

OPEN SPACE DEVELOPMENT ORDINANCE

I. PURPOSE

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

II. OBJECTIVES

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

III. AUTHORITY AND APPLICABILITY

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

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

The Planning Board will need to decide if this strategy will work in Pembroke, or if the choice should be left to the applicant. Pembroke can also require the use of an open space development design for specific areas or situations, such as specific zoning districts or on any parcel with high natural resource value or when certain cultural features are present such as historic structures or existing trail networks.

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

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

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

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

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

Note - Municipalities have the option of granting the planning board the authority to issue a conditional use permit as a means of giving the planning board and applicants greater flexibility to "fit" the development into the landscape by being able to waive or modify some or all of the requirements specified in the open space development ordinance, or to allow certain additional uses in the designated open space when deemed appropriate.

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

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

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

(Or this alternative to Article III below)

III. TYPES OF OPEN SPACE DEVELOPMENTS

Two types of open space development may be allowed:

- A. OSD-1 - Planned Residential Development for use only in the R1 and LO Districts where both town water and sewer are available.
- B. OSD-2 - Rural Cluster Open Space Development for use in the R1 and LO Districts where only town water is available, or town water and sewer are not available, and in the R3 District.

IV. MAXIMUM DEVELOPMENT DENSITY

A. **Base Number of Development Units:** The applicant shall choose one of the following methods for calculating the base number of dwelling units that may be constructed on the property:

- 1. **Formula Approach:** Under the formula approach, the base number of dwelling units is determined by the following formula:

Base Number Dwelling Units =

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

Where Net Area =

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

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

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

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

Factor = number determined by the following:

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

* Steep slopes are those greater than 25%

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

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

For example, for a 120 acre parcel in a 3 acre zone (i.e., 3 acre minimum lot size per single family home (1 dwelling unit per building)) with 30 acres of wetlands and no steep slopes, the formula approach permits 20 dwelling units, as single family homes

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

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

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

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

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

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

3. Exceptions

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

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

1. Conservation of greater than 50 percent of the buildable area of the parcel within the designated open space shall receive a 5 percent increase in the number of dwelling units allowed for every additional 10 percent of open space protected, up to a maximum increase of 15 percent over the base number of dwelling units allowed.

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

2. Developments that grant public access, i.e., not limited to residents of the subdivision, to the designated open space shall be eligible for up to a 10 percent increase in the number of dwelling units allowed.
3. Developments that provide for a permanent conservation easement and that include a stewardship fund payment, acceptable to the planning board and held by the town, a recognized conservation organization, or land trust, shall be eligible for a 10 percent increase in the number of dwelling units allowed.
4. **Other items that are important to Pembroke and worthy of an incentive?**

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

V. DIMENSIONAL REQUIREMENTS

A. Lot Size Requirements

1. Buildings in a conservation subdivision may be located on individual residential lots, on common lots, or a combination thereof. If more than one dwelling unit will be located on a lot, the ownership and management arrangements for that lot, and the units thereon, shall be included in the subdivision application. The arrangements shall be subject to approval by the planning board in accordance with the subdivision regulations.

2. Minimum Lot Size

The average minimum lot size for any proposed open space development shall be as follows:

- A. Average Minimum Lot Size in R1 and LO Districts with town water and sewer = 20,000 sq. ft.
- B. Average Minimum Lot Size in R1 and LO Districts with town water only = 60,000 sq. ft.
- C. Average Minimum Lot Size in R1 and LO Districts without town sewer and water, and the R3 District = 80,000

3. **Alternative Lot Sizing:** The planning board may authorize variations from the minimum lot sizes specified above as part of the conditional use permit, provided the planning board determines that the following conditions are met:

