

CONSERVATION SUBDIVISION AMENDMENTS For Planning Board Workshop _____

250. Subdivision of Land

§250-1 Purpose; approval criteria.

The purpose of these standards shall be to assure the comfort, convenience, safety, health and welfare of the people, to protect the environment and to promote the development of an economically sound and stable community.

The purposes of the additional conservation subdivision standards are to:

1. Promote 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 development.
2. Promote interconnected greenways and corridors throughout the community.
3. Provide a subdivision option that permits flexibility of design in order to promote environmentally sensitive and efficient uses of the land.
4. Preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat.
5. Preserve scenic views both from within and outside the subdivision.
6. Preserve important historic and archaeological sites.
7. Preserve greenspace through the use of nonstructural storm water runoff and water protection measures.
8. Encourage interaction in the community by clustering and orienting houses closer to the street, providing public gathering places and encouraging the use of parks and community facilities as focal points in the neighborhood.
9. Encourage street designs that reduce traffic speeds and promote interconnectivity.
10. Promote construction of convenient landscaped walking trails and bike paths both within the subdivision and connected to neighboring communities, businesses, and facilities to reduce reliance on automobiles.

11. Reduce erosion and sedimentation by minimizing land disturbance and removal of vegetation in development.

12. Promote contiguous greenspace with adjacent municipalities.

13. Protect rural character and activities such as farming and forestry.

14. Protect water quality and aquifers.

To this end, in approving subdivisions within the Town of Cumberland, Maine, the Planning Board shall consider the following criteria and before granting approval shall determine that:

- A. Pollution. The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:
 - (1) The elevation of the land above sea level and its relation to the floodplains;
 - (2) The nature of soils and subsoils and their ability to adequately support waste disposal;
 - (3) The slope of the land and its effect on effluents;
 - (4) The availability of streams for disposal of effluents; and
 - (5) The applicable state and local health and water resource rules and regulations;
- B. Sufficient water. The proposed subdivision has sufficient water available for the reasonable foreseeable needs of the subdivision;
- C. Municipal water supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;
- D. Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;
- E. Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads, existing or proposed;
- F. Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services, if they are utilized;

- G. Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;
- H. Aesthetic, cultural and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;
- I. Conformity with local ordinances and plans. The proposed subdivision conforms to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;
- J. Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards of this section;
- K. Surface waters; outstanding river segments. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, Subchapter 1, Article 2-B, of the Maine Revised Statutes Annotated, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of the body of water. When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet. To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extended to the shore. The frontage and setback provisions of this subsection do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, Chapter 3, Subchapter 1, Article 2-B, of the Maine Revised Statutes Annotated or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definition requirements of 30-A M.R.S.A. § 4401, Subsection 1, on September 23, 1983;
- L. Groundwater. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater;
- M. Flood areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps and information presented by the applicant, whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the one-hundred-year flood elevation and flood hazard boundaries within the

subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the one-hundred-year flood elevation;

- N. Stormwater. The proposed subdivision will provide for adequate stormwater management;
- O. Freshwater wetlands. All potential freshwater wetlands, as defined in 30-A M.R.S.A. § 4401, Subsection 2-A, within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district; and
- P. River, stream or brook. Any river, stream, or brook within or abutting the proposed subdivision has been identified on any map submitted as a part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S.A. § 480-B, Subsection 9.

Q. Conservation subdivisions shall meet the following additional standards:

(1) Applicability of regulations. This conservation subdivision option replaces the cluster subdivision option in the Rural Residential 1 and Rural Residential 2 zoning districts. The applicant must comply with all other provisions of the zoning ordinance and all other applicable laws, except those that are incompatible with the provisions contained herein.

Formatted: Left, Indent: Left: 0.25", Hanging: 0.25", No bullets or numbering

(2) Ownership of development site. The land to be subdivided may be held in single and separate ownership or in multiple ownerships. If held in multiple ownerships, the site must be developed according to a single plan with common authority and common responsibility.

(3) Housing density determination. The maximum number of lots in the conservation subdivision must be determined using the net residential acreage calculation.

Formatted: Left, Indent: Left: 0.25", Hanging: 0.25", No bullets or numbering

(4) Net residential acreage must be determined by subtracting from gross acreage the following:

Formatted: Left, Indent: Left: 0.5"

(a) Roads and parking of either 15% or as shown on the proposed plan;

Formatted: Left, Indent: Left: 1", Hanging: 0.06", No bullets or numbering

(b) Slopes in excess of 20% sustained for 30,000 square feet or more;

Formatted: Left, Indent: Left: 0.56", No bullets or numbering

(c) Wetlands as defined in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated January 10, 1989, as amended;

Formatted: Left, Indent: Left: 0.56", Hanging: 0.44", No bullets or numbering

(d) Land in the 100-year flood zone shown on FEMA Flood Insurance Rate Maps, as revised;

Formatted: Left, Indent: Left: 0.56", Hanging: 0.44", No bullets or numbering

(e) Lands in rights-of-way or easements, but not including land in open space easements; and

Formatted: Left, Indent: Left: 0.56", Hanging: 0.44", No bullets or numbering

(f) Lands in resource protection districts.

Formatted: Left, Indent: Left: 0.56", No bullets or numbering

The density within the conservation subdivision will be based on the zoning district lot size requirements.

Formatted: Font: Not Bold

Formatted: Left

(QUESTIONS: 1. THIS SEEMS A LITTLE UNCLEAR; SHOULD THIS SAY THAT THE MAXIMUM NUMBER OF DWELLING UNITS IN A CONSERVATION SUBDIVISION SHALL NOT EXCEED THAT ALLOWED IN A CONVENTIONAL SUBDIVISION, BASED UPON THE APPLICABLE ZONING DISTRICT LOT SIZE REQUIREMENTS? OR COULD THERE JUST BE A REFERENCE TO SEC. 315-43.D (FORMERLY SUBSECTION E), WHICH ESTABLISHES NET DENSITY FOR ALL DEVELOPMENTS? 2. WHY IS THERE A NET ACREAGE CALCULATION HERE IF THE DENSITY IS BASED ON LOT SIZES? 3. IS THIS INTENDED TO REPLACE THE DEFINITION OF NET RESIDENTIAL ACREAGE IN SEC. 315-4 OF THE ZONING ORDINANCE? IF SO, A STATEMENT NEEDS TO BE ADDED HERE AND TO THAT DEFINITION TO CLARIFY THAT.)

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

(5) Development Standards.

Formatted: Indent: Left: 0.25", No bullets or numbering

The following standards apply to development in conservation subdivisions in place of the otherwise applicable dimensional requirements for the zoning district in which the development is located.

