

DRAFT 16.8.10.H 16.10

Cluster Residential Development

Conservation Subdivision

§16.10.1 16.8.10.H.(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 (e). Maintenance of rural character, preserving farmland, meadows, forests, and wildlife habitat as well as scenic views 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 as Low Impact Development (LID) combined with Best Management Practices (BMP) for optimal stormwater runoff management.

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- 33 F. Expansion of outdoor recreation opportunities wherever possible.
- 34 G. ~~(h)~~ Preservation of historic, archaeological, and cultural features, such as but not limited to, historic
35 structures, stone walls, cellar holes, earthworks, middens or graves.
- 36 H. ~~(i)~~ 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 and response to 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 preservation of woodlands for wildlife, cooling effects and for their role in
43 carbon capture.
- 44 c. Energy efficiency and reduced greenhouse gas emissions in both site design and building
45 design.
- 46 J. Conservation of the Town’s natural resource and neighborhood diversity.

47 ~~§16.10.2 (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. Subdivisions that are not conservation subdivisions,
52 referred to herein as conventional subdivisions, are a special exception use.

53 ~~§16.10.3 (3) Dimensional~~ standards modifications.

54

- 55 A. ~~Notwithstanding other provisions of this title relating to dimensional standards, ¶The Planning Board, in~~
56 reviewing and approving proposed residential or mixed-use development under this article ordinance,
57 may modify certain the following dimensional standards limited to permit flexibility in approaches to
58 site design in accordance with the standards of this title ordinance: lot area, lot coverage impervious
59 surface, street frontage and front/rear/side setbacks. The Board may allow subdivision or site
60 development with modified dimensional standards where the Board determines the benefit of a
61 conservation subdivision is consistent with this title. The Board may allow such dimensional
62 modifications when the Board finds a determination of benefit consistent with this ordinance. Such
63 modifications may not be construed as granting variances to relieve hardship.
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65 B. The Board may also modify density standards when certain affordable housing provisions are met. See
66 16.10.9.

67 ~~(4) **Property ownership.**~~

68 ~~Tracts or parcels of land involved in a development proposed under this article must be in single ownership;~~
69 ~~or must be the subject of an application filed jointly by the owners of all properties included; or must have an~~
70 ~~applicant with vested interest in all property included. Pursuant to the requirements of this article, mobile~~
71 ~~home parks or mobile homes on individual lots are not eligible for conservation subdivisions.~~

72 **§16.10.4 (5) Application procedure.**

73

74 All development reviewed under this article is subject to the application procedures in Chapter 16.8,
75 ~~Development Plan Application and Review Subdivision~~, and the following:

76 A. In addition to the requirements of Chapter 16.8, the following items are required ~~at~~ with
77 submission~~mittal~~ of the sketch plan:

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

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

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

86 (c) ~~(b)~~ All land area identified in 16.5.18, Net Residential Acreage, noted with total land areas for
87 each applicable category.

88 (d) ~~(e)~~ Net residential density calculations demonstrating how many dwelling units are allowable
89 based on the net residential acreage arrived at above and how many dwelling units are proposed.
90 The number of dwelling units proposed must be the same for both the conventional subdivision
91 and the conservation subdivision unless the conservation subdivision proposes to build or create
92 affordable housing as described in §16.10.9. In the uncommon circumstance where the number
93 of proposed dwelling units differs between a conventional subdivision plan and a conservation
94 subdivision plan without the affordable housing incentive involved, the smaller number of units
95 prevails, no matter which type of subdivision is pursued. and

96 (e) ~~(d)~~ Open space as defined described in §16.10.7 16.8.10.H(6)(e) of this article ordinance, labeled
97 appropriately.

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

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131 the subdivision as reserved open space and must be approved by the Planning Board.

132 D. The Planning Board may, at the applicant's expense, seek expert and professional opinions concerning
133 any aspect of the proposed development including but not limited to, engineering, site evaluation/septic
134 design, landscaping, natural resources, historic resources, traffic, wetlands, soil, stormwater and water
135 quality.

136 **§16.10.5** ~~(6)~~ **General standards.**

137 A. The purpose and intent objectives of this title as stated above in §16.10.1 must be upheld for any all
138 subdivision reviews conducted under this article ordinance. In all cases, the subdivision must be
139 designed for the open space first, with the remaining area designated and designed for development. The
140 Planning Board has final authority over the site design and type of subdivision (conservation or
141 conventional) permitted.

142 B. A ~~cluster mixed use and cluster residential development~~ conservation subdivision must meet all
143 requirements for a subdivision (~~and site plan where applicable~~) and all other applicable federal, state and
144 local ordinances, except as modified by §16.10 and/or action of the Planning Board, where authorized.

145 C. Public or privately shared sewer and water must be provided unless it is demonstrated to the Planning
146 Board's satisfaction that alternative methods ~~used~~ proposed will result in a development that is
147 compatible with the purpose and objectives of §16.10 and meets all other state and municipal
148 requirements. ~~this Article XI.~~ Criteria for the Board to consider include:

149 (1) Adequate ground water is available at all locations proposed for any individual water systems.

