

# CONSERVATION OVERLAY DISTRICT

July 2006

## I. Statutory Authorization/Authority

A. The Conservation Overlay District (COD) is authorized by the following provisions of New Hampshire law:

1) **674:21 Innovative Land Use Controls, including the following:**

- 674:21(j) Environmental Characteristics Zoning
- 674:21(f) Cluster Development
- 674:21(d) Transfer of Development Rights
- 674:21 (h) Performance Standards
- 674:21 (n) Village Plan Alternative Subdivision

2) **674:36 (m) Master Plan Supporting Language**

RSA 674:36 (m) states that the Planning Board is authorized to promulgate regulations to “require innovative land use controls on lands when supported by the master plan.” The following language is an example of what might be included in the master plan, along with specific references to the Coastal Watersheds Land Conservation Plan:

**Sample language:** To protect natural resources, minimize the impact of development on the natural environment, and preserve areas which provide natural resource services and sustain ecosystem functions, such as those identified as Conservation Focus Areas in the Coastal Watershed Land Conservation Plan, it is the policy of the Town of [ \_\_\_\_\_ ] to regulate development in such areas so as to minimize detrimental impacts. Specifically, it is recommended that conservation subdivision be mandatory, overall development density be limited appropriate to the development capacity of the land and special site development standards be employed that minimize impact.

3) **674:17 (h) Purposes of Zoning Ordinances:**

“To assure proper use of natural resources and other public requirements”

## II. Purposes

The purposes of this ordinance are:

- A. Protect regional and municipal water quality of aquifers, private and public water supply wells, and surface water
- B. Maintain ecological functions and natural ecosystem services necessary to sustain a healthy environment at the global, regional, and local levels such as:
  - 1. **Climate regulation:** carbon sequestration, or the capture and storage of carbon dioxide by forest and other plant cover, reducing global warming

2. **Freshwater regulation and supply:** the storage, control, filtration, and recharge of water supplies by forests and wetlands which assist in maintaining the quality and integrity of drinking water supplies
3. **Nutrient cycling:** the passage of nutrients, such as nitrogen, through the ecosystem for usage by plants, reducing the need to apply fertilizers
4. **Nutrient uptake and waste assimilation:** the filtering of pathogens and nutrients from runoff by forests, vegetated buffers and wetlands, reducing the need for water treatment systems
5. **Flood retention:** the temporary storage of water from storms in areas provided by wetlands and marshes, reducing damage to real property and municipal infrastructure such as roads and bridges
6. **Habitat protection:** contiguous patches of forest and wetland and other habitat types support a diversity of plant and animal life that contribute to versatility and long-term health of food supply and ecosystem as a whole
7. **Soil Retention and formation:** creation of new soils and prevention of erosion, reducing the need for dredging and mitigation of damage due to siltation of rivers and streams
8. **Recreation and Aesthetics:** recreational activities and aesthetic value provided by the management and conservation of natural resources such as hunting, fishing, bird-watching, hiking, camping, canoeing, kayaking, and wildlife photography which contribute to the prosperity, rural character and welfare of the region and support the tourism and natural resource sectors of the economy

**C. Protect wildlife species consistent with State Wildlife Action Plan;**

**D. Preserve open space per RSA 674:21; and**

**E. Permit the efficient layout of less costly to maintain roads, utilities, and other public and private infrastructures per RSA 674:21.**

### **III. Findings**

**A. The Town of [\_\_\_\_\_] finds the following:**

1. The Coastal Land Conservation Plan has identified priority Core Areas and Supporting Landscape Areas for land protection, based on the value of the natural resources found in those areas;
2. The land within those Core Areas and Supporting Landscape Areas contains natural resources which provide one or more of the ecosystem services identified in the preceding section.

