

Memorandum Date: September 28, 2006
Meeting Date: October 4, 2006



TO: Board of County Commissioners
DEPARTMENT: Public Works Dept./Land Management Division
PRESENTED BY: KENT HOWE, PLANNING DIRECTOR
AGENDA ITEM TITLE: WORK SESSION TO REVIEW POSSIBILITY OF CLUSTER
SUBDIVISIONS FOR MEASURE 37 CLAIMS

I. MOTION

Following the Board discussion, staff will implement the Board direction.

II. AGENDA ITEM SUMMARY

As of the writing of this memo, Lane County has received 122 Measure 37 claims and waived the restrictive land use regulations on 51 of the 57 processed claims. Only 2 of the claims have requested the placement of a dwelling on the property. The remainder of the claims have been applicants desiring partition or subdivision development. The Board requested a work session to review the possibility of developing incentives for low impact or cluster subdivisions for these Measure 37 developments.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

The Board has waived the restrictive land use regulations that prevent subdivisions for 50 property owners that have filed M37 claims. Some of these claims are for large properties that are upwards of 500 acres in size. The Board has expressed an interest in determining if there are benefits to cluster the subdivision development and if so, how Lane County might provide incentives to encourage low impact development or cluster subdivision development on M37 claims.

B. Policy Issues

How can the County encourage cluster subdivision or lower impact development for M37 claims if the Board determines that there is a benefit to the development, the developer and Lane County?

C. Board Goals

The public hearing on any proposed change to county land use regulations will provide an opportunity for citizen participation in decision making, in conformance with the overall goals of the Lane County Strategic Plan.

D. Financial and/or Resource Considerations

The Board would need to consider amending its long range planning work program and/or pursue funding opportunities to explore the possibilities and benefits of taking steps to encouraging low impact or cluster subdivision development for property owners with valid M37 claims.

E. Analysis

1. Existing Policies

Statewide Planning Goal 14 (Urbanization) requires the separation of urban development from rural development. The Urbanization Goal 14 prohibits allowing urban levels of development in rural areas. Lane County Rural Comprehensive Plan (RCP) Land Use Planning Goal 2 Policy 23 implements Goal 14 through a number of requirements that ensure rural subdivision development will not represent urban levels of development and in so doing, establishes restrictive requirements, which in a practical sense, prohibit cluster subdivisions. However, these restrictive requirements may become moot under a M37 waiver if the Board concludes a waiver should include RCP policies. The text of RCP Goal 2 Policy 23 follows:

"A cluster subdivision, with the following exceptions, shall be deemed appropriate to a rural area when the criteria below are satisfied. Exceptions to this policy include cluster subdivision developments which meet the requirements of either A or B, and C.

- a. (1) Limited to single family residences; and
- (2) Limited to 20 single family residences; and
- (3) All lots within the cluster subdivision are five acres in size.

or

- b. (1) Limited to single family residences; and
- (2) Limited to 10 single family residences; and
- (3) Lots within the cluster subdivision average five acres in size.

and

- c. (1) No further cluster development of the parcel is allowed; and
- (2) The parcel being developed is not adjacent to another cluster subdivision containing lots less than five acres."

Consistent with the intent and requirements of OAR 660-14-040(2) and (3), a

showing must be made that the development will not represent an urban population or demand an urban level of facilities and services. For purpose of meeting this standard, affirmative findings must be made addressing the following:

- a. The level of development represented by the development cannot be reasonably accommodated through the expansion of an existing urban growth boundary or by intensification of development at an existing rural center.*
- b. The long-term environmental, economic, social and energy consequences resulting from the development; considering measures designed to mitigate negative impacts, are appropriate to the rural area. Factors to be considered include whether the size of the development is appropriate to the proposed rural area and whether the air, water, energy and land resources of the surrounding area are adequate to serve and are not adversely affected by the development.*
- c. The proposed development is compatible with or can be made compatible with adjacent uses considering:
 - (1) Whether the development detracts from the ability of existing cities and service districts to provide services, and*
 - (2) Whether the potential for continued resource management of the land at present levels surrounding and nearby the development is assured.**
- d. An appropriate level of rural facilities and services are available or can be provided in a timely and efficient manner.*
- e. The approval of the development is coordinated with affected jurisdictions and is consistent with the comprehensive plans of the affected jurisdictions and the Lane County Rural Comprehensive Plan.*

The development will not:

- a. Generate traffic which will exceed the carrying capacity, as defined by Lane Code Chapter 15, of adjacent public and private roads.*
- b. Necessitate a higher level of police service than presently provided to the surrounding area.*
- c. Occur within one mile of an existing urban growth boundary and/or share any urban service provided within a neighboring urban growth boundary.*
- d. On the whole require an urban level of service.*

Reasonable assurances must be provided that the cluster shall not generate students in excess of the capacity of affected facilities within the appropriate school district.

The development represents a concentration of people who generally reside and work in the area.

Deed restrictions which ensure that community water and sewer systems shall remain viable and under private ownership shall be required. Cluster subdivisions which propose to form or use a public water or sewer system shall not be allowed.

Cluster subdivisions shall be limited to residential use. No commercial or industrial uses will be allowed within existing or proposed cluster subdivisions.

All cluster subdivisions must be within an existing Rural Fire Protection District.

No other identifiable substantial increase of a public service shall be necessitated by the approval of a cluster subdivision.

Another RCP policy may also limit residential development outside existing developed and committed areas to those that have provided a valid exception and met all of the Statewide Goal requirements. RCP Goal 14, Urbanization Policy 1 states:

The County shall encourage new residential, commercial and industrial development to locate within existing incorporated cities or rural communities. Any growth outside Urban Growth Boundaries must:

- a. Be restricted to committed or developed areas including approved new development centers; or*
- b. Under certain specified conditions set forth in this plan, industrial, commercial and residential development is appropriate outside of developed and committed areas provided a valid exception is taken and/or all Statewide Goal requirements are met.*
- c. Any community designated in the plan that does not have an adequate Urban Growth Boundary, or any addition to such community that may be proposed, shall be justified by a valid exception pursuant to Statewide Goal 2 ,Part II.*

2. Experience with Existing Policies

No cluster subdivisions have been authorized in Lane County, since adoption of

these policies in 1984. The Statewide Planning Program prohibits urban levels of development on rural lands. Because State waivers for valid M37 claims may invalidate the applicability of the Statewide Planning Program for owners whose date of acquisition predates the Statewide Planning Goals, the issue of urban levels of development on rural lands may be moot.

The State Rule for rural residential development (OAR 660-004-0040(7)(e), attached) allows a Planned Unit Development (PUD) to cluster new dwellings by averaging the density across the parent parcel, if the number of new dwelling units to be clustered does not exceed 10, the number of new lots or parcels to be created does not exceed 10, none of the new lots or parcels will be smaller than 2 acres and the overall density will not exceed one dwelling for each unit of acreage specified in the minimum lot size zoning for the area. The Rule also prohibits service by a new community sewer system. However, with a valid M37 waiver, the State Rule requirements may also be moot.

