

# CHAPTER 10: SUBDIVISION REQUIREMENTS

*(Amended 11/03/08)*

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## CHAPTER 10: SUBDIVISION REQUIREMENTS

### Section 10.1 Purpose and Applicability

#### 10.1.1 Purpose

The purpose of this chapter is to establish an orderly process to subdivide land within Currituck County. It is also the intent of this chapter to provide a clear and comprehensible subdivision process that is fair and equitable to all interests including the petitioners, affected neighbors, county staff, related agencies, the Planning Board, and the Board of Commissioners.

#### 10.1.2 Applicability

- A. As provided in North Carolina General Statutes no person may subdivide their land except in accordance with all of the provisions of this ordinance. In particular, no person may subdivide land until a final plat of the subdivision has been approved in accordance with the provisions of this ordinance and recorded in the Currituck County Register of Deeds. As provided in North Carolina General Statutes the Currituck County Review Officer shall not certify a plat of any subdivision within the county's subdivision jurisdiction unless the plat has been approved in accordance with the provisions of this ordinance.
- B. A 'subdivision' is the division of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose, whether immediate or in the future, of sale or building development and shall include all divisions of land involving the dedication of a new street or a change in existing streets. The following types of subdivisions shall not be subject to the review process established within this ordinance; however, any map or plat to be recorded pursuant to any such exclusion shall bear the notation "no approval required" and the signature of the subdivision administrator or his designee prior to being presented for certification by the review officer:
1. The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown by the regulations prescribed by this ordinance;
  2. The division of land into parcels greater than ten acres where no street right-of-way dedication is involved. Each resultant parcel must be greater than ten acres;
  3. The public acquisition by purchase of strips of land for the widening or opening of streets; or,
  4. The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the county, as shown by the subdivision regulations contained in this ordinance.

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Any proposed subdivision falling under these exemptions shall still be required to meet all applicable requirements for the granting of zoning and building permits as established within this section, and all other relevant chapters of this ordinance.

### **10.1.3 Division Transfer to Government Entity (PB 09-08, 3/2/09)**

The division of a tract or parcel transferred to the county, state, or federal government shall not be subject to the requirements and review processes provided in this ordinance. The transferred tract or parcel shall be for the conservation of natural resources, utilities, or other public purposes, and upon establishment of a use must comply with the provisions of this ordinance to the greatest extent practicable. The subsequent transfer of government property to a non-governmental entity, further division of the property for non-public uses, and any resultant lot shall be subject to the requirements prescribed in this ordinance.

### **10.1.4 Family Division Exemption (PB 09-30, 9/21/09)**

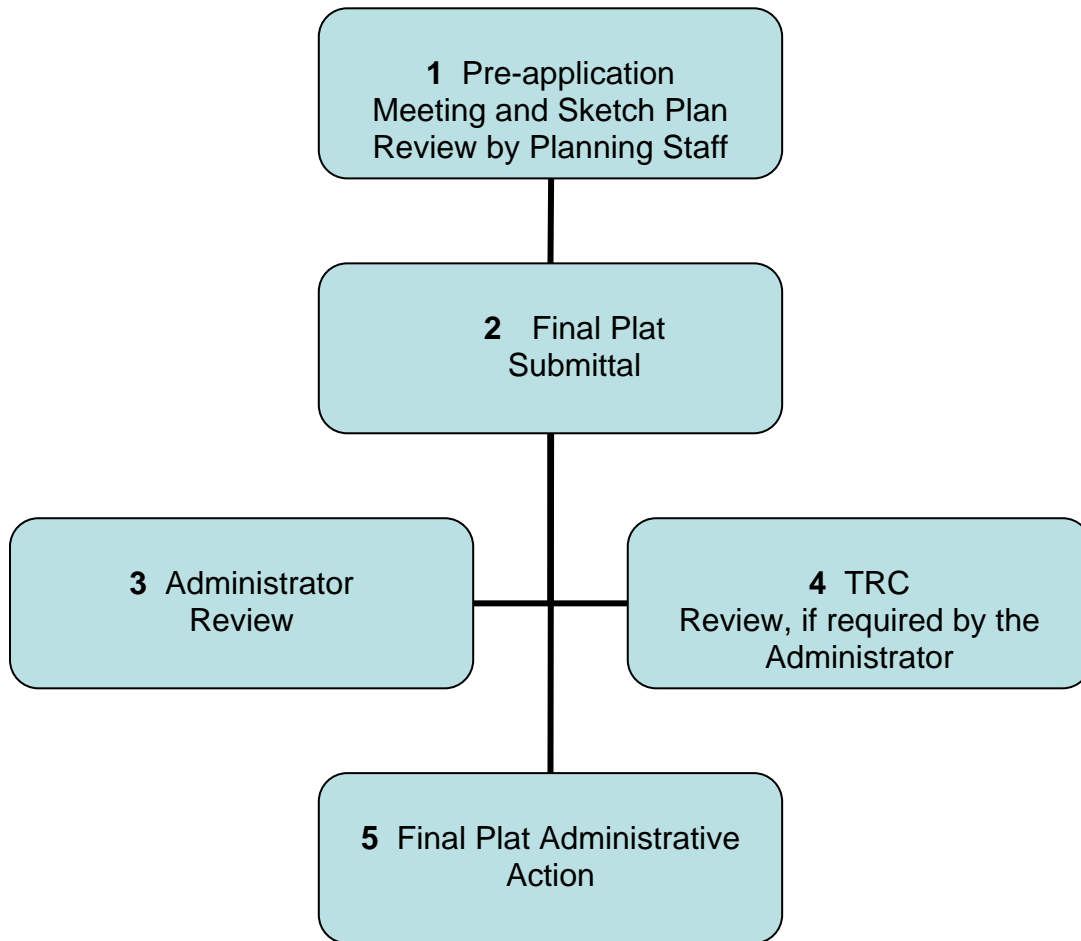
The division of a tract or parcel transferred to a family member within two degrees of kinship (e.g., child, grandchild) shall not be subject to the requirements and review processes of this ordinance provided no more than one lot is created out of the parent parcel. A maximum of one exemption shall be used on the parent parcel. The transferred parcel shall be a minimum of 40,000 square feet in size and share a common access with the original parcel.

