

2.13 Parks and Open Space

- A. Intent.** This section is intended to regulate the development, preservation, and maintenance of parks, open space, and trails throughout the Town. Parks, open space, and trail regulations are intended to preserve natural areas and resources, preserve scenic views, provide access to open areas and recreational opportunities, create public health benefits, and generally enhance the health and quality of life for residents. Particular emphasis should be placed on providing a diversity of parks, trails, and open space opportunities that serve residents of all ages and abilities and that are accessible from a variety of locations within the community via bicycle, foot or automobile.
- B. Park Dedication and Fees In-lieu.** This subsection is intended to provide lands or in-lieu fees for park demand generated by new residential subdivisions. In general, these lands shall be suitable for the development of neighborhood and community parks. Where no suitable land is available, based on subsection B6 of this section, fees in-lieu of land or the equivalent monetary value may be substituted at the Board of Trustees' discretion.
1. Applicability: Any person offering a preliminary or final plat for development of any area zoned and to be used for single-family, duplex, or multi-family residential purposes in the Town shall be required to dedicate: a) a portion of land toward a community goal of five and one-half (5.5) acres of park land per one thousand (1,000) residents; or b) pay a fee in-lieu thereof pursuant to subsection B6 of this section.
 2. Amount of Park Land to be Dedicated:
 - a. The amount of park land dedicated shall not be less than five and one-half (5.5) acres of park land per one thousand (1,000) residents of the development, unless the Board of Trustees makes an individualized finding that supports an alternate dedication requirement. Any such alternate dedication requirement shall be reasonably related to the impacts upon the Town's parks and recreation system that will be generated by the residents and users of the subject development. The following formula shall be used for determining the amount of land to be dedicated:
$$(5.5 \text{ acres} \times \text{number of units} \times \text{persons per unit}) / 1000 = \text{area to be dedicated.}$$
 - b. The Board of Trustees shall determine the number of persons per unit based upon data compiled by the Town Clerk from time to time, which shall be reviewed and adjusted by the Board of Trustees as necessary to reflect current figures.
 - c. The developer shall submit with each subdivision plat for multi-family residential development information concerning the number of units. Should the developer fail to do so, the Town shall assume the highest density allowed in such multi-family residential district.

- d. Commercial and Industrial Developments: The developer shall provide the following park and open space enhancements.
 - i. A minimum of eight (8) percent of the gross land being subdivided as functional open space which may include: plazas, trails, landscaped areas (excluding parking lots), recreational amenities and natural areas of other civic purposes; and.
 - ii. An internal trail system and local trails as designated by the Board of Trustees.

3. Characteristics of Park Land To be Dedicated:

- a. Standard Criteria for Neighborhood Parks: To the maximum extent practicable, park land to be dedicated shall be consistent with the standard characteristics of parks identified in the *Nunn Comprehensive Plan*.
 - i. Neighborhood Parks: Neighborhood parks shall provide places for informal recreation and gathering places. Neighborhood parks may include playing fields, small court games, picnic shelters and tables, multi-use lawn areas, playground equipment, community gardens and other facilities as appropriate. Neighborhood parks shall be:
 - (1) A minimum size of three (3) acres (optimum size of 7 acres) per Board Approval;
 - (2) Centrally located within or adjacent to the neighborhood(s) served;
 - (3) Bordered on at least two (2) sides by public streets (excluding arterial streets) to provide easy public access, visual surveillance and parking;
 - (4) Accessible from surrounding neighborhoods by sidewalks and/or trails; and
 - (5) Owned and maintained by the Town.
 - (6) Applicants shall be responsible for the cost of grading, grass, irrigation, water and sewer taps, raw water fees and the key features of the neighborhood park. The Board of Trustees shall designate whether the developer or Board of Trustees will design and construct the neighborhood park. The Board of Trustees shall designate what amenities shall be placed in the park and the maximum cost of the park improvements.
- b. Additional Criteria For Park Land Dedications: Except as otherwise required by the Planning Commission at the time of preliminary plat approval or by the Board of Trustees on acceptance of the dedication, all dedications of land under this

subsection shall meet the following criteria. These criteria should be considered general guidelines to ensure that dedicated land is suitable for park development.

