

# APPENDIX 10: MODEL OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD) BYLAW WITH MAJOR RESIDENTIAL DEVELOPMENT CONTROLS

*Prepared by Pioneer Valley Planning Commission*

## 1.0 OPEN SPACE RESIDENTIAL DEVELOPMENT

### 1.1 Intent

Open Space Residential Development (OSRD) in accordance with this bylaw shall be required for all Major Residential Developments in the *[input town specific zoning districts here]*, except not in the Floodplain District. Open Space Residential Development shall mean a residential development in which a variety of housing types are clustered together, adjacent to permanently preserved open space. Open Space Residential Development shall be encouraged within the town, and shall be the preferred method of subdivision development wherever the following purposes would be served.

### 1.2 Purposes

The purposes of Open Space Residential Development are:

- 1.21 To allow for greater flexibility and creativity in the design of residential developments, provided that the overall density of the development is no greater than what is normally allowed in the district;
- 1.22 To encourage the permanent preservation of open space, agricultural lands, forest lands and other natural resources including aquifers, water bodies and wetlands, and historical and archaeological resources;
- 1.23 To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features;
- 1.24 To maintain the traditional New England rural character and land use pattern in which small villages contrast with open space and farmlands;
- 1.25 To facilitate the construction of streets, utilities and public services in a more economical and efficient manner;
- 1.26 To ensure that residential developments are designed to minimize impacts to the natural features of the land, including wetlands, watercourses, forests, prime agricultural land, steep slopes, plants, wildlife, historic sites, scenic views, and rural character;
- 1.27 To encourage development out of view from the road, and promote alternatives to strip residential development lining roadsides in the town;
- 1.28 To provide wildlife corridors connecting open spaces, needed by wildlife to ensure their survival.

### 1.3 Definitions

Basic Maximum Number: The number of units that would be allowed on a site using the standard Zoning Bylaw Provisions and/or Subdivision Rules and Regulations as determined by a Yield Plan.

Common Area: Any land area, other than Open Space, set aside for common ownership as a result of an OSRD, including areas for Common Facilities.

Common Driveway: Vehicular access, which is not a street, but extending from a street, serving as a common vehicular access to more than one (1) but not more than six (6) residential lots built in accordance with the standards set forth in this bylaw. The driveway will lie entirely within the lots being served.

Common Facilities: Built facilities which are commonly owned by the property owners within an OSRD. Common Facilities may be proposed but are not required. They may include streets, rights of way, common buildings, wells, water and waste treatment systems, and recreation facilities.

Conventional Lot: A lot in a standard subdivision based upon the minimum dimensional requirements of the underlying zoning district in which the subject property lies, and the minimum requirements of the Subdivision Regulations.

Conventional Plan: A plan showing the division of property into lots based upon the minimum requirements of the underlying zoning district in which the subject property lies, and the minimum requirements of the Subdivision Regulations.

Existing Resources / Site Analysis Map: A map which identifies, locates, and describes noteworthy features to be designed around through sensitive subdivision layouts, such as vegetation, wetlands, steep slopes, farmland soils, historic or cultural features, threatened or endangered species, unusual geological formations, and scenic views or viewsheds.

Homeowners' Association: A private non-profit organization (corporation, association, or other legal entity) established by the developer to manage, maintain, support, and finance the common facilities and common open space of an OSRD, and to enforce certain covenants and restrictions.

Minor Residential Development: A subdivision which requires approval under M.G.L., Ch. 41 creating 3 or fewer lots or a residential development creating 3 or fewer dwelling units.

Major Residential Development: A subdivision which requires approval under M.G.L., Ch. 41 creating 4 or more lots or a residential development creating 4 or more dwelling units.

*[The scale of a Major Residential Development can be changed depending on the typical scale of subdivision design in a given community.]*

Open Space: Undeveloped land set aside for common or individual ownership as a result of an OSRD, with conservation easements and other deeded restrictions to ensure that the land will remain permanently open and undeveloped. A condition of OSRD approval is that open space may not be further subdivided.

Open Space Residential Development (OSRD): A form of residential development where the density of the dwelling units is no greater than would be permitted in the district in where the OSRD is located, but where the lot size and other dimensional standards may be reduced in exchange for the preservation of permanently protected open space, recreational land, forests, or other farmland.

Prime Agricultural Soils: Agricultural land with soils designated as prime or of statewide significance by the U.S. Natural Resources Soil Service soil surveys.

Title V Regulations: 310 CMR 15.000

Wetlands: Areas characterized by vegetation described in Massachusetts General Laws, Chapter 131, Section 40.

