



Strafford Regional Planning Commission

“Planning and action for sustainable development and an improved quality of life.”

Model Land Use/Zoning Ordinance: Open Space Conservation / Cluster Development Subdivisions

**Approved by the Strafford Regional Planning Commission on September 28, 2004.
Recommended for adoption by municipalities in the region.**

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Town of [City of]

**Chapter 145 (For Example)
Land Use**

**Land Use/Zoning Ordinance
Amendments Enabling
Open Space Conservation /
Cluster Development Subdivisions**

ADOPTED BY TOWN MEETING ON _____, 200_____

RECOMMENDED BY THE PLANNING BOARD ON _____, 200_____

FOLLOWING A PUBLIC HEARING ON _____, 200_____

AMENDMENTS ARE NOTED WHERE APPLICABLE.

An amendment to the Town [City] of _____ Municipal Code to add provisions to implement the Master Plan by permitting the development of Open Space Conservation / Cluster Development in zoning districts where residential development is a permitted use.

**CHAPTER 145 (For Example)
LAND USE/ ZONING**

**ARTICLE VII (For Example)
Development or Performance Standards**

**SEC. 145.50 OPEN SPACE CONSERVATION / CLUSTER DEVELOPMENT
SUBDIVISIONS**

- A. **General Purpose.** The general purpose of this section is to provide for the orderly present and future development of the municipality by promoting the public health, safety, convenience and welfare of its residents and to promote the development of an economically as well as environmental sound and stable community.
- B. **Specific Purposes.** The specific purposes of Open Space conservation / cluster development subdivision include:
1. Implement the municipality's Master Plan.
 2. Encourage greater flexibility and creativity in design, while encouraging flexibility in road design that will maintain acceptable safety design.
 3. Protect water quality by minimizing: stormwater runoff (the main source of non-point source pollution) pollutant loads carried by stormwater runoff, land area covered by impervious surfaces, and soil erosion.
 4. Protect water quality and quantity by conserving land that includes watersheds and buffers along streams and rivers, wetlands and floodplains, ponds and lakes, and land overlying aquifers.
 5. Conserve tracts of land of suitable size with productive soils for continued agricultural and forestry use.
 6. Preserve naturally vegetated and wildlife habitat areas, thereby maintaining or increasing biodiversity
 7. Reduce capital cost of development while designing to potentially increase future property values.

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8. Foster the creation of neighborhoods to create a sense of community.
 9. Contribute where possible to a town-wide trail network for the health, enjoyment and safe travel of residents and, where practical, retain open space accessible to the general public.
 10. Support community planning goals, such as farmland preservation, affordable housing and architectural diversity.
 11. Allow for siting infrastructure and providing public services in an efficient and economical manner for developers and the community.
 12. Implement State and Regional smart growth principles.
 13. Foster the increased mobility by motorists, pedestrians, bicyclists through the development of interconnected streets and paths while increasing the service and mobility of public transportation within the open space / cluster development subdivision.
 14. Protect unique natural features, scenic views and other special elements of rural character.
 15. Foster protecting and enhancing the area's historic appearance and character including ensuring developing structures that enhance the traditional New England character and appearance; locating electrical, telephone, and cable utilities underground; and ensuring lighting is not excessive to inhibit the rural "bright stars/dark sky" nightscape.
- C. **Applicability.** The Planning Board shall require the preservation of open space and clustering of residential dwelling units or other uses as permitted in a zoning district by using an Open Space /Cluster Development Subdivision for all major subdivisions and minor subdivisions if a road is required per the Subdivision Regulations. Clustering development will provide a more efficient use of land resulting in the preservation of natural landforms, wetlands, wildlife and waterfowl habitats, significant vegetation and agricultural lands and other natural resources.
- D. **Authorization.** Notwithstanding other provisions of this chapter, the Planning Board may modify the dimensional requirements of this chapter as specified in this section to permit the clustering of residential dwelling units and improve the use and management of the open space. Such modifications shall not be construed as the granting of a variance to relieve hardship or require a special exception(s). The Planning Board is further authorized to adopt amendments to the Subdivision Regulations to further administer and implement the requirements of this section.
- E. **Permitted District(s) and Land Uses.** Open Space Conservation / Cluster Development

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Subdivision shall be permitted in all zoning districts permitting residential development.

