

ARTICLE 3

Definitions

§ 120-301. Definitions. [Amended 4-27-2010 by Order 10-075; 9-14-2010 by Order 10-164; 2-14-2012 by Order 12-014; 10-23-2012 by Order 12-148; 10-23-2012 by Order 12-149; 7-8-2014 by Order 14-164; 10-14-2014 by Order 14-387; 11-18-2014 by Order 14-463; 12-16-2014 by Order 14-491; 3-28-2017 by Order 17-052; 9-12-2017 by Order 17-160; 10-10-2017 by Order 17-161; 6-12-2018 by Order 18-099; 1-15-2019 by Order 18-257; 6-11-2019 by Order 19-057; 5-26-2020 by Order 20-048; 8-11-2020 by Order 20-151; 10-13-2020 by Order 20-211; 4-12-2022 by Order No. 22-062; 6-16-2022 by Order No. 22-108; 10-11-2022 by Order No. 22-175; 3-28-2023 by Order No. 23-041; 4-25-2023 by Order No. 23-060; 8-15-2023 by Order No. 23-149; 8-15-2023 by Order No. 23-150; 4-9-2024 by Order No. 24-018; 5-14-2024 by Order No. 24-052; 8-20-2024 by Order No. 24-165; 1-14-2025 by Order No. 25-001; 1-14-2025 by Order No. 25-002; 4-29-2025 by Order No. 25-043; 5-27-2025 by Order No. 25-090; 1-27-2026 by Order No. 26-009]

In this chapter, the following terms shall have the following meaning unless a contrary meaning is required by the text or is specifically prescribed. In addition to the following definitions, performance standards regulating specified land uses should be reviewed in the district standards for each zoning district (Article 4) and the performance standards (Article 5) that apply to all zoning districts in the Town.

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ARTICLE 4

Zoning Districts**§ 120-406. Farm District (F).**

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- E. Dimensional standards. The following dimensional standards shall apply in the Farm District:
[Amended 12-16-2014 by Order 14-491; 6-9-2020 by Order 20-140]

(2) Net residential density: 60,000 square feet.

(a) Country subdivision: 250,000 square feet.

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- F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Farm District:

(2) Conservation subdivision. (See Article 9, Subdivision Review.) All submissions for subdivisions in the Farm District must be designed as a conservation subdivision or a country subdivision.

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§ 120-407. Farm-Residential District (FR).

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- E. Dimensional standards. The following dimensional standards shall apply in the Farm-Residential

(2) Net residential density: 40,000 square feet.

(a) Country subdivision: 250,000 square feet.

- F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Farm-Residential District:

(3) Conservation subdivision. (See Article 9, Subdivision Review.) All submissions for subdivisions in the Farm-Residential District must be designed as a conservation subdivision or a country subdivision.

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ARTICLE 9
Subdivision Review⁴³

§ 120-908. Waivers. [Amended 6-16-2022 by Order No. 22-108; 10-24-2023 by Order No. 23-193; 4-29-2025 by Order No. 25-043]

- A. Limitation of waivers. The granting of a submission requirement waiver or site waiver may not conflict with, nor negate, any state statutory requirements for the subdivision of land.
- B. Waiver of submission requirements. The Director of Planning or designee may waive the submission requirements identified in § 120-910 (Submission requirements) as being eligible for a waiver if it is determined that the information is not required to determine compliance with the standards and criteria of this chapter or that the information relates to a standard that is not applicable to the application.
 - (1) A waiver from the submission requirements shall not require the applicant or the Director of Planning to follow the procedures and standards in Subsection C, below. A waiver from submission requirements shall not be considered a variance for purposes of 30-A M.R.S.A. § 4403(7).
 - (2) In accordance with § 120-910 (Submission requirements), the applicant shall submit a list of submission requirements for which a waiver is sought. The list shall include the reasons for which the waiver is sought. The Director of Planning is not required to use any criteria in making a determination on the granting of a waiver of the submission requirements.
- C. Waiver of subdivision performance standards. The Planning Board may waive the requirements of § 120-911, Performance and design standards, unless prohibited by Maine statutes, where it finds that there are special circumstances of a particular parcel proposed to be subdivided, or that the application is simple and minor in nature. The applicant must demonstrate that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met and the public health, safety and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of this chapter. With regard to applications for which the Board is performing delegated review authority for applicable permits (i.e., Site Law or Stormwater Law), the waiver shall not result in noncompliance with any provision of the Site Law, Stormwater Law, or DEP regulations adopted pursuant to those laws.
 - (1) Procedure. The applicant shall submit a list of the requested waiver(s) in writing. For each waiver requested, the applicant shall submit answers to each of the criteria in Subsection C(2), Criteria, below.
 - (a) The process for requesting waivers shall be in accordance with the provisions for review procedures in §§ 120-906 and 120-907 and the provisions for submission requirements in § 120-910.
 - (b) The Planning Board may request additional information to make a determination on a waiver request.

(c)

(2) Criteria. In granting site waivers, the Planning Board shall utilize the following criteria:

(a) The waiver will improve the ability of the project to take the property's predevelopment natural features into consideration. Natural features include, but are not limited to, topography, location of water bodies, location of unique or valuable natural resources, and relation to abutting properties or land uses.

(b) The waiver will not result in the following:

[1] Undue water or air pollution.

[2] Undue light pollution or glare.

[3] An inadequate water supply.

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[4] Unreasonable soil erosion.

[5] Unreasonable traffic congestion or safety risk.

[6] Decreased pedestrian safety or access.

[7] Inadequate supply of parking spaces.

[8] Inadequate sewage disposal capacity.

[9] Inadequate solid waste disposal capacity.

[10] An adverse impact on scenic or natural beauty, aesthetics, historic sites, or rare or irreplaceable natural areas.

[11] Flooding or adverse drainage impacts on abutting properties.

[12] An adverse impact on the Town's ability to provide the subdivision with public safety services.

(c) Recording of waivers of subdivision performance standards. When the Board grants a site waiver to any of the improvements required by these regulations, the final plan, to be recorded at the Registry of Deeds, shall indicate the waivers granted. Waivers must be listed in a separate location from either the plan's general notes or any conditions of approval. Waivers of the required application submissions do not need to be listed.

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§ 120-911. Performance and design standards. [Amended 4-27-2010 by Order 10-075; 5-10-2011 by Order 11-070; 7-24-2012 by Order 12-091; 12-16-2014 by Order 14-491; 2-28-2017 by Order 17-038; 10-10-2017 by Order 17-161; 5-22-2018 by Order 18-905; 1-15-2019 by Order 18-257; 6-9-2020 by Order 20-140; 6-16-2022 by Order No. 22-108; 7-12-2022 by Order No. 22-127; 3-28-2023 by Order No. 23-041; 5-23-2023 by Order No. 23-092; 4-29-2025 by Order No. 25-043]

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K. Conservation subdivisions.

(1) Purpose.

- (a) This subsection establishes standards and procedures for developing conservation subdivisions that set aside a significant portion of the site as open space that is permanently protected while allowing the homes to be grouped on smaller lots on the portions of the site that have the least natural, cultural, or historical resource value for conservation purposes. The standards are intended to ensure that those areas of the site that are not developable or that have natural resource value are included in the open space.
- (b) Development under this provision is intended to promote imaginative, well-designed subdivisions which preserve open space, forests and agricultural uses, and an overall rural character. Additionally, conservation subdivisions should provide public access to land for passive and active recreation; protect natural features, environmentally sensitive areas and wildlife cover; respect the physical qualities of the land; and, in some instances, reduce the overall development costs of a subdivision. The standards for conservation subdivisions allow for the creation of lots that are smaller than those that would otherwise be required by the applicable zoning district regulations and in some cases can be combined with density bonuses to allow additional lots, in return for setting aside the balance of the property as permanent open space.
- (c) These provisions are designed to ensure that conservation subdivisions developed in the Town:
 - [1] Preserve those areas of the site that have the highest natural resource value for conservation purposes (refer to the primary and secondary listed below);
 - [2] Preserve rural character and functions in rural portions of Windham;
 - [3] Provide a well-designed approach to the overall roadway and site layout that results in a landscape that provides a sense of a unique and appealing place;
 - [4] Preserve identified historic, archaeological, and cultural features located on the site;
 - [5] Locate the buildings and structures on those portions of the site that are most appropriate for development;
 - [6] Create continuous open spaces, or "greenways," by linking the open spaces in adjoining subdivisions wherever possible; and

- [7] Minimize the impact of residential development on the Town, neighboring properties, and the natural environment.(d) In addition to all applicable standards of this chapter, the Planning Board may approve a single-family conservation subdivision, provided the following conditions are met:

(2) Applicability.

- (a) All submissions for single-family subdivisions in the Farm Zoning District and Farm-Residential Zoning District that meet the space and bulk requirements listed in the appropriate zoning district must be designed as a conservation subdivision or a country subdivision.
- (b) All submissions for subdivisions in all other zoning districts that meet the space and bulk requirements listed in the appropriate zoning district may be designed as a conservation subdivision or a traditional subdivision.
- (c) Property located within more than one residential zoning district. The overall density of the subdivision shall not exceed the combination of the density requirements of the districts in which the subdivision is located, before density bonuses are applied.

