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ARTICLE 5. – MEASUREMENTS AND DIMENSIONAL STANDARDS

Sec. 5-1. Minimum lot area and lot width, minimum house size, maximum density and maximum lot coverage.

5-1.1 *Single- and two-family residential dwelling units.* Within use districts permitting single- and two-family residential dwelling units, the minimum lot areas, minimum lot widths, minimum house size and maximum lot coverage in Table 5-1-1 shall apply. These figures for minimum lot area and minimum lot width do not apply to lots of record.

	Minimum Lot Area (Sq. Feet)	Minimum Lot Width (Measured at Building Line)	Minimum House Size (Heated Sq. Feet) ⁶	Maximum Lot Coverage of Buildings (Percent)
R-Ag Residential-Agricultural	5 acres	300'	1,200	25
R-1 Single-Family Residential	15,000 ^{1, 3, 4}	90'	1,200	25
R-2A Single-Family Residential	12,000 ^{1, 3, 4}	80'	1,200	25
R-2 Two-Family Residential				
Single-family detached	12,000 ^{1, 3, 4}	80'	900	25
Single-Family Townhouses	2,000 ²	20'	n/a	40
Two-Family (Duplex)	10,000 ^{1, 3, 4}	85'	n/a	25
R-3 Multi-Family Residential⁷				
Single-family detached	9,000 ^{1, 3, 4}	70'	900	35
Single-Family Townhouses	2,000 ²	20'	n/a	40
Two-Family (Duplex)	8,000 ^{1, 3, 4}	75'	n/a	35
Multi-Family Dwellings	See Table 5-1-2			
R-MH Residential Manufactured Homes				
Single-family detached	9,000 ^{3, 4}	70'	n/a	35
Manufactured home subdivision ⁵	9,000 ^{3, 4}	70'	n/a	35
Manufactured home park	See Section 4-3.1(B)			
<p>1 New lots abutting platted residential lots may have larger minimum size requirements. See Section 5-1(A)(1) below.</p> <p>2 Townhouses in an R-2 zone require an additional two thousand (2,000) square feet of common open space for each dwelling unit. This area cannot be used for any other purpose except as open space.</p> <p>3 Lots served by private septic tank and well shall be a minimum area of 63,340 square feet and width of 150 feet.</p> <p>4 Lots served by private septic tank and public water shall be a minimum area of 32,670 square feet and width of 100 feet.</p> <p>5 The minimum area for a manufactured home subdivision is ten (10) acres.</p> <p>6 House size less than the minimum may be allowed by Special Exception.</p> <p>7 The R-3 standards apply to non-residential zoning districts which allow residential uses.</p> <p>*See Appendix A for requirements in Form Based Code districts.</p>				

(A) Minimum lot size adjustment. In order to provide a transition from existing subdivided lots to lots in proposed single-family and two-family subdivisions, the lots abutting platted residentially zoned (R-1, R-2, R-2A and R-3) lots shall be adjusted using the following requirements in addition to the requirements in Table 5-1-1. However, the minimum lot size shall not be more than two (2) times the minimum size required in Table 5-1-1. These regulations shall not apply to existing or proposed multifamily dwellings or to existing or proposed developments in the R-MH or R-Ag districts.

(1) The required minimum size of the proposed lots shall be established by determining the average size of the smallest two-thirds (2/3) of the existing lots abutting the new subdivision. The proposed lots abutting the existing lots shall be eighty-five (85) percent of the average size but not more than two times the minimum lot size required in Table 5-1-1 for the zoning classification in which the development is located.

(b) If the adjusted minimum lot size is within ten (10) percent of the minimum lot size requirements mandated in Table 5-1-1, these regulations shall not apply.

5-1.2 *Multifamily residential dwelling units.* Multi-family residential developments shall meet the requirements in Table 5-1-2. All multifamily dwelling units shall be connected to a public sewer.

