

LUPC SUBDIVISION RULE REVIEW

Conservation Subdivisions

Example Ordinances

Copies of or excerpts from the following documents:

- New Hampshire Department of Environmental Services. “1.4 Conservation Subdivision.” *Innovative Land Use Planning Techniques: A Handbook for Sustainable Development*. Concord, NH: NH Department of Environmental Services. 43-77. *Innovative Land Use Planning Techniques Handbook*. Web. March 26, 2015.
- Holden Subdivision Ordinance, various excerpts. Holden, Maine, Municipal Code. Adopted April 14, 2008. Amended December 19, 2011.

<http://www.holdenmaine.com/vertical/Sites/%7BF485F62D-81A7-489A-ACF6-6CF5E665D80F%7D/uploads/20120419155443818.pdf>

Additional examples of Maine municipal ordinances with conservation subdivision provisions (not included):

- Town of Freeport, Subdivision Ordinance

http://www.google.com/url?url=http://www.freeportmaine.com/inc/scripts/file.php%3Ffile_id%3D1051&rct=j&frm=1&q=&esrc=s&sa=U&ei=6PoTVc2KKImeggSN0ID4DQ&ved=0CBQQFjAA&usg=AFQjCNE nQN5wjeg2O8T7GCeL3R0RiuvYqw

- Town of Falmouth, Subdivision Ordinance

http://www.google.com/url?url=http://www.falmouthme.org/code-enforcement/files/subdivision-ordinance&rct=j&frm=1&q=&esrc=s&sa=U&ei=ff0TVdXZLozIsQSm_oK4Aw&ved=0CDEQFjAF&usg=AFQjCNEsfmORoE9ZyhdYysPIWjpnvdFtA



Innovative Land Use Planning Techniques

A HANDBOOK FOR SUSTAINABLE DEVELOPMENT

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COMPILED BY

New Hampshire Department of Environmental Services

New Hampshire Association of Regional Planning Commissions

New Hampshire Office of Energy and Planning

New Hampshire Local Government Center

1.4 Conservation Subdivision

BACKGROUND AND PURPOSE

A conservation subdivision is a residential subdivision in which a substantial amount of the site remains as permanently protected open space while the homes are located on the remaining portion of the site. Under this approach, the community works with the applicant to fit the development into the landscape in a way that maximizes the protection of important natural and cultural amenities on the site and maintains the character of the community.

Conservation subdivisions can provide economic, environmental and social benefits to a community in the following ways.

- The cost of developing the lots can be reduced, which can support the inclusion of some affordable housing units as part of the development project.
- Future service costs for public infrastructure, such as roads, sewers and water lines, are lower because roads and water/sewer lines can be shorter.
- School buses, refuse trucks, snow plow and other service vehicles will have shorter service routes.
- Property values within conservation subdivisions can appreciate faster than properties in conventional subdivisions due to the added amenities provided by the adjacent open space.
- Residents enjoy the recreational opportunities and views provided by the preserved open space.
- Important and unique natural and cultural features, such as archeological or historical sites, can be protected.
- Can reduce the amount of impervious surface created, thus reducing runoff to local water bodies, such as rivers and streams.
- The open space can provide a buffer to protect water bodies and other natural areas, lowering the impact that development has on fragile natural features.
- A larger network of protected areas and open space can be created if open space is connected across several developments and potentially support trail networks for walking, biking, and hiking.
- The clustering of houses can encourage more walking and more frequent interaction with ones' neighbors, fostering a stronger sense of community.

RELATED TOOLS:

- Pedestrian-Oriented Development
- Density Transfer Credit
- Feature-Based Density
- Lot Size Averaging
- Permanent (Post-Construction) Stormwater Management
- Habitat Protection

APPROPRIATE CIRCUMSTANCES AND CONTEXT FOR USE

Conservation subdivision requirements will be most effective when used with a larger plan for resource conservation and community development. New developments using the conservation subdivision design approach can match their development layout to a local or regional open space protection plan to ensure that important natural resource areas, such as a river corridor, are protected as one large, contiguous block even though several individual parcels are developed at different points in time.

Prior to working with the model zoning ordinance and subdivision regulations, a community should consider the following questions and their community's goals.

HOW MUCH LAND AREA SHOULD BE CONSERVED?

Given that conservation of open space is typically a primary objective of pursuing this approach, communities are encouraged to require that a minimum of 50 percent of "buildable" area of the parcel and 80 percent of the "non-buildable" area be conserved as part of a conservation subdivision. "Non-buildable" area is defined based on a community's existing development restrictions (i.e., what areas cannot be counted toward minimum lot size or are restricted from development), but may include wetlands, hydric soils, open water, slopes greater than 25 percent, or any area otherwise restricted from development. By requiring a minimum of 50 percent of the "buildable" land to be conserved helps ensure that uplands, agricultural land, and forested areas are preserved as well as wetlands.

Although it is up to the community to decide what amount of land must be conserved, lesser requirements may not provide sufficient open space to meet the objectives of the community. A community might decide to vary the required amount of open space that must be conserved for different areas or zones within their community. For example, the amount of required open space might increase to 80 percent of the total area of the parcel in areas zoned as rural or agricultural/forestry, but might decrease to 20 percent in higher-density areas.

Communities should also be explicit about what types of land can be counted as part of the open space. For example, land that is part of an individual house lot or right-of-way should not be counted as part of the conserved open space.

WHAT USES SHOULD BE ALLOWED IN THE CONSERVED OPEN SPACE?

A community should identify what activities or uses are allowed within the conserved open space. The types of uses allowed and the amount of the conserved land that can be dedicated to those uses will depend on the community's goals and the nature of the resources being protected. For example, more intensive uses, such as a playground or ball field, might be allowed in a higher-density zone, but most uses could be restricted in areas conserved as wildlife habitat preservation or working farmland.

WHAT RESOURCES SHOULD BE PROTECTED?

Upfront consideration of a community's priorities for protection will help guide the implementation of this approach. Some resources that a community might give priority to include in the open space include:

- Floodplains
- Wetlands, including vernal pools
- Riparian areas (land areas adjacent to water bodies) and surrounding uplands
- Habitat for threatened or endangered species
- Highest condition habitat areas defined by NH Wildlife Action Plan
- Wildlife corridors
- Drinking water supply areas, e.g., wellhead protection areas
- Cemeteries
- Historic sites
- Scenic viewsheds
- Contiguous, high-productivity woodlands
- Productive agricultural or forest soils
- Existing or planned hiking, biking, walking, skiing or snowmobile trails through the site

SHOULD INCENTIVES BE OFFERED FOR CERTAIN DESIGN CHARACTERISTICS?

Incentives may be used to encourage the use of this approach, to motivate better design, or to promote the use of a conservation easement held by a third party to protect the open space. Incentives, which typically take the form of additional dwelling units, should be used sparingly.

Incentives can be used to encourage applicants to provide certain amenities within the development, such as full public access to the open space or a percentage of affordable units, or to encourage designs that provide for greater protection of certain types of natural or cultural features of particular importance to the community.

HOW SHOULD THE NUMBER OF UNITS ALLOWED BE DETERMINED?

Communities are encouraged to use a formula-based approach as the primary method for determining the number of units that can be built within a conservation subdivision. Under a formula-based approach, the number of units is determined based on the natural resource and spatial characteristics of the site and the underlying zoning or density requirements. Several communities in New Hampshire have used formula-based approaches, including Hopkinton, New Durham, and Chichester.

The intent of a conservation subdivision approach is to allow at least as many units as could be built under a conventional approach. To avoid conflict on whether

a formula-based approach unfairly reduces the number of units, communities can allow the use of the yield plan approach as a secondary option. Under the yield plan approach, an applicant creates a conventional subdivision plan to determine the number of allowable units. Although many communities currently use a yield plan approach, this approach can be expensive and time-consuming, and thus, serve as a deterrent to the use of the conservation subdivision approach. Often the effort invested by both the applicant and the planning board in developing and evaluating the conventional subdivision design during the yield plan process is better spent in developing a better conservation subdivision design.

WHAT COMMUNITY CONCERNS ABOUT DESIGN AND LAYOUT SHOULD BE ADDRESSED?

Under a conservation subdivision approach, most, if not all, dimensional requirements for individual lots are eliminated or substantially reduced to provide more flexibility to fit the development to the landscape. However, communities might wish to adopt design standards or guidelines to address community concerns regarding the visual impact of a new development or the quality of the open space conserved. Some of the design standards will be appropriate to apply to all types of subdivisions, not just those using a conservation design approach.

Layout and Location of Protected Open Space

The protected open space within a conservation subdivision should, whenever possible, be connected to undeveloped land on adjacent parcels. Communities may also include additional design parameters as well as a requirement that the subdivision proposal demonstrate consistency with local and regional long-term open space or land protection plans, where applicable.

Rural Character within Built Area

A community may have concerns with allowing a large number of homes to be tightly clustered together, particularly in rural or agricultural areas. In such situations, design standards can be included in the subdivision regulations to maintain the open, undeveloped character of the community and provide a sense of privacy and openness for individual houses.

Neighborhood or Village Character within Built Area

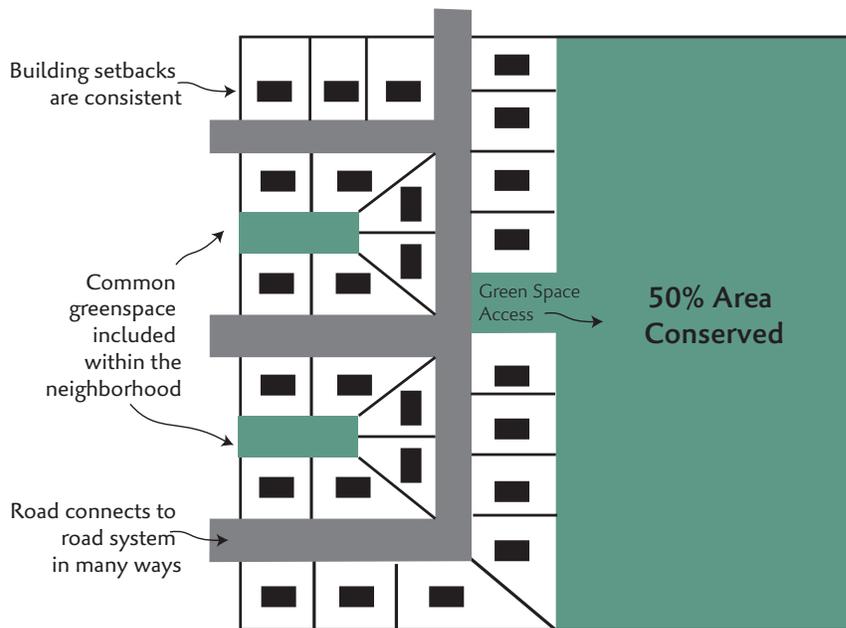
Development within higher-density areas, such as those adjacent to an existing village or town center, or larger developments with a significant clustering of homes, might benefit from using village-type design parameters to structure the built area. A village-type layout of homes, consistent with the traditional New England style of development, will allow homes to be located closer together in much less space, while still creating a comfortable environment for residents and pedestrians. In addition to the model regulations in this chapter, see Chapter 1.5: Village Plan Development.

Minimize the Impact on the Environment

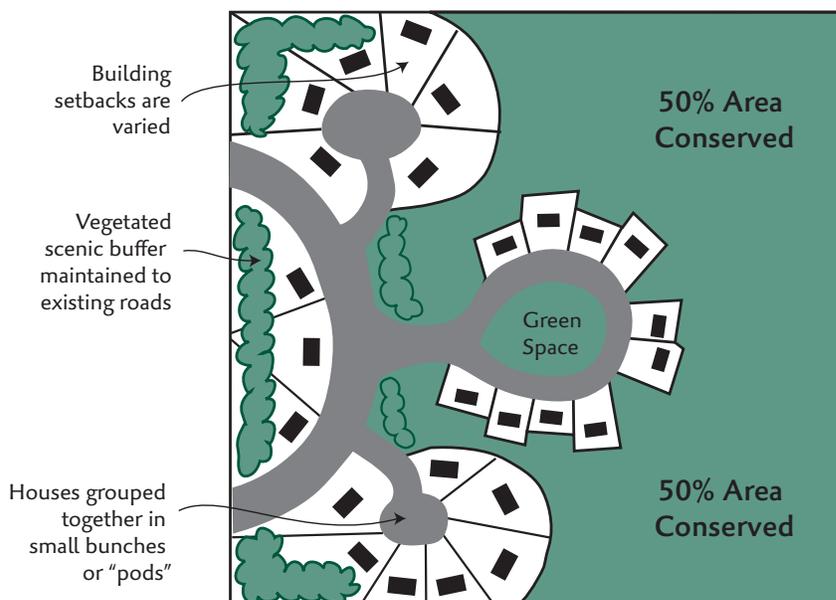
Zoning/subdivision requirements designed to protect natural resources (e.g., wetland buffers, stormwater, landscaping) should continue to apply to all subdivisions, including conservation subdivisions. In many cases, using a conservation subdivision design approach makes it easier for a development to comply with existing and recommended

FIGURE 1.4.1 Conservation Design Works in Village and Rural Settings

**Village Style Layout
(26 Houses)**



**"Rural Pod" Layout
(26 Houses)**



practices for minimizing impacts. For more information on this topic, please refer to the standards presented in the chapters on *Water Resource Protection*, *Permanent (Post-Construction) Stormwater Management*, *Landscaping*, and *Habitat Protection*.