(3) Procedure for conservation subdivisions; design process for conservation subdivision open space.

- (a) Delineation of open space. The area to be designated as open space or otherwise preserved as part of the development shall be delineated based upon the primary and secondary conservation areas. The proposed open space in conservation subdivisions shall be identified in accordance with the following:
 - [1] The minimum percentage and acreage of required open space shall be calculated by the applicant and submitted in accordance with the provisions of § **120-911K** and of this chapter.
 - [2] The proposed open space shall be designated using an existing resources inventory and site analysis sketch plan as a base. This plan shall describe the property proposed to be subdivided and analyze the opportunities and constraints for open space preservation and development. This should be submitted for preapplication review with planning staff prior to submitting a formal application for subdivision approval.
 - [3] The primary conservation areas on the site shall be delineated and shall be incorporated into the open space. The primary conservation areas shall include floodplains, wetlands, and areas with sustained slopes over 25%.
 - [4] The secondary conservation areas on the site shall then be delineated. In delineating secondary conservation areas, the applicant shall prioritize natural and cultural resources on the tract in terms of their highest to lowest suitability for inclusion in the proposed open space based upon the priorities set forth in § **120-911K(6)(c)**.
 - [5] On the basis of those priorities and practical considerations related to the tract's configuration, its context in relation to resource areas on adjoining and neighboring properties, and the applicant's subdivision objectives, sufficient secondary conservation areas shall be identified to be included in the open space to meet at least the minimum area percentage requirement for open space. This delineation shall clearly indicate the boundaries as well as the types of

resources included within them.

- [6] The proposed open space shall include all primary conservation areas and the secondary conservation areas with the highest resource significance as identified. For subdivisions that are not conservation subdivisions, the primary and secondary conservation areas shall be identified using the existing resources inventory and site analysis sketch plan as a base. The layout of the subdivision shall consider these resources and shall preserve them to the extent reasonable.

(b) Open space design.

- [1] All open space areas shall be part of a larger continuous and integrated open space system within the parcel being developed. At least 75% of the open space shall be contiguous to another open space area. For the purposes of this subsection, areas shall be considered contiguous if they are within 100 feet of each other and there are no impediments to access between the areas.
- [2] Open space shall, to the greatest extent possible, protect site features identified in the existing resources inventory and site analysis sketch plan.
- [3] Natural features shall generally be maintained in their natural condition but may be modified to improve their appearance or to restore their overall condition and natural processes.
- [4] No area of open space shall be less than 50 feet in its smallest dimension and less than 10,000 square feet in area. Open space not meeting this standard is allowed as an added project enhancement but shall not be counted toward the required project open space.
- [5] The boundaries of open spaces shall be marked by natural features wherever possible, such as hedgerows, stone walls, edges of woodlands, streams, or individual large trees. Where no such existing demarcations are present, additional plantings, fences, or other landscape features shall be added to enable residents or the public, if applicable, to distinguish where the open space ends and private lot areas begin. Where structural demarcations such as fences are used, they shall be the minimum needed to accomplish this objective.
- [6] Open space shall include lands located along existing public streets in order to preserve existing rural landscape character as seen from these streets and shall, in no case, contain less than the required buffer, setback area, or separation distance.

- (c) Location of building sites. Potential building sites shall be tentatively located taking into consideration the proposed open space and/or the primary and secondary conservation areas identified in § 120-911K(6)(c), as well as other relevant data from the existing resources inventory and site analysis sketch plan, such as topography and soils.

- [1] Building envelopes should generally be located at least feet from primary conservation areas and at least 50 feet from secondary conservation areas, 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.
- [2] Buildings shall be set back at least 100 feet from existing public and private streets. This buffer may be part of the conservation subdivision open space. When buildings will be

visible from the existing streets, the applicant shall minimize the visual impact of new development through larger setbacks or screening with elements such as low walls, split-rail fencing, trees or other plantings.

- [3] Buildings shall be set back at least 50 feet from the external perimeter of the property line of the conservation subdivision, with the exception of property lines along public or private streets. The buffer strip shall be naturally vegetated or landscaped. This buffer may only be part of the open space if the area is a primary or secondary conservation area delineated in accordance with § **120-911K(3)(a)**.
 - (d) Alignment of streets and ways and creation of a trail system. Based upon the designated building sites, a circulation plan shall be designed to provide vehicular and pedestrian access to each site. The street layout shall bear a logical relationship to topographic conditions. Impacts of the street plan on proposed conservation lands shall be minimized, particularly with respect to crossing environmentally sensitive areas such as wetlands and minimizing cut and fill. Street connections shall generally be encouraged to minimize the number of new culs-de-sac and to facilitate access to and from buildings in different parts of the subdivision. A trail system shall be created within the open space to provide access from the subdivision homes to the open space network created by the subdivision.
 - (e) Drawing in the lot lines. Upon completion of the preceding steps in § **120-911K(3)(a)** through (d), lot lines shall be drawn as required to delineate the boundaries of individual lots. Lots shall be designed in keeping with the standards for individual lots found in Article 4 and shall be further designed to provide each residence with a clear delineation of its property bounds and with usable yard spaces.
- (4) Basic standards for conservation subdivisions.
- (a) Conservation subdivisions shall meet all applicable requirements of this chapter.
 - (b) The Planning Board shall allow lots within conservation subdivisions to be reduced from standard subdivision standards as specified in the applicable zoning district. In return for the reduction in the requirements for lot area, frontage, and structure setbacks, the applicant shall provide common open space.
 - (c) In order to determine the maximum number of dwelling units permitted on a tract of land, the net residential acreage of the parcel shall be divided by the net residential density standard of the applicable zoning district. Density bonuses are applicable, per the appropriate zoning district standards (see Article 4).
 - (d) A landowner may choose not to maximize the development potential of a tract of land in the first subdivision application and reserve remaining development rights for a future subdivision application. In this instance, a conceptual master plan showing the location of future lots must be submitted. The conceptual master plan shall include the minimum information required for a sketch plan submission.
- [1] The subdivider may retain ownership of the remaining land from which the subdivision lots are to be created, provided the portion of the remaining land counted toward the subdivision open space is subject to a permanent conservation or agricultural easement, or the subdivider may

transfer ownership of the open space to a third party per § **120-911E(2)**.

[2] The land remaining will be a numbered lot within the subdivision.

[3] The open space standards in § **120-911K(5)** shall apply.

- (e) Each building envelope shall be an element of an overall subdivision plan for site development. Only developments having a total site plan for structures will be considered. The application shall illustrate the placement of building envelopes and the treatment of spaces, paths, roads, service and parking and in so doing shall take into consideration all requirements of § **120-911K** and of other relevant sections of these regulations.
- (f) For conservation subdivisions that are not served by a public water supply, the applicant must demonstrate on the plan that it is possible to locate a subsurface wastewater disposal field and a well on each lot. When determined that it is necessary for specific lots, by the Planning Board, as a condition of approval, the location of these elements shall be elements of the subdivision plan, and any future changes to the location of these elements will require an amended subdivision plan review.
- (g) Up to 30% of individual lots or dwelling units may have direct vehicular access onto a public street existing at the time of development.

[1] Driveways may cross the buffer and must run essentially perpendicular to the street.

[2] Driveways serving individual lots in a conservation subdivision on an existing public street must be separated from new driveways and street intersections by 300 feet.

(5) Arrangement of lots.

- (a) Diversity and originality in lot layout and individual building site design shall be encouraged to achieve the best possible relationship between the proposed development and the land under consideration.
- (b) Factors considered by the Planning Board when evaluating the proposed arrangement of lots shall include, but not be limited to:
 - [1] Arrangement of roads, stormwater facilities, wastewater and other utilities in conformance with the natural features of the parcel, minimizing changes to the topography.
 - [2] Minimization of impervious cover.
 - [3] Protection of stream corridors and other important habitat areas.
 - [4] Protection of wetlands.
 - [5] Feasibility of continued or future agricultural use.
 - [6] Feasibility of continued or future forest management.
 - [7] Relationship to neighboring property, including conservation easements or natural, cultural,

recreational or scenic features.

(6) Open space requirements for conservation subdivisions.

- (a) The open space provided by the conservation subdivision shall be identified on the recorded subdivision plan as "Open Space — Reserved for Recreation, Agricultural and/or Conservation Purposes."
- (b) Minimum amount required. The amount of open space provided within the subdivision shall be equal to or greater than the sum of the following:
 - [1] All of the areas of the parcel that are deducted from the gross area of the site to determine the net residential area (see § **120-541**, Net residential area or acreage); plus
 - [2] At least 50% of the remaining land that is not deducted from the calculated net residential area (see § **120-541**, Net residential area or acreage).
- (c) Priorities for land included in open space. The land set aside in the open space shall be selected based upon the following priorities:
 - [1] Primary conservation priorities.
 - [a] Streams, wetlands , floodplains, vernal pools, and areas with a slope in excess of 25%. Buffers that are required by ordinance along these protected resources shall also be considered primary conservation areas.
 - [b] Areas that maintain the rural character of roadsides.
 - [c] Scenic resources, including viewsheds and agricultural fields, along with the forested margin adjacent to these resources.
 - [d] Areas that are adjacent to other protected open space.
 - [2] Secondary conservation priorities.
 - [a] Areas that provide protection for unique or irreplaceable resources, including the habitat of rare, significant, or endangered species, archaeological or historic sites, landmarks, and cemeteries.
 - [b] Areas that provide for the continuation of resource systems into or through the site such as shorelands, river or stream corridors, wildlife travel corridors, trails, and unfragmented habitat blocks. The width of such corridors shall be as follows:
 - [i] Shorelands, river or stream corridors: 100% of the width of any required vegetative buffer, in addition to the required buffer.
 - [ii] Wildlife travel corridors: 300 feet.
 - [iii] Recreational trail corridors: 25 feet on either side of the trail. Unfragmented habitat blocks shall have a minimum contiguous area of 150 acres.

