

DRAFT Article XI 16.8.10.H

~~Cluster Residential and Cluster Mixed-Use Development~~

Conservation Subdivision (formerly known as Cluster Residential Development)

[Amended 9-26-2011 by Ord. No. 11-15; 9-24-2012 by Ord. No. 12-09]

§**16.8.10.H.1** ~~16.8.11.1~~ Purpose.

~~To implement adopted Comprehensive Plan policies regarding the Town's natural, scenic, marine, cultural and historic resources, land use patterns and recreation and open space, this article is intended to encourage and allow new concepts and innovative approaches to housing/commercial development and environmental design so development will be a permanent and long term asset to the Town, while in harmony with the natural features of the land, water and surrounding development. This ordinance will allow new concepts and innovative approaches to housing and environmental design so that the Town's natural, scenic, cultural, marine and historic resources may be preserved, thus meeting the relevant objectives of the Comprehensive Plan, while limiting the costs and impacts of development on the community and mitigating the effects of climate change. Because Kittery's character is expressed diversely through its natural environment comprising fields, forests, wetlands, salt marshes and shoreland interwoven with its built environment including both compact neighborhoods and large lot neighborhoods, conservation subdivisions in different zones may necessarily differ in how they achieve this balance between development and preservation. In all instances the Objectives include:~~

- ~~A. Efficient use of the land and water, with small networks of utilities and streets;~~
- A. B. Preservation of open space and creation of recreation areas, including but not limited to C. Maintenance of rural character, preserving farmland, meadows, forests, and wildlife habitat as well as viewsapes identified in the Comprehensive Plan.
- B. D. Preservation of areas with the highest ecological value as well as areas with significant value not otherwise protected by law.
- C. E. Location of buildings, streets and structures on those portions of the site most appropriate for development based on environmentally-aware site design.
- D. F. Creation of a network of contiguous open spaces or "greenways" by linking the common open spaces within the site and to Connections to open space on adjoining lands wherever possible.
- E. G. Reduction of impacts on water resources and water quality by minimizing land disturbance and the creation of impervious surfaces and while utilizing nature-based strategies such Low Impact Development (LID) combined with Best Management Practices (BMP) for optimal stormwater runoff management.

- 34 F. Expansion of outdoor recreation opportunities wherever possible.
- 35 G. ~~H.~~ Preservation of historic, archaeological, and cultural features.
- 36 H. ~~F.~~ Minimization of residential development’s footprint, including streets, utilities, and driveways, to
37 lower the impact on the municipality, neighboring properties and the natural environment.
- 38 I. Demonstrated awareness of climate change effects such as:
- 39 a. Sea level rise considerations, including potential salt marsh migration areas, where shoreland
40 and salt marsh exist.
- 41 b. Utilization of nature-based adaptation strategies, such as Low Impact Development (LID) for
42 stormwater and preserving woodlands for wildlife and for their role in carbon capture.
- 43 c. Energy efficiency and reduced greenhouse gas emissions in both site design and building
44 design.
- 45 J. ~~C~~ Conservation of the Town’s natural resource and neighborhood diversity. Maintenance of rural-
46 character, preserving farmland, forests and rural viewscapes.

47 **§16.8.10.H.2** ~~16.8.11.2~~ **Permitted zones Applicability.**

- 48
- 49 A. ~~Cluster residential development~~ Conservation subdivisions is are a residential use permitted in various
50 zones as indicated in Chapter 16.4 16.3. Mobile home parks or manufactured homes on individual lots
51 are not eligible for conservation subdivisions.

52 **§16.8.10.H.3** ~~16.8.11.3~~ **Dimensional standards modifications.**

- 53
- 54 A. ~~Notwithstanding other provisions of this title relating to dimensional standards, the~~ The Planning Board, in
55 reviewing and approving proposed residential or mixed-use development under this article ordinance,
56 may modify said the following dimensional standards to permit flexibility in approaches to site design
57 in accordance with the standards of this title ordinance: lot area, lot coverage impervious surface, street
58 frontage and front/rear/side setbacks. The Board may allow subdivision or site development with
59 modified dimensional standards where the Board determines the benefit of a conservation subdivision
60 is consistent with this title. The Board may allow such dimensional modifications when the Board finds
61 a determination of benefit consistent with this ordinance. Such modifications may not be construed as
62 granting variances to relieve hardship.

- 63 B. The Board may also modify density standards when certain affordable housing provisions are met. See
64 16.8.10.H.9.

