

# Comprehensive Planning Implementation Tools, Techniques and Strategies

## Sample Language from Maine Land Use and Zoning Ordinances

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# Affordable Housing

## General Affordable Housing Comp Plan Language – Camden

### G. AFFORDABLE HOUSING

**State Goal:** To encourage and promote affordable, decent housing opportunities for all Maine citizens. (Growth Management Act)

**Local Goals:** To retain within the Town current residents, those who provide essential services to the Town, and those of moderate means who may wish to work and live in Camden in the future, thereby making Camden a diverse and representative community.

To offer citizens in the lower and middle income levels an opportunity for access to locally available, affordable housing, including, to the extent possible, home ownership.

To promote, develop, and foster an environment conducive to public efforts, public-private cooperative efforts, and private initiatives, such as the donation of privately held land, that will expand the affordable housing stock within the Town.

To foster cooperation among local boards and agencies to achieve these goals.

Pursuant to these goals, the policies and implementation of this Comprehensive Plan are as follows:

1. The Town should support the efforts of the Camden Affordable Housing Committee, or a successor to it, to develop, coordinate, oversee and/or manage the various strategies adopted to achieve the objective of affordable housing.

Responsibility: Select Board

Timeframe: Ongoing

2. The Planning Board should create and enhance mechanisms to foster construction of well-planned, affordable housing developments, including subdivisions, mobile home parks, apartments, and **scattered site/infill projects**. Mechanisms that deserve consideration include:

- (a) The use of incentives to developers to dedicate a given number of their proposed lots for affordable housing. Incentives might include increased densities or provision of Town-financed utilities.
- (b) The wider use of cluster housing as a tool for affordable housing;
- (c) Allowing the conversion of single-family homes in designated areas of Town into multi-family units at greater densities than now permitted; or the addition of

"granny flats" to a single family lot, provided the capacity for such increased density can be demonstrated to exist.

Responsibility: Planning Board, Camden Affordable Housing, Select Board

Timeframe: Immediate

3. The designated affordable housing organization should:

(a) Explore the possibility of purchasing "appreciation rights," that is, the right to impose restrictive covenants on selected homes, which would limit the resale price of those residences to less than market value;

(b) Explore ways to assist citizens of Camden in their individual and collective efforts to purchase and renovate existing housing units within the Town, perhaps through financial assistance or sweat equity; and

(c) Explore ways to encourage, promote, or develop efforts aimed at assisting Camden's elderly residents to find suitable and affordable housing in the Town.

Responsibility: Camden Affordable Housing, Select Board

Timeframe: Ongoing

4. The Town should promote and participate in a regional and comprehensive approach to the provision of affordable housing in the mid-coastal area.

Responsibility: Select Board

Timeframe: Ongoing

5. At a minimum, it is the objective of the Town that, over the next ten years, 35 new affordable housing units, as defined by state law, will be created in Camden (representing 10% of projected new housing units by 2013 for a population of 5,884).

Responsibility: Camden Affordable Housing Committee

Timeframe: Long term

### **Camden Zoning Ordinance:**

#### Article IX Open Space Zoning

##### Section 1. Purpose

The purposes of this Article are, within rural areas of Camden, *to maintain the rural, natural, and scenic qualities of the Town; and, within developing areas, to provide for flexibility in the design of housing developments to allow for the creation of open space, recreational space, efficient use of the land, and opportunities for affordable housing.*

##### Section 2. Applicability

###### (1) Rural-1, Rural-2, and Coastal Residential Districts

The provisions of this Article shall be mandatory for residential subdivisions in the [Rural-1](#), [Rural-2](#), and [Coastal Residential](#) Districts.

###### (2) Other Districts

In districts other than the [Rural-1](#), [Rural-2](#), and [Coastal Residential](#) Districts where residential development is allowed, the provisions of this Article shall be optional. In such districts, notwithstanding other provisions of this Ordinance, the Planning Board in reviewing and approving proposed residential subdivisions may modify provisions

relating to space and bulk to permit innovative approaches to housing and environmental design in accordance with the standards of this Article. Such modifications of space and bulk provisions shall not be construed as granting variances to relieve hardship.

### Section 3. General Standards

(1) Developments proposed under the terms of this Article shall meet all requirements of this Article, unless otherwise noted.

(2) The uses of the land shall not differ from the uses permitted in the district in which the development is located.

(3) Within the [Rural-1](#) District:

(a) the total number of dwelling units shall not exceed one unit per 7 acres.

(b) each lot within the subdivision shall contain a minimum of 1 acre.

(c) lots and/or dwelling units shall be laid out so that, on average, they encompass (or, in the case of dwelling units not on individual lots, occupy) no more than two acres of buildable land per lot or dwelling unit, and so that at least 60% of the buildable land remains as open space outside of the lots and not otherwise assigned to individual dwelling units. "Buildable" land is all land except land within street rights-of-way, wetlands as defined in this Ordinance, 100-year flood plains, water bodies, or sustained slopes in excess of 20%.

(d) minimum road frontage shall be 75 feet. However, no individual lot or dwelling unit shall have its required frontage on a public road existing at the time of application for development or gain its access from such a road.

(e) no building or structure shall be located within 25 feet of any property line.

(f) neither shore frontage nor setbacks from the normal high water marks of water bodies shall be reduced below the minimum otherwise required in the district.

(g) dwelling units may be clustered within a single building or series of attached units. In these cases the provisions of this paragraph (3) shall apply, with the following exceptions and additions:

(i) the parcel of land proposed for development shall have a minimum of 150 feet of frontage;

(ii) the minimum distance between principal buildings on the same lot shall be equivalent to the height of the taller building;

(iii) no building shall contain more than six dwelling units and no more than an average of four units per building for the development as a whole; and attached dwellings shall include no more than six dwelling units in any single series, and no more than an average of four per series for the development as a whole.

### Section 4. Design Standards

In addition to other standards of this zoning ordinance and of the Town's subdivision ordinance, individual building lots shall be laid out to achieve the following objectives (which are listed in order of priority as it is recognized that some may conflict with others on a given site):

(1) Within the [Rural-1](#) and [Rural-2](#) districts:

(a) where on-site wastewater disposal is to be used, on suitable soils for subsurface wastewater disposal;

(b) below elevation 500 feet;

(c) in a manner that maximizes as part of the required open space the amount of contiguous, usable area for agriculture or woodlot production;

(d) in a manner that maximizes as part of the required open space the amount of undisturbed, contiguous wildlife habitat, including but not limited to deer yards;

(e) in a manner that encourages buildings to be located within woodlands or along the edges of open fields adjacent to woodlands;

(f) in locations least likely to block or interrupt scenic vistas, as seen from the public roadway.

### Section 5. Common Open Spaces

(1) The common open space created by the development shall be shown on the subdivision plan with the following notation on the face of the plan: "Common open space shall not be further divided or used for future building lots."

(2) The common open space shall be accessible to the residents of the development, either by locating lots in a manner that they abut the common open space, or via a roadway, right-of-way, easements, or a combination of these mechanisms.

(3) The common open space shall be used only for agriculture, woodlands, preserving the natural features

of the site, or low-intensity recreation. Such uses shall not include rights-of-way (except easements for underground utilities), driveways, or parking areas, or tennis courts, swimming pools, or similar recreation development. Buildings related to allowed activities may be located in the common open space, provided that the footprints of such buildings shall not count toward the percentage of open space required by this Article.

(4) The formation and incorporation by the developer of a homeowner's association shall be accomplished prior to final subdivision approval. Covenants for mandatory membership in the association shall be approved by the Planning Board and included in the deed for each lot or unit or incorporated by reference from a master document recorded in the Knox County Registry of Deeds. The association's documents shall specify that:

- (a) The association shall have the responsibility of maintaining the common open spaces and other private facilities dedicated to the use in common by the development's residents.
- (b) The association shall levy annual charges against all property owners to defray the expenses, if any, connected with maintenance of the common open spaces and facilities.
- (c) The developer shall maintain control of common open spaces and facilities and be responsible for their maintenance until at least 51% of the development's lots or units have been completed and sold, with evidence of such completion and sales submitted to and approved by the Planning Board.

## General Affordable Housing Comp Plan Language - Kennebunk

### B. Housing

*State Goal: To encourage and promote affordable, decent housing opportunities for all Maine citizens.*

*Local Goal(s):*

- *To recognize that the availability of affordable housing is essential to the health and well-being of Kennebunk.*
- *To make housing (including rental housing) available to all age groups and income levels in the community.*
- *To have at least 10% of all housing built during the next decade be “affordable”, according to the M.S.H.A.’s definition of affordable and to encourage and support the efforts of the Kennebunk Affordable Housing Committee in addressing this goal.*
- *To foster public/ private partnerships in achieving these goals.*

### Policies & Strategies

*Policy 1: Investigate land use restrictions and development costs which may be limiting the development of affordable housing and revise as needed to address goals.*

Strategy 1.A: Review zoning regulations- including use, density, lot size, setbacks and other provisions to see if reduction in housing construction cost may be achieved.

Strategy 1.B: Review zoning regulations to provide provisions/ incentives for constructing **“affordable” infill development.**

Strategy 1.C: Investigate other land use restrictions which might result in the creation of affordable housing; i.e. limiting the overall dwelling size and/or limiting the number of bedrooms per unit.

Strategy 1.D: Investigate and work with the utility companies to determine whether the extension and/or impact fee costs could be reduced for deed restricted affordable housing.

Strategy 1.E: Assure the long term affordability of the affordable housing created through the use of deed covenants which are set at the time of construction.

*Policy 2: Investigate other strategies which would support the creation of affordable housing.*

Strategy 2.A: Consider implementing a standard which requires that a percentage of all new residential dwellings be affordable to low and moderate income families- with appropriate covenants to insure that such housing remain affordable.

Strategy 2.B: The Town recommends the creation of a housing trust fund. A trust fund earmarked for a community’s housing needs can be made up of developers’ contributions, sale of municipal owned property, higher building permit fees, town capital budget appropriations, payments made in lieu of providing on-site units, and annual repayments of loans made by the housing trust fund. The money in turn can be used for building or rehab, subsidizing low and moderate-income families’ mortgages and helping finance construction of new housing.

Strategy 2.C: Regularly review Town owned properties to determine if they could be made available for an affordable housing venture either as a Town sponsored project or as a joint public/ private partnership.

Strategy 2.D: Participate (through the Kennebunk Affordable Housing Committee) in regional approaches to addressing affordable housing deficiencies, including working with a regional affordable housing coalition if one is formed.

*Policy 3: Support the efforts of and implement the recommendations of the Kennebunk Affordable Housing Committee.*

Strategy 3.A: It is recommended that annual funding of the Affordable Housing Committee be considered to pay for the costs associated with the Committee's work.