Zoning District	Maximum Dwelling Units per Acre	Minimum Lot Width (measured at building line)	Maximum Lot Coverage of Buildings (Percent)
R-3, RMH	8	85	40
LC, OC, IN	12	85	40
C-1, C-2	20	85	40
C-3	No maximum	0	100
IMU, MUC, NMU, FBR	See Appendix A for requirements in Form Based Code districts.		

Sec. 5-2. Building Setbacks.

5-2.1. *Minimum building setbacks.* Minimum building setbacks are established in Table 5-1-3.

Zoning District	Front Yard		Rear Yard	Side Yard		
	Arterial/ Collector Streets	Minor Streets		Interior Lot	Corner Lot	
			Arterial/ Collector Streets		Minor Streets	
R-Ag Residential-Agricultural	50'	50'	25'	15'	50'	50'
R-1 Single-Family Residential	40'	30'	35'	10'	40'	30'
R-2A Single-Family Residential	40'	25'	25'	8'	40'	25'
R-2 Two-Family Residential	40'	25'	25'	8'	40'	25'
R-3 Multi-Family Residential						
One- and two-family	40'	25'	25'	8'	40'	25'
Multifamily	40'	25'	25'	a	40'	25'
RMH Residential Manufactured Home						
Multifamily	40'	25'	25'	8'	40'	25'
Individual manufactured homes	40'	25'	25'	8'	40'	25'
Manufactured home parks	(See Section 4-3.1(B))					
C-1 Highway Commercial District						
Multifamily	40'	25'	25'	a	40'	25'
Commercial or mixed-use	40'	25'	b	b	40'	25'
C-2 General Commercial District ³						
Multifamily	35'	25'	25'	a	35'	25'
Commercial or mixed-use	40'	25'	b	b	35'	25'
C-3 Central Business District (CBD)						
Multifamily	10'	10'	b	b	10'	10'
Commercial or mixed-use	none	none	b	b	none	none
LC Limited Commercial District ³	40'	25'	b	b	50'	50'
OC Office Commercial District ³	40'	25'	b	b	50'	50'
IN Institutional District ³	40'	25'	b	b	50'	50'
M-1 Wholesale & Light Industrial	50'	50'	b	b	50'	50'
M-2 Industrial	50'	50'	b	b	50'	50'

a. Eight (8) feet plus two (2) additional feet for each story (floor) above two (2) stories, but not exceeding twenty (20) feet; and when dwelling unit faces side yard, the dwelling unit shall not be less than twenty (20) feet from the side lot line.

b. None, except when abutting residential district and then not less than twenty-five (25) feet.

1 See Appendix A for requirements in Form Based Code districts

2 Setbacks for accessory structure are 5 feet from rear and interior side property lines, unless the otherwise required setback listed above is less. (Also see Sec. 4-4.2(E))

3 Single- and two-family dwellings in nonresidential districts shall comply with the setbacks established for such uses in the R-3 zoning district.

- (A) *Front and side yard setbacks for dwellings.* The setback requirements of this ordinance for side yards on corner lots and/or front yards shall not apply to any lot where the average setback on developed lots located, wholly or in part, one hundred (100) feet on each side of such lot and within the same block and zoning district and fronting on the same streets as such lot, is less than the minimum required setback. In such cases, the setback on such lot may be less than the required setback but not less than the average of the existing setbacks on the existing developed lots.
- (B) *Zero side yard setbacks.* Upon review and approval by the Commission, the side yard setback requirement for single-family dwelling lots may be reduced to allow a zero side yard setback on one side of a lot providing the following conditions are met.