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**Section 10.2 Minor Subdivisions**

**10.2.1 Review Process**

- A. A minor subdivision is defined as a subdivision where all of the following conditions exist:
  - 1. No public right-of-way dedication; and,
  - 2. The resultant subdivision will produce five or fewer lots.
  - 3. A maximum of five lots may be created with administrative approval on any separate tract in existence on April 2, 1989.
  
- B. The review process is as follows. The numbers in the flow chart correspond to the numbered details below the chart.



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1. **Pre-application Meeting**  
The applicant shall submit a sketch plan to the subdivision administrator for a determination of whether the approval process authorized under this section can be utilized. The subdivision administrator may require the applicant to submit additional information as necessary to make this determination, including having the technical review committee or other agencies involved in reviewing the submission.
2. **Final Plat Submittal**  
The applicant shall submit a final plat in accordance with the requirements set forth in this section and the development review process manual. The applicant shall also submit with the plat an application, fee, and any other documentation required by the administrator.
3. **Administrator Review**  
The subdivision administrator shall review the plat in accordance with the requirements of this ordinance.
4. **Technical Review Committee Review**  
The technical review committee shall review the plat in accordance with the requirements of this ordinance, if required by the administrator.
5. **Final Plat Administrative Action**  
Following successful revision of the final plat by the applicant in accordance with subdivision administrator and technical review committee comments, the subdivision administrator shall approve the final plat by obtaining the applicable signatures as required by this section.

### 10.2.2 Minor Subdivision General Provisions

- A. Applicants proposing a subdivision of five lots or less are required to obtain all necessary permits certifying compliance with local and state agencies including, but not limited to, NCDENR approval when connecting to existing central sewer systems or public water system prior to the approval of the subdivision plat.
- B. Approval of any plat is contingent upon the plat being recorded within 90 days after the date the certificate of approval is signed by the subdivision administrator. If a plat is not recorded within the 90 day period, it shall be null and void.
- C. Permits from state agencies including the Division of Water Quality (stormwater), DENR (soil erosion, sedimentation control, and CAMA), and/or NCDOT (encroachment agreement) may be required prior to any earth disturbing activity.

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### **10.2.3 Private Access Subdivisions**

Private Access Subdivisions (PAS's) are a type of minor subdivision and shall meet the following requirements:

- A. PAS's shall be developed exclusively for individual lots fronting on a private street.
- B. All private streets shall be constructed in accordance with Chapter 9.
- C. All PAS streets shall connect to an NCDOT maintained street and a NCDOT driveway permit shall be obtained for this connection.

### **10.2.4 Family Subdivisions**

Family subdivisions (FS's) are a type of minor subdivision and shall meet the following requirements in addition to all other applicable requirements of this ordinance:

- A. FS's shall be developed exclusively for single-family dwellings located on individual lots fronting on a private access-way or a public street, but shall not be on an arterial or major arterial. If the lot has frontage on two streets, one of which is an arterial or major arterial, a five foot non-access easement is required along the arterial/major arterial property line.
- B.
- C. No private access way shall serve more than five lots, including existing lots of any size.
- D. No private access way shall adjoin more than one public street.
- E. A lot owner may create one lot per year for a total of five lots.
- F. Streets shall be constructed according to the family subdivision standards in Chapter 9.

## **Section 10.3 Major Subdivisions**

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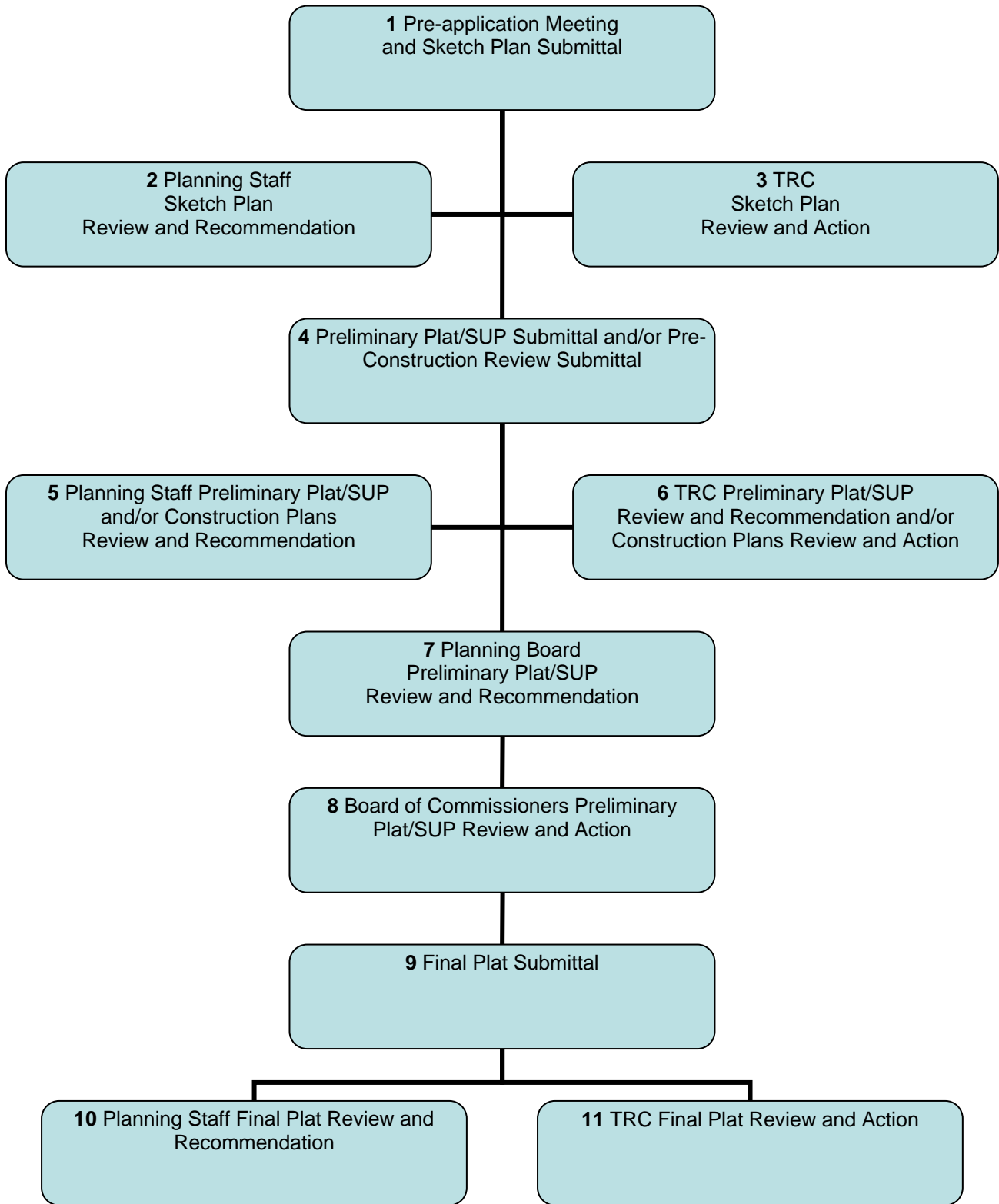
### **10.3.1 Review Process**

