

**Town of Falmouth**  
**Resource Conservation Zoning Overlay District**

**3.13 “RCZO” -- Resource Conservation Zoning Overlay District**

**3.13.1 Applicability**

The provisions of the Resource Conservation Zoning Overlay (RCZO) District shall apply to those areas shown on the Resource Conservation Overlay and Resource Conservation Zoning Overlay Districts Map. The provisions of the RCZO District shall apply only to lots created after (*date of adoption, or start of ordinance process*). Any lot created prior to that date shall not be subject to these provisions and may be used and built upon without compliance with these requirements. Such pre-existing lots shall not be deemed to be nonconforming.

*[Explanatory Note: This overlay district can be drawn to all rural zoning districts, a select set or, similar to the Wildlife Habitat Overlay District also included as an example tool in the Beginning with Habitat Toolbox, applied to a specific geographic feature that may cross multiple underlying zoning districts.]*

**3.13.2 Coordination with the Underlying Zone**

The RCZO District is an overlay district. The provisions of this district supplement the provisions of the underlying zoning district. Where the specific provisions of the RCZO District vary from the requirements of the underlying zone, these provisions shall govern. In general, the requirements of the RCZO overlay district apply to all new single-family residential development that requires review and approval by the Falmouth Planning Board, including legal subdivisions and private ways. It does not apply to house lots created prior to enactment of the overlay district or to individual house lots that can be created without Planning Board approval.

**3.13.3 Conformance with Other Standards**

All development and use of land within the RCZO District shall conform to all other requirements of the Zoning and Site Plan Review Ordinance except as specifically provided for in Section 3.13.

**3.13.4 Allowed Development Patterns**

The development of land within the RCZO District may occur in accordance with any one or a combination of the following development patterns:

- a. Conservation Subdivisions – A parcel of land may be subdivided into lots in accordance with the provisions of Sub-Section 3.13.5, Standards for Conservation Subdivisions.

b. Country Estate Subdivisions – A parcel of land may be subdivided into lots in accordance with the provisions of Sub-Section 3.13.6, Standards for Subdivision Development Using Country Estate Lots.

*[Explanatory Note: Several towns that have adopted conservation or open space subdivision approaches offer a large lot alternative approach as well. The large lot approach can easily exacerbate habitat fragmentation and should be considered very carefully. The lots may be spaced farther apart and help to retain a rural feel for the area, but this development pattern consumes more land and the resulting open spaces between the development windows provide lower functional value from an ecological standpoint than larger contiguous habitat blocks that can result from smaller, more centralized lots in a compact development. The Town of Falmouth adopted this ordinance that requires “Country Estate Lots” to be a minimum of 8-acres; similarly, the Town of Freeport allows “Large Lot” subdivisions (minimum lot size in the district is doubled) as the allowed alternative to open space subdivisions. No further discussion of this approach is included in this document.]*

c. Country Estate Lots That Are Not Part of a Subdivision – Individual lots that are not part of a subdivision may be created in accordance with the provisions of Sub-Section 3.13.7, Country Estate Developments Not Involving a Legal Subdivision of Land.

*[Explanatory Note: The Town of Falmouth requires that projects involving the creation of 2 or more Country Estate lots in any 5-year period (below state subdivision threshold) receive Planning Board review as part of an entrance permit (road application) review process. In this way, the Town can review impacts associated with projects that do not trigger formal subdivision review.]*

d. Exempt Lots – A single residential lot may be created from an existing lot of record in accordance with the provisions of Sub-Section 3.13.8, Exempt Lots.

*[Explanatory Note: Similar to the example wildlife habitat overlay ordinance, included in the Beginning with Habitat Toolbox, the Town of Falmouth provides an exemption for a single lot split as long as it meets certain standard. Additional requirements for provisions c & d above have not been included with this document, but can be found by visiting the Town of Falmouth’s web-page:  
<http://www.town.falmouth.me.us/planning/landsub.pdf>]*

### **3.13.5 Standards for Conservation Subdivisions**

**A. Purpose** – The preferred form of development within the Resource Conservation Zoning Overlay (RCZO) District is conservation subdivisions. This section establishes standards for conservation subdivisions that set aside a significant portion of the site as common open space that is permanently protected while allowing the homes to be clustered 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 common open space.