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

B. Specifications for Individual Lots

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

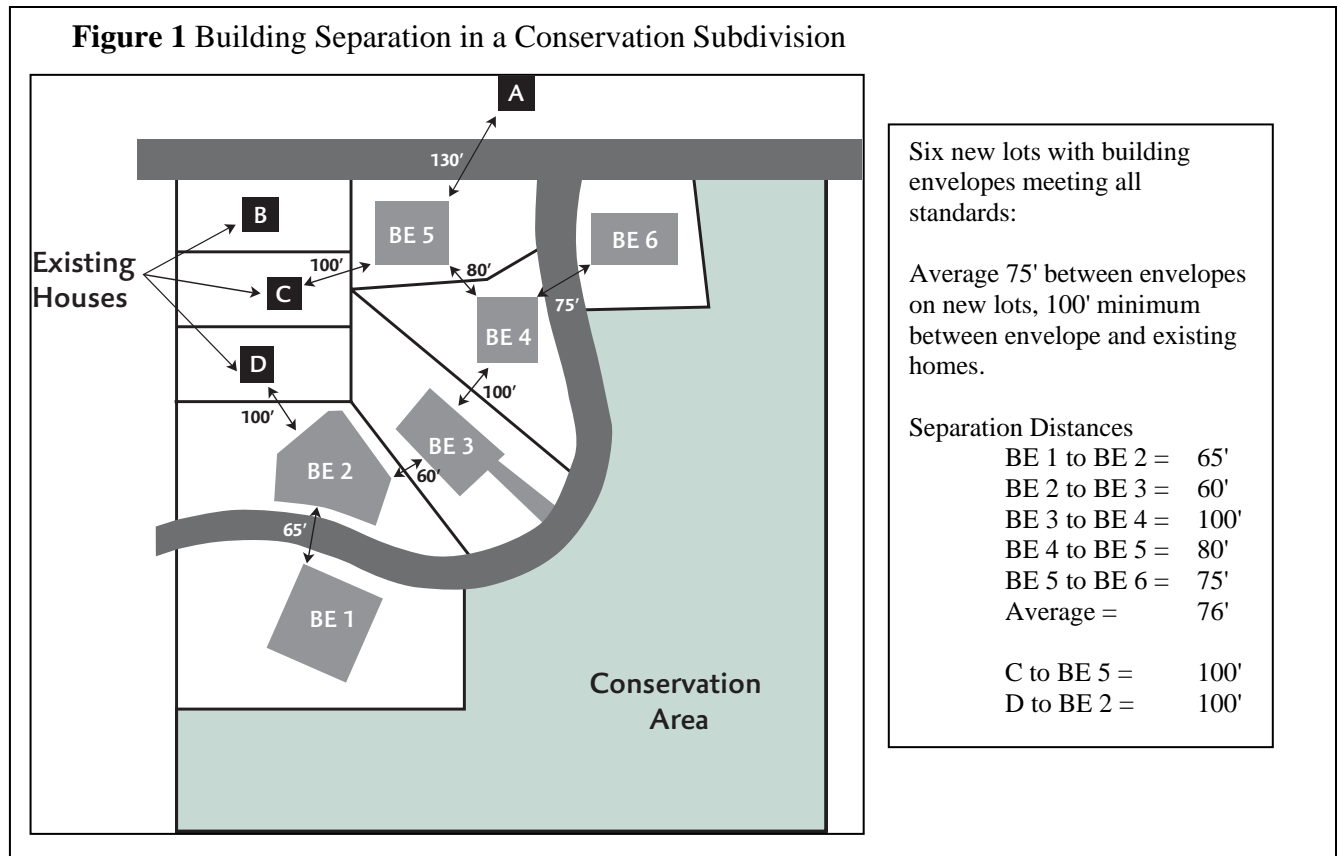
Note - Minimal dimensional standards are set under this approach to allow flexibility in the design and layout of the subdivision and maximize the open space conserved. For this reason, frontage requirements are eliminated and set back requirements are minimized. The layout of structures is managed by the required separation between building envelopes.

Table 1 Specifications of Minimum Separation Distances Between Building Envelopes

| District | Minimum Separation Distance of Building Envelopes for New Lots From Existing Structures on Adjacent Parcels | Minimum Average Separation Distance Between Building Envelopes for New Lots |
|-------------------------------------|---|---|
| R3 – Rural/Agricultural Residential | 100 feet | 30 feet |
| R1 – Medium Density Residential | 75 feet | 30 feet |
| LO – Limited Office | *40 feet | *30 feet |

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

Figure 1 Building Separation in a Conservation Subdivision



Six new lots with building envelopes meeting all standards:

Average 75' between envelopes on new lots, 100' minimum between envelope and existing homes.