**IV. Applicability**

A. **Area of applicability.** The Area of the Conservation Overlay District for the Town of [ ] is identified by the map for the Town of [ ] entitled “Conservation Overlay District” and subsequent amendments. The District includes the following elements:

1. Focus Areas as defined in the Coastal Land Conservation Plan
2. Focus areas contain Core Areas and Supporting Landscape Areas as defined in the Coastal Land Conservation Plan
3. Other Locally Defined Priority Protection Areas [*these would include areas that have been identified by a preexisting local, watershed, or regional level plan that meet the purposes defined in this ordinance.*]

*(NOTE: Zones that a town may wish to exclude based upon the Master Plan may include Commercial, Industrial, or Town Center Zones. Towns adopting this ordinance may wish to add to and/or exclude areas from the Conservation Overlay Zone based on existing zoning or future land use intentions as expressed in the Town’s Master Plan. However, a town may also choose to amend its master plan and zoning configuration based upon the finding that a particular zone may contain one or more focus areas as designated by the Coastal Land Conservation Plan maps. Areas added might include priority conservation areas identified by the town, provided they are consistent with the purposes of this ordinance.)*

B. **Residential Subdivisions.** The following regulations apply to all applications for subdivision on three or more lots or three or more new residential units within the Conservation Overlay District.

*NOTE: the phrase three or more units is included to address cases where individual residents do not own individual lots, but instead utilize a condominium plan or other common ownership of a single large lot.*

*NOTE: The following section should be included only if the Town has or expects to implement a transfer of development credits ordinance.*

C. **Voluntary Transfer of Development Credits.** Participation in the voluntary transfer of development credits program shall be available to all landowners proposing development of three or more lots.

**V. Dimensional Standards**

A. **Overall density.** Density shall be calculated by determining the number of acres containing Core Areas and Supporting Landscape Areas and the number of acreage outside of these areas in proportion to the total area of the parcel as follows:

1. **For acreage containing Core Areas**, the recommended overall density shall be one unit per \_\_\_\_\_ acres. (We recommend five to ten acres).
2. **For acreage containing Supporting Landscape Areas**, the overall density shall be one unit per three to five acres.

*(NOTE: it is recommended that the Town determine an overall density within the above ranges based on consideration of both the particular Core Areas and supporting landscape areas as depicted on the Coastal Land Conservation Plan map set as well as a site-level assessment of the natural resources. A licensed natural resource professional should be retained to evaluate the site and recommend a range of density appropriate for the carrying capacity of the particular resources on site necessary to sustain the ecological function of the particular resources identified.)*

3. **Maximum density.** In no case shall the overall density for a particular parcel be greater than the lowest allowable density for the parcel were it not identified as containing a Focus Area or Supporting Landscape Area.

**B. Site Development Area.** No more than 20 percent of the overall site acreage configured in a contiguous area may be developed unless the proposed development avoids all acreage containing Core Area and Supporting Landscape area. The following density proportions shall apply based on the natural resource characteristics of the parcel:

1. **For parcels in which all of the land area is within a Focus Area**, no more than 10 percent of the site may be developed
2. **For parcels in which all of the land area is within a Supporting Landscape Area**, no more than 20 percent of the overall site may be developed
3. **For parcels in which some of the land is within a Core Area, some of the land is within a supporting Landscape Area**, and some of the land is in neither area, if the development does not include any Core Area or Supporting Landscape Area acreage within the developed portion of the site, up to 70 percent of the site may be developed.
4. For portions of the development that are within Core Areas, no more than 10 percent may be developed. For portions of the development that are within Supporting Landscape Areas, no more than 20 percent may be developed.

**C. Variable lot sizes permitted.** Variable lot sizes shall be permitted, but all lots must be designated by lot lines. No single lot shall be less than that required to reasonably accommodate the dwelling unit and any necessary utilities, including wells and septic

except where community wells or septic systems. Community septic systems shall be located outside of the Conservation Focus Areas.

- D. **Riparian Buffer and Setback Requirements for Wildlife Habitat Areas and Water Quality.** Any lot that includes riparian wildlife habitat area must buffer that riparian habitat area by delineating a 200-300 foot buffer. Any lot that contains or borders a river or stream but does not include riparian wildlife habitat area must delineate a 100-foot buffer for water quality protection. Buffers shall be designated as no cut no disturb by permanent markers or signage.