- (1) Any reduction in one yard requirement shall result in a corresponding increase in the side yard requirement for the opposite side yard. In this manner the overall side yard requirement of the district shall be met.
- (2) Front yard, rear yard and corner side yard requirements of the district shall not be modified.
- (3) Side yard setback requirements shall not be modified for an individual lot unless it is part of a block in which each lot's side yard setback is to be modified. The arrangement of modified side yard requirements shall allow for an open yard area between each dwelling unit.
- (4) The developer of a subdivision for which modifications to the side yard setback requirements are requested shall furnish to the Commission a copy of proposed deed restrictions, conditions, or covenants. Such covenants shall include at a minimum, provisions for:
 - (a) A maintenance easement which will allow for the maintenance of exterior dwelling walls facing a zero setback line.
 - (b) A requirement that dwelling walls facing a zero setback be windowless.
- (5) The developer of a subdivision for which modifications to the side yard setback requirements are requested shall be fully responsible for constructing the development in compliance with the approved final plat. Therefore, the applicant shall place a disclaimer in black ink on each page of the final plat which boldly states:

"The City of Perry assumes no responsibility or liability for any changes to this final plat made during construction or any material defects in construction of the development resulting from noncompliance with the requirements of this final plat that were not expressly authorized by the Perry Planning Commission."

No final plat for a development utilizing the zero side yard setback option that does not contain the aforementioned disclaimer shall be approved by the Planning Commission.

- (6) If, during construction of an approved development for which modifications to the side yard setback requirements were approved, the need for changes to the final plat arise, the applicant shall petition the administrator in writing for approval of said changes prior to construction in accordance with the amendment of an approved final plat. The petition shall contain a clear written description of the requested change, a revised final plat illustrating the requested change, an assessment of all properties that would be affected by the requested change (including properties within the development and adjacent to the development), and a rational outlining the specific need for the requested change. The administrator may approve or disapprove changes that will not affect overall development densities or result in a significant change to the overall development concept. All other requested changes shall be referred by the administrator to the Planning Commission for approval or disapproval. If the requested changes will affect any property abutting the development, the Planning Commission may require a public hearing on the proposed change. The Planning Commission may further require that the developer submit a copy of the written petition for final plat amendment (absent a copy of the revised final plat) via certified mail, return receipt requested to the owners of each affected abutting property at least fifteen (15) days prior to the scheduled public hearing.
- (7) The developer of a subdivision for which modifications to the side yard setback requirements are requested shall prepare an "as-built" plat for approval by the Planning Commission after construction improvements have been completed and prior to recording of the final plat. The "as-built" plat shall indicate the true location of all construction improvements, property lines, and maintenance easements as determined by a transit survey of the development as constructed. If the Planning Commission determines that any changes to the final plat have been made during construction without Planning

Commission approval as specified in Section 5-2(B)(6), the developer may be required to repair any such unauthorized changes prior to recording of the final plat.

- 5-2.2. *Minimum distance between buildings.* The following minimum distances between buildings shall be required unless otherwise specified within this chapter. The minimum distance between main building located on the same lot or parcel shall be:
- (A) Front to rear arrangement—Fifty (50) feet.
 - (B) Front to front arrangement—Forty (40) feet.
 - (C) Rear to rear arrangement—Thirty (30) feet.
 - (D) Side to side arrangement—Twenty (20) feet.
 - (E) All other combinations—Twenty (20) feet.
 - (F) There shall be a distance of not less than twenty (20) feet between a main and accessory building located on the same lot or parcel.

Sec. 5-3. Lots.

