

ORDINANCE NO. 283

**AN ORDINANCE CREATING AN OPEN SPACE DEVELOPMENT ORDINANCE FOR MADISON COUNTY; DESCRIBING THE BACKGROUND FOR THE ORDINANCE; PROVIDING DEFINITIONS; DETERMINING APPLICATION; ESTABLISHING DESIGN CRITERIA; SETTING OPEN SPACE REQUIREMENTS; PROVIDING FOR OPEN SPACE MANAGEMENT; AND, ESTABLISHING AN EFFECTIVE DATE HEREOF.**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MADISON COUNTY, IDAHO, AS FOLLOWS:**

**1. Madison County, Idaho hereby adopts the following Open Space Development Ordinance, as follows:**

**Open Space Development Ordinance**

**Section I. Background**

- A) Open space development has numerous environmental and community benefits, including the following:
  - 1) Reduces the impervious cover in a development. Impervious cover contributes to degradation of water resources by increasing the volume of surface runoff and preventing infiltration into the soil surface.
  - 2) Reduces rainfall pollutant loads to streams and other water resources.
  - 3) Reduces potential pressure to encroach on resource buffer areas.
  - 4) Reduces soil erosion potential by reducing the amount of clearing and grading on the site.
  - 5) Allows green space.
  - 6) Allows open space for recreation.
  - 7) Reduces the capital cost of development.
  - 8) Reduces the cost of storm water management by concentrating runoff in one area and reducing runoff volumes.
  - 9) Provides a wider range of feasible sites to locate storm water best management practices (BMPs).
  - 10) Reduces the cost of future public services needed by the development.
  - 11) Can increase future property values.
  - 12) Creates urban wildlife habitat "islands."
  - 13) Creates a sense of community and pedestrian movement.
  - 14) Can support other community planning goals, such as farmland preservation, affordable housing, and architectural diversity.
- B) It is the desire of Madison County to protect the natural, historic, and community resources in Madison County by promoting open space development within our jurisdiction.

**Section II. Definitions**

**Agricultural Lots**      Lots in a subdivision designated by platting or deed restriction solely for agricultural purposes.

Base Density	The original density permitted under the property's residential zoning category (dwelling units per acre).
Community Open Space	The area of open space remaining after natural open space has been designated. The area may be used for passive or active recreation for storm water management.
Conservation Easement	A conservation easement is a legal and deeded restriction on property, which in perpetuity prohibits some or all development of that property and whose purpose is to conserve open space and/or natural resources.
Development Lot	Lots in a subdivision designated by platting or deed restriction for development or residential use.
Deed Restriction	Allow ownership of set aside to be held by developer for future use.
Frontage Distance	The width of a housing lot (in feet) that fronts along the street.
Green Space	Open space maintained in a natural, undisturbed, or revegetated condition.
Impervious Cover	Any surface in the urban/suburban landscape that cannot effectively absorb or infiltrate rainfall.
Natural Condition	The topography and vegetation of an area that is unaltered by clearing and grading during construction.
No Build Zone	Any land located between a levy or dike and a river. No build zones can <u>not</u> be used as set aside ground.
One Hundred Year Flood Plain	The area of land adjacent to a stream that is subject to inundation during a storm Flood Plain event that has a recurrence interval of 100 years.
Open Space	A portion of a development site that is set aside for public or private use. Open space may be used as community open space or preserved as green space.
Open Space Development	A development pattern that arranges the layout of buildings in a compact area of the site so as to reserve a portion of the site for community open space or green space which could be protected in perpetuity.
Residential Lot	Lots in a subdivision designated solely for residential use.
Right-of-Way	The width of a public roadway that encompasses the pavement width and adjacent land needed for placement of sidewalks,

utilities, and storm water drainage.

Set Aside	Could include open space, community open space, green space, conservation easements, or unbuildable land.
Setback	The distance a structure must be located from property lines or road rights of way or other structures.
Sewer Lot	Lot designated on the plat on which will be placed a community sewer system in a clustered subdivision.
Stream Buffer	A vegetated area bordering a stream that exists or is established to protect a stream system. Alteration of this vegetated area is strictly limited.
Unbuildable Land	A site that includes faults, wetlands, submerged areas, slopes subject to down slope movement, sewer lots, and the 100 year flood plain. Areas that include steep slopes over 25% must be engineered to make sure the slopes and structures are stable.
Wetlands	Those that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

**Section III. Application**

- A. The provisions of this ordinance apply to all zones excluding industrial, commercial and agricultural I.
- B. Open space is a by-right form of development and shall not require a special exception or additional review.
- C. Plans registered before the adoption of this ordinance are exempt from the provisions of this ordinance.