A major subdivision is defined as a subdivision that creates six or more lots and is subject to the improvement standards in this ordinance.

- A. All major subdivisions are subject to the issuance of a special use permit by the Board of Commissioners at the time of preliminary plat review.

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B. The review process is as follows.



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### 10.3.2 Pre-application Meeting

Before submitting any plans, including the sketch plan, to the county for review the applicant shall be required to schedule a pre-application meeting with the administrator. The purpose of this conference is to provide assistance and guidance to the developer to outline the review process and regulations that will have an impact on the proposal. The pre-application meeting is a non-binding and informal review of a development proposal intended to provide information to the applicant on the procedures and policies of Currituck County and does not confer upon the applicant any development rights.

### 10.3.3 Sketch Plan

- A. Sketch plans for subdivisions shall meet the requirements of this ordinance and the development review process manual. The purpose of the sketch plan is to review the conceptual aspects of the proposed development.
- B. Sketch Plan and Application Submittal
  - 1. After the pre-application conference, the developer shall submit a completed application form, sketch plan, and all required supplementary materials and fees to the Planning Department subject to the dates as called out on the Currituck County Submittal Schedule.
  - 2. A yield plan shall be submitted for conservation subdivisions and any subdivision reducing lot area and adding reduction to open space at the sketch plan pre-application conference as indicated in the plan submission requirements. The purpose of the yield plan is to determine the maximum permissible density that shall be allowed on the parcel(s) of land to be subdivided. Permissible density shall be calculated using the underlying zoning district(s). Yield plans shall be conceptual in nature and are not intended to involve significant engineering costs. They shall be realistic and not show development in areas that would not ordinarily be legally permitted in a conventional layout (i.e. the location of streets or residential lots in wetland areas or within identified areas of environmental concern).
- C. Planning Staff Sketch Plan Review and Recommendation  
Planning staff will review the plan and provide a report and recommendation to the Technical Review Committee.
- D. Technical Review Committee Sketch Plan Review and Action
  - 1. A technical review committee meeting shall be coordinated by the Planning Department to review the sketch plan after receipt of the completed application and materials. The purpose of the technical review committee meeting at this stage of review is to allow the applicant to discuss

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development issues with committee members and review alternatives to address identified concerns. The technical review committee will take action on the sketch plan.

2. Sketch plan approval shall remain valid for 24 months.

### 10.3.4 Preliminary Plat/Special Use Permit (SUP)

- A. Preliminary Plat/SUPs for subdivisions shall meet the requirements of this ordinance and the development review process manual. The purpose of the preliminary plat/SUP is to review the specific aspects of the proposed development and establish a site specific development plan.
- B. Preliminary Plat/SUP and Application Submittal
  1. After the pre-application conference, the developer shall submit a completed application form, preliminary plat/SUP, and all required supplementary materials and fees to the Planning Department subject to the dates as called out on the Currituck County Submittal Schedule.
  2. The applicant shall submit a letter of commitment from centralized water and sewer service provider stating their system capacities, capabilities, and commitment to service the proposed subdivision up to full build out.
  3. If a development is constructed in phases, the developer shall submit plans that clearly show the various phases or stages of the proposed development and the requirements of this ordinance that will be satisfied with respect to each phase or stage.
  4. If a development that is to be built in phases includes improvements that are designed to relate to, benefit, or be used by the entire development, then, as part of his application for development review, the developer shall submit a proposed schedule for completion of such improvements. The schedule shall relate completion of one or more phases or stages of the entire development. Once a schedule has been approved, no land may be used, no buildings may be occupied, and no subdivision lots may be sold except in accordance with the schedule approved as part of the permit.
- B. Planning Staff Preliminary Plat/SUP Review and Recommendation  
Planning staff will review the plan and provide a report and recommendation to the Technical Review Committee and Planning Board.
- C. Technical Review Committee Preliminary Plat/SUP Review and Recommendation
  1. The Planning Department shall be responsible for coordinating a technical review committee meeting to review the preliminary plat/SUP. The purpose

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of the technical review committee meeting at this stage of review is to finalize recommendations concerning the formal development of a proposed subdivision. The technical review committee shall check the preliminary plat/SUP against all applicable design standards and plat requirements.

2. Once the technical review committee has reviewed the preliminary plat/SUP and made a recommendation, it shall be placed on the next regularly scheduled Planning Board meeting agenda for review and comment.

### D. Planning Board Preliminary Plat/SUP Review

1. Planning Board members shall discuss with the developer any and all changes deemed advisable and the kind and extent of improvements to be made to the parcel of property. Upon reviewing the comments of the staff, technical review committee, and developer, the Planning Board shall approve, approve conditionally, or disapprove the preliminary plat/SUP.
2. Prior to the start of construction, the developer shall receive pre-construction review and approval from the TRC and obtain a construction permit/letter authorizing the commencement of construction. Failure to obtain a construction permit/letter from the Planning Department prior to the start of any earth disturbing activity may result in the revocation of the preliminary plat/SUP approval.
3. If the preliminary plat/SUP is disapproved, the Planning Board Chairman or his designee shall specify the reasons for such action in writing. One copy will then be attached and forwarded to the developer and one copy will be retained by the Planning Department.
4. Preliminary plat/special use permit approval shall remain valid for 24 months in accordance with the provisions of Chapter 11. The subdivider may submit a written request to the Board of Commissioners for an extension of the original plat approval. The extension shall only be for two years and only one extension shall be granted for a preliminary plat/SUP. No extension may be granted unless applied for before original preliminary plat/SUP approval has expired.
5. Any change to the approved preliminary plat/SUP, or construction plans, shall be consistent with the requirements of Section 11.9, Amendments to Permits.