150 (2) The ground water source(s) proposed for any individual water systems is safe from both on-site and
151 off-site contamination.

152 (3) Any proposed individual septic systems must in no way endanger ground water supplies which are
153 currently being utilized as a water source for any existing development.

154 (4) Any proposed individual septic systems must in no way endanger ground water supplies which will
155 be utilized by any proposed common or individual water system in the conservation subdivision
156 development.

157 (5) The costs of providing a common water supply and distribution system and/or a central collection
158 and wastewater treatment system are prohibitive due to characteristics unique to the property. This
159 criteria by itself is not sufficient, but may inform the Board when making decisions.

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160 D. Open space designated and set aside in a conservation subdivision will be permanently preserved as
161 required by this performance standard. Land that is designated as reserved or common open space as
162 defined by Title 16 must be separate tax parcels and not included as a part of any residential lot. Public
163 open space must be approved and accepted by Town Council per subsection §16.10.4.B. In all cases, the
164 Planning Board must approve the configuration of the open space.

165 E. ~~D.~~ Unless a public or shared sewer collection and treatment system is provided, no lot may be smaller
166 than 20,000 square feet per single-family residence. ~~and 8,000 square feet per bedroom per multifamily~~
167 residence as outlined in the Maine Minimum Lot Size Law, 12 M.R.S. §4807-A.

168 E—Open space requirements.

169 (1) ~~Open space must contain at least 50% of the total area of the property and no less than 30% of the~~
170 total net residential acreage, as defined.

171 (2) ~~Total calculated open space must be designated as follows (see open space definitions in Chapter~~
172 16.2):

173 (a) ~~Open space, reserved;~~

174 (b) ~~Open space, common; and/or~~

175 (c) ~~Open space, public.~~

176 (3) ~~The use of any open space may be further limited or controlled by the Planning Board at the time~~
177 of final approval, where necessary, to protect adjacent properties or uses.

178 (4) ~~Open space must be deeded in perpetuity for the recreational amenity and environmental~~
179 enhancement of the development and be recorded as such. Such deed provisions may include
180 deed/plan restrictions, private covenants, or arrangements to preserve the integrity of open
181 spaces and their use as approved by the Planning Board.

182 (5) ~~Open space must also be for preserving large trees, tree groves, woods, ponds, streams, glens,~~
183 rock outcrops, native plant life, and wildlife cover as identified in the applicant's written
184 statement. In the Mixed Use Neighborhood Zone, open space may be both man-made and
185 natural. Man-made open space must be for the development of recreational areas, pedestrian
186 ways and aesthetics that serve to interconnect and unify the built and natural environments.
187 **[Amended 11-26-2018 by Ord. No. 10-18]**

188 (6) ~~Open space should be in a contiguous form of unfragmented land to protect natural resources,~~

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- 189 including plant and wildlife habitats.
- 190 (7) ~~A portion of the open space should be in close proximity to other open spaces used for recreation~~
- 191 ~~(e.g., a common green, multipurpose athletic field, gardens, and playgrounds).~~
- 192 (f). ~~In the Mixed Use Neighborhood (MU-N) Zone, the maximum building height is 40 feet. If the Planning~~
- 193 ~~Board finds that provisions for fire safety are adequate to allow buildings of greater height, then the~~
- 194 ~~Board may allow a building height of up to 60 feet as a part of the development plan review and~~
- 195 ~~approval process~~
- 196 F. ~~G. In cluster residential developments~~ No individual lot or dwelling unit may have direct vehicular access
- 197 onto a public road existing at the time of development. This requirement may be modified at the
- 198 Planning Board’s discretion in cases where existing structures included in the proposed subdivision have
- 199 access from a public road, and the overall site design is improved for allowing such access to remain.
- 200 G. In cases where proposed development includes shoreland, the entire area that falls within the Shoreland
- 201 Overlay Zone, the Resource Protection Overlay Zone or the Stream Protection Overlay Zone must be
- 202 protected as open space. All areas designated as floodplain and the 250-foot radius around a state-
- 203 designated significant vernal pool must similarly be protected as open space. Where an area falls within
- 204 two or more such zone designations, the zone with the largest total area will apply. Such open space
- 205 may not be part of any private house lot.
- 206 H. ~~Where cluster residential development~~ a conservation subdivision abuts a body of water, stream, or a
- 207 significant wetland as defined by the State of Maine, then a usable portion of the shoreline, as well as
- 208 reasonable and appropriate access to such waterbody, stream or wetland, as determined by the Planning
- 209 Board, must be a part of the commonly held land open space. Shoreland frontage must not be less than
- 210 100 feet. Deeded access to the shoreland frontage must be conveyed to each lot owner in the
- 211 conservation subdivision.
- 212 I. Wetlands, as defined by federal, state, and/or Town of Kittery regulations or ordinances, must be
- 213 included in the open space with a designated “no cut, no disturbance” setback per §16.10.6.E. While
- 214 wetland alterations are generally discouraged, there may be circumstances under which an alteration
- 215 could be considered. Wetlands under consideration for alteration as part of a conservation subdivision
- 216 are not eligible for a Wetland Alteration Permit unless all requirements for a Wetland Alteration Permit
- 217 are met as well as the following conditions:
- 218 (1) The wetland has been assessed/evaluated using techniques such as those used or developed by The
- 219 New England Biological Assessment of Wetlands Workgroup, including the *Method for*
- 220 *Inventorizing and Evaluating Freshwater Wetlands in New Hampshire, 2016* and as amended from
- 221 time to time. Such assessment must be done by a Certified Professional Wetland Scientist or a
- 222 Maine-certified Wetland Scientist and submitted to the Board.

