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Working Draft

Conservation Subdivision

A Conservation Subdivision is a form of development where, instead of subdividing an entire parcel into lots of conventional size and arrangement, a similar number of lots or homestead sites can be arranged on the land in a more innovative fashion which better fits the topography and natural attributes of the site.  The land not built upon is set aside as common space or dedicated open space.  The Andover Conservation Subdivision ordinance is similar to what other towns call Planned Unit Development.

**I. Purpose**

A Conservation Subdivision can help achieve the guiding principles of the master plan, which calls for maintaining the rural character of the town.  Conservation Subdivision can help preserve those areas of the site that have the highest ecological value, such as wildlife habitat, wetlands, streams, and rivers.  This way of subdividing makes it possible to locate buildings and structures on that portion of the subdivision most appropriate for development.

**II. Objective**

 A Conservation subdivision reduces the amount of roads, sidewalks, and storm water management structures that must be built and maintained.   A conservation subdivision helps minimize the impact of residential development on the municipality, neighboring properties, and the natural environment.

1. **Definitions**

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

**Buffer:**  Land area within which adequate vegetation is maintained or provided to visibly separate or screen one use from another.  Also known as “vegetated buffer.” [Omit this last sentence? The working group has not yet finished discussing this.]

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

**Common Area:**  land owned by all individual homeowners within the development as tenants-in-common excluding the designated open space.

**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 and to allow or disallow recreational uses, agriculture, or forestry. Conservation 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 a parent tract into lots of conventional size, a similar number of dwelling units are arranged on lots or homestead sites of reduced dimensions, with the remaining area of the parent tract permanently protected as designated open space.

**Deed Restriction:** See “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 (forestry, agriculture, habitat protection, passive recreation), as approved by the planning board under this ordinance as part of a conservation subdivision.

**Dwelling Envelope:** A homestead site or building lot identified on a subdivision plan indicating the allowed limits of clearing and grading, and within which all structures and, where appropriate, the well and septic systems, shall be located.

**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 space, designated open space, and/or shared facilities.

**Homestead site**:  A lot or area within the subdivision where an individual home or dwelling will be situated.

**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.

**Parent Tract:**  The entirety of the original parcel(s) from which the subdivision is to be created.

**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.

**IV.**  **Requirements**

A. Conservation subdivisions shall comply with all provisions of this Ordinance and the Andover Subdivision Regulations. If any conflicts arise, the provisions of this Ordinance shall apply.

B. Conservation subdivisions are allowed in all zoning districts.

C. The minimum size of a parent tract for a conservation subdivision is 20 acres.

D.  Conservation Subdivisions may have either of two types of ownership:

1. Individual lots and separate ownership for each residential building site. Each building lot will be identified with a property line and dwelling envelope which shows where any building and any well and septic will be placed.  The envelopes will be spaced to provide for adequate separation between structures.  The lots and envelopes will be designed to enhance the privacy of each dwelling.

2. Land owned by one entity with individual dwelling units owned by others. Each dwelling unit will have an identifiable dwelling envelope indicating the location for each building and any well and septic but will not have separate property lines.  The dwelling envelopes will be planned to provide for adequateseparation between structures.

The ownership of homestead sites shall be established at the creation of the Conservation Subdivision; the only way to change from one to the other would be to create a new subdivision.

Each Subdivision must be structured as one or the other of these two types. It cannot be a mix of the two types.

Each building lot or homestead site may be served either by a separate well or water system and septic system or by a shared system or systems. All water and septic systems shall meet NH Department of Environmental Service Standards.

E. Permitted Residential Uses

The following residential uses are permitted in conservation subdivisions in all Zoning Districts:

1. Permitted uses:

 Single family dwellings

 Home Occupations not involving customer visits or retail sales. Accessory uses and buildings

2. Permitted with special exceptions:

Tiny houses –each counts as one family residence.

Multi-family residences – each residential unit counts toward the total number of allowed residential units.

F. Designated Open Space: Delineation and Protection

1. A conservation subdivision shall preserve a minimum of 40% of the parent tract as designated open space.

2. Area Boundaries of the designated open space shall be clearly delineated on subdivision plans.

3. It shall be noted on subdivision plans that development in or subdivision of designated open space shall be prohibited

4. Prior to the approval of the final plan, 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.

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.

6. 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. [Should the town counsel’s fee shall be the financial responsibility of the developer? The working group has not finished discussing this.]

G.Density

The number of dwelling units permitted in a Conservation Subdivision shall be determined in the followingmanner:

1. Yield Plan: A “yield plan” shall be developed to identify the approximate number of dwelling units that could be created as a conventional subdivision.