- i. Aggregate Parcel: The dedicated park land shall form a single parcel of land, except where the Board of Trustees determines that two (2) or more parcels would be in the best interest of the public, given the type and distribution of open spaces needed to adequately serve the proposed development. In such cases, the Board of Trustees may require that such parcels be connected by a dedicated strip of land at least thirty feet (30') in width.
- ii. Usability: At least seventy five percent (75%) of the dedicated land required by this subsection shall be well drained, level, and suitable for playing fields and recreational facilities. No part of such seventy five percent (75%) shall be within any designated floodplain or floodway of the Town.
- iii. Connectivity: All dedicated land shall, to the maximum extent feasible, be linked to parks, open space, and trails or adjacent parcels to form a connected system throughout the Town.
- iv. Environmental Considerations: All parks should be located, designed, constructed, and maintained to minimize local, regional, and global environmental impacts as provided in Environmental Section of the *Nunn Comprehensive Plan*.
- v. Water Rights: Water rights sufficient to irrigate and serve the intended uses of the dedicated park land shall be transferred to the Town prior to the recordation of the final plat.
- vi. Areas Not Eligible: Lands within the following areas shall not be accepted for park land dedication:
 - (1) Private yards;
 - (2) Public or private streets or rights of way not intended for park, open space, or trail related purposes;
 - (3) Open parking areas and driveways for dwellings not intended for park, open space, or trail related purposes;
 - (4) Streetscape or landscape buffers and median strips;
 - (5) Major utility easements over thirty feet (30') wide;
 - (6) Stormwater detention and water quality ponds greater than five feet (5') deep with slopes greater than five to one (5:1);
 - (7) Oil and gas well facilities and setbacks;

- (8) Mine shafts and associated setbacks; and
 - (9) Irrigation ditches and storm water channels.
- 4. Procedure for Dedication of Park Land: The dedication of park land shall be reviewed and approved as part of the preliminary plat. The developer shall designate on the preliminary plat and final plat the area or areas of land to be dedicated pursuant to this subsection.
- 5. Submission of Deed and Title: Unless otherwise stipulated in a development agreement, the conveyance of dedicated land to the Town shall be by warranty deed, and the title shall be free and clear of all liens and encumbrances, including real property taxes prorated to the time of conveyance. The owner shall provide the Town with title insurance for the property. The deed shall be submitted no later than thirty (30) days after the approval of a final plat.
- 6. Payment of Fees in-lieu of Land Dedication:
 - a. Applicability:
 - i. If a development would be required under this subsection to dedicate less than three (3) acres as park land, the Board of Trustees in its discretion may require the developer to pay cash in-lieu of land dedication pursuant to this subsection B6.
 - ii. When an area greater than three (3) acres is required to be dedicated in a part of Town that already has sufficient open space (as required by the *Comprehensive Plan*), the Planning Commission or Board of Trustees shall have the right to require payment of cash in-lieu of land dedication in the interests of the public health, safety and welfare.
 - iii. Redevelopment of properties that previously dedicated or paid fees in-lieu are exempt from paying fees in-lieu and land dedication.
 - b. Payment into Park Dedication Fund: In instances where payment of fee is to be made in-lieu of land dedication, the fee in-lieu of land shall be paid into a Town park fund. The fee in-lieu payment shall be based on an appraisal, conducted by a Board of Trustees approved, qualified appraiser, of the fair market value of the property based on developable land within the final plat application and the zoning of the developable land. The appraisal shall occur within six (6) months of the final plat hearing. If the Board of Trustees does not agree with the applicant's appraisal, the Board of Trustees may require a second appraisal by a qualified appraiser that is jointly agreed upon by the applicant and Town. All appraisal costs shall be paid by the applicant. The park dedication payment by the developer shall be made prior to the recordation of the final plat.
 - c. Administration of Park Dedication Fund: The park dedication fund will be administered by the Town to provide a demonstrable benefit to contributing developments; provided, that the establishment of all public parks shall be within the discretion of the Board of Trustees. The money paid by the developer will be

expended exclusively to establish park land that generally benefits the proposed development. The money shall be properly expended by the Town or returned to the developer within seven (7) years of the date of final plat recordation. The Board of Trustees shall account for all money deposited to the fund, which may be expended for such purposes as acquisition of land, construction of improvements, and purchase of equipment for the relevant park.