The Board of Commissioners might be able to amend the RCP policies to expressly allow cluster subdivisions for properties with a M37 waiver without having to address the state's concern regarding urban levels of development or creating a basis for new M37 claims. This could be a way to encourage cluster subdivisions for properties with a M37 waiver for which the benefits could be many:

- 1) cost effective and efficient lower-impact development designs
- 2) more attractive and affordable developments for the purchaser
- 3) ability to develop property around sensitive environmental features (wetlands, streams, ridges, swales, etc.)

Staff could also explore funding opportunities that could provide a means to educate and encourage property owners and developers with M37 waivers for large subdivisions to utilize the benefits of low impact development or cluster subdivisions.

2. Potential Funding for Cluster Subdivision or Low Impact Development Study

A quick look at potential funding for the cluster subdivision study or low impact developments:

- A. DLCD/Technical Assistance Grant for the study:
- B. DLCD/Transportation & Growth Mgmt Grant for the study: Must have a transportation component. A M37 approval will increase use of county roads with subdivision development. This study would be looking at ways to use health and safety impacts on roads to incentivize appropriate development as a component within the overall cluster development study.
- C. OECD/Technical Assistance Grant for the study.

An alternative or supplement to the study could be a quick survey or rural Smart Growth initiatives.

3. Potential Financial Incentives for Cluster Subdivision or Low Impact Developments

A quick look at potential incentives for the cluster subdivision or low impact development incentives:

- A. ODEQ: Other states have used their clean water funds as low interest loan incentives, often where development supports watershed enhancement. Oregon does have a low interest loan program that might also be used in this capacity.
- B. State low interest loans could be explored as a potential incentive for cluster subdivision or low impact development.
- C. EPA has low interest loan funds for developments that enhance/protect wetlands (similar to Ohio EPA/Darby Development).
- D. Explore annexation/extension of service options in the event of proximity to water/sewer districts.

4. Other Potential Incentives for Cluster Subdivision or Low Impact Developments

- A. The low impact development resulting from cluster subdivisions could be recognized as a conforming use rather than as a non-conforming use.
- B. The County could expedite cluster subdivision applications for property owners with M37 waivers.
- C. A pilot study could be done on one of the large cluster subdivisions and the applicant's fees could be reduced or waived.

F. Alternatives/Options

- 1. Direct staff to explore amending the RCP policies to remove the limitations that prohibit cluster subdivisions for valid M37 claims or specifically address the policies in M37 Orders authorizing the waiver of restrictive land use regulations.
- 2. Direct staff to explore funding options for studying the benefit of cluster subdivisions and related development options that might affect the impact of Measure 37 development approvals, and to explore approaches that would encourage and educate developers about the

benefits of such developments, finishing with policy recommendations that allow cluster subdivisions and similar lower impact developments.

3. Do not amend the policy and do not work to encourage cluster subdivision development for M37 claim waivers.

V. **TIMING/IMPLEMENTATION**

Staff will implement the Board direction.

VI. **RECOMMENDATION**

Alternative 2.

VII. **FOLLOW-UP**

Staff will implement the Board direction.

VII. **ATTACHMENTS**

Rural Residential Rule (OAR 660-004-0040(7)(e))
James City County Rural Lands Residential Development Design Guidelines
The Practice of Conservation Development: Lessons in Success

OAR 660-004-0040: APPLICATION OF GOAL 14 TO RURAL RESIDENTIAL AREAS

1. PURPOSE

(1) The purpose of this rule is to specify how Statewide Planning Goal 14, *Urbanization*, applies to rural lands in acknowledged exception areas planned for residential uses.

2. APPLICABILITY

(2)(a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Statewide Planning Goal 3, (*Agricultural Lands*), Goal 4 (*Forest Lands*), or both has been taken. Such lands are referred to in this rule as *rural residential areas*.

(b) Sections (1) to (8) of this rule do not apply to the creation of a lot or parcel, or to the development or use of one single-family home on such lot or parcel, where the application for partition or subdivision was filed with the local government and deemed to be complete in accordance with ORS 215.427(3) before the effective date of Sections (1) to (8) of this rule.

(c) This rule does not apply to types of land listed in (A) through (H) of this subsection:

- (A) land inside an acknowledged urban growth boundary;
- (B) land inside an acknowledged unincorporated community boundary established pursuant to OAR Chapter 660, Division 022;
- (C) land in an acknowledged urban reserve area established pursuant to OAR Chapter 660, Division 021;
- (D) land in an acknowledged destination resort established pursuant to applicable land use statutes and goals;
- (E) resource land, as defined in OAR 660-004-0005(2);
- (F) nonresource land, as defined in OAR 660-004-0005(3);
- (G) marginal land, as defined in ORS 197.247, 1991 Edition;
- (H) land planned and zoned primarily for rural industrial, commercial, or public use.

3. SCHEDULE

(3)(a) This rule shall take effect on the effective date of an amendment to Goal 14 to provide for development of all lawfully created lots and parcels created in rural residential areas prior to the effective date of the amendment to Goal 14.

(b) Some rural residential areas have been reviewed for compliance with Goal 14 and acknowledged to comply with that goal by the department or commission in a periodic review, acknowledgment, or post-

acknowledgment plan amendment proceeding that occurred after the Oregon Supreme Court's 1986 ruling in *1000 Friends of Oregon v. LCDC, 301 Or 447 (Curry County)*, and before the effective date of this rule. Nothing in this rule shall be construed to require a local government to amend its acknowledged comprehensive plan or land use regulations for those rural residential areas already acknowledged to comply with Goal 14 in such a proceeding. However, if such a local government later amends its plan's provisions or land use regulations that apply to any rural residential area, it shall do so in accordance with this rule.

4. COMPLIANCE WITH GOAL 14

(4) The rural residential areas described in Subsection (2)(a) of this rule are rural lands. Division and development of such lands are subject to Statewide Planning Goal 14, *Urbanization*, which prohibits urban use of rural lands.

5. CURRENT RR ZONING

(5)(a) A rural residential zone currently in effect shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres.

(b) A rural residential zone does not comply with Goal 14 if that zone allows the creation of any new lots or parcels smaller than two acres. For such a zone, a local government must either amend the zone's minimum lot and parcel size provisions to require a minimum of at least two acres or take an exception to Goal 14. Until a local government amends its land use regulations to comply with this subsection, any new lot or parcel created in such a zone must have an area of at least two acres.

(c) For purposes of this section, "rural residential zone currently in effect" means a zone applied to a rural residential area, in effect on the effective date of this rule, and acknowledged to comply with the statewide planning goals.

6. "UPZONING" RR LAND

(6) After the effective date of this rule, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14.

7. LAND DIVISIONS

(7)(a) The creation of any new lot or parcel smaller than two acres in a rural residential area shall be considered an urban use. Such a lot or parcel may be created only if an exception to Goal 14 is taken. This

subsection shall not be construed to imply that creation of new lots or parcels two acres or larger always complies with Goal 14. The question of whether the creation of such lots or parcels complies with Goal 14 depends upon compliance with all provisions of this rule.