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 8 priorities listed below*);
2. Preserve identified historic, archeological, and cultural features located on the site;
3. Locate the buildings and structures on those portions of the site that are most appropriate for development,
4. Create continuous open spaces or “greenways” by linking the common open spaces in adjoining subdivisions wherever possible; and,

*[Explanatory Note: Many local open space subdivision ordinances fall short by not addressing the spatial distribution of dedicated open space on the project site, but rather simply require a percentage of total acreage be set aside. Habitat viability requires connections across the landscape for daily and seasonal species movement, access to key resource areas, and genetic flow. Small patches of open space that exist as islands in the landscape have limited potential to support diversity over the long-term. Provisions that promote connectedness to other protected lands are essential in building a functional landscape for wildlife.]*

5. Minimize the impact of residential development on the Town, neighboring properties, and the natural environment.

**B. Maximum Density-** The maximum number of dwelling units that may be developed in a Conservation Subdivision shall be determined by dividing the calculated Net Residential Area of the parcel by the required Minimum Net Residential Area per Dwelling Unit for the district in which the subdivision is located and rounding down to the maximum allowed whole number of units. If the subdivision involves only part of a parcel, the Net Residential Area shall be calculated for that portion of the parcel proposed to be included in the subdivision and the determination of the maximum number of dwelling units within the subdivision determined based upon that Net Residential Area.

*[Explanatory Note: The manner in which a town calculates net residential density can be a key component to the success of other ordinance tools that address habitat conservation. See the Net Residential Density section of the Beginning with Habitat Toolbox.]*

**C. Required Common Open Space** – Common open space meeting the following requirements shall be created and permanently protected as part of any Conservation Subdivision:

1. Minimum Amount Required – The amount of common open space provided within the subdivision shall be equal to or greater than the sum of the following:

- a. fifty percent (50%) of the calculated Net Residential Area; plus,
- b. the unsuitable area of the parcel that is deducted from the gross area of the site to determine the Net Residential Area.

*[Explanatory Note: Provisions a & b above would require that unbuildable areas such as wetlands and steep slopes automatically become part of the open space, and further requires that 50% of the developable land also be included in the open space and selected based on the following priorities.]*

2. Priorities for Land Included in Open Space – The land set aside in the common open space shall be selected based upon the following priorities:

Priority #1 Primary Conservation Areas including streams, wetlands, floodplains, vernal pools mapped by the town, and areas with a slope in excess of 25%. Vegetative buffers that are required by ordinance along these protected resources shall also be considered Primary Conservation Areas.

Priority #2 Secondary Conservation Areas that provide protection for unique or irreplaceable resources including the habitat of rare, significant, or endangered species, the upland habitat of vernal pools mapped by the Town, archeological or historic sites, landmarks, and cemeteries.

Priority #3 Secondary Conservation 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:

- a. Shorelands, river or stream corridors - 100% of the width of any required vegetative buffer in addition to the required buffer

*[Explanatory Note: This provision encourages a doubling of typical buffers required under shoreland zoning or similar local ordinance requirements. Wider riparian buffers offer greater habitat opportunities as well as enhance water quality benefits.]*

- b. Wildlife travel corridors – 300 feet

*[Explanatory Note: This ordinance does not define wildlife corridors up front, but encourages projects to “build” corridors by setting swaths of open space aside that links to existing protected lands, or provides future opportunity for linkages.]*

c. Recreational Trail Corridors – 25 feet on either side of the trail

Unfragmented habitat blocks shall have a minimum contiguous area of 150 acres.

*[Explanatory Note: This ordinance, unlike the previous example of a wildlife habitat overlay ordinance, does not define wildlife habitat blocks up front, but encourages projects to “build” protected blocks by setting aside open space that is within existing undeveloped areas that have the potential to result in protected contiguous open spaces of 150 or more acres.]*

Priority #4 Secondary Conservation Areas that are adjacent to other protected open space.

Priority #5 Secondary Conservation Areas that maintain the rural character of roadsides.

Priority #6 Secondary Conservation Areas that include identified scenic resources including viewsheds and agricultural fields along with the forested margin adjacent to these resources.

Priority #7 Secondary Conservation Areas that encompass groups of small wetlands not included in #1, streams or ponds in a continuously forested area.

Priority #8 Other Secondary Conservation Areas including fields, aquifer recharge areas, deer yards, and other identified habitat.