<u>Minimum lot size</u>	<u>25,000 sq. ft.</u>
<u>Minimum front yard setback</u>	<u>25 ft.</u>
<u>Minimum side yard setback</u>	<u>20 ft. each side</u>
<u>Minimum rear yard setback</u>	<u>30 ft.</u>
<u>Minimum lot width</u>	<u>75 ft.</u>
<u>Minimum access easement to open space</u>	<u>10 ft.</u>
<u>Minimum open space area required</u>	<u>50% of the gross land area</u>

Formatted: Font: Not Bold

Formatted: Indent: First line: 0"

(6) Standards to determine open space.

Formatted: Left, Indent: Left: 0.5", No bullets or numbering

(a) Minimum Open Space Requirement.

Formatted: Font: Not Bold

The minimum restricted open space must comprise at least 50% of the gross subdivision area.

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: Left, Indent: Left: 1"

(b) Primary Conservation Areas.

The following are considered primary conservation areas and must be included within the open space, unless the applicant demonstrates to the satisfaction of the Planning Board that due to the unique circumstances of the parcel, a waiver may be granted by the Planning Board:

- (i) The regulatory 100-year floodplain; as shown on FEMA Flood Insurance Rate Maps, as revised;
- (ii) Buffer zones of at least 75 feet wide along all perennial and intermittent streams, as defined and regulated by Maine Department of Environmental Protection;
- (iii) Slopes above 25% of at least 5,000 square feet contiguous area;
- (iv) Wetlands that meet the definition used by the Army Corps of Engineers pursuant to the Clean Water Act as amended;
- (v) Archaeological sites, cemeteries and burial grounds; and
- (vi) A buffer area of 75 feet around the perimeter of the subdivision, including the road from which access is gained, excluding any possible future road and trail connections.

(c) Secondary Conservation Areas.

The following are considered secondary conservation areas and may be included within the open space:

- (i) Habitats of endangered or threatened species;
- (ii) Significant wildlife habitats per the Maine Department of Inland Fisheries and Wildlife regulations as amended;
- (iii) Important historic sites as defined by the Maine Historic Preservation Commission;
- (iv) Existing healthy, native forests of at least one acre contiguous area;
- (v) Individual healthy trees with a caliper greater than eight inches as measured at 4.5 feet from the ground;

Formatted: Font: Not Bold

Formatted: Left, Indent: First line: 0.44"

Formatted: Indent: First line: 0.44"

Formatted: Left, Indent: Left: 0.81", First line: 0"

Formatted: Left, Indent: Left: 1", Hanging: 0.5", No bullets or numbering

Formatted: Left, Indent: Left: 1.5"

Formatted: Font: Not Bold

Formatted: Left, Indent: Left: 0.69"

Formatted: Left, Indent: Left: 0.81", First line: 0.19", No bullets or numbering

Formatted: Left, Indent: Left: 0.81", No bullets or numbering

Formatted: Left, Indent: Left: 1", Hanging: 0.5", No bullets or numbering

Formatted: Left, Indent: First line: 0.5", No bullets or numbering, Tab stops: Not at 2"

Formatted: Left, Indent: Left: 1", Hanging: 0.5", No bullets or numbering, Tab stops: Not at 2"

(vi) Other significant natural features and scenic views such as ridge lines, peaks and rock outcroppings, particularly those that can be seen from public roads;

(vii) Prime agricultural lands of at least five contiguous acres;

(ix) Existing trails that connect to neighboring areas; and

(x) Locations with scenic views.

(d) Additional Considerations.

(i) Above-ground utility rights-of-way and small areas of impervious surface may be included within the protected open space but cannot be counted towards the 50% minimum area requirement (exception: historic structures and existing trails may be counted). Large areas of impervious surface must be excluded from the open space calculation.

(ii) At least 75% of the open space must be contiguous, where possible, to another open space area. 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 future protected open space.

(iii) All lots must be provided with safe, convenient access to the open space.

7. Permitted uses of open space. Uses of open space may include:

(a) Walking or biking on porous materials;

(b) Passive recreation;

(c) Active recreation; provided that they are limited to no more than 10% of the total open space and are not located within primary conservation areas. Active recreation areas in excess of this limit must be located outside of the protected open space. Active recreation areas may include impervious surfaces unless excluded elsewhere in town ordinances;

(d) Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices as defined by the Manual of Best Management Practices for Maine Agriculture, dated January, 2007, as amended, are used to minimize environmental impacts;

(e) Nonstructural stormwater management, i.e. rain gardens;

Formatted: Left, Indent: First line: 0.5", No bullets or numbering, Tab stops: Not at 2"

Formatted: Left, Indent: Left: 0.5", First line: 0.5", No bullets or numbering, Tab stops: Not at 2"

Formatted: Left, Indent: First line: 0.5", No bullets or numbering, Tab stops: Not at 2"

Formatted: Left, Indent: Left: 0.5", First line: 0.5", No bullets or numbering, Tab stops: Not at 2"

Formatted: Left

Formatted: Left, Indent: First line: 0.44"

Formatted: Font: Not Bold

Formatted: Left

Formatted: Left, Indent: Left: 0.75", Hanging: 0.25", No bullets or numbering

Formatted: Left, Indent: Left: 1", First line: 0"

Formatted: Left, Indent: Left: 1", First line: 0"

Formatted: Indent: Hanging: 0.25"

Formatted: Font: Not Bold

Formatted: Left, Indent: Left: 0.25", Hanging: 0.31", Tab stops: 0.5", Left + Not at 1"

Formatted: Left, Indent: Hanging: 0.06"

Formatted: Left, Indent: Hanging: 0.06"

Formatted: Left

Formatted: Left, Indent: Left: 0", First line: 0.5"

(f) Easements for drainage, access, and underground utility lines; and

(g) Other conservation-oriented uses compatible with the purposes of this ordinance as determined by the Planning Board in consultation with the Land and Conservation Commission.

8. Prohibited uses in the open space.

The following are prohibited in the open space:

(a) Golf courses or shooting ranges;

(b) Roads, parking lots and impervious surfaces, except as specifically authorized in this ordinance; and

(c) Other activities as determined by the applicant and recorded on the legal instrument providing for permanent protection, i.e., deed restrictions.

9. Ownership and management of open space.

(a) Ownership of open space. The applicant must identify the owner of the open space who is responsible for maintaining the open space and facilities located thereon. For example, if a homeowners association is the owner, membership in the association must be mandatory and automatic for all homeowners of the subdivision and their successors. If a homeowners association is the owner, it must have lien authority to ensure the collection of dues from all members. The cost and responsibility for maintaining the open space and any facilities located thereon must be borne by the owner.