## **Kennebunk Zoning Ordinance**

### **Section 12. Affordable Housing**

#### **A. Applicability**

This Section applies to subdivisions proposed in the following districts: Village, Residential, and Suburban Commercial.

#### **B. Public Sewer and Public Water**

Any development pursuant to this Section shall be connected to the public sewer and public water systems.

#### **C. Density Bonus**

1. The Planning Board may decrease the minimum net lot area per dwelling unit in the applicable district by up to 25% if between 25% and 49% of lots or units in a residential subdivision are earmarked for affordable housing, as defined in this Ordinance, and by up to 50% if at least 50% of lots or units in a residential subdivision are earmarked for affordable housing.

2. This decrease in minimum net lot area per dwelling unit shall not apply in mobile home parks.

#### **D. Assurance of Affordability**

1. An application for a subdivision that includes a request for a density bonus under this Section shall demonstrate to the satisfaction of the Planning Board that, either by means of the terms of a mortgage held by a governmental agency whose purposes include the provision of affordable housing, or by means of an affordable housing covenant to be conveyed to a qualified holder, along with a signed statement by the qualified holder that it will serve as the holder of the affordable housing covenant, the designated share of units will remain affordable, as defined by this Ordinance:

(a) for at least 30 years from the date of first occupancy, in the case of units to be occupied by renters, whether or not the units are subsequently sold for owner-occupancy; and

(b) for at least 10 years from the date of first occupancy, in the case of units to be occupied by the owners of the units.

The affordable housing covenant shall provide, further, that the units will be rented or sold during the designated period of time only to persons whose incomes meet the guideline for affordability, as defined in this Ordinance.



The terms "affordable housing covenant" and "qualified holder" shall have the meaning as set forth in Article 2, Definitions, of this Ordinance. Nothing in this paragraph shall preclude a qualified holder itself from being the applicant for the development of an affordable housing project, provided that it demonstrates to the satisfaction of the Planning Board that, by means of deed restrictions, financial agreements, or other appropriate legal and binding instruments, the designated share of units will remain affordable for the required period of time.

2. An application for a subdivision that includes a request for a density bonus under this Section shall include a written statement on the subdivision plat indicating the share of dwelling units earmarked as affordable, and, in the case of dwelling units to be sold to others individually, the actual units (or the lots that will accommodate such units) earmarked as affordable.

3. An application for a subdivision comprised of rental units that includes a request for a density bonus under this Section shall include as part of the affordable housing covenant a written description of the mechanism by which the subdivider and his successors shall document annually to the qualified holder and to the Planning Board that the designated share of units to be rented have remained priced and, if occupied, actually rented at affordable levels and have been rented to households within the guidelines of affordability, as defined by this Ordinance. Failure to make such annual documentation shall constitute a violation of the subdivision approval.

4. Any dwelling unit that is earmarked for affordability and is to be sold shall include a restriction in its deed that requires:

- (a) any buyer within a 10-year period from the date of first occupancy to be within the guideline of affordability, as defined by this ordinance; and
- (b) the price of the dwelling unit not to be increased by a percentage greater than the percentage increase in the median household income in nonmetropolitan York County, as reported by the U.S. Department of Housing and Urban Development, between the date of purchase of the dwelling and the date of sale of the dwelling.

A copy of the deed restriction shall be included as part of the subdivision application and the deed restriction shall reference the book and page number at which the subdivision plat is recorded in the York County Registry of Deeds.

## **General Affordable Housing Comp Plan Language - North Yarmouth Comp Plan**

### **Affordable Housing Policies**

1. Allow a variety of housing types to provide for the needs of current and future residents, and allow the greatest densities of new residential development to occur in locations readily accessible to municipal services. Particular attention should be given to locating affordable housing in designated growth areas.
2. Continue to encourage the development of affordable senior housing.
3. Encourage the development of affordable housing consistent with the existing character of North Yarmouth for low and moderate-income households.
4. Monitor the Town's progress at meeting affordable housing goals and adjust strategies, as necessary.
5. Regional Coordination: Monitor regional housing trends and participate in regional efforts to promote affordable housing.

### **Implementation Strategies**

The Policies will be implemented as follows:

1. Amend the Zoning Ordinance, as necessary, to permit a wide range of housing opportunities, as follows: (Also see Future Land Use Chapter).
  - a. Permit smaller minimum lot sizes, and other dimensional requirements in Village Districts.
  - b. Assure that road construction and other design standards do not increase housing costs unnecessarily.
  - c. Allow cluster and conservation development, with provisions to permit more affordable development designs.
  - d. Continue to permit affordable housing types, such as mobile homes, mobile home parks, and multifamily housing.
  - e. Allow accessory apartments associated with single-family homes, but eliminate the requirement that they be limited to family members.
  - f. Consider allowing the renovation and re-use of existing structures in the Village Center Districts and other growth area districts, as appropriate, to accommodate affordable housing.
  - g. Continue to encourage the development of affordable senior housing by allowing greater flexibility, such as waivers of dimensional standards and the building cap (Senior Housing Overlay Zone).
  - h. Consider allowing a density bonus, waivers from dimensional standards, and/or waivers from any growth area residential caps for low-moderate income housing. Require that residential subdivisions or developments of 10 units or more provide at least 10% of the proposed lots or units as affordable units (affordability should be required in any subsequent resale or future rental). Explore other applicant options, such as provisions for affordable units/lots off-site, or donations of land or money to a non-profit housing entity.
  - i. Support the efforts of non-profit housing developers, such as Habitat for Humanity, through regulatory waivers and by giving them preference in developing parcels owned by the town.

2. Investigate the latest technologies associated with on-site septic systems and the feasibility of public sewer for the Village Districts.
3. Monitor housing growth and affordability. Review residential building permits, property transfers, housing costs every three years (at a minimum) to determine overall trends, including success at meeting affordable housing goals. Explore other affordable housing options, if necessary. Also monitor the affects of any temporary residential buildings caps in the growth areas on housing.
4. Assist first–time homebuyers and others by providing information on Maine State Housing Authority programs at the town office.
5. Regional Coordination: Work with neighboring towns and within the Greater Portland area to address affordable housing needs. Participate in regional efforts of the Greater Portland Council of Governments.

**North Yarmouth Zoning Ordinance:**

Article XI. Standards for Specific Activities

Definitions. Affordable housing pursuant to these provisions must be approved by the Planning Board through Site Plan Review or Subdivision Review.

**ARTICLE XI. STANDARDS FOR SPECIFIC ACTIVITIES**

**SECTION 11-1. ACCESSORY APARTMENTS**

- A. Purpose: The purpose of this provision is to allow an affordable housing option that is in keeping with the character of the community. This provision allows for the creation of a single, subordinate dwelling unit accessory and incidental to an existing or new single-family dwelling. An accessory apartment is intended to be a separate suite of rooms where one or two people occupy the unit.
- B. Standards and Requirements: An accessory apartment may be constructed within or attached to an existing or new single-family dwelling, or constructed as a separate structure within the vicinity of an existing or new single-family dwelling, for the purpose of adding a separate living area for rental purposes, as well as for “in-laws”, as long as the conversion is carried out in compliance with the following criteria:
  1. The accessory apartment is limited to 1 bedroom, and does not utilize more than 40 percent of the available living area of the principal single-family dwelling (excluding the basement of the single-family dwelling).
  2. The Code Enforcement Officer (CEO) approves the accessory apartment. The CEO shall require certification that the existing or proposed wastewater disposal system has the capacity for the additional waste to be generated. The conversion must also comply with all provisions of the State of Maine Plumbing Code and all sections of BOCA Building Code.
  3. No single-family dwelling may be converted in such a manner to provide an accessory apartment, unless the dwelling sits on a lot that is in compliance with the minimum lot size for the zoning district in which it is located.
  4. The owner of the property must occupy either the accessory apartment or the principal dwelling unit.
  5. Only one accessory apartment shall be permitted per single-family owner-occupied dwelling unit.
  6. Accessory apartments shall be exempted from meeting the requirements of Section 3-3.E. Residential Growth Limitation.

## **SECTION 11-2. AFFORDABLE HOUSING**

### **A. Purpose:**

1. The purpose of these provisions is to provide incentives for the development of affordable housing, with the following priorities:
  - a. To provide an adequate supply of affordable housing to meet the needs of senior citizens, municipal and school employees, and others with modest incomes.
  - b. To encourage lifetime residency - to facilitate townspeople remaining in the town after their children have grown up and during retirement years by providing affordable senior housing that is compatible with “senior living lifestyles”.
  - c. To encourage the development of affordable housing consistent with the existing character of the town.
2. These provisions are intended to provide the Planning Board with flexibility to waive requirements that impede development of qualified affordable housing, provided that the Planning Board, in its discretion, determines that the proposed affordable housing meets the purposes of this Section to the maximum extent feasible.

### **B. Applicability:**

These provisions shall apply to any affordable housing as defined in Article XII.

### **C. Standards and Requirements:**

1. Affordable housing units shall be geographically dispersed throughout the development where feasible, and the dwelling units shall be compatible with the design of the remainder of the development in terms of appearance.
2. An affordable housing unit shall not have more than 1,500 square feet of living space. The Planning Board shall require deed restrictions that prohibit future expansion of the square footage of living space.
3. The affordable housing lots/units shall be constructed concurrently with the remainder of the project.
4. An affordable housing development may be developed as a clustered housing development pursuant to Section 11-3. Clustered Housing Developments, and/or as multiplex housing pursuant to Section 11-7. Multiplex Housing. Affordable housing may be condominiums.
5. Net Residential Density Bonus: The Planning Board may grant a 20 percent net residential density bonus for the development of affordable housing units, if the developer can assure to the Planning Board’s satisfaction that at least 20 percent of the total number of residential dwelling units in the proposed development will remain affordable to low and/or moderate income families for the next 25 years, and that preference will be given to individuals and families as described in A.1 above. The density bonus shall be calculated such that when the percentage of lots or units is more than .5 the bonus number of lots/units shall be rounded up, and when percentage of lots or units is .5 or less the bonus number of lots/units shall be rounded down. For example, if 12 lots are proposed, 2 of the lots must be affordable housing units (12 times 20% = 2.4, rounded down to 2 lots) If 13 lots are proposed, 3 of the lots must be affordable housing units (13 times 20% = 2.6, rounded up to 3 lots). The Planning Board shall not grant a net residential density bonus within the Royal River Corridor Overlay District, Residential Shoreland District or the Resource Protection District. The Planning Board shall not grant a net residential density bonus for any development located within the Groundwater Protection Overlay District, unless sewer serves the development.
6. Residential Growth Limitation Waiver: The Planning Board shall waive the requirements of Section 3-3.E. Residential Growth Limitation, for the affordable housing units, if the developer can assure to the Planning Board’s satisfaction that at least 20 percent of the total number of residential dwelling units in the proposed development will remain affordable to low and/or moderate income families for the next 25 years, and that preference will be given to individuals and families as described in A.1 and A.2 above.