### E. Board of Commissioners Preliminary Plat/Special Use Permit Public Hearing and Action

1. Notice of public hearing shall be in accordance with the requirements for a special use permit per Section 11.7.

2. The Board of Commissioners shall schedule a public hearing to review and take action on the preliminary plat and special use permit in accordance with established county policy following receipt of the Planning Board recommendation. During the public hearing, the Board of Commissioners shall review any and all remarks presented by the developer, staff comments and recommendations, technical review committee comments, and others.
  
3. The Board of Commissioners shall discuss with the developer, or their agent, changes deemed advisable, if any, and the kind and extent of improvements to be made by the applicant. If it is determined that adequate public facilities do not currently exist to serve the entire proposed development, the Board of Commissioners may allow for the phased development of the proposed subdivision as adequate public facilities become available. Upon conclusion of the public hearing, the Board of Commissioners may approve, approve conditionally, disapprove, or table the request as set forth in the Board of Commissioner's Rules of Procedures and by state law. This shall not constitute an official action of approval of the subdivision for recordation, but it shall grant vested right status to a proposed development. In addition, the Board of Commissioners may place limiting conditions on the timing and extent of development pursuant to the county's adequate public facilities ordinance provisions. Receiving approval from the Board of Commissioners shall allow the developer to proceed with submission of all materials and information required for the pre-construction review or final plat review process and to seek all permits as required under this chapter. A final plat shall be submitted for review within 24 months from the date the preliminary plat is approved by the Board of Commissioners. Failure to submit a final plat within the allotted time shall void the preliminary plat/special use permit approval.

### **10.3.5 Pre-Construction Review**

- A. Pre-construction drawings for subdivisions shall meet the requirements of this ordinance and the development review process manual. The purpose of the pre-construction review is to allow necessary technical review committee members to review detailed construction drawings and state permits prior to final plat submittal.
  
- B. Pre-Construction Review Submittal
  1. After the pre-application meeting, the developer shall submit a completed application form, detailed construction sheets, and all required supplementary materials to the Planning Department subject to the dates as called out on the Currituck County Submittal Schedule.
  
  2. Preliminary plat/SUP and pre-construction review submittals may be submitted simultaneously.

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- C. **Planning Staff Pre-Construction Review and Recommendation**  
Planning staff will review the plan and provide a recommendation to the technical review committee.
- D. **Technical Review Committee Pre-Construction Review and Action**  
The technical review committee shall discuss with the developer, or their agent, changes deemed advisable, if any, and the kind and extent of improvements to be made by the applicant. The technical review committee may approve, conditionally approve, or deny the construction drawings. Receiving approval from the technical review committee shall allow the developer to proceed with submission of all materials and information required for the final plat review process and to seek all permits as required under this chapter. A pre-construction review approval is valid so long as the preliminary plat is valid.

### 10.3.6 Final Plat

- A. Final plats for subdivisions shall meet the requirements of this ordinance and the development review process manual. The purpose of the final plat is to allow the recordation of a subdivision and transfer of individual lots for construction purposes.
- B. **Final Plat Submittal**
  - 1. After the pre-application conference, the developer shall submit a completed application form, final plat, and all required supplementary materials and fees to the Planning Department as called out on the Currituck County Submittal Schedule.
  - 2. The final plat shall be submitted before the expiration of the preliminary plat/SUP, otherwise such approval shall be null and void.
  - 3. Final plats shall include the entire area approved for construction as delineated on the preliminary plat.
- C. **Planning Staff Final Plat Review and Recommendation**  
Planning staff will review the plan and provide a recommendation to the technical review committee.
- D. **Technical Review Committee Final Plat Review and Action**
  - 1. The Planning Department shall be responsible for coordinating a technical review committee meeting to review the final plat. The technical review committee shall check the final plat against the preliminary plat and all applicable plat requirements.

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2. Once the technical review committee has reviewed the final plat and made a recommendation, it shall approve, conditionally approve, or deny the final plat.
3. No final plat shall be approved unless the developer has installed all required improvements for the area shown on the preliminary plat and approved for on the final plat.
4. The administrator shall secure from the developer a maintenance guarantee security document in which said developer shall agree to maintain the required improvements (See this chapter for the requirements) until such time as:
  - a. The state Division of Highways accepts the maintenance of any dedicated streets. The developer of any subdivision containing streets intended for public dedication shall post a letter of credit or other sufficient surety to guarantee that such streets shall be properly maintained until the offer of dedication is accepted by the NC Department of Transportation (NCDOT). The amount of the security shall constitute 15 percent of the total cost of the improvements. The developer shall provide information sufficient to determine the cost of the improvements;
  - b. The required improvements are accepted for maintenance by a property owners or homeowners association that is recognized and approved by the Board of Commissioners and established in accordance with the procedures established within this ordinance;
5. Upon approval of the final plat the developer shall have authorization to file the plat with the Register of Deeds. Approval shall be null and void for any plat not recorded within 90 days.
6. Approval of a plat shall not constitute acceptance by the county or other public agency of the offer of dedication of any streets, sidewalks, parks, or other public facilities shown on a plat. However, the county or other public agency may, to the extent of its statutory authority, accept such offer of dedication by resolution of the governing body or by actually exercising control over and maintaining such facilities.
7. For any replatting or resubdivision of land, the same procedures, rules, and regulations contained within this ordinance shall apply as prescribed for any subdivision. Lot sizes may, however, be varied on an approved final plat after recording, provided that: no lot or tract shall be created or sold that is smaller than the size shown on the approved plat; drainage easements shall not be changed; right-of-ways shall not be changed; street alignment and block sizes

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shall not be changed; the rear portion of the lots shall not be subdivided from the front part; and the character of the area shall be maintained.