(b) Management plan. The applicant must submit a plan for management of open space and common facilities that:

(i) 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 (for example, in a homeowners association, this would be covered by the declaration, rules and by-laws);

(ii) Estimates the costs and 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. (This, for example, would be covered by the homeowners' association declaration, rules and by-laws, or by a trust agreement);

Formatted: Left

Formatted: Font: Times New Roman, Font color: Auto

Formatted: Normal, Left, No bullets or numbering

Formatted: Left

Formatted: Left, Indent: Hanging: 0.06"

Formatted: Left

Formatted: Left, Indent: Hanging: 0.06"

Formatted: Font: Not Bold

(iii) Provides that any changes to the plan must be approved by the Planning Board; and

(iv) Provides for the enforcement of the plan.

(c) In the event the party responsible for maintenance of the open space fails to maintain all or any portion in reasonable order and condition, **the Town of Cumberland 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 must be proportionally charged either to the owner, or to the homeowners association, or to the individual property owners who make up the homeowners association, and may include administrative costs and penalties. All maintenance and assessed administrative costs and penalties must become a lien on all properties within the subdivision. **(NOTE: WE NEED TO DISCUSS THE PROVISION IN BOLD)**

Formatted: Left

Formatted: Font: Bold

10. Legal instrument for protection.

Formatted: Font: Times New Roman, Font color: Auto

The open space must be protected in perpetuity by a binding legal instrument that is recorded **with the deed (CHANGE TO: IN THE REGISTRY OF DEEDS AND REFERRED TO IN THE LOT DEEDS?).** The instrument must be one of the following:

Formatted: Normal, Indent: Left: 0.25", No bullets or numbering, Tab stops: Not at 0.5"

Formatted: Left, Indent: Left: 0.44"

Formatted: Font: Bold

Formatted: Font: Bold

(a) A permanent conservation easement in favor of either:

Formatted: Font: Times New Roman, Font color: Auto

(i) A land trust or similar conservation-oriented non-profit organization with legal authority to accept such easements. The organization must be bona fide with perpetual existence and the conveyance instruments must contain an appropriate provision for retransfer in the event the organization becomes unable or chooses to not carry out its functions; or

Formatted: Normal, Indent: First line: 0.5", No bullets or numbering

(ii) A governmental entity with the authority in pursuing goals compatible with the purposes of this ordinance. If the entity accepting the easement is not the Town of Cumberland then a third right of enforcement favoring the Town must be included in the easement; or

Formatted: Left, Indent: Left: 1.25", Hanging: 0.25", No bullets or numbering

(b) A permanent restrictive covenant for conservation purposes in favor of a governmental entity; or

(c) An equivalent legal tool, if approved by the Town of Cumberland, that provides permanent protection.

Formatted: Font: Times New Roman, Font color: Auto

The instrument of permanent protection must include clear restrictions on the use of the open space and must include all restrictions contained in this ordinance, as well as any further restrictions the applicant chooses to place on the use of the open space.

Formatted: Indent: Left: 0.5"

§ 250-3 Definitions.

In general, words and terms used in these standards shall have their customary dictionary meanings. More specifically, certain words and terms used herein are defined as follows:

BYWAY

A traffic way alongside or adjacent to one side of the paved portions of roads to be used by persons including, but not limited to, pedestrians, bicyclists, and handicapped persons operating motorized wheelchairs and which otherwise excludes motorized vehicles, except as otherwise provided in this chapter or state law. Byways include sidewalks, freewalks and paved shoulders.

~~CLUSTERED RESIDENTIAL DEVELOPMENT OR SUBDIVISION~~

~~A type of development where building lots are smaller, with lot frontages that are shorter than those in a traditional subdivision, and are grouped on certain portions of the site that are best suited for development and other areas remain open and free from development. The homes may or may not be connected to the public sewer system.~~

COMPREHENSIVE PLAN OR POLICY STATEMENT

Any part or element of the overall plan or policy for development of the Town as defined in Title 30-A, Chapter 187, of the Maine Revised Statutes Annotated.

CONSERVATION SUBDIVISION

A subdivision designed to preserve sensitive and/or valuable natural areas including, but not limited to, farmland, wetlands, steep slopes, and significant views.

CONSTRUCTION DRAWINGS

Drawings showing the location, profile, grades, size and type of drains, sewers, water mains, underground fire alarm ducts and underground telephone ducts, pavements, cross section of streets, miscellaneous structures, etc.

~~DISPERSED RESIDENTIAL DEVELOPMENT OR SUBDIVISION~~

~~A type of development where building lots are smaller, with lot frontages that are shorter than those in a traditional subdivision, and are grouped on certain portions of the site that are best suited for development and other areas remain open and free from development.~~

EASEMENT

The written authorization of a property owner for the use by another, and for a specified purpose, of any designated part of the owner's property.

ENGINEER

The Municipal Engineer or consulting engineer licensed by the State of Maine.

FINAL PLAN

The final drawings on which the subdivider's plan of subdivision is presented to the Planning Board for approval and which, if approved, may be filed for record with the Municipal Clerk and County Registry of Deeds.

LEGISLATIVE BODY

Town Council.

MUNICIPALITY

Town of Cumberland.

NET RESIDENTIAL ACREAGE

Net residential acreage shall be determined by subtracting from gross acreage available the following:

- A. Area for roads and parking as shown on the proposed plan.
- B. Land which is cut off from the main parcel by a road, existing land uses, a utility easement or right-of-way or major stream so as to serve as a major barrier to common use or so that it is isolated and unavailable for building purposes (final determination by Planning Board).
- C. Other areas which are difficult to develop in their natural state because of topography, drainage or subsoil conditions. Specific conditions include but are not limited to:
 - (1) Slopes in excess of 20% sustained for 30,000 square feet or more.
 - (2) Wetlands as defined in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated January 10, 1989, and as amended from time to time.
 - (3) Land shown to be in a one-hundred-year flood zone as shown on the Flood Insurance Rate Map (FIRM).

- D. Land in rights-of-way or easements, but not including land in open space easements under Chapter 315, Zoning, § 315-43. **(CHECK THIS PROVISION)**

Formatted: Font: Bold

- E. Resource Protection Districts.

OFFICIAL SUBMITTAL DATE

The time of submission of a preapplication plan, preliminary plan, or final plan shall be considered the submission date of the application for such plan approval to the Board, complete and accompanied by any required fee and all data required by these standards.