Yield Plan: A conceptual plan showing how the parcel could be subdivided in a conventional manner. Determination of the possible number of conventional lots shall be determined by Title V regulations, 310 CMR 15.000, as well as the [Insert Town Name] Board of Health regulations. For purposes of determining the number of OSRD dwelling units, each conceptual conventional lot must meet the requirements of a buildable lot for a single family dwelling unit as defined in the zoning district in which the OSRD is located and meet all other applicable requirements of the Zoning Bylaw and Subdivision Regulations. In no case shall the number of OSRD dwelling units exceed the number of units that would be allowed under a conventional subdivision.

## **1.4 Applicability**

1.41 Any applicant applying for a Major Residential Development in the Town of [Insert Town Name] shall apply for an OSRD under this bylaw. Applicants applying for a Minor Residential Development may apply for an OSRD under this bylaw.

*[This model bylaw mandates the use of OSRD for all Major Residential Developments. Each community should assess whether to make this type of development mandatory, encourage its use through incentives, or allow it by right on an equal footing to conventional subdivision. If a community determines that this type of development should be encouraged, incentive language should be added to encourage its use.]*

1.42 Segmentation: In determining whether a project is a major residential development, the developer and the Planning Board shall consider the entirety of the development, including (a) any likely future expansion of the project on the subject property or on any property which is contiguous to the subject property or under related ownership or (b) any past, related development on any property which is contiguous to the subject property or any property that was under related ownership with the subject property at the time that this bylaw was adopted. A developer may not phase or segment a project or transfer ownership of contiguous properties to evade, defer or curtail the requirements set forth in this bylaw.

1.43 Uses Permitted in the Developed Area of an OSRD.

1) Single Family Detached Dwelling Units;

- 2) Duplex or Two-Family Dwelling Units;
- 3) Multi-Family Dwelling Units provided that no building shall contain greater than four (4) dwelling units, and the percentage of multi-family dwelling units shall not exceed twenty (20) percent of the total number of units in the development;

*[This model bylaw allows for a variety of housing types within the OSRD. Each community should assess its housing needs and amend this section based on those needs]*

1.44 Uses Permitted in the Open Space of an OSRD.

- 1) Agricultural uses including horticultural, raising of crops, livestock, poultry, nurseries, orchards, hay, and building related to the same;
- 2) Public park or recreation area;
- 3) Woodlots, arboreta, and other similar silvicultural uses;
- 4) Woodland preserve, game preserve, wildlife sanctuary, or other similar conservation use;
- 5) Accessory uses customarily incidental to any permitted use.

1.45 Special Land Features. The Planning Board may request an applicant to use an OSRD subdivision design if the property possesses one or more of the following special features:

- 1) Unfragmented open land as identified as a priority for protection in the town's Open Space and Recreation Plan, Master Plan or the Community Development Plan;
- 2) Agricultural land with soils designated as prime or of statewide significance by the U.S. Natural Resource Conservation Service soil surveys;
- 3) Rare, threatened, or endangered species or exemplary natural communities according to the Massachusetts BioMap Project developed by the Massachusetts Natural Heritage & Endangered Species Program;
- 4) Unique natural, cultural, and/or historical features as identified in the Master Plan or Community Development Plan.

*[The language under Section 1.45 above should only be added to the bylaw if the community is not going to mandate OSRD for all Major Residential Developments, but allow the Planning board to decide which form of development to use when the subject property possesses one or more of the specials features highlighted above.]*

## **1.5 Application Requirements**

1.51 Pre-application Review

The applicant is very strongly encouraged to request a pre-application review at a regular business meeting of the Planning Board. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, Historical Commission, and [INSERT THE NAMES OF ANY OTHER APPROPRIATE BOARDS]. The purpose of a pre-application review is to minimize the applicant's costs of engineering and other technical experts, and to commence discussions with the Planning Board at the earliest possible stage in the development. At the pre-application review, the applicant may outline the proposed development including both conventional and OSRD models, seek

preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application.

1.52 Site Visit

Applicants are encouraged to request a site visit by the Planning Board and/or its agents in order to facilitate pre-application review of the proposed development. If one is requested, the Planning Board shall invite the Conservation Commission, Board of Health, Historical Commission, and [INSERT THE NAMES OF ANY OTHER APPROPRIATE BOARDS]

1.53 Site Context Map

A Site Context Map shall be submitted / presented to the Planning board during the pre-application review. This map shall illustrate the parcel in connection to its surrounding neighborhood. Based upon existing data sources and field inspections, it shall show various kinds of major natural resource areas or features that cross parcel lines or that are located on adjoining lands. This map enables the Planning Board to understand the site in relation to what is occurring on adjacent properties.