65 ~~§16.8.11.4~~ **Property ownership.**

- 66 ~~Tracts or parcels of land involved in a development proposed under this article must be in single ownership;~~

67 ~~or must be the subject of an application filed jointly by the owners of all properties included; or must have an~~
68 ~~applicant with vested interest in all property included. Pursuant to the requirements of this article, mobile-~~
69 ~~home parks or mobile homes on individual lots are not eligible for conservation subdivisions.~~

70 § **16.8.10.H.4** ~~16.8.11.5~~ **Application procedure.**

71

72 All development reviewed under this article is subject to the application procedures in Chapter 16.810,
73 ~~Development Plan Application and Review Subdivision~~, and the following:

74 A. In addition to the requirements of Chapter 16.810, the following items are required ~~at~~ with
75 ~~submission~~mittal of the sketch plan:

76 (1) A plan showing the proposed conservation subdivision and a plan showing a conventional
77 subdivision for the site. Both plans must include the following information as applicable:
78 Calculations and maps to illustrate:

79 (a) 4. The location of each of the proposed building envelopes, as well as the proposed placement of
80 sidewalks, roads, service areas and parking areas. Only developments having a total complete
81 subdivision or site plans with building envelopes shown will be considered.

82 (b) ~~(a)~~ Proposed dimensional measurements and sizes modifications for all lots and the dimensional
83 standards required in the zone in which the development will be located.

84 (c) ~~(b)~~ All land area identified in Chapter 16.5.17 7, Article VIII, Net Residential Acreage, noted
85 with total land areas for each applicable category. [Amended 9-28-2015 by Ord. No. 15-05]

86 (d) ~~(e)~~ Net residential density calculations demonstrating how many dwelling units are allowable
87 based on the net residential acreage arrived at above. This number must be the same for both the
88 conventional subdivision and the proposed conservation subdivision unless the conservation
89 subdivision proposes to build or create affordable housing as described in 16.8.10.H.9; and
90 [Amended 9-28-2015 by Ord. No. 15-05]

91 (e) ~~(d)~~ Open space as defined described in § 16.8.10.H.7 of this article ordinance, labeled
92 appropriately.

93 (f) Natural features, with areas of ecological value noted, including those identified by the Maine
94 Natural Areas Program and Maine Inland Fisheries and Wildlife, as well as all waterbodies,
95 streams, aquifers, wetlands, salt marshes, floodplains, farmland, non-forested areas, scenic
96 vistas.

97 (g) Historical, archeological or culturally important features and/or structures.

98

- 99 (2) A map or plan showing constraints to development, such as, but not limited to, wetlands, resource
100 protection zones, shoreland zones, ~~deer wintering areas~~ rare plant and animal habitat, side slopes in
101 excess of ~~33-20%~~, easements, rights-of-way, existing roads, driveway entrances and intersections,
102 existing structures, and existing utilities.
- 103 (3) If the site includes valuable agricultural soils, such as but not limited to, prime farmland soils or
104 soils of state-wide importance, a soils map illustrating their locations must be included.
- 105 (4) ~~(3)~~ A written statement describing the site and the ways the proposed development furthers the
106 purpose and objectives of this article ordinance, including how natural features ~~which~~ will be
107 preserved or enhanced. ~~Natural features include, but are not limited to, moderate to high value~~
108 ~~wildlife and waterfowl habitats, important agricultural soils, moderate to high yield aquifers and~~
109 ~~important natural or historic sites worthy of preservation.~~
- 110 ~~(4) The location of each of the proposed building envelopes. Only developments having a total~~
111 ~~subdivision or site plan with building envelopes will be considered.~~
- 112 (5) If the conservation subdivision will rely on groundwater for its drinking water supply, a written
113 statement prepared by a Maine licensed well driller must attest to the sufficiency of water for the
114 development and that such private well or wells will not reduce either the quantity or quality of the
115 groundwater supply for surrounding properties.
- 116 B. For preliminary plan submission, in addition to the requirements of Chapter 16.8, A an applicant with a
117 project that includes proposed public open space such as a park or a nature trail must obtain Town
118 Council approval acceptance for accepting the public land prior to Planning Board’s preliminary plan
119 approval. Such open space must be offered to the Town in fee or through an easement to be held by the
120 Town. or easement following preliminary plan approval. Town Council acceptance of the public open
121 space is contingent upon receipt of final plan approval by the Planning Board.
- 122 C. An applicant with a project that includes moderate to high value wildlife habitat or other exceptional
123 natural features is strongly encouraged to seek a conservation easement to be held by a land trust or
124 other such conservation entity. Such easements will be counted towards the open space requirements for
125 the subdivision as reserved open space and must be approved by the Planning Board.
- 126 D. The Planning Board may, at the applicant’s expense, seek expert and professional opinions concerning
127 any aspect of the proposed development including but not limited to, engineering, landscaping, natural
128 resources, historic resources, traffic, wetlands, soil, stormwater and water quality.