OFFICIAL ZONING MAP

The most current Zoning Map adopted by the Town Council, as amended from time to time.

PERSON

Includes a firm, association, organization, partnership, trust, company or corporation, individual, or other legal entity.

PLANNING BOARD

The Planning Board of the municipality ~~created under 30 A.M.R.S.A. § 3001.~~

PLANTING SCREEN EASEMENT

A visual buffer consisting of dense vegetation sufficient to substantially screen the use indicated.

PRELIMINARY PLAN

The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Planning Board for its consideration.

RECREATION, ACTIVE

Those recreational pursuits which require physical alteration to the area in which they are performed, examples include playgrounds, ball courts and swimming pools.

Formatted: Indent: Left: 0.54"

RECREATION, PASSIVE

Recreation that involves existing natural resources and has a minimal impact. Passive recreation includes but is not limited to hiking, biking, picnicking, and bird-watching.

REQUIRED IMPROVEMENTS

The following are required improvements: monuments, street signs, streetlights, streets, sidewalks, water supply, sewage disposal and storm drainage, lighting and signing and pavement markings for traffic control, walking and biking trails, erosion control, or other improvements required by the Board, except where the

Board may waive or modify such improvements in accordance with the provisions of these standards.

RESUBDIVISION

The division of an existing subdivision or any change of lot size therein or the relocation of any street or lot in a subdivision.

SKETCH PLAN

A nonengineered plan based on topography, wetlands, steep slopes, water bodies, and appropriate septic locations, if applicable, and as further defined in § 250-7A of this chapter.

STREET

Public and private rights-of-ways such as alleys, avenues, boulevards, roads, and highways.

STRUCTURE

Anything built for the support, shelter, or enclosure of persons, animals, goods, or property of any kind.

SUBDIVISION

A subdivision shall be as defined by 30-A M.R.S.A. § 4401, as amended from time to time. Lots of 40 or more acres shall not count as lots for purposes of this chapter when the parcel of land being divided is located entirely outside any shoreland area as defined in 38 M.R.S.A. § 435, as amended from time to time.

SUBDIVISION, MAJOR

Any subdivision containing more than four lots or requiring new streets or private ways, or extensions of existing streets or private ways, or construction and/or extension of public utilities or any subdivision proposing that any of its lots not meet the minimum area or lot requirements of the zones in which they are located.

SUBDIVISION, MINOR

A subdivision containing not more than four lots and not otherwise requiring classification as a major subdivision, as defined in this section.

TRADITIONAL RESIDENTIAL DEVELOPMENT OR SUBDIVISION

A type of development where building lots are at least the minimum lot size for the district in which they are located. A small portion of the lot may remain open and free from development.

§ 250-4 General procedures.

Classification of a proposed project as either a minor or major subdivision shall be made by the Code Enforcement Officer, subject to Planning Board approval, at the time of the initial application submission. Once the project is so classified, the applicant shall follow

the applicable procedures in § 250-6 or 250-7. The preapplication conference step, § 250-5, is recommended but not mandatory for minor subdivisions. A copy of the required application form is included as Appendix A of this chapter. The subdivision review fee schedule is established by order of the Town Council. Outside consulting fees shall be charged in accordance with Chapter 315, Zoning, § 315-81. Appendices C and D list the submission requirements for minor and major subdivision plans, respectively, including additional submission requirements for conservation subdivisions. Overall subdivision review sheets for minor and major subdivision plans, including conservation subdivisions, are included in Appendix E and Appendix F, respectively. An application checklist for minor subdivision plans is included in Appendix G. Appendix H contains an application checklist for preliminary major subdivisions, and Appendix I contains an application checklist for final major subdivisions. Appendix J contains an application completeness form and Appendix K contains a notice of decision form. In all instances throughout the subdivision review process, the burden of proof shall be upon the person or persons proposing the subdivision.

§ 250-7 **Review and approval of plan for major subdivision.**

A. ~~Sketch plan.~~ Initial Conference for conservation subdivision. Before submitting an application for a conservation subdivision, the subdivider must meet with the Town Planner to discuss the procedure for approval of a conservation subdivision, including submittal requirements and design standards.

~~(1) — The purpose of the sketch plan approval is for the applicant to submit concept plans for at least two of the following types of subdivisions and to receive the Board's decision as to which type of development is most appropriate for the site, based upon a consideration of all of the factors set forth in Subsection A(4): clustered, dispersed, or traditional. An application for sketch plan review and 15 copies of each sketch plan and accompanying materials shall be submitted to the Town Planner at least 21 days prior to the meeting at which it is to be considered. If the application is found to be deficient, any additional information must be submitted no later 14 days prior to the meeting at which it is to be considered.~~

~~(2) — The applicant shall present the sketch plans and make a verbal presentation regarding the site and the proposed development. The Board may ask questions and make suggestions to be incorporated by the developer into the application.~~

~~(3) — The sketch plan shall show, in simple form, the proposed layout of streets, lots, building envelopes, and proposed open spaces. The plan shall include a delineation of topography, wetlands, steep slopes, water bodies, adequate septic system locations, if applicable, and other known natural features.~~

~~(4) — The Board shall determine which type of subdivision best suits the property in relation to the natural features of the land, adjacent properties and~~

Formatted: Indent: Left: 0.5", First line: 0"

~~neighborhoods, and the characteristics of open space to be maintained, if applicable.~~

~~(5) The applicant shall be given a decision at the meeting as to what type of development is most appropriate or be told what additional information is necessary for the Board to make a decision. The Board shall specify in writing its decision within 10 days of the meeting.~~

~~(6) The type of subdivision development approved at the sketch plan meeting shall not be changed unless the Board finds that unforeseen circumstances require the decision to be altered.~~

~~(7) The acceptance of a sketch plan shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of 1 M.R.S.A. § 302.~~

~~(8) Following the sketch plan meeting the Board shall establish a file for the proposed subdivision. All correspondence and submissions shall be maintained in the file.~~

Formatted: Justified, Indent: Left: 0.5", First line: 0"

Amendment to Appendix C (Minor Subdivision Submission Requirements)

B. An application for a conservation subdivision shall include the following additional information:

(1) Site analysis map. The applicant must submit a site inventory and analysis map to ensure the important site features have been adequately identified prior to the creation of the site design, and the proposed open space will meet all requirements. The map must include the following features:

Formatted: Normal, Indent: Left: 0", Hanging: 0.25", No bullets or numbering, Tab stops: 0", Left

(a) Property boundaries;

Formatted: Font: Times New Roman, Font color: Auto

(b) All streams, rivers, lakes, wetlands, vernal pools and other hydrologic features;