*[Explanatory Note: Although this example does not list deer wintering areas as a higher priority (Priority #8 by Falmouth), MDIF&W is becoming increasingly concerned with the rate of development occurring in deer wintering areas in organized towns. We strongly encourage applicants for development in deer wintering areas to contact our department during the early phases of project planning in order to best minimize impacts.]*

3. Use of the Common Open Space -- The common open space in a Conservation Subdivision shall not be used as the location for dwelling units or other nonresidential buildings or parking except as provided for below and shall only be used for the following purposes:

a. The conservation and protection of natural resource areas, wildlife habitats, scenic features or views, and identified cultural or historic features such as stone walls, cemeteries, and similar identified features or resources;

b. Outdoor recreation uses and facilities including related accessory structures and buildings that are compatible with the overall scale and character of the subdivision provided that no more than 25% and a maximum of 3 acres of the common open space is altered or developed for recreational facilities and that any building shall have a gross floor area of less than two hundred (200) square feet and the total gross floor areas of all such buildings shall be less than one thousand (1,000) square feet;

c. Indoor community or recreational facilities that primarily serve residents of the subdivision, having a total gross floor area for all such facilities of less than two thousand (2,000) square feet, and that are compatible with the overall scale and character of the subdivision;

*[Explanatory Note: Many communities attempt to balance the needs for open space that provides habitat benefits and passive recreation values, and with active recreation facilities such as ball fields. Although both of these needs are important for every community, one tool may not be adequate to address all of them. The discussion regarding how to balance recreation needs with open space needs should happen at the early stages in any process to determine if separate tools or a combined approach is best. Refer to the Impact Fee Section of the Beginning with Habitat Toolbox for further discussion.]*

d. Forest management and agricultural uses including animal husbandry that are specifically approved by the Planning Board as part of the subdivision approval;

e. Support facilities necessary for the subdivision including individual or community wells, stormwater management facilities, underground utility lines and related facilities such as sewer pump stations, small community storage buildings, and similar buildings and structures that are needed for the operation of the subdivision but not including personal storage buildings or sheds;

f. Individual or group subsurface wastewater disposal systems or parts thereof, provided that this use was approved as part of the subdivision plan and that appropriate legal arrangements are established and approved by the Planning Board for the maintenance and operation of these facilities;

g. Other appropriate uses that are compatible with the overall scale and character of the subdivision and that are specifically approved by the Planning Board.

Permanent provisions for the use, ownership, and maintenance of the common open space including provisions for screening and buffering shall be established subject to approval by the Planning Board as part of the approval of the subdivision in accordance with the Land Subdivision Ordinance.

4. Stewardship Requirements- Appropriate legal mechanisms for the on-going maintenance and stewardship of the common open space shall be established, including the creation of a stewardship account or payment to the Town's Stewardship Fund as set forth in the Land Subdivision Ordinance, subject to approval by the Planning Board as part of the approval of the subdivision in accordance with the Land Subdivision Ordinance.

*[Explanatory Note: If common open space is to be protected under a conservation easement held by the town, or local land-trust, these easements typically include enforcement provisions that enable the holder to enter the premises to make sure allowed uses and other terms of the easement are not being violated. Easement monitoring and any necessary enforcement does involve direct costs such as staff time, legal consultation, boundary marking, etc. Establishment of a fund to pay these expenses should be considered if town staff, local conservation commissions, or town legal representation is not deemed adequate to cover these additional responsibilities.]*

**D. Standards for Individual Lots-** Lots that are created as part of a conservation subdivision, and the subsequent development of those lots, shall conform to the following standards:

1. Minimum Lot Size -- Individual lots that are created as part of a Conservation Subdivision may be smaller than the required minimum lot size for the district in which it is located. The size of the individual lots shall be shown on the subdivision plan and shall be subject to Planning Board approval. In no case shall any lot served by a subsurface wastewater disposal system be less than twenty thousand (20,000) square feet in area.

*[Explanatory Note: Lots with individual wastewater disposal systems need to be a minimum of 20,000 square feet based on the current Maine plumbing code. Community septic systems may allow for further lot reduction.]*

*Note: In attempt to keep this document more concise, non-habitat related provisions of this ordinance including: Standards for Minimum Lot Width, Minimum Street Frontage, Minimum Front Setback, and Minimum Building Separation (side setbacks) have not been included. The text of several other sections has similarly been omitted as indicated after the section title. All of these provisions are design elements that should be considered by the municipality. It is suggested that maximum flexibility for these space requirements be built into any ordinance with the goal of conserving habitat. By allowing more flexibility to minimize impacts on natural resources, a town can provide additional options for a developer to be creative in their approach to project design.*

**E. Layout and Design of the Subdivision** – The subdivision, including the location of the common open space, lots, and streets, shall be laid out in accordance with the Four

Step Design Process set forth in the Land Subdivision Ordinance. Documentation of the Four Step Process shall be provided as part of the subdivision application.