7. Long-Term Affordability Required for All Affordable Housing: Long-term affordability must be assured for a period no less than 25 years through deed restrictions or some other recorded instrument acceptable to the Town Attorney. The developer of affordable housing shall include provisions for preserving affordability, which shall be reviewed by the town attorney prior to Selectmen and Planning Board review of the proposed long-term affordability agreement. A third party that has the expertise and resources to undertake and continue the task of assuring the long-term affordability of the housing may administer the affordability program. The following standards shall be applied to affordable owner occupied and rental housing:

- a. Owner Occupied Residences: When the affordable housing includes units to be sold as residences, the developer shall use legal mechanisms such as, but not limited to, restrictive covenants, ground leases, or "soft" mortgages to ensure that the residences are owner-occupied and that the initial and subsequent sales prices are affordable to target groups for a minimum of 25 years. Preserving long-term affordability may mean restrictions on resale to qualified buyers, if available, granting a right of first refusal to the town, or the town's designee. Additional restrictions limiting the owner's ability to improve the property and/or to recoup some part of the costs of the improvements at resale are also to be considered.
- b. Rental Units: When an affordable housing includes rental units, provisions shall be made to ensure that the rental price of units remains affordable to the target groups for a minimum of 25 years.

### **SECTION 11-3. CLUSTERED HOUSING DEVELOPMENT AND OPEN SPACE 5 DEVELOPMENT**

#### **A. Purpose:**

1. The purposes of these provisions are as follows:

- a. To conserve open land, including, but not limited to areas containing unique or environmentally sensitive natural or cultural resources such as stream corridors, wetlands, wildlife habitats, woodlands, existing and future water supplies, scenic areas and significant archaeological sites, by setting them aside from development;
- b. To implement the Comprehensive Plan, including the Open Space Plan, to create a Royal River Corridor and other conservation networks for the benefit of present and future residents;
- c. To provide for the conservation and maintenance of open land for active or passive recreational use;
- d. To provide greater design flexibility and efficiency in siting of services and infrastructure, including reductions in the length of roads and utility runs, and the amount of paving required for development;
- e. To provide for a diversity of lot sizes, building densities and housing choices to accommodate a variety of age and income groups, and residential preferences;
- f. To create neighborhoods with direct visual access to open land, with amenities in the form of neighborhood open space, and with a strong neighborhood identity.
- g. To conserve scenic views and elements of the town's rural character, and to minimize perceived density, by minimizing views of new development from existing public roads.

2. To achieve these purposes, the Planning Board may approve clustered housing development and open space development in accordance with the provisions of this section. In approving any subdivision in any district, the Planning Board may approve clustered housing development where lot sizes, lot widths, lot coverage, street frontages and building setbacks can be reduced below the minimum requirements of Article VII. Zoning District Regulations, and any land gained thereby is set aside as open space. Clustered housing development is optional in the growth districts<sup>2</sup> and mandatory in the rural districts<sup>3</sup>. In approving subdivisions, the Planning Board may also approve open space development in the rural districts as an

alternative to clustered housing development. Open space development requires very low residential densities and permanent preservation of designated high value open space.

**B. Applicability:**

This section is applicable to the development of residential subdivisions, as follows:

1. Farm and Forest District, the Residential Shoreland District and the Resource Protection Districts  
Clustered Housing Development or Open Space Development and the provisions of this section shall be mandatory for all residential subdivisions located within the Farm and Forest District, the Residential Shoreland District and the Resource Protection District.

Waivers: The Planning Board may waive the mandatory Clustered Housing Development or Open Space Development requirement under the following conditions:

- a. For minor subdivisions of less than 5 lots where the applicant demonstrates that there will be minimal benefits in keeping with the purposes of Section 11-3, and where the development does not provide an opportunity to enhance the Royal River Corridor, Pratt's Brook, Toddy Brook or Deer Brook corridors, open space associated with Knight's Pond or existing and future public water supplies.
- b. For subdivisions within and/or adjacent to the Royal River Corridor, when a developer or landowner demonstrates to the Planning Board the following:
  - i. The property was a lot of record at the time of the adoption (June 14, 2005) of this provision (Section 11-3.B.1.b), and the developer was the owner of the property at the time of the adoption of this provision;
  - ii. The mandatory Clustered Housing Development or Open Space Development requirement would result in a significant loss of otherwise buildable lots under the other provisions of Section 11-3.B.1. A significant loss of otherwise buildable lots is defined as the loss of more than 30 percent of the total number of buildable lots due to the prohibition against new residences within subdivisions within the Royal River Corridor area between 250 feet from the normal high water mark of the Royal River, Chandler Brook or the East Branch and 500 feet from the high water mark of these water bodies; and
  - iii. The developer and/or landowner calculates the number of buildable lots lost as a result of Section 11-3.B.1 and obtains subdivision approval for a plan that meets the other criteria of this Ordinance and the Subdivision provisions prior to January 1, 2010.
  - iv. Sunset Clause: Section 11-3.B.1.b will terminate on January 1, 2010.
- c. In all cases, waivers shall only be granted in accordance with subsections B.1.a and B.1.b, above. The Planning Board shall assure preservation of high value open space in keeping with the goals of the Royal River Corridor Overlay District to the greatest extent practical. In granting the waiver the Planning Board may allow smaller lot sizes and/or allow for limited residential development within the area between 250 feet from the normal high water mark of the Royal River, Chandler Brook or the East Branch and 500 feet from the high water mark 28 of these water bodies.

2. Village Center District and Village Residential District: The provisions of this section shall be optional in the Village Center District and Village Residential District. Applicants shall be encouraged to utilize cluster housing development when these designs can be shown to increase housing affordability and/or enhance neighborhood cohesion, aesthetics, open space and recreational amenities.

- a. When a subdivision application/sketch plan does not propose clustered development, the

Planning Board may, in its discretion, ask the applicant to submit an alternative sketch plan showing a clustered housing development.

b. If the Planning Board, after a site walk and after such consultation with the North Yarmouth Conservation Commission as the Planning Board deems appropriate, concludes that the parcel shown on the alternative sketch plan contains open fields, pasture, wetlands, waterways, wildlife habitat, scenic vistas, historic and/or archeological assets, rare flora or fauna or notable stands of forest, any of which could be preserved by clustering, the Planning Board may request that the applicant revise the application and propose a clustered housing development.

c. A request under paragraph (b) above will not bind the applicant; but if the applicant decides not to propose a clustered housing development, the Planning Board may consider the absence of clustering when it determines if the application meets the review criteria of Article V. Subdivision Review Procedures and Criteria.

### C. General Standards for Clustered Housing Development and Open Space Development:

1. Developments proposed under the terms of this section shall meet all the requirements for a subdivision, the town's roadway criteria and specifications, and all other applicable town ordinances including the general performance standards of this Ordinance, unless otherwise noted.
2. Each lot or building must be an element of an overall plan for site development. When the development consists of the creation of lots, the plan shall establish a building envelop for each lot that identifies the area within which the buildings will be located. When the development involves the construction of multiple buildings on one or more lots, the plan shall show the location of each building.
3. Developments shall be designed to preserve valuable open space consistent with the town's Open Space Plan, and any other areas worthy of conservation as established through the sketch plan process. No dwelling units, structures associated with dwelling units, or uses accessory to a dwelling unit shall extend into the required minimum protected open space. Open space shall be generally contiguous, and shall be designed to connect with valuable open space or conservation land on adjacent properties to the greatest extent possible. The creation of open space networks and expanses of conservation land to provide wildlife habitat and corridors, to provide land for future trail systems and passive recreation land, and to protect other cultural and natural resources is required. The addition of open space and conservation land to the Royal River Corridor including the Royal River, Chandler Brook and the East Branch, and Pratt's Brook, Toddy Brook, Deer Brook including the Deer Brook wetland, and Knight's Pond, areas that will add to protection for existing and future public water supplies are high priorities. The Planning Board may require public access to open space areas, unless the open space is an environmentally sensitive area where public access would be detrimental. There must be a demonstrated need for the public access, such as access to a water body, access to a trail system or the need for passive open space for recreation within the area.
4. Where a development abuts a water body, a portion of the land along the water shall be useable for passive recreation. This open space land shall have a minimum depth of 500 feet for areas abutting the Royal River, Chandler Brook and/or the East Branch. This open space land shall have a minimum depth of 150 feet for areas abutting Pratt's Brook, Toddy Brook, Deer Brook, the Deer Brook wetland and Knight's Pond. The minimum depth requirement of 500 feet for areas abutting the Royal River, Chandler Brook and/or the East Branch may be reduced to 250 feet only in accordance with Section 11-3.B.1, above.
5. Notwithstanding the provisions of Article VII. Zoning District Regulations relating to minimum lot size, street frontage and setbacks, and maximum lot coverage, the Planning Board, in reviewing proposed clustered housing developments and open space development may modify said provisions relating to minimum lot size, street frontage, setback, and lot coverage to permit innovative approaches to development and environmental design in accordance with the

standards of this section. The Planning Board may reduce lot frontage and front setback requirements as well as reduce side and rear setbacks without percentage limitation. The Planning Board may reduce lot area requirements, but only if a net residential acreage at least equal in area to the cumulative lot size reduction is maintained as common or public land. The modification of these standards shall not require a variance and no finding of undue hardship shall be required.

6. In the Farm and Forest District, Residential Shoreland District and Resource Protection District, the following shall apply:
  - a. The maximum residential density for clustered housing development shall be 1 residential unit per 3 net residential acres.
  - b. The maximum residential density for open space development shall be 1 residential unit per 10 net residential acres.
  - c. The total area of permanently preserved open space within clustered housing developments and open space developments shall be a minimum of 50 percent of the total area of the parcel. The Planning Board may not waive the minimum open space requirements.
  - d. No individual lots shall have direct driveway access to Routes 231, 115 or 9, or North Road.
  - e. No individual lots shall have direct driveway access to any other public road, which existed prior to the time of the development, unless the applicant demonstrates to the Planning Board's satisfaction that there is a unique situation where the configuration of the parcel and an environmental constraint, such as a high value wetland, prohibits driveway access to an internal subdivision road, or is preferable to impacting the high value wetland.
7. (blank)
8. In the Village Center District and Village Residential District, the following shall apply:
  - a. Clustered housing development shall be a minimum of 5 lots or 5 residential units.
  - b. The Planning Board may grant a density bonus of 20 percent for clustered housing development that provides useable public open space for recreation pursuant to Section 10-22 Recreation and Open Space Land in Developments, protects high value scenic vistas as identified in the Comprehensive Plan, and/or provides affordable housing pursuant to the provisions of Section 11-2. Affordable Housing.
  - c. No individual lots shall have direct driveway access to routes 9, 231, 115 or North Road.
9. All sewage disposal systems shall meet the requirements of Section 10-16. Sewage Disposal and Section 10-23. Water Supply.

