

### **3.3 CONSERVATION SUBDIVISIONS**

**3.3.1** Purposes. A Conservation Subdivision represents a form of residential development where, instead of subdividing an entire tract of land into lots of conventional size and arrangement, a similar number of lots can be arranged on the land in a more innovative fashion which better fits the topography and natural attributes of the site. The remaining land in the tract that has not been built upon shall be set aside for open space or integrated among the housing units and reserved for usable common open space. This open space designation shall be held in a form of ownership that will prevent it from being further subdivided or developed.

The purpose for establishing this section is to promote a development pattern that creates areas of useable and accessible open space, provides land for open space, prevents disruption of natural topography and drainage systems, maintains the rural and open character of the undeveloped area of the Town; protects historically significant buildings, resources, and/or landscapes; protects valuable wildlife areas; allows for attractive site design; encourages a more environmentally practical utility and street network; and assists the Town in the goals of protecting open space and providing housing alternatives as outlined in the Master Plan.

#### **3.3.2 Objectives**

- 3.3.2.1 To provide a residential zoning district that permits flexibility of design in order to promote environmentally sensitive and efficient uses of land.
- 3.3.2.2 To preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands, and wildlife habitat
- 3.3.2.3 To permit clustering of houses and structures on less environmentally sensitive soils, which will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for residential development.
- 3.3.2.4 To reduce soil erosion and sedimentation by minimizing land disturbance and removal of vegetation in residential development.
- 3.3.2.5 To encourage interconnected greenways and corridors throughout the community.
- 3.3.2.6 To encourage contiguous green space with adjacent jurisdictions.
- 3.3.2.7 To encourage interaction in the community by clustering houses and orienting them closer to the street, providing public gathering places and encouraging use of parks and community facilities as focal points in the neighborhood.
- 3.3.2.8 To encourage street design that reduces traffic speeds and reliance on main arteries.
- 3.3.2.9 To encourage construction of convenient landscaped walking trails and bike paths both within the subdivision and connected to neighboring communities, businesses, and facilities to reduce reliance on automobiles.
- 3.3.2.10 To conserve scenic views and reduce perceived density by maximizing the number of houses with direct access to and views of open space.
- 3.3.2.11 To protect prime agricultural land and preserve farming as an economic activity.
- 3.3.2.12 To preserve important historic and archaeological sites.

#### **3.3.3 General Regulations**

- 3.3.3.1 Applications of Regulations. This Conservation Subdivision option is available as a use by right in the AR-I Zoning District. The Applicants shall comply with all other provisions of the zoning ordinance and all other applicable regulations, except those that are incompatible with the provisions contained herein.
- 3.3.3.1.1 Lots of greater than 20 acres in the AR-I Zone that are located closer than 100 feet to a parcel already protected by the Town of Londonderry by easement or ownership for Open Space purposes, and which require the construction of a new roadway to access newly subdivided lots, shall be required to utilize the Conservation Subdivision requirements of this section for any subdivision of the land for housing development.
- 3.3.3.2 Housing Density Determination. The maximum number of lots in the Conservation Subdivision shall be determined by either of the following methods, at the discretion of the applicant:
- 3.3.3.2.1.1 **Calculation Method:** the maximum number of lots is determined by dividing the area of the tract of land by the minimum lot size specified in the underlying zoning.
- 3.3.3.2.1.2 Where public sewer is not available, the maximum density for a Conservation Subdivision using the calculation method will be established by using Table 2 in Section 2.3.1.3 of this ordinance, and computing a total soil carrying capacity of all allowed soils found in the parcel proposed for subdivision. The soil carrying capacity of any soil is to be calculated by dividing the given area of any soil type by the required area for that soil type found in Table 1. The resulting number shall be multiplied by 85 percent to obtain the maximum number of dwelling lots permitted in the Conservation Subdivision.
- 3.3.3.2.1.3 Where public sewer is available, the maximum density will be established by using Table 1 of Section 2.3.1.3 of this ordinance, divided by the total area of the entire parcel to be subdivided.
- 3.3.3.2.1.4 In using the Calculation Method for determining the maximum number of lots, the following shall not be included in the total area of the parcel:
- 3.3.3.2.1.4.1 Slopes over 25% of at least 5000 square feet contiguous area;
  - 3.3.3.2.1.4.2 The 100-year floodplain;
  - 3.3.3.2.1.4.3 Drainage Easements; and
  - 3.3.3.2.1.4.4 Wetlands that meet the definition of this ordinance.
- 3.3.3.2.2 **Yield Plan Method:** The maximum number of lots is based on a conventional subdivision design plan, prepared by the applicant, in which the tract of land is subdivided in a manner intended to yield the highest number of lots possible. The plan does not have to meet formal requirements for a site design plan, but the design must be capable of being constructed given site feature and all applicable regulations
- 3.3.3.3 **Lot Area and Shape.**
- 3.3.3.3.1 The minimum lot size (prior to subdivision) for a Conservation Subdivision is 20 acres in common beneficial ownership. The minimum frontage for the development shall be a contiguous 100 feet and of sufficient length to provide safe access for a right-of-way of at least 50 feet.

