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August 17, 2010

To: The Honorable Town Council
Robert S. Butler, President

From: Jennifer Paquet
Town Planner *JRP*

Re: **Public Hearing: Conservation Design Development**
Proposed Zoning Ordinance amendment
Planning Board Recommendation to Town Council

At their regular meeting held on August 16, 2010, the Planning Board voted to approve (4-0) the following motion:

Motion to recommend to the Town Council the adoption of the proposed amendments to the Zoning Ordinance to enable the creation of Conservation Design Developments within the Town of West Greenwich, based on the following findings of fact:

1. The proposed amendments are consistent with the Comprehensive Plan, specifically the following Goals, Policies, and Implementation items:
 - a. Natural Resources Goals 2 and 5, Policies 1, 4, 9, 10, 12, 17, & 18, and Implementation Items Policy 18 Implementation. 2 & 3, Goal 2 . I. 2.
 - b. Cultural & Historic Resources Goals 1 & 2, Policy Item 4., Implementation Item 8.
 - c. Housing Goals 2 & 5, Policy Items 1 & 2.
 - d. Open Space & Recreation Goals 2, 3. 5. 6. 7. & 10. Policy Items 1, 2, 5, 6, 7, 10, 12, & 13; Implementation Item Policy 10, I. #1.
 - e. Land Use Goal 1, Policy Items 4, 5, 10, 11, 19, & 23; and Implementation Items Goal 1 Implementation # 2, Policy 7 I #3, P. 9 I #2, and Policy 19, Implementation # 1.
2. The proposed amendments recognize and consider each of the following applicable purposes of zoning:
 - a. Providing for orderly growth and development which recognizes the goals and patterns of land use contained in the West Greenwich Comprehensive Plan, the natural characteristics of the land, including its suitability for use based on soil characteristics and topography; and the use of innovative development regulations and techniques.
 - b. Providing for the protection of the natural, historic, cultural, and scenic character of the Town.
 - c. Providing for the preservation and promotion of agricultural production, forest, silviculture, timber resources, and open space.
 - d. Promoting a high level of quality in design in the development of private and public facilities
 - e. Promoting implementation of the Comprehensive Plan

The draft proposed amendments are attached for your September 8, 2010 Public Hearing. Please note that a few minor changes (shown in 'Track Changes') had been made and approved by the Planning Board since you first scheduled the public hearing.

Definitions

Add:

Cluster- A site planning technique that concentrates buildings in specific areas on the site to allow the remaining land to be used for recreation, common open space, and/or preservation of environmentally, historically, culturally, or other sensitive features and/or structures. The techniques used to concentrate buildings shall be specified in the ordinance and may include, but are not limited to, reduction in lot areas, setback requirements, and/or bulk requirements, with the resultant open land being devoted by deed restrictions for one or more uses. Under cluster development there is no increase in the number of lots that would be permitted under conventional development.

Cluster Lot- a lot within a Conservation Design Development with reduced dimensional requirements as compared to a conventional lot meeting the requirements of the Zoning Ordinance.

Conservation Restriction- A right to prohibit or require a limitation upon or an obligation to perform acts on or with respect to or uses of a land or water area, whether stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the area or in any order of taking, which right, limitation, or obligation is appropriate to retain or maintain the land or water area, or is appropriate to provide the public the benefit of the unique features of the land or water area, including improvements thereon predominantly in its natural, scenic, or open condition, or in agricultural, farming, open space, wildlife, or forest use, or in other use or condition consistent with the protection of environmental quality.

Homestead Lot-A minimum 10 acre lot created as part of a Conservation Design Development, primarily used for a private residence, with a secondary use contributing towards one or more purposes of Conservation Design Development. (An applicant may wish to include a minimum of 11 acres for a Homestead lot so that it may qualify for the Farm, Forest, and Open Space tax program.)

Land Development Project (already in Zoning Ord.)- A project in which one or more lots, tracts, or parcels of land are to be developed or redeveloped as a coordinated site for a complex of uses, units, or structures, including, but not limited to, planned development and/or cluster development for residential, commercial, institutional, recreational, open space, and/or mixed uses as may be provided for in the zoning ordinance.