1. First, non-buildable area is subtracted from the total acreage of the parent tract.
2. Next, the remaining acreage of the parent tract is divided by the minimum lot size of the zoning district in which the parent tract is located.  The resulting number of units shall be the “yield plan.”

2**.** Density Incentives: The Planning Board may award the development a density bonus that increases the maximum number of dwelling units identified in the yield plan.  Bonuses may be awarded from any combination of the following criteria, but in no case shall the bonuses result in more than a 25% increase in dwelling units.  The number of units generated by the yield plan process shall serve as the starting point for determining the number of total dwelling units permitted in the subdivision.  (All fractional numbers of 0.5 or greater shall be rounded up to the nearest whole number; those fractional numbers less than 0 shall be rounded down to the nearest whole number).

[The working group has not yet finished discussing the **basis** for these bonuses – “parent tract” or “buildable area”?]

a. Additional Designated Open Space Bonus:  10 % increase in number of building sites above the yield plan where the proposed development shows 60% or more of the parent tract as designated open space protected as such in perpetuity, OR 20% increase in number of dwelling units above the yield plan where the proposed development shows 70% or more of the parent tract as designated open space protected as such in perpetuity.

b. Trail Bonus:  5% increase in number of building sites above the yield plan where the proposed development has a linking of existing/proposed trails or open space networks with trail corridors through the site, and the general public in granted access to these trails in perpetuity.  The minimum nature of public access required to trigger this bonus is allowing pedestrian traffic (The instrument granting access, acceptable to the Planning Board, may restrict motorized vehicles where appropriate.)

c. Agricultural Land and Use Bonus:  10% increase in building sites above the yield plan where the proposed development protects agriculturally valuable lands and provides permission for their use as such in perpetuity.  If the portion preserved for agricultural use is equal to 25% or more of the parent tract, then the full bonus shall be awarded, with a proportionately smaller bonus for smaller percentages.  The instrument granting this protection may reasonably restrict the type of farming to prevent nuisances.  This provision requires only that agricultural uses remain possible; the fact that agricultural uses are not pursued at any particular time does not affect the validity of the bonus. At a minimum, however, fields should not be allowed to become overgrown, but kept open by mowing.

d. Forest Management Bonus: 15% increase in building sites above the yield plan where the designated open space to be preserved is mostly mature forest (70% or greater), where no more than 30% of this mature forest area shall be cut at one time, and where the cutting is well distributed and will be based on a management plan developed by a NH Licensed Forester and approved by the Planning Board.

H. Roads

A conservation subdivision shall have frontage on a Class V or better road.   If the road is improved by the developer from a Class VI road, the road accessing the Conservation Development will be upgraded to town standards at the developer’s expense. Interior roads in the subdivision, which may be private, shall have a 30 foot right of way and shall be built to town standards. Interior roads shall be set back 50 feet from the boundaries of the development. Interior roads may be paved with asphalt, or finished with a gravel or hardpack surface.

I. Building Setbacks

Any structure must be at least 15 feet from the edge of the building lot or homestead site. All buildings in the subdivision shall be a minimum of 30 feet from the road.

J. HomeownersAssociation

1. All owners of building lots or homestead sites shall become members of the conservation subdivision’s Homeowners Association.

2. The Association articles and by-laws must be approved in writing by the Planning Board and shall be filed with the Planning Board following approval.

3. The Association will be responsible for planning, maintaining, and plowing the private roads in the development.  The Association shall be obligated to maintain any designated open space, common areas, private roadways and private utilities.

4. The Association’s by-laws shall require it to charge dues or levy assessments against the property owners in the conservation subdivision and the owners of houses built on land in the conservation subdivision in order to cover expenses for designated open space, common areas, private roadways, and private utilities, including but not limited to tax liabilities, maintenance, and improvements~~.~~

5. The Association by-laws shall recognize the right of the Town of Andover to ensure the maintenance of the designated open space, common areas, and private roadways and utilities.

6. In the event that the association or the homeowners shall, for any reason, fail to maintain the open space, common areas, or private roadways or utilities, the selectmen shall serve written notices upon the association or the property owners setting forth the deficiencies noted.  Such notice shall include a demand that the noticed deficiencies be corrected and that statement of intent to comply and a date of compliance be filed with the Selectmen within 30 days of such notice.

7. If the association or property owners fail to correct the noted deficiencies within the time determined by the Selectmen, the association shall be liable for the fines and penalties provide for in RSA 676:17 et.seq. in addition to any other legal and equitable remedies.

8. The selectmen may arrange to have the deficiencies cured at the expense of the property owners, and may record liens on each individual property until each property owner pays his, her, or its prorated share of the incurred expenses, including whatever liens and/or penalties are assessed, if any.