3.3.3.3.2 Minimum Lot Size

3.3.3.3.2.1 For lots connected to public or community water and sewer: The minimum lot size in a Conservation Subdivision shall be one half (½) acre in size.

3.3.3.3.2.2 For lots connected to public or community sewer, but utilizing an onsite well for water service: The minimum lot size in a Conservation Subdivision shall be one half (½) acre in size.

3.3.3.3.2.3 For lots connected to public or community water, but utilizing an onsite septic system: The minimum lot size in a Conservation Subdivision shall be one half (½) of the total calculated minimum lot size using Table 2 of Section 2.3.1.3.1 of this ordinance or ½ acre, whichever is greater.

3.3.3.3.2.4 For lots serviced by an onsite well and an onsite septic system: The minimum lot size in a Conservation Subdivision shall be the total calculated minimum lot size using Table 2 of Section 2.3.1.3.1 of this ordinance or 1 acre, whichever is greater.

3.3.3.3.3 Frontage: Every building lot in the Conservation Subdivision shall have a minimum frontage of fifty (50) feet along a street providing access exclusively to the Conservation Subdivision and situated entirely within the Conservation Subdivision.

3.3.3.4 **Setbacks.**

3.3.3.4.1 Setbacks from exterior property lines of the entire development parcel (the lot as it existed prior to subdivision) shall be 25 feet.

3.3.3.4.2 Minimum Setback for Structures from Property Lines:

Front	30 feet
Side	15 feet
Back	15 feet

**3.3.4 Density Bonus Criteria.** All density bonuses are subject to approval of a Conditional Use Permit from the Planning Board and each bonus is computed on the base density as defined in Section 3.3.3.3 above. (For example, if a Conservation Subdivision was approved for 100 units and had two density bonuses of 10% each, the total authorized units would be 120, not  $100 \times 1.1 \times 1.1 = 121$ .)

3.3.4.1 Where the proposed Conservation Subdivision plan shows 50% or more of the total parcel as open space protected as such in perpetuity, the development may be awarded a density bonus of 10%.

3.3.4.2 Public Access Bonus- Where the public is granted access to the open space or a small (5 spaces or less) off-street gravel parking area for people to access open space is provided, the development may be awarded a density bonus of 5%. The intent of the bonus is permit pedestrian use, the Planning Board, may reasonably restrict the use of motorized vehicles.

3.3.4.3 Agricultural Lands and Use Bonus- Where the development protects agriculturally valuable lands and provides for their use as such in perpetuity, the development may be awarded a density bonus of up to 10%. The Planning Board shall, on a case-by-case basis, determine the bonus percentage by considering the size of the project, the quality of the soils, and the number of acres of farmland preserved. The open space portion preserved for agricultural use must be at least three and one-half (3.5) contiguous acres and must be reasonably accessible. To receive the maximum bonus it must either have

been historically farmed, or contain prime, statewide or locally significant agricultural soils, as shown on NRCS soil maps