- 5-3.1. *Lots.* No lot even though it may consist of one or more adjacent lots of record shall be reduced in size so that lot width or depth, front, side, or rear yard, inner, or outer courts, lot area per family or other requirements or this ordinance are not maintained. This section shall not apply when a portion of a lot is acquired for public use or when a lot is divided between the two adjacent lots so that the divided lot becomes part of the adjacent standard size lots.
- 5-3.2. *Lots of record.* Where the owner of a lot of record or his successor to the title thereto does not own sufficient land to enable him to conform to the dimensional requirements of this ordinance, the following exceptions may be allowed.
- (A) *Land use.* Where a lot, tract or parcel of land is an area or width that does not conform to the requirements of the district in which it is located, the lot may be used for a single-family dwelling in the Residential Districts, (R-1, R-2, R-3). A two-family dwelling may be constructed in a R-2 or R-3 Residential District provided the lot to be used has a minimum area of five thousand (5,000) square feet and a minimum lot width at the building line of fifty (50) feet and provided that it is connected to a public sewer.
 - (B) *Replating.* When two (2) or more adjoining and vacant lots with continuous frontage are in a single ownership at the time of application and such lots have a frontage or lot area less than is required by the use district in which they are located, such lots shall be platted or reparcelled so as to create one (1) or more lots which conform to the minimum frontage and area requirements of the use district.
 - (C) *Improvements.* Buildings or structures located on sub-standard lots of record may be improved only when the addition of adequate plumbing is required by the laws and ordinances of the Council, provided that the yard requirements in Section 91 are adhered to.
 - (D) *Side yard requirements.* The side yard requirements for sub-standard lots of record may be improved only when the addition of adequate plumbing is required by the laws and ordinances of the Council, provided that the yard requirements in Section 91 are adhered to.
 - (E) *Expansion of existing dwelling on sub-standard lots of record.* Where a residential lot is an area or width that does not conform to the requirements of the district in which it is located, and said lot has an existing dwelling, said dwelling may be improved or expanded provided the following requirements are met:
 - (1) Proposed improvements or expansions comply with current setback requirements.
 - (2) Total lot coverage including proposed improvements or expansions do not exceed current allowable maximum coverage.
- 5-3.3. *Access to public streets.* Access to public streets shall be maintained in accordance to the following requirements:
- (A) Each principal use shall be located on a lot or parcel which provides frontage on a public street having a right-of-way of not less than thirty (30) feet.
 - (B) Any additional dwelling shall have access to a public street by means of a passageway open to the sky at least fifteen (15) feet in width.

5-3.4. *Additional dwellings on a single lot.* The Commission, after a review of an application and public hearing thereon, may grant a special exception to permit one (1) additional single-family dwelling, or mobile home on the same lot or parcel of land as that of the main dwelling provided that:

- (A) Each additional dwelling conforms to the minimum lot area, minimum width and maximum lot coverage requirements for such dwellings as set forth in Section 5-1.1, and conforms to the setback requirements as set forth in Section 5-2.1.
- (B) The arrangement of such additional dwellings are in such a manner that if the lot or parcel of land is ever subdivided, no nonconforming lots or nonconforming buildings are created; and
- (C) Each additional dwelling or mobile home has access to a public street by means of an unobstructed passageway of at least fifteen (15) feet in width.
- (D) Special exceptions to permit mobile homes as an additional dwelling on a single lot shall be effective for a period of one (1) year and may renewed by the Commission.

Sec. 5-4. Yards.

- (A) No part of a yard or other open space required for any building for the purpose of complying with the provisions of this ordinance shall be included as part of a yard or other open space similarly required for another building. Every part of a required yard or court shall be open from its lowest point to the sky unobstructed, except for the ordinary projection of sills, cornices, buttresses, ornamental features, chimneys, flues, and eaves, provided such projections shall not extend more than two (2) feet beyond the yard area requirements.
- (B) Yard requirements. Yard requirements shall be modified subject to the following conditions:
 - (1) On double frontage lots, the required front yard shall be provided on each street.
 - (2) Whenever a rear property line of a lot abuts upon a [an] alley one-half (½) of the alley width shall be considered as a portion of the required rear yard.
 - (3) An unroofed porch shall project into a required front yard for a distance not exceeding ten (10) feet.
 - (4) The front and side yard requirements may be waived where dwellings occupy space above commercial uses upon approval of the Planning Commission.

Sec. 5-5. Building height.