- [c] Areas that encompass groups of small wetlands not included in primary conservation areas, as well as streams or ponds in a continuously forested area.
 - [d] Other secondary conservation areas, including fields, aquifer recharge areas, deer yards, and other identified habitat.
- (d) For open space not retained by the subdivider, one principal access point having a minimum width of 20 feet shall be provided from the road network within the conservation subdivision. Additional, secondary points of access having a minimum width of 10 feet may be provided from individual lots when these lots abut or are located within a portion of the open space area.
- [1] The size and location of the principal and secondary access points shall be reviewed and approved by the Planning Board as part of the Board's review of the conservation subdivision.
 - [2] In order to be eligible for any density bonus described in the applicable zoning district standards, the following conditions must be met: the open space must be open for general public use, not just homeowners within the subdivision or the subdivider; and the open space must either be accessed from an existing public street, or access is from an abutting property that is public, permanent open space or recreation land; or access must be formalized in easement language if access is to be provided over the new subdivision street or streets until such time as the subdivision street or streets are adopted by the Town. Access easements for the open space must be recorded at the registry prior to the issuance of building permits.
- (e) The required open space shall not be used for commercial recreation or for private clubs whose membership is different from the homeowners' association.
- (f) The proposed location of open space areas should also be considered in relation to other open space areas on abutting properties, and logical connections to and from open space areas on abutting properties should be given consideration by the Planning Board.
- (7) Country subdivisions. As an alternative to conservation subdivision design in the Farm Zoning District and the Farm-Residential Zoning District, an applicant may choose a country subdivision design. This alternative does not include the reservation of open space or the level of site analysis and design required by a conservation subdivision. As a result, large residential lots are required in order to meet Town goals of protecting water quality and wildlife habitats and preserving rural character.
- (a) Layout and design of the development.
 - [1] Minimum property line setbacks. All principal buildings shall be set back a minimum of 75 feet from any property line. Accessory buildings and structures with less than 200 square feet of footprint area shall be set back a minimum of 50 feet from any property line. Any other accessory buildings and structures shall be set back a minimum of 75 feet from any property line.
 - [2] Streetscape buffers. A vegetated buffer strip shall be maintained on any country lot that fronts on or otherwise abuts any existing public and private street to minimize the visual impact of the development on the streetscape. The depth of the buffer strip shall be at least 50 feet. The buffer strip may be crossed by driveways or access drives that run essentially perpendicular to the street. The buffer strip shall be naturally vegetated or landscaped in a manner appropriate to the

existing site conditions and the secondary conservation value of the strip.

- [3] Perimeter buffers. A vegetated buffer strip shall be maintained along the external perimeter or property line of the country subdivision, with the exception of property lines along public or private streets, to minimize the impact of the country subdivision on abutting properties. The width of the buffer strip shall be at least 50 feet. The buffer strip shall be naturally vegetated or landscaped.
- (b) Conceptual master plan. A landowner may choose not to maximize the development potential of a tract of land in the first subdivision application and reserve remaining development rights for a future subdivision application. In this instance, a conceptual master plan showing the location of future lots must be submitted. The conceptual master plan shall include the minimum information required for a sketch plan submission.

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ARTICLE 3 Definitions

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CONSERVATION SUBDIVISION BUILDING ENVELOPE — The portion of a lot within a Conservation Subdivision designated and approved for the location of structures, site improvements, and associated development. Building envelopes shall be established through the conservation design process in accordance with § 120-911K and shall avoid or minimize impacts to identified Primary Conservation Resources and Secondary Conservation Resources.

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COUNTRY SUBDIVISION — A form of residential subdivision development permitted in the Farm District (F) and Farm-Residential District (FR) that utilizes larger lot sizes, increased setbacks, and buffer requirements to preserve rural character in accordance with the standards of §120-911K(7). A Country Subdivision does not require the reservation of open space except as otherwise required by this Ordinance.

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PRIMARY CONSERVATION RESOURCES — Natural resources and land features identified for the highest level of protection and preservation within a Conservation Subdivision. Primary Conservation Resources shall be identified, delineated, and protected in accordance with the criteria of §120-911K(3)(c)[1] and the conservation design process established in §120-911K(6).

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SECONDARY CONSERVATION RESOURCES — Natural, cultural, historic, scenic, agricultural, recreational, and other land features that contribute to the ecological integrity and rural character of a site and are considered for preservation within a Conservation Subdivision. Secondary Conservation Resources shall be identified, evaluated, and incorporated into the conservation design process in accordance with the criteria of §120-911K(3)(c)[2] and §120-911K(6).

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ARTICLE 4

Zoning Districts

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- (2) Net residential density: 60,000 square feet.
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- F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Farm District:

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- (2) Conservation subdivision. (See Article 9, Subdivision Review.) All ~~submissions for~~ subdivisions proposed on lots/parcels greater with more than 8 acres of gross land area in the Farm District must be designed as a conservation subdivision or a country subdivision.

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§ 120-407. Farm-Residential District (FR).

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- F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Farm-Residential District:

- (3) Conservation subdivision. (See Article 9, Subdivision Review.) All ~~submissions for~~ subdivisions proposed on parcels/lots greater with more than 5 acres of gross land area in the Farm-Residential District must be designed as a conservation subdivision or a country subdivision.

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ARTICLE 9
Subdivision Review⁴³

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 - (2) In accordance with § 120-910 (Submission requirements), the applicant shall submit a list of submission requirements for which a waiver is sought. The list shall include the reasons for which the waiver is sought. The Director of Planning is not required to use any criteria in making a determination on the granting of a waiver of the submission requirements.
- C. Waiver of subdivision performance standards. The Planning Board may waive the requirements of § 120-911, Performance and design standards, unless prohibited by Maine statutes, where it finds that there are special circumstances of a particular parcel proposed to be subdivided, or that the application is simple and minor in nature. The applicant must demonstrate that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met and the public health, safety and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of this chapter. With regard to applications for which the Board is performing delegated review authority for applicable permits (i.e., Site Law or Stormwater Law), the waiver shall not result in noncompliance with any provision of the Site Law, Stormwater Law, or DEP regulations adopted pursuant to those laws.
 - (1) Procedure. The applicant shall submit a list of the requested waiver(s) in writing. For each waiver requested, the applicant shall submit answers to each of the criteria in Subsection C(2), Criteria, below.
 - (a) The process for requesting waivers shall be in accordance with the provisions for review procedures in §§ 120-906 and 120-907 and the provisions for submission requirements in § 120-910.
 - (b) The Planning Board may request additional information to make a determination on a waiver request.

(c)

(2) Criteria. In granting site waivers, the Planning Board shall utilize the following criteria:

- (a) The waiver will improve the ability of the project to take the property's predevelopment natural features into consideration. Natural features include, but are not limited to, topography, location of water bodies, location of unique or valuable natural resources, and relation to abutting properties or land uses.
- (b) The waiver will not result in the following:
 - [1] Undue water or air pollution.
 - [2] Undue light pollution or glare.
 - [3] An inadequate water supply.

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- [4] Unreasonable soil erosion.
- [5] Unreasonable traffic congestion or safety risk.
- [6] Decreased pedestrian safety or access.
- [7] Inadequate supply of parking spaces.
- [8] Inadequate sewage disposal capacity.
- [9] Inadequate solid waste disposal capacity.
- [10] An adverse impact on scenic or natural beauty, aesthetics, historic sites, or rare or irreplaceable natural areas.
- [11] Flooding or adverse drainage impacts on abutting properties.
- [12] An adverse impact on the Town's ability to provide the subdivision with public safety services.

- (c) Recording of waivers of subdivision performance standards. When the Board grants a site waiver to any of the improvements required by these regulations, the final plan, to be recorded at the Registry of Deeds, shall indicate the waivers granted. Waivers must be listed in a separate location from either the plan's general notes or any conditions of approval. Waivers of the required application submissions do not need to be listed.

(3) Non-Waivable Subdivision Performance Standards. Notwithstanding anything in this § 121-908 to the contrary, the following subdivision performance standards may not be waived or varied by the Planning Board or Zoning Board of Appeals, respectively:

- (a) § 120-911K(6): Open space requirements for conservation subdivisions.

Commented [SP1]: Attorney's Addition

...