(b) Each local government must specify a minimum area for any new lot or parcel that is to be created in a rural residential area. For the purposes of this rule, that minimum area shall be referred to as the *minimum lot size*.

(c) If, on the effective date of this rule, a local government's land use regulations specify a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed that minimum lot size which is already in effect.

(d) If, on the effective date of this rule, a local government's land use regulations specify a minimum lot size smaller than two acres, the area of any new lot or parcel created shall equal or exceed two acres.

(e) A local government may authorize a planned unit development (PUD), specify the size of lots or parcels by averaging density across a parent parcel, or allow clustering of new dwellings in a rural residential area only if all conditions set forth in paragraphs (7)(e)(A) through (7)(e)(H) are met:

(A) The number of new dwelling units to be clustered or developed as a PUD does not exceed 10.

(B) The number of new lots or parcels to be created does not exceed 10.

(C) None of the new lots or parcels will be smaller than two acres.

(D) The development is not to be served by a new community sewer system.

(E) The development is not to be served by any new extension of a sewer system from within an urban growth boundary or from within an unincorporated community.

(F) The overall density of the development will not exceed one dwelling for each unit of acreage specified in the local government's land use regulations on the effective date of this rule as the minimum lot size for the area.

(G) Any group or cluster of two or more dwelling units will not force a significant change in accepted farm or forest practices on nearby lands devoted to farm or forest use and will not significantly increase the cost of accepted farm or forest practices there.

(H) For any open space or common area provided as a part of the cluster or planned unit development under this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records. The deed restrictions shall preclude all future rights to construct a dwelling on the lot, parcel, or tract designated as open

space or common area for as long as the lot, parcel, or tract remains outside an urban growth boundary.

(f) Except as provided in subsection (e) of this section, a local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area. Where a medical hardship creates a need for a second household to reside temporarily on a lot or parcel where one dwelling already exists, a local government may authorize the temporary placement of a manufactured dwelling or recreational vehicle.

(g) In rural residential areas, the establishment of a new mobile home park or manufactured dwelling park as defined in ORS 446.003(32) shall be considered an urban use if the density of manufactured dwellings in the park exceeds the density for residential development set by this rule's requirements for minimum lot and parcel sizes. Such a park may be established only if an exception to Goal 14 is taken.

(h) A local government may allow the creation of a new parcel or parcels smaller than a minimum lot size required under subsections (a) through (d) of this section without an exception to Goal 14 only if the conditions described in paragraphs (A) through (D) of this subsection exist:

(A) The parcel to be divided has two or more permanent habitable dwellings on it;

(B) The permanent habitable dwellings on the parcel to be divided were established there before the effective date of this rule;

(C) Each new parcel created by the partition would have at least one of those permanent habitable dwellings on it; and

(D) The partition would not create any vacant parcels on which a new dwelling could be established.

(E) For purposes of this rule, *habitable dwelling* means a dwelling that meets the criteria set forth in ORS 215.283(t)(A)-(t)(D).

(i) For rural residential areas designated after the effective date of this rule, the affected county shall either:

(A) Require that any new lot or parcel have an area of at least ten acres, or

(B) Establish a minimum size of at least two acres for new lots or parcels in accordance with the requirements of Section (6).

The minimum lot size adopted by the county shall be consistent with OAR 660-004-0018, "Planning and Zoning for Exception Areas."

8. THE "URBAN FRINGE"

(8)(a) Notwithstanding the provisions of Section 7 of this rule, divisions of rural residential land within one mile of an urban growth boundary for any city or urban area listed in paragraphs (A) through (E) of this

subsection shall be subject to the provisions of subsections (8)(b) and (8)(c).

- (A) Ashland;
- (B) Central Point;
- (C) Medford;
- (D) Newberg;
- (E) Sandy.

(b) If a city or urban area listed in Subsection (8)(a):

- (A) has an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR 660, Division 021; or
- (B) is part of a regional growth plan that contains at least a twenty-year regional reserve of land beyond the land contained within the collective urban growth boundaries of the participating cities, and that has been acknowledged through the process prescribed for Regional Problem Solving in ORS 197.652 through 197.658;

then any division of rural residential land in that reserve area shall be done in accordance with the acknowledged urban reserve ordinance or acknowledged regional growth plan.

(c) Notwithstanding the provisions of Section 7 of this rule, if any part of a lot or parcel to be divided is less than one mile from an urban growth boundary for a city or urban area listed in Subsection (8)(a), and if that city or urban area does not have an urban reserve area acknowledged to comply with OAR 660, Division 021, or is not part of an acknowledged regional growth plan as described in Subsection (b), Paragraph (B), of this section, the minimum area of any new lot or parcel there shall be ten acres.

(d) Notwithstanding the provisions of Section 7, if the Portland metropolitan service district has an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR 660, Division 021, any division of rural

residential land in that reserve area shall be done in accordance with the acknowledged urban reserve ordinance.

(e) Notwithstanding the provisions of Section 7, if any part of a lot or parcel to be divided is less than one mile from the urban growth boundary for the Portland metropolitan area and is in a rural residential area, and if the Portland metropolitan area does not have an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR 660, Division 021, the minimum area of any new lot or parcel there shall be twenty acres. If the lot or parcel to be divided also lies within the area governed by the Columbia River Gorge National Scenic Area Act, the division shall be done in accordance with the provisions of that act.

(f) Notwithstanding the provisions of Section 7 and Subsection (8)(e), a local government may establish minimum area requirements smaller than twenty acres for some of the lands described in Subsection (8)(e). The selection of those lands and the minimum established for them shall be based on an analysis of the likelihood that such lands will urbanize, of their current parcel and lot sizes, and of the capacity of local governments to serve such lands efficiently with urban services at the densities set forth in the Metro 2040 plan. In no case shall the minimum area requirement set for such lands be smaller than 10 acres.