Formatted: Font: Times New Roman, Font color: Auto

(c) Topographic contours of no less than 10-foot intervals;

Formatted: Font: Times New Roman, Font color: Auto

(d) All primary and secondary conservation areas labeled by type, as described in Section 6.2.4, of this ordinance;

Formatted: Font: Times New Roman, Font color: Auto

Formatted: Font: Times New Roman, Bold, Font color: Auto

(e) General vegetation characteristics;

Formatted: Font: Times New Roman, Font color: Auto

Formatted: Font: Times New Roman, Font color: Auto

(f) General soil types;

Formatted: Font: Times New Roman, Font color: Auto

Formatted: Normal, No bullets or numbering

(g) The planned location of protected open space;

Formatted: Font: Times New Roman, Font color: Auto

(h) Existing roads and structures;

Formatted: Normal, Indent: First line: 0.25", No bullets or numbering

Formatted: Font: Times New Roman, Font color: Auto

(i) Potential connections with existing green space and trails; and

(j) Beginning with Habitat program criteria assessment.

(2) Open space management plan. An open space management plan, as described in Section 250-1.Q.9.b must be prepared and submitted to the Planning Board for acceptance prior to final approval.

(3) Instrument of permanent protection. An instrument of permanent protection as described in Section 250-1.Q.9.a, such as a conservation easement or permanent restrictive covenant, must be accepted by the Planning Board prior to final approval.

Formatted: Font: Times New Roman, Font color: Auto

Formatted: No bullets or numbering

Formatted: Font: Times New Roman, Font color: Auto

Formatted: Indent: Left: 0.25", No bullets or numbering

Amendment to Appendix D

C. An application for a conservation subdivision shall include the following additional information:

(1) Site analysis map. The applicant must submit a site inventory and analysis map to ensure the important site features have been adequately identified prior to the creation of the site design, and the proposed open space will meet all requirements. The map must include the following features:

Formatted: Normal, Indent: Left: 0", Hanging: 0.25", No bullets or numbering, Tab stops: 0", Left

(a) Property boundaries;

Formatted: Font: Times New Roman, Font color: Auto

(b) All streams, rivers, lakes, wetlands, vernal pools and other hydrologic features;

Formatted: Font: Times New Roman, Font color: Auto

(c) Topographic contours of no less than 10-foot intervals;

Formatted: Font: Times New Roman, Font color: Auto

(d) All primary and secondary conservation areas labeled by type, as described in Section 6.2.4. of this ordinance;

Formatted: Font: Times New Roman, Font color: Auto

Formatted: Font: Times New Roman, Bold, Font color: Auto

(e) General vegetation characteristics;

Formatted: Font: Times New Roman, Font color: Auto

(f) General soil types;

Formatted: Font: Times New Roman, Font color: Auto

Formatted: Font: Times New Roman, Font color: Auto

(g) The planned location of protected open space;

Formatted: Normal, No bullets or numbering

Formatted: Font: Times New Roman, Font color: Auto

(h) Existing roads and structures;

Formatted: Normal, Indent: First line: 0.25", No bullets or numbering

(i) Potential connections with existing green space and trails; and

Formatted: Font: Times New Roman, Font color: Auto

(j) Beginning with Habitat program criteria assessment.

Formatted: No bullets or numbering

Formatted: Font: Times New Roman, Font color: Auto

Formatted: Font: Times New Roman, Font color: Auto

Formatted: Indent: Left: 0.25", No bullets or numbering

(2) Open space management plan. An open space management plan, as described in Section 250-1.Q.9.b must be prepared and submitted to the Planning Board for acceptance prior to final approval.

- (3) Instrument of permanent protection. An instrument of permanent protection as described in Section 250-1.Q.9.a, such as a conservation easement or permanent restrictive covenant, must be accepted by the Planning Board prior to final approval.

D. Instrument of permanent protection. An instrument of permanent protection as described in Section 6.2.4.E, such as a conservation easement or permanent restrictive covenant, must be accepted by the Planning Board prior to final approval.

E. Other requirements. The application must adhere to all other applicable requirements of the zoning district and the subdivision ordinance.

Formatted: Font: Not Bold

AMENDMENTS TO ZONING ORDINANCE

§ 315-4 Word usage and definitions.

~~CLUSTERED RESIDENTIAL DEVELOPMENT~~

~~A type of development where building lots are smaller, with lot frontages that are shorter than those in a traditional subdivision, and are grouped on certain portions of the site that are best suited for development and other areas remain open and free from development. The homes may or may not be connected to the public sewer system.~~

Formatted: Font: Not Bold

CONSERVATION SUBDIVISION

A subdivision located in the Rural Residential District 1 or Rural Residential District 2 that is developed in accordance with the standards set forth in Chapter 250, Subdivision of Land, § 250-1.Q.

Formatted: Font: Not Bold

~~DISPERSED RESIDENTIAL DEVELOPMENT OR SUBDIVISION~~

~~A type of development where building lots are smaller, with lot frontages that are shorter than those in a traditional subdivision, and are grouped on certain portions of the site that are best suited for development and other areas remain open and free from development.~~

Formatted: Font: Not Bold

§ 315-6 Rural Residential Districts (RR1 and RR2).

The RR Districts primarily allow agriculture, low-density residential and other low-density uses with the intent of maintaining significant amounts of open space and a generally rural character.

- A. Rural Residential District 1 (RR1). The RR1 District requires larger minimum lot sizes than does the RR2 District on the basis of the results of the Community Groundwater Study, Cumberland, Maine, March 1989.

- (3) The following lot standards apply in the RR1 District:

- (a) Minimum lot size of four acres, except that the minimum lot size shall be two acres for a lot served by sewer.
- (b) In the case of duplex or multiplex development, there shall be no less than 2.5 acres of lot area per dwelling unit, except that the minimum lot area per dwelling unit for a lot served by sewer shall be one acre.

(c) There shall be no less than 200 feet of lot frontage.

(d) The lot size and frontage standards in this subsection shall not apply to lots in conservation subdivisions, which shall be subject to the requirements set forth in Chapter 250, Subdivision of Land, § 250-1.Q.5.

Formatted: Indent: Left: 1", Hanging: 0.5"

(4) The following minimum setbacks are required in the RR1 District, except that sheds and driveways are permitted to a minimum setback of 15 feet from the side and rear lot lines:

(a) Front: 50 feet.

(b) Rear: 75 feet.

(c) Side: 30 feet; combined width at least 75 feet.

(d) The setback standards in this subsection shall not apply to lots in conservation subdivisions, which shall be subject to the requirements set forth in Chapter 250, Subdivision of Land, § 250-1.Q.5.