(Note: For municipalities that promote neighborhoods with mixed land uses.)

Limited neighborhood service business land uses to meet frequent residential needs may be permitted in the Open Space Conservation / Cluster Development Subdivision after site plan review and approval by the Planning Board.

- F. **Maximum Density.** The maximum density of dwelling units permitted shall be the same as described in the municipality's adopted Master Plan and permitted in a Zoning District(s) in which the Open Space Conservation / Cluster Development Subdivision is located, provided in no case shall the density exceed the soil carrying capacity to accommodate a septic system for each residential dwelling unit as required by the State and Subdivision Regulations.

(Note: For municipalities with Aquifer Protection Overlay Districts)

Aquifer Protection District Exception. The exception is that in any Open Space Conservation / Cluster Development Subdivision where the parcel is located in one Zoning District and partially in an Aquifer Protection District the permitted density for that portion of the lot within the Aquifer Protection District may be doubled and transferred to the portion of the lot located in the other District, provided:

1. All land within the Aquifer Protection District is included within the common land or Open Space;
2. A conservation easement is granted to the Town or other entity over that portion of the subdivision located within the Aquifer Protection District;
3. All stormwater detention facilities shall be located outside the Aquifer Protection District. Stormwater retention facilities may be located in the Aquifer Protection District; and
4. The total increase in density in the Open Space/Cluster Development shall not exceed 20%, but
5. In no case shall the density exceed the soil carrying capacity to accommodate a septic system as required by the State and Subdivision Regulations.

G. **Dimensional Requirements**

1. **Lot Size:** In the absence of a municipal wastewater system, there is no minimum lot size, except as required by the State to insure groundwater quality protection and accommodate a septic system based on soil conditions. Minimum lot sizes within all subdivisions shall meet the most current requirements specified by the State. All costs of preparing soil data shall be borne by the applicant.
2. **Lots: - Dwelling Unit Lots.** The minimum lot area for residential dwelling sites shall be flexible to allow for consideration of dwelling sites and types, landscape and topography, adjacent Open Space and access.
 - (a) Dwelling Unit Lot size may vary based on the soil capability to accommodate septic

systems as determined by the State and per the municipality's Subdivision Regulations.

- (b) Dwelling Unit Lot shapes may be irregular and shared driveways are permitted.
- (c) Dwelling Unit Lots shall be laid out and graded to eliminate flood or stagnant water pools. No water shall be permitted to run across a street on the surface, but shall be directed into catch basins and pipes underground in a pipe of not less than 12 inches in diameter.

3. **Residential Dwelling Units.** The total number of residential units allowable within an Open Space Conservation/Cluster Development shall not exceed the number of units that would otherwise be allowed in the existing zoning district using conventional subdivision design. The total number of units allowed shall be determined using the following formula:

Total Dwelling Units Permitted = Base Density multiplied by Total Acres
 minus the total acres of the Unbuildable Land and the Road and Utility Right of Way

$$T = BD [A - (U + R)]$$

T = Total Units Permitted (dwelling units)
 BD = Base Density (dwelling units per acre)
 A = Total Site Area (acres)
 U = Unbuildable Land (acres)
 R = Road and Utility Right of Way (acres)

Example:

Total Dwelling Units	T = # total dwelling units permitted	? dwelling units
Base Density	BD = dwelling units per acre	2 dwelling units per acre
Total Site Area	A = total acres at site	10 acres
Unbuildable Land	U = acres unbuildable land	2 acres
Road and Utility Right of Way	R = acres for road and utility right of way	2 acres

$$T = BD [A - (U + R)]$$

$$T = 2 [10 - (2 + 2)]$$

$$T = 2 [6]$$

$$T = 12 \text{ total dwelling units permitted}$$

4. Setbacks.

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- a. Frontage distance, rear, front and side yard setbacks may be reduced to [50%] of the requirements in the zoning district subject to the following:
 - i. The required setbacks from lot lines and from street rights-of-way within the Open Space Conservation/Cluster Development may be reduced, but no structure shall be located within 15 feet of any lot line or within 20 feet of any street right-of-way within the Open Space Conservation/Cluster Development.
 - ii. Sidewalk setbacks shall be a minimum of five feet; this requirement may be waived if the regulations of the local Fire Department are met.
5. **Septic Systems.** Shared septic systems may be permitted provided the requirements of the State Department of Environmental Services are met, including appropriate provisions for legal obligations related to maintenance and replacement. Said systems may be located in a Common Open Space area provided the area shall not be sold to another property owner. All septic systems shall meet state and municipal setback requirements from poorly and very poorly drained soils.
6. **Parking.** The number of parking spaces required for a residential / Cluster Development shall be two spaces per dwelling unit. Parking may be provided in driveways.
7. **Landscaped Buffer.** A landscaped buffer strip shall be provided along the perimeter of the clustered lots except where access streets into the development are located, where adjacent land is part of an Open Space area or conservation easement, or where clusters of residential dwelling units on adjacent lots or developments are adjacent to each other. The buffer strip shall have a minimum width equal to 1/5 of the required lot frontage of the applicable zoning district, except along existing improved public streets, where the buffer strip shall have a minimum width equal to 1/2 of the required lot frontage. The buffer strip shall be owned in fee and managed by an association of the owners of the lots within the development.
8. **Lot Frontage.** The minimum frontage on an access road to the lot shall be 100 feet. This may be divided in two fifty-foot frontage widths to provide two points of ingress/egress.

H. Open Space.

1. At least fifty percent (50%) of an Open Space/Cluster Development's buildable area shall be permanently designated Open Space by covenant recorded at the Registry of Deeds and shown on the recorded subdivision plan. The designated Open Space shall not be used for additional building lots.
2. The following activities or land uses may not be counted as a part of designated Open

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Space:

- a. Land considered unbuildable (steep slopes in excess of 25%, wetland soils, rock outcrops and floodplains) as defined in Section II.
 - b. Land covered by existing rights-of-way, utility easements, and structures, such as dwellings, garages, storage sheds, patios, parking areas, driveways.
 - c. Setbacks and lawns.
3. The following areas shall be high priorities for inclusion in designated Open Space:
 - a. Resource buffers
 - b. High quality forest resources
 - c. Individual trees
 - d. Critical habitat areas
 - e. High quality soil resources
 - f. Cultural and historic resources
 - g. Viewsheds
 4. Reasonable efforts must be made to locate Open Space adjacent to Open Space in an adjoining property or properties to the satisfaction of the Planning Board. At least 75% of designated Open Space shall be contiguous to other Open Space and with no portion less than 100 feet wide.
 5. At least 50% of designated Open Space shall be designated as Conservation Area and shall be maintained in a natural and undisturbed condition.
 6. Limited access to Open Space may be allowed in the form of a walking, hiking or biking paths, the total area of which must be no more than 2% of the total Open Space area.
 7. Of the remaining designated Open Space a minimum of 10% should be designated "common space" and may be used for passive or active recreation or for the location of stormwater management facilities.
 8. If used for stormwater management, all design, construction, maintenance and public safety requirements shall be met using the design criteria set forth in the municipality's stormwater management Best Management Practices.
 9. If used for active recreation, impervious cover shall not exceed 5% of this common area.
 10. Areas set aside for parks and playgrounds to be dedicated or reserved for the public use and/or common use of all property owners shall be of reasonable size and character for neighborhood playgrounds or other recreational uses.

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I. Open Space Management.