- C. **Open Space and Trail Dedications and Fees In-lieu.** Broad views and rolling agricultural lands are abundant and contribute significantly to the Town's character; however, many of these lands are planned for future development in the *Nunn Comprehensive Plan*. In addition to providing land for trails, open space can help direct growth, maintain rural character, protect sensitive environmental areas, scenic views and historic resources, and provide opportunities for education, wildlife protection and observation, hiking, and other passive and active recreation activities for existing and future Town residents.
1. Residential Applicability: Any person filing a preliminary or final plat for development of any area zoned and to be used for single-family, duplex, or multi-family residential purposes in the Town shall be required to dedicate: a) a portion of land toward a community goal of nine (9) acres of open space per one thousand (1,000) residents; or b) pay an in-lieu fee pursuant to subsection C5 of this section.
 - a. The amount of open space to be dedicated shall not be less than nine (9) acres of open space land per one thousand (1,000) ultimate residents of the development unless the Board of Trustees makes an individualized finding that supports an alternate dedication requirement. Any such alternate dedication requirement shall be reasonably related to the impacts upon the Town parks and recreation system that will be generated by the residents and users of the subject development. The following formula shall be used for determining the amount of land to be dedicated: $(9 \text{ acres} \times \text{number of units} \times \text{persons per unit}) / 1000 = \text{area to be dedicated}$.
 - b. The Board of Trustees shall determine the number of persons per unit based upon data compiled by the Town from time to time in the update of its comprehensive plan, which shall be reviewed and adjusted by the Board of Trustees as necessary to reflect current figures.
 - c. The developer shall submit with each subdivision plat for multi-family residential development information concerning the number of units. Should the developer fail to do so, the Town shall assume the highest density allowed in such multi-family residential district.
 2. Commercial, Industrial, Public and Institutional Applicability: Any person filing a preliminary or final plat for development of any area for non-residential purposes in the Town shall be required to dedicate: a) a portion of land toward a community goal of eight (8) acres of open space per one thousand (1,000) residents; or b) pay an in-lieu fee pursuant to subsection C5 of this section.
 - a. The amount of open space to be dedicated shall not be less than eight (8) acres of open space land per one thousand (1,000) ultimate residents of the development unless the Board of Trustees makes an individualized finding that supports an

alternate dedication requirement. Any such alternate dedication requirement shall be reasonably related to the impacts upon the Town parks and recreation system that will be generated by the residents and users of the subject development. The following formula shall be used for determining the amount of land to be dedicated:

$(8 \text{ acres} \times \text{number of units} \times \text{persons per unit}) / 1000 = \text{area to be dedicated.}$

3. Characteristics Of Open Space To Be Dedicated:

- a. Standard Criteria For Open Space: Open space is characterized as undeveloped land that is permanently maintained in a natural or agricultural state. Open space land shall have the following characteristics:
 - i. A minimum of nine (9) contiguous acres for residential developments and a minimum of eight (8) contiguous acres for non-residential developments;
 - ii. A parcel that is no less than three hundred feet (300') at the narrowest width, unless the Board of Trustees approves a lesser amount for a trail;
 - iii. To the maximum extent feasible, a location that is contiguous with or connected to adjacent open space or parks;
 - iv. Is, generally, unencumbered by utility lines, built structures, and paved surfaces; and
 - v. If the Board of Trustees has not approved the open space dedication for agricultural purposes, then the property shall be covered with native vegetation and generally free of weeds and other noxious plants and trees. If land being dedicated is not in a native condition acceptable to the Board of Trustees, then applicant shall be responsible for restoration of the property to native vegetation before the Board of Trustees accepts it for maintenance.
 - vi. Typically, open space shall be owned and maintained by the Town. The Board of Trustees may consider a conservation easement as an alternative. Approval of a conservation easement shall be at the discretion of the Town approving body.
- b. Permissible Functions/Use:
 - i. Open space shall serve one or more of the following functions:
 - (1) Preserving rural/agricultural land;
 - (2) Producing crops for revenue;
 - (3) Protecting significant archeological, historic and cultural resources;
 - (4) Providing aquatic, wetland and riparian habitat and buffers;