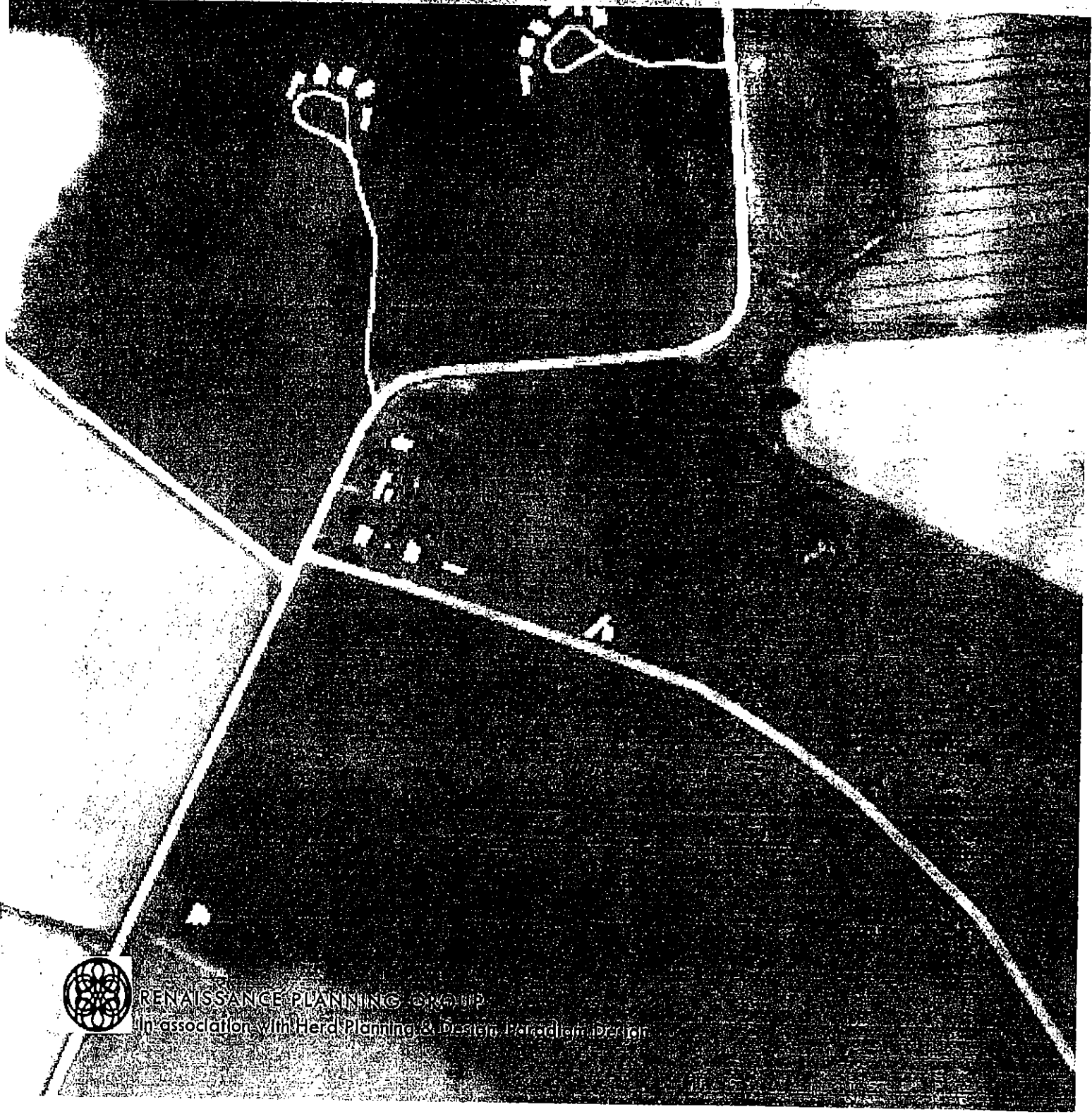
9. "GRANDFATHERING" EXISTING LOTS AND PARCELS TO ALLOW A DWELLING

(9) The development, placement, or use of one single-family dwelling on a lot or parcel lawfully created in an acknowledged rural residential area is allowed under this rule and Goal 14, subject to all other applicable laws.

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JAMES CITY COUNTY

Rural Lands Residential Development Design Guidelines



RENAISSANCE PLANNING GROUP
In association with Herd Planning & Design, Periodic Design



CLUSTER DEVELOPMENT

The Recommendations for Rural Lands place special emphasis on the value of Cluster Development as a means of preserving open areas and views in the landscape while accommodating residential development. The following guidelines on cluster development in general, and on specific cluster types, are intended to give landowners a basic understanding of this development pattern, and of opportunities to incorporate it into their planning process when and if they choose to develop portions of their land.

CLUSTER DESIGN PRINCIPLES

Houses should be located to conserve open space and have least visual impact on the landscape.

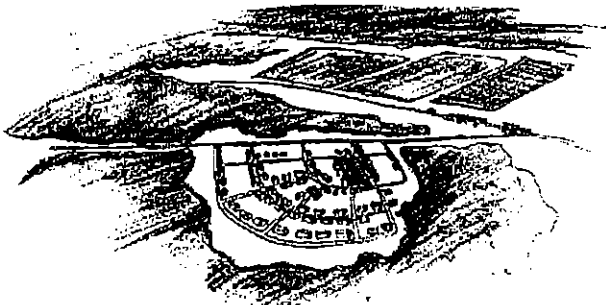
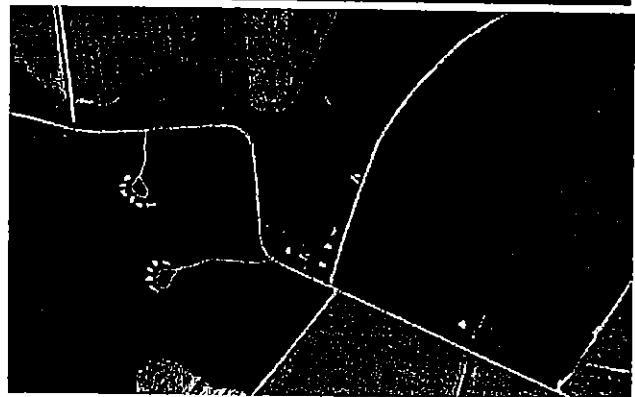
On a lot located horizontal to the road with little room for setbacks, homes should be clustered near the wooded edge and/or screened with a landscape buffer.

Minimize the number of access points to existing rural roadways in the design of the road patterns in a cluster development.

Roadways can often be hidden along the forest edge on a site.

Larger setbacks are encouraged whenever possible to conserve the maximum amount of open space and to preserve rural vistas.

The physical design of all site and building elements in the rural lands should respect the environment, the land, the history, and the way of life of the people who live in it.





The hatch pattern in the diagrams below represent the best opportunity for development on this site, with the least amount of impact. These diagrams are representative of a process that can be applied on a site-specific basis to determine the most appropriate location for development with the goal of preserving open space and rural vistas.

Existing Conditions

The best opportunity for development on this hypothetical site is indicated in the hatch pattern below. The land is < 20% slope and incorporates good soils for on-site drainage.



- 1 Slope: Slopes greater than 20% are less desirable. Avoid siting buildings along ridgelines to preserve rural vistas.
- 2 Streams: Streams, floodplains, and wetlands should be conserved.
- 3 Soil: Soil analyses will locate the best soils for on-site drainage. Refer to a soil survey and field verify to locate a site for septic drain-



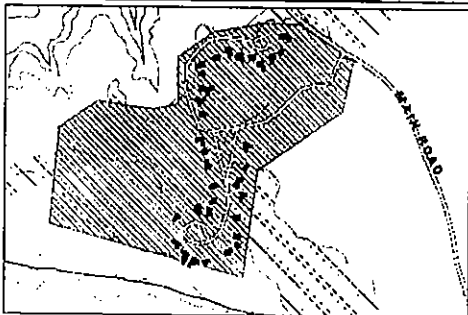
- 1 Forest: Forest edge is optimal for siting houses and roads, while retaining open space viewsheds. Prioritize preserving mature stands of trees and native species.
- 2 Stream Buffer: Landscape buffers protect the health of the stream and act as wildlife corridors. Preserve these buffers at a minimum of the Chesapeake Bay requirements.
- 3 Non-forested land: Includes farmland, open fields, meadows, and other land uses.