1. The boundaries of designated Open Space areas, recreation areas, stormwater management facilities and naturally vegetated areas shall be clearly delineated on plans including plats and marked in the field with signage approved by the Planning Board to distinguish these areas from private property.
2. Development in and/or subdivision of designated Open Spaces in the future is prohibited and shall be so noted on the approved recorded subdivision plan/plat.
3. Prior to the sale of any lots, the Open Space shall be controlled by one or more of the following methods:
 - a. Ownership by an association of the owners of the dwelling units within the development with open space protection deed restrictions;
 - b. Ownership by an association of the owners of the dwelling units within the development with a conservation easement granted to the Town or recognized conservation organization;
 - c. Dedication to the municipality as public Open Space; and/or
 - d. Transfer, with permanent restrictions, to a land trust or other recognized conservation organization.
4. **Common Open Space Management.** The developer may structure the management of the common Open Space in one or more of the above methods. The Planning Board shall approve the arrangements for the ownership, control and maintenance of the common Open Space as part of the subdivision approval. No changes in use or management of the common Open Space via homeownership, bylaw amendments, or other means shall be made without the approval of the Planning Board. Said prior approval requirement shall be so noted in the recorded "Declaration of Covenants and Homeowner's Association Bylaws.
5. **Homeowners Association.** A homeowners association shall be created to own and manage the common lands and facilities.
 - a. Covenants for mandatory membership in the homeowners association, setting forth the owner's rights, interest and responsibilities, shall be required and approved by the Planning Board and shall be included in the deed for each lot and where applicable, the Declaration of Covenants.
 - b. A management plan for the common Open Space and facilities by the individual lot owners as a homeowners' association shall be required and approved by the Planning Board. Any amendments thereto by the homeowners' association shall be approved by the Planning Board.
 - c. The deed to each lot shall include a proportionate share of the common Open Space.
 - d. The assessment of dues or fees for structural improvements in the Open Space shall

require the affirmative vote of no less than two-thirds of the homeowners' association membership.

6. Conservation Easement:

- a. If owned by a separate entity, a conservation easement shall be established for the area as defined in subsection c below and shall be granted to the municipality.
 - b. A conservation easement, established as defined in subsection c below may be transferred to an established and designated land trust organization among whose purposes is to conserve Open Space and/or natural resources. This option is recommended for natural Open Space areas. Such transfer is allowable provided that:
 - i. The organization is acceptable to the Planning Board and is a bona fide conservation organization with perpetual existence;
 - ii. The conveyance contains appropriate provision for proper reversion or retransfer in the event that organization becomes unwilling or unable to continue carrying out its functions; and
 - iii. A maintenance agreement acceptable to the homeowners' association is signed by the developer and the organization.
 - c. The conservation easement shall:
 - i. Protect Open Space from future development, subdivision, and environmental damage by restricting the Open Space area from any future building or subdivision; and the removal of soil, trees and other natural features except as is consistent with conservation, recreation or agricultural uses or uses accessory to permitted uses;
 - ii. Provide that residents have access to the Open Space at all times;
 - iii. State whether Open Space is for the benefit of subdivision residents only or may be open to residents of the municipality.
- 7. Open Space Management.** An Open Space management entity shall assure the Open Space will be protected in perpetuity from all forms of development except as shown on the approved Subdivision Plan and that it will never be changed to another use. The management entity shall:
- a. Prescribe all allowable and unallowable uses and activities within such Open Space,
 - b. Provide detailed standards and schedules for maintenance of the Open Space including vegetative management, and
 - c. Allow for county or municipal maintenance of Open Space in the event that maintenance specified under a homeowners' agreement is not complied with.