- (5) Providing hedgerows, feeding, cover, breeding, foraging and nesting habitat;
 - (6) Preserving native wildlife habitat and their migration and travel corridors;
 - (7) Creating and preserving pastoral scenic views to mountains, plains, and agricultural lands;
 - (8) Providing corridors and natural area destinations;
 - (9) Providing passive recreational experiences and trails;
 - (10) Providing environmental education opportunities;
 - (11) Shaping growth; protecting landmark topographic features; and
 - (12) Protecting the public from natural and geologic hazards; providing visual and physical linkages between community resources.
- ii. Clearing of underbrush and debris and the provision of walks, fountains, fences, and other similar features are allowed within open space.
- c. Resource Preservation: To the maximum extent feasible, where significant natural and scenic resource assets exist on a property, the subdivider, developer, or owner shall give priority to their preservation as open space. In reviewing the proposed location of open space areas, the Board of Trustees shall use all applicable plans, maps, and reports to determine whether significant resources exist on a proposed site that should be protected, with priority being given to the following areas (which are not listed in a particular order):
- i. Flood hazard areas;
 - ii. Lakes, rivers, creeks, wetlands, stream/riparian corridors, and similar features;
 - iii. Wildlife habitat and migration corridors; and
 - iv. Native and specimen trees and plants.
- d. Design Standards:
- i. Open space shall not consist solely of undevelopable or "leftover" pieces of the site, but shall be designed as an integral part of the overall development plan, incorporating identified environmentally and historically significant components of the site.
 - ii. Open space shall be organized to create continuous, integrated systems that physically and visually connect with the following features dedicated or identified in a Town master parks and open space plan document:

- (1) Parks or greenways;
 - (2) School sites;
 - (3) Historic, cultural, or archeological sites and features; or
 - (4) Trail and open space systems.
- iii. Open space shall be unobstructed by utility lines, built structures, or paved areas (other than trails).
 - iv. To maintain strong visual and physical linkages, to the maximum extent feasible, open space shall not be less than thirty feet (30') in width at the point of connection to adjacent lands or uses as described above. Where topography or other site features would prevent the above standard from being met, the point of connection may be reduced to less than thirty feet (30') for short distances at the discretion of the Board of Trustees.
 - v. Trail corridors outside of open space areas shall have a minimum corridor width of thirty feet (30').
- e. Water Rights: Water rights sufficient to irrigate and serve the intended uses of the dedicated open space shall be transferred to the Town prior to the recordation of the final plat.
 - f. Environmental Considerations: All open space and trails should be located, designed, and maintained to minimize local, regional, and global environmental impacts.
 - g. Areas Not Eligible: Lands within the following areas shall not be counted towards required open space dedication:
 - i. Private yards;
 - ii. Public or private streets or rights of way not intended for open space related purposes;
 - iii. Open parking areas and driveways for dwellings;
 - iv. Neighborhood and community parks;
 - v. Land covered by structures not intended solely for recreational uses;
 - vi. Streetscape or landscape buffers;
 - vii. Median strips;
 - viii. Storm water channels, detention and water quality ponds greater than five feet (5') deep with slopes greater than five to one (5:1).

4. Procedure For Dedication Of Open Space:

- a. The dedication of open space shall be reviewed and approved as part of the preliminary plat. The developer shall designate on the preliminary plat and final plat the area or areas of land to be dedicated pursuant to this subsection C5.
- b. The conveyance of dedicated land to the Town shall be by warranty deed, or conservation easement agreement, and the title shall be free and clear of all liens and encumbrances, including real property taxes prorated to the time of conveyance. The owner shall pay for and provide the Town with title insurance for the property. The deed shall be submitted no later than thirty (30) days after the approval of a final plat.