OTHER COMMUNITY CONCERNS:

How will Long-term Protection of the Conserved Open Space be Ensured? What Role is the Municipality Willing to Assume?

The open space land may remain in private ownership by one or more landowners, be owned in common, or be conveyed to the municipality or to a third-party organization. Regardless of who owns the conserved open space, a community needs to ensure that there is an acceptable legal restriction and stewardship plan in place to ensure the long-term protection of the open space conserved as part of the conservation subdivision.

Conservation easements are legally binding agreements held by a third-party (either a municipality or a qualified organization in the area), that govern the future use and management of the parcel of land on which the conservation easement is placed. The easement provides the legal basis for the organization that holds the easement to ensure the long-term protection of the open space. Conservation easements are the preferred approach for larger areas of protected open space, especially for parcels containing high-valued natural resource or cultural features. Local and state-wide land trusts and conservation groups are more likely to accept an easement for larger parcels protecting resources and/or areas they have identified as important (either as a participant in the site design process or in a previous conservation planning effort). The municipality (often the local conservation commission) must be prepared to perform all the necessary actions if they hold a conservation easement on a property.

Deed restrictions (also called restrictive covenants) can also be used to protect open space. A deed restriction is a restriction on the use of land usually set forth in the deed of a property. The restrictions would limit how the open space is used, the structures that would be allowed on it and how the land should be maintained in perpetuity. A homeowners' association is almost always required, especially when there is joint open land and/or open space protected through deed restrictions alone. If deed restrictions are implemented, municipalities should provide sample language to the applicant to ensure effectiveness and should require that the municipality and any resident of the development or abutting properties have the authority to enforce the deed restriction. Although deed restrictions are considered a less secure alternative, they can be an appropriate protection method for smaller parcels of land or for open spaces that are subject to more intensive uses.

To facilitate oversight of the conserved land, protected areas must be clearly identified on a final plat of the subdivision and on-the-ground markers should be placed on site to identify the boundaries of conservation land.

The logistics of implementing a **long-term monitoring and stewardship plan** also must be addressed. The monitoring and stewardship plan ensures that the conditions of the open space protection agreement (whether it is an easement or deed restriction) are honored. One approach to provide for long-term stewardship is to assess a fee at the time of subdivision approval to fund long-term monitoring. Most

local and state organizations require a fee to cover their stewardship responsibilities when accepting an easement.

Municipalities might also require that homeowner education materials be developed to teach new homeowners about the appropriate uses and prohibited activities in the protected open space. The planning board should discuss with the applicant and the conservation commission how these materials will be developed, maintained and distributed to future homeowners.

LEGAL BASIS AND CONSIDERATIONS FOR NEW HAMPSHIRE

ENABLING STATUTES

RSA 674:21 authorizes a community to enact a conservation subdivision ordinance. A community follows the same procedures to enact a conservation subdivision ordinance as other ordinances, as outlined in RSA 675:2-5. Although some communities require a special exception for a conservation subdivision, this is not recommended. To encourage the use of this approach, a conservation subdivision application should be treated in the same manner as a conventional subdivision application.

Under RSA 674:21, municipalities have the option of granting the planning board the authority to issue a special permit (also known as a conditional use permit) as a means of giving the planning board and applicants greater flexibility to waive or modify some or all of the requirements specified in the conservation subdivision ordinance or to allow certain additional uses in the designated open space when deemed appropriate. The advantage of allowing special permits is that the planning board can work with an applicant to modify a plan when it is in the best interest of the community and the applicant to do so without requiring a zoning variance.

When authorized by local zoning, the conservation subdivision approach can be the required format for new subdivisions. A community might elect to require this approach for all subdivisions or only for subdivisions of a certain size, e.g., greater than 10 acres, or in certain areas of their community, such as those areas targeted for conservation or for parcels containing certain types of important natural or cultural features.

To make the best use of the conservation subdivision approach, communities should revise the application requirements and review process for all subdivisions to require more detailed information on the site to be developed earlier in the review process and to require applicants to participate in a preliminary review prior to submitting a formal application (under RSA 676:4, II). Pursuant to RSA 674:35, I, a municipality's governing body must authorize the planning board to require preliminary review of applications for the subdivision or land (and for site plans, under RSA 674:43, I). The process for subdivision application and review and the submission requirements for each step are addressed in a municipality's subdivision regulations.

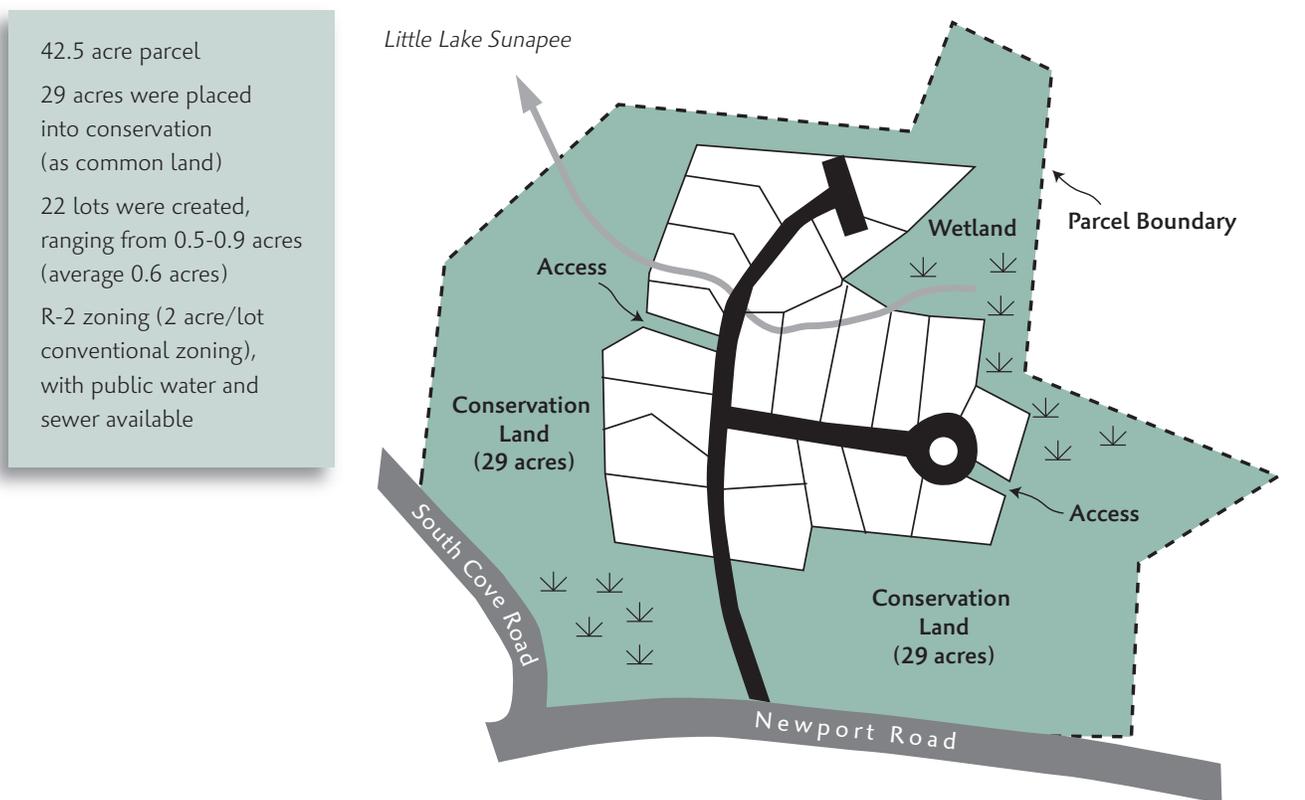
New Hampshire statute identifies three stages of plan review: preliminary review, design review, and formal application (RSA 676:4, II). Preliminary review is non-binding and is limited to discussion of "proposals in conceptual form only and in general terms such as desirability of types of development and proposals under the master plan (RSA 676:4, IIa)."

EXAMPLES AND OUTCOMES

Many New Hampshire communities have adopted some type of open space or conservation subdivision design approach. Communities vary substantially, however, in how these concepts are applied, including the amount of open space that must be conserved and whether the use of conservation design is required (or optional).

The communities of Hanover, Hopkinton, and Durham have adopted the approach described in this chapter. Exeter, Stratham, Dublin, New Durham, and Dover, among others, have similar open space subdivision requirements.

FIGURE 1.4.2 Conservation Subdivision Example: Great Pines, New London, New Hampshire



42.5 acre parcel
 29 acres were placed into conservation (as common land)
 22 lots were created, ranging from 0.5-0.9 acres (average 0.6 acres)
 R-2 zoning (2 acre/lot conventional zoning), with public water and sewer available

Property is located uphill, approximately 1,000 feet from Little Lake Sunapee, which provided the impetus for developing this property as an open space/conservation/ cluster subdivision (under New London’s cluster development ordinance in place at that time). To further reduce the potential impact, this project used a narrow pavement width (18 feet of pavement with gravel shoulders within 50 foot right-of-way), minimized clearing and land disturbance, and included additional measures to control stormwater runoff (e.g., infiltrating open swales rather than a closed drainage system).
 Required setbacks include: 20 feet from edge of pavement, 100 feet from the exterior parcel boundary, and 25 feet separation between structures on adjacent lots.

Model Language and Guidance for Implementation

This section provides a model conservation subdivision zoning ordinance and additional model subdivision regulation language. Also included are model resolutions authorizing the planning board to require applicants to participate in site inventory review and conceptual plan review meetings with the planning board prior to submitting a formal subdivision application. The model subdivision regulation language revises the application requirements and review process for all subdivisions. A conservation subdivision ordinance will be more effective if a community also revises the general requirements and application process for all subdivisions.

CONSERVATION SUBDIVISION ORDINANCE

I. PURPOSE

This Conservation Subdivision ordinance is intended to encourage environmentally sound planning to conserve open space, retain and protect important natural and cultural features, and provide for efficient use of land and community services to advance the goals stated in the master plan.

II. OBJECTIVES

- To maintain rural character, preserving farmland, forests and maintaining rural views.
- To preserve those areas of the site that have the highest ecological value, including, for example, wildlife habitat, e.g., large unfragmented blocks of undeveloped land, areas of highest condition identified based on NH Fish and Game's Wildlife Action Plan, and water resources, e.g., drinking water supply areas and watersheds, wetlands, streams and rivers.
- To locate buildings and structures on those portions of the site that are the most appropriate for development and avoiding developing in areas ill-suited for development, including, for example, areas with poor soil conditions, a high water table, that are subject to frequent flooding or that have excessively steep slopes.
- To preserve historic, archeological, and cultural features located on the site.
- To create a contiguous network of open spaces or "greenways" by linking the common open spaces within the subdivision and to open space on adjoining lands wherever possible.
- To reduce the impacts on water resources by minimizing land disturbance and the creation of impervious surfaces and stormwater runoff.
- To reduce the amount of roads, sidewalks, and stormwater management structures that must be built and maintained.
- To minimize the impact of residential development on the municipality, neighboring properties, and the natural environment.

Each community should examine its own purpose and objectives, as expressed by the public and articulated in the Master Plan, in implementing this approach.

Municipalities should review the list below and include only those terms not already defined within their zoning ordinance, or revise terms included within their ordinance as needed. Terms that are expected to already be defined in a town's existing zoning ordinance are not included here.

III. DEFINITIONS

For the purpose of this chapter, the terms used herein are defined as follows:

Applicant: The owner of land proposed to be subdivided or his representative.

Buffer: Land area within which adequate vegetation is maintained or provided to visibly separate or screen one use from another and/or to minimize potentially negative impacts on surrounding areas, e.g., shield or block noise, light or other nuisances, reduce water pollution. Also known as a “vegetated buffer.”

Buildable Area: Land area of a parcel excluding non-buildable area.

Buildable Lot: The smallest lot area established by the zoning ordinance on which a use or structure may be located in a particular district.

Building Envelope: Area of a building lot identified on a subdivision plan indicating the allowed limits of clearing and grading, and within which all structures, and, when applicable, the well and septic systems, including the tank and leach field, shall be located.

Conservation Easement: A permanent legal restriction against future development and other activities as specified in the conservation easement deed. An easement may be worded to permit or restrict public access, allow or disallow recreational uses, allow or disallow other uses, such as limited development, agriculture, or forestry. Easements are tied to the title of the land, regardless of subsequent ownership.

Conservation Subdivision: An alternative form of residential development where, instead of subdividing an entire tract into lots of conventional size, a similar number of housing units are arranged on lots of reduced dimensions, with the remaining area of the parcel permanently protected as designated open space. Also referred to as “open space subdivision.”

Deed Restriction: A restriction on the use of land usually set forth in the deed for the property. Also known as a “restrictive covenant.”

