

**SECTION VII.A. CONSERVATION SUBDIVISION DESIGN – FLEXIBLE  
DEVELOPMENT STANDARDS FOR LOWER DENSITY RESIDENTIAL DISTRICTS**  
[Amended 05/05/2010][Amended 07/16/2014] [Amended 01/20/16]

**A. PURPOSE**

Conservation subdivisions are intended to conserve and protect the town's freshwater wetlands, watercourses, farmlands, open space and natural features, while enabling more flexibility for residential developments to design around these natural features and resources. Conservation subdivisions allow the same net residential density on a given parcel as a conventional subdivision, but the use of alternative space and bulk requirements enable residential lots and dwellings to be clustered away from the natural or agricultural resources within a development. Conservation subdivision designs present many public benefits including: the conservation of wetlands; the avoidance of wetland impacts; the protection of watercourses and riparian corridors; the conservation of wildlife habitat; the conservation of productive agricultural uses, activities and soils; and the conservation of open space and forestlands for neighborhood use and recreation. Conservation subdivision designs also offer economic and maintenance benefits to the landowner, developer and town government through clustered development which enables shorter road lengths, less infrastructure, and less impact to the landscape. Conservation subdivision design shall be required to avoid and conserve Scarborough's freshwater wetlands and shall be encouraged to conserve Scarborough's forestlands, wildlife habitat, farms, agriculture and rural character.

**B. APPLICABILITY**

Conservation subdivisions are allowed in only the RFM, RF and R-2 Zoning Districts, subject to the requirements of Section VIIA.

1. Required conservation subdivisions. Conservation subdivision design is required in the RFM, RF and R-2 Districts when:

- a. The land to be subdivided contains one acre or more of wetlands.
- b. Twenty percent (20%) or more of the land to be subdivided is wetlands.
- c. Twenty percent (20%) or more of the land to be subdivided is within the Shoreland Zone under the Town of Scarborough Shoreland Zoning Ordinance.
- d. A subdivision will alter (through lot configurations and road, driveway and utility crossings) 4,300 square feet or more of wetland if designed and developed in a conventional layout.
- e. A subdivision proposes to include two-family and/or multi-family dwellings. [Adopted 05/05/10]

2. Elective conservation subdivisions. Where not required under Section VIIA(B)(1) above, conservation subdivision design may be permitted by the Planning Board in the RFM, RF and R-2 Districts in order to:

- a. Avoid, buffer and conserve wetlands, watercourses, water bodies, and shoreland zoned areas less in area and percentages than the thresholds requiring conservation subdivision design under Section VIIA(B)(1).
- b. Conserve agricultural fields, farming activities, forestlands, meadows, wildlife corridors, high value plant and animal habitat areas, or other natural areas, while accommodating residential development through flexible design.
- c. Establish open space to be used for active and passive recreational purposes that can complement and serve the residences within a conservation subdivision.

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**C. PERMITTED USES & SPECIAL EXCEPTIONS [Amended 05/05/10]**

The Permitted Uses and Special Exceptions within a conservation subdivision shall be the same as those allowed within the zoning district in which the subdivision is approved.

**D. DENSITY DETERMINATION**

The maximum number of dwelling units permitted within the conservation subdivision shall be determined by the maximum net residential density allowed in the zoning district in which the conservation subdivision is located, and as calculated in accordance with the definition of net residential acreage. To demonstrate the number of dwelling units possible, an applicant shall submit a sketch or concept level conventional subdivision plan showing a lot layout complying with the space and bulk regulations of the applicable zoning district, the net residential density calculation, an upland area on each lot capable of sufficiently accommodating a building envelope and providing for drinking water and wastewater disposal, and a street layout in accordance with the Street Acceptance Ordinance of the Town of Scarborough. If the subdivision will be served by on-site well and wastewater disposal the lots in a sketch conventional plan shall each have at least 20,000 square feet of contiguous uplands.

**E. SPACE AND BULK REGULATIONS**

Notwithstanding other provisions of this Ordinance relating to space and bulk, the Planning Board, in reviewing and approving a proposed conservation subdivision, shall apply the following space and bulk regulations.