ARTICLE II (For Example)
Word Usage and Definitions

**SECTION 145.09 DEFINITIONS (Amendments related to enabling
Open Space Conservation / Cluster Development Subdivisions.)**

1. **Base Density:** The initial density permitted under the property's residential zoning district, i.e., the number of dwelling units per acre.
2. **Best Management Practices:** Methods that have been found to be the most effective and practical means of preventing or reducing pollution.
3. **Common Open Space:** The area of Open Space remaining after natural Open Space has been designated. The area may be used for passive or active recreation or stormwater management.
4. **Conservation Easement:** A legal agreement between a landowner and a land trust, government agency or other qualified party that permanently limits uses of land to protect conservation values. It allows the property owner to continue to own and use the land and to sell it or pass it on to heirs. The easement may permit or restrict public access, allow or disallow recreational use and development, and similar provisions. Easements are recorded and linked to the title of the land, regardless of its subsequent ownership. (According to RSA 477:45-47)
5. **Development:** Any construction or grading activities on real estate for other than agricultural and forestry practices.
6. **Easement:** The authorization by a property owner for the use by another and for a specific purpose of any designated part of his/her property.
7. **Frontage Distance/Street Frontage:** That side of a lot abutting a street or body of water and ordinarily regarded as the front of the lot.
8. **Homeowners' Association:** A private corporation, association or other legal entity organized in accordance with state law and established by the developer for the benefit and enjoyment of its members.
9. **Impervious Cover:** Any surface in the urban or suburban landscape that cannot effectively absorb or infiltrate rainfall.
10. **Lot:** A parcel of land capable of being occupied that is of sufficient size to meet the minimum requirements for use, building coverage, and area.

11. **Lot - (Dwelling Unit Lot):** A parcel of land subdivided within a lot (parcel lot) capable of being used for a residential dwelling unit that is of sufficient size to meet the minimum requirements for use, building coverage, and area.
12. **Lot of Record:** A parcel, the plat or description of which has been recorded at the County register of deeds.
13. **Lot Line Adjustment:** Adjustments to the boundary between adjoining properties, where no new lots are created.
14. **Municipal Wastewater System:** A wastewater collection, treatment, and disposal system that is owned and operated by a municipality.
15. **Natural Condition:** The topography and vegetation of an area that is unaltered by clearing and grading during construction and protected in perpetuity.
16. **Non-Point Source Pollution:** Pollution that is generated by various land use activities rather than from an identifiable or discrete source and is conveyed to waterways through natural processes such as rainfall, stormwater runoff, or groundwater seepage rather than direct discharges.
17. **One Hundred Year Floodplain:** As defined by the National Flood Insurance Program, Flood Insurance Rate Map (FIRM) the area of land adjacent to a stream that is subject to inundation during a storm event that has a recurrence interval of one hundred (100) years according to Env1005.
18. **Open Space:** A portion of a development site that is permanently set aside for public or private use and will not be developed.
19. **Open Space - Public:** Land purchased by, given to, or granted by easement to the municipality for parks, playgrounds, or an undeveloped Open Space, generally with the intention of making it accessible for public use.
20. **Open Space Conservation / Cluster Development Subdivision:** A subdivision that sites houses on smaller dwelling unit lots with a density that will not exceed the density permitted in conventional subdivision. Additional land that would have been allocated to individual lots is converted to common shared Open Space for the subdivision residents and / or the community. It is protected in perpetuity. Typically, road frontage, lot size, setbacks and other traditional subdivision regulations are redefined to permit the developer to preserve ecologically sensitive areas, historical sites or other unique characteristics of the land being subdivided.
21. **Setback:** The distance between a building or structure and the nearest property line,

wetland or sewage disposal system.

22. **Sewage Disposal System (Individual):** Any onsite sewage disposal or treatment system that receives either sewage or other wastes, or both. For the purposes of this regulation, this means all components of the system, including the leachfield.
23. **Stormwater Management:** The use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes and/or peak flow discharge rates.
24. **Slope:** The average steepness of the land surface under consideration. For determining lot size categories, Natural Resource Conservation Service slope ranges shall be used. Slope shall be determined by the preparation of a topographic plan or by on site measurement through the use of a clinometer.
25. **Slope - Steep Slope Land:** Land with slopes of 25% or more.
26. **Soil Carrying Capacity:** The lot size is calculated by dividing the given area of each soil type by the required area for that soil type.
27. **Unbuildable Land:** The area of a site that includes wetlands and submerged areas, slopes of 25% or more, and the 100 year flood plain.

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