanent protection shall not have been established more than 6 months prior to the submission of the first Preliminary Plat (or, if none is required, the first Final Plat) that clearly indicates that the proposed subdivision is to be a Conservation Development.

(e) The County may, in its discretion, require a form conservation easement, and, in that event, the Applicant shall grant such easement as provided, except only that the Applicant may add such use restrictions as the Applicant desires. The County may, however, accept any easement from an Applicant which, in the County's sole discretion, substantially complies with these ordinances.

11.5.6 *Tax Assessment.* Once a legal instrument for permanent protection has been placed upon the Open Space, the Homeowners Association may request that the Baldwin County Revenue Commission reassess the Open Space to reflect its more limited use.