### 10.3.7 Major Subdivision General Provisions

- A. Any expenses involved in the improvement of any property prior to the written receipt of preliminary plat approval by the Currituck County Board of Commissioners shall be incurred solely at the risk of the owner/developer. Preliminary plat approval shall in no way be construed as constituting an official action of approval for recording of the subdivision as required by this ordinance.
- B. Concurrent submittals of preliminary and final plats may be allowed by the Planning Department when no improvements, such as street construction or extension of utility lines to service a new lot of record, are required.
- C. It is not intended that these regulations repeal, impair, abrogate, or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations, or permits previously adopted or issued pursuant to law.
- D. The Board of Commissioners has the authority to allocate the number of lots that can go to final plat at one time based upon the adequacy of public facilities.
- E. Cultural and historic: the developer shall not destroy buildings, structures, archeological, or cultural features listed (or eligible to be listed) on national, state, or county registers or inventories of cultural or historic significance without an inventory or survey. The significance shall be determined by county technical staff in consultation with state preservation officials. Plans shall be reviewed by the appropriate agency within the Department of Cultural Resources as part of the technical review committee process.
- F. In approving a preliminary plat/SUP, the Board of Commissioners may at its own discretion, or upon request from the subdivider, modify any standard or requirement of this section where it is determined that an equal or better performance will result. In modifying any standard or requirement, the evaluation shall be made with regard to the overall performance in carrying out the purposes of these regulations. In approving a modification, the Board of Commissioners may attach additional conditions or requirements as part of the special use permit that will secure the objectives, standards, or requirements modified. Modifications shall not include varying zoning provisions. Any modifications or waivers shall require findings of fact issued by the Board of Commissioners.

### 10.3.8 Conventional Subdivisions

Conventional subdivisions are residential or non-residential subdivisions where all lots front on a public or private street and have less than 40 lots, unless all lot sizes are 5 acres or more. See Chapter 2 for dimensional requirements in each zoning district.

**10.3.9 Conservation Subdivisions**

- A. The purpose of conservation subdivision design is to preserve agricultural and forestry lands, natural and cultural features, and rural character that would be likely lost through conventional development approaches. To accomplish this goal, greater flexibility and creativity in design of such developments is encouraged. This type of subdivision allows the developer to decrease lot sizes and leave the land “saved” as common open space, thereby lowering development costs and increasing the amenity of the project without increasing the density beyond what would be permissible if the land were to be developed into lots using the conventional subdivision standards.
- B. Subdivisions with more than 40 lots are required to meet the conservation subdivision standards, unless all lot sizes are five acres or more. See Chapter 2 for dimensional requirements in each zoning district.
- C. On sites not served by public sewerage or a centralized private sewage treatment facility, soil suitability for individual septic systems shall be demonstrated at the time of sketch plan submission. The planning staff and Albemarle Regional Health Services shall select ten percent of the lots to be tested, in areas considered to be marginal. Costs for the tests shall be the responsibility of the applicant. If tests on the sample lots pass the soil test as conducted by Albemarle Regional Health Services, the applicant’s other lots shall also be deemed suitable for septic systems, for the purpose of calculating total lot yield. However, if any of the sample lots fail, several others of the county’s choosing shall be tested, until all the lots in a given sample pass.
- D. For conservation subdivisions, the developer may utilize the following density bonuses. Conservation subdivisions within the RO2 District are not eligible for a density bonus.
  - 1. For all conservation subdivisions, the total number of lots may be increased above what the yield plan will allow, by up to 20 percent in an Agricultural (A) zoning district and 5 percent in the other zoning districts.
  - 2. For conservation subdivisions in which 50 percent of the required open space (excluding primary conservation areas) is being actively farmed and remaining under the ownership of the developer, farmer or farm preservation trust and is protected from future development by a permanent conservation easement, the total number of lots may be increased by 5 percent above what the yield plan will permit.
  - 3. For conservation subdivisions in the residential and agricultural zoning districts, the total number of lots may be increased by 5 percent above what the yield plan will permit if at least 20 acres of land outside of the required open space is donated and accepted for county facilities.

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- E. An existing features analysis plan showing existing conditions and that analyzes each site's special features is required at the sketch plan stage as indicated in the plan submission requirements in this chapter for all proposed conservation subdivisions.
- F. Each sketch plan for a conservation subdivision shall follow a four-step design process as described below. When the conceptual sketch plan is submitted, applicants shall be prepared to demonstrate to the county that these four design steps were followed by their site designers in determining the layout of the proposed streets, house lots, and greenway lands.
1. During the first step all potential conservation areas (both primary and secondary) shall be identified, using the existing features analysis. Primary conservation areas shall consist of CAMA and adjacent 404 wetlands. Secondary conservation areas shall comprise 50 percent of the remaining land, and it shall include the most sensitive and noteworthy natural, scenic, and cultural resources on that remaining half of the property.
  2. During the second step, potential house sites are tentatively located. Because the proposed location of the houses within each lot represents a significant decision with potential impacts on the ability of the development to meet the subdivision standards, applicants shall identify tentative house sites on the conceptual sketch plan. House sites should generally be located not closer than 50 feet to primary conservation areas.
  3. The third step consists of aligning proposed streets to provide vehicular access to each house in the most reasonable and economical way. When lots and access streets are laid out, they shall be located in a way that avoids, or at least minimizes, adverse impacts on both the primary and secondary conservation areas. Wetland crossings shall be avoided. Street connections shall be provided to minimize the number of cul-de-sacs and to facilitate easy access to and from homes in different parts of the property (and on adjoining parcels). Where cul-de-sacs are necessary, those serving five or fewer homes may be designed with "T-intersections" facilitating three-point turns. Cul-de-sacs shall be designed with a central island containing indigenous trees and shrubs (either conserved on site or planted).
  4. The fourth step is simply to draw in the lot lines where applicable.
- G. Prior to review of the sketch plan, the applicant shall submit to the planning staff a "preliminary engineering certification" stating that the approximate layout of proposed streets, house lots, and open space lands complies with the county regulations, particularly those sections governing the design of subdivision streets and stormwater management facilities. This certification requirement is meant to

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provide the county with assurance that the proposed plan is able to be accomplished within the current regulations of the county.