1.54 Existing Resources / Site Analysis Map

The following shall be submitted / presented to the Planning Board during the pre-application review at a regularly scheduled meeting for the purpose of assessing the impact or implications of the development and shall be used in the preparation of a preliminary design plan.

- 1) Boundaries of wetlands defined by Massachusetts Wetlands Law CMR-140 and certified by a licensed wetlands professional engineer;
- 2) Location and limits of soils types, particularly Prime Agricultural Soils, consistent with the soils classification maps prepared by the US Department of Agriculture Natural Resource Conservation Service;
- 3) Areas where the depth of natural soil to bedrock is four (4) feet or less;
- 4) The extent of any Interim Wellhead Protection Areas and Recharge Areas;
- 5) Topographic contours at intervals of ten (10) feet or less;
- 6) Delineation of slopes of twenty-five percent (25%) or greater;
- 7) The location of cultural and historic features including, but not limited to, stone walls, archaeological and historic sites and structures, and significant and rare vegetation;
- 9) Areas delineated as "BioMap Core Habitat" or "Supporting Natural Landscape" on the Massachusetts BioMap Project developed by the Massachusetts Natural Heritage & Endangered Species Program;

1.55 Preliminary Subdivision Plan Submission

- 1) A Preliminary Subdivision Plan shall be submitted in conformance with the Town of [Insert Town Name] Subdivision Regulations. Applicants shall submit the preliminary design to the Planning Board for review prior to development of a Definitive Plan. Approval of the Preliminary Plan by the Planning Board will be based on the review criteria standards set forth in Section 1.55(2).

*[For those communities that want to encourage this form of development and give the Planning Board the discretion to choose between OSRD and conventional development, applicants should submit both a conventional plan and an OSRD plan in order for the Planning Board to make a determination on a case by case basis on the type of development to be used.]*

- 2) Review of Preliminary Plan. The Planning Board shall review the Preliminary Subdivision Plan in accordance with the criteria contained in this Bylaw and with other applicable regulations of the Town of [Insert Town Name]. The review shall informally advise the applicant to the extent to which the proposed subdivision or land development conforms to the relevant standards of this Bylaw and may suggest possible plan modifications that would increase its degree of conformance. The review shall include, but is not limited to:
  - (a) The location of all areas proposed for land disturbance (streets, foundations, yards, septic disposal systems, storm water management areas, etc.) with respect to notable features of natural or cultural significance as identified on the applicants Existing Resources / Site Analysis Map;
  - (b) The potential for street connections with existing streets, other proposed streets, or potential developments of adjoining parcels;
  - (c) The location of proposed access points along existing road networks;
  - (d) The proposed building density and areas of impervious surface.

#### 1.56 Definitive Subdivision Plan Submission

A final Definitive Development Plan shall be submitted in conformance with this section and the Town of [Insert Town Name] Subdivision Regulations as applicable. Such Plans shall adequately address standards delineated in this bylaw. In addition, the Definitive Development Plan shall address issues that have been previously discussed in the Existing Resources / Site Analysis Map.

### 1.6 **Subdivision Approval Procedures**

- 1.61 Applicants for Open Space development projects shall follow all procedures specified in the Town of [Insert Town Name] Subdivision Regulations.
- 1.62 The Planning Board shall submit copies of the preliminary and final subdivision plans to the Board of Health, Conservation Commission, Highway Department, Chief of Police, Fire Chief [INSERT THE NAMES OF ANY OTHER APPROPRIATE BOARDS] who shall review the application and submit their recommendations and comments to the Planning Board concerning :
  - 1) The completeness and adequacy of the data and methodology used by the applicant to determine the impacts of the proposed development;
  - 2) The effects of the projected impacts of the proposed development; and
  - 3) Recommended conditions or remedial measures to accommodate or mitigate the expected impacts of the proposed development.

Failure of Boards to make recommendations within 30 days of the referral of the application shall be deemed to be lack of opposition.