**VI. Conservation Area Calculation**

- A. **Area of Development:** All development density to include roads, dwelling units, and other structures, but not to include septic systems and wells, must be located within **20 percent of the entire parcel**. The remainder of the parcel shall be considered as conservation area and must comply with the following provisions for area, buildable area calculation, and ownership and management. Septic systems and wells may be located within the remaining 80 percent of the parcel but not within Core Areas.
- B. **Conservation Area:** All developments shall have at least 50% ( fifty percent) of the buildable upland area of the entire parcel designated as conservation land and documented through a permanent conservation easement within the deed for the parcel. Where significant wildlife habitat is identified through the four-step process above, the applicant shall also submit a **wildlife management plan** for the conservation land prepared by a natural resources professional and reviewed, at the applicant's expense, by the town's consultant.
- C. **Buildable Area Calculation:** The buildable upland area of a parcel is determined by subtracting from the acreage of the entire parcel the following: the area of the parcel that will be used for locations of housing, related structures and roads, steep slopes in excess of 15 percent, and poorly and very poorly drained soils.
- D. **Ownership and Management of Conservation Area:** Deed and related documents must clearly state the conveyance of the conservation land to an appropriate ownership and/or management entity through the use of a conservation easement.

**VII. Phasing and Regional Impact Provisions for Residential Subdivisions**

- A. **Mandatory Phasing.** Mandatory phasing will be required on all subdivisions consistent with federal stormwater guidelines for soil disturbance requirements.
- B. **Performance Agreement.** A Performance Agreement for the sequencing of the installation of roads and a schedule of completion of each phase may be required at the discretion of the Planning Board.

**VIII. Uses allowed within the Conservation Overlay District**

- A. **Performance Standards.** Uses allowed within the Conservation Overlay District include those uses which meet the following criterion and the performance standards designed to maintain the ability of the natural resources found within the Core Areas and Supporting Landscape to provide the ecosystem services described in preceding sections.
- B. **Uses which require the use, storage, production or disposal of toxic or hazardous materials, including but not limited to volatile organic compounds, petroleum products, heavy metals, and radioactive materials as defined by the State Department of Environmental Services are expressly prohibited. All other uses must meet the following criteria in order to be permitted within the District:**
1. **Best Management Practices for Stormwater Management and Low Impact Development /On-Site Infiltration.** The site utilizes best management practices for stormwater management and low impact development as defined by New Hampshire Department of Environmental Services, including on-site infiltration.
  2. **Fragmentation.** The use does not fragment forest blocks and other important wildlife habitat resources found within a Focus Area as identified on the District Map.
  3. **Best Management Practices for management of animal waste.** The use must utilize EPA and DES defined best management practices for management of animal waste to minimize the potential for water source contamination.
  4. **Building Footprint.** Building footprint size must be less than 14,000 square feet to minimize the amount of large areas of impervious surface and fragmentation of the landscape by large buildings and supporting municipal infrastructure.
  5. **Dark Sky Standards.** All development must meet the standards of the International Dark Sky Association for full-cutoff lighting fixtures to reduce off-site impacts of lighting on nocturnal wildlife species and minimize the negative effects of light pollution.

**IX. Preliminary Layout**

- A. **Four-step Design Process.** Any subdivision in the COD shall be designed according to the following four-step process. Applicants shall submit four separate sketch maps indicating the findings of each step of the design process.
1. **Step 1: Identify All Potential Primary and Secondary Conservation Areas:**

- a) **Primary Conservation Areas.** The following elements must be identified in Step 1 as primary conservation areas. The developer should attempt to limit development in these areas to the extent feasible:
  - 1. Areas Delineated as **Core Areas** by the District Map
  - 2. Wetlands, Floodplains, and Steep Slopes  
*(NOTE: Towns may wish to include a provision identifying their existing Wetlands, Shoreline Protection and Floodplains Ordinances applicability to these resources)*
  - 3. Existing conservation lands or other lands permanently protected by conservation easements or under the management of a local or state Conservation Organization
  
- b) **Secondary Conservation Areas.** The following areas must be identified as secondary conservation areas:
  - 1. Areas Delineated as **Supporting Landscape** by the District Map
  - 2. Areas identified for protection in the Municipality's Master Plan, Natural Resource Inventory, and in the State of New Hampshire Wildlife Action Plan Co-occurrence habitat maps
  - 3. Surface water areas including lakes, ponds, rivers, or streams and groundwater sources including aquifers and wells

(The applicant may reference local, regional, and state maps in identifying these areas. )

The developer should limit development in secondary conservation areas by locating buildings, roads, and infrastructure so as not to fragment existing forest or other habitat blocks.

- c) **Evaluation Criteria.** The subdivision shall be designed around both the Primary and Secondary Conservation areas. The Conservation Commission shall review and provide comments on the sketch and documentation produced by the developer in Step 1.