10. Minimum Lot Area Requirements:

- a. The minimum lot area requirement may be reduced to 20,000 square feet under either of the following conditions:
    - i. When the lot is served by public sewer, or
    - ii. When the lot is served by an advanced wastewater treatment system where a hydrogeological assessment pursuant to Section 10-24. Water Quality, has demonstrated that water quality will not be degraded.
  - b. The minimum lot area requirement may be reduced to 10,000 square feet when both public water and public sewer serve the lot.
11. The Planning Board may reject a proposed Clustered Housing Development or Open Space Development that does not permanently preserve a sufficient amount of open space, or permanently preserve high value open space areas as identified in the Comprehensive Plan and Open Space Plan.
  12. There shall be no further subdivision of lots within clustered housing developments or open space developments located in the Farm and Forest District, Residential Shoreland District, or Resource Protection District. The Planning Board may require that there be no further



subdivision of lots within clustered housing developments within the Village Residential District and/or Village Center District, to maintain the long-term integrity of the development in meeting the intent and purposes of the Clustered Housing provisions and this Ordinance.

**D. Other Siting Standards:**

1. Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, south-facing slopes (where possible) and natural drainage areas, in accordance with an overall plan for site development and landscaping.
2. Buildings shall be located within forested portions of the development and not in open fields. When the development contains no forest, or insufficient forestland to include all buildings, the development shall be designed to minimize views of buildings that will be visible from existing public streets. When a development contains a scenic ridgeline, buildings should be placed 50 feet vertical distance below the ridgeline and tree removal should be limited. Restrictions minimizing views of buildings shall be included on the plat and in the deed to each lot. Buildings shall be designed and laid out to protect bedroom windows from light invasions by vehicle headlights or glare from existing outdoor lighting or illuminated signs where allowed, insofar as practical.
4. Where parking spaces or storage areas are located in areas abutting existing residential properties, a permanent wood or masonry screen at least 4 feet high shall be erected along the property line in addition to the green perimeter strip described below.
5. Other than in the Resource Protection District, a green perimeter strip not less than 20 feet wide shall be maintained with grass, bushes, flowers, or tress along all lot lines (except for entrance and exit driveways). Such green strip shall not be built on or paved or used for parking or storage. There shall be no removal of trees over 4 inches in diameter within this buffer. In the Resource Protection District, vegetation shall be retained in its natural state, although tree planting shall be permitted as a matter of right. Restrictions protecting this green perimeter strip shall be included on the plat and in the deed to each lot. Alternatively, such areas may be protected by a conservation easement.

**E. Dedicated Open Space Land:**

1. There shall be no further subdivision of dedicated open space. Open space land shall be used only for agriculture, forestry, conservation, and/or non-intensive public outdoor recreational activities that do not require modifications or improvements to the land other than access points or trails, including bridges for trails (such as hiking, bird watching, nature study, cross country skiing, snowmobiling and hunting). Vehicular use and hunting and trapping may be prohibited. Subsurface sewage disposal systems, wells and easements for public utilities, but no structures, may be permitted in open space areas.
2. Open Space land set-aside in clustered housing development or open space development shall be protected as required by this sub-section. Land set aside as protected open space may be a separate parcel. In Farm and Forest District, Residential Shoreland District and Resource Protection District developments only, such land may be included as a portion of one or more parcels on which dwellings and other structures are permitted, provided that a conservation easement is placed on such land and that the Planning Board approves the configuration of the open space land and finds that the proposed development plan will not compromise the conservation value of the open space land.
3. Fee Simple Dedication to Town, State, the Friends of the Royal River or Other Conservation Organization: Fee simple dedication of protected open space land to the town, state, the Friends of the Royal River, or another conservation organization approved by the Planning Board is an acceptable method of protection.
4. Dedication of Conservation Easement to Friends of the Royal River, Town, State or Federal Agency, or Other Conservation Organization:

- a. A perpetual conservation easement restricting development may be granted to a qualified non-for-profit conservation organization or land trust, such as the Friends of the Royal River, the town, the state or a federal agency.
- b. Such conservation easement shall be approved by the Planning Board, with review of the Conservation Commission and the Town Attorney, and shall be required as a condition of Planning Board approval.
- c. The conservation easement shall be recorded in the Cumberland County Registry of Deeds prior to or simultaneously with the filing of the final subdivision or site plan. In the case of minor site plans, a deed restriction enforceable by the town may be substituted for a 46 conservation easement.
- d. The conservation easement may permit only those uses authorized through the development review process.

# Land Use

## Differential Growth Cap - Kennebunkport Comprehensive Plan

**Land Use Policy 1: Encourage growth adjacent to current village centers. Growth should be compatible with and integrated into existing areas and existing infrastructure.**

- Strategy 1: **Differentiate the number of growth permits by zone.** Enact a growth cap ordinance that limits growth in areas of the town designated as non-growth areas in the Future Land Use Plan and does not differentiate between subdivision and non-subdivision lots. Limit the annual number of permits allowed in non-growth areas to no more than 25 percent of the total number of permits issued town-wide in the preceding calendar year, with the following allocation proposed for each of the three non-growth areas:
- o Z1 (Rural) – 5 percent of previous year’s total;
  - o Z9 (Critical Rural) – 5 percent pf previous year’s total;
  - and
  - o Z10 (Transitional) – 15 percent of previous year’s Total.

## Making Growth Areas Attractive – Rockport Comp Plan

|  |   |  |         |
|--|---|--|---------|
| Develop further village infrastructure for Rockville     | Develop, analyze and prioritize list of infrastructure projects for Rockville – e.g. sewer extension vs. community wastewater disposal system; Route 17 crossing, sidewalks, incentives for additional businesses, etc. | Rockville Ad-Hoc Village Committee<br><br>(appointed by selectboard) | Ongoing |
| Develop further village infrastructure for West Rockport | Analyze costs of extending sewer line to W. Rockport vs. community wastewater disposal system.  | W. Rockport Village Committee<br>(appointed by selectboard)          | Ongoing |

## Making Growth Areas Attractive – Kennebunk Comp Plan

### Growth Areas

- Traditional Villages- Kennebunk Village, West Kennebunk Village and Lower Village are included here and consist of both the core commercial areas within each of the villages and the surrounding residential neighborhoods.

- Proposed Village Extensions- extended villages are intended to allow for residential growth over the next decade. These areas have, or are most easily and efficiently served by public services and facilities and infrastructure expansion. **Extended village development should be laid out to achieve a sense of village: tight knit, pedestrian oriented, interconnected streets where possible, public open spaces built into the development, etc. Residents in these village/extended villages areas should be involved in formulating the dimensional and design standards.**

Recommended density within the village extension:

30,000 square feet per lot without public sewer

10,000 square feet per lot with public sewer

## **Current Use Tax Programs – Lincolnville Comp Plan**

### **Agricultural & Forest Resources Goal #2:**

To encourage owners of large parcels to keep their land productive.

#### **Implementation Strategies:**

- Educate landowners about state-sponsored Farmland & Open Space and Tree Growth programs. (Town Administrator, Town Office Staff and Conservation Commission, ongoing)
- Inform property owners about conservation easements and area Land Trusts. (Town Administrator, Town Office Staff and Conservation Commission, ongoing)
- Encourage development patterns that retain open space through such mechanisms as open space design, building envelopes and density limits. (Land Use Committee, ongoing)
- Develop a fair and equitable schedule for taxation of properties in the Farmland & Open Space program, and those under conservation easements. (Board of Selectmen and Town Assessor, within one year)
- Encourage changes in existing state law re: the assessment of real property to encourage the preservation of forest and agricultural resources; including, providing a special designation for hayfields that encourage continued use of the land for that purpose. (Board of Selectmen and Town Assessor, within five years)

## Cluster Housing – Arundel Zoning Ordinance

### 8.4 CLUSTER HOUSING/PLANNED UNIT DEVELOPMENT

#### 8.4.A Purpose

The purpose of these provisions is to allow for flexibility in design and layout of housing developments, provided that the net residential density shall be no greater than is permitted in the District in which the development is proposed. All layout, dimensional, and area requirements contained in this ordinance or the town's subdivision review standards may be altered by the Planning Board, except height limitations.

#### 8.4.B Basic Requirements

Cluster/planned unit developments shall meet all the following criteria:

8.4.B.1 All developments shall meet the Arundel Subdivision Regulations but are exempt from this ordinance's requirements relating to minimum lot size, property line setbacks and street frontage. The total area of reduction on lot sizes below the required minimums shall be at least equal to the amount of dedicated common open space.

8.4.B.2 The minimum area of land in a cluster/planned unit development shall be 6 acres.

8.4.B.3 The site plan shall identify the location of all proposed roads, structures, parking areas, footpaths, common open space, and private yard space related to individual dwelling units. Only developments having a total site master plan will be considered.

8.4.B.4 To determine the maximum number of dwelling units permitted on a tract of land, the total acreage allowed to be included in net density calculations less the land needed for road rights of way, shall be divided by the minimum lot size normally required in the district. On any parcel encompassing 5 or more acres of important natural resources, noted as existing farmland soils, open fields or pasture, or registered tree growth woodland, the dwelling unit layout shall be clustered on such land to the most practical extent, so that at least 90% of the important natural resources remain as undeveloped.

8.4.B.5 No single group of dwellings which are attached either horizontally or vertically shall contain more than four (4) dwelling units. Residential structures, including mobile homes, shall not be located closer than 30 feet to each other.

8.4.B.6 The extent of soil types shall be delineated by a Registered Soil Scientist, licensed in the State of Maine, on a soil survey map.

8.4.B.7 No dwelling unit shall be constructed on soil classified as being "very-poorly" drained.

8.4.B.8 Where a cluster/planned unit development abuts a watercourse or waterbody, a portion of the shoreline, as well as reasonable access to it, shall be a part of the common land.

8.4.B.9 All dwelling units in a cluster/planned unit development shall be connected to a common water supply and distribution system, either public or private, at no expense to the municipality. The Planning Board may allow individual water supplies based on the submission of a hydrogeologic assessment and feasibility analysis which indicates that the individual water supplies will be:

8.4.B.9.a less expensive to install, maintain and operate;

8.4.B.9.b protected from contamination;

8.4.B.9.c able to provide adequate supply.

8.4.B.10 All structures with plumbing in a cluster/planned unit development shall be connected to a public sanitary sewer system, if available, or to a central collection and treatment system in accordance with Section 7.10 Sanitary Provisions of this Ordinance. The Planning Board may allow individual wastewater disposal systems based on the submission of a hydrogeologic assessment and feasibility analysis which indicates that the individual systems will not adversely impact the groundwater quality.