B. Rural Residential District 2 (RR2). The RR2 District requires a lesser minimum lot size than does the RR1 District on the basis of the results of the Community Groundwater Study, Cumberland, Maine, March 1989.

(3) The following lot standards apply in the RR2 District:

(a) Minimum lot size of two acres, whether or not the lot is served by sewer.

(b) In the case of duplex or multiplex development, there shall be no less than 1.25 acres of lot area per dwelling unit, except that the minimum lot area per dwelling unit for a lot served by sewer shall be one acre.

(c) There shall be no less than 200 feet of lot frontage.

(d) The lot size and frontage standards in this subsection shall not apply to lots in conservation subdivisions, which shall be subject to the requirements set forth in Chapter 250, Subdivision of Land, § 250-1.Q.5.

(4) The following minimum setbacks are required in the RR2 District, except that sheds and driveways are permitted to a minimum setback of 15 feet from the side and rear lot lines:

Field Code Changed

Formatted: No underline

- (a) Front: 50 feet.
- (b) Rear: 75 feet.
- (c) Side: 30 feet; combined width at least 75 feet.

(d) The setback standards in this subsection shall not apply to lots in conservation subdivisions, which shall be subject to the requirements set forth in Chapter 250, Subdivision of Land, § 250-1.Q.5.

§ 315-43 ~~Clustered, dispersed and traditional residential development. Conservation subdivisions and traditional residential development.~~

Formatted: Space Before: 0 pt

- A. General. ~~In reviewing applications for major subdivision approval involving a residential development consisting of five or more single family residences and/or duplex dwellings in the Rural Residential 1, Rural Residential 2, Rural Industrial, Medium Density Residential, Low Density Residential, and Island Residential Districts, the Planning Board shall be authorized to require that the residential development be designed and constructed as a clustered residential development, a traditional residential development, or a dispersed residential development based on the standards and criteria set forth in this section, except that developments with four or fewer lots may be designed as a clustered or dispersed development upon a positive finding by the Planning Board that the intent of this section listed below can be met.~~ Conservation subdivisions shall be allowed in the Such developments are subject to Chapter 250, Subdivision of Land, § 250-7. All such residential developments shall conform to the requirements of this chapter as well as Chapter 250, Subdivision of Land, and all other applicable ordinances of the Town of Cumberland and the Town of Cumberland Comprehensive Plan. The intention of this section is to assure that residential developments are designed in such a way as to assure protection of wells and groundwater from contamination; prevent adverse impacts on existing wells on adjoining properties and on wells to be created within the new residential development; avoid septic contamination or interference within the new residential development and with respect to surrounding properties; minimize the cost of constructing and maintaining public utilities and improvements, including streets, waterlines, sewer lines, electric lines, gas lines, telephone lines, and other utilities; protect and preserve existing farms and farmland; protect areas in Resource Protection Districts; protect, preserve and improve existing recreational areas and trails; protect and preserve sensitive wildlife habitats and other natural areas; and protect and preserve public access to water bodies.
- B. Conservation subdivisions. Conservation subdivisions shall be allowed in the Rural Residential 1 and Rural Residential 2 zoning districts. Such subdivisions

shall meet the standards set forth in Section 250-1.Q in addition to other applicable requirements of Chapter 250 and this Chapter. ▲

Formatted: Font: Not Bold

~~Clustered residential development. Clustered residential developments are residential developments in which groups or clusters of dwelling units may be located on adjoining individual building lots which may be smaller than the required minimum lot size for the zoning district in which they are located but within which land is set aside as open space, so long as the following requirements are satisfied:~~

Formatted: Indent: First line: 0"

~~(1) — Minimum lot size. If the lots are connected to the public water and sewer systems, the minimum lot size for each single family dwelling shall be 30,000 square feet and for each duplex dwelling shall be 40,000 square feet. If the lots are connected to the public water system but not the public sewer system, the minimum lot size for each single family dwelling shall be 45,000 square feet and 60,000 square feet for each duplex. If the lots are not connected to the public water and sewer system, the minimum lot size for each single family dwelling shall be 60,000 square feet and for each duplex dwelling shall be 80,000 square feet.~~

Formatted: Indent: Left: 0.5", First line: 0"

~~(2) — Setback. Setback requirements for a clustered residential development shall be the same as those required in the zoning district in which the residential development is located.~~

Formatted: Indent: Left: 0.5", First line: 0"

~~(3) — Frontage. In Rural Residential Districts 1 and 2, each lot shall have no less than 100 feet of lot frontage on a street. In all other districts each lot shall have no less than 75 feet of lot frontage on a street.~~

Formatted: Indent: Left: 0.5", First line: 0"

~~(4) — Buffering. A buffer area at least 75 feet in depth shall be established between the clustered residential development and abutting tracts or parcels of land and between the clustered residential development and existing streets and roads adjoining or abutting the clustered residential development. Such buffer shall be designed to eliminate potential adverse impacts (including glare, noise, and unsightly views of service areas). Buffering shall consist of trees, landscaping, fencing, grading, or a combination of some or all of these techniques. Where possible, existing trees and vegetation shall be preserved in buffer areas.~~

Formatted: Indent: Left: 0.5", First line: 0"

~~(5) — Open space. At least 25% of the total area of the tract or parcel of land being developed must be maintained as open space and not included in the individual building lots. Such open space shall consist of land which has one or more of the following characteristics:~~

Formatted: Indent: Left: 0"

Formatted: Indent: Left: 0.5", First line: 0"

~~(a) — Active farmland or land adjoining active farmland.~~

Formatted: Indent: Left: 0"

Formatted: Indent: Hanging: 0.5"

- ~~(b) An active trail system or which provides a link to an existing trail system.~~
- ~~(c) Land which provides a buffer around a sensitive wildlife habitat or other natural area.~~
- ~~(d) Land which provides physical or visual access to a water body, including the ocean, lake, pond, river, stream, or brook.~~
- ~~(e) Land which is in resource protection.~~
- ~~(f) Land which is suitable for active recreation.~~
- ~~(g) Land which abuts or adjoins an existing public open space.~~
- ~~(6) Land set aside as open space may be held as common open space by the individual lot owners of the proposed residential development, and in such cases the developer shall be required to establish a homeowners' association consisting of individual lot owners which shall include the following:~~
 - ~~(a) Covenants shall be included in each deed from the developer to an individual lot owner which shall require mandatory membership in the association and shall set forth the owner's rights, interests, privileges, and obligations in the association and in the common open space, including the association's responsibility and obligation to maintain the common open space and any recreational facilities located therein.~~
 - ~~(b) The association shall develop a system to levy and collect annual charges against any and all lot owners to defray expenses connected with the maintenance of common open space and recreational facilities located therein, and this system shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.~~
 - ~~(c) The developer shall be responsible for its maintenance until at least 75% of the lots have been sold to individual lot owners, after which time the association shall be responsible for such maintenance, and this requirement shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.~~
 - ~~(d) All proposed deed covenants and legal documents relating to such common open space shall be reviewed by the Town Attorney and the Planning Board and, if approved, shall be recorded in the~~

