

Town of Falmouth's Four Step Design Process for Subdivisions in the Resource Conservation Zoning Overlay District

All subdivisions shall be designed in accordance with the following four-step process. The submission for the preliminary plan of a major subdivision or the final plan of a minor subdivision (if required by the Planning Board) shall include documentation of the four-step design process for determining the layout of the subdivision including proposed conservation lands, house sites, streets, and lot lines in accordance with the following process. Applicants shall submit four separate sketch maps indicating the findings of each step of the design process, if so requested by the Planning Board.

[Explanatory Note: This document provides step-by-step guidance for applicants proposing subdivisions. This process requires that the open space areas be identified prior to drawing individual lot lines, and has requirements for the size and configuration of open space areas to help ensure that the project does not result in fragmented, lower value habitat.]

Step 1: Delineation and Design of Common Open Space

Step 1A. Delineation of Common Open Space

The area to be designated as common open space or otherwise preserved as part of the development shall be delineated based upon the Primary and Secondary Conservation Areas. The proposed common open space in conservation subdivisions shall be identified in accordance with the following:

1. The minimum percentage and acreage of required common open space shall be calculated by the applicant and submitted in accordance with the provisions of this ordinance and of the Zoning Ordinance.
2. The proposed common open space shall be designated using the Site Analysis Sketch Plan as a base.
3. The Primary Conservation Areas on the site shall be delineated and shall be incorporated into the common open space. The Primary Conservation Areas shall include floodplains, wetlands, and areas with sustained slopes over 25 percent.
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 common open space based upon the priorities set forth in the Zoning and Site Plan Review Ordinance
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 common open space to meet at least the minimum area percentage requirement for common open space. This delineation shall clearly indicate the boundaries as well as the types of resources included within them.

6. The proposed common open space shall include all Primary Conservation Areas and the Secondary Conservation Areas with the highest resource significance as identified in 5. For subdivisions that are not Conservation Subdivisions, the Primary and Secondary Conservation Areas shall be identified using the Site Analysis Sketch Plan as a base. The layout of the subdivision shall consider these resources and shall preserve them to the extent reasonable.

Step 1B. Design of Common Open Space

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 percent of the common open space shall be contiguous to another common 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. Common open space shall, to the greatest extent possible, protect site features identified in the Existing Resources and Site Analysis 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, as recommended by natural resource professionals and in compliance with an approved Common Open Space Ownership and Stewardship Plan as provided in Appendix 3 for major subdivision submissions and Appendix 4 for minor subdivision submissions.

4. No area of common 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 common open space.

5. The boundaries of common 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 common 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. Common 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.

Step 2: Location of Building Sites

Potential building sites shall be tentatively located taking into consideration the proposed common open space and/or the Primary and Secondary Conservation Areas identified in Step 1 as well as other relevant data from the Site Inventory Plan and Site Analysis Sketch Plan, such as topography and soils. Building sites should generally be located at least 100 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.

Step 3: 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 cul-de-sacs and to facilitate access to and from buildings in different parts of the subdivision. A trail system shall be created within the common open space to provide access from the subdivision homes to the open space network created by the subdivision.

Step 4: Drawing in the Lot Lines

Upon completion of the preceding three steps, 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 Section 3.13.5 D. of the Zoning and Site Plan Review Ordinance and shall be further designed to provide each residence with a clear delineation of its property bounds and with useable yard spaces.

Additional Requirements for Common Open Space in Conservation Subdivisions

1. *Executory Interest.* If any common open space will be owned by a homeowners or community association or a private landowner, the owner(s) shall convey an executory interest with power of termination to the Town.

[Explanatory Note: This requirement gives the Town of Falmouth a third party interest in the open space which will only pass interest to the Town in the future, or never, if a certain breach in the conservation easement terms occur.]

2. *Conservation Provisions.* The common open space shall be protected from development or intensive use and shall be maintained as undeveloped open land and/or active or passive recreation land but may include other support uses as approved by the Planning Board as part of the approval of the subdivision. Permanent conservation restrictions shall be established, subject to approval by the Planning Board, to assure that the future use and maintenance of the common open space is consistent with the subdivision approval. These provisions may include deed restrictions or covenants, conservation easements, the sale or transfer of development rights, or other legal mechanisms approved by the Planning Board.

3. *Stewardship Provisions.* Legally binding provisions shall be established in the conservation restriction tool (e.g., deed, easement) for the periodic monitoring of the use and maintenance of the common open space to ensure that the terms of the restrictions are being met. The monitoring shall occur at least once every two years on an ongoing basis. The party or organization designated to conduct the monitoring shall be qualified in land conservation and resource management, shall have an established record in land management or the oversight of conservation easements or restrictions, shall be willing to assume the review obligation, and shall be subject to approval by the Planning Board. The party conducting the monitoring shall prepare a written report summarizing the findings of the monitoring and identifying any issues with compliance with the conservation provisions. A copy of the report shall be provided to the owner and the Planning Department within thirty (30) days of the monitoring. The stewardship arrangements shall provide for the enforcement of the conservation provisions by the Town of Falmouth against the owner of the property if the reviewer finds that the conservation provisions are not being met and for the ability of the Town to charge the owners of the property with the costs of enforcement of the provisions.

[Explanatory Note: Easement monitoring is an important component of any open space subdivision process that results in the dedication of open space with conservation easements or deed restrictions. Monitoring the appropriate use of open space lands benefits the subdivision residents and public users of the land. Towns typically charge their local conservation commission with monitoring duties for easements held by the town. Land trusts will also monitor easements that they hold, and will typically require that monies be set aside with the easement to pay for monitoring expenses (see Stewardship Account below).]

4. *Stewardship Account.* A Stewardship Account shall be established by the applicant for all land with conservation restrictions and shall be held and managed by the property owner or grantee. The purpose of this account shall be to pay the costs of the biennial monitoring. The amount of this fund shall be adequate to assure the required monitoring and shall be approved by the Planning Board. Based on the experience of land trusts in establishing stewardship accounts for lands they monitor, the costs of doing biennial inspections for a period of 20 years to confirm adherence to the terms of open space dedication ranges between \$5000 and \$10,000 depending on the size of the open space parcel. The applicant shall submit a proposal to the Planning Board for an amount within this range, which shall be submitted for peer review prior to final approval.

If the Town holds an executory interest in a property with conservation restrictions or is asked to take ownership of a property, the applicant shall deposit funds required by the Planning Board in the Town's Stewardship Fund. Prior to release of the approved plan, the applicant shall provide the Town Planner with evidence that the Stewardship Account has been established and funded, or that full payment has been made to the Town's Stewardship Fund.