**The Board shall consider the following criteria, if applicable, in evaluating the proposed layout of lots and open space:** *(The Board may wish to develop a checklist to use in this section to evaluate the applicant's compliance, or may wish to set up the following criteria as performance standards.)*

- **Impacts of grading, filling, or construction:** The extent to which the design protect all floodplains, wetlands, and steep slopes greater than 15 percent from the impacts of grading, filling or construction.
- **Preservation of existing resources and buffers between residential and agricultural uses:** The extent to which the design preserve and maintain mature woodlands, existing fields, pastures, meadows, and orchards, and create sufficient buffer areas to minimize conflicts between residential and agricultural uses.
- **Location of houses:** If the development must be located on open fields or pastures due to development constraints on other parts of the site, the extent to which houses are sited on the least prime agricultural soils, or in locations at the far edge of a field.
- **Buffers for water quality and wildlife habitat:** The extent to which the layout maintains or creates an undisturbed upland buffer or natural native species vegetation of at least 100 feet in depth adjacent to wetlands and surface waters, including creeks, streams, springs, lakes, vernal pools and ponds, or 200-300 feet if the riparian area constitutes riparian wildlife habitat area.
- **Maintain existing treelines and large woodlands:** The extent to which the design considers existing treelines, and minimizes impacts in large woodlands, especially those containing significant wildlife habitat.

2. **Step 2: Locate the House Sites.** The Board in evaluating the proposed application shall consider the following recommendations.

- Potential building sites shall be located taking into consideration the proposed common open space identified in Step 1 as well as other relevant data from the Site Inventory Plan and Site Analysis Map, such as topography and soils.
- Building sites must be located outside of Primary Conservation Areas and should be located outside of Secondary Conservation Areas to the extent feasible, taking into consideration the potential negative impacts of development on such areas as well as the potential positive benefits of such locations to provide attractive views and visual settings for residences and other uses.

3. **Step 3: Designing Street Alignments and Trails.** The Board shall consider the following criteria in evaluating the applicant's proposed design.

- Does the design minimize the amount of impervious surface by utilizing narrower roads if approved by the town's fire and safety officials and road agent?

- Does the design utilize low-impact development practices for stormwater management?
- Does the design incorporate wildlife crossings in areas of identified wildlife habitat and allow culvert sizing suitable for wildlife passage?

**4. Step 4: Drawing the Lot Lines**

- Lot lines shall be drawn as required to delineate the boundaries of individual lots.

B. **Environmental Assessment.** Applicant must complete an environmental assessment of the area and/or reference the Town's natural resource inventory. The assessment must be reviewed by a qualified natural resources professional such as a licensed forester, professional wildlife biologist or certified wetlands scientist retained by the town at the applicant's expense.

C. **The following studies may also be required at the discretion of the Planning Board:**

1. Aquifers/ hydrogeological study
2. High Intensity Soil Survey
3. Wetlands Inventory
4. Delineation of slopes greater than 15 percent

D. **Minimize or Mitigate Negative Impacts.** Applicant must demonstrate that the development will minimize or mitigate negative impacts of development during the construction phase through an erosion and sediment control plan.

E. **Reclamation Plan.** Applicant must provide reclamation plan and revegetation plan for any areas disturbed.

F. **Wildlife Habitat Checklist.** Applicant must complete the wildlife habitat conservation checklist (see Appendix)

**X. Buffers for Riparian Area Specifications**

A. Buffers for riparian wildlife habitat areas shall be 200-300 feet deep, vegetated, and designated as no cut no disturb by permanent markers or signage. Buffers for water quality shall be 100 feet deep, vegetated, and designated as no cut no disturb markers.

XI. **Wetlands Setbacks and Buffers Designation.** Setbacks and buffers may not be cut or disturbed except as specified in an approved Conservation Area Management Plan referenced in the provisions of the Conservation Easement. The Building inspector will certify by on-site inspection that the boundary of the buffer area has been marked with permanent markers or discs as described above.

XII. **Subdivision Design Regulations. The following provisions are recommended for the Subdivision Regulations for the Town of [\_\_\_\_\_].**

- A. Trails and Public Access
- B. Minimizing Impacts to Wildlife and Discouraging Nuisance Animals
- C. Lighting
- D. Stormwater Management
- E. Erosion and Sediment Control