129 **§16.8.10.H.5** ~~16.8.11.6~~ **General Standards.**

- 130 A. The purpose and ~~intent~~ objectives of this title as stated above in §16.8.10.H.1 must be upheld for any
131 subdivision reviews conducted under this article ordinance.

- 133 B. ~~A cluster mixed-use and cluster residential development~~ conservation subdivision must meet all
134 requirements for a subdivision ~~(and site plan where applicable)~~ and all other applicable federal, state and
135 local ordinances, except as modified by 16.8.10.H and/or action of the Planning Board, where
136 authorized.
- 137 C. Public or privately shared sewer and water must be provided unless it is demonstrated to the Planning
138 Board's satisfaction that alternative methods ~~used~~ proposed will result in a development that is
139 compatible with the purpose and objectives of 16.8.10.H and meets all other state and municipal
140 requirements. ~~this Article XI.~~
- 141 D. Open space designated and set aside in a conservation subdivision will be permanently preserved as
142 required by this performance standard. Land that is designated as reserved or common open space as
143 defined by Title 16 must be separate tax parcels and not included as part of any house lot. Public open
144 space must be approved and accepted by Town Council per subsection 16.8.10.H.4.B. In all cases, the
145 Planning Board must approve the configuration of the open space.
- 146 E. ~~D.~~ Unless a public or shared sewer collection and treatment system is provided, no lot may be smaller
147 than 20,000 square feet per single-family residence. ~~and 8,000 square feet per bedroom per multifamily~~
148 ~~residence as outlined in the Maine Minimum Lot Size Law, 12 M.R.S. §4807-A.~~
- 149 ~~E—Open space requirements.~~
- 150 (1) ~~Open space must contain at least 50% of the total area of the property and no less than 30% of the~~
151 ~~total net residential acreage, as defined.~~
- 152 (2) ~~Total calculated open space must be designated as follows (see open space definitions in Chapter~~
153 ~~16.2):~~
- 154 (a) ~~Open space, reserved;~~
- 155 (b) ~~Open space, common; and/or~~
- 156 (c) ~~Open space, public.~~
- 157 (3) ~~The use of any open space may be further limited or controlled by the Planning Board at the time~~
158 ~~of final approval, where necessary, to protect adjacent properties or uses.~~
- 159 (4) ~~Open space must be deeded in perpetuity for the recreational amenity and environmental~~
160 ~~enhancement of the development and be recorded as such. Such deed provisions may include~~
161 ~~deed/plan restrictions, private covenants, or arrangements to preserve the integrity of open~~
162 ~~spaces and their use as approved by the Planning Board.~~
- 163 (5) ~~Open space must also be for preserving large trees, tree groves, woods, ponds, streams, glens,~~

164 rock outcrops, native plant life, and wildlife cover as identified in the applicant's written
165 statement. In the Mixed Use Neighborhood Zone, open space may be both man-made and
166 natural. Man-made open space must be for the development of recreational areas, pedestrian
167 ways and aesthetics that serve to interconnect and unify the built and natural environments.
168 ~~[Amended 11-26-2018 by Ord. No. 10-18]~~

169 (6) ~~Open space should be in a contiguous form of unfragmented land to protect natural resources,~~
170 ~~including plant and wildlife habitats.~~

171 (7) ~~A portion of the open space should be in close proximity to other open spaces used for recreation~~
172 ~~(e.g., a common green, multipurpose athletic field, gardens, and playgrounds).~~

173 F. ~~(Reserved) G. In cluster residential developments~~ No individual lot or dwelling unit may have direct
174 vehicular access onto a public road existing at the time of development. This requirement may be
175 modified at the Planning Board's discretion in cases where existing structures included in the proposed
176 subdivision have access from a public road, and the overall site design is improved for allowing such
177 access to remain.

178 G. In cases where proposed development includes shoreland, the entire area that falls within the Shoreland
179 Overlay Zone, the Resource Protection Zone or the Stream Protection Overlay Zone must be protected
180 as open space. All areas designated as floodplain and the 250-foot radius around a state-designated
181 significant vernal pool must similarly be protected as open space. Where an area falls within two or
182 more such zone designations, the zone with the largest total area will apply. Such open space may not be
183 part of any private house lot.