**F. Streetscape Buffers Adjacent to Existing Public Streets** – *(not included in this document)*

**G. Perimeter Buffers** -- *(not included in this document)*

**H. Conceptual Long Range Development Plan** -- When a Conservation Subdivision will not utilize the entire parcel and there is potential for future subdivision or development of the parcel or any of the lots being created, the application for subdivision approval shall include a Conceptual Long Range Development Plan showing the potential utilization of the lots and the balance of the parcel not being subdivided. The Long Range Plan is intended to be conceptual in nature, to rely on published data about natural resources relevant to the parcel and the built environment, and to demonstrate that the current subdivision proposal will not compromise important conservation values or the long-term development of the parcel as a Conservation Subdivision. This plan shall show the relationship of the proposed subdivision area to the balance of the parcel and to adjacent land. This plan shall analyze the conservation and development potential of the remaining area of the parcel and shall show, in general terms, the potential street network, open space areas, and development areas in a manner that demonstrates that both the proposed development and the future development can occur so that it conforms to the requirements for Conservation Subdivisions and preserves the significant natural resource and conservation values of the entire parcel.

*[Explanatory Note: The Town of Falmouth included this requirement for a Long Range Development Plan as a mechanism to help their planning board consider cumulative impacts and to have some input into the applicant's future development planning. It is a useful tool to consider, but could be considered unreasonably burdensome for applicants especially those who have no long-term plans for further subdivision.]*

### **3.13.6 Standards for Subdivision Development Using Country Estate Lots**

**A. Purpose** – The alternative form of development within the Resource Conservation Zoning Overlay (RCZO) District is the use of Country Estate lots either as part of a subdivision or as individual lots that do not constitute a subdivision. This section establishes standards for a subdivision using Country Estate lots. The standards are intended to assure that the layout of the lots respects those areas of the site that have natural resource value, protects the rural character of the RCZO District, and provides reasonable access to lots for public safety purposes.

**B. Standards for Individual Lots** – Country Estate lots shall conform to the following standards:

1. **Minimum Lot Size** – The minimum lot size for a Country Estate lot is three hundred fifty thousand (350,000) square feet



2. Minimum Net Residential Area Per Unit – The maximum density for a Country Estate subdivision is two hundred fifty thousand (250,000) square feet of net residential area per dwelling unit

*(The remainder of this section regarding performance standards not included in this document)*

### **Definitions Specific to Falmouth’s Ordinance**

**Common Open Space:** Land within or related to a subdivision that is set aside to conserve natural resource, scenic, cultural, historic, or archeological values, provide active or passive recreation, or accommodate support facilities related to the subdivision, and that is restricted from significant development or intensive use except for approved recreational or support facilities and protected in perpetuity in a substantially undeveloped state through legally binding fee ownership or conservation easements.

**Conservation Easement:** A non-possessory interest in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural, cultural, or historic resources; or maintaining air or water quality and including preservation easements for historic or cultural resources.

**Conservation Land:** Land owned by a public body, land trust, conservation organization, or other group for the purpose of the protection of natural resources or scenic, cultural, historic or archeological values, the provision of open space, and/or for passive recreational use and which is permanently restricted from development or intensive use and protected in perpetuity in a substantially undeveloped state by legally binding arrangements.

**Conservation Subdivision:** A subdivision meeting the requirements of Section 3.13.5 in which a significant portion of the site is set as common open space and permanently protected.

**Stream:** A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined

**Unfragmented Habitat Block:** An area with a minimum of one hundred fifty (150) acres of contiguous mature forest.

**Vernal Pool.** A naturally occurring temporary to permanent inland body of water that forms in a shallow depression and typically fills during the spring or fall and may dry during the summer. The vernal pool contains no viable populations of

predatory fish, and it provides the primary breeding habitat for wood frogs, spotted salamanders, blue-spotted salamanders and fairy shrimp. The presence of any one or more of these species is usually conclusive evidence of a vernal pool. Only vernal pools that have been mapped or identified by a governmental agency prior to project approval shall be considered as being within this definition.