§ 120-911. Performance and design standards. [Amended 4-27-2010 by Order 10-075; 5-10-2011 by Order 11-070; 7-24-2012 by Order 12-091; 12-16-2014 by Order 14-491; 2-28-2017 by Order 17-038; 10-10-2017 by Order 17-161; 5-22-2018 by Order 18-905; 1-15-2019 by Order 18-257; 6-9-2020 by Order 20-140; 6-16-2022 by Order No. 22-108; 7-12-2022 by Order No. 22-127; 3-28-2023 by Order No. 23-041; 5-23-2023 by Order No. 23-092; 4-29-2025 by Order No. 25-043]

...

K. Conservation subdivisions.

(1) Purpose.

- (a) This subsection establishes standards and procedures for developing conservation subdivisions that set aside a significant portion of the site as open space that is permanently protected while allowing the homes to be grouped on smaller lots on the portions of the site that have the least natural, cultural, or historical resource value for conservation purposes. The standards are intended to ensure that those areas of the site that are not developable or that have natural resource value are included in the open space.
- (b) Development under this provision is intended to promote imaginative, well-designed subdivisions which preserve open space, forests and agricultural uses, and an overall rural character. Additionally, conservation subdivisions should provide public access to land for passive and active recreation; protect natural features, environmentally sensitive areas and wildlife cover; respect the physical qualities of the land; and, in some instances, reduce the overall development costs of a subdivision. The standards for conservation subdivisions allow for the creation of lots that are smaller than those that would otherwise be required by the applicable zoning district regulations and in some cases can be combined with density bonuses to allow additional lots, in return for setting aside the balance of the property as permanent open space.
- (c) These provisions are designed to ensure that conservation subdivisions developed in the Town:
 - [1] Preserve those areas of the site that have the highest natural resource value for conservation purposes (refer to the primary and secondary listed below);
 - [2] Preserve rural character and functions in rural portions of Windham;
 - [3] Provide a well-designed approach to the overall roadway and site layout that results in a landscape that provides a sense of a unique and appealing place;
 - [4] Preserve identified historic, archaeological, and cultural features located on the site;
 - [5] Locate the buildings and structures on those portions of the site that are most appropriate for development;
 - [6] Create continuous open spaces, or "greenways," by linking the open spaces in adjoining subdivisions wherever possible; and

- [7] Minimize the impact of residential development on the Town, neighboring properties, and the natural environment.(d) In addition to all applicable standards of this chapter, the Planning Board may approve a ~~single-family~~ conservation subdivision, provided the following conditions are met:

(2) Applicability.

- (a) All submissions for ~~single-family~~ subdivisions in the Farm Zoning District and Farm-Residential Zoning District that meet the space and bulk requirements listed in the appropriate zoning district must be designed as a conservation subdivision or a country subdivision.
- (b) All submissions for subdivisions in all other zoning districts that meet the space and bulk requirements listed in the appropriate zoning district may be designed as a conservation subdivision or a traditional subdivision.
- (c) Property located within more than one residential zoning district. The overall density of the subdivision shall not exceed the combination of the density requirements of the districts in which the subdivision is located, before density bonuses are applied.

(3) Procedure for conservation subdivisions; design process for conservation subdivision open space.

- (a) Delineation of open space. The area to be designated as open space or otherwise preserved as part of the development shall be delineated based upon the primary and secondary conservation areas. The proposed open space in conservation subdivisions shall be identified in accordance with the following:
- [1] The minimum percentage and acreage of required open space shall be calculated by the applicant and submitted in accordance with the provisions of § **120-911K** and of this chapter.
- [2] The proposed open space shall be designated using an existing resources inventory and site analysis sketch plan as a base. This plan shall describe the property proposed to be subdivided and analyze the opportunities and constraints for open space preservation and development. This should be submitted for preapplication review with planning staff prior to submitting a formal application for subdivision approval.
- [3] The primary conservation areas on the site shall be delineated and shall be incorporated into the open space. In delineating primary conservation areas, the applicant shall prioritize natural and cultural resources on the tract in terms of their highest to lowest suitability for inclusion in the proposed open space based upon the priorities set forth in § 120-911K(6)(c).~~The primary conservation areas shall include floodplains, wetlands, and areas with sustained slopes over 25%.~~
- [4] The secondary conservation areas on the site shall then be delineated. In delineating secondary conservation areas, the applicant shall prioritize natural and cultural resources on the tract in terms of their highest to lowest suitability for inclusion in the proposed open space based upon the priorities set forth in § **120-911K(6)(c)**.
- [5] On the basis of those priorities and practical considerations related to the tract's configuration, its context in relation to resource areas on adjoining and neighboring properties, and the

applicant's subdivision objectives, sufficient secondary conservation areas shall be identified to be included in the open space to meet at least the minimum area percentage requirement for open space. This delineation shall clearly indicate the boundaries as well as the types of resources included within them.

~~[6] The proposed open space shall include all primary conservation areas and the secondary conservation areas with the highest resource significance as identified. For subdivisions that are not conservation subdivisions, the primary and secondary conservation areas shall be identified using the existing resources inventory and site analysis sketch plan as a base. The layout of the subdivision shall consider these resources and shall preserve them to the extent reasonable.~~

Commented [AL2]: This is repetitive of the requirements above.

Commented [AL3]: This section only applies to conservation or country subdivisions. This language should be in another section of the subdivision standards to be applicable.

(b) Open space design.

- [1] All open space areas shall be part of a larger continuous and integrated open space system within the parcel being developed. At least 75% of the open space shall be contiguous to another open space area. For the purposes of this subsection, areas shall be considered contiguous if they are within 100 feet of each other and there are no impediments to access between the areas.
- [2] Open space shall, to the greatest extent possible, protect site features identified in the existing resources inventory and site analysis sketch plan.
- [3] Natural features shall generally be maintained in their natural condition but may be modified to improve their appearance or to restore their overall condition and natural processes.
- [4] No area of open space shall be less than 50 feet in its smallest dimension and less than 10,000 square feet in area. Open space not meeting this standard is allowed as an added project enhancement but shall not be counted toward the required project open space.
- [5] The boundaries of open spaces shall be marked by natural features wherever possible, such as hedgerows, stone walls, edges of woodlands, streams, or individual large trees. Where no such existing demarcations are present, additional plantings, fences, or other landscape features shall be added to enable residents or the public, if applicable, to distinguish where the open space ends and private lot areas begin. Where structural demarcations such as fences are used, they shall be the minimum needed to accomplish this objective.
- [6] Open space shall include lands located along existing public streets in order to preserve existing rural landscape character as seen from these streets and shall, in no case, contain less than the required buffer, setback area, or separation distance.

(c) Location of building sites. Potential building sites shall be ~~tentatively~~ located ~~taking into consideration~~ consistent with the proposed open space and/or the primary and secondary conservation areas identified in § 120-911K(6)(c), as well as other relevant data from the existing resources inventory and site analysis sketch plan, such as topography and soils.

Commented [BM4]: I'm confused as to whether building envelope locations are compulsory or suggestive?

Commented [SP5R4]: I believe the intent is to be show as part of the recorded subdivision plan.

- [1] ~~Except as adjusted below, b~~ Building envelopes ~~should generally~~ shall be located at least ~~100 75~~ feet from primary conservation areas and at least ~~50 40~~ feet from secondary conservation areas, ~~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.~~

[2] Buildings shall be set back at least 100 feet from existing public and private streets. A buffer yard along the street that is adjacent to, and parallel with, the front property line of the conservation subdivision, shall be provided in accordance with the performance standards of § 120-511. The remainder of the 100-foot buffer strip shall be naturally vegetated or landscaped. This buffer may be part of the conservation subdivision open space. When buildings will be visible from the existing streets, the applicant shall minimize the visual impact of new development through larger setbacks or screening with elements such as low walls, split-rail fencing, trees or other plantings.

[3] Buildings shall be set back at least 50 feet from the external perimeter of the property line of the conservation subdivision, with the exception of property lines along public or private streets. A buffer yard, meeting the Buffer Yard D standards in § 120-511 Table 1, adjacent to the exterior perimeter of the conservation subdivision, shall be provided in accordance with performance standards of § 120-511. The remainder of the 50-foot buffer strip shall be naturally vegetated or landscaped. This buffer yard may only be part of the open space, but shall only count towards the required project open space if the area is a primary or secondary conservation area delineated in accordance with § 120-911K(3)(a), or additional land area is required after to meet the minimum area percentage requirement for open space after primary and secondary conservation areas have been incorporated into the open space.

Commented [AL6]: Note that the Planning Board has the flexibility to approve alternative buffer plans in accordance with § 120-511C(1)(b) and buffer yards in Section 120-511 are not applicable for agricultural uses.

(d) Alignment of streets and ways and creation of a trail system. Based upon the designated building sites, a circulation plan shall be designed to provide vehicular and pedestrian access to each site. The street layout shall bear a logical relationship to topographic conditions. Impacts of the street plan on proposed conservation lands shall be minimized, particularly with respect to crossing environmentally sensitive areas such as wetlands and minimizing cut and fill. Street connections shall generally be encouraged to minimize the number of new culs-de-sac and to facilitate access to and from buildings in different parts of the subdivision. A trail system shall be created within the open space to provide access from the subdivision homes to the open space network created by the subdivision.

(e) Drawing in the lot lines. Upon completion of the preceding steps in § 120-911K(3)(a) through (d), lot lines shall be drawn as required to delineate the boundaries of individual lots. Lots shall be designed in keeping with the standards for individual lots found in Article 4 and shall be further designed to provide each residence with a clear delineation of its property bounds and with usable yard spaces.