184 H. ~~Where cluster residential development~~ a conservation subdivision abuts a body of water, stream, or a
185 significant wetland as defined by the State of Maine, then a usable portion of the shoreline, as well as
186 reasonable and appropriate access to such waterbody, stream or wetland, as determined by the Planning
187 Board, must be a part of the commonly held land open space. Shoreland frontage must not be less than
188 100 feet. Deeded access to the shoreland frontage must be conveyed to each lot owner in the
189 conservation subdivision.

190 I. ~~I.(2) Utility installation.~~ All utilities are to must be installed underground, wherever possible.
191 Underground utilities and related easements may be located in designated common open space but must
192 be shown on the plans. The Planning Board may allow aboveground electrical service installation but it
193 is incumbent on the developer to demonstrate to the Planning Board's satisfaction that underground
194 installation of utilities is not possible. ~~When~~ permitting such aboveground electrical service
195 installations ~~The~~ Planning Board must require the developer to adopt a prudent avoidance approach in
196 regard to pole and line placements as a condition of approval and include their placement within the site
197 on the final plan. ~~when permitting aboveground electrical service installations.~~ Transformer boxes,
198 pumping stations and meters must be located so as not to be unsightly or hazardous to the public.

199

200 J. The location of any subsurface wastewater disposal systems and a reserve areas, if required, must be
201 shown on the plan. The reserve areas must be labeled as restricted so as not to be built or encroached
202 upon. All necessary information such as the site evaluator report and State-required permits must be
203 included prior to final plan approval. ~~The report of a site evaluator, licensed by the State of Maine, must~~
204 ~~accompany the plan. If the subsurface disposal system is an engineered system, approval from the~~
205 ~~Maine Department of Human Services, Division of Health Engineering, and the Municipal Plumbing~~
206 ~~Inspector must be obtained prior to Planning Board approval.~~

207 **§16.8.10.H.6 Design Standards.**

208 A. ~~16.8.11.6.I~~ The developer must take into consideration the site's natural features and physical location
209 into consideration as follows: the following points, and illustrate the treatment of buildings, structures,
210 spaces, utilities, paths, roads, service and parking areas, recreational facilities, and any other features
211 determined by the Planning Board to be a part of the proposed development.

212 (1) ~~Orientation.~~ All elements of the site including the individual buildings, view corridors and other
213 improvements are to must be designed so scenic vistas, and natural, historic and cultural features
214 are integrated into the development preserved and protected while being integrated into the
215 development.

216 (2) ~~(4)~~ Buildings should must be sited to consider natural sunlight, shade, topography, natural drainage,
217 prevailing winds and ventilation.

218 (3) Buildings must be designed and oriented to protect against light trespass from vehicle headlights,
219 and any existing outdoor lighting to the greatest extent possible.

220 (4) It is strongly recommended that all buildings be designed for maximum energy efficiency and use
221 heating and cooling systems that reduce greenhouse gases.

222 (5) Existing natural vegetation, including trees, unless diseased or dying, must remain to control soil
223 erosion, provide shade and wildlife habitat and to ensure the least amount of disturbance during
224 construction. Existing large healthy trees located near new rights of ways, driveways or building
225 sites, whose removal is not necessary for construction, must be protected from damage during
226 construction. Such trees must be noted on the plans and plan notes must include protection details.

227 B. ~~(3) Recreation.~~ Facilities must be provided consistent with the development proposal. Active
228 recreational facilities such as playgrounds or tennis courts requiring permanent equipment affixed to the
229 ground and/or modification of the site may not be located within the wetland or shoreland setback areas
230 or within contiguous reserved open space areas.

231 C. Where a park or a playground with permanent affixed equipment, either recreational or artistic in nature
232 is proposed as common open space, the park or playground must be designed by a landscape architect

233 or a professional specializing in playgrounds. The plans for the playground or park must be submitted
234 as part of the preliminary plan or if the conservation subdivision is less than five lots, part of the final
235 plan. Any impervious surface created as part of the park or playground must be included in the
236 stormwater management report to ensure the design of adequate stormwater management systems.

237 D. ~~(4) Buffering.~~ Plantings, landscaping, naturally existing vegetation, and the forms and siting of
238 buildings and other improvements, ~~or fencing and screening~~ must be used to integrate the proposed
239 development with the surrounding landscape and the character of any surrounding neighboring
240 development.