Formatted: Indent: Left: 0"

Formatted: Indent: Left: 0", Hanging: 0.5"

Formatted: Indent: Left: 0", Hanging: 0.5"

Formatted: Indent: Hanging: 0.5"

Formatted: Indent: Hanging: 0.5"

Formatted: Indent: Hanging: 0.5"

Formatted: Indent: Left: 0"

Formatted: Indent: Left: 0", Hanging: 0.5"

Formatted: Indent: Left: 0"

Formatted: Indent: Left: 0"

~~Cumberland County Registry of Deeds and included or referred to in the deed of each lot.~~

~~(7) Some or all of the open space may be dedicated to the Town of Cumberland, subject to acceptance by the Town Council. Any such dedication shall be accomplished by deeds or other appropriate legal instruments acceptable to the Town Attorney.~~

~~(8) Some or all of the open space may be conveyed to a nonprofit, tax-exempt land trust or similar organization for conservation, passive recreation, or active recreational purposes. Any such conveyance shall be accomplished by deeds or other appropriate legal instruments acceptable to the Town Attorney.~~

C. Traditional residential development. Traditional residential developments are residential developments in which the dwelling units are located on individual building lots which conform to the minimum lot size for the zoning district in which they are located. A traditional residential development may but is not required to include land set aside as open space, as provided in Chapter 250, Subdivision of Land, § 250-22.

D. ~~Dispersed residential development. Dispersed residential developments are residential developments in which the dwelling units may be located on individual building lots which may be smaller than the required minimum lot size for the zoning district in which they are located but within which land is set aside as open space, so long as the following requirements are satisfied:~~

~~(1) Minimum lot size. The minimum lot size for each single-family dwelling shall be 60,000 square feet and for each duplex dwelling shall be 80,000 square feet.~~

~~(2) Setback. Setback requirements for a dispersed residential development shall be the same as those required in the zoning district in which the residential development is located.~~

~~(3) Frontage. In Rural Residential Districts 1 and 2, each lot shall have no less than 100 feet of lot frontage on a street. In all other districts each lot shall have no less than 75 feet of lot frontage on a street.~~

~~(4) Buffering. A buffer area shall be established between the residential development and abutting tracts or parcels of land and between the residential development and existing streets and roads adjoining or abutting the residential development. Such buffer shall be designed to eliminate potential adverse impacts (including glare, noise, and unsightly views of service areas). Buffering shall consist of trees, landscaping, fencing, grading, or a combination of some or all of these techniques.~~

Formatted: Indent: Left: 0"

Formatted: Indent: Left: 0"

Formatted: Font: Bold

- ~~Where possible, existing trees and vegetation shall be preserved in buffer areas.~~
- ~~(5) Open space. At least 25% of the total area of the tract or parcel of land being developed must be maintained as open space and not included in the individual building lots. Such open space shall consist of land which has one or more of the following characteristics:~~
- ~~(a) Active farmland or land adjoining active farmland.~~
 - ~~(b) An active trail system or which provides a link to an existing trail system.~~
 - ~~(c) Land which preserves and provides a buffer around a sensitive wildlife habitat or other natural area.~~
 - ~~(d) Land which provides physical or visual access to a water body, including the ocean, lake, pond, river, stream, or brook.~~
 - ~~(e) Land which is in resource protection.~~
 - ~~(f) Land which is suitable for active recreation.~~
- ~~(6) Land set aside as open space may be held as common open space by the individual lot owners of the proposed residential development, and in such case the developer shall be required to establish a homeowners' association consisting of individual lot owners which shall include the following:~~
- ~~(a) Covenants shall be included in each deed from the developer to an individual lot owner which shall require mandatory membership in the association and shall set forth the owner's rights, interests, privileges, and obligations in the association and in the common open space, including the association's responsibility and obligation to maintain the common open space and any recreational facilities located therein.~~
 - ~~(b) The association shall develop a system to levy and collect annual charges against any and all lot owners to defray expenses connected with the maintenance of common open space and recreational facilities located therein, and this system shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.~~
 - ~~(c) The developer shall be responsible for its maintenance until at least 75% of the lots have been sold to individual lot owners, after which time the association shall be responsible for such~~

~~maintenance, and this requirement shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.~~

~~(d) — All proposed deed covenants and legal documents relating to such common open space shall be reviewed by the Town Attorney and the Planning Board and, if approved, shall be recorded in the Cumberland County Registry of Deeds and included or referred to in the deed of each lot.~~

~~(7) — Some or all of the open space may be dedicated to the Town of Cumberland, subject to acceptance by the Town Council. Any such dedication shall be accomplished by deeds or other appropriate legal instruments acceptable to the Town Attorney.~~

~~(8) — Some or all of the open space may be conveyed to a nonprofit, tax-exempt land trust or similar organization for conservation, passive recreation, or active recreational purposes. Any such conveyance shall be accomplished by deeds or other appropriate legal instruments acceptable to the Town Attorney.~~

E. Net residential density. The maximum number of dwelling units permitted on the tract or parcel of land proposed for any type of residential development shall be determined by dividing the net residential acreage of the tract or parcel by the zoning district minimum lot size for the zone in which the project is located. In no event shall the number of residential units exceed the density requirement of the zoning district in which it is located.