- (A) *General.* Building height is the vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the coping of the parapet wall of a flat roof, to the deck line of a mansard roof, or to the average height level between the eaves and ridge of a shed, gable, hip, or gambrel roof.
- (B) *Maximum building height.* Maximum building heights are established in Table 5-5-1.

Table 5-5-1: Maximum building height*	
Zoning District and Use	Maximum Building Height (in feet)
Single-family, two-family, and townhouse residential in any district	35
Non-residential uses in R-Ag, R-1, R-2, R-2A, R-3 and RMH	40
Multi-family residential in R-3	40
C-1, C-2	50
C-3, LC, OC, IN	40
M-1, M-2	50
IMU, MUC, NMU, FBR	See Appendix A for requirements in Form Based Code districts.
*Maximum building height for accessory structures is provided in Section 4-4.2(E).	

- (C) *Exceptions.* Spires, belfries, cupolas, chimneys, antennas, water tanks, ventilators, elevator housings, mechanical equipment or other such structures placed above the roof level and not intended for human

occupancy shall not be subject to height limitations. Silos, granaries and other similar agricultural structures are not subject to height limitations.

Sec. 5-6. Conservation Subdivision Option.

5-6.1. *Purpose.* The purpose of the conservation subdivision is to:

- (A) Preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat;
- (B) Preserve important historic and archaeological sites;
- (C) Permit clustering of houses and structures on less environmentally sensitive soils which will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for residential development;
- (D) Reduce erosion and sedimentation by minimizing land disturbance and removal of vegetation in residential development;
- (E) Promote interconnected greenways and corridors throughout the community;
- (F) Promote contiguous greenspace with adjacent jurisdictions;
- (G) Encourage interaction in the community by clustering houses and orienting them closer to the street, providing public gathering places and encouraging use of parks and community facilities as focal points in the neighborhood;
- (H) Promote construction of convenient landscaped walking trails and bike paths both within the subdivision and connected to neighboring communities, businesses, and facilities to reduce reliance on automobiles;
- (I) Conserve scenic views and reduce perceived density by maximizing the number of houses with direct access to and views of conservation space; and
- (J) Protect prime agricultural land and preserve farming as an economic activity.

To achieve these objectives, an applicant for a permit to construct a residential development within the R-1, R-2, R-2A, R-3 and R-MH residential zones may elect, with the written consent of the Commission, to submit a subdivision plan utilizing the conservation subdivision option, subject to the provisions set forth in this section. The Commission may permit, upon determination that the proposed development complies with all requirements of this Section, variations in lot area, setbacks, and other dimensional requirements, and a variety of residential building types as necessary to ensure that the conservation subdivision design will achieve the objectives identified above.

5-6.2. *Applicability of Regulations.* This Conservation Subdivision option is available with Planning Commission approval in all residential zoning districts, including R-1, R-2, R-2A, R-3 and R-MH residential districts. Applicant shall comply with all other provisions of the zoning code and all other applicable laws, except those that are incompatible with the provisions contained herein.

5-6.3. *Ownership of Development Site.* The tract of land to be subdivided may be held in single and separate ownership or in multiple ownership. If held in multiple ownership, however, the site shall be developed according to a single plan with common authority and common responsibility.

5-6.4. *Housing Density Determination.* The maximum net density of a Conservation Subdivision shall not exceed the following:

Table 5-6-1: Maximum Density for Conservation Subdivisions			
Zoning District	Open Space Provided		
	30 percent	40 percent	50 percent
R-1	1.7 dwellings per acre	2.0 dwellings per acre	2.4 dwellings per acre
R-2 and R-2A	2.1 dwellings per acre	2.5 dwellings per acre	2.9 dwellings per acre
R-3 and RMH	2.6 dwellings per acre	3.0 dwellings per acre	3.4 dwellings per acre