**Section IV. Design Criteria**

- A) The total number of development lots allowable within an open space subdivision may be increased by 4% if all lots in the subdivision are ½ acre or smaller. If larger lots are used the number of lots will revert to the amount allowed in the existing zoning district using conventional development standards. The total number of development lots allowed shall be determined by using one of the following formulas:

$$T = [A - (NBZ+R)] \div BD + (A \times .04) \text{ (used when all lots are equal to or less than } \frac{1}{2} \text{ acre)}$$

$$T = [A - (NBZ+ R)] \div BD$$

Where:

- T = total units (residential or development lots)
- BD = base density (dwelling units/acre)
- A = total site area (acres)
- NBZ = no build zone land as defined in Section II (acres)
- R = road right-of-way (acres)

B) Frontage distance and rear, front, and side yard setbacks may be reduced to 50 percent of the requirements in the base zoning, subject to the following rules:

- 1) The frontage distance shall be no less than 100 feet except in cul de sacs with a maximum of 4 equal lots.
- 2) Side and rear yard setbacks shall be no less than 10 feet.
- 3) Front yard setbacks may be reduced to 30 feet on subdivision roads not considered arterial or collector roads.

C) Lot size may only be reduced in size from the standard with clustering and the provision by the developer of a community sewer system and sidewalk. Community sewer systems must comply with the requirements of the District VII Health Department, including appropriate provisions for legal obligations related to maintenance and replacement, and shall include the following requirements:

- 1) The lot on which the community sewer system is placed shall be part of the subdivision, shall be designated on the plat as the sewer, and shall be Unbuildable Land, and.
- 2) Ownership of the sewer lot shall be placed in the individual lot owners by means of a homeowners' association. The deed to each lot shall include a proportionate share of the sewer lot. Each lot owner shall be required to be a member of a homeowner's association, which shall be formed prior to conveyance of the first lot. The assessment of dues or fees for structural improvements requires the affirmative vote of no less than two-thirds of the homeowners' association membership. The homeowner's association must be created by the developer and approved by Madison Planning and Zoning prior to approval of the final plat and issuance of any building permits in the subdivision, and must be made binding on each lot in the subdivision by means of restrictive covenants, which covenants, shall at the minimum, provide for the following:
  - a) Provide detailed standards and schedules for routine operation, maintenance, repair and eventual replacement of the sewer system and the sewer lot, including vegetative management in a management plan.
  - b) Provide appropriate and enforceable fees or assessments and financing for the routine operation, maintenance, repair and eventual replacement of the sewer system, and means for routine collection of those fees or assessments.
  - c) Provide for the actual maintenance of the sewer system and sewer

lot in compliance with the management plan.

d) Provide for contingency plans for compliance with the management plan.

e) If there is not sufficient compliance with the homeowner's association and the management plan, provide a legal and functional framework to allow for county or municipal maintenance of the sewer system and sewer lot. Options may include:

(i) Provisions allowing the appropriate governmental entity to perform the maintenance, repair and replacement, assessing the subdivision property owners for all costs incurred;

(ii) Some other arrangement which will adequately provide for the continuing maintenance, care and costs of the sewer system and lot.

D) The number of parking spaces required for a residential open space development shall be two spaces per dwelling unit. Parking must be provided off street.

E) Minimum lot size shall not be less than one-third (1/3) acre, including sidewalks and drainage.

## **Section V. Open Space Requirements**

A) The total area of dedicated open space shall equal the following:

$$A - [(T \times \text{MLS}) + \text{NBZ} + R] = \text{OS}$$

Where

T = total units (residential or development lots)

A = total site area (acres)

NBZ = no build zone land as defined in Section II (acres)

R = road right-of-way (acres)

MLS = minimum lot size with cluster/open space development

OS = open space

B) The following activities or land uses may not be counted as a part of designated open space:

- 1) Land designated as being in a no build zone as defined under Section II,
- 2) Road rights-of-way,
- 3) Platted lots designated for development, not purely as open space.

C) The following areas shall be high priorities for inclusion in designated open space:

- 1) Resource buffers,
- 2) High-quality forest resources,

- 3) Individual trees,
  - 4) Critical habitat areas,
  - 5) High-quality soil resources/agricultural resources.
- D) At least 75 percent of designated open space shall be contiguous.
- E) Reasonable effort must be made to locate green space adjacent to green space in an adjoining property(s).
- F) Open space may be “community space” and may be used for passive or active recreation or the location of storm water management facilities, or for agricultural uses.
- 1) If used for storm water management, all design, construction, maintenance, and public safety requirements shall be met using EPA recommended design criteria.
  - 2) If used for active recreation, impervious cover shall not exceed 5 percent of this area. Such impervious cover may include horse barns, parking areas, club houses or other such uses acceptable to the Madison County Planning and Zoning Commission.
  - 3) If used for agricultural uses, the open space shall be assigned a specific lot number or numbers in the subdivision plat for ease of identification.
  - 4) Water rights appurtenant to the subdivision must remain with the subdivision and may not be removed from the land, with the following provisions:
    - (a) The developer must provide for a water delivery system to any development or residential lots greater in size than ½ acre. For lots ½ acre to one acre in size, the developer must provide a water delivery system of underground tile or other like satisfactory underground conduit. For lots one acre or more in size the developer must provide a suitable water delivery system. For each such water delivery system the developer must also obtain the approval of the other appropriate entities as set out in Idaho Code §31-3806 and any amendments thereto.
    - (b) In subdivisions where no development or residential lots are greater than ½ acre in size, water rights may be assigned to the open space or agricultural lots, and the developer must petition any appropriate irrigation entity and have the development and residential lots removed from any irrigation entity in which they may be located.