(4) Basic standards for conservation subdivisions.

(a) Conservation subdivisions shall meet all applicable requirements of this chapter.

(b) The Planning Board shall allow lots within conservation subdivisions to be reduced from standard subdivision standards as specified in the applicable zoning district. In return for the reduction in the requirements for lot area, frontage, and structure setbacks, the applicant shall provide common open space.

(c) In order to determine the maximum number of dwelling units permitted on a tract of land, the net residential acreage of the parcel shall be divided by the net residential density standard of the

applicable zoning district. Density bonuses are applicable, per the appropriate zoning district standards (see Article 4).

- (d) A landowner may choose not to maximize the development potential of a tract of land in the first subdivision application and reserve remaining development rights for a future subdivision application. In this instance, a conceptual master plan showing the location of future lots must be submitted. The conceptual master plan shall include the minimum information required for a sketch plan submission.
 - [1] The subdivider may retain ownership of the remaining land from which the subdivision lots are to be created, provided the portion of the remaining land counted toward the subdivision open space is subject to a permanent conservation or agricultural easement, or the subdivider may transfer ownership of the open space to a third party per § 120-911E(2).
 - [2] The land remaining will be a numbered lot within the subdivision.
 - [3] The open space standards in § 120-911K(5) shall apply.
- (e) Each building envelope shall be an element of an overall subdivision plan for site development. Only developments having a total site plan for structures will be considered. The application shall illustrate the placement of building envelopes and the treatment of spaces, paths, roads, service and parking and in so doing shall take into consideration all requirements of § 120-911K and of other relevant sections of these regulations.
- (f) For conservation subdivisions that are not served by a public water supply, the applicant must demonstrate on the plan that it is possible to locate a subsurface wastewater disposal field and a well on each lot. When determined that it is necessary for specific lots, by the Planning Board, as a condition of approval, the location of these elements shall be elements of the subdivision plan, and any future changes to the location of these elements will require an amended subdivision plan review.
- (g) Up to 30% of individual lots or dwelling units may have direct vehicular access onto a public street existing at the time of development.
 - [1] Driveways may cross the buffer and must run essentially perpendicular to the street.
 - [2] Driveways serving individual lots in a conservation subdivision on an existing public street must be separated from new driveways and street intersections by 300 feet.
- (h) Alteration of Natural Resources. The Planning Board may allow the alteration of natural resources identified as primary and secondary conservation areas and their associated buffers and setbacks for the construction of the following improvements:
 - [1] Stormwater management facilities.
 - [2] Road crossings, bridges, culverts, and the installation of utilities needed to access property on the other side of wetlands and water bodies.
 - [3] Docks, boat ramps, and other structures necessary for direct access to water bodies.

In granting such relief, the Board must find that:

[1] The resulting subdivision design best achieves the purposes of a conservation subdivision.

[2] The design is integrated with the natural topographic conditions and minimizes the need for cuts and fills.

[3] The impacts on the resource(s) and their respective buffers and setbacks have been minimized; and.

[4] The design and function of the improvements incorporate accepted best management practices. Proposed stream crossings shall utilize Maine Stream Smart principles; and ;

[5] The applicant has received all necessary local, state, and federal permitting for such alterations.

(5) Arrangement of lots.

- (a) Diversity and originality in lot layout and individual building site design shall be encouraged to achieve the best possible relationship between the proposed development and the land under consideration.
- (b) Factors considered by the Planning Board when evaluating the proposed arrangement of lots shall include, but not be limited to:
 - [1] Arrangement of roads, stormwater facilities, wastewater and other utilities in conformance with the natural features of the parcel, minimizing changes to the topography.
 - [2] Minimization of impervious cover.
 - [3] Protection of stream corridors and other important habitat areas.
 - [4] Protection of wetlands.
 - [5] Feasibility of continued or future agricultural use.
 - [6] Feasibility of continued or future forest management.
 - [7] Relationship to neighboring property, including conservation easements or natural, cultural, recreational or scenic features.

(6) Open space requirements for conservation subdivisions.

- (a) The open space provided by the conservation subdivision shall be identified on the recorded subdivision plan as "Open Space — Reserved for Recreation, Agricultural and/or Conservation Purposes."
- (b) **Minimum amount required.** The amount of open space provided within the subdivision shall be equal to or greater than the sum of the following:

Commented [AL7]: For reference, Previously cluster subdivisions required The total area of reserved open space within the development shall equal or exceed 50% of the gross land area of the property to be subdivided. At least fifty percent (50%) of the land suitable for development (see Section 534 – Net Residential Area or Acreage) shall be included in the common open space.

- [1] ~~Excepting acreage which is used for public or private rights of way. All of the~~ Areas of the parcel that are deducted from the gross area of the site to determine the net residential area (see § 120-541, Net residential area or acreage). ~~exclusive of land within public or private rights of way; plus and~~
- [2] ~~At least 50%~~ A percentage of the remaining land that is not deducted from the calculated net residential area (see § 120-541, Net residential area or acreage) ~~greater than or equal to:-~~
 - ~~[a] In the Farm District: At least 50%.~~
 - ~~[b] In the Farm-Residential District: At least 45%.~~
 - ~~[c] Other Zoning Districts: At least 40%.~~

(c) Priorities for land included in open space. The land set aside in the open space shall be selected based upon the following priorities:

- [1] Primary conservation area priorities.
 - [a] Streams, freshwater wetlands as defined by the Maine Department of Environmental Protection under Chapter 310 (Wetlands and Waterbodies Protection Rules), -that are greater than 4,300 square feet averaging more than 30 feet in width as determined by measuring the width of five evenly spaced section that are subject to alteration permits under the Natural Resources Protection Act, floodplains, vernal pools, and areas with a slope in excess of 25%. Buffers that are required by ordinance along these protected resources shall also be considered primary conservation areas.
 - [b] Areas that maintain the rural character of roadsides.
 - [c] Scenic resources, including viewsheds and agricultural fields, along with the forested margin adjacent to these resources.
 - [d] Areas that are adjacent to other protected open space.
- [2] Secondary conservation area priorities.
 - [a] Areas that provide protection for unique or irreplaceable resources, including the habitat of rare, significant, or endangered species, archaeological or historic sites, landmarks, and cemeteries.
 - [b] Areas that provide for the continuation of resource systems into or through the site such as shorelands, river or stream corridors, wildlife travel corridors, trails, and unfragmented habitat blocks. The width of such corridors shall be as follows:
 - [i] Shorelands, river or stream corridors: 100% of the width of any required vegetative buffer, in addition to the required buffer.
 - [ii] Wildlife travel corridors: 300 feet.
 - [iii] Recreational trail corridors: 25 feet on either side of the trail. Unfragmented habitat

Commented [SP8]: The Board doesn't want the option to waive below these minimums. Ben can you add language to section the prohibit waivers

Commented [BM9R8]: Amended 120-908 instead to keep all provisions relating to waivers in the same place. Sent separately.

blocks shall have a minimum contiguous area of 150 acres.

- [c] Areas that encompass groups of small wetlands not included in primary conservation areas or wetlands that function primarily as drainage swales in upland areas, as well as streams or ponds in a continuously forested area.
 - [d] Other secondary conservation areas, including fields, aquifer recharge areas, deer yards, and other identified habitat.
- (d) For open space not retained by the subdivider, one principal access point having a minimum width of 20 feet shall be provided from the road network within the conservation subdivision. Additional, secondary points of access having a minimum width of 10 feet may be provided from individual lots when these lots abut or are located within a portion of the open space area.
- [1] The size and location of the principal and secondary access points shall be reviewed and approved by the Planning Board as part of the Board's review of the conservation subdivision.
 - [2] In order to be eligible for any density bonus described in the applicable zoning district standards, the following conditions must be met: the open space must be open for general public use, not just homeowners within the subdivision or the subdivider; and the open space must either be accessed from an existing public street, or access is from an abutting property that is public, permanent open space or recreation land; or access must be formalized in easement language if access is to be provided over the new subdivision street or streets until such time as the subdivision street or streets are adopted by the Town. Access easements for the open space must be recorded at the registry prior to the issuance of building permits.
- (e) The required open space shall not be used for commercial recreation or for private clubs whose membership is different from the homeowners' association.
- (f) The proposed location of open space areas should also be considered in relation to other open space areas on abutting properties, and logical connections to and from open space areas on abutting properties should be given consideration by the Planning Board.
- (7) Country subdivisions. As an alternative to conservation subdivision design in the Farm Zoning District and the Farm-Residential Zoning District, an applicant may choose a country subdivision design. This alternative does not include the reservation of open space or the level of site analysis and design required by a conservation subdivision. As a result, large residential lots are required in order to meet Town goals of protecting water quality and wildlife habitats and preserving rural character.
- (a) Layout and design of the development.
- [1] Minimum property line setbacks. All principal buildings shall be set back a minimum of 75 feet from any property line. Accessory buildings and structures with less than 200 square feet of footprint area shall be set back a minimum of 50 feet from any property line. Any other accessory buildings and structures shall be set back a minimum of 75 feet from any property line.
 - [2] Streetscape buffers. A vegetated buffer strip shall be maintained on any country subdivision lot that fronts on or otherwise abuts any existing public and private street to minimize the visual

impact of the development on the streetscape. The depth of the buffer strip shall be at least 50 feet. A buffer yard that is along the street-adjacent to, and parallel with, the front property line of the conservation subdivision, shall be provided in accordance with the performance standards of § 120-511. The buffer strip may be crossed by driveways or access drives that run essentially perpendicular to the street. The remainder of the 50-foot buffer strip shall be naturally vegetated or landscaped in a manner appropriate to the existing site conditions and the secondary conservation value of the strip.