241 E ~~(5) Development setbacks.~~ Setbacks from wetlands, streams and waterbodies must comply with
242 ~~§16.5.28 and §16.8.10.H.5.G.~~ demonstrate compliance to Table 16.9 of Chapter 16.9. These setbacks
243 must be permanently maintained as "no cut, no disturb" buffer areas except where common access by
244 the conservation subdivision residents is required per §16.8.10.H.5.H. These buffer areas must be
245 identified as such on all subdivision plans, including the as-built plan. The Planning Board may require
246 signs denoting the boundaries of these buffer areas be placed prior to the issuance of any certificate of
247 occupancy to ensure that encroachment does not occur. If the setback areas ~~are not of~~ do not contain
248 substantial vegetation, as determined by the Planning Board, to provide a sufficient and environmentally
249 appropriate buffer and ecological benefit, the Planning Board may require additional native or
250 Northeastern native climate tolerant plantings. If plantings are required, any plantings that do not survive
251 must be replaced. This plantings requirement does not expire and runs with the land.

252 F A vegetated buffer is required in zones R-C and R-RL along the front lot line (except for access to the
253 development) of the proposed development where designated open space or “no-cut, no disturb buffers”
254 as described in subsection E, above, do not exist. The frontage buffer must be at least 20 feet wide and
255 will serve to screen the development from the street, perform carbon capture and aid in stormwater
256 absorption. This buffer may not be built on, paved, mowed or used for parking or storage nor can it be
257 part of any residential lot. No trees may be cut within the buffer unless they are dead, diseased or dying,
258 are identified as an invasive species or are less than a two-inch caliper. Any invasive plant species, as
259 identified by the State of Maine, that are found in the buffer must be removed. Vegetation will be
260 maintained in its natural state unless the Planning Board deems the buffer insufficiently vegetated to
261 serve its purpose, in which case, the Board may also require additional native or Northeastern native
262 climate tolerant plantings. If plantings are required, any plantings that do not survive must be replaced.
263 This plantings requirement does not expire and runs with the land.

264 (1) The buffer may be increased to a maximum of 40 feet, if in the Board’s judgement, the
265 preservation of natural features or the design of the site as proposed, including how it blends with
266 the surrounding environment, would be improved by wider buffers.

267 (2) The buffer requirement may also be modified by the Board in different ways than described by (1)
268 above, if, in the Board’s judgement, the buffer would impact important objectives, such as
269 preserving views, providing access to a trail/open space or protecting natural features.

270 G. The Planning Board may require vegetated buffers in other locations on the site, such as but not limited
271 to, side lot lines or rear lot lines, when, in the Board’s judgement, such a buffer will allow the site design
272 to better meet the criteria and objectives of this conservation subdivision ordinance. Such buffers may
273 not exceed 40 feet in width and all requirements in F. above apply.

274 H. Low Impact Development (LID) must be incorporated into the site design and should include simple
275 nature-based strategies such as maintaining significant stands of forest and intact and ecologically
276 functional wetlands.

277 I. In cases where a proposed conservation subdivision abuts permanently protected land such as property
278 owned by a land trust or private property with a conservation easement, all proposed development
279 including private house lots, structures, roads, utility easements and utilities must be set back at least 30
280 feet from the edge of the protected property. This 30-foot setback also applies to Town-owned land used
281 by the general public such as but not limited to Rogers Park, the Town Forest and Fort Foster.

282 **§16.8.10.H.7 ~~16.8.11.6.E~~ Open space requirements**

283 A. The amount of open space required varies with the zoning district in which the conservation subdivision
284 is located. The requirements are as follows:

285 a. In the R-C Zone, the designated open space must be a minimum of 70% of the total land area,
286 with a minimum of 50% of that consisting of net residential acreage as defined by this Title.

287 b. In the R-RL Zone, the designated open space must be a minimum of 60% of the total land
288 area, with a minimum of 40% of that consisting of net residential acreage as defined by this
289 Title.

290 c. In the KP-V Zone, the designated open space must be a minimum of 50% of the total land
291 area, with a minimum of 30% of that consisting of net residential acreage as defined by this
292 Title.

293 d. In the R-S and R-U Zones:

294 i. For properties of ten (10) acres or more, the designated open space must be at least
295 50% of the total land area, with a minimum of 30% of that consisting of net residential
296 acreage as defined by this Title.

297 ii. For properties of less than ten acres with public sewer, the designated open space must
298 be at least 25% of the total land area with a minimum of 5% of that consisting of net
299 residential acreage.