Development Planning

The physical design of all site and building elements in the rural lands should respect the environment, the land, the history, and the way of life of the people who live in it.



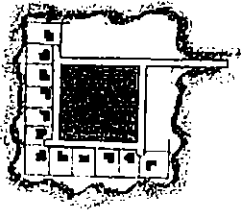

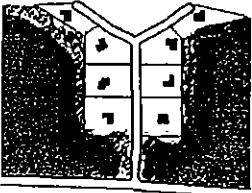
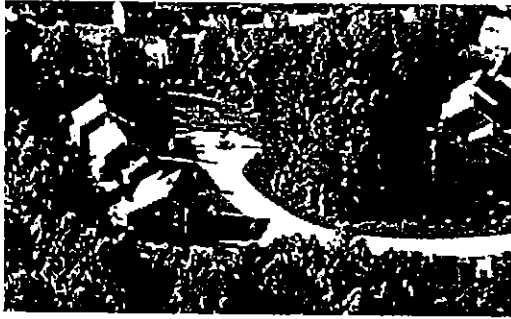
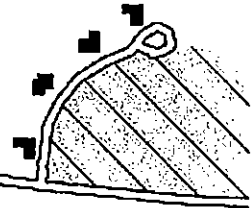

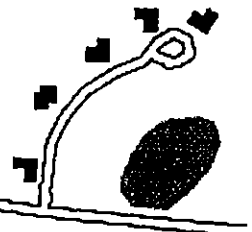

Overlaying the existing conditions above, the remaining property highlighted in red is best suited for development. It takes advantage of the forest edge, incorporates soils for drainage, is on a slope of < 20% and conserves a high proportion of forested land.



Building a cluster type development on this land could resemble the following diagram. One driveway connects with the main road and houses are tucked into and behind the trees. Open space is conserved adjacent to the road for agriculture or to maintain a rural vista.

CLUSTER TYPES

The following diagrams give some examples of cluster types and the opportunities available for using existing site features as focal points in the design of clusters. Landowners should study these basic cluster types if they are considering development of their property, and, working with a qualified land planner, incorporate the design principles in the layout of their site.

| <u>Diagrams</u> | <u>Image Examples</u> | <u>Description</u> |
|---|---|---|
|  |  | <p>Village Green Cluster homes around an open greenspace for passive or active recreation, or for privacy and visual screening of adjacent properties; The greenspace can be a identity element of a cluster community.</p> |
|  |  | <p>Forest Edge Homes can be developed in a linear cluster with open space or forest in view to the front and the back of the house. Wooded trails would be a great asset to this development for promoting a sense of community and a recreational opportunity.</p> |
|  |  | <p>Farm Commons Homes can be developed in a linear cluster with open space or forest in view to the front and the back of the house. Wooded trails would be a great asset to this development for promoting a sense of community and a recreational opportunity.</p> |
|  |  | <p>Water Feature Clustering homes along a water element offers both aesthetic benefits and can function as a fire safety element.</p> |



Buildout – conventional 3 ac lots



Buildout – conventional 10 ac lots



Existing Conditions



Buildout – clusters, density 1 unit/3 ac

**ULI Land Use Policy Forum Report
in Partnership with The Conservation Fund**

The Practice of Conservation Development: Lessons in Success

**Prepared by
Edward T. McMahon, The Conservation Fund
Michael Pawlukiewicz, Urban Land Institute**

**Urban Land Institute/
The Conservation Fund Joint Forum**

**Chicago, Illinois
December 3–4, 2002**



**Urban Land
Institute**

THE CONSERVATION FUND

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Introduction

In December 2002, the Urban Land Institute and The Conservation Fund convened a panel of 27 experts in Grayslake, Illinois, to discuss the topic "The Practice of Conservation Development: Lessons in Success." The forum was intended to stimulate a dialogue on conservation development and how it can be used as a tool for land conservation, particularly in rural and exurban settings.

Participants included a diverse group of professionals from the real estate industry, including developers, real estate advisers, land use planning practitioners, designers, architects, and representatives of several major conservation organizations. They considered the following questions:

- What is conservation development, and what is it not?
- Why is conservation development important?
- Is conservation development the same as smart growth?
- How can conservation development be used as a tool for land conservation?
- What are the barriers to conservation design and how can they be overcome?
- Is conservation development a market niche, or is there potential for significant market penetration?
- Does conservation development provide an acceptable rate of return on investment?
- What tools and actions are needed to advance the practice of conservation development?

Forum Summary

The forum began with a welcome and opening remarks by forum cochairs James J. Chaffin, former ULI chairman and chairman of Chaffin/Light Associates of Spring Island, South Carolina, and George Ranney, Jr., president and CEO of Chicago Metropolis 2020 and developer of Prairie Crossing, a conservation development in Grayslake. A series of presentations and case studies followed that led to an exchange of views by forum participants. The program included a presentation by pollster Brooke Warrick, president of American LIVES, Inc.; a moderated discussion of ideas that emerged during the forum; and a discussion of tools and actions needed to advance the practice of conservation development.

The Need for Conservation Development

Edward T. McMahon, vice president of The Conservation Fund, set the stage for the forum with a presentation on the need for conservation development. He outlined the reasons why The Conservation Fund, a national non-profit land conservation organization based in Arlington, Virginia, had chosen to co-sponsor the forum with the Urban Land Institute and described how development could be used as a tool for conservation.

America's Land Conservation Challenge

The accelerated consumption and fragmentation of open land is America's number-one land conservation challenge and a top issue facing local and state government officials, McMahon said. According to the December 2000 update of the Natural Resources Inventory compiled by the U.S. Agriculture Department's Natural Resources Conservation Service, the total amount of developed land in the United States increased by 34 percent, or 25 million acres, from 1982 to 1997. From 1982 to 1992, land was developed at the rate of 1.4 million acres per year, but from 1992 to 1997, that rate accelerated to 2.2 million acres per year—more than 1.5 times the rate for the previous ten years. That means land development is increasing at a rate far faster than population growth. For example, between 1970 and 1990, the population of Cook County, Illinois, and the five other metropolitan Chicago counties grew by 4 percent, but the amount of land developed in those counties increased 33 percent.

From an environmental standpoint, conversion of natural areas and farmland to developed property has resulted in increased habitat fragmentation, loss of biodiversity, disruption of natural landscape processes, degradation of water resources, increased flooding, non-point-source pollution, and growing public and private costs for servicing disbursed development.

One of the major factors contributing to the accelerating consumption and fragmentation of open land is the increase in average lot size: while the size of the average America family has been shrinking, the average lot size has been growing. Likewise, the footprint of commercial development in suburban areas far exceeds that of such development in urban areas. Fragmentation of open land also has challenged the land development community by fostering a rising tide of opposition to new development. Local governments have responded with a wide variety of new laws and ordinances, with the most popular among them being open-space protection measures.