Separation Distances

| | |
|----------------|------|
| BE 1 to BE 2 = | 65' |
| BE 2 to BE 3 = | 60' |
| BE 3 to BE 4 = | 100' |
| BE 4 to BE 5 = | 80' |
| BE 5 to BE 6 = | 75' |
| Average = | 76' |
| C to BE 5 = | 100' |
| D to BE 2 = | 100' |

- Principal structures located on a common lot (and within a common building envelope) shall be no less than 15 feet apart and shall conform to the requirements of the town's building code and the NFPA fire protection codes based upon the type of construction and proposed use.
- Height limits for structures shall be determined by the underlying zoning for the parcel, unless variations are granted by conditional use permit.

4. Building envelopes shall provide for a minimum setback of at least 10 feet from the lot boundaries.
5. Building envelopes shall be delineated to ensure that no structures shall be less than 15 feet from the edge of pavement of the roadway.
6. Building envelopes shall be setback a minimum of 50 feet from wetlands and shorelines, and no structures or supporting utilities may be constructed on wetlands.
7. Lots may be irregular in size and shape provided they conform to the natural topography and features of the parcel (e.g., the lot lines follow an existing stone wall, stream, or other natural dividing feature).
8. The planning board may authorize reductions from the above standards, except for provision (6) pertaining to the setback from a wetland/shoreline or any requirement covered by state regulation or addressed elsewhere in this ordinance, by up to 50 percent by special use permit issued pursuant to Section IV.C.2, for the purpose of providing flexibility in the design of the subdivision to meet the objectives of this section or to support the creation or continuation of a traditional village-style development pattern.

C. Design Standards for Developed Areas: Subdivision plans shall comply with any additional applicable standards governing the location and layout of lots and structures found elsewhere in this ordinance and as set forth in the Subdivision Regulations.

VI. OPEN SPACE REQUIREMENTS

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

Question – would Pembroke like to vary the percentage of open space for different areas of town or dependent on the specific characteristics of the parcel?

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

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

Figure 2: Rural Conservation Subdivision Example

- 16.5 acre parcel (1 acre wetlands and 1.5 acres steep slopes)
- Conventional Zoning: 2 acres per dwelling, 3 acres for 2-family

Calculate Number of Allowed Units

Number of single family homes =

$$[(718,740 \text{ sq ft} - 43,560 - 65,340) \times (\text{factor} = 0.70) \div 86,720] = 4.9 = 5 \text{ homes}$$

20% bonus = 1 additional single family home = 6 homes

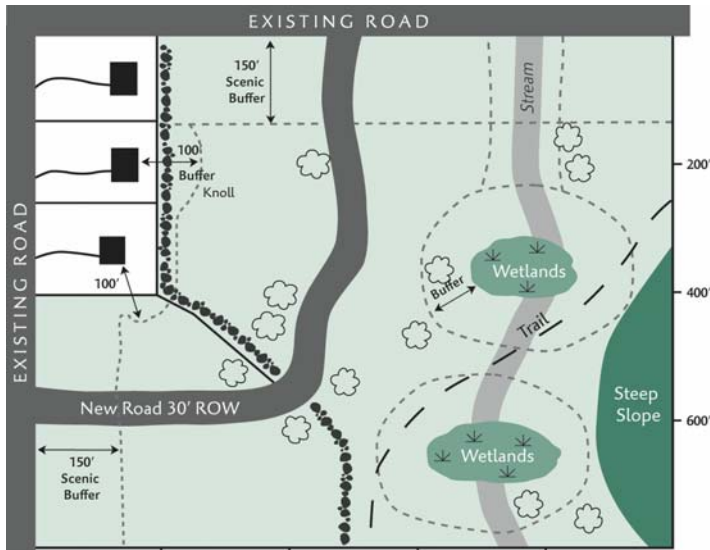
Number of 2-family structures =

$$[426,888 \div 130,680 = 3.3 = 3 \text{ structures} \times 2 \text{ units per building} = 6 \text{ units}]$$