**1. RF & RFM Districts**

Maximum net residential density	1 dwelling unit per net residential 2 acres
Minimum lot area	30,000 sq. ft.
Minimum street frontage	100 feet
Minimum front yard, all buildings	25 feet
Minimum rear and side yards, all buildings	15 feet
Maximum building height	(See Section IX,A,15)
Maximum building coverage	25%

**2. R2 Districts served by Sewer**

Maximum net residential density	2 dwelling units per net residential acre
Minimum lot area	7,500 sq. ft.
Minimum street frontage	75 feet
Minimum front yard, all buildings	15 feet
Minimum rear and side yards, all buildings	15 feet* <sup>1</sup>
Maximum building height	(See Section IX,A,15)
Maximum building coverage	35%

*1. The minimum side yards may be reduced to 5 feet if the buildings meet the Fire Rating requirements for the lesser yard as per the NFPA 101 Life Safety Code and the Scarborough Fire Department approves the reduced yard.*

**3.** For conservation subdivisions in areas of the R2 District that are not served by the public sewer system, or are not within a reasonable distance from public sewer system, the space and bulk standards of the R2 District shall apply. When determining a reasonable distance from the public sewer system, the Planning Board should consider factors such as the topography of the potential

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sewer line extension; subsurface conditions within the potential sewer line alignment; the residential density and number of building lots proposed within the subdivision; and other similar factors.

**4.** Building lots may be clustered in groupings of three to five lots or may all be clustered in one contiguous area depending on the natural characteristics of the land, the location and size of upland areas, and the function and values of the open space. The minimum width of open space between any clusters of building lots shall be 50 feet. This minimum width shall be measured between the building lots' side property lines and is intended to provide separation between clusters of building lots along a road right-of-way. The size and dimensions of the larger, contiguous open space areas shall be designed in accordance with the applicable performance standards in Section VIIA(F) below.

**5.** The minimum lot area in the RFM and RF Districts shall be 30,000 sq. ft. as per Section VIIA(E)(1) above, except where a greater lot area minimum may be required in order to meet the Town Plumbing Ordinance and the Maine State Plumbing Code. Lot size determinations shall be made prior to preliminary plan approval.

**F. CONSERVATION OF OPEN SPACE**

The open space within a conservation subdivision may include freshwater wetlands, forested wetlands, saltwater marshlands, farmlands, fields, forestlands and recreation areas. Stormwater facilities including detention or retention ponds and similar facilities shall not be counted in meeting the minimum open space requirements unless the Planning Board finds that the purpose and other standards of this Section VIIA. are met. The open space shall be designed in accordance with the following performance standards depending on the purpose of the open space:

**1.** Within conservation subdivisions that are required pursuant to Section VIIA(B)(1) and are located in the RF District, REM District or within a sewered area of the R2 District, at least 50% of a subdivision's total land area shall be open space. The open space areas shall be contiguous areas that encompass and buffer the wetlands, watercourses, water bodies and other natural features within the subdivision. In addition to these wetlands and natural features, the open space may also include agricultural fields, farming activities, forest lands, wildlife corridors and habitat areas, or recreation areas that will be preserved or established as part of the subdivision as well as land designed to buffer these areas. In order to be counted toward the 50% requirement, an open space area must be at least one acre in size and include a minimum wetland buffer of twenty-five (25) feet from the upland edge of a wetland to any building lot boundary. The open space areas shall be connected and contiguous, consistent with the connectivity and network of the wetlands, watercourses, water bodies and other natural features within the subdivision. To the extent possible, open space shall connect to open space lands existing or proposed on adjacent properties. The open space areas within conservation subdivisions shall also be consistent with the performance standards that apply to the type and function of the open space. Building lots shall be designed on the accessible and contiguous upland areas in clusters according to Section VIIA(E)(3) to prevent fragmentation of the open space tracts and to lessen road lengths, infrastructure needs and wetland or stream crossings. The Planning Board may permit open space parcels that are not contiguous and are less than one acre in size, as per Section VIIA(G), if the intent and purpose of this Section VIIA is fulfilled.