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- 223 (2) The wetland alteration proposed must be less than 4,300 square feet in size and must constitute a
224 single complete project.
- 225 (3) The wetland must not:
- 226 i. Be deemed a significant wetland by the State of Maine
- 227 ii. Be within the Shoreland, Stream Protection or Resource Protection Zones
- 228 iii. Contain 10,000 sf or greater of open water or emergent vegetation.
- 229 (4) An analysis of the proposed development-related impact to the wetland must be done and submitted
230 by a professional qualified as in (1) above.
- 231 (5) The Board may, at its discretion, request a more detailed site study (intensive site assessment) of the
232 wetland in question to be done by professionals as qualified in (1) above at the expense of the
233 applicant.

234 Wetland alterations that exceed 4,300 sf are not permitted within a conservation subdivision. If greater
235 wetland alterations are proposed, the applicant must request a special exception conventional
236 subdivision permit from the Planning Board and meet all the requirements of Chapter 16.8. It is
237 incumbent on the applicant to demonstrate the need to exceed the 4,300 sf. All requirements in
238 subsections I.(1), I.(3)-I.(5) apply. The Planning Board has final authority over whether or not to grant
239 such a request and may require additional open space, conservation easements, or buffers when granting
240 such a concession.

241 I. ~~i.[2] Utility installation.~~ All utilities are to must be installed underground, wherever possible.
242 Underground utilities and related easements may be located in designated common open space but must
243 be shown on the plans, including the as-built plan. The Planning Board may allow aboveground
244 electrical/utility service installation but it is incumbent on the developer to demonstrate to the Planning
245 Board's satisfaction that underground installation of utilities is not technically possible. ~~W~~When
246 determining whether or not to permit aboveground utilities, the Board will use the following criteria:

- 247 (1) The proximity and visibility of such a proposed utility line(s) to the surrounding neighborhood and
248 public streets.
- 249 (2) The impact that aboveground utilities will have on natural resources, any public recreation areas,
250 scenic views and conserved land.
- 251 (3) The ramifications of aboveground utilities on the overall design and functionality of the conservation

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252 subdivision and how well the developer has addressed these ramifications.

253 When permitting such aboveground electrical service installations ~~The Planning Board~~ must require the
254 developer to adopt a prudent avoidance approach in regard to pole and line placements as a condition of
255 approval and include their placement within the site on the final plan. ~~when permitting aboveground~~
256 ~~electrical service installations.~~ Transformer boxes, pumping stations and meters must be located so as
257 not to be unsightly or hazardous to the public.

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

265 §16.10.6 Design standards.

266 A. ~~(i) The developer must take into consideration the site's natural features and physical location into~~
267 ~~consideration as follows: the following points, and illustrate the treatment of buildings, structures,~~
268 ~~spaces, utilities, paths, roads, service and parking areas, recreational facilities, and any other features~~
269 ~~determined by the Planning Board to be a part of the proposed development.~~

270 (1) ~~Orientation. All elements of the site including the individual buildings, view corridors and other~~
271 ~~improvements are to~~ must be designed so scenic vistas, including views from scenic roads, and
272 natural, historic and cultural features are integrated into the development preserved and protected
273 while being integrated into the development.

274 (2) ~~(4) Buildings should~~ must be sited to consider ~~natural~~ sunlight, shade, topography, natural drainage,
275 prevailing winds and ventilation.

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

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

280 (5) Existing natural vegetation, including trees, unless diseased or dying, must remain to control soil
281 erosion, provide shade and wildlife habitat and assist in stormwater infiltration to ensure the least
282 amount of disturbance during construction. Existing large healthy trees located near new rights of