Article VII: Special Regulations

Section 19. Conservation Design Development

1. Definition and Purpose

Conservation Design Development is a type of residential Cluster Land Development Project, as authorized by RIGL 45-24-47, which preserves at least 50% of the suitable land of a property as meaningful open space, while guiding the development to the most appropriate areas within the

parcel on reduced sized lots such that density remains neutral. It is an alternative to conventional residential subdivision for the following purposes:

- a. To preserve the rural character of the Town by preserving the character-defining features, scenic views, environmentally sensitive features, and the natural and cultural resources within the site, and by minimizing the views of new development from existing streets.
- b. To provide for the preservation and promotion of agricultural production, and forest and timber resource production.
- c. To provide opportunities for both active and passive recreational facilities to service various neighborhoods in the Town. (comp plan III-23, G#10)
- d. To provide public access to and/or to provide for the conservation and stewardship of noteworthy natural, cultural, and recreational resources within Town in furtherance of the above three goals.
- e. To provide a means for the Town to develop an interconnected network of greenway corridors, and to link together and add to already protected open space and public land.
- f. To provide for greater design flexibility in the siting of dwellings and other development features than would be permitted by the application of conventional subdivision regulations in order to minimize the disturbance of rural landscape elements, scenic quality, and overall natural and cultural values of the landscape.
- g. To reduce road and utility lengths, and minimize the need for stormwater infrastructure in order to reduce disturbance to the environment and to reduce construction and maintenance costs.
- h. To reduce erosion and sedimentation by retaining existing vegetation and minimizing the total area of disturbance on the site compared to a conventional residential development.
- i. To promote a balance of housing choices, for all income levels and groups, to assure the health, safety and welfare of all citizens and their rights to affordable, accessible, safe, and sanitary housing. (ZO)
- j. To provide for orderly growth and development which recognizes the natural characteristics of the land, including its suitability for use based on soil characteristics, topography, and susceptibility to surface or groundwater pollution; and which recognizes the values of unique or valuable natural resources and features (ZO)
- k. To implement many of the goals and policies as recommended in the Town of West Greenwich Comprehensive Plan.

2. Applicability

a. Conservation Design Development is a type of residential development allowable only in the RFR-2 Zoning District, at the discretion of the Planning Board.

b. A parcel of land shall not be eligible for Conservation Design Development if it is not otherwise eligible for a conventional subdivision.

3. Planning Board Authority

- a. The Planning Board shall have the sole authority to determine whether a major or minor subdivision or land development project shall be developed as a Conservation Design Development or as a conventional development. The Planning Board shall

make findings of fact in writing supporting the requirement, based on the value of the site features and the benefits to the community in furtherance of the purposes of Conservation Design Development. The Planning Board shall notify the applicant of such no later than the Master Plan review stage for a major application, and no later than the Preliminary review stage for a minor application.

- b. The Planning Board shall have the authority to review and approve Conservation Design Developments in accordance with the dimensional requirements set forth in this section.
- c. The Planning Board shall have the authority to determine if a Conservation Design Development should consist of a combination of cluster lots and homestead lots.
- d. All lots created as part of a Conservation Design Development, including homestead lots and open space, shall be subject to a restriction of no further subdivision.

4. Permitted Uses

a. Uses Permitted on Residential Cluster Lots within a Conservation Design Development:

- 1) Single Family Residential 001
- 2) In-Law Apartments 007 (by Special Use Permit)
- 3) Customary Home Occupations 008 (including Taxidermy 115 by SUP)
- 4) Community Residences 009
- 5) Family Day Care Homes 010 (need to also correct code number typo on use matrix)

All other uses are prohibited on residential cluster lots within a Conservation Design Development

b. Uses Permitted on Conservation Land within a Conservation Design Development:

- 1) Conservation of open land in its natural state (requires an Open Space Management Plan);
- 2) Agriculture 10 (requires a farmland conservation easement); including Field Crops 101; Fruit, Tree, Nut, & Vegetable Farms 102; Livestock Farms, except Piggeries 103; General Farms 104; and Non-commercial Farms 105. Sale of crops and related products produced on the farm is allowed on-site.
- 3) Agricultural Services, Hunting & Trapping 11; limited to: Agricultural Services 111 by SUP; Animal Husbandry 112; Horticultural Services 113; and Hunting & Trapping Services 114 by SUP.
- 4) Forestry 12 (requires a Forest Management Plan); including Timber Tracts 121; Forest Nurseries, & Tree Seed gathering & extracting 122; and Forestry Services 123 by SUP.
- 5) Outdoor Public Recreation limited to: Playgrounds, Playfields, & Tot Lots 801; Major Parks (>5 acres) 802; Minor Parks (<5 acres) 803; and Golf Courses 806 by SUP (Golf courses may include practice driving areas and practice putting greens, but shall not include stand alone driving ranges or miniature golf. Golf courses may constitute up to half of the minimum required open space land. Their parking areas and any associated structure shall not be included within the 50 percent minimum open space requirement, and their parking and access ways may be paved and lighted.). Outdoor Public Recreation also includes neighborhood open space uses

such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses specifically excluding motorized off-road vehicles, rifle ranges, and other uses similar in character and potential impact as determined by the Board. Outdoor Public Recreation also includes active noncommercial recreation areas, such as playing fields, playgrounds, courts, and bikeways, provided such areas do not consume more than half of the minimum required open space land or five acres, whichever is less. Playing fields, playgrounds, and courts shall not be located within 100 feet of abutting property lines. Parking facilities for the same shall also be permitted, and they shall generally be gravel-surfaced, unlighted, and properly drained; provide safe ingress and egress; and contain no more than ten parking spaces.

- 6) Outdoor Public Water-Based Recreation 81, limited to: Boating areas 811; Bathing Beaches 812; and Fishing Sites 813
- 7) Outdoor Private Land Recreation limited to: Riding Academies 834 by SUP (Equestrian facilities may not consume more than $\frac{3}{4}$ of the minimum required open space land.), and Golf Courses 838 by SUP (Golf courses may include practice driving areas and practice putting greens, but shall not include stand alone driving ranges or miniature golf. Golf courses may constitute up to half of the minimum required open space land. Their parking areas and any associated structure shall not be included within the 50 percent minimum open space requirement, and their parking and access ways may be paved and lighted.)
- 8) Easements for drainage, access, sewer or water lines, or other public purposes.
- 9) Aboveground utility rights-of-way. Above-ground utility and street rights-of-way may traverse conservation areas but shall not count toward the minimum required open space land.

All other uses shall be prohibited within the conservation land.

c. Uses Permitted on Homestead Lots within a Conservation Design Development:

- 1) Single Family Residential 001
- 2) In-Law Apartments 007 (by Special Use Permit)
- 3) Customary Home Occupations 008 (including Taxidermy 115 by SUP)
- 4) Community Residences 009
- 5) Family Day Care Homes 010
- 6) Accessory Conservation Uses:
 - a) Conservation of Open Land in its natural state (a Conservation Easement is required unless all of the lots within the development are created as Homestead lots)
 - b) Those agricultural uses as permitted on the Conservation Land items 2 and 3, above
 - c) Those forestry uses as permitted on the Conservation Land item 4, above
 - d) Easements for public access to trails or other forms of access connecting open space land.

All other uses are prohibited on a Homestead Lot within a Conservation Design Development.

5. Dimensional Requirements

a. Conservation Design Development provides for 2 lot size options, for specific purposes. The Planning Board may require the two lot sizes to be combined within a development if they find that such a combination would better fulfill the purposes of Conservation Design Development as stated in the Zoning Ordinance than either of the two single lot size options.

- 1) The Conservation Cluster Option provides for residential uses at the density permitted by the existing zoning, with a minimum lot size of 1 acre. Open Space and conservation lands consist of a minimum of 50% of the suitable land plus 100% of the land unsuitable for development. House lots are clustered on the most suitable areas for development in order to preserve the environmentally and culturally sensitive features, and to create neighborhoods where each home enjoys the benefits of access and views to the open space. Public access to the open space may be required.
- 2) The Homestead Lot Option provides for lower density than the existing zoning, with larger, privately owned lots of a minimum of 10 acres of suitable land, in order to maintain a rural setting and private use and management of the land, and allowing reduced road design in accordance with the Residential Compound standards. There is no minimum requirement for commonly owned or publicly owned open space, or public access, unless otherwise required by the Planning Board, or unless the development contains a combination of conservation cluster lots and homestead lots. Further subdivision of Homestead lots shall be prohibited.