8.4.B.11 The development shall be designed with a continuous landscaped area not less than fifty feet in width which shall contain no structures. The first twenty-five (25) feet of the buffer strip, as measured from the exterior boundaries of the development shall contain evergreen shrub, trees, fences, walls or any combination which forms an effective visual barrier to be located on all exterior lot lines of the development, except that streets or driveways shall be kept open to provide visibility for vehicles entering and leaving the development.

#### 8.4.C Dedication and Maintenance of Common Open Space

8.4.C.1 The common open space land shall be jointly owned in common by the owners of the dwelling units/lots invested in an association. Covenants for mandatory membership in the association, setting forth the owner's rights and interests, shall be included in the deed for each lot or dwelling.

8.4.C.2 The common land shall be restricted to recreation, conservation or agricultural purposes. Structures accessory to non-commercial recreational, conservation or agricultural uses may be erected on the common land.

8.4.C.3 The common open space(s) shall be shown on the development plan and with appropriate notation on the face thereof to indicate that:

8.4.C.3.a Further subdivision of common land is prohibited and it shall not be used for future residential building lots; and that,

8.4.C.3.b A part of or all of the common open space may be dedicated for acceptance by the Town for operation as a municipal recreation facility.

8.4.C.4 The by-laws of the proposed neighborhood association shall specify maintenance responsibilities for the common lands.

8.4.C.5 The association shall levy annual charges against all dwelling owners to defray the expenses connected with the maintenance of open space, neighborhood recreational facilities and other assessments.

8.4.C.6 The developer or subdivider shall maintain control of such open space(s) and be responsible for their maintenance until at least 50% but not more than 75% of the lots/units are sold.

## Clustering - Model Code: Southern Maine Regional Planning Commission

### 12.10 Cluster Developments.

*[Ideally the provisions of this section should be included in a zoning ordinance. The recommendations of this section are modified from Southern Maine Regional Planning Commission's model zoning provisions for cluster developments. This section should not be included in subdivision regulations unless the municipality has a zoning ordinance that permits cluster development but fails to provide adequate performance standards or design guidelines.]*

#### A. Purpose.

The purpose of these provisions is to allow for flexibility in the design of housing developments to allow for the creation of open space which provides recreational opportunities or protects important natural features from the adverse impacts of development, provided that the net residential density shall be no greater than is permitted in the district in which the development is proposed. Notwithstanding provisions of the zoning ordinance relating to dimensional requirements, the Board, in reviewing and approving proposed residential subdivisions, may modify the provisions related to dimensional requirements to permit flexibility in approaches to housing and environmental design in accordance with the following guidelines. This shall not be construed as granting variances.

*[Section 12.10.A sets out the purposes of clustering and specifically allows the review authority to modify the dimensional requirements and permit reduced lot sizes, frontages and setbacks, without it being considered a variance. Again, these provisions should not be included if the municipal zoning ordinance does not permit cluster development or if the zoning ordinance already has detailed procedures and standards for cluster developments.]*

#### B. Application Procedure.

*[Section 12.10.B establishes the procedure for reviewing a cluster development, which varies slightly from the normal procedures in the Model, and the parameters for determining whether to allow clustering instead of a conventional design. As written, this section allows clustering only with specific permission of the review authority, if they find there will be some benefit to the community. Each municipality may choose some other procedure, such as allowing clustering by right, or even requiring clustering in some or all situations. With the implementation of many comprehensive plans in the 1990s, many communities have looked at mandating subdivisions on agricultural land be developed in such a manner as to preserve farmland. **Clustering is a tool which can be used to preserve other open space, and can be a key tool to implement comprehensive plan policies which call for the protection of wildlife habitat, scenic views, or important forest land.** Section 11.8 repeatedly called for various types of land to be set aside in open space. The provisions of Section 12.10.B establish the mechanism by which the creation of permanent open space can be required while the property owner continues to receive the financial benefits of subdivision development. Whereas clustering can bestow various benefits upon the developer due to reduced development costs, the Model recommends that there should be some demonstrated benefit to the community prior to allowing clustering. Some have commented that the requirement to present two plans to the review authority is too expensive a procedure. Each community must decide to what extent it wants to encourage or permit clustering in drafting these procedural requirements. **Goals and policies in the comprehensive plan regarding issues such as preservation of open space, maintenance of wildlife habitat or the creation of a greenbelt system of trails and recreation areas should be considered.**]*

The Planning Board may allow lots within subdivisions to be reduced in area and width below the minimum normally required by this ordinance in return for open space where the Board determines that the benefits of the cluster approach will decrease development costs, increase recreational opportunities or prevent the loss of natural features without increasing the net density of the development. Two sketch plans shall be submitted with one layout as a standard subdivision and the second as a cluster development indicating open space and significant natural features. Each lot in the standard subdivision shall meet the minimum lot size and lot width requirements of this ordinance, and if not serviced by public sewer have an area suitable for subsurface waste water disposal according to the Maine Subsurface Wastewater Disposal Rules. The number of buildable

lots or dwelling units in the cluster development shall in no case exceed the number of lots or dwelling units in the standard subdivision.

Estimated costs of infrastructure development (roads, utilities, etc.) shall accompany the plan. The written statement shall describe the natural features which will be preserved or enhanced by the cluster approach. Natural features include, but are not limited to moderate-to-high value wildlife and waterfowl habitats, important agricultural soils, moderate-to-high yield aquifers and important natural or historic sites identified by the comprehensive plan as worthy of preservation. The statement shall also compare the impacts upon the municipality from each plan. Examples of impacts are municipal cost for roads, school bussing, solid waste removal, utility efficiencies, recreational opportunities, protection of flood water storage areas, environmental impacts on sensitive lands caused by construction activities, underground utilities, reclamation of land and provision of land for conservation use.

Within ten days of receiving the application, the Board shall invite comments on the application from the conservation commission, the recreation commission, other appropriate town agencies, and abutters. Within thirty days of receiving the application, the Board shall determine whether to allow the subdivision to be developed in accordance with the cluster standards of this section.

C. Basic Requirements for Cluster Developments.

1. Cluster developments shall meet all requirements of these regulations.
2. Each building shall be an element of an overall plan for site development. Only developments having a total site plan for structures will be considered. The application shall illustrate the placement of buildings and the treatment of spaces, paths, roads, service and parking and in so doing shall take into consideration all requirements of this section and of other relevant sections of these regulations.

*[The requirement that the plan show all buildings etc. may not be necessary in cluster developments with a larger lot size. A municipality may wish to include this provision only for subdivisions with lot sizes under one acre or so. If the plan is not going to show the building location, a "building envelope," or limit of clearing in wooded sites, should be shown.]*

3. The net residential acreage shall be calculated by taking the total area of the lot and subtracting, in order, the following:

*[The issue of calculating the appropriate number of lots or dwelling units in cluster developments should really be taken care of in the zoning ordinance. This section is included in the Model as an example of what can be done. **If the zoning ordinance does not make any reference to net acreage calculations, the subdivision regulations should not as well.***

*The issue of net acreage and formulae for determining it will vary from community to community. On one hand, some suggest that an applicant should not be able to place more units in cluster development than on a conventional subdivision, and therefore "undevelopable land" should not be counted. On the other hand, others maintain that whereas clustering is generally beneficial to the community, due to the provision of open space and shorter streets and utilities, that there should not be a penalty for clustering, and perhaps there should even be an incentive or bonus for clustering. You may wish to consider adopting a net acreage provision such as above for all subdivisions or all lots, as some communities in southern Maine have, not just cluster developments. In addition, it may be better to define the term "net acreage" in the definition section and merely use it here in the text. This will facilitate using the same net acreage formula for other developments such as multi-family or mobile home parks and will mean Section 12.10.C.3 is not necessary. **These issues should be discussed and resolved in preparing a comprehensive plan.***

- a. 15% of the area of the lot to account for roads and parking.



- b. Portions of the lot which, because of existing land uses or lack of access, are isolated and unavailable for building purposes or for use in common with the remainder of the lot, as determined by the Board.
  - c. Portions of the lot shown to be in a floodway or a coastal high hazard zone as designated in the Flood Boundary and Floodway Map prepared by the Federal Insurance Administration.
  - d. Portions of the lot which are unsuitable for development in their natural state due to topographical, drainage or subsoil conditions such as, but not limited to:
    - 1. slopes greater than 20%.
    - 2. organic soils.
    - 3. wetland soils.
    - 4. 50% of the poorly drained soils.
    - 5. coastal sand dunes.
  - e. Portions of the lot subject to rights of way.
  - f. Portions of the lot located in the resource protection zone.
  - g. Portions of the lot covered by surface waters.
  - h. Portions of the lot utilized for storm water management facilities.
4. In order to determine the maximum number of dwelling units permitted on a tract of land, the net residential acreage shall be divided by the minimum lot size required by the zoning ordinance. No building shall be sited on slopes steeper than 25%, within 100 feet of any water body or wetland, or on soil classified as being very poorly drained.

*[Section 12.10.C.3 set out the criteria for determining the net acreage. Section 12.10.C.4 spells out how to use that figure for determining the maximum number of lots or dwelling units permitted in the subdivision. One of the advantages of clustering is the ability to avoid construction in environmentally sensitive areas, therefore the prohibition on construction on these sites. A community may also wish to preclude construction on other sensitive areas such as ridge tops, high value wildlife habitat, etc. as is suggested in the performance standards in the Model, requiring these resources to be placed in open space. If the prohibition refers to soils characteristics, or if the net acreage formula refers to soils characteristics, a high intensity soil survey is necessary.]*

*The submission requirements in Articles 6 and 7 require its submittal. If other characteristics are proposed to be used, the community should consider identifying particular resources in advance of development proposals coming forward, such as those identified as important in the comprehensive plan, or very clearly spelling out the criteria for inclusion as the preserved resource and the procedure for its identification.]*

- 5. Unless a community sewage collection and treatment system is provided, no lot shall be smaller in area than 20,000 square feet.

*[State law prohibits lots smaller than 20,000 square feet in area from having individual subsurface waste water disposal systems. Some towns may choose to set a particular minimum lot size or allowable percentage reduction from the lot size normally required.]*

- 6. The total area of reserved open space within the development shall equal or exceed the sum of the areas by which any building lots are reduced below the minimum lot area normally required by the zoning ordinance. No less than 30% of the reserved open space shall be usable open space.

*[If your community is going to provide a bonus for cluster subdivisions, the first sentence of Section 12.10.C.6 should not be included. Some communities may not place a priority on "usable open space," and may therefore*

wish to provide some flexibility in the regulations or delete the last sentence. "Usable open space" is defined in Article 3.]