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2. Within conservation subdivisions that are required pursuant to Section VIIA(B)(1) and are located in an unsewered area of the R2 District or conservation subdivisions that are elected pursuant to Section VIIA(B)(2) a., at least 40% of a subdivision's total land area shall be open space. The open space areas shall be contiguous areas that encompass and buffer the wetlands, watercourses, water bodies and other natural features within the subdivision. In order to be counted toward the 40% requirement, these open space areas shall include a minimum wetland buffer of twenty-five (25) feet, but the open space areas may be less than one acre in size depending on the size and configuration of wetlands or other natural features. The open space areas shall be connected and contiguous, consistent with the connectivity and network of the wetlands, watercourses, water bodies and other natural features within the subdivision. Building lots shall be designed on the accessible and contiguous upland areas in clusters according to Section VIIA(E)(3) to prevent fragmentation of the open space tracts and to lessen road lengths, infrastructure needs and wetland or stream crossings. The Planning Board may permit open space parcels that are not contiguous, as per Section VIIA(G), if the intent and purpose of this section is fulfilled.

3. Within conservation subdivisions that are elected pursuant to Section VIIA(B)(2)(b) or (c), at least 40% of a subdivision's total land area shall be open space. The open space areas shall encompass and buffer the wetlands, watercourses, water bodies and other natural features within the subdivision. In addition, the open space may encompass and buffer the agricultural fields, farming activities, forest lands, wildlife corridors and habitat areas, or recreation areas the conservation subdivision is intended to preserve or establish. In order to be counted toward the 40% minimum requirement, the open space areas shall be connected and contiguous and shall each be at least one acre in size. To the extent possible, open spaces shall connect to open space lands existing or proposed on adjacent properties. The open space areas within conservation subdivisions shall also be consistent with the performance standards that apply to the type and function of the open space.

4. Open space lands that are conserved to be used and maintained for agricultural activities shall meet the following standards:

- a. The open space land(s) intended for agricultural activity shall not be intermingled with a cluster of residential lots within a conservation subdivision, but rather shall be designed as larger, contiguous tracts of land appropriate in dimensions and area to enable agricultural activities to occur at a level deemed appropriate by the Planning Board. For example, agricultural fields and activities should be designated along a road at the entrance to a subdivision, within a central common between clusters of residential lots, or at the rear of subdivision behind a cluster of residential lots, as opposed to designating agricultural activities on smaller open space strips between residential lots.
- b. The specific agricultural activity shall require Planning Board approval. When determining the appropriateness of an agricultural activity within a conservation subdivision the Planning Board shall consider the noise, dust, odors, and other impacts that may result from the proposed agricultural activity. The Planning Board may require specific buffering, hours of operation and seasons of operation, and may restrict the type and intensity of agricultural use or activity based on the above considerations. Any conditions or restrictions imposed by the Planning Board shall be consistent with best

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management practices as determined by the Maine Department of Agriculture, Food and Rural Resources.

- c. No access to the agricultural use by vehicles, equipment or livestock associated with the agricultural activity shall be planned or allowed over residential lots as part of the conservation subdivision. Separate access to the agricultural use for operational purposes shall be required.
- d. The size and location of any agricultural building(s) associated with the agricultural use of the open space shall be approved by the Planning Board.
- e. The open space lands may be owned jointly by the owners of the residential lots within the subdivision, or may be permanently conveyed to a corporation or trust owned or to be owned jointly by the owners of the residential lots within the subdivision or to a recognized nonprofit conservation group, a land trust or the Town as approved by the Planning Board. Alternatively, open space land preserved for agricultural activity may be held in private ownership separate from the ownership of the residential lots within the subdivision, provided that all the agricultural open space within the subdivision is held in the same ownership. A deed restriction prohibiting further use and development of the open space parcel(s) beyond the specified agricultural use(s) and building(s) shall be required. Allowance for modification of the uses within that deed restriction shall require a subdivision amendment and Planning Board approval.