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- 283 ways, driveways or building sites, whose removal is not necessary for construction, must be
284 protected from damage during construction. Such trees must be noted on the plans and plan notes
285 must include protection details.
- 286 B. ~~(3) Recreation.~~ Facilities must be provided consistent with the development proposal. Active
287 recreational facilities such as playgrounds or tennis courts requiring permanent equipment affixed to the
288 ground and/or modification of the site may not be located within the wetland or shoreland setback areas
289 or within ~~contiguous~~ reserved open space areas.
- 290 C. Where a park or a playground with permanent affixed equipment, either recreational or artistic in nature
291 is proposed as common open space, the park or playground must be designed by a landscape architect
292 or a professional specializing in playgrounds. The plans for the playground or park must be submitted
293 as part of the preliminary plan or if the conservation subdivision is less than five lots, part of the final
294 plan. Any impervious surface created as part of the park or playground must be included in the
295 stormwater management report to ensure the design of adequate stormwater management systems.
- 296 D. ~~(4) Buffering.~~ Plantings, landscaping, naturally existing vegetation, and the forms and siting of
297 buildings and other improvements, or fencing and screening must be used to integrate the proposed
298 development with the surrounding landscape and ~~the character of any surrounding neighboring~~
299 development.
- 300 E ~~(5) Development setbacks.~~ Setbacks from wetlands, streams and waterbodies must comply with
301 §16.5.30 and §16.10.5.G. demonstrate compliance to Table 16.10 of Chapter 16.10. These setbacks must
302 be permanently maintained as "no cut, no disturb" buffer areas except where common access by the
303 conservation subdivision residents is required per §16.10.5.H. These buffer areas must be identified as
304 such on all subdivision plans, including the as-built plan. The Planning Board may require signs
305 denoting the boundaries of these buffer areas be placed prior to the issuance of any certificate of
306 occupancy to ensure that encroachment does not occur. If the setback areas are not of do not contain
307 substantial vegetation, as determined by the Planning Board, to provide a sufficient and environmentally
308 appropriate buffer and ecological benefit, the Planning Board may require additional native or
309 Northeastern native climate tolerant plantings. If plantings are required, any plantings that do not survive
310 must be replaced. This plantings requirement does not expire and runs with the land.
- 311 F A vegetated buffer is required in zones R-C and R-RL along the front lot line (except for access to the
312 development) of the proposed development where designated open space or “no-cut, no disturb buffers”
313 as described in subsection E. above, do not exist. The frontage buffer must be at least 40 feet wide and
314 will serve to screen the development from the street, perform carbon capture and aid in stormwater
315 absorption. This buffer may not be built on, paved, mowed or used for parking or storage nor can it be
316 part of any residential lot. No trees may be cut within the buffer unless they are dead, diseased or dying,
317 are identified as an invasive species or are less than a two-inch caliper. Any invasive plant species, as

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318 identified by the State of Maine, that are found in the buffer must be removed. Vegetation will be
319 maintained in its natural state (excluding invasive species) unless the Planning Board deems the buffer
320 insufficiently vegetated to serve its purpose, in which case, the Board may also require additional native
321 or Northeastern native climate tolerant plantings. If plantings are required, any plantings that do not
322 survive must be replaced. This plantings requirement does not expire and runs with the land.

323 (1) The buffer may be increased to a maximum of 50 feet, if in the Board’s judgement, the
324 preservation of natural features or the design of the site as proposed, including how it blends with
325 the surrounding environment, would be improved by wider buffers.

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

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

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

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

342 **§16.10.7 6.(e) Open space requirements**

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

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

347 (2) In the R-RL Zone, the designated open space must be a minimum of 60% of the total land
348 area, with a minimum of 40% of that consisting of net residential acreage as defined by this
349 Title.

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- 350 (3) In the KP-V Zone, the designated open space must be a minimum of 50% of the total land
351 area, with a minimum of 30% of that consisting of net residential acreage as defined by this
352 Title.
- 353 (4) In the R-S and R-U Zones:
- 354 i. For properties of ten (10) acres or more, the designated open space must be at least
355 50% of the total land area, with a minimum of 30% of that consisting of net residential
356 acreage as defined by this Title.
- 357 ii. For properties of less than ten acres with public sewer or common private septic, the
358 designated open space must be at least 25% of the total land area with a minimum of
359 5% of that consisting of net residential acreage.
- 360 iii. For properties of less than ten acres with private septic, the designated open space must
361 be at least 25% of the total land area with no minimum net residential acreage
362 requirement.
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- 364 B. Wetlands of all types, water bodies, floodplains, and streams located on the site must be protected as
365 reserved open space, except as otherwise allowed in §16.10.5.
- 366 C. Natural resources such as wildlife habitat or areas of ecological importance must be included in the
367 designated open space.
- 368 D. The required designated open space must include any notable natural features found on the site, such as
369 but not limited to, stands of mature trees, meadows, hillsides, ledge/outcroppings, and former or existing
370 farmland.
- 371 E. All historic, cultural or archeological resources must be included in the designated open space.
- 372 F. Open space areas within a site must ~~should~~ be contiguous blocks, to the greatest extent possible, and link
373 to open space on abutting land where it exists to protect natural resources, including plant and wildlife
374 habitats. It is incumbent on the applicant to demonstrate to the Planning Board’s satisfaction that non-
375 contiguous open space still meets the criteria and intent of this ordinance.
- 376 (1) Narrow strips of open space located around the perimeters of the site will not necessarily meet
377 this standard but such narrow strips may exist for purposes of buffering the development from
378 the street as required in §16.10.6.F.
- 379 (2) Narrow strips of open space which serve purposes other than those required by §16.10.6.F
380 such as a buffer to neighboring properties or to provide public access connectors to public
381 open space, public trails or links to neighborhoods, all of which must be approved by the
382 Board, may be counted towards the total open space requirements.
- 383 G. Open space may not consist entirely of mowed grass areas unless such a space is designated as a park,
384 either public or private. If a park is proposed or included in the development, seating areas and shade
385 trees, at minimum, must also be included in the park. See §16.10.6 for design details.
- 386 H. All three types of open space, public, common and reserved as defined by Title 16, may be used for a
387 proposed development to meet the open space area requirements of the applicable zone. For example, a
388 conservation subdivision may propose common open space for a community garden with mowed areas
389 around the garden for community gatherings while designating the woodlands beyond as reserved open
390 space with both areas combining to meet the necessary open space requirements. The Planning Board
391 must approve the designations and may require changes in the designations and/or the uses based on the
392 standards of this ordinance.