- [3] Perimeter buffers. A vegetated buffer strip shall be maintained along the external perimeter or property line of the country subdivision, with the exception of property lines along public or private streets, to minimize the impact of the country subdivision on abutting properties. The width of the buffer strip shall be at least 50 feet. A buffer yard, meeting the Buffer Yard D standards in § 120-511 Table 1, adjacent to the exterior perimeter of the country subdivision shall be provided in accordance with performance standards of § 120-511. The remainder of ~~The the 50-foot~~ buffer strip shall be naturally vegetated or landscaped.
- (b) Conceptual master plan. A landowner may choose not to maximize the development potential of a tract of land in the first subdivision application and reserve remaining development rights for a future subdivision application. In this instance, a conceptual master plan showing the location of future lots must be submitted. The conceptual master plan shall include the minimum information required for a sketch plan submission.

ARTICLE 3
Definitions

§ 120-301. Definitions. [Amended 4-27-2010 by Order 10-075; 9-14-2010 by Order 10-164; 2-14-2012 by Order 12-014; 10-23-2012 by Order 12-148; 10-23-2012 by Order 12-149; 7-8-2014 by Order 14-164; 10-14-2014 by Order 14-387; 11-18-2014 by Order 14-463; 12-16-2014 by Order 14-491; 3-28-2017 by Order 17-052; 9-12-2017 by Order 17-160; 10-10-2017 by Order 17-161; 6-12-2018 by Order 18-099; 1-15-2019 by Order 18-257; 6-11-2019 by Order 19-057; 5-26-2020 by Order 20-048; 8-11-2020 by Order 20-151; 10-13-2020 by Order 20-211; 4-12-2022 by Order No. 22-062; 6-16-2022 by Order No. 22-108; 10-11-2022 by Order No. 22-175; 3-28-2023 by Order No. 23-041; 4-25-2023 by Order No. 23-060; 8-15-2023 by Order No. 23-149; 8-15-2023 by Order No. 23-150; 4-9-2024 by Order No. 24-018; 5-14-2024 by Order No. 24-052; 8-20-2024 by Order No. 24-165; 1-14-2025 by Order No. 25-001; 1-14-2025 by Order No. 25-002; 4-29-2025 by Order No. 25-043; 5-27-2025 by Order No. 25-090; 1-27-2026 by Order No. 26-009]

In this chapter, the following terms shall have the following meaning unless a contrary meaning is required by the text or is specifically prescribed. In addition to the following definitions, performance standards regulating specified land uses should be reviewed in the district standards for each zoning district (Article 4) and the performance standards (Article 5) that apply to all zoning districts in the Town.

...

CONSERVATION SUBDIVISION BUILDING ENVELOPE — The portion of a lot within a Conservation Subdivision designated and approved for the location of structures, site improvements, and associated development. Building envelopes shall be established through the conservation design process in accordance with § 120-911K and shall avoid or minimize impacts to identified Primary Conservation Resources and Secondary Conservation Resources.

...

COUNTRY SUBDIVISION — A form of residential subdivision development permitted in the Farm District (F) and Farm-Residential District (FR) that utilizes larger lot sizes, increased setbacks, and buffer requirements to preserve rural character in accordance with the standards of §120-911K(7). A Country Subdivision does not require the reservation of open space except as otherwise required by this Ordinance.

...

PRIMARY CONSERVATION RESOURCES — Natural resources and land features identified for the highest level of protection and preservation within a Conservation Subdivision. Primary Conservation Resources shall be identified, delineated, and protected in accordance with the criteria of §120-911K(3)(c)[1] and the conservation design process established in §120-911K(6).

...

SECONDARY CONSERVATION RESOURCES — Natural, cultural, historic, scenic, agricultural, recreational, and other land features that contribute to the ecological integrity and rural character of a site and are considered for preservation within a Conservation Subdivision. Secondary Conservation Resources shall be identified, evaluated, and incorporated into the conservation design process in accordance with the criteria of §120-911K(3)(c)[2] and §120-911K(6).

...

ARTICLE 4

Zoning Districts**§ 120-406. Farm District (F).**

...

- E. Dimensional standards. The following dimensional standards shall apply in the Farm District:
[Amended 12-16-2014 by Order 14-491; 6-9-2020 by Order 20-140]

...

(2) Net residential density: 60,000 square feet.

(a) Country subdivision: 200,000 square feet.

...

- F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Farm District:

...

(2) Conservation subdivision. (See Article 9, Subdivision Review.) All subdivisions proposed on parcels with more than 8 acres of gross land area in the Farm District must be designed as a conservation subdivision or a country subdivision.

””

§ 120-407. Farm-Residential District (FR).

””

- E. Dimensional standards. The following dimensional standards shall apply in the Farm-Residential

...

(2) Net residential density: 40,000 square feet.

(a) Country subdivision: 200,000 square feet.

...

- F. District standards. In addition to Article 5, Performance Standards, these standards shall apply to the following uses in the Farm-Residential District:

(3) Conservation subdivision. (See Article 9, Subdivision Review.) All subdivisions proposed on parcels with more than 5 acres of gross land area in the Farm-Residential District must be designed as a conservation subdivision or a country subdivision.

...

ARTICLE 9
Subdivision Review⁴³

§ 120-908. Waivers. [Amended 6-16-2022 by Order No. 22-108; 10-24-2023 by Order No. 23-193; 4-29-2025 by Order No. 25-043]

- A. Limitation of waivers. The granting of a submission requirement waiver or site waiver may not conflict with, nor negate, any state statutory requirements for the subdivision of land.
- B. Waiver of submission requirements. The Director of Planning or designee may waive the submission requirements identified in § 120-910 (Submission requirements) as being eligible for a waiver if it is determined that the information is not required to determine compliance with the standards and criteria of this chapter or that the information relates to a standard that is not applicable to the application.
 - (1) A waiver from the submission requirements shall not require the applicant or the Director of Planning to follow the procedures and standards in Subsection C, below. A waiver from submission requirements shall not be considered a variance for purposes of 30-A M.R.S.A. § 4403(7).
 - (2) In accordance with § 120-910 (Submission requirements), the applicant shall submit a list of submission requirements for which a waiver is sought. The list shall include the reasons for which the waiver is sought. The Director of Planning is not required to use any criteria in making a determination on the granting of a waiver of the submission requirements.
- C. Waiver of subdivision performance standards. The Planning Board may waive the requirements of § 120-911, Performance and design standards, unless prohibited by Maine statutes, where it finds that there are special circumstances of a particular parcel proposed to be subdivided, or that the application is simple and minor in nature. The applicant must demonstrate that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met and the public health, safety and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of this chapter. With regard to applications for which the Board is performing delegated review authority for applicable permits (i.e., Site Law or Stormwater Law), the waiver shall not result in noncompliance with any provision of the Site Law, Stormwater Law, or DEP regulations adopted pursuant to those laws.
 - (1) Procedure. The applicant shall submit a list of the requested waiver(s) in writing. For each waiver requested, the applicant shall submit answers to each of the criteria in Subsection C(2), Criteria, below.
 - (a) The process for requesting waivers shall be in accordance with the provisions for review procedures in §§ 120-906 and 120-907 and the provisions for submission requirements in § 120-910.
 - (b) The Planning Board may request additional information to make a determination on a waiver request.

(c)

(2) Criteria. In granting site waivers, the Planning Board shall utilize the following criteria:

(a) The waiver will improve the ability of the project to take the property's predevelopment natural features into consideration. Natural features include, but are not limited to, topography, location of water bodies, location of unique or valuable natural resources, and relation to abutting properties or land uses.

(b) The waiver will not result in the following:

[1] Undue water or air pollution.

[2] Undue light pollution or glare.

[3] An inadequate water supply.

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[4] Unreasonable soil erosion.

[5] Unreasonable traffic congestion or safety risk.

[6] Decreased pedestrian safety or access.

[7] Inadequate supply of parking spaces.

[8] Inadequate sewage disposal capacity.

[9] Inadequate solid waste disposal capacity.

[10] An adverse impact on scenic or natural beauty, aesthetics, historic sites, or rare or irreplaceable natural areas.

[11] Flooding or adverse drainage impacts on abutting properties.

[12] An adverse impact on the Town's ability to provide the subdivision with public safety services.

(c) Recording of waivers of subdivision performance standards. When the Board grants a site waiver to any of the improvements required by these regulations, the final plan, to be recorded at the Registry of Deeds, shall indicate the waivers granted. Waivers must be listed in a separate location from either the plan's general notes or any conditions of approval. Waivers of the required application submissions do not need to be listed.