**Section VI. Open Space Management**

- A) The boundaries of designated open space areas, recreation areas, storm water management facilities, and green space shall be clearly delineated on

plans, including recorded plats, and marked in the field with signage approved by Madison County Planning and Zoning Commission to distinguish these areas from private property, or may be designated by appropriate deed restriction with approval of the Planning and Zoning Department.

B) Development in designated open spaces in the future is prohibited, except as otherwise set out below. Ownership of open space shall be designated through one of the following options:

1) Ownership by the individual lot owners as a homeowners' association. The deed to each lot shall include a proportionate share of the common open space. Each lot owner shall be required to be a member of a homeowner's association, which shall be formed prior to conveyance of the first lot. The assessment of dues or fees for structural improvements requires the affirmative vote of no less than two-thirds of the homeowners' association membership. The homeowner's association must be created by the developer and approved by Madison Planning and Zoning prior to approval of the final plat and issuance of any building permits in the development.

2) Conservation easement.

- a) If owned by a separate entity, a conservation easement shall be established for the area as defined in Section II, above, and shall be given to Madison County. Such a transfer is allowable, provided that the owning entity enters into a maintenance agreement acceptable to the County.
- b) A conservation easement, established as defined in Section II, above may be transferred to an established, designated land trust organization, among whose purposes is to conserve open space and/or natural resources. This option is recommended for natural open space areas. Such transfer is allowable, provided that
  - i. The organization is acceptable to Madison Planning and Zoning and is a bona fide conservation organization with perpetual existence;
  - ii. The conveyance contains appropriate provision for proper reverter or retransfer in the event that organization becomes unwilling or unable to continue carrying out its functions; and
  - iii. A maintenance agreement acceptable to the homeowners' association is entered into by the developer and the organization.

c) The conservation easement shall

- i. Protect open space from future development and environmental damage by restricting the area from any future building and from the removal of soil, trees, and other natural features, except as is consistent with conservation, recreation, or agricultural uses or uses accessory to permitted uses.
- ii. Provide that residents have access to the open space at all times.
- iii. Dictate whether open space is for the benefit of residents only or may be open to residents of Madison County.

3) Private Ownership. Private ownership of open space shall only be

allowed:

- 1) Where the owner uses the lot for agricultural purposes,
- 2) Where the owner retains ownership for future development when future zoning would so allow. In this event the plat shall be clearly marked to show that future development may occur on the privately owned open space property

C) Except where open space is retained under private ownership as set out above, an open space management entity shall be adopted which shall ensure that the open space will be protected in perpetuity from all forms of development, except as shown on an approved development plan and that it will never be changed to another use. The management entity shall create a management plan binding on all property in the development and approved by the Planning and Zoning department, and shall

- 1) Prescribe all allowable and unallowable uses and activities within such open space in a management plan.
- 2) Provide detailed standards and schedules for maintenance of the open space, including vegetative management in a management plan.
- 3) Provide appropriate and enforceable fees or assessments and financing of the management plan, and means for routine collection of those fees or assessments.
- 4) Provide for the actual maintenance of the open space in compliance with the management plan.
- 5) Provide for contingency plans for compliance with the management plan.
- 6) If there is not sufficient compliance with the homeowner's maintenance agreement, provide a legal and functional framework to allow for county or municipal maintenance of open space. Option may include:
  - a) Provisions allowing the appropriate governmental entity to perform the maintenance, assessing the subdivision property owners for all cost incurred;
  - b) Provisions providing for the open space property to be deeded to the appropriate governmental entity for public use;
  - c) Provisions providing for open space property to revert to the ownership of the original developer, his heir or assigns; or
  - d) Some other arrangement which will adequately provide for the continuing maintenance, care and costs of the open space property.

**2. This ordinance shall be in full force and effect, from and after its passage and publication, all as provided by law.**

**PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_.**

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**ROGER MUIR, CHAIRMAN  
BOARD OF COUNTY COMMISSIONERS  
MADISON COUNTY, IDAHO**

**ATTEST:**

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**MARILYN R. RASMUSSEN, CLERK**