**5.** Open space lands that are conserved as wetlands, forestlands, meadows and other natural areas shall meet the following standards:

- a. Conservation subdivisions utilized to preserve wetlands, forestlands, meadows, wildlife corridors, wildlife habitats and other natural features shall be designed with the open space lands encompassing the most significant wildlife areas, mature forestlands or natural features within the subdivision. The open space lands shall be as large and contiguous as possible to provide the highest wildlife habitat and passive recreation values possible.
- b. Open space lands may include a trail system for walking, hiking, biking or similar activities. This trail system shall be included on the subdivision plan, including a cross-section and limit of clearing, and should link with adjacent trails if possible.
- c. The open space lands shall be owned jointly by the owners of the residential lots within the subdivision, or shall be permanently conveyed to a corporation or trust owned or to be owned jointly by the owners of the residential lots within the conservation subdivision, to be used for open space and recreational purposes, as specified above and as approved by the Planning Board, and shall not be further subdivided, used for building purposes or used for other recreational activities. A deed restriction to this effect shall be required. Any allowance for modification of the uses within that deed restriction shall require a subdivision amendment and Planning Board approval.
- d. As an alternative to Section VIIA(F)(5)(c), the open space lands may be preserved as such by being conveyed to a recognized non-profit conservation group, land trust or the Town as approved by the Planning Board. This conveyance shall also be accompanied by a deed restriction limiting the use of the land to the specific open space and recreational purposes approved by the Planning Board. Any allowance for

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modification of the uses within that deed restriction shall require a subdivision amendment and Planning Board approval.

**6.** Open space lands designed to accommodate passive and active recreational facilities or amenities shall meet the following standards:

- a.** The active and passive recreational areas may include facilities exclusively for the use of the residents of the subdivision such as neighborhood commons, gardens, picnic areas, playing fields, playgrounds, courts, bikeways or a combination thereof, or for use by the general public, or may be privately owned and operated as commercial recreational facilities such as golf courses, cross country ski areas and other commercial outdoor recreational uses.
- b.** Recreational areas shall be designed and located in a manner that is accessible to all of the residential dwellings in the subdivision. The open space and recreation areas may include sidewalks, footpaths, trails, driveways and parking areas to facilitate accessibility. Such amenities and infrastructure shall be reviewed and approved by the Planning Board.
- c.** Commercial recreational areas and facilities shall be principally identified by the use of open, outdoor space and shall have minimal structure development. If any of the facilities will be privately owned by an entity other than the owners of the dwelling units in the subdivision, permanent provisions must be established that allow residents of the subdivision use of the open space or designated facilities within the open space. Access to commercial recreational facilities for subdivision residents on a no-fee or reduced fee basis approved by the Planning Board can meet the requirement for resident access to the open space.
- d.** The size, location and impervious area of any recreational facility or amenity shall be reviewed and approved by the Planning Board. The Planning Board may consider stormwater runoff, lighting, proximity to residential dwellings, buffering, traffic impacts, compatibility with the residential development, and similar factors in their review.
- e.** Recreation areas shall be owned jointly by the owners of the residential lots within the subdivision, or shall be permanently conveyed to a corporation or trust owned or to be owned jointly by the owners of the residential lots within the conservation subdivision, to be used for open space and recreational purposes, as specified above and as approved by the Planning Board, and shall not be further subdivided, used for building purposes or used for other recreational activities. A deed restriction to this effect shall be required. Any allowance for modification of the uses within that deed restriction shall require a subdivision amendment and Planning Board approval.
- f.** As an alternative to Section VIIA(F)(6)(a) and (d), the recreation areas may be conveyed to the Town and may be open to use by the entire community if specifically approved by the Planning Board and agreed to by the Town Council. If open to community use, the recreation areas shall be sited in a location that is easily accessible to the public with minimal traffic impacts to the residential component of the conservation subdivision; shall provide adequate visitor parking based on the recreation area's size and intended uses; and shall include buffers to the residential lots within the conservation subdivision to separate public and private space.