From 1998 to 2002, voters approved more than 83 percent of referenda proposing tax increases or bonds for open-space preservation. For example, in November 2002, Nevada voters passed with 69 percent of the vote a \$150 million bond issue to buy open space in the state—despite the fact that more than 85 percent of Nevada land is already owned by the federal government. However, most land conservation efforts have been reactive, haphazard, narrowly focused, and not coordinated with other efforts to protect natural resources or to shape and direct growth. Smart conservation, as well as smart growth, is needed, McMahon said. He defined “smart conservation” as conservation that is proactive not reactive, systematic not haphazard, conducted on a large scale rather than on a small scale, and that is coordinated with other programs and policies.

Can Greenfield Development Qualify as Smart Growth?

McMahon argued that smart growth principles can be applied to development on the fringe, and pointed out that for the foreseeable future, the majority of new development will continue to take place in greenfield locations. Given this market reality, two questions arise: once a site is selected, how can it be made as environmentally sensitive as possible, and how can development be used as a tool for conservation? Quoting Bill Browning of the Rocky Mountain Institute on the need for developers to pursue environmentally sensitive development, McMahon said: “It’s better to be half right than all wrong.” Today, about 1.2 million units of housing are built in the United States each year, most of which are in greenfield locations. Only a small number are in conservation developments—planned communities that have land conservation as a central organizing principle underlying their design; the conserved land may be farmland or natural areas (such as forests, prairie, or desert), environmentally sensitive land (such as endangered species habitat or wildlife movement corridors), or historically significant land (such as battlefields or archaeological sites.)

Steven R. Kellenberg, principal with EDAW, Inc., in Irvine, California, said there are three reasons for conservation development initiatives—to promote the general good, to overcome entitlement challenges, and to produce premiums for developers. He noted that environmentally oriented buyers constitute 33 percent of the population in Orange County, California, and they will pay a premium for housing in conservation development areas. He also

pointed out that studies by the U.S. Green Building Council show that there has been an increase in awareness and acceptance of environmental priorities in the marketplace.

Lee R. Rayburn, of the Community of Civano in Tucson, Arizona, said one of the major barriers to expanding the market for conservation development is the Realtor community, which does not understand or accept the viability of this type of development.

Chaffin added that merely saving open space is not enough; developers also need to consider the stewardship of the open space.

Randall Arendt, of Greener Prospects in Narragansett, Rhode Island, said the movement would benefit from creation of a clearinghouse of information on conservation development and open-space management.

Tom Gray, of Santa Lucia Preserve in Monterey County, California, noted that most developers at the forum were smaller developers, whom he believes are motivated by “a love of the land.” Robert Brownell, CEO of Bielinski Custom Homes in Waukesha, Wisconsin, the largest homebuilder in the state, responded that large developers want to do conservation development projects, but they face the questions of how to expedite the entitlement process and who will maintain the open space.

Jeff Kingsbury, vice president of sales and marketing at McStain Neighborhoods in Boulder, Colorado, said the United States is seeing a convergence of growing concerns: housing needs, global warming, land development rates, traffic problems, and health and community issues. He noted that whether developers approach the issue of environmental sensitivity from the standpoint of smart growth or profits, they need to focus on common problems and how to overcome them. Chaffin agreed, noting that only through collaboration and partnerships will developers solve the current problems facing their professional community. Developers need to collaborate with conservation organizations, he said.

Edward Noonan, of Edward Noonan and Associates of Chicago, developer of Tryon Farms in northern Indiana, commented that developers want to do the right thing, but often it is too hard because of entitlement challenges. Time is money, and developers default to conventional development patterns when regulations make conservation development too difficult, he said.

Regulatory Issues: Ecological Planning and Design

In the second presentation, Kellenberg focused on cutting-edge preservation techniques used to balance ecological and economic considerations, and on how to overcome barriers to conservation design. He focused on several projects EDAW has been involved with, particularly Rancho Mission Viejo, a mixed-use, 23,000-acre project in southeast Orange County, California, in which more than half of the open space is designated for preservation.

The company began planning for the project in 1997, adopting an unconventional approach that combined the California process for developing a natural communities conservation plan (NCCP) for endangered species protection with the U.S. Army Corps of Engineers special area management plan for watershed management. Because it is important to know how the land functions ecologically, this synthesis integrates management of upland and aquatic habitats, and area water management. An integrated conservation plan was developed for Rancho Mission Viejo that addressed water quality, habitat, wildlife migration, habitat preservation, and other concerns. Developers honored strict development guidelines and landscape requirements in the combined NCCP/special area management plan for the region. Kellenberg listed three regulatory challenges faced by the project—bureaucratic resistance to the process, coordination of local entitlement requirements with state and federal standards, and high upfront planning costs.

Among the lessons Kellenberg said his firm learned were that a good science database is important, all stakeholders must share a vision, broad goals must be set and tied to implementation criteria, and the land preserve must be defined to provide residents and development opponents with the predictability they seek.

Just as developers need predictability and certainty, so do conservationists, McMahon pointed out. The best way to reduce opposition to development is for all land development to occur within the context of the conserved land.

Arendt commented that when land conservation is part of the comprehensive plan, the community is less likely to oppose the land development. A regional perspective gives greater credence to the predictability, Chaffin added. Because interest in protecting open space is growing, the next 50 years should be very good for conservation development, he predicted.

Luther Propst, executive director of the Sonoran Institute in Tucson, said legislatures in the five fastest-growing states in the mountain West have shackled local governments, restricting their ability to do regional planning. Good things are happening as a result of landowner initiatives, but not because of local government initiatives, he said.

Jonathan Callender, vice president of the Kennecott Development Company in Murray, Utah, described the Envision Utah project, which brought many stakeholders together in a regional collaborative process involving all Salt Lake City area counties. This process, which asked citizens to allocate expected growth to development areas in the region, has reduced opposition to development, he said.

Graphic representation of choices is a great way to build consensus, noted Will Humphrey, Illinois director of The Conservation Fund. Gray responded that it is often impossible to achieve consensus, and that in the case of Santa Lucia Preserve, a small group of environmental extremists held out to the end. For them, "the perfect became the enemy of the good," he said.

James P. Siepman, president of Siepman Realty Corporation in Waukesha, said he thinks the problem is aversion to change. Change is inevitable, he added, and people need to be educated about how change can make their communities better.

Do People Care about Sustainability and the Environment?

Warrick, with American LIVES, a leading real estate market research and polling firm based in Oakland, California, examined public attitudes toward sustainability and the environment.

Polling shows that people agree there is no inherent conflict between ecological sustainability and some form of economic growth and progress, especially when they are accompanied by technological and lifestyle changes, he said. People also realize that there is an environmental crisis, which justifies change. People are prepared to change their lifestyles, but only if the rationale and payoffs are evident and compelling, he said, and they are willing to spend more for products that are environmentally oriented and reduce waste. People also agree that equity issues must be addressed as a significant part of sustainability efforts.

Among Warrick's other findings was that the typical homebuyer knows more about environmental practices

than about conservation development, sustainability, and smart growth.