(3) Non-Waivable Subdivision Performance Standards. Notwithstanding anything in this § 121-908 to the contrary, the following subdivision performance standards may not be waived or varied by the Planning Board or Zoning Board of Appeals, respectively:

(a) **§ 120-911K(6):** Open space requirements for conservation subdivisions.

...

§ 120-911. Performance and design standards. [Amended 4-27-2010 by Order 10-075; 5-10-2011 by Order 11-070; 7-24-2012 by Order 12-091; 12-16-2014 by Order 14-491; 2-28-2017 by Order 17-038; 10-10-2017 by Order 17-161; 5-22-2018 by Order 18-905; 1-15-2019 by Order 18-257; 6-9-2020 by Order 20-140; 6-16-2022 by Order No. 22-108; 7-12-2022 by Order No. 22-127; 3-28-2023 by Order No. 23-041; 5-23-2023 by Order No. 23-092; 4-29-2025 by Order No. 25-043]

...

K. Conservation subdivisions.

(1) Purpose.

- (a) This subsection establishes standards and procedures for developing conservation subdivisions that set aside a significant portion of the site as open space that is permanently protected while allowing the homes to be grouped on smaller lots on the portions of the site that have the least natural, cultural, or historical resource value for conservation purposes. The standards are intended to ensure that those areas of the site that are not developable or that have natural resource value are included in the open space.
- (b) Development under this provision is intended to promote imaginative, well-designed subdivisions which preserve open space, forests and agricultural uses, and an overall rural character. Additionally, conservation subdivisions should provide public access to land for passive and active recreation; protect natural features, environmentally sensitive areas and wildlife cover; respect the physical qualities of the land; and, in some instances, reduce the overall development costs of a subdivision. The standards for conservation subdivisions allow for the creation of lots that are smaller than those that would otherwise be required by the applicable zoning district regulations and in some cases can be combined with density bonuses to allow additional lots, in return for setting aside the balance of the property as permanent open space.
- (c) These provisions are designed to ensure that conservation subdivisions developed in the Town:
 - [1] Preserve those areas of the site that have the highest natural resource value for conservation purposes (refer to the primary and secondary listed below);
 - [2] Preserve rural character and functions in rural portions of Windham;
 - [3] Provide a well-designed approach to the overall roadway and site layout that results in a landscape that provides a sense of a unique and appealing place;
 - [4] Preserve identified historic, archaeological, and cultural features located on the site;
 - [5] Locate the buildings and structures on those portions of the site that are most appropriate for development;
 - [6] Create continuous open spaces, or "greenways," by linking the open spaces in adjoining subdivisions wherever possible; and

- [7] Minimize the impact of residential development on the Town, neighboring properties, and the natural environment.(d) In addition to all applicable standards of this chapter, the Planning Board may approve a conservation subdivision, provided the following conditions are met:

(2) Applicability.

- (a) All submissions for subdivisions in the Farm Zoning District and Farm-Residential Zoning District that meet the space and bulk requirements listed in the appropriate zoning district must be designed as a conservation subdivision or a country subdivision.
- (b) All submissions for subdivisions in all other zoning districts that meet the space and bulk requirements listed in the appropriate zoning district may be designed as a conservation subdivision or a traditional subdivision.
- (c) Property located within more than one residential zoning district. The overall density of the subdivision shall not exceed the combination of the density requirements of the districts in which the subdivision is located, before density bonuses are applied.

(3) Procedure for conservation subdivisions; design process for conservation subdivision open space.

- (a) Delineation of open space. The area to be designated as open space or otherwise preserved as part of the development shall be delineated based upon the primary and secondary conservation areas. The proposed open space in conservation subdivisions shall be identified in accordance with the following:
 - [1] The minimum percentage and acreage of required open space shall be calculated by the applicant and submitted in accordance with the provisions of § **120-911K** and of this chapter.
 - [2] The proposed open space shall be designated using an existing resources inventory and site analysis sketch plan as a base. This plan shall describe the property proposed to be subdivided and analyze the opportunities and constraints for open space preservation and development. This should be submitted for preapplication review with planning staff prior to submitting a formal application for subdivision approval.
 - [3] The primary conservation areas on the site shall be delineated and shall be incorporated into the open space. In delineating primary conservation areas, the applicant shall prioritize natural and cultural resources on the tract in terms of their highest to lowest suitability for inclusion in the proposed open space based upon the priorities set forth in § **120-911K(6)(c)**.
 - [4] The secondary conservation areas on the site shall then be delineated. In delineating secondary conservation areas, the applicant shall prioritize natural and cultural resources on the tract in terms of their highest to lowest suitability for inclusion in the proposed open space based upon the priorities set forth in § **120-911K(6)(c)**.
 - [5] On the basis of those priorities and practical considerations related to the tract's configuration, its context in relation to resource areas on adjoining and neighboring properties, and the applicant's subdivision objectives, sufficient secondary conservation areas shall be identified to be included in the open space to meet at least the minimum area percentage requirement for open space. This delineation shall clearly indicate the boundaries as well as the types of

resources included within them.

(b) Open space design.

- [1] All open space areas shall be part of a larger continuous and integrated open space system within the parcel being developed. At least 75% of the open space shall be contiguous to another open space area. For the purposes of this subsection, areas shall be considered contiguous if they are within 100 feet of each other and there are no impediments to access between the areas.
 - [2] Open space shall, to the greatest extent possible, protect site features identified in the existing resources inventory and site analysis sketch plan.
 - [3] Natural features shall generally be maintained in their natural condition but may be modified to improve their appearance or to restore their overall condition and natural processes.
 - [4] No area of open space shall be less than 50 feet in its smallest dimension and less than 10,000 square feet in area. Open space not meeting this standard is allowed as an added project enhancement but shall not be counted toward the required project open space.
 - [5] The boundaries of open spaces shall be marked by natural features wherever possible, such as hedgerows, stone walls, edges of woodlands, streams, or individual large trees. Where no such existing demarcations are present, additional plantings, fences, or other landscape features shall be added to enable residents or the public, if applicable, to distinguish where the open space ends and private lot areas begin. Where structural demarcations such as fences are used, they shall be the minimum needed to accomplish this objective.
 - [6] Open space shall include lands located along existing public streets in order to preserve existing rural landscape character as seen from these streets and shall, in no case, contain less than the required buffer, setback area, or separation distance.
- (c) Location of building sites. Potential building sites shall be located consistent with the proposed open space and/or the primary and secondary conservation areas identified in § 120-911K(6)(c), as well as other relevant data from the existing resources inventory and site analysis sketch plan, such as topography and soils.
- [1] Except as adjusted below, building envelopes shall be located at least 175 feet from primary conservation areas and at least 40 feet from secondary conservation areas,
 - [2] Buildings shall be set back at least 100 feet from existing public and private streets. A buffer yard along the street that is adjacent to, and parallel with, the front property line of the conservation subdivision, shall be provided in accordance with the performance standards of § 120-511. The remainder of the 100-foot buffer strip shall be naturally vegetated or landscaped. This buffer may be part of the conservation subdivision open space. When buildings will be visible from the existing streets, the applicant shall minimize the visual impact of new development through larger setbacks or screening with elements such as low walls, split-rail fencing, trees or other plantings.
 - [3] Buildings shall be set back at least 50 feet from the external perimeter of the property line of the

conservation subdivision, with the exception of property lines along public or private streets. A buffer yard, meeting the Buffer Yard D standards in § 120-511 Table 1, adjacent to the exterior perimeter of the conservation subdivision, shall be provided in accordance with performance standards of § 120-511. The remainder of the 50-foot buffer strip shall be naturally vegetated or landscaped. This buffer yard shall only count towards the required project open space if the area is a primary or secondary conservation area delineated in accordance with § **120-911K(3)(a)**, or additional land area is required after to meet the minimum area percentage requirement for open space after primary and secondary conservation areas have been incorporated into the open space.

- (d) Alignment of streets and ways and creation of a trail system. Based upon the designated building sites, a circulation plan shall be designed to provide vehicular and pedestrian access to each site. The street layout shall bear a logical relationship to topographic conditions. Impacts of the street plan on proposed conservation lands shall be minimized, particularly with respect to crossing environmentally sensitive areas such as wetlands and minimizing cut and fill. Street connections shall generally be encouraged to minimize the number of new culs-de-sac and to facilitate access to and from buildings in different parts of the subdivision. A trail system shall be created within the open space to provide access from the subdivision homes to the open space network created by the subdivision.
 - (e) Drawing in the lot lines. Upon completion of the preceding steps in § **120-911K(3)(a)** through **(d)**, lot lines shall be drawn as required to delineate the boundaries of individual lots. Lots shall be designed in keeping with the standards for individual lots found in Article 4 and shall be further designed to provide each residence with a clear delineation of its property bounds and with usable yard spaces.
- (4) Basic standards for conservation subdivisions.
- (a) Conservation subdivisions shall meet all applicable requirements of this chapter.
 - (b) The Planning Board shall allow lots within conservation subdivisions to be reduced from standard subdivision standards as specified in the applicable zoning district. In return for the reduction in the requirements for lot area, frontage, and structure setbacks, the applicant shall provide common open space.
 - (c) In order to determine the maximum number of dwelling units permitted on a tract of land, the net residential acreage of the parcel shall be divided by the net residential density standard of the applicable zoning district. Density bonuses are applicable, per the appropriate zoning district standards (see Article 4).
 - (d) A landowner may choose not to maximize the development potential of a tract of land in the first subdivision application and reserve remaining development rights for a future subdivision application. In this instance, a conceptual master plan showing the location of future lots must be submitted. The conceptual master plan shall include the minimum information required for a sketch plan submission.
- [1] The subdivider may retain ownership of the remaining land from which the subdivision lots are to be created, provided the portion of the remaining land counted toward the subdivision open space is subject to a permanent conservation or agricultural easement, or the subdivider may

transfer ownership of the open space to a third party per § **120-911E(2)**.