300 iii. For properties of less than ten acres with private septic, the designated open space must
301 be at least 25% of the total land area with no minimum net residential acreage
302 requirement.

303

- 304 B. Wetlands of all types, water bodies, floodplains, and streams located on the site must be protected as
305 reserved open space, except as otherwise allowed in §16.8.10.H.
- 306 C. Natural resources such as wildlife habitat or areas of ecological importance must be included in the
307 designated open space.
- 308 D. The required designated open space must include any notable natural features found on the site, such as
309 but not limited to, stands of mature trees, meadows, hillsides, ledge/outcroppings, and former or existing
310 farmland.
- 311 E. All historic, cultural or archeological resources must be included in the designated open space.
- 312 F. Open space areas within a site must ~~should~~ be contiguous blocks, to the greatest extent possible, and link
313 to open space on abutting land where it exists to protect natural resources, including plant and wildlife
314 habitats. It is incumbent on the applicant to demonstrate to the Planning Board’s satisfaction that non-
315 contiguous open space still meets the criteria and intent of this ordinance. Narrow strips of open space
316 around the perimeters of the site alone will not meet these criteria but may exist for purposes of
317 buffering the development from the street as required in 16.8.10.H.6.F or from neighboring properties or
318 to provide public access connectors to public open space, public trails or links to neighborhoods, all of
319 which must be approved by the Board.
- 320 G. Open space may not consist entirely of mowed grass areas unless such a space is designated as a park,
321 either public or private. If a park is proposed or included in the development, seating areas and shade
322 trees, at minimum, must also be included in the park. See §16.8.10.H.6 for design details.
- 323 H. All three types of open space, public, common and reserved as defined by Title 16, may be used for a
324 proposed development to meet the open space area requirements of the applicable zone. For example, a
325 conservation subdivision may propose common open space for a community garden with mowed areas
326 around the garden for community gatherings while designating the woodlands beyond as reserved open
327 space with both areas combining to meet the necessary open space requirements. The Planning Board
328 must approve the designations and may require changes in the designations and/or the uses based on the
329 standards of this ordinance.

330 **§16.8.10.H.8 16.8.11.7 Open space and facilities dedication and maintenance.**
331

- 332 A. Planning Board review and approval of a conservation subdivision under this ordinance will apply to and
333 supersede any inconsistent or more restrictive provisions of Title 16.
- 334 B. Open space designated and set aside in a conservation subdivision will be permanently protected from
335 development as required by this ordinance. Such perpetual protection includes but is not limited to
336 conservation easements and declarations of covenants, conditions, and restrictions.
- 337 C. A conservation easement may be granted to or the declarations may be for the benefit of a qualified not-
338 for-profit conservation organization such as a land trust acceptable to the Planning Board or to the Town
339 of Kittery with the approval of Town Council.

- 340 D. The Planning Board may require that any conservation easement or declaration of covenants, conditions
341 and restrictions be enforceable by a third party as specified and/or approved by the Board.
- 342 E. On all parcels, open space uses must be appropriate to the site as follows:
- 343 1. Parcels that include three acres or more of land suitable for agriculture by reason of former or
344 existing agricultural use or agriculturally valuable soil must be conserved for agriculture or other
345 compatible open space uses such as wildlife habitat, resource conservation and/or passive
346 recreation. A conservation easement to be held by a land conservation entity is strongly
347 encouraged.
- 348 2. If any portion of the designated open space will be devoted to an agricultural land use, the
349 developer must submit a management plan to the Planning Board for review and approval
350 demonstrating how the use will be fostered into the future. Examples of such plans include a farm
351 management plan or a community garden plan. If the open space will be leased to another party, a
352 long-term lease (three years or more) must be included with the management plan.
- 353 3. When the principal purpose for conserving certain portions of the open space is protection and
354 preservation of natural resources such as but not limited to, wetlands, stream corridors, waterbody
355 shores, wildlife habitat, woodlands, meadows and hillsides, those open spaces must be designated
356 as reserved open space with no use allowed beyond passive recreation.
- 357 4. For the purposes of this conservation subdivision ordinance, forestry means the practice of
358 planting, managing, and caring for forests. Any portion of the open space designated for forestry
359 must be covered by a plan done by a licensed Maine Forester that manages for the health of the
360 forest and, if appropriate, passive recreation. Timber harvesting as a main objective is not
361 allowed, although trees removed for health and/or safety reasons according to the management
362 plan may be sold per state and local regulations.
- 363 5. The use of any proposed open space may be limited by the Planning Board prior to final plan
364 approval when the Board finds that it is necessary to protect sensitive natural features or resources
365 or to protect adjacent properties or uses.
- 366 6. No further subdivision of open space is allowed and the deed restrictions must clearly state this.
367 Such deed restrictions must be reviewed by the Town’s legal counsel prior to final plan approval.
368 See subsection F. below Any use of open space other than that designated at the time of Planning
369 Board final approval for agriculture, forestry, recreation and/or conservation, is prohibited except
370 for underground utility easements (see §16.8.10.H.5.I) which, if necessary, may be reviewed and
371 approved by the Board as a major modification after final plan approval. Any modification of a
372 previously approved use for open space must be reviewed and approved by the Planning Board as
373 a major modification.