There are several major challenges in the marketplace, he said, including:

- the typical homebuyer does not know what conservation development is and does not have a vocabulary to talk or think about it;

- regulators are likely to respond to public opinion regardless of the need for or efficacy of new regulations; and

- developers are hard pressed to sell to homeowners the advantages of conservation development, sustainability, or environmental practices, and builders are reluctant to abandon selling the advantages of homes offering more and bigger bedrooms and bathrooms and fancy features. An alignment between the stakeholders can be difficult.

Many builders are successfully addressing the challenges in the marketplace, Warrick said. For example:

- leading-edge builders are designing environmentally sensitive, energy-efficient homes and learning how to articulate what that means for the buyer, i.e., benefits, not just features;

- leading-edge regulators are crafting new codes and realizing that there is a market basket of sustainable features that developers and builders are willing to include and that buyers, for the most part, are willing to pay for;

- leading-edge developers are learning how to explain sustainable practices to their public and their builders; and

- the development industry is good at copying.

In order to determine which features of sustainable development are important to the buyer, Warrick said developers must ask the following questions:

- Is the buyer willing to pay for it?

- Does it have a high perceived value? (It needs to be important and cost the developer less than the buyer is willing to pay.)

- Is it the right thing to do, and can the cost be neutralized?

- Are tax credits available for it if it promotes a benefit like clean air?

- Does it get the project approved faster?

- Does it appeal to a target market currently not being served?

- Is it part of a strategy addressing market creation or market share?

- Is it easy to explain to the buyer?

- Can the builder easily control how the message about it is conveyed?

- Does it contribute to getting the product on the home-buyer's shortlist?

Warrick discussed why some ideas and products don't move beyond the innovation stage. Green development accounts for only 2.5 percent of all developments in the United States, he noted, and it likely will remain a small percentage unless mainstream builders are brought into the field. The challenge is how to move green development out of the innovation ghetto. One way is to have a common language: if there is anything that promotes an idea, it is the existence of a common language to discuss it, he said. The vocabulary used to discuss these issues, however, remains ambiguous. The industry is still uncertain whether the subject is smart growth, conservation development, sustainable development, or green development.

For conservation development to take hold, it must reach the tipping point where an innovative idea suddenly gains acceptance. Warrick cited the fact that in 1962, only 2 percent of Americans were concerned about environmental protection. Rachel Carson's book *Silent Spring* caused that number to more than double in two years, and today, 80 percent of Americans identify themselves as environmentalists.

Warrick also noted that responsible development and sustainability might not be as important from a marketing standpoint as healthful living. People want to move to the neighborhood that is best for them and their families. What constitutes "best" is not just a function of greenness, or responsible development, or density. While all of these things may be important, developers must focus on what is specifically important to particular buyers.

Market and Economics

Kingsbury in his presentation sought to answer the following questions:

- Does conservation development appeal to the market?

- Does it represent just a niche market, or is their potential for significant market penetration?

- Does conservation development provide an acceptable rate of return on investment?

- Which investors/financiers are interested in providing capital for this product?

What Is the Market for Conservation Development?

Kingsbury, who has been the director of marketing for several signature conservation development projects—including Prairie Crossing; Hidden Springs in Boise, Idaho; High Plains Village in Fort Collins, Colorado; and the Stapleton Redevelopment Project in Denver—pointed out that conservation development is a niche market, but it is growing and, he said, it will become the norm within the next decade. He said developers are beginning to recognize the power of being a green builder. His company is continually working to raise the bar on green building because it has found it to be a profitable niche that appeals to at least a quarter of the population, he said.

Hidden Springs, a \$130 million land development that opened in April 1999, set aside an 810-acre preserve with a conservation easement, developed 25 miles of trails, developed a 100,000-square-foot town center, constructed a charter school, and implemented an innovative wastewater management system. When the project opened, houses were selling at a 10 percent premium, Kingsbury noted; today, they are selling at a 20 to 30 percent premium.

Prairie Crossing has preserved permanently 400 of 667 total acres—60 percent of the property. It includes ten miles of trails, a community-supported garden, restored native landscapes, a community barn and fitness center, a 22-acre swimming lake, and an innovative stormwater management system. Of the 362 houses, 272 have been sold. Houses originally sold at a 15 percent price premium; now they are selling at a 33 percent premium, he said. He also described High Plains Village and the Stapleton Redevelopment Project, making the following points:

- Conservation does appeal to a niche market. Early phases may have slower sales, but premiums will be achieved over time.
- Overall marketing costs will be the same as for conventional development, but the marketing mix will be allocated differently.
- Several national surveys, including some by American LIVES and the National Association of Realtors, show that homebuyers think natural open space, walking and biking trails, and gardens with native plants are extremely important in their housing choice.

Selling Green Development

Although builders believe that only 44 percent of homebuyers would pay \$2,500 or more for green features, Kingsbury said, a 2000 survey by *Professional Builder*

magazine found that nearly 90 percent of buyers said they would pay extra for green features and that 66 percent of them would pay \$2,500 or more extra for them.

He said that although conservation developments are a different product than conventional developments, they are competing for the same buyers. Conservation developers in marketing their homes must consider the resale market and emphasize amenities rather than square footage. The market for sustainable development is enormous—estimated at almost \$80 billion, Kingsbury said—and the market for green products and services is likely to increase for the next 15 to 25 years.

Homes in master-planned communities with permanently protected open space appreciate in value more than homes in large-lot conventional subdivisions, he said. For example, houses in Village Homes in Davis, California, a 240-unit green development constructed more than 20 years ago, sell for \$11 more per square foot than the average house in Davis. Likewise, studies show that homesites near parks and recreation areas have values 15 to 20 percent higher than those in other locations.

Health and wellness issues will become increasingly important in the green marketplace, he said. The most attractive features of environmentally sensitive development are those that provide a clear consumer benefit, not just those that appeal to an environmentalist's conscience. Developers should emphasize livability and community as competitive advantages, he said. Marketing should focus on open space per home site as opposed to price per square foot; dollar savings should be emphasized and not just energy savings. Finally, Kingsbury said, successful projects use a set of principles to guide design and development and to evaluate success.

Several participants remarked that developers should not assume that real estate brokers understand or have positive feelings about green development, and uninformed brokers can cause problems. Successful developers keep brokers in the loop and help them understand the value of conservation development. Marketing and messages should appeal at both the emotional and intellectual levels, participants said. Green building is premium building; it saves money, saves time, and provides a more healthful environment and a better quality of life than conventional building, they said.

Kingsbury ended his presentation by urging participants to “strive for the genius of the ‘and.’” By doing so, developers can balance environmental *and* economic objec-

tives; the two are not mutually exclusive but, in fact, can support one another, he said. As an example, he cited Prairie Crossing's stormwater management system: it saved more than \$1 million compared with a conventional curb and gutter system *and* improved water quality in the lake, which is used for swimming and as a passive amenity. Solutions that strive for the genius of the "and" may not be conventional or readily apparent, Kingsbury said, but if developers set finding them as their goal in design and development decision making, such solutions are attainable.