7. Every building lot that is reduced in area below the amount normally required shall be within 1,000 feet of the common land.

*[Some municipalities require that each lot abut the common land. This occasionally results in poor design in order to fit the requirement. The Model suggests the 1,000 foot provision with the intent that every lot will be in close proximity as a reasonable goal.]*

8. The distance between buildings shall not be less than 20 feet.

*[For basic fire safety, ventilation, privacy and maintenance of outside walls. Any closer and you might as well have attached units. In rural areas, without central water supply and hydrants, this figure should be increased. Consult with the fire chief for a recommendation.*

*This provision is important to prevent strip development along an existing street with reduced frontages and the back land being "open space." ]*

9. No individual lot or dwelling unit shall have direct vehicular access onto a public road existing at the time of development.

10. Shore frontage shall not be reduced below the minimum normally required by the zoning ordinance.

*[The state's Minimum Shoreland Zoning Guidelines do not allow for shore frontage reductions.]*

11. Where a cluster development abuts a body of water, a usable portion of the shoreline, as well as reasonable access to it, shall be a part of the common land.

*[This will allow greater access to the water body by residents of the subdivision and possibly the public, and minimize the environmental impact of the subdivision on the shoreline and water quality.]*

# Critical Natural Areas

## Overall Language - Southern Maine Regional Planning Commission Model Subdivision Ordinance

*(This has scenic and ridgeline components)*

### 12.3 Wildlife Habitat, Rare Natural Areas or Public Access to the Shoreline.

#### A. Preservation of Natural Beauty and Aesthetics.

1. Unless located in areas designated as a growth area in the comprehensive plan, a subdivision in which the land cover type at the time of application is forested shall maintain a wooded buffer strip no less than fifty feet in width along all existing public roads. The buffer may be broken only for driveways and streets.

*[Maintaining the rural character of areas not designated for growth is one of the major goals of the comprehensive planning statute. To many people, rural character is defined by the perception of a lack of development more than an actual maintenance of an agricultural or forestry based economy. The Model suggests that buffering subdivision activity from area.]*

2. Unless located in areas designated as a growth area in the comprehensive plan, building location shall be restricted from open fields, and shall be located within forested portions of the subdivision. When the subdivision contains no forest or insufficient forested portions to include all buildings, the subdivision shall be designed to minimize the appearance of building when viewed from existing public streets.

*[Similar to the previous restriction on forested buffer strips, this section has been included in order to preserve the visual resources of open fields. In addition this may serve to preserve a resource necessary for the future of agriculture in some municipalities. The comprehensive plan should be consulted for the appropriateness of a guideline such as this. If there are no policies to support such a requirement, Section 12.3.A.2 should be deleted.]*

3. When a proposed subdivision contains a ridge line identified in the comprehensive plan as a visual resource to be protected, the plan shall restrict tree removal and prohibit building placement within 50 feet vertical distance of the ridge top. These restrictions shall appear as notes on the plan and as covenants in the deed.

*[The ridges of mountains or hilltops in many communities serve as major visual resources, which comprehensive plans may discuss preserving. Restriction of building activity or forest clearing from these ridge lines can assist in preserving this aesthetic resource. The comprehensive plan should be consulted for the appropriateness of a guideline such as this. If there are no policies to support such a requirement, Section 12.3.A.3 should be deleted.]*

4. When a proposed subdivision street traverses open fields, the plan shall include the planting of street trees. Street trees shall include a mix of tall shade trees and medium height flowering species. Trees shall be planted no more than fifty feet apart.

*[Much of the New England townscape's character resulted from the foresight of someone several generations ago to plant street trees. Street trees serve to provide shade, frame views along a street, and in themselves contribute to the beauty of a subdivision. The Model has suggested a mix of tall shade trees and medium-height flowering trees to avoid potential monotony and avoid single species plantings which intensified the catastrophe of Dutch elm disease.]*

#### B. Retention of Open Spaces and Natural or Historic Features.

1. The subdivision shall reserve between 5% and 10-% of the area of the subdivision as open space in order to provide for the recreational needs of the occupants of the subdivision and/or to

maintain the scenic or natural beauty of the area. In determining the need for open space the Board shall consider the needs identified in the comprehensive plan or recreation plan for open space or recreation facilities in the neighborhood surrounding the subdivision and the policies of the plan for meeting those needs; the proximity of the subdivision to neighboring dedicated open space or recreation facilities; the type of development and the demographic characteristics of potential residents in the subdivision; and the density or lot sizes of the development.

*[This guideline is related to Section 11.8.B.4. The performance standards required the subdivision to reserve enough open space for the recreational needs of the occupants of the subdivision. The Model suggests that between five and ten percent of the land area of the subdivision should be set aside for recreational purposes or for natural open space. Prior to including this suggested guideline in a local regulation, the review authority should look at the identified need for recreation or open space and the policies addressing those needs in the comprehensive plan. If the local regulation or ordinance includes this or a similar guideline, the review authority is directed to look at the particulars of each subdivision as far as the policies and recommendations in the comprehensive plan, the projected demand for open space, the availability of nearby facilities and in determining where within this range the amount of open space should fall.]*

2. Subdivisions with an average density of more than three dwelling units per acre shall provide no less than fifty percent of the open space as usable open space to be improved for ball fields, playgrounds or other similar active recreation facility. A site intended to be used for active recreation purposes, such as a playground or a play field, should be relatively level and dry, have a total frontage on one or more streets of at least 200 feet, and have no major dimensions of less than 200 feet.

*[As required by the submission requirements, the applicant should indicate the proposed ownership, management and uses of any open space. This guideline suggests some dimensional requirements and site characteristics for different types of recreational open space.]*

3. Sites selected primarily for scenic or passive recreation purposes shall have such access as the Board may deem suitable and no less than 25 feet of road frontage. The configuration of such sites shall be deemed adequate by the Board with regard to scenic attributes and significant wildlife habitat to be preserved, together with sufficient areas for trails, lookouts, etc. where necessary and appropriate.
4. Proposed subdivisions which include or are adjacent to buildings or sites on the National Register of Historic Places or which the comprehensive plan has identified as being of historical significance shall be designed in such a manner as to minimize the impacts on the historic features. When the historic features to be protected include buildings, the placement and the architectural design of new structures in the subdivision shall be similar to the historic structures. The Board shall seek the advice of the Maine Historic Preservation Commission in reviewing such plans.

*[The Maine Historic Preservation Commission can assist municipal reviewing authorities by reviewing plans for impact on historic and prehistoric sites. In addition, the comprehensive plan should identify those areas in the municipality which are of historic or prehistoric importance. Many historic features can be protected through the design of a subdivision. Architectural features, and the ability of new buildings to complement existing ones are the most common methods to protect historic features. Placing historic sites in common open space is another option.]*

### **C. Protection of Significant Wildlife Habitat and Important Habitat Areas.**

The following guidelines are designed to protect the significant wildlife resources identified in the municipality. The Board recognizes that wildlife management must take into account many site specific variables. Applicants proposing to subdivide land within identified wildlife resources must consult with the Maine Department of Inland Fisheries and Wildlife or a qualified wildlife biologist and provide their written comments to the Board. The guidelines of this section shall apply to only those subdivisions which include significant wildlife habitat or resources identified in Section 11.8.C.

*[Section 12.3.C provides guidelines for the protection of habitats identified in Section 11.8.C as needing protection. When faced with a subdivision which includes identified wildlife resources, the review authority should contact the regional biologist from the Department of Inland Fisheries and Wildlife or a qualified wildlife biologist to assure that development plans and other restrictions are adequate.]*

1. Protection of Habitat of Endangered or Threatened Species.

- a. Habitat or species appearing on the official state or federal lists of endangered or threatened species shall be placed in open space.

*[Activities within the habitat of certain endangered or threatened species in already controlled by the Department of Inland Fisheries and Wildlife. The Department has adopted rules for “essential habitat” for bald eagles, least terns, roseate terns, and piping plovers. The Model suggests that the habitat be placed in open space. Use of cluster development techniques can allow a property to develop a similar number of subdivision lots even though habitat is placed off-limits from development activity.]*

- b. Deed restrictions and notes on the plan shall reflect standards from the Department of Inland Fisheries and Wildlife for removal of vegetation within 250 feet of the habitat for species appearing on the list of endangered or threatened species unless the Department of Inland Fisheries and Wildlife has approved cutting of vegetation in writing.

*[Many species are sensitive to disturbances and activities adjacent to their critical habitat. The Model suggests that any standards from the Department of Inland Fisheries and Wildlife be followed within the area 250 feet from the habitat be maintained to limit disturbances.]*

2. Protection of Waterfowl, Shorebird, and Wading Bird Habitat, Atlantic Salmon Spawning and Nursery Areas.

*[Section 12.3.C.2 places restrictions on development and activities on land adjacent to important aquatic habitats. The land adjacent to a body of water or a wetland is known as “riparian habitat.” Riparian habitat functions to protect water quality and fisheries values by filtering out excessive nutrients, sediments, or other pollutants leaching in from upland areas, maintaining water temperatures suitable for aquatic life and contributing vegetation and invertebrates to the food base. Riparian habitat is also important as cover for the many species of wildlife attracted to aquatic systems, and serves as a protective travel corridor for movements between undeveloped tracts of land.*

*Land clearing or development in upland habitat adjacent to wetlands can degrade a wetland’s value as habitat. The riparian area around wetlands serves the same purposes as riparian areas along waterbodies. The guidelines are written to protect water quality and riparian habitat.*

*Coastal nesting colonies are typically located on islands or peninsulas. Inland colonies are usually found near wetlands, lakes, or rivers, or in flooded woodlands. The Department of Inland Fisheries and Wildlife has stated that the most important factor governing the continued presence of nesting wading birds, such as great blue herons, snowy egrets, and glossy ibis, is the availability of undisturbed nesting habitat and undisturbed, uncontaminated feeding areas. Human disturbance of a colony can cause abandonment of the colony, egg mortality, predation of young and starvation or predation of the young if forced from the nest too early. Much of the Department’s recommendations deal with limiting activities around the nest during critical times of the year. Implementing these recommendations is beyond the scope of subdivision regulations.]*

- a. There shall be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high-water mark of the following habitat areas:
1. Shorebird nesting, feeding and staging areas and seabird nesting islands;
  2. High and moderate value waterfowl and wading bird habitats, including nesting and feeding areas;
  3. Critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission, or
  4. Other important habitat areas identified in the comprehensive plan.

b. This restriction shall appear as a note on the plan and as a deed restriction to the affected lots.

3. Protection of Deer Wintering Areas.

The report prepared by a wildlife biologist, selected or approved by the Board, shall include a management plan for deer wintering areas.