- H. In evaluating the layout of lots and open space, the following design principles will be considered by the county as indicating design appropriate to the site's natural, historic, and cultural features, and meeting the purpose of this ordinance. The county shall evaluate proposals to determine whether the proposed development:
1. Provides a 50 foot buffer with wildlife plantings along open space utilized as active farmland;
  2. Protects and preserves all floodways and wetlands;
  3. Preserves and maintains mature woodlands, existing fields, pastures, meadows, and orchards, and creates sufficient buffer areas to minimize conflicts between residential and agricultural uses;
  4. Maintains or creates an upland buffer of natural native species vegetation of at least 50 feet in depth adjacent to wetlands and surface waters, including creeks, streams, springs, lakes, and ponds;
  5. Protects wildlife habitat areas of species listed as endangered, threatened, or of special concern by the U.S. Environmental Protection Agency and/or by the North Carolina Department of Environment, Health, and Natural Resources;
  6. Designs around and preserves sites of historic, archaeological, or cultural value, and their environs;
  7. Protects rural roadside character and improves public safety and vehicular carrying capacity by avoiding development fronting onto existing public roads and establishes buffer zones along the scenic corridor of rural roads with historic buildings, hedgerows, etc;
  8. Landscapes common areas (such as community greens), cul-de-sac islands, and both sides of new streets with native specie shade trees and flowering shrubs with high wildlife conservation value;
  9. Provides active recreational areas in suitable locations offering convenient access by residents, and adequately screened from nearby house lots;
  10. Includes a pedestrian circulation system designed to assure that pedestrians can walk safely and easily on the site, between properties and activities or special features within the neighborhood open space system. All roadside footpaths should connect with off-road trails, which in turn should link with potential open space on adjoining undeveloped parcels (or with existing open space on adjoining developed parcels, where applicable); and,

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11. Provides open space that is reasonably contiguous. Fragmentation of open space shall be minimized so that these resource areas are not divided into numerous small parcels located in various parts of the development. Open space shall generally abut existing or potential open space land on adjacent parcels, and shall be designed as part of larger contiguous and integrated greenway systems.

### 10.3.10 Planned Unit Development (PUD) Subdivisions

- A. In PUD subdivisions, mixed residential and commercial developments are planned as a unit and are allowed in a PUD overlay district. See Chapter 4 for overlay district requirements.
- B. The plans for the PUD shall indicate the particular portions of the tract that the developer intends to develop for residential and commercial purposes as applicable. Each portion of the lot shall then be treated as if it were a separate district zoned to permit either residential or commercial uses.
- C. A special use permit may be approved showing the portion of the tract proposed for commercial uses reserved for future development. No construction on any land may take place within such areas until the special use permit is amended to approve specific plans for such areas.
- D. The nonresidential portions of any PUD may be occupied only in accordance with a schedule approved by the Board of Commissioners that relates occupancy of such non-residential portions of the PUD to the completion of a specified percentage number of phases or sections of the residential portion of the development. The purpose and intent of this provision is to ensure that the PUD procedure is not used, intentionally or unintentionally, to create nonresidential uses in areas generally zoned for residential uses except as part of an integrated and well-planned, primarily residential, development. In approving a proposed schedule the board may consider, among other factors, the number of dwelling units proposed for the residential portion of the PUD, the nature and scope of the nonresidential portions of the PUD, the physical relationship of the nonresidential components of the PUD to neighboring properties not within the PUD, and whether the nonresidential uses are to be located within pre-existing buildings or new construction.
- E. In granting modifications the Board of Commissioners may attach additional conditions or requirements that will, in its judgment, secure the objective of the standards or requirements so varied or modified.

### 10.3.11 Residential Airpark Development (RAD) Subdivisions

Residential development adjoining the Currituck County Airport may be planned to provide for right-of-ways to be used for both motor vehicles and taxiing aircraft in a RAD Overlay District. See Chapter 4 for overlay district requirements.

**Section 10.4 Open Space Standards**

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**10.4.1 Applicability and Definition**

- A. All major subdivisions shall provide permanent open space. This shall not apply to subdivisions with 20 lots or less or where all the lots are 5 acres or larger.
- B. The location of open space shall be consistent with the policies contained in these provisions and other long range documents adopted by the Currituck County Board of Commissioners.
- C. For purposes of this section, open space means an area that:
  - 1. Is not encumbered with any structure unless such structure is for recreational purposes available and accessible to all residents of the subdivision or general public, including indoor tennis courts, swimming pool, and other facilities;
  - 2. Is not contained within a street right-of-way or otherwise devoted to use as a roadway, parking area not associated with the use of open space, or above ground waste disposal facilities;
  - 3. Is legally and practicably accessible to the residents of the development out of which the open space is taken;
  - 4. Is not encumbered by underground septic lines, any part of a sewage disposal system, or any above ground or below ground structure;
  - 5. May include farmland and tree farms;
  - 6. Is capable of being used and enjoyed for passive recreation, such as walking, jogging, or being improved for more active recreational use;
  - 7. Does not include any CAMA wetlands; and,
  - 8. Includes any part of any man-made or natural lakes or ponds provided they are completely surrounded by the development and under the ownership of the developer or homeowners association.
- D. Within the RO-2 district in major open space subdivisions, the transfer of existing lots that do not meet the current minimum lot size and width requirements; and existing or proposed lots or proposed open space areas, are permitted to transfer across rights-of-way between adjacent undeveloped parcels in order to facilitate subdivision design, for development of detached single-family dwellings that is appropriate for the district.

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**10.4.2 Minimum Open Space Requirements (not including Conservation Subdivisions)**

Open space shall be dedicated in accordance with the table below. Percentages are based on total development area. At least 50 percent of the open space required shall be lands suitable for development and shall not include, among other things, wetlands (CAMA, 404, 401), and swamps. Recreational amenities, such as water front access sites and picnic areas, shall be allowed within required open space areas. Portions of required open space shall also be allowed for dedication to the county for the development of necessary public facilities such as schools.