Prairie Crossing developer George Ranney commented that conventional developers were critical of his project even though his rate of return was 12 percent, compared with a typical return of 6 to 7 percent in the region.

A project's image and identity are extremely important to the overall marketing success, Gray noted. Chaffin added that differentiation of product produces an advantage in the marketplace.

Kellenberg said that to expand its market niche, conservation development needs to become attractive to national homebuilders, who are not impressed with construction rates of 35 to 40 units per year. Kingsbury responded that the Stapleton Redevelopment Project has an absorption rate of more than 600 houses a year.

Arendt noted that it took Grayslake residents and elected officials several years to understand the value of conservation development.

Stewardship

Michael Sands, environmental team leader at Prairie Crossing, examined operations and stewardship. He discussed:

- the steps needed to maintain and manage a project's green infrastructure once construction is completed;
- approaches for engaging project occupants in stewardship of the green infrastructure; and
- innovative approaches to funding and sustaining long-term stewardship programs.

Environmentally sensitive development will remain sensitive to the environment only if it continues to function in the resource-efficient manner in which it was intended when built, Sands said. Builders should ensure the permanent protection of conservation lands through implemen-

tation of conservation easements and stewardship agreements, he said. Also, stewardship provides an enormous opportunity for community residents to build a relationship with the land. Sands pointed out that most developers tend to focus on closing the deal and not on "raising the child." Conservation development will become endangered unless the project investment in green infrastructure is sustained over time.

Prairie Crossing came into being because of concern for a much larger area—more than 3,000 acres known as the Liberty Prairie Preserve, Sands said. Prairie Crossing—developed in response to the threat to the region's sense of place and community—has been successful not just because it preserved 400 acres within the site, but because it led to a regional conservation initiative that has gone a long way toward preserving almost 2,000 acres of adjacent land. Successive stewardship programs rest on education and community involvement. Funding for stewardship programs is also important, he said.

A number of environmentally sensitive developments have established natural-area stewardship funds for the restoration and/or management of natural areas on their project sites. Potential funding sources include transfer taxes, land trusts, joint ventures with conservation organizations, fees added to the costs of each unit that is sold, and annual management fees.

Among a number of examples of stewardship programs discussed were the following:

■ *Santa Lucia Preserve.* A 20,000-acre Preserve Land Company development with 350 homesites in Carmel Valley, California, the development includes 18,000 acres—90 percent of the land—designated as an ecological preserve. A conservancy was formed to manage, restore, and enhance the preserved land in perpetuity. Funding of the conservancy's efforts is guaranteed through an endowment established by the landowner from a dedicated portion of the sales price of each residential parcel. All lots share in ownership of the preserve.

■ *Prairie Crossing.* Developed by Prairie Holdings Corporation, the development has covenants requiring that one half of 1 percent of the value of each new home sale and resale go to the Liberty Prairie Foundation, which funds environmental stewardship and education programs in the Liberty Prairie Reserve—2,000 acres of land adjacent to the development.

■ *Rocking K Ranch*. A mixed-use resort and residential community developed by Rocking K Development near Tucson, Arizona, Rocking K funds a stewardship program with an initial grant from the development company of \$240,000 over five years. Subsequent funding is provided in deed requirements imposed on development that establish residential and commercial occupancy fees, real estate transfer fees, and a nightly hotel fee.

Sands also pointed out that a primary objective of environmentally sensitive construction projects is to heighten environmental awareness among residents. This can be done the following ways:

- using the site or a building on the site as an educational tool to demonstrate the importance of the environment in sustaining human life;
- increasing public awareness of appropriate technologies, of building and consumer materials that conserve energy and other natural resources, and of the waste associated with conventional materials;
- enhancing the appreciation of and nurturing human interaction with the natural environment; and
- relaying cultural and historical understanding of the site.

Sands's presentation generated a great deal of discussion. Victoria Ranney, vice president of Prairie Holdings Corporation, noted that there is a real connection between conservation and community. There also is a radical difference between how most development is done and how it was done at Prairie Crossing, she said. She added that a charter school at Prairie Crossing plays an important part in the conservation development's success.

One of the fundamental aspects of conservation development is that it rebuts the pervasive myth that humans are not part of nature, said Siepmann. Every place evolves through its relationship with humans, and that change is already reflected in the plants and animals that live there before development begins. Human involvement with land is part of the natural process, and people need to understand better the relationship between man and nature, he said; stewardship programs can help to accomplish this.

Chaffin said the environmental education center at Spring Island provides a variety of programs designed to teach people about the environment and connect them with nature. Programs include a summer camp for children,

sea kayaking, bird watching, daily trail rides, and visits to an on-site interpretive center. A full-time naturalist runs the preserve and its programs, which are supported and managed by the Spring Island Trust. The trust is supported by a 1.5 percent fee on the initial sale of each lot and a 1 percent fee on subsequent sales.

Stewardship organizations need a focused mission and partnerships with other groups, Propst said. Steve Apfelbaum, president of Applied Ecological Services, discussed his company's restoration efforts and how to get residents involved in restoration programs. Most residents like to be involved in stewardship and community-building activities, said Harold Teasdale, developer of Jackson Meadow outside of Minneapolis.

The Future of Conservation Development

The final discussion focused on where the industry goes from here, which tools and actions are needed to advance the practice of conservation development, and what the industry's next steps should be. McMahon began the discussion by quoting Winston Churchill: "Americans always do the right thing—after they've tried everything else." Michael Pawlukiewicz, ULI director of environment and policy education, said interest in green building is growing exponentially. A recent U.S. Green Building Council conference in Austin, Texas, was expected to draw 1,800 people, but instead attracted 3,500. "It's amazing how interest in green building is growing," he said. "Builders are interested not just in the building itself, but in the horizontal land development issues." At the ULI fall meeting in Las Vegas, there was great interest in green building, and foundations also are becoming more interested in the subject, he said.

Brett Engelking, director of development for Bielinski Custom Homes, noted that green development will expand its market share only after there are more projects in more markets. Chaffin noted that conservation development is different from sustainable development. Matthew Moorhead, of the Nature Conservancy of Colorado, said land conservancies need to be able to say truthfully that conservation development is an appropriate tool for land conservation. Pawlukiewicz noted that small successes will propel the movement.

Kellenberg concluded by setting out the following ten-point program for pushing conservation development into the mainstream:

- create a definition of conservation development;
- identify mainstream, nonboutique development models;
- demonstrate the economic feasibility of conservation development for merchant builders;
- identify and publicize icon projects;
- identify and illustrate possible developer motivations and benefits;
- integrate nonprofit conservation organizations into the process;
- integrate conservation development into the ULI smart growth program;
- establish an institute or center for research on conservation development;
- publish a "how to" manual on conservation development; and
- have a joint national meeting or conference once a year on conservation development.

Arendt said a newsletter on conservation development is needed. Propst discussed the need to expand the conversation to include groups like the National League of Cities and National Association of Counties. McMahon said The Conservation Fund would take the lead on an implementation strategy. Chaffin reported that the results of the meeting would be distributed to the group and publicized in *Urban Land* magazine.