- 375 7. Proposed structures or buildings accessory to agriculture, recreation or conservation uses of open
376 space are allowed subject to Planning Board approval through the major site plan review process
377 pursuant to this ordinance and Chapter 16.7. Such a process may run concurrently with the
378 conservation subdivision approval process.
- 379 8. In cases where historic or culturally important sites are included in the open space, the Planning
380 Board may require that extra protections be put into place, such as an iron fence around a
381 graveyard or a stone wall around an early homestead site. The Board may also require that
382 markers or signs be erected, describing the site’s significance.
- 383 9. Adapting an historic or culturally important structure within a proposed conservation subdivision
384 for use either residentially or as an accessory structure is encouraged. If the proposed open space
385 in the subdivision includes a historic or culturally important structure or building, the following
386 options exist:
- 387 i. Repurposing of such a building is allowed if all other state and local regulations are met,
388 for example, a historic barn could be used as a clubhouse or for storage of small
389 recreational vehicles and watercraft. The building must be repaired and maintained by the
390 homeowner’s association with the necessary funding put in place for continued upkeep.
391 The proposed use must be reviewed and approved by the Planning Board through the
392 major site plan review process pursuant to this ordinance and Chapter 16.7. The site plan
393 review may be done concurrently with the subdivision review.
- 394 ii. The building’s deed can be transferred to an entity, such as a historical society, that can
395 preserve and maintain it. Such a transfer must be approved by the Board.
- 396 iii. In cases where the building will not be repurposed and an entity cannot be found to accept
397 the deed for the building, the Board may allow the building to be dismantled and given or
398 sold to a willing party, moved to another location off the site by a willing party or
399 demolished. If the building will be dismantled, moved or demolished, the developer must
400 document the building. Such documentation must include dimensions and photographs,
401 inside and out, on its original site prior to any further action taken to remove the building.
402 The Board may require the developer to hire a historian at the developer’s expense to
403 create the documentation. A copy of the completed documentation must be given to the
404 Kittery Historical and Naval Museum and a copy must be filed with the Town Planning
405 Department prior to the issuance of the first building permit and will be a condition of
406 approval.
- 407 F. A. Prior to approval of the final plan by the Planning Board, documentsation, including plans,
408 homeowner association documents such as the covenants, conditions and restrictions as well as bylaws,
409 deed restrictions, conservation easements and any other legal instruments for open space concerned with
410 the subdivision and its open space must be submitted to the Town for review by legal counsel at the

411 applicant's expense. Once reviewed by legal counsel and any corrections required are made, the
412 documents must be submitted to the Board as part of the final plan submission. Subsequent to approval,
413 ~~there may be no further division of the open space; however, tracts or easements dedicated for public-~~
414 ~~utilities, public access or structures accessory to noncommercial recreation, agriculture or conservation~~
415 ~~may be permitted within the open space.~~

416 G. ~~B-~~The open space(s) must be shown on the development plans, at least by final plan submission and on
417 the as-built plan with appropriate notation on the face thereof to indicate that:

418 (1) The open space is permanently protected and must not be used for future building lots or any
419 additional development unless approved by the Planning Board where authorized; and

420 (2) The uses or uses applicable, ownership, management, method of preservation and the rights, if any
421 of the owners of the subdivision to such land or portions thereof;

422 (3) ~~(2) A part or all of the open space may be.~~ Any open space that will be deeded to a land
423 conservation entity, dedicated for acceptance by the Town or protected by a conservation easement
424 held by a land conservation entity;

425 (4) The type of open space: reserved, common or public; and

426 (5) The book and page of any conservation easements or deed restrictions required to be recorded to
427 implement such protections or restrictions.