Designated Open Space: Reserved land that is permanently protected from further development and remains in a natural condition or is managed according to an approved management plan for natural resource functions, e.g., forestry, agriculture, habitat protection, passive recreation, or limited uses as approved by the planning board under this ordinance as part of a conservation subdivision.

Easement: The right or privilege that a person may have in another person's property, often for the purposes of installing and maintaining utilities and drainage ways or allowing a right of passage.

Homeowners Association: A private corporation, association, or other legal entity organized in accordance with state law and established by the applicant or the member individuals for the benefit and enjoyment of its members, including oversight and management of common open space, designated open space, and/or shared facilities.

Non-buildable Area: Land area that cannot be counted toward the minimum lot size under a conventional subdivision, including areas with the following characteristics:

wetlands or wetland soils as defined by RSA 482-A: 2, X; slopes greater than 25 percent; submerged areas; utility rights-of way; land area within the 100-year floodplain; or land that is restricted from development by covenant, easement or other restriction.

Open Space Common: Land within or related to a development, exclusive of land dedicated as designated open space, not individually owned, which is designed and intended for the common use or enjoyment of the residents of the development and/or the town and may include such complementary structures and improvements as are necessary, appropriate and approved by the planning board.

Restrictive Covenant: A restriction on the use of land usually set forth in the deed for the property.

Sketch Plan: A preparatory sketch of the preliminary subdivision layout that does not include engineering details, which is used to support a general discussion with the planning board as to the form of the plat and the objectives of the zoning ordinance and applicable subdivision or site plan regulations.

The definition of **non-buildable area** should be customized for each community based on its restrictions regarding what land area can be counted toward the minimum lot size under the conventional subdivision requirements.

IV. AUTHORITY AND APPLICABILITY

- A. To facilitate the implementation of the goals of the master plan, all subdivisions for residential use shall use a conservation subdivision design approach, unless exempted under Section IV.B or granted a special use permit under Section IV.C.

The model ordinance is written to encourage the use of conservation design subdivisions, but to allow the planning board to entertain a conventional development plan under a special permit or conditional use process (rather than seeking a variance from the Zoning Board of Adjustment). Under this approach, the use of the conventional subdivision design is subject to an additional review and approval step by the planning board, making it somewhat more difficult for the applicant to pursue conventional subdivision design.

Each community must decide whether it wishes to require the use of conservation subdivision design for residential subdivision development or leave the choice up to the applicant. A community can also require the use of conservation subdivision design for specific areas or situations, such as specific zoning districts or on any parcel with high natural resource value (e.g., on parcels containing rare or outstanding habitat features, buffer areas to wetlands, streams, rivers, ponds, and lakes, etc.), or when certain cultural features are present such as historic structures or existing trail networks.

This model ordinance does not restrict the use of the conservation subdivision approach to larger parcels of land. Instead, the level of protection afforded to the open space is expected to vary. Although smaller parcels of conserved land are generally not viable candidates for a conservation easement held and enforced by a third party, such areas can be protected through deed restrictions. The open space is protected over time by ensuring that neighboring land owners in the subdivision and abutters, a community association, and the town all have the legal authority to enforce the deed restrictions.

- B. **Exemptions:** Subdivisions meeting any one of the following criteria shall be exempt from the requirements of this section, unless a landowner elects to follow the standards of this section.

If conservation subdivision is required as the primary form of residential subdivision, the community might wish to identify specific conditions under which conservation subdivision is not required, such as when a small number of lots or dwelling units are created with no future opportunity for further subdivision or when very large lots are created, e.g., 11-25 acres or greater per lot. A lot that is at least 11 acres in size is eligible for the current use tax assessment for 10 acres.

1. The subdivision creates lots that are, on average, equal to or greater than 479,160 square feet (11 acres) in size and provided the deed for each lot created contains a restriction prohibiting the further subdivision of the lot;
2. The parent parcel is nine acres or less in total size and the subdivision does not require a new road; or
3. The subdivision creates five or fewer dwelling units and does not require a new road.

C. Authorization to Issue a Special Use Permit: Notwithstanding other provisions of (municipality)'s zoning ordinance, authority is hereby granted to the planning board, as allowed under RSA 674:21, II, to issue a special use permit to modify the requirements of this section as follows:

1. The planning board may issue a special use permit for the parcel to be developed as a conventional subdivision when it finds that:
 - a. The parcel is ill-suited for development using conservation subdivision design, or a conventional design provides greater or equal benefits to the community; and
 - b. The conventional subdivision design retains and protects important natural and/or cultural features identified by the planning board and/or the site inventory.
2. The planning board may issue a special use permit for a modified conservation subdivision design to allow for variations from certain requirements of this section as specified herein. Such modifications shall be consistent with the purposes and standards of this section, fall within the guidelines contained herein, and shall not be detrimental to public health, safety or welfare.

Municipalities have the option of granting the planning board the authority to issue a special permit (also known as a conditional use permit) as a means of giving the planning board and applicants greater flexibility to "fit" the development into the landscape by being able to waive or modify some or all of the requirements specified in the conservation subdivision ordinance or to allow certain additional uses in the designated open space when deemed appropriate. The advantage of allowing special permits is that the planning board can work with an applicant to modify a plan when it is in the best interest of the community without forcing the applicant to pursue a zoning variance. The risk, however, is that the applicant and/or planning board may also go too far in relaxing the standards. For this reason, this model ordinance specifies the degree to which the specific standards can be varied under a conditional use or special permit.

D. Sequential Subdivisions: The provisions of this ordinance shall apply to the sequenced development of a parent parcel over time through separate successive applications. When a subdivision is proposed that involves part of a larger

parcel or includes lots that are capable of further subdivision, the planning board may require that a site inventory and a conceptual (non-binding) long-range plan be submitted for the entire parcel and used to evaluate the proposed subdivision.

- E. **Review Process:** A subdivision application under this section shall comply with the application and review process specified in the subdivision regulations, except that sections of the subdivision regulations that are clearly not applicable to a conservation subdivision design shall not be imposed on the applicant by the planning board.
- F. **Legal Review:** Prior to final approval by the planning board, the applicant shall submit for review by the town counsel any restrictive covenants, condominium or cooperative agreements, conservation easement, deed restrictions, or other legal agreements proposed for use in the conservation subdivision. The town counsel shall advise the planning board of the adequacy of such legal provisions. The applicant shall pay all associated costs of the legal review.

The details for the **review process** are provided in the model language for revising a community’s subdivision review regulations, which follow the model zoning ordinance.

V. MAXIMUM DEVELOPMENT DENSITY

- A. **Base Number of Development Units:** The applicant shall choose one of the following methods for calculating the base number of dwelling units that may be constructed on the property:
 - 1. **Formula Approach:** Under the formula approach, the base number of dwelling units is determined by the following formula:

Example Formula

Base Number Dwelling Units =
[(Net Area) x (Factor) ÷ Conventional Minimum Lot Size (# Dwelling Units/Lot)]

Where Net Area =
Total Area of Parcel (sq. ft.) – “Non-Buildable Area” on the Parcel (sq. ft.)

Conventional Minimum Lot Size = lot size determined for a single-family building, two-family building, or multi-family building (or combination of the above as permitted) based on the conventional zoning requirements.

Non-Buildable Area = any area that cannot be counted toward the minimum lot size under a conventional subdivision or is restricted from development by covenant, easement or other restriction (see definition).

Factor = number determined by the following:

Percentage of Parcel that is Wetlands and/or Steep Slopes*	Factor
0-<10%	0.75
10-<20%	0.70
20-<30%	0.65
30% or more	Use Yield Plan Approach

* Steep slopes are those greater than 25%

The “**factor**” accounts for area required for a new roadway, right-of-way, and utilities, and reflects the difficulty of developing a site by varying density based on the amount of wetlands and steep slopes.

The number of allowable dwelling units is determined based on the allowable number of units per building under the conventional zoning, where the result is rounded up for single family homes and down to the next whole number for buildings containing more than one dwelling unit.

If the subdivision involves only part of a parcel, the buildable area shall be calculated for that portion of the parcel proposed to be included in the subdivision. If a parcel is located in more than one district, the base number of allowable dwelling units will be determined for each portion of the parcel separately and added together and then rounded to the next whole number.

For example, for a 120 acre parcel in a 3 acre zone (i.e., 3 acre minimum lot size per single family home (1 dwelling unit per building)) with 30 acres of wetlands, the example formula approach above permits 20 dwelling units, as single family homes

$$[(120-30)*0.65] \div 3 = 19.5 \text{ or } 20 \text{ single family homes.}$$

With a 4 acre minimum lot size per two-family building (each building containing two dwelling units), 14 two-family buildings are permitted

$$[(120-30)*0.65] \div 4 = 14.6 \text{ or } 14 \text{ buildings,}$$

$$*2 \text{ dwelling units per building} = 28 \text{ dwelling units.}$$

Communities should evaluate any proposed formula against several recent subdivisions and consider the nature of remaining land in their community. The objective is to define a formula that provides a number of units that is the same or very close to the number that would be allowed under a conventional subdivision approach.

2. **Yield Plan Approach:** Under this approach, the applicant presents a yield plan to the planning board to determine the number of allowable buildings and dwelling units permitted within the conservation subdivision. The yield plan is a sketch plan for a conventional subdivision development that fully complies with the requirements for a conventional subdivision.

Applicants and planning boards must follow all standard procedures for approving variances or waivers in approving a Yield Plan (see Auger v. Town of Strafford, No. 2006-646).

3. Exceptions

- a. If more than 30 percent of the area of the parcel consists of wetlands or steep slopes, then the applicant shall use the yield plan approach to determine the allowable number of buildings and dwelling units.
- b. The planning board may require the preparation of a yield plan if the subdivision creates 20 or more dwelling units as determined by the Formula Approach. The planning board may require the use of the yield plan for determining the permitted number of dwelling units if it finds, upon review of the yield plan, that the characteristics of the site, e.g., soil types, arrangement of wetlands and steep slopes, support fewer than 90 percent of the number of dwelling units permitted by using the formula approach.

- B. **Incentives:** Additional dwelling units and/or lots, not to exceed 20 percent over and above the base number of dwelling units permitted, may be awarded at the discretion of the planning board for any of the following:

Incentives generally are not needed to encourage the use of the conservation subdivision approach, provided the review/approval process is the same as for a conventional subdivision. Incentives are best used sparingly to encourage actions that cannot be required – such as providing full public access, more permanently protected open space, or establishing a permanent conservation easement held by a third-party conservation organization. Too many opportunities for applicants to increase the number of dwelling units allowed can reduce community support for using the conservation subdivision approach.

1. Conservation of greater than 50 percent of the buildable area of the parcel within the designated open space shall receive a 5 percent increase in the number of dwelling units allowed for every additional 10 percent of open space protected, up to a maximum increase of 15 percent over the base number of dwelling units allowed.
2. Developments that grant public access, i.e., not limited to residents of the subdivision, to the designated open space shall be eligible for up to a 10 percent increase in the number of dwelling units allowed.
3. Developments that provide for a permanent conservation easement and that include a stewardship fund payment, acceptable to the planning board and held by the town, a recognized conservation organization, or land trust, shall be eligible for a 10 percent increase in the number of dwelling units allowed.

For example, a 20-unit development with 72 percent of the buildable area of the parcel retained as designated open space would receive two additional bonus units, for a total of 22 units.

In this case, the additional dwelling units are provided to encourage the establishment of conservation easements in recognition of the additional work and expense involved in putting the easement in place.

VI. DIMENSIONAL REQUIREMENTS

A. Lot Size Requirements

1. Buildings in a conservation subdivision may be located on individual residential lots, on common lots, or a combination thereof. If more than one dwelling unit will be located on a lot, the ownership and management arrangements for that lot, and the units thereon, shall be included in the subdivision application. The arrangements shall be subject to approval by the planning board in accordance with the subdivision regulations.
2. **Minimum Lot Size** [First Option for a Municipality]
 - a. If public wastewater treatment is not available, the minimum lot size permitted shall be based on soil-based lot sizing requirements for wastewater management as specified by the New Hampshire Department of Environmental Services. Developments may utilize individual or community wells and/or septic systems.
 - b. The planning board may require lot sizes to be larger than the minimum required under soil-based lot sizing to comply with other requirements of this section, particularly the dimensional and

The model provides two options for establishing a minimum lot size within a conservation design subdivision. Under the first approach, the minimum lot size is determined by soil-based lot sizing requirements for wastewater management. Under the second approach, the community specifies a minimum lot size, e.g., 50 percent of the minimum lot size under conventional subdivision, but allows for variation from that minimum by special permit.

design standards of this section, or to protect human health, welfare and public safety.

- c. If public or community wastewater treatment is provided, lot size shall be the minimum size necessary to comply with the dimensional and design requirements of this section. In no case, shall a lot be less than 5,000 square feet.
- d) The size of the individual lots shall be shown on the subdivision plan and shall be subject to planning board approval based upon its finding that the lot sizes will allow for the creation of a high-quality living environment for the residents of the subdivision and the abutting property owners.