## 1.7 Criteria for Evaluation

No approval for an OSRD shall be given unless the application complies with the following criteria:

- 1.71 The proposed development shall be compatible with respect to the objectives and policy recommendations of the Open Space and Recreation Plan and Community Development Plan or Master Plan;
- 1.72 The proposed development shall be consistent with the intent and purposes of this bylaw;
- 1.73 All dwellings shall, to the greatest extent possible, be located out of view from any road unless valuable natural resources or farmland located to the rear of the property render building in view of the road more desirable;
- 1.74 The portion of a parcel placed in open space shall, to the greatest extent possible, be that which is most valuable or productive as a natural resource, wildlife habitat, farmland, or forestry land;
- 1.75 The OSRD shall result in the creation of less curb cuts or vehicular access points to a public way than would reasonably be expected to occur under Standard ANR or Subdivision Development.
- 1.76 Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject parcel.
- 1.77 The preferred location for the required protected open space in an OSRD shall be, to the extent feasible, in view of town roads and linked to any existing protected lands on adjacent parcels.

## 1.8 Dimensional Standards

### 1.81 Allowed Density

- 1) The maximum number of dwelling units for an OSRD shall be determined by use of a yield plan, which is a conceptual plan showing how the parcel could be subdivided in a conventional manner. Determination of the possible number of conventional lots shall be determined by Title V regulations, 310 CMR 15.000, as well as the [Insert Town Name] Board of Health regulations. For purposes of determining the number of OSRD dwelling units, each conceptual conventional lot must meet the requirements of a buildable lot for a single family dwelling unit as defined in the zoning district in which the OSRD is located and meet all other applicable requirements of the Zoning Bylaw and Subdivision Regulations. In no case shall the

number of OSRD dwelling units exceed the number of units that would be allowed under a conventional subdivision.

- 2) There shall be no further subdivision of an approved OSRD.

## 1.82 Flexible Dimensional Controls

### 1) Frontage

- (a) The minimum frontage for a tract on which an OSRD is proposed (whether or not by subdivision) shall equal or exceed 60 feet for each lot created in the OSRD, as shown in the Table of OSRD Dimensional Requirements (Table 1). [For example, to create a six-lot OSRD in a typical Residential District, the original parcel must have a minimum of 360 foot contiguous frontage along a public way.]
- (b) In the interest of flexibility and creative site designs, there shall be no minimum frontage requirement for individual lots on new subdivision streets within an OSRD, with the exception described in Section 1.9.2(c) below.
- (c) For each lot developed along a public street existing at the time of the application, the minimum frontage, minimum lot size and all other dimensional controls shall be those which are required in the underlying zoning district in which the OSRD is located.

### 2) Lot Size

- (a) The minimum lot size for individual lots without town water and sewer within an OSRD shall be 25,000 square feet.
- (b) The minimum lot size for individual lots with town water and sewer within an OSRD shall be 10,000 square feet.

*[Minimum lot sizes for individual lots within an OSRD without public water and sewer should be based on whether the community will allow community systems to be built within the Open Space of an OSRD. Minimum lot sizes for individual lots within an OSRD with public water and sewer should be based upon existing lots sizes in the underlying zoning districts in which OSRD is mandated or allowed.]*

### 3) Setbacks

- (a) There shall be a minimum setback of fifty (50) feet along all property boundaries of the overall tract for all structures, including accessory structures, parking areas, driveways and internal streets. Entrance streets connecting the OSRD to the external street system may cross the setback area.
- (b) There shall be no minimum front yard, side yard, or rear yard setback requirements for individual lots within an OSRD.
- (c) There shall be a minimum of twenty (20) feet between buildings in an OSRD.

### 4) Required Open Space



The minimum open space requirement for an OSRD shall be fifty (50) percent of the total tract area of which no more than twenty-five (25) percent may consist of wetlands, surface waters, flood plains, or areas with unaltered slopes greater than twenty-five (25) percent provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes of this bylaw.

*[The minimum percentage of open space required by the Planning Board may vary from one town to another but should be based on a careful assessment of developable lands. The minimum requirement could be elevated beyond the suggested fifty percent (50%) if the town identifies that few if any of its developable lands are significantly restrained by existing wetland resources. Likewise, if there are many significant parcels with the majority of their land in resource areas, it would be prudent to reduce the minimum open space set-aside to allow for a more flexible and equitable approach.]*