<b>Number of Units/ Development Type</b>	<b>Minimum Percent Open Space</b>
0-20 Single-family	0
21-30 Single-family	20%
31-40 Single-family	30%
40+ Single-family	45%*
Multi-family, two-family, or mixed residential (no Subdivision)	<b>30%</b>
PRD or PUD	35%**
Other Residential Development	15%

\*see Section 10.4.4 for additional Conservation Subdivision Open Space requirements

\*\*see Section 10.4.5 for additional PUD Open Space requirements

**10.4.3 Open Space Design Requirements (not including Conservation Subdivisions)**

- A. A portion of the required open space shall be improved for recreational use (i.e. ball fields, children's playground, swimming pools, tennis courts, etc.) taking into consideration:
  - 1. The character of the open space land;
  - 2. The estimated age and the recreation needs of persons likely to reside in the development;
  - 3. The cost of recreation facilities; and,
  - 4. The proximity to existing recreational areas.

**10.4.4 Conservation Subdivision Open Space Requirements**

- A. Subdivisions shall be designed around both the primary and secondary conservation areas, which together constitute the total required open space.
- B. Both primary and secondary conservation areas required to be preserved for open space shall be placed in undivided preserves, which may adjoin housing areas that have been designed more compactly to create larger areas that may be enjoyed equally by all residents of the development.
- C. For conservation subdivisions, a minimum of 45 percent of the total tract area shall be designated as permanent open space. This calculation shall be made after deducting the following unbuildable land:
  - 1. Primary conservation areas;
  - 2. Lands required for street right-of-ways (10 percent of the net tract); and
  - 3. Land under permanent easement prohibiting future development (including easements for drainage, access, and utilities).
- D. In addition to the requirements and open space requirements for all subdivisions, open space in conservation subdivisions shall be comprised of two types of land:
  - 1. Primary conservation areas consisting of CAMA and 404 adjacent wetlands. These environmentally sensitive resources form the core of the open space that is required to be protected;
  - 2. Secondary conservation areas consisting of the following: isolated 404 wetlands, soils unsuitable for septic systems as identified by onsite analysis or by using the USDA Soil Conservation Survey for Currituck County; mature woodlands; significant wildlife habitat; prime agricultural farmland; historic, archeological and cultural features listed (or eligible to be listed) on national, state or county registers or inventories; significant views into and out from the site; and aquifers and their recharge areas. Secondary conservation areas typically consist of upland forest, meadows, pastures, and farm fields as part of the ecologically-connected matrix of natural areas significant for wildlife habitat, water quality protection, and other resources. Secondary conservation areas are intended to include the most sensitive and noteworthy natural, scenic, and cultural resources on the property.
  - 3. Although resource lands listed as potential secondary conservation areas may comprise more than half of the remaining land on a development parcel (after primary conservation areas have been deducted), no applicant shall be required to designate more than fifty percent of that remaining land as a secondary conservation area. Full density credit shall be allowed for land in

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this category that would otherwise be buildable under local, state and federal regulations, so that their development potential is not reduced by this designation. Such density credit may be applied to other unconstrained parts of the site.

- E. All primary conservation areas and designated undivided open space shall be restricted from further subdivision through a permanent conservation easement, in a form acceptable to the county and duly recorded in the County Register of Deeds Office or protected by covenants under control of a homeowners association recorded in the County Register of Deeds Office.
- F. A minimum of 2,000 square feet per dwelling shall be designated and improved for active recreation. Determination of suitable improved active recreation shall be based on the character of the open space land, the estimated age and the recreation needs of persons likely to reside in the development, the costs of installation and maintenance of recreation facilities, and the proximity to existing recreational areas.
- G. No more than 50 percent of the minimum required open space, subject to (C) above, shall be utilized for active recreation (excluding golf course developments) in order to preserve a reasonable proportion of natural areas on the site.
- H. Acceptable modifications to natural areas include: reforestation, pasture or cropland use; buffer area, landscaping, shoreline protection, and wetlands management. The purposes for which open space areas are proposed shall be documented by the applicant.
- I. Undivided open space shall be directly accessible and interconnected to the largest practicable number of lots within an open space development. The majority of house lots should abut undivided open space in order to provide direct views and access. Safe and convenient pedestrian access to the open space from all lots not adjoining the open space shall be provided (except in the case of farmland, or other resource areas vulnerable to trampling damage or human disturbance). Where the undivided open space is designated as separate, non-contiguous parcels, no parcel shall consist of less than three acres in area, except such areas that are specifically designed as village greens, ball fields, upland buffers to wetlands, water bodies or watercourses, or designed as trail links.

### 10.4.5 PUD Open Space Requirements

The minimum lot sizes set forth in Chapter 4 for Planned Unit Developments may be reduced from 20,000 square feet to 7,500 square feet if the additional area is added to the minimum open space required in this ordinance.

**10.4.6 Open Space Ownership and Maintenance**

- A. Open space may be owned or administered by one or a combination of the following methods:
  - 1. Fee simple ownership by a unit of government or private non-profit land conservancy;
  - 2. Owned by a homeowners association; and/or,
  - 3. By individual private ownership such as a farmer, developer, or other private entity that maintains the open space in accordance with the purposes of this chapter. (i.e. farming, equestrian facility, etc. excluding confined livestock operations).
- B. Open space, man-made ponds, and reserve utility open space required to be provided by the developer in accordance with this chapter shall not be dedicated to the public except upon written acceptance by the county, but shall remain under the ownership and control of the developer (or his successor) or a homeowners association or similar organization.
- C. The owner of dedicated open space shall be responsible for the continuing upkeep and proper maintenance of the same. Determination of proper continuing upkeep and maintenance shall be the responsibility of the administrator.
- D. The developer shall place in a conspicuous manner upon the final plat of the subdivision prior to final plat approval a notation concerning control of open space.
- E. The developer will provide proof of registration of the articles of incorporation with the appropriate state agency for the formation of the homeowners association to the Planning Department.
- F. Although it is encouraged that the developer turnover any common properties to the homeowners association at the earliest date, the following requirements shall be placed within the homeowners association documents filed with the Currituck County Register of Deeds to ensure a proper transition:
  - 1. At 25 percent of total lot sales of the development or first phase receiving final plat approval, it shall be the responsibility of the developer to have established a functioning homeowners association board of directors along with the selection of officers; and,
  - 2. At 51 percent of total lot sales of the development or first phase receiving final plat approval, it shall be the responsibility of the developer to turnover control of all common areas to be assigned to the homeowners' association board of

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directors. If this is a phased development, the developer may only turnover that portion of common properties assigned to that phase.