393 **§16.10.8 16.8.10.H.7 Open space and facilities dedication and maintenance.**
394

- 395 A. This conservation subdivision ordinance will supersede any inconsistent or more restrictive provisions of
396 Title 16 where relevant and applied to a conservation subdivision development being considered by the
397 Board.

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- 398 B. Open space designated and set aside in a conservation subdivision will be permanently protected from
399 development as required by this ordinance. Such perpetual protection includes but is not limited to
400 conservation easements and declarations of covenants, conditions, and restrictions.
- 401 C. A conservation easement may be granted to or the declarations may be for the benefit of a qualified not-
402 for-profit conservation organization such as a land trust acceptable to the Planning Board or to the Town
403 of Kittery with the approval of Town Council.
- 404 D. The Planning Board may require that any conservation easement or declaration of covenants, conditions
405 and restrictions be enforceable by a third party as specified and/or approved by the Board.
- 406 E. On all parcels, open space uses must be appropriate to the site as follows:
- 407 (1) Parcels that include three acres or more of land suitable for agriculture by reason of former or
408 existing agricultural use or agriculturally valuable soil must be conserved for agriculture or other
409 compatible open space uses such as wildlife habitat, resource conservation and/or passive
410 recreation. A conservation easement to be held by a land conservation entity is strongly
411 encouraged.
- 412 (2) If any portion of the designated open space will be devoted to an agricultural land use, the
413 developer must submit a management plan to the Planning Board for review and approval
414 demonstrating how the use will be fostered into the future. Examples of such plans include a farm
415 management plan or a community garden plan. If the open space will be leased to another party, a
416 long-term lease (three years or more) must be included with the management plan.
- 417 (3) When the principal purpose for conserving certain portions of the open space is protection and
418 preservation of natural resources such as but not limited to, wetlands, stream corridors, waterbody
419 shores, wildlife habitat, woodlands, meadows and hillsides, those open spaces must be designated
420 as reserved open space with no use allowed beyond passive recreation.
- 421 (4) For the purposes of this conservation subdivision ordinance, forestry means the practice of
422 planting, managing, and caring for forests. Any portion of the open space designated for forestry
423 must be covered by a plan done by a licensed Maine Forester that manages for the health of the
424 forest and, if appropriate, passive recreation. Timber harvesting as a main objective is not
425 allowed, although trees removed for health and/or safety reasons according to the management
426 plan may be sold per state and local regulations.
- 427 (5) The use of any proposed open space may be limited by the Planning Board prior to final plan
428 approval when the Board finds that it is necessary to protect sensitive natural features or resources
429 or to protect adjacent properties or uses.

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- 430 (6) No further subdivision of open space is allowed and the deed restrictions must clearly state this.
431 Such deed restrictions must be reviewed by the Town’s legal counsel prior to final plan approval.
432 See subsection F. below Any use of open space other than that designated at the time of Planning
433 Board final approval for agriculture, forestry, recreation and/or conservation, is prohibited except
434 for underground utility easements (see §16.10.5.I) which, if necessary, may be reviewed and
435 approved by the Board as a major modification after final plan approval. Any modification of a
436 previously approved use for open space must be reviewed and approved by the Planning Board as
437 a major modification.
- 438 (7) Proposed structures or buildings accessory to agriculture, recreation or conservation uses of open
439 space are allowed subject to Planning Board approval through the major site plan review process
440 pursuant to this ordinance and §16.7. Such a process may run concurrently with the conservation
441 subdivision approval process.
- 442 (8) In cases where historic or culturally important sites are included in the open space, the Planning
443 Board may require that extra protections be put into place, such as a fence around a graveyard or a
444 stone wall around an early homestead site. The Board may also require that markers or signs be
445 erected at the developer’s expense, describing the site’s significance.
- 446 (9) Adapting an historic or culturally important structure within a proposed conservation subdivision
447 for use either residentially or as an accessory structure is encouraged. For the purposes of this
448 ordinance, a historic structure means any structure that is significant in the history, architecture or
449 landscape of Kittery and is at least 50 years old. If the proposed open space in the subdivision
450 includes a historic or culturally important structure or building, the following options exist:
- 451 i. Repurposing of such a building is allowed if all other state and local regulations are met,
452 for example, a historic barn could be used as a clubhouse or for storage of small
453 recreational vehicles and watercraft. The building must be repaired and maintained by the
454 homeowner’s association with the necessary funding put in place for continued upkeep.
455 The proposed use must be reviewed and approved by the Planning Board through the
456 major site plan review process pursuant to this ordinance and Chapter 16.7. The site plan
457 review may be done concurrently with the subdivision review.
- 458 ii. The building’s deed can be transferred to an entity, such as a historical society, that can
459 preserve and maintain it. Such a transfer must be approved by the Board.
- 460 iii. In cases where the building will not be repurposed and an entity cannot be found to accept
461 the deed for the building, the Board may allow the building to be dismantled and given or
462 sold to a willing party, moved to another location off the site by a willing party or
463 demolished. If the building will be dismantled, moved or demolished, the developer must