b. Conservation Design Developments provide for two lot configuration options—frontage lots and Interior Building Lots (also know as ‘flag lots’). Frontage lots contain full frontage dimensional requirements along the public street. Interior Building Lots have reduced frontage for the driveway access at the public street, and the building envelope portion of the lot is situated behind a frontage lot. Frontage for Interior Building Lots shall be in accordance with the following table, and all other dimensional requirements shall be met. The front yard set-back for an interior lot shall be measured parallel to the rear yard setbacks of all the abutting frontage lots.

c. Dimensional Requirements

	Conservation Cluster Lots	Homestead Lot Option	Combination Conservation Cluster Lots with Homestead Lot Option
Minimum amount of Open Space (suitable land)	50% of the suitable land plus 100% of all the land deemed unsuitable for development	Not required	50% of the suitable land (A portion of the suitable land on each Homestead Lot may contribute towards the required open space, excluding a two-acre house site of suitable land per lot- A conservation easement is required)
Density (maximum)	2 acres of suitable land per dwelling unit	10 acres of suitable land per dwelling unit	2 acres of suitable land per dwelling unit
Minimum Lot Size	1 acre (43,560 sf)	10 acres	As dictated by lot type
Frontage (minimum)	100 feet frontage lots; 50 feet Interior Lots; 30 feet access to Open Space	100 feet	100 feet frontage lots; 50 feet Interior Lots; 30 feet access to Open Space
Minimum Setbacks- Front yard	50 feet	150 from existing Town road, 40 feet from new subdivision street, country lane, or common driveways	As dictated by lot type
Side yard	15 feet	25 feet, 10 feet for accessory buildings under 500 square feet floor area	As dictated by lot type
Rear yard	50 feet	50 for principal buildings, 10 feet for accessory buildings under 500 square feet floor area	As dictated by lot type
Perimeter of site	75 feet of no-cut buffer	N/A	75 feet of no-cut buffer
External Road Right-of-way	200 feet	150 feet	As dictated by lot type
From abutting cropland or pasture	100 feet	N/A	As dictated by lot type
From buildings or barnyards housing livestock	300 feet	N/A	As dictated by lot type

	Conservation Cluster Lots	Homestead Lot Option	Combination Conservation Cluster Lots with Homestead Lot Option
From active recreation areas, (excluding tot-lots)	150 feet	N/A	As dictated by lot type
Minimum Lot Width (measured from front yard setback to rear property line)	100 feet	100 feet	As dictated by lot type
Maximum Lot Depth to Width Ratio	5:1	5:1	5:1
Minimum Suitable Land per lot (contiguous)	1 acre	5 acres	As dictated by lot type
Maximum Impervious Surface per lot	25%	5%	As dictated by lot type
Maximum Building Height	35 feet	40	As dictated by lot type

d. Dimensional Requirements for Open Space land:

Buildings, structures, parking areas, or other impervious improvements which are accessory to and subordinate to a permitted open space use may be located on any open space lot that is not a Homestead lot provided that they occupy no more than 15% of the total open space area, with the exception of golf courses as otherwise restricted.

Minimum Street Frontage	Maximum Lot Coverage Impervious Surface	Minimum Front Yard Setback	Minimum Side Yard Setback	Minimum Rear Yard Setback	Maximum Building Height
30 feet	15%	50 ft	25 ft	50 ft	40 feet

6. Review Procedure

Applications for a Conservation Design Development shall be made in accordance with the procedures for review and approval of a minor or major subdivision or land development project, as provided in the West Greenwich Land Development and Subdivision Regulations, and as authorized by RIGL 45-23-49. Additional requirements, design standards, and submission checklists are contained within the Land Development and Subdivision Regulations.