*[Winter is a critical time in the survival of white-tailed deer in Maine. Deer in northern climates often subsist on limited quantities of low quality food in the winter while having to cope with low temperatures, chilling winds and higher energy requirements. Deer wintering areas provide deer with shelter from radiant heat loss as well as improved mobility in snow. Higher value deer wintering areas will have a dominant softwood cover, canopy closure, and southern exposure.]*

*The main objective of the forest management recommendations is to prevent excessive removal of the forest canopy.]*

## Expand Shoreland Zoning

**We could not find specific examples where shoreland zoning was expanded to include other non-shoreland resources, but we are sure it can be done and we will keep looking!**

**Here are some recommendations from a fisheries biologist with MDIFW:**

“There is no law requiring town's to place "so called significant fisheries habitats" in resource protection. The 400' setback suggestion comes from our experience in the field and talking with wildlife biologists about maximum buffers around brook trout streams to guard against beaver infestations that clog waters, impact spawning gravel, warm natural spring streams that are over-summer cold-water refugia habitat and overall make barriers to fish migration. The premise of the 400' buffer is that beaver will not move into a stream if they have to travel a distance of more than 400' for food. These new food areas (pioneer hardwoods) crop up after cutting occurs from logging and general development clearing within 400' of a stream, making the riparian areas fertile ground for beavers to move into.”

**From the SMRPC Model:**

#### **4. Protection of Important Shoreland Areas.**

*[Section 12.3.C.4 condenses and repeats the shoreland zoning provisions regarding timber harvesting and clearing of vegetation. The Department of Environmental Protection's Guidelines for Municipal Shoreland Zoning Ordinances contain several provisions in their performance standards for timber harvesting and clearing of vegetation that are important for wildlife preservation. While these provisions have been required to be in local shoreland zoning ordinances since 1991, they may be overlooked in reviewing subdivision proposals unless the standards are specifically referred to in the subdivision regulations. By including specific standards for clearing on the plan and in the deed, an additional mechanism is created to ensure that these standards are met.]*

- a. Except as in areas described in Section 12.3.C.2, within all areas subject to the state mandated 250 foot shoreland zone:
  1. Tree removal shall be limited to no more than 40% of the volume of trees 4 inches or more in diameter measured at 4 1/2 feet above the ground level on any lot in any ten year period.
  2. Cleared openings for development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, shall not exceed in the aggregate, 25% of the lot area or 10,000 square feet, whichever is greater, including land previously developed.
- b. These restrictions shall appear as notes on the plan and as deed restrictions to the affected lots.

5. If the proposed subdivision includes other important wildlife habitat as identified by the Department of Inland Fisheries and Wildlife or the comprehensive plan, the restrictions on activities in and around these areas shall be reviewed by the Department or a qualified wildlife biologist and their comments presented in writing to the Board.

*[Other significant wildlife habitat may include the osprey nests, shore bird roosting sites, seal haul outs, or other habitat not previously listed in Section 12.3.C. Review authorities should consult with the Department of Inland Fisheries and Wildlife or some other qualified wildlife biologist when reviewing plans adjacent to identified areas of significance.]*

## **High Elevation Standards - Rockport Comp Plan**

### ***High Elevation Performance Standards***

Buildings constructed at high elevations should blend into the landscape to minimize their visibility. Standards should consider elements such as building colors, materials, vegetation, and siting. It is further recommended that the highest point of any structure be built at least 50 to 100 vertical feet below all mountain tops or ridgelines in the High Elevation Areas with the exception of Dodge’s Ridge, which would be excluded from this particular performance standard.

HIGH ELEVATION AREAS: Subject to final review and adjustment when the ordinance is written, the Committee proposes high elevation areas above the following elevations:

### ***High Elevations Areas***

| MOUNTAIN, RIDGE, HILL             | PERFORMANCE ELEV. | SUMMIT  |
|-----------------------------------|-------------------|---------|
| Pleasant                          | 750 ft            | 1060 ft |
| Spruce west peak                  | 600 ft            | 970 ft  |
| Spruce east peak                  | 600 ft            | 835 ft  |
| Ragged (including Southeast Lobe) | 500 ft            | 1200 ft |
| Spring                            | 500 ft            | 650 ft  |
| Dodge’s Ridge                     | 400 ft            | 584 ft  |



## Ridgeline Protection Ordinance – Colorado

Not from Maine but may be adapted...

### Chapter 17.14 Skyline/Ridgeline Protection Regulations 17.14.010 Title and effective date.

This Chapter may be cited as the "Skyline/Ridgeline Protection Regulations" and shall become effective April 5, 1999. (Ord. 99-15 §1(part), 1999)

#### 17.14.020 Purpose and intent.

Within the corporate limits of the Town there are many significant landforms including mesas with distinct ridgelines, usually at higher elevations. These topographical features distinguish Castle Rock and Douglas County from metropolitan Denver, and accordingly constitute a unique natural resource meriting protection and preservation. Construction of structures in locations on these landforms which are visible from many areas of the Town degrades this natural heritage. The regulations adopted by this Chapter place restrictions on the siting of structures in visually significant areas and provide mitigation of the visual impact of such development. These regulations are promulgated and applied as a zoning overlay district as a legislative exercise by the Town Council of the police powers of the Town. These regulations apply uniformly to all zoned development encompassing landforms with visually sensitive areas, while also recognizing pre-existing development rights vested under law and the need to site public facilities at locations optimizing their effectiveness. (Ord. 99-15 §1(part), 1999)

#### 17.14.030 Definitions.

As used in this Chapter, the following terms shall have the indicated meanings:

- A. *Area* means one (1) of the five (5) geographical subsets of the district: Major Ridgeline, Minor Ridgeline, Major Skyline, Moderate Skyline, Minor Skyline.
- B. *Building height* as defined in Sections 17.08.060 and 17.08.190 of this Code.
- C. *Code* means the Castle Rock Municipal Code, as amended.
- D. *District* means the Skyline/Ridgeline Protection District as delineated on the district map.
- E. *District Map* means the official map of the district boundaries and the areas within the district.
- F. *District regulations* means the restrictions and requirements on development within the District imposed by this Chapter.
- G. *Mature planned development* means a planned development (PD) zone district of which two thirds (2/3) or more of the area of the PD is zoned for residential, commercial or industrial development and has been made subject to a final subdivision plat as of July 1, 1999.
- H. *Public facilities* means facilities which are developed by the Town or developed by others and conveyed to the Town to support the provision of municipal services, including, but not limited to, water production treatment and storage, parks and recreation and telecommunications.
- I. *Ridgeline area* means an area delineated on the district map in which all or part of a permanent structure constructed thereon would be visible from one (1) or more points on a viewing platform, but would not be visible along the skyline when viewed from the same point because of a higher landform located behind the ridge.
  - 1. *Major ridgeline areas* are ridgeline areas with a major visual impact.
  - 2. *Minor ridgeline areas* are ridgeline areas with a minor visual impact.
- J. *Skyline* means the horizon between land and sky.
- K. *Skyline area* means an area as delineated on the district map in which all or part of a permanent structure constructed thereon would be visible along the skyline, i.e., it would extend higher than the

highest landform located either in front or behind the structure, when viewed from one (1) or more points on a viewing platform.

1. *Major skyline areas* are skyline areas where a twenty-five-foot high structure would be highly visible along the viewing platforms.

2. *Minor skyline areas* are skyline areas where a twenty-five-foot high structure would not be visible, but a thirty-five-foot high structure would be visible from several points along the viewing platforms.

3. *Moderate skyline areas* are skyline areas where a twenty-five-foot high structure would be visible from several points along the viewing platforms.

L. *Viewing platforms* means those portions of major thoroughfares and other selected vantage points within and adjacent to the municipal boundaries from which computer and field observations were used to assess the visual significance of development on prominent landforms. (Ord. 99-30 §1, 1999; Ord. 99-15 §1(part), 1999)

#### **17.14.040 Applicability and compliance.**

The district is a zoning district under Chapter 17.12 of this Code, which overlays the zoning districts enumerated in 17.12.010 of this Code. The district regulations apply to all land use applications for which any portion of the subject property is located within the district as delineated on the district map. District regulations do not apply to public facilities constructed or developed in the district. Any rezoning, subdivision, development or building approval or permit shall be subject to compliance with the district regulations, irrespective of whether specific reference to the district regulations is made in the code sections governing such approval or permit. In the event of overlapping or conflicting requirements between the district regulations and other provisions or regulations under this Code, the more restrictive provision shall apply. The district regulations shall supercede any conflicting development or building standard or regulation contained in any PD zoning regulation (as defined in Section 17.60.210 of this Code), and the district regulations shall constitute an amendment thereto. (Ord. 99-15 §1(part), 1999)

#### **17.14.050 Adoption of official map.**

The District Map dated February 26, 1999, designating the areas in which the district regulations apply is adopted as an amendment to the Zoning District Map maintained by the Town pursuant to Section 17.12.020 of this Code. The District Map shall be kept in digital form at the offices of the Town's Community Development Department and shall be distributed to the public upon request. In addition, unofficial paper reproductions of the District Map shall be available for review by the public during normal business hours, and for distribution to the public upon request and payment of a fee covering copying costs. In the event of a conflict between the digital District Map and the paper reproduction, the digital District Map shall control. Disputes concerning the boundaries of the district shall be resolved as provided in Section 17.12.030 of this Code. (Ord. 99-15 §1(part), 1999)

#### **17.14.060 Building restrictions and visual impact mitigation.**

A. **Structures Prohibited.** Within major skyline and major ridgeline areas, no primary or accessory structure shall be constructed. Land within such areas may be included in lots that extend outside such areas provided that the primary and accessory structures on such lots are located completely outside the major skyline and major ridgeline areas. To ensure the placement of structures outside of the major skyline and major ridgeline area on such lots, and to provide notice of such restriction, building envelopes shall be designated on the applicable subdivision plat and/or zoning site plan.

B. **Restrictions on height.** Within moderate skyline areas, no primary or accessory structure with a building height of greater than twenty-five (25) feet shall be constructed, provided that if the underlying zoning allows multifamily structures of fifty (50) feet or higher as a permitted use or the structure is located within a mature planned development, the building height restriction shall be thirty-five (35) feet. Within minor skyline and minor ridgeline areas, no primary or accessory structure with a building height greater than thirty-five (35) feet shall be constructed.

**C. Mitigation of Impacts.** Within moderate skyline, minor skyline and minor ridgeline areas of the district, all primary and accessory structures shall be required to comply with the following measures designated to mitigate the visual impact of the structure prior to occupancy, unless explicitly exempted elsewhere in this Chapter.