Step 1:

Identify natural and cultural features and required setbacks

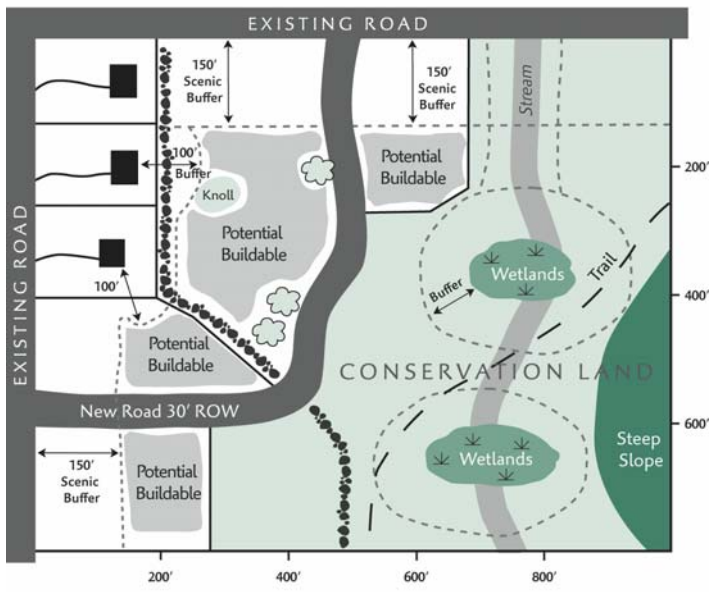
- minimum 100' setback from existing homes
- minimum 50' setback from wetlands
- minimum 150' setback along existing roads



Step 2:

Delineate conservation areas and potential area for building (possible building envelope)

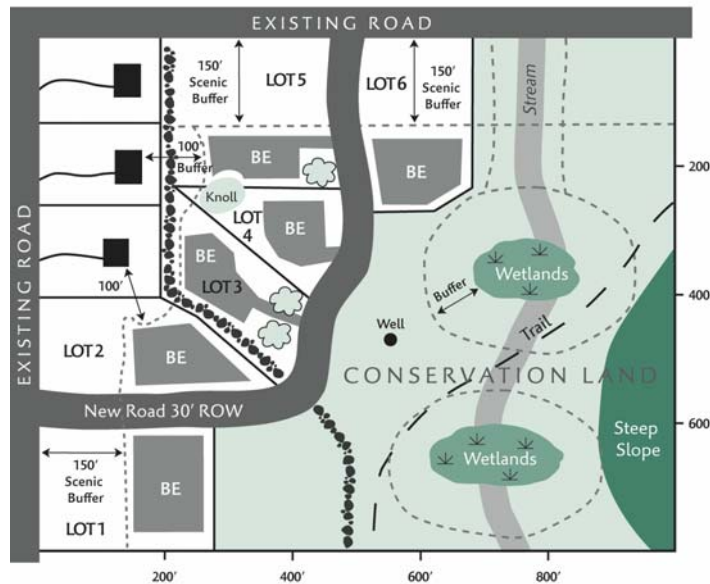
- 9 acres conserved = 54% of buildable area)



Step 3:

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

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



DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

Non-buildable Area: Land area that cannot be counted toward the minimum lot size under a conventional subdivision, including areas with the following characteristics: wetlands or wetland soils as defined by RSA 482-A: 2, X; slopes greater than 25 percent; submerged areas; utility rights-of way; land area within the 100-year floodplain; or land that is restricted from development by covenant, easement or other restriction.

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

Open Space Development: An alternative form of residential development where, instead of subdividing an entire tract into lots of conventional size, a similar number of housing units are arranged on lots of reduced dimensions, with the remaining area of the parcel permanently protected as designated open space.

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.