5. Payments Of Fees In-lieu Of Land Dedication:

- a. Applicability:
 - i. Development of an area smaller than five (5) acres for open space purposes usually is impractical from the Town's perspective. If a development would be required under this subsection to dedicate less than five (5) acres as open space, the Board of Trustees, in its discretion, may require the developer to pay cash in-lieu of land pursuant to this subsection C5.
 - ii. When an area greater than five (5) acres is required to be dedicated in a part of Town that already has sufficient open space, the Board of Trustees shall have the right to require payment of cash in-lieu of land dedication in the interests of the public health, safety and welfare.
- b. Payment Into Open Space Dedication Fund: In instances where payment of fee is to be made in-lieu of land dedication, the fee in-lieu of land shall be paid into a Town open space fund. The fee in-lieu payment shall be based on an appraisal, conducted by a Board of Trustees approved qualified appraiser, of the fair market value of the property based on developable land within the final plat application and the zoning of the developable land. The appraisal shall occur within six (6) months of the final plat hearing. If the Board of Trustees does not agree with the applicant's appraisal, the Board of Trustees may require a second appraisal by a qualified appraiser that is jointly agreed upon by the applicant and Board of Trustees. All appraisal costs shall be paid by the applicant. The open space dedication payment by the developer shall be made prior to the recordation of the final plat.
- c. Administration Of Open Space Dedication Fund: The open space dedication fund shall be administered by the Town Clerk to provide a demonstrable benefit to contributing developments; provided, that the establishment of all public open space and/or trail systems shall be within the discretion of the Board of Trustees. The money paid by the developer will be expended to establish an open space site that generally benefits the proposed development. The money shall be properly

expended by the Town or returned to the developer within seven (7) years of the date of final plat recordation. The Town shall account for all money deposited to the fund, which may be expended for such purposes as acquisition of land, construction of improvements, and purchase of equipment for the relevant park/open space area.

6. Open Space and Ecological Characterization Plans: All land development applications with the exception of plot plan applications for individual single-family residences shall be accompanied by the conceptual and ecological characterization plan to determine if additional areas within the development shall be preserved. The following information shall be included with the landscape plans or submitted as a separate map.
 - a. *Conceptual Open Space and Ecological Characterization Plan* (submit with subdivision outline development plan). **The intent of the conceptual open space and ecological characterization plan is to identify the resources on a site and show how they are integrated into the overall design for the project and the neighborhood.** This information shall be included on the outline development plan map or combined with the landscape plan if it can be clearly illustrated and the scale is not greater than 1"=200'. The conceptual open space and ecological characterization plan shall contain the following:
 - i. A verbal and graphic description of the design intention and how the open space will function; and
 - ii. Specific information required on the conceptual plan as listed in Table 2-1 which follows.
 - b. *Preliminary Open Space and Ecological Characterization Plan* (submit with subdivision preliminary plat). The intent of the preliminary open space and ecological characterization plan is to discuss the details of how the open space will be used to organize the overall project design, illustrate how it will function in the overall neighborhood and define long term maintenance requirements and responsibilities. Information shall be included on the preliminary landscape plan if it can be clearly illustrated and the scale is not greater than 1" = 100'. The preliminary open space and ecological characterization plan shall contain the following:
 - i. A description of the design intention and how the proposal is consistent with the purpose and intent of this Section.
 - ii. Specific information required on the preliminary plan as listed in Table 2-1 which follows.
 - c. *Final Open Space and Ecological Characterization Plan* (submit with subdivision final plat). The intent of the final open space and ecological characterization plan is to ensure that all phases of the final open space plan are consistent with the

preliminary open space plan as approved during the preliminary plat; or for a PUD development, to identify the resources on the site and discuss the details of how the open space will be used to organize the overall project design, to illustrate how it will function in the overall neighborhood and define long term maintenance requirements and responsibilities. Information shall be included on the final landscape plan if it can be clearly illustrated and the scale is not greater than 1" = 50'. The final open space and ecological characterization plan shall contain the following:

- i. A description of the design intention and how the proposal is consistent with the preliminary open space and ecological characterization plan;
- ii. Appropriate documentation (i.e. warranty deed, homeowners' association documents, conservation easement and open space management plan) that shows who will own and maintain the open space. Applicants shall develop an open space management plan. Technical information and assistance in developing the plan are available from: the National Resources Conservation Service (NRCS), the local Colorado State University Cooperative Extension Service and the local Soil Conservation District; and
- iii. Specific information required on the final open space and ecological characterization plan as listed in Table 2-1 which follows.