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- g.** When parking areas are proposed, they shall be designed and constructed with pervious and semi-pervious alternatives to bituminous pavement, if possible. Such alternatives may include porous pavement blocks, grassed interlocking paving systems, re-enforced turf and stone dust materials. These alternative parking surfaces are intended to minimize storm water run-off and facilitate infiltration and natural hydrological functions to the extent feasible.
- h.** If any portion of the open space will be owned by a private entity consisting of others than the owners of the lots or units in the subdivision, that open space shall be protected from future development or uses that are inconsistent with its function as open space that benefits the subdivision by the establishment of a permanent conservation easement to the Town of Scarborough or a land trust or conservation organization approved by the Planning Board, or the subdivision's home owners association. This easement shall be approved by the Town prior to approval of the subdivision by the Planning Board.

**7.** Open space lands, required pursuant to Section VIIA(B)(1), may be designed to conserve wetlands and other natural resources, while also accommodating agricultural or recreational uses and activities or solar or wind energy systems as allowed for under Section IX.. The Planning Board shall have the flexibility to allow a combination of open space functions so long as these functions and uses are in conformance with all of the above performance standards in Section VIIA(F)(1) through (6).

**G. WETLAND AVOIDANCE AND IMPACTS**

As stated in Section VIIA(A) and (F), one of the primary purposes of conservation subdivision design is to avoid wetland fills and alterations and to buffer wetlands from development and impacts. Therefore, wetlands within a conservation subdivision shall not be used, filled or altered, except as follows:

- 1.** Where no practical alternative exists, the Planning Board may allow the crossing of wetlands for roads, driveways or utilities to provide access to, or use of, an upland area within a subdivision. To approve this crossing the Planning Board must find that the wetland impact is minimized, that the upland area is consistent with the net residential acreage, and that all other standards of this ordinance are met.
- 2.** Where no practical alternative exists, the Planning Board may allow the construction of footbridges, trails and docks within wetlands to provide communal access to the open space lands within a conservation subdivision. The footbridges, docks or similar structures shall be constructed on posts, pilings, or other structural supports to maintain the unobstructed flow of water and wetland connectivity.
- 3.** The Planning Board may allow the restoration or enhancement of a previously altered, disturbed or degraded wetland to improve the functions and values of the wetland area. This allowance shall involve a restoration or enhancement program consisting of the wetland area subject to the program, the activities necessary for restoration or enhancement, a planting schedule and other necessary material as determined by the Planning Board.
- 4.** The Planning Board may allow a wetland to be used for agricultural purposes in accordance with Section VIIA(F)(4) if the agricultural use is in existence within the wetland area at the time of subdivision. Any agricultural use shall be in accordance with Section VIIA(15)(M) of the Town of Scarborough Shoreland Zoning Ordinance.

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**H. RELATIONSHIP TO OTHER ORDINANCE PROVISIONS**

1. When a conservation subdivision is required or elected, the provisions of this Section VIIA shall apply in place of the provisions of Section VII.
2. This Section VIIA does not alter or supersede any requirement of the Scarborough Shoreland Zoning Ordinance for any portion of a conservation subdivision located within the Shoreland Zone.

**I. WETLANDS DEFINED**

As used in this Section VIIA, and notwithstanding any other definitions in this ordinance or the Scarborough Shoreland Zoning Ordinance, the terms “wetland,” “wetlands,” and “wetland areas” shall mean any of the following:

1. Coastal wetlands. “Coastal wetlands” means all tidal and subtidal lands, including all areas below any identifiable debris line left by tidal action; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service.
2. Floodplain wetland. “Floodplain wetland” means lands adjacent to a river, stream or brook that are inundated with floodwater during a 100-year flood event and that under normal circumstances support a prevalence of wetland vegetation typically adapted for life in saturated soils.
3. Freshwater wetlands. “Freshwater wetlands” means freshwater swamps, marshes, bogs and similar areas that are inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.
4. Forested wetland. “Forested wetland” means a freshwater wetland dominated by woody vegetation that is 6 meters tall, or taller.

It is the intent of this Section VIIA that the terms wetland, wetlands and wetland areas shall be interpreted and applied in the same fashion as the terms listed above are interpreted and applied by the Maine Department of Environmental Protection under the Natural Resources Protection Act, Title 38 of the Maine Revised Statutes, Chapter 3, Subchapter 1, Article 5-A.