3. Minimum Lot Size [Second Option for a Municipality]

[Insert a minimum lot size table for your community]

The municipality determines standard minimum lot size(s) within a conservation design subdivision for each zoning district, but allows for flexibility by including the section below on alternative lot sizing.

4. Alternative Lot Sizing: The planning board may authorize variations from the minimum lot sizes specified above by special use permit, provided the planning board determines that the following conditions are met:

- a. All lots comply with the New Hampshire Department of Environmental Services requirements for subsurface wastewater management (developments may utilize individual or community wells and/or septic systems); and
- b. The goals and design specifications of this section are otherwise achieved.

B. Specifications for Individual Lots

- 1. A building envelope shall be identified for each new lot in compliance with the standards in Table 1 to ensure an adequate separation between new primary structures on the subdivided parcel and between new primary structures and existing structures on adjacent lots. For new lots, the standard is applied to the *average* distance between building envelopes on adjacent new lots, i.e., the actual distance of separation may vary and be less than the minimum specified for some lots, provided that, on average, the minimum distance of separation is achieved across all new lots created. Variations from this standard may be granted by the planning board under special permit provided that the intent of this section is met and an adequate vegetated buffer is maintained or provided between new structures.

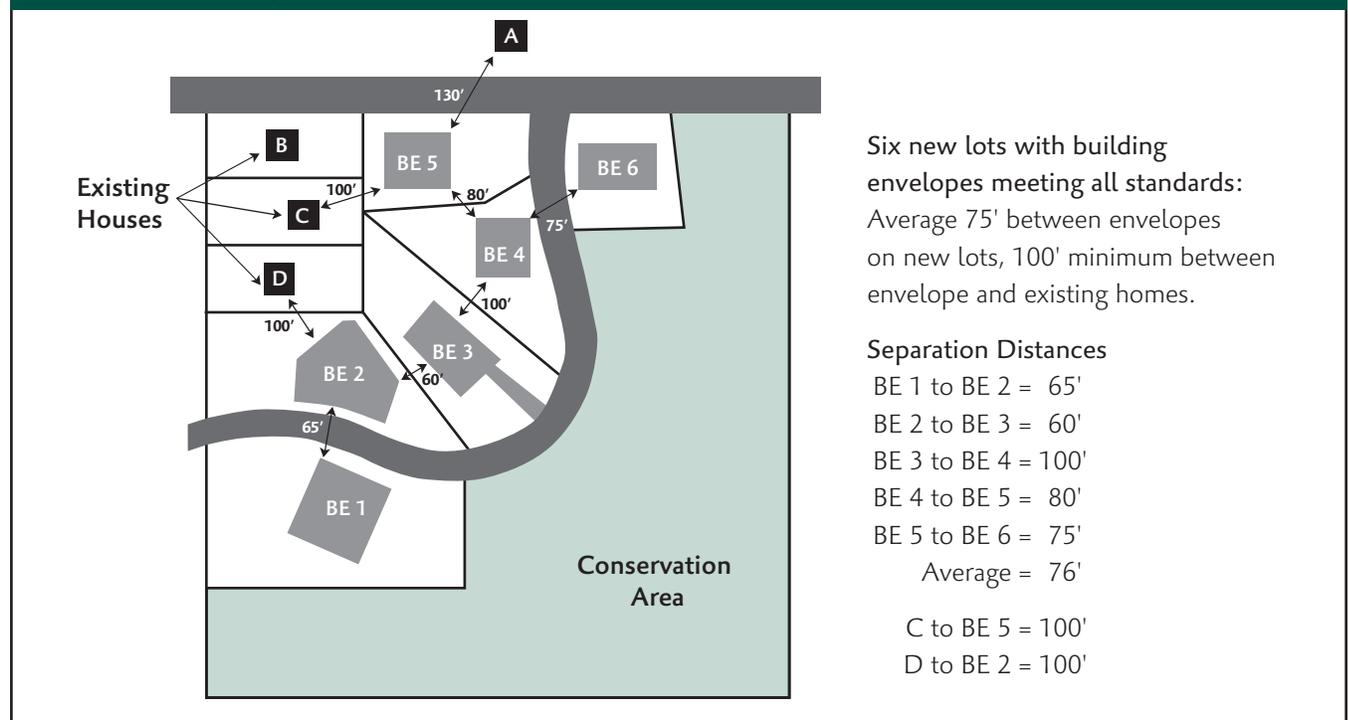
Minimal dimensional standards are set under this approach to allow flexibility in the design and layout of the subdivision and maximize the open space conserved. For this reason, frontage requirements are eliminated and set back requirements are minimized. The layout of structures is managed by the required separation between building envelopes. A community should review these specifications for consistency with their objectives for the design of subdivisions within their different zoning districts.

Table 1.4.1: Specifications of Minimum Separation Distances Between Building Envelopes
 [EXAMPLE: Specify Requirements for Your Community!]

District	Minimum Separation Distance of Building Envelopes for New Lots From Existing Structures on Adjacent Parcels	Minimum Average Separation Distance Between Building Envelopes for New Lots
Rural – large lots (4+ acres)	100 feet	75 feet
Rural Residential (2-3 acre lots)	75 feet	50 feet
Residential(1 acre lots)	40 feet*	30 feet*
Village Development (< 1 acre lots)	30 feet*	20 feet*

* The minimum separation distance may be reduced to the average separation between structures on neighboring properties.

FIGURE 1.4.3 Building Separation in a Conservation Subdivision



- Principal structures located on a common lot (and within a common building envelope) shall be no less than 15 feet apart and shall conform to the requirements of the town's building code and the NFPA fire protection codes based upon the type of construction and proposed use.
- Height limits for structures shall be determined by the underlying zoning for the parcel, unless variations are granted by special permit.
- Building envelopes shall provide for a minimum setback of at least 10 feet from the lot boundaries.
- Building envelopes shall be delineated to ensure that no structures shall be less than 15 feet from the edge of pavement of the roadway.

6. Building envelopes shall be setback a minimum of 50 feet from wetlands and shorelines (unless subject to a greater setback requirement under local zoning or state law). No structures or supporting utilities may be constructed on wetland.
 7. Lots may be irregular in size and shape provided they conform to the natural topography and features of the parcel (e.g., the lot lines follow an existing stone wall, stream, or other natural dividing feature).
 8. The planning board may authorize variations from the above standards, except for provision (6) pertaining to the setback from a wetland/shoreline or any requirement covered by state regulation or addressed elsewhere in this ordinance, by up to 50 percent by special use permit issued pursuant to Section IV.C.2, for the purpose of providing flexibility in the design of the subdivision to meet the objectives of this section or to support the creation or continuation of a traditional village-style development pattern.
- C. **Design Standards for Developed Areas:** Subdivision plans shall comply with any additional applicable standards governing the location and layout of lots and structures found elsewhere in this ordinance and as set forth in the Subdivision Regulations.

VII. OPEN SPACE REQUIREMENTS

- A. At least 50 percent of the buildable area and 80 percent of the non-buildable area of the parcel shall be permanently protected as designated open space subject to the additional conditions below. The planning board may authorize a slight reduction in the area of designated open space by special use permit, when it finds that (1) the reduction is necessary to enable the use of the conservation subdivision approach based on the characteristics of the parcel, and (2) the proposed subdivision adequately meets all other requirements of this ordinance. In no case, shall the designated open space represent less than 50 percent of the total area of the parcel.

A community might decide to require a greater or lesser percentage of the parcel to be conserved or vary the percentage for different areas of town or dependent on the specific characteristics of the parcel. For example, a community might require 80 percent of the total area of a parcel to be conserved in areas with high-value natural resources.

- B. Portions of the parcel that comprise part of an individual house lot, roadway, driveway, access road, roadway right-of-way, other new or existing right-of-way, utility easement, private or community leachfields or other components of a wastewater management system, stormwater management structures, or are part of a required buffer between any new structure and an existing right-of-way, or any area that is less than 100 feet wide shall not count toward the calculation of the designated open space.
- C. The location, layout, and management of the designated open space shall conform to the standards and process set forth in the Subdivision Regulations.

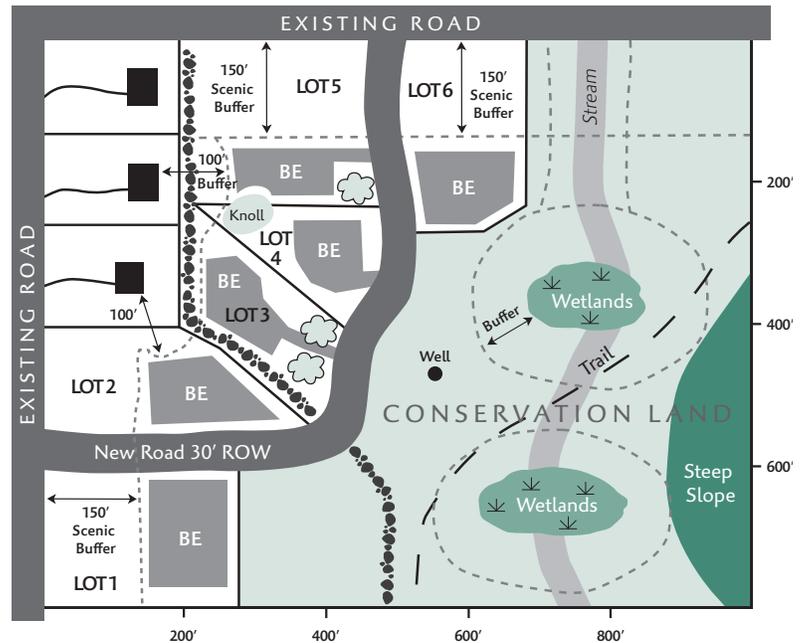
The model envisions that the predominant purpose of the designated open space is preservation of natural resource functions, and thus, allows only limited uses of the open space. A community should decide what uses are appropriate in the designated open space based on your community's goals and objectives in utilizing this technique. A community might decide to vary the uses allowed depending on the location of the development or the types of natural and/or cultural resources present. For example, all uses of the open space might be prohibited if an area to be conserved contains critical wildlife habitat; passive recreation, agriculture and forestry might be permitted in a development in a rural zone; while more intensive recreation, such as ball fields or tennis courts, might be permitted in an area targeted for higher density growth. Alternatively, a community could establish a process to determine the allowable uses based on the characteristics of the site and the recommendations of a natural resource specialist.

- D. Any use of the designated open space is subject to approval of the planning board and conservation commission and shall demonstrate that such uses shall not negatively impact the natural and/or cultural amenities preserved through the conservation subdivision design.
- E. The following uses generally are permitted in the designated open space, unless specifically prohibited or restricted as a condition of subdivision approval for the purposes of protecting important natural features or characteristics of the parcel:
 - 1. Forest management.
 - 2. Agricultural cultivation and pastures.
 - 3. Passive (non-motorized) trails and recreational uses.
 - 4. Snowmobile trails.
- F. Up to 50 percent of the designated open space may be permitted by special permit to be used for the following. The planning board may impose specific criteria or restrictions on such uses as deemed necessary to support the goals of this section:
 - 1. Agriculture involving animal husbandry and/or boarding.
 - 2. Active outdoor recreation uses, including formal playgrounds and fields.
 - 3. Parking areas for access to the designated open space.
 - 4. Individual or community wells provided that this use was approved as part of the subdivision plan and that appropriate legal arrangements are established and approved by the planning board for the maintenance and operation of these facilities.
- G. The removal of soil, trees and other natural features from the designated open space is prohibited, except as consistent with conservation objectives or permitted uses as provided above.
- H. The designated open space shall be retained in a natural, undisturbed state, except for those activities permitted and approved as provided above, or as required for active management according to a conservation agreement and management plan written by a qualified natural resource professional.

FIGURE 1.4.4 Rural Conservation Subdivision Example (continued)

STEP 3: Delineate building envelope and lot lines (for single family homes)

- minimum 75' average separation between new building envelopes (BE)
- minimum 15' from edge of pavement
- minimum 10' from parcel boundary (unless another setback is in effect)
- minimum lot size = 21,780 sq ft
 - Community well, individual septic
 - Type 3 soils, open space development



AMENDED PROCESS AND REQUIREMENTS FOR SUBDIVISION APPLICATION AND APPROVAL

AUTHORIZATION OF PRE-APPLICATION REQUIREMENTS

Model Resolution Language

Pursuant to RSA 674:35, I, the planning board is hereby authorized to require preliminary review of applications for the subdivision of land.

Pursuant to RSA 674:43, I, the planning board is hereby authorized to require preliminary review of site plans for nonresidential uses or for multi-family dwelling units.

Pursuant to RSA 674:35, I, a municipality's governing body must authorize the planning board to require preliminary review of applications for the subdivision of land (and for site plans, under RSA 674:43, I). The ability of the planning board to require applicants to participate in preliminary or pre-application meetings is critical to providing planning boards early involvement in the subdivision design process and will greatly increase their ability to influence the ultimate design and layout based on the broader municipal goals and the characteristics of the site. The pre-application meeting can also foster a collaborative relationship between the board, the abutters, and the applicant.

REVISIONS TO SUBDIVISION REGULATIONS AND APPLICATION PROCEDURES

(once authorized by resolution at town meeting or by city/town council)

The following text is intended to be added to a community's existing subdivision review regulations and to apply to all subdivision applications, both conventional and conservation design.