**TABLE 1 - TABLE OF OSRD DIMENSIONAL REQUIREMENTS**

<i>Development Type</i>	<i>Zoning District</i>	<i>Minimum Lot Size in Sq. Ft. (per Dwelling Unit)</i>	<i>Average Lot Size in sq. ft. (per Dwelling Unit)<sup>1</sup></i>	<i>Minimum Required Open Space (% of total parcel)</i>	<i>Minimum Designated Nitrogen Credit Land</i>	<i>Minimum Lot Frontage (continuous in ft.)</i>	<i>Minimum Frontage for Total Devel. Parcel (ft.)<sup>2</sup></i>	<i>Minimum Front Yard (ft.)</i>	<i>Minimum Side Yard (ft.)</i>	<i>Minimum Rear Yard (ft.)</i>	<i>Maximum Building Coverage of Land including Accessory Buildings</i>	<i>% of</i>	<i>Maximum Building Height (ft.)</i>
<b>Standard Subdivision or ANR Development</b>	Rural-Residential	60,000	N/A	None	None	[Input town specific data]	[Input town specific data]	[Input town specific data]	[Input town specific data]	[Input town specific data]	[Input town specific data]		[Input town specific data]
	Residential-Neighborhood	40,000	N/A	None	None	[Input town specific data]	[Input town specific data]	[Input town specific data]	[Input town specific data]	[Input town specific data]	[Input town specific data]		[Input town specific data]
	Residential-Village	30,000	N/A	None	None	[Input town specific data]	[Input town specific data]	[Input town specific data]	[Input town specific data]	[Input town specific data]	[Input town specific data]		[Input town specific data]
<b>OSRD Development</b>	Rural-Residential - Town Water/Sewer - Individual Systems	15,000 25,000	20,000 30,000	50%	None 40,000 sf per lot, including lot	None	60 per lot	None	None	None	25%		35
	Residential-Neighborhood - Town Water/Sewer - Individual Systems	10,000 15,000	15,000 20,000	50%	None 40,000 sf per lot, including lot	None	60 per lot	None	None	None	25%		35
	Residential-Village - Town Water/Sewer Individual Systems	8,000 10,000	10,000 15,000	50%	None 40,000 sf per lot, including lot	None	60 per lot	None	None	None	25%		35

<sup>1</sup> Calculations for average lot areas shall be computed by adding the lot sizes for all lots in the OSRD, plus common open space, as described in Section 1.12, and dividing by the total number of lots.

<sup>2</sup> The frontage of the total tract from which an OSRD is created shall equal or exceed at least 60 feet per developable lot created.

1.83 Landscaped Buffers

- 1) A landscaped buffer no less than fifty (50) feet deep shall be provided where appropriate to screen the development from public streets and adjacent properties. Entrance streets connecting the OSRD to the external street system may cross the buffer area. The natural vegetation shall be retained whenever possible. If the natural vegetation is not sufficient to serve as an effective visual screen, landscaping shall be required to provide such a screen. Landscaping may include berms and/or decorative fencing of an appropriate height.
- 2) This buffer area shall be part of the common area, and shall be subject to the same restrictions that apply to that area.
- 3) Frontage lands on streets existing at the time of application shall be preserved as buffers to the maximum extent possible in addition to all required setbacks

1.84 Common Driveways

The Planning Board may authorize the use of common driveways to provide access to no more than six (6) individual lots of land provided that the following conditions are met:

- 1) A common driveway shall have a minimum roadway width of sixteen (16) feet to a maximum of twenty (20) feet, in addition to an easement of sufficient width to assure proper drainage and maintenance.
- 2) A common driveway shall not exceed 400 feet in length.
- 3) The slope or grade of a common drive shall in no place exceed 10% if unpaved or 12% if paved.
- 4) The common drive shall intersect a public way at an angle of not less than 80 degrees.
- 5) Alignment and sight distances should be sufficient to support a design speed of 15 mph.
- 6) The common driveway shall be capable of providing access for emergency vehicles with either a "hammer head", "T" or "Y" configuration in lieu of a cul-de-sac for reverse direction in a single movement.
- 7) The common driveway shall lie entirely within the lots being served.
- 8) The common driveway, at its intersection with the street, must provide a leveling-off area with a slope no greater than 1% for the first 20 feet and a slope no greater than 5% for the next 30 feet.
- 9) There shall be a minimum of 500 feet between the entrances of any two common driveways onto any road.

