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REPLACEMENT OF SECTION 7.02 OPEN SPACE RESIDENTIAL DEVELOPMENT

7.02 Open Space Residential Development

Definition Section

Applicant - The owner of land proposed to be subdivided or the owner's representative.

Buffer - A setback area within which adequate vegetation is maintained or provided to visually screen one use from another, to minimize potentially negative impacts on surrounding areas or natural resources, e.g., shield or block noise, light or other nuisances, and protect water quality and reduce water pollution, or to maintain wildlife habitat. Specific buffer types include wetland buffer and perimeter buffer.

Wetland buffer - A setback area adjacent to a stream, river, wetland or vernal pool, or poorly or very poorly drained soils, measured outward on a horizontal plane from the delineated edge of wetland, as applicable. The wetland buffer maintains the natural vegetation cover and is used to protect property and conserve natural resource areas.

Perimeter buffer - A vegetated strip along a property boundary or public road which is left in its natural state or landscaped so as to limit the visibility of the development from the road or adjacent properties or different zoning districts or to provide an attractive boundary.

Building Envelope - Area of a building lot identified on a subdivision plan indicating the allowed limits of clearing and grading, and within which all structures and the well and septic system, including the tank and leach field, shall be located. No portion of the building envelope may be located within a building or yard setback, wetland buffer or perimeter buffer. The applicant shall show a contiguous building envelope on the plan that depicts a plot of buildable land sufficiently large for the proposed building, well, septic, and related improvements.

Future construction on the lot is encouraged but not required to be located within the identified building envelope; however, construction outside of the building envelope shall comply with setback requirements for a conventional subdivision development as specified in Article 6 Dimensional Requirements. The building envelope is intended to ensure that the lot provides enough buildable land for house, septic, garage and accessory structures without the need to disrupt environmentally sensitive lands and wetland buffers and to meet the requirements of this Ordinance.

Homeowners Association (Association) - an organization of property or unit owners duly incorporated under New Hampshire Law for the purpose of managing and maintaining common areas.

Open Space - Land within a parcel that is not built upon and is protected from future development and further subdivision. There are two types of open space: Common Open Space and Designated Open Space.

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

Designated Open Space is land that is protected from further development by a conservation easement or other restriction and remains in a natural condition or is managed according to an

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approved management plan for natural resource functions, e.g., habitat protection, passive recreation, or limited uses as approved by the Planning Board.

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

A. Authority and Purpose

The provisions of Section 7.02 are adopted as an innovative land use control as authorized by RSA 674:21. The Open Space Residential Development allows for an alternative pattern of land development without an overall increase in density. The purposes of this section are to further the goals and objectives of the Master Plan by:

1. Facilitating cost-effective and service-efficient development;
2. Promoting a contiguous network of conserved open space lands with high ecological value, and protecting water resources, including drinking water supply areas and watersheds, wetlands, streams and rivers and associated wildlife;
3. Reducing the impacts on water resources and hydrologic patterns by minimizing land disturbance, maintaining natural drainage patterns, and minimizing the creation of impervious surfaces and stormwater runoff;
4. Maintaining the Town's rural character by protecting the natural and scenic attributes of the land, such as forests and viewscapes, and preserving historic, archeological, and cultural features located on the site.
5. Preserving open space while providing greater flexibility in the design of residential subdivisions; and
6. Encouraging diversity and originality in lot layout and individual building design to achieve a harmonious relationship between development and the land.

B. General Provisions and Restrictions

1. All Open Space Residential Developments shall comply with all provisions of this Ordinance, except as herein provided, and shall be governed by the current Subdivision Regulations of the Town of Bow except as modified herein.
2. Except as herein provided, there shall be no greater number of units than permitted by the requirements of a non-Open Space Residential Development. The Planning Board shall adopt criteria in the Subdivision Regulations to ensure that the number of units is no more than would be permitted in a conventional subdivision layout.
3. Only one Single Family Dwelling, with an Accessory Dwelling Unit as permitted in Section 7.04, shall be permitted per lot.
4. Open Space Requirements
 - a) Common open space shall consist of at least fifty percent (50%) of the total original tract area, and at least fifty percent (50%) of this open space must be buildable land.
 - b) Seventy-five (75%) percent of open space shall consist of contiguous land. It is preferred that the contiguous land connects with adjacent undeveloped or protected land. Open space shall be so