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464 document the building. Such documentation must include dimensions and photographs,
465 inside and out, on its original site prior to any further action taken to remove the building.
466 The Board may require the developer to hire a historian at the developer’s expense to
467 create the documentation. A copy of the completed documentation must be given to the
468 Kittery Historical and Naval Museum and a copy must be filed with the Town Planning
469 Department prior to the issuance of the first building permit and will be a condition of
470 approval.

471 F. a- Prior to approval of the final plan by the Planning Board, documentsation, including plans, homeowner
472 association documents such as the covenants, conditions and restrictions as well as bylaws, deed
473 restrictions, conservation easements and any other legal instruments for open space concerned with the
474 subdivision and its open space must be submitted to the Town for review by legal counsel at the
475 applicant’s expense. Once reviewed by legal counsel and any corrections required are made, the
476 documents must be submitted to the Board as part of the final plan submission. Subsequent to approval,
477 there may be no further division of the open space; however, tracts or easements dedicated for public
478 utilities, public access or structures accessory to noncommercial recreation, agriculture or conservation
479 may be permitted within the open space.

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

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

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

486 (3) ~~(2)~~ A part or all of the open space may be. Any open space that will be deeded to a land
487 conservation entity, dedicated for acceptance by the Town or protected by a conservation easement
488 held by a land conservation entity;

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

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

492 H. The Planning Board may require that a separate open space plan with full details and notations per
493 subsection E. above be submitted for preliminary or final plan approval or both. Planning staff may also
494 require such a plan to be included as part of the as-built plan.

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- 495 I. e If any, or all, of the open space ~~is to be reserved for ownership by the residents~~ will be owned in
496 common by the residents of the conservation subdivision and/or by commercial entities, the bylaws of
497 the proposed homeowners' ~~or similar governing association for commercial owners~~ and/or the recorded
498 covenants, conditions and restrictions must specify maintenance responsibilities and tasks and be
499 submitted to the Planning Board for review prior to final plan approval. See Subsection AF above.
- 500

501 **§16.10.9 Affordable Housing**

502 A. In instances where affordable housing as defined by Title 16 is required, and the affordable housing will
503 be built, either on-site or off-site per §16.5.4, the Planning Board may allow:

504 (1) In the R-C, R-RL and KP-V Zones, one additional lot for a market-rate single-family dwelling to
505 be created in the conservation subdivision, provided all objectives, requirements and criteria in
506 §16.10 except for the base zone residential density requirements are met to the Board’s
507 satisfaction.

508 (2) In the R-S and R-U Zones, one additional lot for a market-rate single-family dwelling to be
509 created in the conservation subdivision, provided all objectives, requirements and criteria in
510 §16.10 are met to the Board’s satisfaction and as follows:

511 i. Base zone residential density requirements will be necessarily modified to allow an
512 additional dwelling unit.

513 ii. Open space requirements may also be modified by the Board when doing so will result in
514 development that meets the intent of §16.10 while supplying modestly priced housing in a
515 designated growth area per the Comprehensive Plan.

516 iii. To qualify for this allowance, the affordable housing, if not located on the conservation
517 subdivision site itself, must be located in one of these zones: R-S, R-U, B-L, or B-L1.

518 **§16.10.10 16.8.10.H(7)(d) Homeowners Association responsibilities.**

519 A. ~~[H] Maintenance.~~ The homeowners’ association (HOA) or similar association for commercial owners
520 is responsible for the maintenance of open space(s) owned in common by the residents and other
521 common facilities such as streets, stormwater management systems, and shared septic and water
522 systems, unless and until accepted by the Town. The stormwater management system must be
523 maintained in accordance with §16.8.10.F, Post construction stormwater management. Associations
524 must maintain adequate funds to defray these expenses. The Planning Board shall require an initial
525 capital fund for associations to be paid by the developer to cover these expenses.

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

528 C. The Planning Board may require that a qualified independent party or steward be designated and
529 contracted to oversee homeowner association-owned open space in instances where natural resources
530 or historical, archeological or cultural features must be expertly observed and monitored. Such an

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531 arrangement must be approved by the Board and will be funded by the HOA in perpetuity or until a
532 conservation or historic preservation entity holds a conservation or historic preservation easement for
533 the open space or obtains the open space in fee. Any such transfer of responsibility from the HOA to
534 another entity must be reviewed and approved by the Board as a major modification.