F. ~~Criteria to be considered. In determining whether a proposed residential development shall be constructed as a clustered residential development, a traditional residential development, or a dispersed residential development, the Planning Board shall consider the following criteria as required by 30-A M.R.S.A. § 4404 and Chapter 250, Subdivision of Land.~~

G. ~~Standards for requiring clustered residential development. The Planning Board shall require that a residential development be designed as a clustered residential development if the following standards are met:~~

~~(1) — The tract or parcel of land to be developed has a public water system or will be connected to the public water system, or the Planning Board determines that adequate wells can be established for each residential unit without risk of contamination or interference with existing wells or groundwater on abutting properties and wells to be located within the proposed residential development.~~

- ~~(2) — The tract or parcel of land to be developed is connected to the public sewer system or will be connected to the public sewer system, or the Planning Board determines that adequate on-site septic systems can be established for each residential unit without risk of contamination or interference with existing wells, groundwater and septic systems on abutting properties and within the proposed residential development.~~
- ~~(3) — The tract or parcel of land to be developed contains one or more of the following types of open space:
 - ~~(a) — Land which is active farmland or which adjoins or abuts active farmland.~~
 - ~~(b) — Land which contains an existing trail system used by the public or which can provide a link to existing trails.~~
 - ~~(c) — Land which contains or adjoins a significant wildlife habitat or other rare and irreplaceable natural area as determined by the Department of Inland Fisheries and Wildlife or the Town of Cumberland.~~
 - ~~(d) — Land which may provide physical or visual access to water bodies, including the ocean, lakes, ponds, rivers, streams, and brooks.~~
 - ~~(e) — Land which contains or adjoins a Resource Protection District as shown on the Official Zoning Map of the Town of Cumberland.~~
 - ~~(f) — Land which adjoins or abuts an existing parcel of land which constitutes public open space.~~
 - ~~(g) — Land which is suitable for active recreational activities.~~~~

H. Standards for requiring dispersed residential development. The Planning Board shall require that a residential development be designed as a dispersed residential development if the following standards are met:

- ~~(1) — The Planning Board determines that adequate wells cannot be established for each residential unit in the proposed residential development without risk of contamination or interference with existing wells or wells to be established within the proposed residential development unless the wells are widely separated.~~
- ~~(2) — The Planning Board determines that, due to the nature of soils and the configuration of the tract or parcel of land to be developed, on-site septic systems must be widely separated in order to eliminate risk of~~

- ~~contamination and interference with wells and septic systems on adjoining properties or within the proposed residential development.~~
- ~~(3) The tract or parcel to be developed contains one or more of the following types of open space:~~
- ~~(a) Land which is active farmland or which adjoins or abuts active farmland.~~
 - ~~(b) Land which contains an existing trail system used by the public or which can provide a link to existing trails.~~
 - ~~(c) Land which contains or adjoins a significant wildlife habitat or other rare and irreplaceable natural area as determined by the Department of Inland Fisheries and Wildlife or the Town of Cumberland.~~
 - ~~(d) Land which may provide physical or visual access to water bodies, including the ocean, lakes, ponds, rivers, streams, and brooks.~~
 - ~~(e) Land which contains or adjoins a Resource Protection District as shown on the Official Zoning Map of the Town of Cumberland.~~
 - ~~(f) Land which adjoins or abuts an existing parcel of land which constitutes public open space.~~
 - ~~(g) Land which is suitable for active recreational activities.~~

~~I. Affordable housing developments. Notwithstanding the foregoing requirements of this section and the requirements applicable to the underlying zoning district, the Town Council may by contract zoning pursuant to § 315-79 of this chapter allow a clustered residential development of single family residential lots that is developed as an affordable housing development in any zoning district in which residential uses are permitted and which has access to public water and sewer, subject to the following requirements:~~

- ~~(1) "Affordable housing" shall mean residential dwelling units such that the persons eligible to purchase such residential dwellings shall have annual incomes which fall within income guidelines established by the Cumberland Town Council.~~
- ~~(2) Minimum lot size: 10,000 square feet per single family dwelling unit.~~
- ~~(3) Setback:~~
 - ~~(a) Front: 25 feet.~~

Formatted: Indent: Left: 0.5", First line: 0.5"

Formatted: Indent: Left: 0.5", Hanging: 0.5"

- ~~(b) — Rear: 30 feet.~~
 - ~~(c) — Side: 10 feet.~~
- ~~(4) — Frontage. Each lot shall have no less than 100 feet of lot frontage on a street.~~
- ~~(5) — Buffering. A buffer area at least 75 feet in depth shall be established between the affordable residential development and abutting tracts or parcels of land and between the affordable residential development and existing streets and roads adjoining or abutting the affordable residential development. Such buffer shall be designed to eliminate potential adverse impacts (including glare, noise, and unsightly views of service areas). Buffering shall consist of trees, landscaping, fencing, grading, or a combination of some or all of these techniques. Where possible, existing trees and vegetation shall be preserved in buffer areas.~~
- ~~(6) — Open space. At least 25% but no more than 50% of the total area of the tract or parcel of land being developed must be maintained as open space and not included in the individual building lots. Such open space shall consist of land which has one or more of the following characteristics:~~
 - ~~(a) — Active farmland or land adjoining active farmland.~~
 - ~~(b) — An active trail system or which provides a link to an existing trail system.~~
 - ~~(c) — Land which provides a buffer around a sensitive wildlife habitat or other natural area.~~
 - ~~(d) — Land which provides physical or visual access to a water body, including the ocean, lake, pond, river, stream, or brook.~~
 - ~~(e) — Land which is in resource protection.~~
 - ~~(f) — Land which is suitable for active recreation.~~
 - ~~(g) — Land which abuts or adjoins an existing public open space.~~
- ~~(7) — Land set aside as open space may be held as common open space by the individual lot owners of the proposed residential development, and in such case the developer shall be required to establish a homeowners' association consisting of individual lot owners which shall include the following:~~

- ~~(a) — Covenants shall be included in each deed from the developer to an individual lot owner which shall require mandatory membership in the association and shall set forth the owner's rights, interests, privileges, and obligations in the association and in the common open space, including the association's responsibility and obligation to maintain the common open space and any recreational facilities located therein.~~
- ~~(b) — The association shall develop a system to levy and collect annual charges against any and all lot owners to defray expenses connected with the maintenance of common open space and recreational facilities located therein, and this system shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.~~
- ~~(c) — The developer shall be responsible for its maintenance until at least 75% of the lots have been sold to individual lot owners, after which time the association shall be responsible for such maintenance, and this requirement shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.~~
- ~~(d) — All proposed deed covenants and legal documents relating to such common open space shall be reviewed by the Town Attorney and the Planning Board and, if approved, shall be recorded in the Cumberland County Registry of Deeds and included or referred to in the deed of each lot.~~
- ~~(8) — Some or all of the open space may be dedicated to the Town of Cumberland, subject to acceptance by the Town Council. Any such dedication shall be accomplished by deeds or other appropriate legal instruments acceptable to the Town Attorney.~~
- ~~(9) — Some or all of the open space may be conveyed to a nonprofit, tax-exempt land trust or similar organization for conservation, passive recreation, or active recreational purposes. Any such conveyance shall be accomplished by deeds or other appropriate legal instruments acceptable to the Town Attorney.~~

Formatted: Indent: Left: 0"