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defined on a subdivision plan and shall be made subject to a deed restriction or placed under a conservation easement which shall thereafter prohibit further subdivision or development of the open space.

c) At least fifty percent (50%) of the buildable area shall be protected as open space subject to a conservation easement or similar restriction.

d) The location, layout, and management of the open space shall conform to the standards and process set forth in the Subdivision Regulations.

e) Any use of the open space is subject to approval of the Planning Board and Conservation Commission and shall demonstrate that such uses shall not negatively impact the natural or cultural amenities preserved through the Open Space Residential Development design.

f) The following uses generally are permitted in the designated open space, unless specifically prohibited or restricted as a condition of subdivision approval for the purposes of protecting important natural features or characteristics of the parcel:

1. Forest management.

2. Trails for non-motorized use and recreation.

g) The removal of soil, trees and other natural features from the designated open space is prohibited, except as consistent with conservation objectives or permitted uses as provided above.

h) The designated open space shall be retained in a natural, undisturbed state, except for those activities permitted and approved as provided above, or as required for active management according to a conservation agreement and management plan written by a qualified natural resource professional.

5. Any provision within this article may be waived by the Planning Board for good cause, so long as the plan meets the intent and purpose of this ordinance.

6. Lots in an Open Space Residential Development shall not have individual access onto an existing town road and the minimum road frontage requirement for each lot shall be provided on a new public or private road.

C. Area Frontage and Setback Requirements

1. The minimum original tract size proposed for Open Space Residential Developments shall be ten (10) acres.

2. For the purpose of visual or aesthetic screening, a perimeter buffer zone having a minimum depth of fifty (50) foot shall be provided inside and abutting the perimeter of the entire original Open Space Residential Development tract. Where existing vegetation is not sufficient to achieve adequate screening, the Planning Board may require additional plantings. To improve neighborhood functionality or achieve continuity with similar neighborhoods, the Planning Board may waive or modify the requirements for the perimeter buffer.

3. The perimeter and any wetland buffer(s) shall not be disturbed unless approved by the Planning Board. Prior to commencement of construction activity on the parcel, the required buffer(s) shall be marked at fifty (50) feet intervals with signs approved by the Planning Board.

4. Prior to Subdivision approval, the Planning Board may approve modifications of the perimeter buffer as provided in this section. After completion of the required public improvements and occupation of

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dwelling units, the Planning Board may approve modifications of the perimeter buffer by Conditional Use Permit (see Section 7.02 D 5 below).

5. The minimum lot size after subdivision shall consist of three-fourths (3/4) acre of buildable land for lots with individual wells and on-site sewage disposal. For Open Space Residential Developments with municipal or community water supply, the Planning Board may approve lots with a minimum of one-half (½) acre buildable land.

6. The perimeter buffer required in Section 7.02C 3 shall not be included within any part of a residential lot.

7. Road and lot frontage in an Open Space Residential Development shall be a minimum of one hundred (100) feet. Cul-de-sac lots shall have a minimum frontage of fifty (50) feet with minimum lot width of one hundred (100) feet to exist at a distance of one hundred (100) feet back from the road frontage.

8. For Open Space Residential Developments with municipal or community water supply, the Planning Board may approve lots with a minimum frontage of eighty (80) feet or forty (40) feet on cul-de-sacs.

9. Where the Planning Board finds that the Purposes of Open Space Residential Development would be furthered, the Board may approve common driveways providing access to no more than three residential lots (see Article 6.06).

10. To ensure the protection of existing homes, where a proposed Open Space Residential Development lot would abut a non-Open Space Residential Development lot with an existing residence built thereon, the Planning Board is empowered to require that the abutting Open Space Residential Development lot conform to the minimum lot size and frontage requirements of Article 6, Section 6.07 Table of Dimensional Regulations.