- 3.3.4.4 Additional Protection Bonus - Where the development is able to protect unique characteristics, including the following, it may be awarded a total density bonus under this section 3.3.4.4 of up to 10%, in the sole discretion of the Planning Board. The development must provide for the protection of these resources in perpetuity and trail corridor protection must allow for reasonable public access:
  - 3.3.4.4.1 Viewsheds, which are lands or corridors of land that contribute to the visual landscape of the town, including items such as open fields containing stonewalls, mature forests, visible water bodies and their buffers.
  - 3.3.4.4.2 Historically significant buildings and landscapes identified by the Heritage/Historic District Commission.
  - 3.3.4.4.3 Valuable wildlife habitat and exemplary natural communities confirmed by the Conservation Commission.
  - 3.3.4.4.4 Linking open space parcels or trail corridors through the site with existing trails or open space networks located off the subject parcel.
  - 3.3.4.4.5 Including land identified as part of the Londonderry Open Space Plan.
- 3.3.4.5 Bonus Multiplier for projects using Development Yield Method. The yield for residential Conservation Subdivision development shall be determined by total bedrooms and shall not exceed the following:
  - 3.3.4.5.1 4 bedroom units= (yield plan + bonuses) /1.00
  - 3.3.4.5.2 3 bedroom units= (yield plan + bonuses) / 0.85
  - 3.3.4.5.3 1 & 2 bedroom units= (yield plan + bonuses) /0.65
- 3.3.4.6 Density Bonus Cap: No Conservation Subdivision shall be granted bonuses totaling greater than 20% when combined.

**3.3.5 Application Requirements:** Refer to the Londonderry Subdivision Regulations for specific application requirements.

### **3.3.6 Open Space**

- 3.3.6.1 Definition. For purposes of this section of the Zoning Ordinance, open space is the portion of the conservation subdivision that has been set aside for permanent protection. Activities within the Open Space are restricted in perpetuity through the use of a legal instrument approved by the Planning Board for the subdivision.
- 3.3.6.2 Standards to Determine Open Space.
  - 3.3.6.2.1 The minimum restricted Open Space shall comprise at least 40% of the gross tract area.
  - 3.3.6.2.2 The following are considered Primary Conservation Areas and are required to be included within the Open Space, unless the Applicant demonstrates that this provision would constitute an unusual hardship and be counter to the purposes of this section:
    - 3.3.6.2.2.1 The regulatory 100-year floodplain;

- 3.3.6.2.2.2 Conservation Overlay (CO) District areas;
  - 3.3.6.2.2.3 Slopes above 25 percent of at least 5,000 square feet contiguous area;
  - 3.3.6.2.2.4 Habitat areas of endangered or threatened species; and
  - 3.3.6.2.2.5 Archaeological sites, cemeteries, and burial grounds.
  - 3.3.6.2.2.6 Land included within the Londonderry Open Space Plan, to the extent the subject tract has sufficient acreage outside the town-designated goal for open space to meet the minimum requirements for a Conservation Subdivision.
  - 3.3.6.2.2.7 Lands containing prime agricultural soils as shown on NRCS soils maps that are at least three and one-half (3.5) acres in size.
- 3.3.6.2.3 The following are considered Secondary Conservation Areas and should be included within the Open Space to the maximum extent feasible.
- 3.3.6.2.3.1 Important historic sites;
  - 3.3.6.2.3.2 Existing healthy, native forests of at least one acre contiguous area;
  - 3.3.6.2.3.3 Individual existing healthy trees greater than 8 inches caliper, as measured from their outermost drip line;
  - 3.3.6.2.3.4 Other significant natural features and scenic view sheds such as ridge lines, peaks and rock outcroppings, particularly those that can be seen from public roads;
  - 3.3.6.2.3.5 Lands containing statewide significant agricultural soils as shown on NRCS soils maps that are at least three and one-half (3.5) acres in size.; and,
  - 3.3.6.2.3.6 Existing trails that connect the tract to neighboring areas.
- 3.3.6.2.4 Above-ground utility rights-of-way and small areas of impervious surface (for use in trails) may be included within the protected Open Space but cannot be counted towards the 40 percent minimum area requirement (exception: historic structures and existing trails may be counted). Large areas of impervious surface shall be excluded from the Open Space.
- 3.3.6.2.5 At least 75 percent of the Open Space shall form a contiguous area of land. The Open Space should adjoin any neighboring areas of Open Space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of a future area of protected Open Space.
- 3.3.6.2.6 The Open Space shall be directly accessible to the largest practicable number of lots within the subdivision. Non-adjoining lots shall be provided with safe, convenient access to the Open Space.
- 3.3.6.2.7 A minimum of 25% of the total required open space land must be useable uplands and reasonably available for recreational purposes, provided however, that no more than 50% of the total required open space shall be utilized for such purpose in order to preserve a reasonable proportion of natural area on the site.
- 3.3.6.2.7.1 The minimum required Open Space shall not contain more than 50% of the sum of the following kinds of unbuildable land:

- 3.3.6.2.7.1.1 CO District Areas and Wetlands as defined in Section 4.7;
- 3.3.6.2.7.1.2 Slopes exceeding a grade of 25% of at least 5,000 square feet contiguous area;
- 3.3.6.2.7.1.3 Drainage facilities/Drainage Easements;
- 3.3.6.2.7.1.4 Land used for septic systems;
- 3.3.6.2.7.1.5 Floodways, as shown on official FEMA maps.

**3.3.6.2.8 Permitted Uses of Open Space.** Uses of Open Space may include the following:

- 3.3.6.2.8.1 Conservation of natural, archeological or historical resources;
- 3.3.6.2.8.2 Meadows, woodlands, wetlands, wildlife corridors, or similar conservation-oriented areas;
- 3.3.6.2.8.3 Walking or bicycle trails, provided they are constructed of porous paving materials;
- 3.3.6.2.8.4 Passive recreation areas that only minimally disturb the natural vegetation, e.g. walking trails;
- 3.3.6.2.8.5 Active recreation areas, provided that they are limited to no more than 10 percent of the total Open Space and are not located within Primary Conservation Areas. Active recreation in excess of this limit must be located outside of the protected Open Space;
  - 3.3.6.2.8.5.1 Uses customarily accessory to permitted outdoor-recreational uses such as small clubhouses (less than 1,500 square feet), maintenance facilities, or gazebos shall be permitted by Conditional Use Permit.
- 3.3.6.2.8.6 Community gardens, agriculture, horticulture or silviculture uses, provided that all applicable best management practices are used to minimize environmental impacts, and such activities are not conducted within Primary Conservation Areas;
- 3.3.6.2.8.7 Stormwater best management practices (may not encompass more than 5% of the protected open space);
- 3.3.6.2.8.8 Easements for drainage, access, and underground utility line; or
- 3.3.6.2.8.9 Other conservation-oriented uses compatible with the purposes of this ordinance.

**3.3.6.2.9 Prohibited uses of Open Space.**

- 3.3.6.2.9.1 Golf courses;
- 3.3.6.2.9.2 Roads, parking lots and impervious surfaces, except as specifically authorized in the previous sections;
- 3.3.6.2.9.3 Agricultural and forestry activities not conducted according to accepted Best Management Practices; and
- 3.3.6.2.9.4 Other activities as determined by the Applicant and recorded on the legal instrument providing for permanent protection.

**3.3.6.2.10 Open Space Layout.** Open space land shall be platted as undivided parcels to facilitate easement monitoring, enforcement, maintenance, and to promote appropriate management by a single entity exercising single or common ownership according to this Section, and the approved plans.

- 3.3.6.2.10.1 As part of the application an open space plan shall be submitted showing a clear delineation of parcels of open space land that is not to be developed.

The open space plan shall be recorded at the Registry of Deeds and shall indicate that development is restricted in perpetuity.

3.3.6.2.10.2 Open space shall be directly accessible to the largest possible number of lots within the development and to town officials or designees for monitoring purposes.

3.3.6.2.10.3 Safe and convenient pedestrian access to open space shall be provided from all lots not adjoining the open space.