- 5-6.5. *Minimum Lot Size Adjacent to Existing Single-Family Residential.* The minimum lot size for residential properties (R-1, R-2, and R-3) abutting platted residentially zoned lots shall be at least eighty-five (85) percent the size of the established lot. However, the minimum lot size shall not be more than two (2) times the minimum size required in Table 5-1-1. These standards shall not apply to new or existing multifamily properties.
- 5-6.6. *Development Requirements.* Conservation subdivisions shall meet the following requirements:
- (A) Minimum subdivision size shall be ten (10) acres.
 - (B) Minimum lot width shall be sixty (60) feet as measured at the front building line.
 - (C) There is no minimum lot area requirement.
 - (D) The maximum allowable lot coverage shall be fifty (50) percent.
 - (E) The minimum right-of-way width for minor residential streets shall be fifty (50) feet.
 - (F) The minimum setbacks are established in Table 5-6-2:

Table 5-6-2: Minimum building setbacks in conservation subdivisions (in feet)				
Zoning District	Front	Interior Side	Exterior Side	Rear
R-1	25	8	20	20
R-2 and R-2A	25	5	20	20
R-3 and RMH	25	5	20	20

- (G) *Conservation Space Management Plan Required.* A conservation space management plan, as described in Section 5-6.9, shall be prepared and submitted prior to the issuance of a land disturbance permit.
 - (H) *Instrument of Permanent Protection Required.* An instrument of permanent protection, such as a conservation easement or permanent restrictive covenant and as described in Section 5-6.9, shall be placed on the Conservation Space concurrent with the issuance of a land disturbance permit.
 - (I) *Other Requirements.* The Applicant shall adhere to all other applicable requirements of the underlying zoning and Article XII of this Ordinance.
- 5-6.7. *Conservation Space.*
- (A) *Definition.* Conservation Space is the portion of the conservation subdivision that has been set aside for permanent protection. Activities within the Conservation Space are restricted in perpetuity through the use of an approved legal instrument.
 - (B) *Standards to Determine Conservation Space.*
 - (1) The minimum restricted Conservation Space shall be determined by the zoning district and density as established in the administrative manual.
 - (2) The following are considered Primary Conservation Areas and are required to be included within the Conservation Space, unless the Applicant demonstrates that this provision would constitute an unusual hardship and be counter to the purposes of this article:
 - (a) The 100-year floodplain.
 - (b) Riparian zones of at least 75-foot width along all perennial and intermittent streams.
 - (c) Slopes above twenty-five (25) percent of at least five thousand (5,000) square feet contiguous area.
 - (d) Wetlands that meet the definition used by the Army Corps of Engineers pursuant to the Clean Water Act.
 - (e) Populations of endangered or threatened species, or habitat for such species.
 - (f) Archaeological sites, cemeteries and burial grounds.