7. Restrictions and Required Conditions of Approval

- a. Further subdivision of all house lots and common open space created as part of a Conservation Design Development, including Homestead lots shall be prohibited.
- b. The required open space shall be restricted in perpetuity from future development, except in accordance with an approved Open Space Management Plan.
- c. Changes in the use of the open space shall be in accordance with those uses allowable within the open space in a Conservation Design Development, as governed by the Zoning Ordinance, and shall be approved by the Planning Board as an amendment to the plan.
- d. No disturbance shall be made to the natural contours of the land nor shall any existing natural vegetation be removed or any natural or man-made features altered in any way. Clearing and excavation of open space areas shall be permitted only for the installation of stormwater drainage facilities, or for permitted disturbance associated with implementing an approved Open Space Management Plan.
- e. Open space land shall not be eligible for transfer to another party except for transfer to another method of ownership permitted under Subsection 8, below.
- f. A ~~Protective~~ Conservation Restriction in the form of a Conservation Easement is required for all open space, whether privately, publicly, or commonly owned, and regardless of any other conservation easement, ~~in accordance with~~ and shall incorporate the following requirements:

- 1) All open space shall be protected against further development and unauthorized alteration in perpetuity by appropriate deed restrictions through the grant of a Conservation Restriction to the Town of West Greenwich, the West Greenwich Land Trust, or other non-profit conservation group, pursuant to Title 34, Chapter 39 of the Rhode Island General Laws, as amended.
- 2) In addition, the perpetual maintenance of all open space shall be guaranteed by appropriate deed restrictions. The Planning Board (Legal Counsel) shall approve the form and content of all deed restrictions at the time of final approval of the subdivision. Every deed restriction providing a perpetual maintenance guarantee shall contain the following provision:

“If the owners, or their successors or assigns fail to maintain the open space, the Restriction holder may perform any necessary maintenance and enforce the payment for such costs, including reasonable attorney’s fees, by an action at law or in equity against the owners or their successors or assigns.”

- 3) The permanent Conservation Restriction shall be duly recorded in the Land Evidence Records, and shall define the range of permitted activities, as approved

by the Planning Board, and include all restrictions as noted in this Subsection 7., entitled, "Restrictions."

- 4) In the event that the Town of West Greenwich is the proposed owner of the open space, the protective conservation restriction shall be held by both the Town and either the West Greenwich Land Trust, or other non-profit conservation organization. ~~The Town of West Greenwich shall also hold a Declaration of Easement with Conservation Restrictions.~~

8. Open Space / Conservation Land Ownership Options

Conservation land within a Conservation Development subdivision shall be doubly protected through fee simple ownership and a conservation restriction, at the discretion of the Planning Board. The Planning Board may require two or more A conservation easement holders, which may include a Homeowners' Association, or any governmental body, or a charitable corporation, association, trust, or other entity whose purposes include conservation of land or water areas or of a particular area. may also be placed on the open space. Open space land shall not be transferred to another entity except for transfer to another method of ownership permitted under this Subsection.

a. Open space shall be owned in fee simple by any one or more of the following entities, as further described below:

- 1) Homeowner's Association
- 2) Town of West Greenwich
- 3) A land trust or other non-profit conservation or recreation group
- 4) Individual owners of homestead lots, or other private individual who will use the land for open space purposes as provided by a conservation easement and conservation restriction.
- 5) Condominium Association

1) Homeowner Association: Open space and related facilities may be held in common ownership (as undivided proportionate interests) by (the members of) a homeowner association, subject to all of the provisions for homeowner associations set forth in State regulations and statutes. In addition, the following regulations shall be met:

a) The applicant shall provide the Town a description of the organization of the proposed association, including its bylaws guaranteeing continuing maintenance of the open space and other common facilities, and all documents governing ownership, transfer of ownership, maintenance, and use restrictions for the open space, for review and approval by the Town as part of the Preliminary Plan. The Homeowners Association Agreement shall be recorded with the Final Plan. The homeowners' association bylaws or the declaration of covenants, conditions, and restrictions of the homeowners association shall contain the following information:

- i. The legal description of the common land and a survey map.
- ii. A description of common facilities;
- iii. The restrictions placed upon the use and enjoyment of the lands or facilities;
- iv. Persons or entities entitled to enforce the restrictions;
- v. A mechanism to assess and enforce the common expenses for the land or facilities, including upkeep and maintenance expenses, real estate taxes, and insurance premiums;

- vi. A mechanism for resolving disputes among the owners or association members;
- vii. The conditions and timing of the transfer of ownership and control of land facilities to the association;
- viii. provisions for proper reverter or re-transfer in the event that the association becomes unwilling or unable to continue carrying out its functions;
- ix. Any other matter the developer deems appropriate.

b) The proposed association shall be established by the owner or applicant and shall be operating before the sale of any lots or homes within the development.