1. Colors. All occupied structures and accessory structures shall be constructed and maintained so that predominant exterior wall colors (including the colors of basement walls on the downhill side of the structure) and roof surfacing materials (a) repeat the colors found most commonly in the land and vegetation around the building (earth tone), and (b) have a light reflective value of no more than forty percent (40%). Reflective materials and bright colors that contrast dramatically with the colors of the land and vegetation around them shall not be used as predominant colors on any wall or roof surface.
2. Vegetation. The area around each primary structure and accessory structure shall include at least one (1) tree of a species with a mature height of at least thirty-five (35) feet for each two thousand five hundred (2,500) square feet of lot or parcel area; provided, however, that this requirement shall not require any single-family residential lot to contain more than eight (8) trees. At least fifty percent (50%) of the total number of trees required on the lot or parcel pursuant to this Subsection 2 shall be located within fifty (50) feet of the primary structure on the side of the primary structure facing the nearest viewing platform as so designated by the Community Development Department. The remainder of the trees required on the lot or parcel pursuant to this Subsection 2 shall be located within fifty (50) feet of the primary structure. All trees installed to meet the requirements of this Subsection shall be of coniferous species, shall be a minimum of eight (8) feet tall when planted, and shall be planted before a Certificate of Occupancy is issued for the primary structure, or if that is not possible due to planting season or weather conditions, then within one (1) month of the beginning of the planting season for the species. In addition, to the maximum degree feasible, during overlot grading, all existing mature vegetation with a height of more than three (3) feet, other than noxious plants and weeds, shall be preserved. Any existing trees that meet the height requirement are counted towards satisfaction of the tree requirements, regardless of whether they are coniferous or deciduous. Concurrently with the final PD site plan review and approval process, the property owner submitting such plan may request approval of a vegetation plan in which the vegetation requirements for certain lots or tracts may be increased, decreased or deleted, to reflect the degree of visibility of structures located in various portions of the subdivision. Additionally, such owner may request alternative placement of landscaping on certain lots and tracts if such placement provides adequate mitigation of the visual impact of the roof line of the primary structure. Landscaping required by this Section shall be credited against the landscaping requirement imposed by any other section of this Code, or the specific PD development plan. In commercial and multifamily residential areas, vegetation screening required by this Subsection shall be limited to the total area required for landscaping under this Code or the applicable PD plan, and therefore only such vegetation screening which can be reasonably accommodated within such areas is required to be planted or maintained.
3. Floodlighting. Floodlights shall not be used to light all or any portion of any primary or accessory structure facade, and all outdoor light sources mounted on poles, buildings or trees to illuminate streets, sidewalks, walkways, parking lots or other outdoor areas shall use full cutoff light fixtures. For purposes of this Section, a *full cutoff light fixture* is one in which no more than two and one-half percent (2.5%) of the total output is emitted at ninety degrees (90°) from the vertical pole or building wall on which it is mounted. All such fixtures shall be installed or shielded so that part of the light bulb or light source is not visible beyond the property boundaries.
4. Exposed Basements. On the side of each primary and accessory structure facing the nearest viewing platform as so designated by the Community Development Department, no basement wall shall be exposed for more than one-half (½) of its height, unless a vegetated berm at least three (3) feet in height is constructed between such basement and the property line closest to the nearest viewing platform. (Ord. 99-30 §2, 1999; Ord. 99-15 §1(part), 1999)

## Scenic Protection - LincolNville Comp Plan

**Critical Natural Resources Goal #5:** To protect significant scenic views.

### Implementation Strategies:

- Catalogue the present inventory shown on the Scenic Views Map and create a textual description of the scenic views in accordance with state procedure. Add to the Inventory Section of this Plan. (CEO, Conservation Commission and the Comprehensive Plan Review Committee, within one year)
- Continue to identify, inventory, and map additional scenic views. Create separate overlay maps to inventory the views. As methods of mapping and inventorying scenic views improve, the maps should be improved and brought up to date. Views from the major roadways should be included with views from the mountains and hills; significant views of ponds, lakes, and rivers; views of the bay from strategic vantage points; and significant views of the historic village areas; each as separate overlay. (Conservation Commission and Comprehensive Plan Review Committee, ongoing)
- Create standards that will limit or reduce the impact of development in the high priority scenic corridors. (Land Use Committee, within one year)
- Encourage and seek scenic easements of high priority views. (Planning Board, ongoing)

## Scenic Protection - LincolNville Subdivision Ordinance

### Article 11 – Development Standards

#### 11.4 Preservation of natural, scenic and historic features

The landscape must be preserved in its natural state insofar as practical by minimizing tree removal, disturbance and compaction of soil, and by retaining existing vegetation insofar as practical during construction. Extensive grading and filling must be avoided as far as possible. Except for surplus topsoil from roads, parking areas and building excavations, topsoil shall not be removed from the site.

##### 11.4.1 Natural resources:

In predominantly natural environments and undeveloped areas, site clearing must be minimized, and vegetation retained (or provided) to lessen the visual impact of the development. Natural vegetation must be maintained adjacent to any shoreline to soften the appearance of the development.

##### 11.4.2 Buffering

- a) A subdivision in which the natural land cover type is forested shall maintain a wooded buffer strip no less than fifty feet in width or 25 feet in width for a subdivision in a Comprehensive Plan designated growth area along all existing public roads. The buffer may be broken only for driveways and streets.

- b) A subdivision in which land cover type is not forested shall preserve the scenic visual corridors along town roads by providing natural landscape buffers to minimize their adverse visual impacts when topographical or other barriers do not provide reasonable screening. Such buffering shall not encroach on a view as described in 11.4.3.
- c) Buffering shall be designed and maintained to provide a year-round visual screen in order to minimize adverse impacts. The species specified for buffers shall be selected from tree and shrub species found in existing hedgerows and along wooded roadside edges in the vicinity of the development proposal.

#### 11.4.3 Scenic Resources

When a proposed development contains prominent features such as hillsides, ridgelines, or shoreland, or is located within a significant viewshed that is identified in the Scenic View Map approved by the voters and on file in the Lincolnville Town Office, the development must be designed to minimize the encroachment of all buildings, structures, landscaping, and other site features on the identified view. Design modifications to minimize encroachment shall include, but are not limited to, orientation of the building envelope and roads on the site, siting the building envelope to the maximum extent practicable within the natural contours, and maintaining open space areas in their natural state.

- (a) Hillsides and ridgelines. All hillside development must be designed to blend into the surrounding landscape to the maximum extent practicable to minimize the visibility of any roads or construction on the site. The plan shall closely control tree removal to only those trees essential to construction of the development.. The plan shall restrict tree removal and prohibit the siting of building envelopes on sites at or above the elevations listed below:

1. Moody Mountain Ridgeline: 600ft.
2. Levenseller Mountain Ridgeline: 600ft.
3. Bald Rock / Garey Mountain Ridgeline: 600ft.
4. Gould Hill Ridgeline: 500ft.
5. Ducktrap Mountain Ridgeline: 500ft.
6. Cameron Mountain / Maiden's Cliff Ridgeline: 500ft.
7. Highlands east of Moody Pond and West of Routes 105/52: 450 ft.

The appropriate contour line of a USGS Topographical map of Lincolnville shall be used to delineate these areas. These restrictions shall appear as notes on the plan and as covenants in the deed.

- (b) Shoreland. When a proposed development is visible from a great pond, river, stream, or from Penobscot Bay, the development must be designed so that it blends into the surrounding landscape when viewed from the opposite shoreline of the water body. In developed shoreland environments, the appearance of the new development when viewed from the water must be compatible with the existing visual character to the maximum extent practicable.

#### 11.4.4 Slopes

- a) All grading and earthmoving on slopes exceeding 15 percent shall be minimized, and no site disturbance shall be allowed on slopes exceeding 25 percent except as specified in subsection (b) below. There shall be no site disturbance to slopes in excess of 40 per cent.
- b) If access to building sites is prohibited because segments of the access road or driveway traverse slopes greater than 25%, such access shall be allowed if the following criteria are met:
  - The building sites to be accessed are on slopes of 15% or less
  - The access road or driveway segments that traverse slopes in excess of 25 % do not exceed 300 feet, or within a few feet of 300 feet, in length.
  - The applicant's engineered road plan is acceptable to the Board.
  - The applicant's engineered road plan shows that the access road or driveway meets all other standards of this ordinance.
- c) In subdivisions containing slopes of fifteen per cent or greater, removal of living trees for the purpose of development shall be limited to the proposed building envelopes and roadways except when done under the supervision of a licensed forester as part of a forest management plan reviewed and accepted by the Planning Board. Vegetation remaining outside the building envelopes and roadways shall be considered buffering and shall be subject to the standards in 11.4, 11.4.1, and 11.4.2 (a)-(c).
- d) On slopes of 15 to 25 percent, the only permitted grading shall be in conjunction with the siting of a single family dwelling, its access driveway and the septic system which should be designed with a long, narrow drainage field following the land contours.
- e) Grading or earthmoving on all sloping lands of 15 percent or greater shall not result in earth cuts or fills whose highest vertical dimension exceeds six feet, except where in the judgment of the Board no reasonable alternatives exist for construction of roads, drainage structures and other public improvements, in which case such vertical dimensions shall not exceed 12 feet. Vertical surfaces shall be terraced at 6- foot intervals and planted to reduce the visual impact and eliminate problems associated with runoff. Roads and driveways shall follow the line of existing topography to minimize the required cut and fill. Finished slopes of all cuts and fills shall be as required to minimize disturbance of natural grades.

## Scenic Protection: Newcastle's Zoning Ordinance

### C. SCENIC VIEWS

In considering the issuing of a permit or approval under this ordinance, or approving any plan, plat or use, the decision-maker must consider and reduce to the greatest extent practicable any adverse effect on the public's scenic view.

1. The following views and areas are designated as special views requiring preservation and enhancement to the greatest extent possible:

- a. The view from U.S. Route 1, the main exit ramp and the River Road across the Damariscotta River to the Town of Damariscotta.
- b. The views from U.S. Route 1 over Sherman Lake and the Marsh River.
- c. The views from U.S. Route 1 on both sides from the Mills Road overpass to the Damariscotta Town line.
- d. The views along State Routes 213-215 along Damariscotta Lake.
- e. The views along State Route 213-215 over the fields at "Cowshit Corner".

2. Prior to issuing a building permit or other permit or approval that may adversely affect a scenic view, particularly of a designated special view, the CEO shall notify the planning board and allow reasonable time for their review of the application. The planning board may determine if there is unnecessary adverse effect on a scenic view and direct the CEO to issue or deny the permit or approval.

3. A substantial disruption or interference with the usual sight lines from the area of general public use or viewing of the scenic view is an adverse effect sufficient to support denial, if in the opinion of the Planning Board:

- a. The scenic view is a designated special view or another equally valuable view to the general public;
- b. There are other practicable alternatives to the proposed structure or use that would minimize or eliminate the adverse effect; and
- c. Balancing all issues, denial is in the best interests of the Town.