- (3) The following are considered Secondary Conservation Areas and should be included within the Conservation Space to the maximum extent feasible.
 - (a) Important historic sites.
 - (b) Existing healthy, native forests of at least one (1) acre contiguous area.
 - (c) Individual existing healthy trees greater than eight (8) inches caliper, as measured from their outermost drip line.
 - (d) Other significant natural features and scenic viewsheds such as ridge lines, peaks and rock outcroppings, particularly those that can be seen from public roads.
 - (e) Prime agricultural lands of at least five (5) acres contiguous area.
 - (f) Existing trails that connect the tract to neighboring areas.
 - (4) Above-ground utility rights-of-way and small areas of impervious surface may be included within the protected Conservation Space but cannot be counted towards the minimum area requirement (exception: historic structures and existing trails may be counted). Large areas of impervious surface shall be excluded from the Conservation Space.
 - (5) At least twenty-five (25) percent of the Conservation Space shall consist of land that is suitable for building.
 - (6) At least seventy-five (75) percent of the Conservation Space shall be in a contiguous tract. The Conservation Space shall adjoin any neighboring areas of Conservation Space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of a future area of protected Conservation Space.
 - (7) The Conservation Space shall be directly accessible to the largest practicable number of lots within the subdivision. Non-adjoining lots shall be provided with safe, convenient access to the Conservation Space.
- (C) *Permitted Uses of Conservation Space.* Uses of Conservation Space may include the following:
- (1) Conservation of natural, archeological or historical resources;
 - (2) Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas;
 - (3) Walking or bicycle trails, provided they are constructed of porous paving materials;
 - (4) Passive recreation areas, such as open fields;
 - (5) Active recreation areas, provided that they are limited to no more than ten (10) percent of the total Conservation Space and are not located within Primary Conservation Areas. Active recreation areas may include impervious surfaces. Active recreation areas in excess of this limit must be located outside of the protected Conservation Space.
 - (6) Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are used to minimize environmental impacts, and such activities are not conducted within Primary Conservation Areas;
 - (7) Easements for drainage, access, and underground utility lines;
 - (8) Other conservation-oriented uses compatible with the purposes of this ordinance.
- (D) *Prohibited uses of Conservation Space.*
- (1) Golf courses;
 - (2) Roads, parking lots and impervious surfaces, except as specifically authorized in the previous sections;
 - (3) Agricultural and forestry activities not conducted according to accepted Best Management Practices;
 - (4) Stormwater facilities;
 - (5) Other activities as determined by the Applicant and recorded on the legal instrument providing for permanent protection.

5-6.8. *Ownership and Management of Conservation Space.*

- (A) Ownership of Conservation Space. Conservation space shall be owned in fee-simple by a mandatory property owner's association; or other entity approved in advance by the Planning Commission during their normal course of business. The developer shall record the deed to the conservation space prior to, or concurrent with, the recording of the first final subdivision plat. An access easement following the alignment of future public streets is acceptable. However, "pocket parks" or "neighborhood greens" may be deeded concurrent with the unit or phase of the final subdivision plat of which it is a part.
- (B) Management Plan. Applicant shall submit a Plan for Management of Conservation Space and Common Facilities ("Plan") that:
 - (1) Allocates responsibility and guidelines for the maintenance and operation of the Conservation Space and any facilities located thereon, including provisions for ongoing maintenance and for long-term capital improvements;
 - (2) Estimates the costs and staffing requirements needed for maintenance and operation of, and insurance for, the Conservation Space and outlines the means by which such funding will be obtained or provided;
 - (3) Provides that any changes to the Plan be approved by the Planning Commission; and
 - (4) Provides for enforcement of the Plan.
- (C) In the event the party responsible for maintenance of the Conservation Space fails to maintain all or any portion in reasonable order and condition, the City of Perry may assume responsibility for its maintenance and may enter the premises and take corrective action, including the provision of extended maintenance. The costs of such maintenance may be charged to the Homeowner's Association, or to the individual property owners that make up the Homeowner's Association, and may include administrative costs and penalties. Such costs shall become a lien on all subdivision properties.

5-6.9. *Legal Instrument for Permanent Protection.*

- (A) The Conservation Space shall be protected in perpetuity by a binding legal instrument that is recorded with the deed. The instrument shall be one of the following:
 - (1) A permanent conservation easement in favor of either:
 - (a) A land trust or similar conservation-oriented non-profit organization with legal authority to accept such easements. The organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for retransfer in the event the organization becomes unable to carry out its functions; or
 - (b) A governmental entity with an interest in pursuing goals compatible with the purposes of this ordinance. If the entity accepting the easement is not the City of Perry, then a third right of enforcement favoring City of Perry shall be included in the easement.
 - (2) A permanent restrictive covenant for conservation purposes in favor of a governmental entity.
 - (3) An equivalent legal tool that provides permanent protection, if approved by City of Perry.
- (B) The instrument for permanent protection shall include clear restrictions on the use of the Conservation Space. These restrictions shall include all restrictions contained in this article, as well as any further restrictions the applicant chooses to place on the use of the Conservation Space.