11. The minimum yard requirements contained within Article 6, Section 6.07 Table of Dimensional Regulations shall apply to development within an Open Space Residential Development. In Open Space Residential Developments with municipal or community water supply, the Planning Board may permit side setbacks of no less than fifteen (15) feet for interior lot lines. Minimum yard requirements (setbacks) shall be measured from the inside limit of the buffer required in Section 7.02 C 3 above to the drip line of the structure.

12. Lots may be irregular in size and shape provided they conform to the natural topography and features of the parcel (e.g., the lot lines follow an existing stone wall, stream, or other natural dividing feature).

D. Approvals and Revisions

1. **Legal Review:** Prior to final subdivision approval by the planning board, the applicant shall submit for review by the town counsel any restrictive covenants, condominium or cooperative agreements, proposed articles of association and by-laws, conservation easements, deed restrictions, or other legal agreements proposed for use in the Open Space Residential Development. The town counsel shall advise the Planning Board of the adequacy of such legal provisions. The cost of legal review by the Town's legal counsel shall be borne by the applicant. Planning Board approval shall be required for any proposed changes to such documents as well as for the final version of such documents and for approval of the development.

2. **Membership in a Homeowners Association** shall be mandatory for Open Space Residential Development property owners shall be made a required covenant in all deeds issued to lot or property owners. The Association shall provide voting and use rights in the open space area(s) when applicable and shall charge dues or levy assessments to cover expenses which may include tax liabilities of common

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areas, and for the maintenance of such common open space areas, improvements, and rights-of-way, etc. The Association shall be responsible for the perpetuation, maintenance, and function of all common open space lands, uses and facilities. The Association shall be responsible for educating members regarding the obligations for all buffers, common lands, uses, and facilities. Such Association shall not be dissolved, nor shall such Association dispose of any common open space or natural land by sale or otherwise without prior written consent of the Planning Board. The developer of the Open Space Residential Development shall be responsible for all obligations of the Association until the Association is formed and in operation, including educating each purchaser of the obligations for all buffers, common lands, uses, and facilities.

3. Any and all open space land within the Open Space Residential Development tract shall be held in common ownership by the dwelling unit owners or by the Homeowners Association. The Planning Board may permit the transfer of conservation land or a conservation easement to the Town of Bow, Bow Open Spaces, or other approved conservation organization. No changes to the open space design or uses permitted are allowed without prior approval of the Planning Board.

4. In the event that the Association established to own and maintain the open space areas, or any successor Association, or the owner or owners of the dwelling units located within the development who own said open space shall, for any reason, fail to maintain the open space in reasonable order and condition in accordance with the final approved plan, the Planning Board shall serve written notice upon such Association, successor Association, or residents setting forth the deficiencies in the maintenance, order and condition of the open space. Such notice shall include a demand that said deficiencies be cured forthwith and that a statement of intent to comply and a date of compliance shall be filed with the Planning Board within fourteen (14) days of such notice. If the Association or owners of the dwelling units fail to cure the deficiencies forthwith, the Association and each of the owners of the dwelling units shall be liable for the fines and penalties provided for in RSA 676:17 et. seq. in addition to all other legal and equitable remedies.

5. Following completion of required improvements and occupation of dwelling units in an Open Space Residential Development, the Planning Board may approve, by Conditional Use Permit, modifications to the required perimeter buffer. In determining whether to grant a conditional use permit, the Planning Board shall, in addition to the standards set forth in Section 12.05 of this Ordinance, take into consideration the existing condition of the buffer prior to disturbance, the character and use of neighboring properties abutting the area of the buffer proposed for disturbance, the impact of the proposed disturbance including any benefits or detriments to properties abutting the affected buffer including lots in the Open Space Residential Development, and whether the proposed plan enhances the function of the perimeter buffer. Notwithstanding the foregoing, no buffer shall not be disturbed for the placement of buildings.

6. Sequential Subdivisions: The provisions of this ordinance shall apply to the sequenced development of a parent parcel over time through separate successive applications. When a subdivision is proposed that involves part of a larger parcel or includes lots that are capable of further subdivision, the planning board may require that a site inventory and a conceptual (non-binding) long-range plan be submitted for the entire parcel and used to evaluate the proposed subdivision.