I. PRELIMINARY REVIEW

A community will need to determine if all subdivisions are required to participate in a preliminary review prior to submitting a formal application and if not, what types of projects are exempt, e.g., minor subdivisions.

All applicants for subdivision review are required to participate in a preliminary review process with the planning board. The purpose of this process is to discuss the characteristics of the site and proposed plan for development in conceptual terms. The preliminary review process is further designed to acquaint the potential applicants with the formal application process and particular information that the planning board may request, to suggest methods for resolving possible problems in the development design and layout, and to make the potential applicant aware of any pertinent recommendations in the master plan, zoning, or regulations to the property in question.

A. Limits of the Review

1. The preliminary review shall be conducted at a posted meeting of the planning board after identification of and notice to the abutters, holders of conservation, preservation or other restrictions on the site or abutting parcels, and the general public under RSA 676:4 I(d).
2. The preliminary review shall not cause the proposed plan to be a pending application or proceeding, and as such, no processing time limits, as defined in RSA 676:4 shall apply.
3. The preliminary review shall be informational and shall not bind the applicant or the planning board. However, the planning board shall be entitled to make recommendations with respect to the material presented during the preliminary review to assist the potential applicant in preparing a formal application. No decisions relative to the plan shall be made at the preliminary review.
4. Public input will be accepted.
5. Any documents provided to the planning board will be made part of the record for future reference purposes.
6. The planning board shall enter into the minutes any suggestions, recommendations, or other factors discussed.

B. Preliminary Review Documents

Applicants shall submit the following materials at least 30 days in advance of the preliminary review meeting with the planning board. Materials shall be

submitted to the town office, c/o chairperson of the planning board, according to the filing schedule established by the planning administrator. All materials must be submitted before a preliminary review can be scheduled.

1. **Request for Preliminary Review.** Applicants shall submit the appropriate form, available from the town office, a list of the names and addresses of abutters obtained from town records not more than five days before the date of filing of the application, and application fee.
2. **Site Context Map.** The site context map shall be drawn at a size adequate to show the relationship of the proposed subdivision to the adjacent properties and to locate the subdivision within the municipality, e.g., 1 inch = 400 feet. The site context map shall include the following:
 - a. Existing subdivisions in the proximity of the proposed subdivision, including building locations.
 - b. Locations and names of existing streets.
 - c. Boundaries and designations of zoning districts.
 - d. Watershed and subwatershed boundaries.
 - e. An outline of the subject parcel and the proposed subdivision.
3. **Site Inventory and Map(s).** The site inventory map(s) shall be at a scale of one inch equals 100 feet (unless another scale is mutually agreed upon for larger projects) and shall involve an individual or team with the necessary training in natural resources and who shall certify the information submitted. The inventory and map(s) shall include, at a minimum, the following:
 - a. The proposed name of the subdivision, north arrow (true meridian), date, and scale.
 - b. The boundaries of the parcel based upon a standard boundary survey prepared by a registered land surveyor and giving the bearings and distances of all property lines.
 - c. Existing structures or easements on the site; if none, so state.
 - d. The topography of the site at an appropriate contour interval depending on the nature of the use and the character of the site.
 - e. The major natural features of the site and within 500 feet of the site, including wetlands, vernal pools, streams, ponds, rivers, riparian areas, floodplains, stratified drift aquifers, areas of significant wildlife habitat (i.e., areas identified by the NH Wildlife Action Plan as the highest condition habitat in the state or region; habitats of endangered or threatened wildlife, other habitats of local significance as identified by the conservation commission or other conservation organization), mast stands, boundary trees, noteworthy tree specimens, scenic views or areas, significant geologic features,

Municipalities should review their current standards and requirements for site maps and site information and provide consistency between the preliminary review and formal application materials.

ridgelines, slopes in excess of 25 percent, agricultural soils of local and statewide significance, high quality forest soils, meadows, and any other important natural features. Wetlands on the site shall be identified and delineated by a New Hampshire Certified Wetlands Scientist and certified by the person performing the delineation. Information on adjacent properties may be from published sources and available state, regional, and local data.

- f. Visible or known human-made features of the site and within 500 feet of the site, including historic or cultural features, stone walls, roads, driveways, fences, trails, historic structures or remnants, archeological resources, graveyards, cemeteries, historic or current waste disposal sites, and any other important features; if none, so state.
 - g. Soils on the site based on a soil survey. The planning board may require the submission of a high intensity soil survey if it determines that a HISS is necessary to determine if the proposed density of development conforms to the zoning requirements or to evaluate the appropriate use of the property.
 - h. Vegetative cover conditions on the property.
 - i. Views onto and off of the property, with accompanying photographs.
 - j. Watershed and subwatershed boundaries.
 - k. Location of drinking water supplies (public and private) and protective radii.
 - l. All areas subject to covenant, easement or other restriction limiting the potential development and/or use of such areas, including resource boundaries and buffer areas subject to local, state, and/or Federal regulation. The nature of the restriction shall also be noted.
 - m. Location and size of existing utilities or improvements to the site; if none, so state.
 - n. If not served by public water, any potential sources of fire protection water supply within one half mile of the site, including public water mains, existing fire ponds, or other possible sources.
 - o. Preliminary identification of those areas of the site with the most significant conservation value based on the assessment of the site.
4. **Conceptual Plan of Proposed Development.** Applicants shall submit a conceptual plan for the development of the subject parcel that reflects the characteristics of the site as detailed in the site inventory and map(s) and its location within the community as indicated in the site context map. The conceptual plan shall be prepared at the same scale as the site inventory map and be provided as both a translucent sheet, which can be overlaid onto the site inventory map(s), and solid plan.

A conceptual plan shall be a draft plan, which does not include engineering details, but is drawn to scale and indicates the following:

- a. Proposed location of any new roadway.
- b. Proposed residential lots, building envelopes, including the possible location of a well and septic system, when applicable, and potential house sites for each lot.
- c. Existing and proposed features and amenities, including common areas, trails, or community buildings, etc.
- d. Proposed boundaries of the designated open space.
- e. A narrative description of the proposed approach for providing for drinking water supply, waste water treatment, stormwater management, and landscaping.

Applicants shall demonstrate that their conceptual plan is consistent with the following approach for designing a subdivision:

- a. **Step One: Identify Conservation Areas.** Identify those areas of the parcel containing or supporting important natural resource features and functions, as listed in the subdivision regulations or otherwise identified by the planning board for priority consideration for inclusion within the designated open space. If not included in the designated open space, other protective mechanisms, such as a substantial setback of development or maintenance of an undisturbed buffer around the feature, shall be identified.
- b. **Step Two: Locate House Sites and Building Envelopes.** To the maximum extent feasible, house sites and building envelopes shall be located outside of those areas delineated in Step One. The location of the house sites and building envelopes shall also reflect the design objectives identified elsewhere.
- c. **Step Three: Align Streets and Trails.** The minimum length and network of streets necessary to access each house lot shall be identified, subject to the road standards of the Town and with consideration given to conforming the street to the natural landscape. Proposed trails shall be identified where access to the designated open space is appropriate and/or to provide for pedestrian circulation within the development as well as pedestrian access to areas outside the development.
- d. **Step Four: Identify Lot Lines.** Lot lines for each house site, or group of homes on a common lot, shall be identified. The placement of the lot lines shall give consideration to those areas identified in Step One as well as conform to the natural features of the landscape to the greatest extent possible, e.g., follow stone walls, lines of boundary trees, streams. The delineation of lots shall also consider the privacy provided for individual homeowners and opportunity for future owners to reasonably expand the structures on the lot.

- e. **Conceptual Long Range Development Plan.** When a subdivision will not utilize the entire parcel and there is potential for future subdivision or development of the parcel or any of the lots being created, the application for preliminary review shall include a conceptual long range development plan showing the potential utilization of the lots and the balance of the parcel not being subdivided. The conceptual long range development plan is a sketch plan with no engineering details, intended to be conceptual in nature, to rely on published data about natural resources relevant to the parcel, and to demonstrate that the current subdivision proposal will not compromise important conservation values or the long term development of the parcel as a conservation design subdivision. This plan shall show the relationship of the proposed subdivision area to the balance of the parcel and to adjacent land. This plan shall analyze the conservation and development potential of the remaining area of the parcel and shall show, in general terms, the potential street network, open space areas, and development areas in a manner that demonstrates that both the proposed development and the future development can occur so that it conforms to the requirements for conservation design subdivisions and preserves the significant natural resource and conservation values of the entire parcel.

C. Technical Review

At the discretion of the planning board, the board may request that the applicant pay a reasonable fee to provide for a third-party technical review of the information provided on the site or the conceptual plan of the proposed development submitted for the preliminary review. The fee shall be due at the time of submission of a formal application. A formal application for subdivision review shall not be deemed complete until the technical review of the preliminary review materials is conducted, or 30 days after the preliminary review materials and the fee for the technical review are received (provided all other requirements for a formal application are met), whichever is earlier. The applicant may elect to submit the fee for this technical review in advance of the formal application to expedite the review process.

D. Site Inspection

The planning board may conduct a site inspection of the subject property to review existing conditions, field verify the information submitted, and investigate the preliminary development proposal. The board may schedule this inspection before or after the preliminary review meeting or decide not to hold a site inspection at this time.

II. FORMAL APPLICATION REVIEW PROCESS

[A community should evaluate its existing formal application procedure for consistency with the pre-application procedures in this chapter.]

III. DESIGN STANDARDS: SUBDIVISIONS

The following design standards are intended to improve the character and aesthetic qualities of the development and to minimize its impact on the natural and cultural features on the site. Variations from these standards may be granted by the planning board provided that the overall intent of this section is achieved by the alternative design.

A. Lot Configuration and Design

The following design standards are intended to improve the character and aesthetic qualities of development and to minimize impacts on natural and cultural features on the site. The planning board may require development plans to be certified by an individual with professional training in neighborhood design.

1. Minimum Impact to Natural and Cultural Features.

Individual lot lines and building envelopes shall, to the extent possible, conform to the natural contours of the site and be delineated to minimize negative impacts on the natural and cultural resources of the site as identified by the planning board and/or site inventory.

- a. The location and orientation of individual building envelopes and building sites shall be designed to maintain the natural topography and drainage patterns, to preserve important natural features in their natural condition, to maximize the potential for use of passive solar energy for light and heat, to minimize disturbance of natural vegetated cover, and to minimize grading, cut-and-fill, and soil removal.
- b. Topography and natural drainage ways shall be treated as fixed determinants of road and lot configuration rather than malleable elements that can be changed to allow for a preferred development scheme. Land disturbance and cut-and-fill shall be minimized.
- c. The removal or disruption of historic, traditional, or significant uses, structures, or architectural elements shall be minimized.
- d. Significant trees, boundary trees, stone walls, wetlands and streams and other important natural features not included within the designated open space should be incorporated along the edges of individual lots or along a path or roadway, rather than transected by lot lines or a roadway.
- e. The planning board may require the designation of protected, naturally-vegetated buffer strip of 50 feet or more around water resource features, e.g., lakes, ponds, streams, wetlands, or other natural features that may be adversely affected by erosion or stormwater runoff. Such areas may be required to be revegetated if they were recently cleared prior to subdivision approval or cleared during construction.
- f. Stream and wetland crossings shall be eliminated whenever possible. When necessary, stream and wetland

These standards will augment any existing design standards guiding subdivision layout. Most of these standards are appropriate to apply to all types of subdivision development, not just to conservation subdivisions. Those design criteria intended to apply solely to conservation subdivisions are listed separately.

Readers should also review the design standards specified in several other chapters, including Stormwater Management, Wildlife Habitat Protection, and the Water Resource Protection chapters for additional provisions they might wish to apply.

See chapter on Wildlife Habitat Protection for a more extensive set of criteria to minimize impacts on wildlife through site design.

See chapter on post-construction stormwater management for more information on recommended stormwater management practices, including additional discussion on restricting land disturbance (clearing, grading, cut and fill), impervious cover and off-site drainage.

crossings shall comply with state recommended design standards to minimize impacts to flow and animal passage (see NH Fish and Game Department, 2008).

- g. A building envelope shall be identified for each lot. Future construction on the lot is encouraged, but not required to be located within the identified building envelope for each lot; however, construction outside of the designated building envelope shall comply with the setback requirements for a conventional development.
- h. Building envelopes, and/or areas of contiguous clearing, shall generally be limited to a maximum area of 21,780 square feet (1/2 acre) for an individual building or up to 87,120 square feet (2 acres) when multiple buildings are located on a common lot.