- 10) The common driveway shall be constructed of a minimum 15" gravel base, with an oil and stone top layer of 1½" consisting of three successive layers of ¾" crushed traprock stone, ½" crushed traprock stone and ¼" crushed traprock stone, with a crown sufficient for drainage. Drainage shall be by sheet runoff to drainage swales adequate to dispose of surface runoff. Culverts will be installed if deemed necessary by the Planning Board.
- 11) A common driveway shall have adequate sight distance at its intersection with a public or private road, and shall not create traffic safety hazards to its users or the public.
- 12) The common driveway shall access the property over the frontage of at least one of the lots being served by the driveway.
- 13) The common driveway shall provide the only vehicular egress/access to the lots being serviced by it, and this shall be so stated in the deeds to the subject lots.
- 14) Permanent signs, sufficiently readable from the road to serve the purpose of emergency identification, indicating the street number address assigned to each lot served by the common driveway shall be installed within ten (10) feet of the intersection of the common driveway with the street, as well as within ten (10) feet of the intersection of an individual lot driveway with the common driveway. This requirement is in addition to those for individual homes.
- 15) Common driveway design shall to the greatest extent possible minimize adverse impact to wetlands, farmland, or other natural resources; allow reasonable, safe, and less environmentally damaging access to lots characterized by slopes or ledges; and result in the preservation of rural character through reduction of number of access ways; and retention of existing vegetation and topography.
- 16) Frontage along the length of a common driveway shall in no way be used to satisfy frontage requirements as specified in the Zoning Bylaw.
- 17) No common driveway, approved under this bylaw, shall accepted by the town as a public road, nor shall the town under any circumstances be held liable for construction, reconstruction, maintenance or snow removal on any common driveway.

These standards may be waived when, in the opinion of the Planning Board, such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Bylaw.

*[This model bylaw encourages the use of common driveways to allow greater flexibility in the design of an OSRD. Communities that have existing common driveway regulations should reference the appropriate bylaw in place of these specific provisions. Communities should consider whether to allow common driveways for all developments as opposed to only OSRD, in which case such regulations should be put forth as a zoning amendment to apply to all development in the community.]*

## 1.9 Utility Requirements

### 1.91 On-site Sewage Disposal

The following standards shall apply to developments requiring on-site sewage disposal:

- 1) The applicant shall submit a septic system design prepared by a certified engineer and approved by the Board of Health and a plan illustrating the location of water supply wells with the application.
- 2) All Open Space Residential Developments must meet the minimum state Environmental Code (Title V) requirements for minimum setbacks between private water supply wells and septic tanks or soil absorption systems (310 CMR 15.211).
- 3) All Open Space Residential Developments must meet the minimum state Environmental Code (Title V) requirements for nitrogen loading limitations (310 CMR 15.214-15.217). For OSRDs with individual lot sizes less than 40,000 square feet, applicants must meet the following standards:
  - (a) Applicants must designate, on a plan, specific areas of common open space as "nitrogen credit land", based on the following equation:

$(40,000 \text{ square feet} \times \text{number of OSRD lots}) - (\text{total square feet in proposed OSRD lots}) = \text{square feet of required nitrogen credit land in common open space}$

- (b) Nitrogen credit land must meet DEP qualifications contained in "Guidelines for Title 5 Aggregation of Flows and Nitrogen Loading 310CMR15.216" including, but not limited, to the following qualifications:
      - Must be restricted to prohibit man-made sources of nitrogen, including sewage discharge, nitrogen-based fertilizer or raising and grazing of livestock;
      - Must be restricted to prohibit artificially rendered imperviousness (i.e. paved streets, paved parking lots, buildings, structures, etc.);
      - Not within a Velocity Zone or Regulatory Floodway identified by FEMA;
      - Not under surface water;
      - Not already being used as nitrogen credit land.
    - (c) All designated nitrogen credit land must be permanently restricted from further development under a "Grant of Title 5 Nitrogen Loading Restriction and Easement on Nitrogen Credit Land".

After approval of the Flexible Residential Open Space Final Subdivision Plan, applicants must apply to the Board of Health and the Mass.

Department of Environmental Protection (DEP) for an aggregate determination of nitrogen loading under 310 CMR 15.216.

- 4) It is required that septic tanks be installed on individually-owned lots. Nitrogen Credit Land must be at least 100 feet from all private wells.

1.92 Water Supply

In order to meet state Title V requirements for separation distances between drinking water wells and septic systems, private drinking water supply wells may be located in the common open space for an Open Space Residential Development, provided that the provisions of Section 1.13 for a homeowners' association are met.

1.93 Stormwater Management

The Planning Board shall encourage the use of non-structural stormwater management techniques and other drainage systems that reduce impervious surfaces and enable infiltration where appropriate.

Stormwater management systems serving the OSRD subdivision may be located within the required common open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space requirement.

**1.10 Common Open Space**

1.101 Common Open Space Requirements

- 1) A minimum of 50% of the total development parcel must be permanently protected as common open space. At least 70% of the common open space shall be retained in contiguous areas, unless approved by the Planning Board.
- 2) Watercourses, lakes, ponds, wetlands, floodplains, and steep slopes over 25% may be included in common open space calculations not to exceed twenty-five (25) percent.
- 3) The Planning Board may permit up to three (3) percent of the open space area to be paved or built upon for structures accessory to the dedicated use of open space (i.e. pedestrian walks, bicycle paths, playgrounds, farm-related structures).
- 4) All recreational facilities, common areas, and common open space shall be reasonably accessible to all residents of the development.