#### 3.3.6.2.11 **Ownership and Management of Open Space.**

3.3.6.2.11.1 Ownership of Open Space. Conservation Areas provided by open space subdivisions shall be permanently protected as open space and shall be conveyed in one of the following ways subject to the approval of the Planning Board:

3.3.6.2.11.1.1 To the Town of Londonderry and accepted by the Town Council for park, open space or other specified conservation uses;

3.3.6.2.11.1.2 To the State of New Hampshire for permanent open space uses; To a private non-profit organization whose principal purposes is the conservation of open space with the financial and organizational means for perpetual stewardship, such as the Audubon Society of New Hampshire, the Society for the Protection of New Hampshire Forests, or other land trust that has adopted the Land Trust Alliance Standards and Practices;

3.3.6.2.11.1.3 To a corporation or trust, such as a homeowner's association owned or to be owned by the owners of lots or dwelling units within the subdivision, or to owners of shares within a cooperative development, by incorporation of appropriate restrictions in the instrument of conveyance, enforceable by the town of Londonderry;

3.3.6.2.11.1.4 A private landowner such as a farmer or forest manager that will manage it for the uses consistent with the purposes of this Article by incorporation of appropriate restrictions in the instrument of conveyance, enforceable by the town of Londonderry;

3.3.6.2.11.2 The applicant must identify the owner of the Open Space who shall be responsible for maintaining the Open Space and facilities located thereon. If a Homeowners Association is the owner, membership in the association shall be mandatory and automatic for all homeowners of the subdivision and their successors. If a Homeowners Association is the owner, the Homeowners' Association shall have lien authority to ensure the collection of dues from all members. The responsibility for maintaining the Open Space, for continued compliance with the use limitations of the Conservation Subdivision regulations, and for any facilities located thereon shall be borne by the owner.

3.3.6.2.11.3 Management Plan. Applicant shall submit a Plan for Management of Open Space and Common Facilities ("Plan") that:

- 3.3.6.2.11.3.1 Allocates responsibility and guidelines for the maintenance and operation of the Open Space and any facilities located thereon, including provisions for ongoing maintenance and for long-term capital improvements;
  - 3.3.6.2.11.3.2 Estimates the costs of staffing requirements needed for maintenance and operation of, and insurance for, the Open Space and outlines the means by which such funding will be obtained or provided;
  - 3.3.6.2.11.3.3 Provides that any changes to the Plan be approved by the Planning Board; and,
  - 3.3.6.2.11.3.4 Provides for enforcement of the Plan.
- 3.3.6.2.11.4 In the even the party responsible for maintenance of the Open Space fails to maintain all or any portion in reasonable order and condition, the Town of Londonderry may assume responsibility for its maintenance and may enter the premises and take corrective action, including the provision of extended maintenance. The costs of such maintenance may be charged to the owner, Homeowner's Association, or to the individual property owners that make up the Homeowner's Association, and may include administrative costs and penalties. Such costs shall become a lien on all subdivision properties.

**3.3.6.2.12 Legal Instrument for Permanent Protection.**

- 3.3.6.2.12.1 The Open Space shall be protected in perpetuity by a binding legal instrument that is recorded with the deed. The instrument shall be one of the following:
- 3.3.6.2.12.1.1 A permanent conservation easement in favor of either:
    - 3.3.6.2.12.1.1.1 A land trust or similar conservation-oriented non-profit organization with legal authority to accept such easements that has adopted the Land Trust Alliance Standards and Practices. The organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for retransfer in the event the organization becomes unable to carry out its functions; or
    - 3.3.6.2.12.1.1.2 A governmental entity with an interest in pursuing goals compatible with the purposes of this ordinance.
  - 3.3.6.2.12.1.2 A permanent restrictive covenant for conservation purposes in favor of a governmental entity; or
  - 3.3.6.2.12.1.3 An equivalent legal tool that provides permanent protection, if approved by the Town of Londonderry.
- 3.3.6.2.12.2 The instrument for permanent protection shall include clear restrictions on the use of the Open Space. These restrictions shall include all restrictions contained in this article, as well as any further restrictions the Applicant chooses to place on the use of the Open Space.

**3.3.7 Road Design Criteria.** Roads in Conservation Subdivisions shall be designed to the appropriate road design criteria found in the Subdivision Regulations, as most recently amended.