2. **Minimum Visual Impact.** Individual lots and building envelopes shall be delineated so as to mitigate the visual impact of new development on views from existing roadways, adjacent properties, and offsite vantage points.
- a. At its discretion, the planning board may prohibit the placement of building envelopes in visually prominent areas that cannot be adequately screened.
 - b. Development within open fields shall be discouraged. If development must be located within open fields due to constraints elsewhere on the site, building envelopes should not be located on prime agricultural soils and/or should be located at the edges of the field to the maximum extent possible. Additional landscaping may be required to provide a sufficient visual buffer for new development.
 - c. To the extent practical, building envelopes shall be delineated to maximize the privacy afforded to each dwelling unit, by, for example, positioning homes to eliminate direct sight lines to neighboring homes and to prevent a building from being positioned directly above (or “perched” above) another building on a vertical slope, unless an adequate separation distance and vegetated buffer exists or is provided.
 - d. The planning board may require a vegetated buffer to provide screening between developments and/or between development and public roadways.
 - e. Lots that have frontage on an existing public road shall be laid out to minimize the number of curb cuts onto the existing road through the use of shared or common driveways or other methods. The number of curb cuts and distance between them shall be subject to planning board approval.
 - f. Lots in the rural, agricultural or low-density residential zones having frontage on an existing public road may be required to maintain a 150 foot vegetated, screening buffer from the existing public road to minimize the effect of the development on the streetscape. The buffer area shall remain free of buildings, parking, or other

structures. This buffer area shall be protected by a deed restriction on the subject properties.

- g. The setback of building envelopes and structures from the roadway in rural areas are encouraged to vary from lot to lot within the subdivision. Applicants are further encouraged to vary lot sizes, lot dimensions, and the location of building envelopes and structures within the subdivision to retain significant, natural vegetation along the road; provide increased privacy for residents on adjacent lots; and increase the visual variety provided by the arrangement of homes within the subdivision.

Each community should evaluate if and where they want to require a vegetated setback and/or variation in lot layout and building envelope setback. These standards are intended to help maintain the "rural character" within the subdivision and along existing roads. In village situations, new development should be visible from public ways and contiguous with existing development.

3. Landscaping and Tree Preservation. At the request of the planning board, an applicant shall prepare a detailed landscaping plan and/or tree preservation plan.

- a. The landscaping plan shall identify the areas of existing natural cover to be retained as well as new landscaping to be provided on the site, including specific types and sizing of plantings with a preference for native species. The landscaping plan should provide reasonable privacy for individual homes, provide a visual buffer of the development, and improve the overall aesthetics of the development.
 - i. The planning board may require revegetation of any setback or buffer area that was substantially cleared prior to or during the subdivision development to ensure adequate visual screening of the new development, particularly for setbacks to existing roadways and neighboring structures, or within the development itself.
 - ii. The planning board may require the planting of shade trees within all subdivision layouts where residential, commercial or industrial development is to take place.
- b. When requested by the planning board, the landscaping plan shall include a tree preservation plan, which shall identify all trees greater than 15 inches in diameter at 4 feet above the ground, indicate which trees will be retained, and detail a plan to protect those trees, including the root zone, during construction.
- c. Landscaping plans may be submitted to the conservation commission for its review.

4. Additional Design Guidelines for Conservation Subdivisions

- a. Building envelopes on individual or common lots should be set back as far as possible from the boundary of the adjoining designated open space, consistent with other design parameters of this section, to augment and protect the integrity of the open space area.
- b. Consideration should be given in the layout of the subdivision to provide each dwelling unit with access and/or views onto the designated open space.

The restriction on the number of buildings that may be clustered together in a contiguous grouping or “pod” is intended to provide for natural visual breaks in the developed area of the parcel to address concerns about the potential negative visual impact of tightly clustering a large number of homes in a rural area characterized by low-density and dispersed development. This standard may not be appropriate or necessary in all areas of a community; thus the model allows for this to be applied at the discretion of the planning board. Alternatively, a community might apply this requirement only in certain zoning districts.

- c. At the discretion of the planning board, groupings of buildings in the rural zone(s) may be limited to six buildings (containing single or multiple dwelling units) together in a “pod” formation (on individual lots or on a common lot) with a vegetated buffer of 100-300 feet separating the groupings. Larger buffers (200-300 feet) may be required depending on the size of the proposed structures, the nature of the existing vegetation, and the elevation change in the area of concern.
- d. A septic leach field may be located outside of the lot line boundaries provided the requirements of the New Hampshire Department of Environmental Services are met, including appropriate legal provisions to allow for maintenance and replacement.
- e. Shared driveways are permitted and encouraged where appropriate to access individual lots.
- f. Other design requirements that apply to all residential subdivisions shall continue to apply, when appropriate. These may include, but are not limited to, landscaping standards, street and neighborhood lighting provisions, utility placement, erosion and sediment control, and post-construction stormwater management.

B. Village Design Standards

The following standards provide guidelines for the layout of a new residential and/or mixed use development in a traditional village format when such an option is feasible under the applicable zoning, i.e., frontage and set back requirements, allowable uses, etc.

1. Lots within a village-style layout should have a maximum frontage of 70 feet.
2. Lots within a village-style layout should have a maximum front setback of 20 feet.
3. Garages and Secondary Structures.
 - a. Attached garages must be flush or (preferably) set back from the front wall or façade of the principle building and must be architecturally integrated with the principle building.
 - b. Detached garages or other secondary structures must be flush with or set back from the front wall or façade of the principle building. Detached garages and other secondary structures are encouraged to be located behind principle structures.
 - c. No more than two garage doors facing a street may be located in a row, and such rows of garage doors must be separated from any other garage door facing a street by at least ten feet.
4. Houses on opposite sides of the street should be located between 70 feet and 100 feet across from each other, except along a boulevard, which is defined as a divided street with a center landscaped strip at least ten feet

wide, and except when buildings face onto greens, commons, or other open space.

5. Buildings should be of at least one-and-one-half story construction, but no more than three stories. Public or commercial buildings containing significant architectural features, such as a steeple or clock tower, may be higher than three stories if the height of the building is consistent with the overall village design of the development.
6. Villages shall be designed in a pattern of interconnecting streets and alleys, defined by buildings, street furniture, landscaping, pedestrian ways, and sidewalks. The layout should be suited to the existing topography and other natural features of the area to minimize cut-and-fill and grading throughout the site.
7. Sidewalks or pathways, no less than four feet wide, shall be provided along all road frontages of new village-style development.
8. Cul-de-sacs are prohibited.
9. To calm traffic speeds and to provide for pedestrian safety, the use of “T” intersections, small roundabouts, and four-way stops are encouraged.
10. Street trees shall be planted every 35 linear feet within the street right of way.

See chapter on Village Plan Alternative for additional design standards to apply to a new village-style development that incorporates small scale retail and commercial in addition to residential uses.

C. Designated Open Space: Design Criteria

1. The subdivision and development shall, whenever possible, preserve important natural features in their natural condition. The planning board may request an advisory opinion from the conservation commission in determination of the value of the natural features on a site, the boundaries of those natural systems, and the appropriateness of the proposed designated open space to preserve the integrity and function of important natural features.
2. Areas containing the following shall be considered high priority for inclusion in the designated open space:
 - a. Riparian areas, wetlands, streams, and other water resources and buffers for those resources.
 - b. Critical or high-quality habitat areas, including areas identified as the highest statewide or eco-region importance by the NH Fish and Game’s Wildlife Action Plan, and buffers or supporting landscapes to these areas.
 - c. Significant stands of trees or significant individual trees.
 - d. High-quality soil resources (forest or agricultural soils).
 - e. Cultural and historic resources, e.g., stone walls, historic structures.
 - f. Existing trails.

A community should review and revise this list of high priority resources based on the resources present in their community and the preservation goals of the community.

- g. Areas that connect to undeveloped open space on adjacent properties
 - h. Ridgelines, particularly those that continue through the parcel
 - i. Viewshed areas
 - j. Water supply protection areas
3. To the maximum extent possible, the area of designated open space shall include any area identified as a priority for conservation in a local, town, regional or state conservation plan, e.g., areas identified in the Natural Resource Inventory, highest ranked habitat areas identified within New Hampshire's Fish and Game's Wildlife Action Plan. These areas shall be adequately buffered from development by including an additional (minimum) 300 foot distance within the designated open space to the maximum extent feasible. A larger setback from the edge of the designated open space to specific areas may be required depending on the type of habitat and/or sensitivity of a species of concern to human influence.
 4. To the extent practical, the designated open space shall be contiguous within the parcel and adjacent to existing undeveloped land on adjoining parcels to form a continuous, integrated open space system. Particular attention shall be paid to maintaining and expanding existing trail networks.
 5. The design of the designated open space and any permitted uses, such as trails, shall be sensitive to minimizing potential impacts to high-quality and/or rare plant communities and habitat areas, particularly those areas potentially supporting rare or endangered species.
 6. To the maximum extent practical, a minimum of a 50 foot undisturbed, vegetated buffer around water resource features, e.g., lakes, ponds, streams, wetlands, shall be included within the designated open space. Such areas may be required to be revegetated if they were recently cleared prior to subdivision approval or impacted during construction.
 7. No topsoil or vegetation shall be removed from the designated open space, except in conformance with an approved management plan for the area.
 8. Access points to the designated open space shall be clearly identified on plans and posted with permanent signage approved by the planning board indicated allowed uses.
 9. No more than 5 percent of the designated open space shall be covered by surfaces that impede the infiltration of rainwater into the soil, except as approved by special permit by the planning board.
 10. The designated open space shall not be used as the location for dwelling units, roadways, other access, private recreation structures or play equipment, private accessory structures, or other nonresidential buildings or parking except as approved by the planning board.

D. Designated Open Space: Protection and Management

1. Area Boundaries of the designated open space shall be clearly identified:

- a. Boundaries shall be clearly delineated on plans including plats.
 - b. Boundaries shall be clearly marked and identified as “No Disturbance” areas, except in areas identified for permitted uses, prior to commencing construction activities, including tree cutting, site clearing and grading; temporary markings are acceptable.
 - c. Boundaries shall be clearly and permanently marked in the field with signage approved by the planning board to identify the area as protected open space.
2. Future development in and/or subdivision of designated open space areas shall be prohibited and shall be so noted on the approved subdivision plan/plat.
3. Prior to the approval of the final plat, the designated open space shall be protected and controlled by one or more of the following methods subject to planning board approval:
 - a. Transfer to the municipality as open space, with public access and permanent deed restriction or conservation easement in place (subject to acceptance by the municipality).
 - b. Transfer, with permanent deed restrictions or conservation easement, to a land trust or other recognized conservation organization (subject to acceptance by the organization).
 - c. Ownership by one or more private individuals (separately or in common) or a cooperative legal entity, e.g., a homeowner’s association, with a conservation easement granted to the municipality and/or recognized conservation or land trust organization.
 - d. For designated open space areas of less than 50 acres, ownership by one or more private individuals (separately or in common) or a cooperative legal entity, e.g., homeowner’s association, with open space protection deed restrictions enforceable by any land owner within the subdivision, any owner of separate land parcels abutting the open space, or the municipality.
4. In the event that the designated open space is owned by a cooperative legal entity for the benefit of the residents of the subdivision, all common open space shall be governed in accordance with the requirements of New Hampshire RSA 479-A:1-23 inclusive as amended.
5. Deed restrictions and/or conservation easement documents shall be placed on file with the town clerk upon receipt of planning board subdivision approval and duly recorded at the County Registry of Deeds, where appropriate. Such documents shall clearly indicate whether the property is open to the general public, open only to residents of the municipality, or open only to residents of the subdivision.

Because **deed restrictions** are considered a somewhat weaker form of long-term protection against future development, this approach is not recommended to protect large and/or significant parcels of open space. In these cases, every effort should be made to secure a conservation easement for the property to be held by the municipality and/or a recognized conservation organization. However, if the municipality is not willing or able to accept the conservation easement and fulfill the stewardship responsibilities, it may be necessary to accept deed restrictions for larger parcels.

6. A management plan for the designated open space and facilities shall be prepared and approved by the planning board, which includes the following:
 - a. Identifies the entity assuming responsibility for stewardship and management of the designated open space, including regular inspections to confirm continued compliance with the terms of the subdivision approval and conservation easement or deed restrictions.
 - b. Includes detailed standards and schedules for maintenance of the designated open space, including maintenance of vegetation.
 - c. Allows for municipal maintenance in the event that the maintenance specified under the agreement is not completed and recovery of costs incurred from the designated management entity or the owners of the designated open space within the subdivision.
 - d. Provides that any amendments to the plan shall be reviewed and approved by the planning board.
7. For properties containing open space protected under a conservation easement to be held and enforced by the town or a third-party, a one-time stewardship fee shall be collected and provided to that entity to be held in a separate trust account and used to support the monitoring and enforcement of the conservation restrictions. The amount of the stewardship fee shall be determined by the town or third-party easement holder based on the size and restrictions in place on the open space and the requirements of the easement holder.
8. At the discretion of the planning board, an applicant may be required to prepare a brochure identifying the development as a conservation subdivision and detailing the location and use restrictions of the designated open space, and provided to all purchasers of property within the subdivision. Additional copies (hard copies and an electronic format) of the brochure shall be provided to the municipality to be distributed to future property owners.
9. All documents, including deed restriction language, conservation easements, and the management plan shall be reviewed and approved by town counsel prior to receiving subdivision approval from the planning board.