#### 1.102 Land Protection Methods for Common Open Space

- 1) All land not devoted to buildings, lots, roads and other development shall be permanently protected as common open space for recreation, conservation, forestry or agricultural uses which preserve the land in its natural condition.
- 2) The land shall be owned by a non-profit land trust or conservation organization, homeowners' association, or individual, and a permanent conservation easement or deed restriction must be conveyed to the Town, with Town approval, or to a non-profit trust or conservation organization whose principal purpose is to conserve farmland or open space.
- 3) Further subdivision of common open land or its use other than recreation, conservation, forest or agriculture, except for easements for underground utilities or drinking water supply wells, shall be prohibited.

#### 1.11 **Additional Requirements**

- 1.111 Trails. Where there is an existing local or regional trail network on land adjacent to a proposed OSRD, the developer of the OSRD may be required to connect to the existing trail network with trail corridors through the site, and shall grant the general public access to these trails in perpetuity. The minimum nature of public access required is pedestrian traffic. The instrument granting access, acceptable to the planning board, shall restrict the use of motorized vehicles where appropriate.
- 1.112 Open Space. Where there is an existing network of open space or large tracts of unfragmented open space on land adjacent to a proposed OSRD, the developer of the OSRD may be required to connect to the existing open space where feasible with the required open space set-aside, and shall grant the general public access to this open space in perpetuity. The minimum nature of public access required is pedestrian traffic. The instrument granting access, acceptable to the planning board, shall restrict the use of motorized vehicles where appropriate.
- 1.113 Forest Management. On sites where the open space to be preserved is mostly mature forest (70% or greater), the developer of a OSRD may be required to submit a Forest Management Plan developed by a MA Licensed Forester and approved by the Planning Board.
- 1.114 View Shed and Viewpoints. The Planning Board may require the development to protect in perpetuity view sheds and associated viewpoints, which are lands or corridors of land that contribute to the visual landscape of the Town, including items such as open fields containing stonewalls. View sheds and

viewpoints include, but are not limited to, those identified in the most current version of the [Insert Town Name] Community Development Plan. The Planning Board may make use of a site visit to determine potential view sheds and viewpoints to be preserved.

#### **1.12 Homeowners' Association**

- 1.121 In the event that ownership of the land will remain with the homeowners in the Open Space Residential Development, a non-profit, homeowners' association shall be established, requiring membership of each lot owner in the Open Space Residential Development.
- 1.122 The association shall be responsible for the permanent maintenance of all common lands, common open space, recreational and thoroughfare facilities (not including drinking water wells), except where such responsibility is assumed by another owner of the common land (land trust or conservation organization). If any drinking water well is located on common open space, the homeowner/s shall own the well and be responsible for any maintenance or related costs associated with their well.
- 1.123 A homeowners' association agreement or covenant will guarantee continuing maintenance of such common utilities, land and facilities, and assessing each lot a share of maintenance expenses shall be submitted with the final subdivision application. Where no homeowners' association is proposed, an alternative plan shall be submitted with the final subdivision application.
- 1.124 Such agreement shall be subject to the review and approval of Town Counsel and the Planning Board, and shall be recorded in the Hampden County Registry of Deeds. Such agreements or covenants shall provide that in the event that the association fails to maintain the common open land in reasonable order and condition in accordance with the agreement, the town may, after notice to the association and public hearing, enter upon such land and maintain it in order to preserve taxable values of the properties within the development and to prevent the common land from becoming a public nuisance. The covenants shall also provide that the cost of such maintenance by the town shall be assessed equally against each of the properties within the development.

#### **1.13 Conflict with Other Laws**

The provisions of this bylaw shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.



#### **1.14 Severability**

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Town's Zoning Bylaw.

## Optional Sections of an OSRD Bylaw

### **1.X Increases in Permissible Density.**

The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number for an OSRD Plan. The density bonus for the OSRD shall not, in the aggregate, exceed twenty percent (20%) of the Basic Maximum Number. Computations shall be rounded down to the next whole number. A density bonus may be awarded in the following circumstances:

- A. For each additional ten percent (10%) of the site (over and above the required 50%) set aside as open space, a bonus of five percent (5%) of the Basic Maximum Number may be awarded. Calculations shall be rounded down to the nearest integer when determining this bonus.
- B. For every two (2) dwelling units restricted in perpetuity to occupancy by Moderate-Income Households, or for every one (1) dwelling unit restricted in perpetuity to occupancy by Low-Income Households, one (1) market rate dwelling unit may be added to the Basic Maximum Number. Affordable housing units may be used toward density bonuses only if they can be counted toward the Town's affordable housing inventory as determined by the Massachusetts Department of Housing and Community Development. The applicant shall provide documentation demonstrating that the unit(s) shall count toward the community's affordable housing inventory to the satisfaction of the Planning Board.
- C. For every historic structure preserved and subject to a historic preservation restriction, one (1) dwelling unit may be added to the Basic Maximum Number.