535 D. ~~(2)~~ Stormwater. The stormwater management system must be maintained in accordance with
536 §16.8.10.F, Post-construction stormwater management. As stated in A. above, an initial capital fund will
537 be provided by the developer to cover expenses but the ~~association~~ HOA will be responsible for
538 maintaining adequate funding going forward.

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

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

550 **§16.10.11** ~~§16.8.10(H)(8)~~ **Predevelopment requirements.**

551

552 Prior to the beginning of any site work, including tree cutting or disturbing any soil, the applicant must:

553 (1) Clearly define the limits of clearing and obtain sign-off from Code Enforcement per approved
554 plan; and

555 (2) Schedule a pre-construction meeting with the Town and file with the Town Planning
556 Department all required performance guarantees and inspection escrows in forms acceptable
557 to the Town Manager in accordance with §16.8.11.F.

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1 **Miscellaneous amendments related to the proposed Conservation Subdivision**

2 **Under 16.3 Definitions**

3

4 ~~CLUSTER RESIDENTIAL DEVELOPMENT CONSERVATION SUBDIVISION~~

5 ~~A form of land use improvements and/or change in which the dimensional requirements are~~
6 ~~reduced below that what is normally required in the zoning district in which the land use~~
7 ~~improvements and/or change is located in return for the provision to set aside a portion of the~~
8 ~~tract as of permanent open space and other environmental enhancements owned and maintained~~
9 ~~jointly in common by individual lot/unit owners, the Town, or a land conservation organization.~~

10 A type of land use which in its simplest form allows a reduction of the pertinent zoning district's
11 dimensional requirements such as lot size, frontage and setbacks, on a property to be subdivided
12 while permanently protecting open space on the property based on certain criteria and objectives.

13

14 **OPEN SPACE**

15 Includes all dedicated portions of a parcel that has vegetated surfaces or is in an undisturbed
16 natural state. "Open space" does not include areas occupied by a building or a parking area,
17 except where required by the management plan in place to govern the open space and as
18 approved by the Planning Board. Vegetated surfaces of outdoor commercial uses may be used to
19 satisfy up to 50% of the required open space on any parcel, except those parcels within a
20 conservation subdivision. ~~cluster residential or cluster mixed-use development.~~

21 [Added 9-24-2012 by Ord. No. 12-10]

22 **OPEN SPACE, RESERVED**

23 Dedicated land that is permanently protected from further development and remains in a natural
24 condition or is managed according to an approved management plan for natural resource
25 functions, e.g., forestry, agriculture, habitat protection, passive recreation, or limited uses as
26 approved by the Planning Board as part of a conservation subdivision. ~~cluster residential and~~
27 ~~cluster mixed-use developments.~~

28 [Added 9-24-2012 by Ord. No. 12-10]

29

30

31 **Under 16.4 Land Use Zones Regulations**

32

33 **§16.4.10 Residential – Rural R-RL.**

34 B. Permitted uses. The following uses are permitted in the R-RL Zone:

35 (2) Conservation Subdivision ~~Cluster residential development.~~

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37 D. Standards.

38 The following standards must be met unless modified per §16.10, Section 16.8.10.H(3),
39 Conservation Subdivision Cluster Residential Development:

40 (3) Subdivision types and standards

41 Subject to net residential acreage and net residential density per §16.3.

42 (a) ~~Cluster residential development~~. In a conservation subdivision ~~cluster~~
43 ~~residential development~~, the above standards may be modified in accordance
44 with special provisions of ~~§16.8.10.H(3)~~ §16.10, including that there is no
45 minimum lot size, and with the conditions that: ...

46 (6) Affordable housing requirements:

47 (a) All requirements in §16.5.4 Affordable Housing must be met.

48
49 (b) Density incentives detailed in §16.10 may be applied to projects that create
50 affordable housing units, as defined by this code. No proportional payment-
51 in-lieu is required if the affordable dwelling unit requirements for the
52 density incentives are met.

53

54 §16.4.11 Residential – Suburban R-S.

55 B. Permitted uses. The following uses are permitted in the R-S Zone:

56 (2) Conservation subdivision ~~Cluster residential development~~.

57 D. Standards.

58 The following standards must be met unless modified per §16.10, Conservation Subdivision
59 ~~Cluster Residential Development~~

60 (3) Subdivision types and standards

61 Subject to net residential acreage and net residential density per §16.3.

62 (a) ~~Cluster residential development~~. In a conservation subdivision ~~cluster~~
63 ~~residential development~~, the above standards may be modified in accordance
64 with special provisions of §16.10 ~~§16.8.10.H(3)~~, including that there is no
65 minimum lot size, and with the conditions that:...

66 (5) Affordable housing requirements:

67 (a) All requirements in §16.5.4 Affordable Housing must be met.