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TOWN OF HOLDEN

SUBDIVISION ORDINANCE

NOT AN OFFICIAL COPY

EXCERPTS FOR LUPC SUBDIVISION RULE REVIEW PURPOSES

March 25, 2015

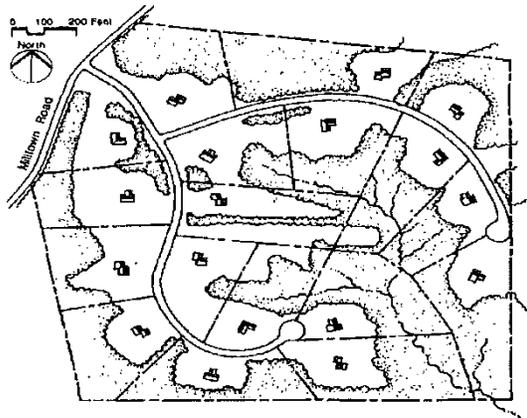
SECTION VIII: PRE-APPLICATION PROCEDURES/SKETCH PLAN REVIEW

A. GENERAL

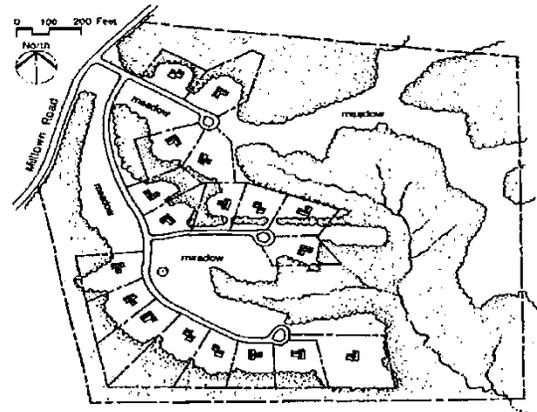
All applicants shall meet with the Planning Board and otherwise comply with the pre-application procedures set forth below prior to the formal submission of a subdivision plan. All subdivision applications submitted to the Holden Planning Board shall be conservation subdivisions. See explanation in paragraph C, below, Section XVI.E., Retention of Open Spaces and Natural or Historic Features, and Section XX, Requirements for Conservation Subdivisions.

B. EXPLANATION OF CONSERVATION SUBDIVISION

A conservation subdivision is a technique that concentrates development in one or more compact areas on the site in exchange for conserving open space and natural areas elsewhere on the site. The minimum lot sizes, setbacks and frontage requirements for the zone are relaxed in order to create open space on the site. The municipal ordinance typically permits the same amount of development that is already permitted. The key difference is that this technique requires new construction to be located on only a portion – typically half – of the parcel. This new construction should incorporate buffers, landscaping and design features to preserve the rural character of the zone in which it is located. The remaining open space is permanently protected under a conservation easement held by a land trust, the municipality itself, or under such terms as the parties may agree.



Traditional subdivision -
development of entire parcel with
lots



Conservation subdivision - development of
portion of site with same # of lot

*Reprinted with permission from "Growing Greener, Putting Conservation into Local Codes,"
by Randall Arendt.*

E. SUBMISSION OF SITE INVENTORY AND ANALYSIS

All applicants for subdivision approval shall submit a Site Inventory and Analysis to the Code Enforcement Officer/Planner. This requirement shall apply to new subdivisions, amendments to existing subdivision and re-subdivision of land within an existing subdivision. Submission of the site inventory and analysis shall not cause the plan to be a pending application or proceeding under Title 1 M.R.S.A. §302.

1. PURPOSE

The Site Inventory and Analysis is intended to provide the applicant, the Planning Board, and the CEO/Planner with a better understanding of the site and the opportunities and constraints imposed on its use by both the natural and built environments, and to provide a complete and factual reference for the Planning Board in making its site inspection. It is anticipated that this analysis will result in a subdivision plan that reflects the conditions of the site; those areas most suitable for conservation and open space will be preserved to the maximum extent possible, and those areas most suitable for the proposed use will be utilized. Therefore, the submission requirements provide that the applicant submit basic information about the site. The Planning Board's focus during this phase will be primarily on the location of open space.

2. SUBMISSION REQUIREMENTS

The Site Inventory and Analysis shall include the following information:

- a. The name of the property owner and the name of the applicant, if different.
- b. Evidence that the applicant has right, title or interest in the property.
- c. An aerial photograph enlarged to a scale not less detailed than 1 inch = 400 feet, to show the relationship of the proposed area to be subdivided to adjacent properties and to the total areas owned in whole or in part by the applicant. The aerial photograph shall include:
 - 1) Property boundaries in the area;
 - 2) Locations and names of existing streets;
 - 3) Boundaries and designations of zoning districts;
 - 4) Wetlands, regardless of size, prepared by a State Certified Soil Scientist or Geologist registered in the State of Maine, based on an on-site investigation, streams or ponds located in whole or in part on the parcel proposed to be subdivided.
 - 5) The boundaries of the 100-year floodplain;
 - 6) Public land, and
 - 7) Land protected under conservation easements.
- d. One or more maps of the site at the same scale as the aerial photograph showing:
 - 1) Topographic, physical and cultural features including fields, pastures, meadows, wooded areas, trees with a diameter of 15 inches or more, steep slopes over 20%, rock outcrops, soil types, ponds, ditches, drains, streams
 - 2) Cultural features such as all structures, foundations, walls, wells, trails and abandoned roads
- e. Names and addresses of abutters.

3. REVIEW OF SITE INVENTORY AND ANALYSIS BY CEO/PLANNER

Upon receipt of a Site Inventory and Analysis, the Code Enforcement Officer/Planner (CEO/Planner) shall give the applicant a dated receipt. Within ten (10) days of the receipt of a site inventory and analysis submission, the CEO/Planner shall review the material and determine whether the submission is complete. If the submission is determined to be complete, the applicant shall provide ten (10) copies of the Site Inventory and Analysis to the Code Enforcement Officer. Following receipt of the 10 copies, the Code Enforcement Officer/Planner shall place the item on the agenda for review by the Planning Board at the next available meeting.

If the submission is determined to be incomplete, the CEO/Planner shall notify the applicant in writing of this finding and shall specify the additional material required to make the submission complete. The CEO/Planner shall advise the applicant that, unless the applicant applies for a waiver or reduction of the submission requirements, the application will not be considered by the Board until the additional information is submitted. These steps shall be repeated until the application is found to be complete. When the submission is determined to be complete, or when the applicant has submitted a written, signed request for a waiver or reduction of submission requirements, the Code Enforcement Officer/Planner shall place the item on the agenda for review by the Planning Board at the next available meeting. The Planning Board shall have the final say on the completeness of the Site Inventory and Analysis and/or whether or not to grant a waiver or reduction of requirements.

4. WAIVER OR REDUCTION OF SITE INVENTORY AND ANALYSIS REQUIREMENTS

Upon written appeal by the applicant, the Planning Board may waive the submission requirements set forth in E.2., above, or reduce the amount of information required for the revision of previously approved plans, upon a finding that the analysis provided by this process is not necessary due to the scale of the project and the absence of any significant natural resources or development constraints on the site. Requests for waivers from a submission requirement must be submitted in writing by the applicant. Unless waived by the Board, this review must be completed prior to the preparation and submission of a subdivision application and supporting documentation.

5. REVIEW OF SITE INVENTORY AND ANALYSIS BY PLANNING BOARD

Unless the requirements for a Site Inventory and Analysis are waived or reduced, the Planning Board shall review the Site Inventory and Analysis with the applicant to determine if the information provides a clear understanding of the site and identifies opportunities and constraints that will help determine how it should be used, areas that are appropriate for conservation areas, and areas that are appropriate for development.

SECTION XVI: GENERAL PERFORMANCE STANDARDS

A. RETENTION OF OPEN SPACES AND NATURAL OR HISTORIC FEATURES

All subdivisions in the Town of Holden shall be Conservation Subdivisions as described in Section VIII. See also Section XX: Requirements for Conservation Subdivisions

1. Rural Area Requirement: In rural areas including portions of the R1 Zone as described in the Comprehensive Plan, and all areas within R2 and R3 Zones, at least 50% of the land suitable for development in proposed subdivisions shall be preserved as open space.
2. Growth Area Requirement: In growth areas as described in the Comprehensive Plan, the applicant shall
Excerpts of Holden Subdivision Ordinance

provide at least ten (10) percent of his total area as usable open space. In any subdivision twenty (20) acres or less, or containing ten (10) lots or dwelling units or less, the Board may grant a waiver for all or a portion of this requirement. It is desirable that areas reserved for recreation be at least two (2) acres in size and easily accessible from all lots within the subdivision.

3. Land reserved for open space purposes shall be of a character, configuration, and location suitable for the particular use intended. For example a site intended to be used for active recreation purposes, such as a playground or a play field, should be relatively level and dry, have a total frontage on one or more roads of at least two hundred (200) feet, and have no major dimensions of less than two hundred (200) feet. Sites selected primarily for scenic or passive recreation purposes shall have such access as the Board may deem suitable and no less than twenty-five (25) feet of road frontage. The configuration of such sites shall be deemed adequate by the Board with regard to scenic attributes to be preserved, together with sufficient areas for trails, lookouts, etc. where necessary and appropriate.
4. Where the proposed subdivision is located on a lake, pond, river or stream, a portion of the waterfront area, shall be included in the reserved land. The land so reserved shall be at least 200 feet wide measured perpendicularly from the normal high water mark.
5. If the Planning Board determines that the reservation of land for open space purposes would be inappropriate or that the land is not suitable or is insufficient in amount, the Board may waive the requirement of open space on the condition that the Applicant offer suitable land, as determined by the Planning Board, in another location or deposit a cash payment in lieu of land reservation in an amount determined by the Planning Board, with the Town Clerk. Such a payment shall be placed in a trust fund to be used exclusively for the purchase and development of neighborhood sites for open space purposes. In growth areas, the amount of such payment shall be not more than 25% of the estimated market value, including the value attributable to the proposed subdivision improvements (such as roads, drainage facilities, utility services as defined in 33 M.R.S. § 458, etc.), for each lot approved on the final plan. In rural areas, the amount of such payment shall not be more than 75% of the estimated market value, including improvements (such as roads, drainage facilities, utility services as defined in 33 M.R.S. §458, etc.), for each lot approved on the final plan. The estimated market values shall be determined by the Town Tax Assessor. If the Applicant disagrees with the Assessor's determinations of value, the Applicant may submit an appraisal prepared by a duly certified appraiser under Maine law for the Board's consideration.
6. The Board may require that the development plans include a landscape plan that will show the preservation whenever practicable of any existing trees larger than twenty-four (24) inches diameter 4 feet from the ground, the replacement of trees and vegetation, graded contours, streams and the preservation of scenic, historic or environmentally significant areas. Cutting of trees on the northerly borders of lots should be avoided as far as possible, to retain a natural wind buffer.

SECTION XX: REQUIREMENTS FOR CONSERVATION SUBDIVISIONS

A. POLICY

It is the policy of the Town of Holden to require the use of conservation subdivisions in order to preserve a sense of space, provide for sustainable agriculture and forestry as well as recreational land, preserve other resources identified in the Town of Holden Comprehensive Plan, and harmonize new development with the traditional open, wooded, agricultural, rural and village landscapes of the Town.

This performance standard is intended to implement that policy by providing incentives that afford flexibility

to landowners in road and lot layout and design and road frontage requirements and by allowing the Planning Board to expedite procedure and to waive or reduce certain otherwise applicable standards and provisions of this Subdivision Ordinance. These incentives are designed to encourage greater flexibility and more innovative approaches to housing and environmental design for the development of single and multi-family residential areas that will promote the most appropriate use of land and will preserve, as permanent open space, agricultural or forestry land, important natural features, wildlife habitat, water resources, ecological systems, and historic and scenic areas for the benefit of present and future residents.

B. PURPOSES

To qualify for approval as a conservation subdivision, the Planning Board must find that the proposed conservation subdivision will achieve the following purposes that are applicable to its specific circumstances:

1. Long term protection and conservation of existing natural and other resources and landscapes identified in the Comprehensive Plan including but not limited to:
 - a. State-defined critical areas, and unique natural features located on the parcel to be subdivided;
 - b. Historic land use patterns and historic structures;
 - c. Points of visual access to or from water bodies, scenic vistas, and points of access to water bodies;
 - d. Contiguous stands of mature trees; or
 - e. Other significant open space areas.
2. Maintenance or establishment of compatibility with surrounding land uses and the overall rural character of the Town as envisioned by the Comprehensive Plan;
3. Provision of adequate buffers for adjoining properties where needed;
4. Contribution to Town-wide open space planning by creating a system of permanently preserved open space, both within large parcels of land and among such parcels throughout the Town, and by encouraging linkages between open space areas;
5. Conservation of land suitable or actively used for agriculture and forestry uses, particularly where the conservation subdivision borders active agricultural or forestry land or land suitable for the same;
6. Conservation of traditional land uses
7. Creation of choices in the type of environment (business or residential) and type of housing available that will be a long-term asset to the Town of Holden;
8. Construction of affordable housing;
9. Provision of recreation facilities, including active and passive recreational space, in the most suitable locations for use consistent with the other purposes of this performance standard;
10. Attainment of planned variety and coordination in the location of structures, and building forms and relationships; and

11. Avoidance of strip development along the Town's road networks.

C. GROUPING CONTIGUOUS PARCELS

In order to increase design flexibility, two or more contiguous parcels of land under the same or different ownership, including parcels separated by a public or private road, may be grouped together as one conservation subdivision, if the Planning Board finds that such grouping will benefit the Town and that it helps achieve the purposes set forth in Paragraph B.