[2] The land remaining will be a numbered lot within the subdivision.

[3] The open space standards in § **120-911K(5)** shall apply.

(e) Each building envelope shall be an element of an overall subdivision plan for site development. Only developments having a total site plan for structures will be considered. The application shall illustrate the placement of building envelopes and the treatment of spaces, paths, roads, service and parking and in so doing shall take into consideration all requirements of § **120-911K** and of other relevant sections of these regulations.

(f) For conservation subdivisions that are not served by a public water supply, the applicant must demonstrate on the plan that it is possible to locate a subsurface wastewater disposal field and a well on each lot. When determined that it is necessary for specific lots, by the Planning Board, as a condition of approval, the location of these elements shall be elements of the subdivision plan, and any future changes to the location of these elements will require an amended subdivision plan review.

(g) Up to 30% of individual lots or dwelling units may have direct vehicular access onto a public street existing at the time of development.

[1] Driveways may cross the buffer and must run essentially perpendicular to the street.

[2] Driveways serving individual lots in a conservation subdivision on an existing public street must be separated from new driveways and street intersections by 300 feet.

(h) Alteration of Natural Resources. The Planning Board may allow the alteration of natural resources identified as primary and secondary conservation areas and their associated buffers and setbacks for the construction of the following improvements:

[1] Stormwater management facilities.

[2] Road crossings, bridges, culverts, and the installation of utilities needed to access property on the other side of wetlands and water bodies.

[3] Docks, boat ramps, and other structures necessary for direct access to water bodies.

In granting such relief, the Board must find that:

[1] The resulting subdivision design best achieves the purposes of a conservation subdivision.

[2] The design is integrated with the natural topographic conditions and minimizes the need for cuts and fills.

[3] The impacts on the resource(s) and their respective buffers and setbacks have been minimized.

[4] The design and function of the improvements incorporate accepted best management practices. Proposed stream crossings shall utilize Maine Stream Smart principles; and

[5] The applicant has received all necessary local, state, and federal permitting for such alterations.

(5) Arrangement of lots.

- (a) Diversity and originality in lot layout and individual building site design shall be encouraged to achieve the best possible relationship between the proposed development and the land under consideration.
- (b) Factors considered by the Planning Board when evaluating the proposed arrangement of lots shall include, but not be limited to:
 - [1] Arrangement of roads, stormwater facilities, wastewater and other utilities in conformance with the natural features of the parcel, minimizing changes to the topography.
 - [2] Minimization of impervious cover.
 - [3] Protection of stream corridors and other important habitat areas.
 - [4] Protection of wetlands.
 - [5] Feasibility of continued or future agricultural use.
 - [6] Feasibility of continued or future forest management.
 - [7] Relationship to neighboring property, including conservation easements or natural, cultural, recreational or scenic features.

(6) Open space requirements for conservation subdivisions.

- (a) The open space provided by the conservation subdivision shall be identified on the recorded subdivision plan as "Open Space — Reserved for Recreation, Agricultural and/or Conservation Purposes."
- (b) Minimum amount required. The amount of open space provided within the subdivision shall be equal to or greater than the sum of the following:
 - [1] Areas of the parcel that are deducted from the gross area of the site to determine the net residential area (see § **120-541**, Net residential area or acreage), exclusive of land within public or private rights of way; and
 - [2] A percentage of the remaining land that is not deducted from the calculated net residential area (see § **120-541**, Net residential area or acreage) greater than or equal to:
 - [a] In the Farm District: At least 50%.
 - [b] In the Farm-Residential District: At least 45%.
 - [c] Other Zoning Districts: At least 40%.

- (c) Priorities for land included in open space. The land set aside in the open space shall be selected based upon the following priorities:

[1] Primary conservation area priorities.

- [a] Streams, freshwater wetlands as defined by the Maine Department of Environmental Protection under Chapter 310 (Wetlands and Waterbodies Protection Rules), that are greater than 4,300 square feet averaging more than 30 feet in width as determined by measuring the width of five evenly spaced section that are subject to alteration permits under the Natural Resources Protection Act, floodplains, vernal pools, and areas with a slope in excess of 25%. Buffers that are required by ordinance along these protected resources shall also be considered primary conservation areas.
- [b] Areas that maintain the rural character of roadsides.
- [c] Scenic resources, including viewsheds and agricultural fields, along with the forested margin adjacent to these resources.
- [d] Areas that are adjacent to other protected open space.

[2] Secondary conservation area priorities.

- [a] Areas that provide protection for unique or irreplaceable resources, including the habitat of rare, significant, or endangered species, archaeological or historic sites, landmarks, and cemeteries.
 - [b] Areas that provide for the continuation of resource systems into or through the site such as shorelands, river or stream corridors, wildlife travel corridors, trails, and unfragmented habitat blocks. The width of such corridors shall be as follows:
 - [i] Shorelands, river or stream corridors: 100% of the width of any required vegetative buffer, in addition to the required buffer.
 - [ii] Wildlife travel corridors: 300 feet.
 - [iii] Recreational trail corridors: 25 feet on either side of the trail. Unfragmented habitat blocks shall have a minimum contiguous area of 150 acres.
 - [c] Areas that encompass groups of small wetlands not included in primary conservation areas or wetlands that function primarily as drainage swales in upland areas, as well as streams or ponds in a continuously forested area.
 - [d] Other secondary conservation areas, including fields, aquifer recharge areas, deer yards, and other identified habitat.
- (d) For open space not retained by the subdivider, one principal access point having a minimum width of 20 feet shall be provided from the road network within the conservation subdivision. Additional, secondary points of access having a minimum width of 10 feet may be provided from individual lots when these lots abut or are located within a portion of the open space area.

- [1] The size and location of the principal and secondary access points shall be reviewed and approved by the Planning Board as part of the Board's review of the conservation subdivision.
- [2] In order to be eligible for any density bonus described in the applicable zoning district standards, the following conditions must be met: the open space must be open for general public use, not just homeowners within the subdivision or the subdivider; and the open space must either be accessed from an existing public street, or access is from an abutting property that is public, permanent open space or recreation land; or access must be formalized in easement language if access is to be provided over the new subdivision street or streets until such time as the subdivision street or streets are adopted by the Town. Access easements for the open space must be recorded at the registry prior to the issuance of building permits.
- (e) The required open space shall not be used for commercial recreation or for private clubs whose membership is different from the homeowners' association.
- (f) The proposed location of open space areas should also be considered in relation to other open space areas on abutting properties, and logical connections to and from open space areas on abutting properties should be given consideration by the Planning Board.
- (7) Country subdivisions. As an alternative to conservation subdivision design in the Farm Zoning District and the Farm-Residential Zoning District, an applicant may choose a country subdivision design. This alternative does not include the reservation of open space or the level of site analysis and design required by a conservation subdivision. As a result, large residential lots are required in order to meet Town goals of protecting water quality and wildlife habitats and preserving rural character.
 - (a) Layout and design of the development.
 - [1] Minimum property line setbacks. All principal buildings shall be set back a minimum of 75 feet from any property line. Accessory buildings and structures with less than 200 square feet of footprint area shall be set back a minimum of 50 feet from any property line. Any other accessory buildings and structures shall be set back a minimum of 75 feet from any property line.
 - [2] Streetscape buffers. A vegetated buffer strip shall be maintained on any country subdivision lot that fronts on or otherwise abuts any existing public and private street to minimize the visual impact of the development on the streetscape. The depth of the buffer strip shall be at least 50 feet. A buffer yard that is adjacent to, and parallel with, the front property line of the conservation subdivision, shall be provided in accordance with the performance standards of § 120-511. The buffer strip may be crossed by driveways or access drives that run essentially perpendicular to the street. The remainder of the 50-foot buffer strip shall be naturally vegetated or landscaped in a manner appropriate to the existing site conditions and the secondary conservation value of the strip.
 - [3] Perimeter buffers. A vegetated buffer strip shall be maintained along the external perimeter or property line of the country subdivision, with the exception of property lines along public or private streets, to minimize the impact of the country subdivision on abutting properties. The width of the buffer strip shall be at least 50 feet. A buffer yard, meeting the Buffer Yard D standards in § 120-511 Table 1, adjacent to the exterior perimeter of the country subdivision shall be provided in accordance with performance standards of § 120-511. The remainder of the

50-foot buffer strip shall be naturally vegetated or landscaped.

- (b) Conceptual master plan. A landowner may choose not to maximize the development potential of a tract of land in the first subdivision application and reserve remaining development rights for a future subdivision application. In this instance, a conceptual master plan showing the location of future lots must be submitted. The conceptual master plan shall include the minimum information required for a sketch plan submission.