Table 2-1

OPEN SPACE AND ECOLOGICAL CHARACTERIZATION PLAN

INFORMATION REQUIRED	CONCEPT	PRELIMINARY	FINAL
Scale, north arrow, site boundary	✓	✓	✓
Existing and proposed streets	✓	✓	✓
Existing and proposed utilities and easements		✓	✓
Existing contours (2' intervals) - may use USGS for concept plan	✓	✓	✓
Existing site features, including ditches, trees, shrubs and native ground covers and any drainageways on the site. Indicate which plants will be preserved and method of preservation and which will be removed	✓	✓	✓
Indicate if there are floodplains, wetlands, wildlife habitat, endangered species, archaeological/historic areas or other resources and prominent views and how they will be preserved and integrated into the overall site design	✓	✓	✓
Show the species of wildlife using the area, times/seasons area is used and the "value" (feeding, watering, nesting, roosting, perching, cover) area provides for such species	✓	✓	✓
Show wildlife travel corridors	✓	✓	✓
Note the general ecological functions provided by the site and its features	✓	✓	✓
Show the bank, shoreline and high water mark of any perennial stream or body of water on the site	✓	✓	✓
Illustrate how the open space network and pedestrian circulation system (both private and public) will function within the proposed development and surrounding neighborhood	✓	✓	✓
Show how the property will relate to the neighborhood parks and trails in the area	✓	✓	✓
Indicate which areas will be irrigated and method of irrigation		✓	✓
Table indicating the required park dedication (in acres), park land provided, required open space dedication (in acres) and the amount of open space provided.	✓	✓	✓
Define areas to be considered open space and if they will be public or private	✓	✓	✓
Indicate how open space (i.e. parks, trails, natural areas, etc.) will be used and maintained including: erosion control, revegetation, irrigation, and weed management both during and after construction		✓	✓
Describe the design intention	✓	✓	✓
Conceptual design of neighborhood park (if applicable)		✓	✓

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2.15 Dedications and Reservations

A. Dedications and Reservations.

1. Intent. Dedication of land, free of all liens and encumbrances, for park and recreation areas shall be required in each new subdivision or other designation of the Town.
2. Reservations. Reservation by covenant, in-lieu of dedication, may be permitted in some cases such as a planned unit development where land is to be used for recreational or amenity purposes by the property owners.
 - a. Reservation of land within a subdivision may be required for the duration of the preliminary plat approval in order to afford the appropriate public agency the opportunity to coordinate its acquisition of public land with the development of the subdivision. An agreement shall be entered into between the subdivider and the public agency regarding the timing and method of acquisition.
3. Land dedication for School Sites. Dedication of land or cash payments in-lieu thereof for school purposes shall be required for each new development including, but not limited to, annexation, subdivision, planned unit development, special use permit, planned unit development plan, or other development approval (any residential building permit except as provided in the Intergovernmental Agreement) within the Town.
 - a. A subdivider, owner, or developer shall be required to allocate land or make cash payments in-lieu thereof for the appropriate value in accordance with an agreement entered into between Weld County School District RE-9 and the Town, and such payment shall be made pursuant to the current methodology as indicated in such Intergovernmental Agreement.
 - b. The amount of land required to be dedicated or cash paid in-lieu of such land dedication may, from time to time, be modified upon receipt by the Town, updated methodology for the calculation of such fees in-lieu of such dedication.
4. The specific site of any land dedication shall be determined at the time of final plat approval. In the event cash in-lieu of land dedication is the method of compliance with this section, then such cash in-lieu may be paid in gross at the time of final plat approval. In the event payment is not made in gross, then the cash in-lieu payment shall be collected at the time of issuance of the building permit. All funds collected pursuant to this section shall be paid directly to Weld County School District RE-9 at 210 West First Street, Ault, Colorado, 80610, prior to the issuance of such permit.

5. This ordinance shall apply to all new residential construction within the Town, except construction, which will not have an adverse effect on the School District's ability to provide adequate educational opportunities. The following shall be exempt from the requirements of this Ordinance:
- a. Alteration or expansion of a residential dwelling unit not exceeding a net increase of 1,000 square feet of the existing dwelling unit.
 - b. Replacement of a residential dwelling in which the replacement does not exceed a net increase of 1,000 square feet of dwelling unit being replaced.
 - c. Construction of a non-dwelling unit, accessory building, or structure.
 - d. Construction of any non-residential building or restructure.
 - e. Nursing homes or assisted living facilities designed exclusively for the elderly or disabled.
 - f. Board of Trustees approved planned residential developments that are subject to the recorded covenants restricting the age of the residents of said dwelling units such that the dwelling units may be classified as "housing for older persons" pursuant to the Federal Fair Housing Amendment Act of 1988.