D. MAXIMUM NUMBER OF LOTS ALLOWED (see also Section XX., Paragraph F)

The maximum number of lots allowed shall be calculated in the following manner:

1. Determine the land suitable for development of the parcel according to Section XVI, General Performance Standards, Subsection F, "Land Not Suitable for Development," of the Town of Holden Subdivision Ordinance; then
2. Divide the land suitable for development by the minimum lot size required in the Zoning Ordinance to obtain the maximum number of lots allowed; then
3. Subtract the land area that would be needed for internal roads if it were not a Conservation Subdivision and recalculate the maximum allowable number of lots by:

- a. Multiplying the required frontage in the zone by the gross number of lots determined in #2 above, divide by two (this method assumes a double-loaded street) and multiply by the 50-foot right of way. For example:

If the required frontage is 300 feet and the gross number of lots is 10:

$300 \times 10 = 3,000$ (multiply the required frontage by the gross number of lots) $3,000/2 = 1,500$ (divide the result, 3,000, by 2 to account for double-frontage lots)
 $1,500 \times 50 = 75,000$ square feet (multiply the result, 1,500, by the frontage to get 75,000)

- b. Subtract the resulting square footage obtained in 3.a., above, from the land suitable for development; and
 - c. Divide the revised land suitable for development figure by the lot size requirement in the zone to obtain the maximum number of lots allowable.
4. **DENSITY BONUS:** When the Planning Board determines that a density bonus is warranted, multiply the result obtained in 3.c by:
 - 1.15 if the proposed development will provide for one of the following (4.a. or 4.b., below), or
 - 1.20 if the proposed development will provide for both of the following (4.a. and 4.b., below), and round to the nearest whole number. A density bonus may be allowed by the Planning Board for:
 - a. Affordable housing acceptable to the Town that meets the standards for affordable housing contained in the current affordability index for the Town of Holden prepared by the Maine State Housing Authority, when at least 10% of the housing units in the proposed subdivision or provided by the subdivider elsewhere in town will be affordable and mechanisms acceptable to the town are

proposed to ensure that such units remain affordable; and/or

- b. Public access to usable open space provided by the developer acceptable to the Town such as, but not limited to, public access to trails, recreation areas or water bodies; or dedication of land to the Town of Holden to meet a public purpose. This provision shall not be met by offerings or dedication of land for roads, utilities and similar facilities serving the development.
5. A lot for a dwelling unit created as part of a conservation subdivision shall not be further subdivided.
6. A lot or parcel of land created as part of a conservation subdivision that has within its bounds designated open space shall not be further subdivided unless the original approved plan shall have reserved future development of such lot, but any such further subdivision shall only be made in accordance with this performance standard.

E. LAYOUT AND SITING STANDARDS

In planning the location and siting of residential or business structures in a conservation subdivision, lot dimension and frontage should not be the primary considerations. Priority should be given to the preservation of the open space for its natural resource value, with human habitation and business activity located and sited on the lower valued natural resource portion of a parcel, taking into account the contours of the land and the reasonableness of slopes.

The building lots on a parcel shall be laid out and the residence and business structures shall be sited so as to maximize the following principles. The Board in its discretion shall resolve conflicts between these principles as applied to a particular site.

1. On buildable land.
2. In the least suitable agricultural soils and in a manner which maximizes the useable area remaining for the designated open space use, where agricultural, forestry, or recreational, existing or future uses, are particularly sought to be preserved;
3. In locations least likely to block or interrupt scenic, historic, and traditional land use views, as seen from public roadways and great ponds;
4. Within woodlands, or along the far edges of open agricultural fields adjacent to any woodland to reduce encroachment upon agricultural soils, to provide shade in the summer, and shelter as well as solar gain in the winter, and to enable new residential development to be visually absorbed by natural landscape features;
5. In such manner that the boundaries between residential or business lots and active agricultural or forestry land are well buffered by vegetation, topography, roads, or other barriers to minimize potential conflict between residential or business and agricultural or forestry uses;
6. In locations where buildings may be oriented with respect to scenic vistas, natural landscape features, topography, and natural drainage areas, in accordance with an overall plan for site development;
7. In locations that provide compatibility in terms of physical size, visual impact, intensity of use, proximity to other structures, and density of development with other permitted uses within the land

use district;

8. In locations such that diversity and originality in lot layout and individual building, street, parking layout are encouraged; and
9. So that individual lots, buildings, street and parking areas shall be designed and situated to minimize alterations of the natural site, to avoid the adverse effects of shadows, noise and traffic on the residents of the site, to conserve energy and natural resources, and to relate to surrounding properties, to improve the view from and of buildings.

F. SPACE STANDARDS (see also Section XX., paragraph D)

1. Shore frontage and shore setback requirements shall not be reduced below the minimum shore frontage or shore setback required in the land use district.
2. In R-2 and R-3 districts outside of the shoreland zone, the required minimum lot size or minimum land area per dwelling unit for the building envelope may be reduced in conservation subdivisions to no less than one-half acre. In all districts outside the shoreland zone, if the lot area is reduced, the total open space in the development shall equal or exceed the sum of the areas by which the building lots are reduced below the minimum lot area normally required in the Zoning Ordinance as modified, if any, by paragraph D, above. If individual lot sizes are reduced, in no case shall the total number of lots exceed the maximum number of lots allowed in paragraph D, above.
3. Minimum road frontage requirements of the Zoning Ordinance may be waived or modified by the Planning Board provided that:
 - a. Any applicable provisions regarding roads in the Subdivision Ordinance are satisfied.
 - b. Adequate access and turnaround to and from all parcels by fire trucks, ambulances, police cars and other emergency vehicles can be ensured by private roads and /or common driveways.
4. A reduction of required setback distances other than required shoreland zoning setbacks may be allowed at the discretion of the Board to achieve the purposes of this Section.
5. The designated open space shall include at least 50% of the land suitable for development in rural areas as described in the Comprehensive Plan, and 10% in growth areas as described in the Comprehensive Plan. Any land not suitable for development that is designated as open space shall not be counted toward this 50% or 10% requirement.
6. The setbacks of all structures shall be shown on the subdivision plan.

G. UTILITIES

At the discretion of the Planning Board, in order to achieve the most appropriate design and layout of lots and open space, utilities, including individual wells and septic systems, may be located on designated portions of the open space, if necessary, provided the same shall not unreasonably interfere with the open space purposes to be achieved under this performance standard and for the particular parcel(s) that is the subject of the application for conservation subdivision approval.

1. The Planning Board may waive or modify the requirement for hydrogeological reviews or studies, if the

applicant demonstrates that due to the specific placement of wells and septic systems:

- a. Adequate groundwater is available at all locations proposed for individual water systems; and that
- b. There is no reasonable likelihood that the domestic water supply for any proposed lot will exceed 10mg/I of nitrates.

The Planning Board may also waive or modify the requirement for hydrogeological reviews or studies if the development will be served by a public water system or a centralized water system.

2. If a private collection septic system is proposed for a single family or multi-family conservation subdivision, the applicant must show either that at least one (1) designated site for each lot, in the open space or on the lot, has adequate soils and land area suitable for subsurface waste disposal for each lot in accordance with the minimum standards set forth in the Maine Subsurface Wastewater Disposal Rules, and that a second designated site on the parcel has the size, location and soil characteristics, to accommodate a system similar to the one originally proposed.
3. If a private central collection system is proposed, the system shall be maintained by a homeowners association or under an agreement of the lot or unit owners in the same fashion required for maintenance of the open space by a homeowners association or the lot or unit owners in common and written evidence of said maintenance agreement shall be submitted to the Planning Board.

H. OPEN SPACE REQUIREMENTS

In the review and approval of a conservation subdivision, the following requirements shall apply and shall supersede any inconsistent or more restrictive provisions of this Subdivision Ordinance or the Zoning Ordinance.

Open space set aside in a conservation subdivision shall be permanently preserved as required by this performance standard, except as allowed under this provision for flexible open space and the substitution for and/or the addition to the same, or where open space is dedicated by a landowner under contract with the Town for a term of years as set forth below. Land set aside as permanent open space may, but need not be, a separate tax parcel. Such land may be included as a portion of one or more large parcels on which dwellings are permitted, provided that a conservation easement or a declaration of covenants and restrictions is placed on such land pursuant to paragraph H.3 and provided that the Planning Board approves such configuration of the open space.

1. OPEN SPACE USES

On all parcels, open space uses shall be appropriate to the site. Open space shall include natural features located on the parcel(s) such as, but not limited to, stream beds, significant stands of trees, individual trees of significant size, agricultural land, forested acreage, wildlife habitat, rock outcroppings and historic features and sites. Open space shall be preserved and maintained subject to the following, as applicable:

- a. On parcels that contain significant portions of land suited to agricultural production, open space shall be conserved for agriculture or other consistent open space uses such as forestry, recreation (active or passive), and resource conservation.
- b. When the principal purposes of conserving portions of the open space is the protection of natural resources such as wetlands, aquifers, steep slopes, wildlife and plant habitats, and stream

corridors, open space uses in those portions may be limited to those which are no more intensive than passive recreation.

- c. Open space areas shall be contiguous, where possible, to allow linking of open space areas throughout the Town.
- d. If the open space is to be devoted, at least in part to a productive land use, such as agriculture or forestry, the developer shall submit to the Planning Board a plan of how such use is to be fostered in the future. Such plan may include, for example, a long-term timber management plan.
- e. The Planning Board may limit the use of any open space at the time of final plan approval where the Board deems it necessary to protect adjacent properties or uses, or to protect sensitive natural features or resources. A proposed change in use of open space land, other than that specified at the time of plan approval, shall be reviewed by the Planning Board as an amendment to the approved plan.
- f. Further subdivision of open space or its use for other than agriculture, forestry, recreation or conservation, except for easements for underground utilities, shall be prohibited and shall be so stated as a condition of plat approval in the Planning Board order and by deed restrictions except as provided in paragraph H.3. Structures and buildings accessory to agriculture, recreation or conservation uses may be erected on open space, subject to Planning Board approval of these provisions for conservation subdivisions.

2. NOTATIONS ON PLAN

Open space must be clearly labeled on the Final Plan as to its use or uses with respect to the portions of the open space that such use or uses apply, ownership, management, method of preservation, and the rights, if any, of the owners in the subdivision to such land or portions thereof. The Plan shall clearly show that the open space land is permanently reserved for open space purposes, indicating the book and page of any conservation easements or deed restrictions required to be recorded to implement such reservations or restrictions.

3. PRESERVATION IN PERPETUITY

An owner of a parcel of land may designate all or a portion of the parcel for open space use in perpetuity if the purposes set forth in paragraph B are achieved and all other requirements of this performance standard are met subject to the following conditions:

- a. A draft perpetual conservation easement, or declaration of covenants and restrictions, restricting development of the open space land must be included in the conservation subdivision application.
- b. The conservation easement may be granted to or the declarations may be for the benefit of a private party, third party or other entity, the Town, with the approval of the Town Council, or to a qualified not-for-profit conservation organization acceptable to the Planning Board.
- c. Such conservation easement or declaration of covenants and restrictions shall be reviewed and approved by the Planning Board and be required as a condition of plan approval hereunder.
- d. The Planning Board may require that such conservation easement, or declaration of covenants and restrictions, be enforceable by the Town of Holden if the Town is not the holder of the conservation easement or beneficiary of the declarations.

- e. The conservation easement or declarations shall prohibit residential, industrial, or commercial use of such open space land (except in connection with agriculture, forestry, and recreation), and shall not be amendable to permit such use.
- f. The conservation easement or declarations shall be recorded in the Penobscot County Registry of Deeds prior to or simultaneously with the filing of the conservation subdivision final plan in the Penobscot County Registry of Deeds.

4. OWNERSHIP OF OPEN SPACE LAND

Open space land may be held in private ownership including an appropriate third party not the applicant; or owned in common by a homeowner's association (HOA); dedicated to the Town, County or State governments or agencies; transferred to a non-profit organization such as a conservation trust acceptable to the Planning Board; or held in such other form of ownership as the Planning Board finds adequate to achieve the purposes set forth in paragraph B and under the other requirements of this Ordinance.

The appropriate form of ownership shall be determined based upon the purpose of the open space reservation as stated pursuant to section paragraph H.1 above. Unless so determined, or unless deeded to the Town of Holden and accepted by the citizens of the Town at Town Meeting, common open space shall be owned in common by the owners of the lots or units in the development. Covenants for mandatory membership in the association setting forth the owners' rights and interest and privileges in the association and the common land, shall be approved by the Planning Board and included in the deed for each lot.

5. MAINTENANCE STANDARDS

Maintenance standards for open space land, where appropriate, shall be in accordance with other requirements of Section XXII of this Subdivision Ordinance.