c) Membership in the association shall be mandatory and automatic for all purchasers of house lots therein and their successors in title.

d) The association shall be responsible for maintenance and insurance of common open space and facilities. The members of the organization shall share equally the costs of maintaining and developing the open space, in accordance with the procedures established by them.

e) The association shall be responsible for payment of all property taxes on any common facilities and open space, if applicable.

f) The bylaws shall confer legal authority on the association to place a lien on the real property of any member who falls delinquent in dues. Such dues shall be paid with the accrued interest before the lien may be lifted.

g) Written notice of any proposed transfer of common open space or facilities by the association or the assumption of maintenance for common facilities by another entity must be given to all members of the association and to the Town of West Greenwich and all easement holders no less than thirty (30) days prior to such event.

h) The association shall have adequate staff to administer, maintain, and operate such common facilities.

2) **Dedication to the Town of West Greenwich:** The Town of West Greenwich may, but shall not be required to accept the dedication of fee simple title to any portion of the open space, provided that:

- a) There is no cost of acquisition to the Town;
- b) The Town agrees to and has access to maintain such open space
- c) The open space is accessible to the residents of the Town
- d) The land may be held by either the Town of West Greenwich or the West Greenwich

Land Trust

3) **Non-Profit Conservation Organization:** With permission of the Town, an owner may transfer fee simple title of the open space, to a private nonprofit conservation organization provided that:

- a) The conservation organization is acceptable to the Town and is a bona fide conservation organization intended to exist indefinitely;
- b) The conveyance contains appropriate provisions for proper reverter or re-transfer in the event that the organization becomes unwilling or unable to continue carrying out its functions and responsibilities;
- c) A maintenance agreement acceptable to the Town is established between the owner and the organization.

4) **Noncommon Private Ownership/ (Individual Ownership):** - a private owner may own the open space land, provided that the following requirements are met:

- a) The use of the land is within the purposes of the Conservation Development
- b) There shall be restrictions that the land shall not be further subdivided or developed, except in accordance with a Town approved management plan for the intended use of the open space.
- c) The required open space land may be included within one or more large “homestead” lots, as provided by the Zoning Ordinance.
- d) The Planning Board may also require a conservation easement to ensure the use of the property in conformance with an approved Open Space Management Plan.

5) **Condominium Association-** Common open space and facilities may be controlled through the use of condominium agreements. Such agreements shall be in accordance with relevant State and Federal law, and shall be approved as to form by the Town Solicitor. All open space and common facilities shall be held as “common elements” in accordance with the condominium documents. An association of unit owners shall be formed to govern the affairs of the condominium and membership shall be mandatory. All additional requirements pertaining to a Homeowner Association, as noted above, shall also apply to a Condominium Association.

b. A Conservation Easement ~~may~~shall also be held by the Town of West Greenwich, the West Greenwich Land Trust, or other non-profit conservation group, as follows:

1) **Dedication of Conservation Easements to the Town:** The Town of West Greenwich may, but shall not be required to accept easements for any portion of the open space land. In such cases, the open space remains in the ownership of the homeowner association, land trust, private conservation organization, private individual, or condominium association, while the easements are held by the Town. In addition, the following regulations shall apply:

- a) there shall be no cost of acquisition to the Town
- b) Any easements intended for public use shall be accessible to the residents of the Town.
- c) A satisfactory maintenance agreement shall be reached between the owner and the Town.

2) **Conservation Easement to a Land Trust or other Non-Profit Conservation**

Organization: With permission of the Town, an owner may convey easements on any portion of the open space to the West Greenwich Land Trust, or to a nonprofit conservation organization provided that:

- a) The conservation organization is acceptable to the Town and is a bona fide conservation organization intended to exist indefinitely;

- b) The conveyance contains appropriate provisions for proper reverter or re-transfer in the event that the organization becomes unwilling or unable to continue carrying out its functions and responsibilities;
- c) A maintenance agreement acceptable to the Town is established between the owner and the organization.

9. Affordable Housing Local Subsidy

The reduced infrastructure requirements and reduced costs inherent to Conservation Design Developments are hereby provided as a local municipal subsidy to encourage the creation of housing affordable to low and moderate income residents. Conservation Design Development applications shall be subject to the mandatory Inclusionary Zoning provision.