### **1.X Affordable Housing**

#### **1.X1 Definitions**

Affordable Housing Unit: A dwelling unit with an Affordability Deed Restriction available at a cost of no more than 30% of gross household income of households at or below 80% of the Area Median Income as reported by the U.S. Department of Housing and Urban Development, including units listed under M.G.L. Chapter 40B Sections 20-24.

Affordable Deed Restriction: A covenant agreement, deed restriction, or other legal instrument, acceptable in form and substance to the Town of [Insert Town Name], that effectively restricts occupancy of an affordable housing unit to a qualified purchaser or qualified renter, and which provides for administration, monitoring and enforcement of the restriction during the term of affordability. An affordable housing restriction shall run with the land in perpetuity or for the maximum period of time allowed by law, so as

to be binding on and enforceable against any person claiming an interest in the property. An affordable housing restriction shall be enforceable under the provisions of M.G.L. Chapter 184, Section 32, and be approved by the Department of Housing and Community Development.

Low- or Moderate-Income Household: A household with income at or below 80% of area median income, adjusted for household size, for the metropolitan or non-metropolitan area that includes the Town of [Insert Town Name] as determined annually by the United States Department of Housing and Urban Development (HUD).

Maximum Affordable Purchase Price or Rent: A selling price or monthly rent, exclusive of utilities, that meets the maximum purchase price or rent guidelines of the Massachusetts Department of Housing and Community Development for inclusion on the Subsidized Housing Inventory.

Median Income: The household income determined annually by the US Department of Housing and Urban Development for [Insert town name] or the region that includes [Insert town name].

Qualified Purchaser - A low- or moderate-income household that purchases and occupies an affordable housing unit as its principal residence.

Qualified Renter: A low or moderate-income household that rents and occupies an affordable housing unit as its principal residence.

Subsidized Housing Inventory: The Department of Housing and Community Development Chapter 40B Subsidized Housing Inventory as provided in 760 CMR 31.04.

- 1.X2 Number of Units to be Provided - All developments of 10 units or more which are subject to this Bylaw shall be required to set aside a minimum of ten percent (10%) of the total number of dwelling units provided as affordable housing.
- 1.X3 The affordable units to be provided shall be equivalent in size, quality, and characteristics to the other units in the development. The units shall not be grouped together; they shall be distributed among all units.
- 1.X4 Preservation of Affordability; Restrictions on Resale
- (1) An affordable housing unit created in accordance with this Bylaw shall be subject to an affordable housing restriction or regulatory agreement that contains limitations on use, resale and rents. The affordable housing restriction or regulatory agreement shall meet the requirements of the Town and the Local Initiative Program or other programs qualifying dwelling units for inclusion on the Subsidized Housing Inventory, and shall be in force for the maximum period allowed by law.
  - (2) The affordable housing restriction or regulatory agreement shall be enforceable under the provisions of M.G.L. c.184.

- (3) The Planning Board shall require that the applicant comply with the mandatory provision of affordable housing units and accompanying restrictions on affordability, including the execution of the affordable housing restriction or regulatory agreement.

All documents necessary to ensure compliance with this Bylaw shall be subject to the review and approval of the Planning Board and review as to form by Town Counsel. Such documents shall be executed and recorded prior to and as a condition of the issuance of any Certificate of Occupancy unless later recording is permitted by the Planning Board for good reason.

## **Proposed Addition to the Subdivision Regulations**

### **Fire Suppression**

The Fire Chief shall determine on a case by case basis whether the developer of a proposed subdivision shall be required to install:

- A. Fire Suppression Cistern(s) for fire suppression within the proposed subdivision. The appropriate size and location of the fire cistern(s) shall be determined by the Fire Chief; or
- B. Residential Fire Suppression Systems for all residential units within the proposed subdivision; or
- C. Both Fire Suppression Cistern(s) for fire suppression within the proposed subdivision and Residential Fire Suppression Systems for all residential units within the proposed subdivision.

The final determination on the type of fire suppression system(s) to be utilized within a proposed subdivision shall be determined by the Fire Chief.