428 H. The Planning Board may require that a separate open space plan with full details and notations per
429 subsection E. above be submitted for either preliminary or final plan approval.

430 I. ~~C~~ If any, or all, of the open space is to be reserved for ownership by the residents will be owned in
431 common by the residents of the conservation subdivision and/or by commercial entities, the bylaws of
432 the proposed homeowners' or similar governing association for commercial owners and/or the recorded
433 covenants, conditions and restrictions must specify maintenance responsibilities and tasks and be
434 submitted to the Planning Board for review prior to final plan approval. See Subsection AF above.
435 **[Amended 11-26-2018 by Ord. No. 10-18]**

436 **§16.8.10.H.9 Affordable Housing**

437 A. In instances where affordable housing as defined by Title 16 is required, and the affordable housing will
438 be built, either on-site or off-site per §16.12, the Planning Board may allow:

439 (1) In the R-C, R-RL and KP-V Zones, one additional market-rate lot for a single-family dwelling to
440 be created in the conservation subdivision, provided all objectives, requirements and criteria in
441 §16.8.10.H except for the base zone residential density requirements are met to the Board's
442 satisfaction.

443 (2) In the R-S and R-U Zones, one additional market-rate lot for a single-family dwelling to be
444 created in the conservation subdivision, provided all objectives, requirements and criteria in
445 §16.8.10.H are met to the Board’s satisfaction and as follows:

- 446 i. Base zone residential density requirements will be necessarily modified to allow an
447 additional dwelling unit.
- 448 ii. Open space requirements may also be modified by the Board when doing so will result in
449 development that meets the intent of §16.8.10.H while supplying modestly priced housing
450 in a designated growth area per the Comprehensive Plan.
- 451 iii. To qualify for this allowance, the affordable housing, if not located on the conservation
452 subdivision site itself, must be located in one of these zones: R-S, R-U, B-L, or B-L1.

453 §16.8.10.H.10 ~~16.8.11.7.D~~ **Homeowners Association responsibilities.**

454 A. ~~(1) Maintenance.~~ The homeowners association (HOA) or similar association for commercial owners is
455 responsible for the maintenance of open space(s) owned in common by the residents and other
456 common facilities such as streets, stormwater management systems, and shared septic and water
457 systems. unless and until accepted by the Town. Associations must maintain adequate funds to defray
458 these expenses. The Planning Board shall require an initial capital fund for associations to be paid by
459 the developer to cover these expenses.

460 B. Any additional plantings required by the Planning Board must be documented and provisions made in
461 the HOA’s documents to ensure that the plantings are maintained and replaced when necessary.

462 C. The Planning Board may require that a qualified independent party or steward be designated and
463 contracted to oversee homeowner association-owned open space in instances where natural resources
464 or historical, archeological or cultural features must be expertly observed and monitored. Such an
465 arrangement must be approved by the Board and will be funded by the HOA.

466 D. ~~(2) Stormwater.~~ The stormwater management system must be maintained in accordance with §16.8.8.2,
467 Post-construction stormwater management. As stated in A. above, an initial capital fund will be
468 provided by the developer to cover expenses but the association HOA will be responsible for
469 maintaining adequate funding going forward.

470 (2) Inspection. Annually, by June 30, the developer or association must complete and submit to the
471 Code Enforcement Officer a maintenance compliance report, on a form prepared by the Code
472 Enforcement Officer, certifying compliance with any open space use and protection requirements.
473 Said report must be completed by a Maine-licensed civil engineer or certified soil scientist.

474

475 E. Transition of responsibility. The developer ~~must maintain control of such open space(s) and be is~~
476 responsible for maintenance of all open space and all facilities until development, sufficient to support
477 ~~any and all associations, the HOA residential or commercial,~~ has taken place. At minimum, 75% of the
478 residences must be built and sold before any transfer of responsibility may occur. Responsibility and
479 authority must be clearly defined and described in the recorded covenants, and such information All
480 HOA documentation must be distributed to ~~any and all the HOA associations in a timely manner~~ prior to
481 the issuance of the final occupancy permit so the transition of responsibilities is seamless.

482 **§16.8.10.H.11** ~~§16.8.11.8~~ **Predevelopment requirements.**
483

484 A. Prior to the beginning of any site work, including tree cutting or disturbing any soil, the applicant must
485 schedule a pre-construction meeting with the Town and file with the Town Planning Department all
486 required performance guarantees and inspection escrows in forms acceptable to the Town Manager in
487 accordance with **§16.8.9.D.(3).c.**