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- (b) Density incentives detailed in §16.10 may be applied to projects that create affordable housing units, as defined by this code. No proportional payment-in-lieu is required if the affordable dwelling unit requirements for the density incentives are met.

§16.4.12 Residential - Kittery Point Village R-KPV.

B. Permitted uses. The following uses are permitted in the R-KPV Zone:

- (2) Conservation subdivision ~~Cluster residential development.~~

D. Standards.

The following standards must be met unless modified per §16.10 ~~16.8.10.H(3)~~, Conservation Subdivision ~~Cluster Residential and Cluster Mixed Use Development:~~

- (3) Subdivision types and standards

Subject to net residential acreage and net residential density per §16.3.

- (a) ~~Cluster residential development.~~ In a conservation subdivision ~~cluster residential development~~, the above standards may be modified in accordance with special provisions of §~~16.8.10.H(3)~~ of §16.10, including that there is no minimum lot size, and with the conditions that:...

- (4) Affordable housing requirements:

- (a) All requirements in §16.5.4 Affordable Housing must be met.

- (b) Density incentives detailed in §16.10 may be applied to projects that create affordable housing units, as defined by this code. No proportional payment-in-lieu is required if the affordable dwelling unit requirements for the density incentives are met.

§16.4.13 Residential - Urban R-U.

B. Permitted uses. The following uses are permitted in the R-U Zone:

- (2) Conservation subdivision ~~Cluster residential development~~

D. Standards.

The following standards must be met unless modified per §16.10 ~~16.8.10.H(3)~~, Conservation Subdivision ~~Cluster Residential and Cluster Mixed Use Development:~~

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- 100 (3) Subdivision types and standards.
101 Subject to net residential acreage and net residential density per §16.3
102 (a) ~~Cluster residential development~~. In a conservation subdivision ~~cluster~~
103 ~~residential development~~, the above standards may be modified in accordance
104 with special provisions of §16.10 ~~16.8.10.H(3)~~, including that there is no
105 minimum lot size, and with the conditions that:...

106 (6) Affordable housing requirements:

- 107 (a) All requirements in §16.5.4 Affordable Housing must be met.
108
109 (b) Density incentives detailed in §16.10 may be applied to projects that create
110 affordable housing units, as defined by this code. No proportional payment-
111 in-lieu is required if the affordable dwelling unit requirements for the
112 density incentives are met.

113
114 **§16.4.15 Residential - Conservation R-C.**

115 B. Permitted uses. The following uses are permitted in the R-C Zone:

116 (7) Conservation subdivision ~~Cluster residential development~~

117 D. Standards. The following standards must be met unless modified per §16.10,
118 16.8.10.H(3), Conservation Subdivision ~~Cluster Residential and Cluster Mixed Use~~
119 ~~Development~~:

- 120 (3) Subdivision types and standards.
121 Subject to net residential acreage and net residential density per §16.3.
122 (a) ~~Cluster residential development~~. In a conservation subdivision ~~cluster~~
123 ~~residential development~~, the above standards may be modified in accordance
124 with special provisions of §16.10, ~~16.8.10.H(3)~~ including that there is no
125 minimum lot size, and with the conditions that:...

126 (4) Affordable housing requirements:

- 127 (a) All requirements in §16.5.4 Affordable Housing must be met.
128
129 (b) Density incentives detailed in §16.10 may be applied to projects that create
130 affordable housing units, as defined by this code. No proportional payment-
131 in-lieu is required if the affordable dwelling unit requirements for the
132 density incentives are met.

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135 **Additional sections requiring amendments**

136

137 **16.8.9.C Preliminary Plan Review**

138 (6) Written submission requirements, Preliminary Plan

139 (l). Additional submissions as may be required by other sections of this title such as for
140 ~~clustered development~~ conservation subdivisions, mobile home parks, or junkyards must
141 be provided.

142 **16.8.10.L Soil suitability**

143 4. ~~Cluster residential and cluster mixed-use~~ Conservation subdivision, commercial or
144 industrial development and similar intensive land uses require a Class A (high-intensity)
145 soil survey by a Maine-certified soil scientist.

146 5. Where ~~nonclustered~~ development is limited in scale and intensity and is not a conservation
147 subdivision, the developer may request the Class A (high-intensity) soil survey required by
148 §16.9.1.4E 16.8.10.L(3) above be waived by the Planning Board.

149 **16.5.2.7 C Street classification**

150 (7) Private streets function exclusively as residential streets serving higher-density housing
151 developments, including ~~clustered housing~~ conservation subdivisions, multi-family
152 dwellings, age-restricted housing, and mobile home parks, and may not be dedicated for
153 public acceptance...

154 **16.5.9.G Wetlands alteration approval criteria**

155 7. The applicant must submit applicable documentation that demonstrates there is no practicable
156 alternative to the proposed alteration of the wetland. In determining if no practicable
157 alternative exists, the Planning Board will consider the following:

158 a. The proposed use:

159 3. Provides alternative project designs, such as ~~cluster development~~ conservation
160 subdivision, roof gardens, bridges, etc., that avoid or lessen the wetland impact;
161 and...

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