- G. Homeowners' associations or similar legal entities that are responsible for the maintenance and control of open space areas and common areas shall be established by the developer who shall record in the Register of Deeds a declaration of covenants and restrictions that will govern the association or similar legal entity. A copy of the recorded document shall be provided to the administrator and such document shall include, but not be limited to, the following:
1. Provision for the establishment of the association or similar entity is required before any lot in the development is sold or any building occupied and membership shall be mandatory for each homeowner and any successive buyer.
  2. The association or similar legal entity has clear legal authority to maintain and exercise control over such common open space areas.
  3. The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of such common areas. Further, assessments levied can become a lien on the property if allowed in the master deed establishing the homeowners association or similar legal entity.
  4. The open space restrictions must be permanent, not just for a period of years.
  5. The association or similar legal entity must be responsible for liability insurance, applicable taxes, and the maintenance open space and other facilities under their control.
  6. The association or similar legal entity must be able to adjust the assessment to meet changing needs.
  7. The association shall be responsible for maintaining all public storm water drainage systems and easements within the subdivision not being maintained by the county, state, or other approved entity.
  8. It shall be expressly stated within the restrictive covenants/homeowners association documents that it will be the responsibility of the developer or successors or assigns to enforce such covenants or restrictions until such time as control has been transferred to the Homeowners Association Board of Directors. It shall be the sole responsibility of the developer, successor, or assigns to correct any deficiencies prior to transfer of control over to the Homeowners Association Board of Directors.

**10.4.7 Water Access for Subdivisions**

- A. For subdivisions of more than 20 lots, where the property being subdivided abuts public trust or estuarine waters, adequate areas suitable for access to those waters by the property owners shall be established. At a minimum, this area shall include 20,000 square feet in area and shall be contiguous to the tract being developed and accessible to all property owners.
  
- B. No developer may usurp, abolish, or restrict public access areas to the waters of the Currituck Sound or other local bays, sounds, creeks, rivers, or canals which public access has been historically enjoyed by the people of Currituck County.

**10.4.8 Utility Open Space Reservation**

Every residential development containing more than twenty lots or dwelling units served by septic tanks shall reserve an area, in addition to the open space area required herein, suitable in terms of size, location, soil type, topography, and other relevant factors to accommodate a community sewage treatment facility if one becomes necessary in the future due to septic tank failure or other reasons. This area is referred to in this chapter as reserve utility open space. It shall be the burden of the developer to provide plans and specifications to provide adequate reserve utility open space to the satisfaction of the county engineer and Board of Commissioners.

**10.4.9 School Site Reservation**

If a development plan submitted for approval includes a proposed school site that has been designated in the Land Use Plan (in accordance with G.S. 153A-331 [Contents and Requirements of Ordinance]) or some other long range document adopted by the Board of Commissioners, the county shall immediately notify the Board of Education. If the Board of Education does not wish the site to be reserved, no site may be reserved. If the Board of Education does wish the site to be reserved, the development shall not be approved without the reservation. As provided in G.S. 153A-331 [Contents and Requirements of Ordinance], the Board of Education must acquire the site within 18 months after the date the site is reserved, and if it fails to do so the developer may treat the land as freed of the reservation.

**10.4.10 Flexibility in Administration**

- A. The requirements set forth in this open space section concerning the amount, size, location, and nature of open space to be provided in connection with residential developments are established by the board as standards that presumptively will result in the provision of that amount of open space that is consistent with or generally recognized standards relating to the need for such areas. The board recognizes, however, that due to the particular nature of a tract of land, or the particular type or configuration of development proposed, or other factors, the underlying objectives of this chapter may be achieved even though the standards are not adhered to with mathematical precision. Therefore, the permit issuing body is authorized to permit minor deviations from these standards whenever it

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determines that: (i) the objectives underlying these standards can be met without strict adherence to them; and (ii) because of peculiarities in the developer's tract of land or the particular type or configuration of development proposed, it would be unreasonable to require strict adherence to these standards.

- B. Whenever the permit issuing board authorizes some deviation from the standards set forth in this section, the official record of action taken on the development application shall contain a detailed statement of the reasons for allowing the deviation.

### **Section 10.5 Surety Guarantees and Homeowners Associations for Subdivisions**

#### **10.5.1 Surety Guarantee Required for Maintenance**

- A. The developer shall deliver a surety guarantee in the form of cash or an irrevocable letter of credit payable to Currituck County to cover the costs that would be incurred to maintain common area to meet applicable local and state agency requirements in the event the homeowners association fails to maintain all common property in a safe condition in accordance with local and state guidelines including, but not limited to North Carolina Building Code and Currituck County nuisance regulations. This surety agreement shall be reviewed and approved by the county attorney prior to the approval of the final plat.
- B. The surety guarantee shall contain provisions granting the county, or other designated agency, the authority to go onto the property and upgrade/maintain the common areas. The total amount of the surety guarantee shall be estimated by the developer and approved by county staff, in consultation with local and state officials, to cover the amount such improvements would cost to bring them up to required standard based upon 20 percent of the improvement cost.
- C. In cases where a subdivider is not proposing to request dedication of improvements, such as private streets and open space, to the county, state, or another entity for maintenance and upkeep, then the county shall require a homeowners association to be created to guarantee the perpetual maintenance and upkeep of all improvements and/or open space.

#### **10.5.2 Homeowners Associations**

- A. The subdivider shall be required to submit to the county, prior to review of the final plat, a declaration of restrictive covenants, deed restrictions, and by-laws that, at a minimum, establish the following provisions:
  - 1. The establishment of a homeowners association responsible for the enforcement of the covenants and deed restrictions;

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2. Language establishing the common ownership of all on-site improvements not offered to any local or state agency for dedication to include, but not limited to, streets, drainage systems, open space, and community recreational facilities;
3. A full set of by-laws requiring every owner within the development, and their successors, to make regular payments of adequate fees and assessments to the homeowners association for the purpose of supporting financially all improvements not formally offered for dedication;
4. The establishment of a reserve fund to support the continued maintenance and upkeep of all identified common property;
5. The establishment of regulations allowing for the increasing of the mandatory fees or assessments when necessary;
6. The establishment of the legal procedure for the transfer of the maintenance requirements for all common area from the subdivider to the homeowners association.