

SECTION 10.23 RECREATION AND OPEN SPACE LAND IN DEVELOPMENTS [AMENDED 6/19/21]

A. **Applicability and Purpose:** This section is applicable to developments proposed for the Village Center District and the Village Residential District. The purpose of these provisions is to provide for the development of useable open space and recreation land within residential neighborhoods, to include, but not limited to: playgrounds, ball fields, picnic areas, passive open space, and networks of inter-connected trails, walkways and bicycle paths. Landscaping of these areas should be designed to enhance their use for recreation while providing privacy for individual homeowners.

B. **Retention of Useable Open Space and Recreation Land in Residential Developments:**

1. The Planning Board shall require the reservation of land for proposed or future parks, playgrounds, trails, walkways, bicycle paths, or conservation areas to benefit the residents of the proposed development and the general public. Reserved land must be of suitable dimension, topography and general character for the proposed recreational use and must be reasonably accessible to residents of the development and the public. This land shall be designated as Common Open Space and Recreation Land.
2. The percentage of useable open space and/or recreational land to be reserved shall depend on the identified needs for outdoor recreation in the portion of the town in which the development is located, the proposed lot sizes within the development, the expected demographic makeup of the occupants of the development, and the site characteristics. The following table provides guidelines for determining the amount of useable open space and recreation land that should be set-aside in developments.
3. 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 purpose 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 areas.
4. No area of common open space shall be less than 50 feet in its smallest dimension and less than 10,00 Sq. Ft. Open space not meeting this standard is allowed but must be for enhancement of the project but shall not be counted toward the required common open space requirements.
5. The boundaries of common open space 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.

Guidelines for the Percentage of Total Parcel to be Reserved for Common Open Space and Recreation Land		
Type of Development	Average Size of Lots	Percentage of Total Parcel to be Reserved
Single Family Lots	80,000 square feet or greater	1.6%
	40,000 square feet	3.3%
	20,000 square feet	6.5%
	15,000 square feet	8.7%
	10,000 square feet	13.0%

C. **Waivers for Minor Subdivisions:** The Planning Board may waive this requirement for minor

subdivisions if the Planning Board makes a written finding, supported by an explanation, that the useable open space and/or recreation land is not necessary due to the location of the proposed development near existing publicly accessible open space/recreation land; or where there are no opportunities to contribute to a network of open space land, or inter-connected trails, walkways and/or bicycle paths. The applicant must submit a written request for the waiver and provide the evidence necessary for the Planning Board to make its written findings.

D. Ownership and Maintenance of Common Open Space and/or Recreation Land:

1. All common open space and/or recreation land, facilities and property shall be owned by:
 - a. The owners of the lots or dwelling units by means of a lot owners' association;
 - b. An association which has as its principal purpose the conservation or preservation of land in essentially its natural condition; or
 - c. The town.

2. A description of all common open space and any other lands and facilities proposed to be owned by the Town, or a conservation organization, or a home owners association, or that will be permanently protected by conservation easements. This description shall include a map indicating the approximate location of these lands and facilities.

3. A description of proposed ownership arrangements for the parcels identified in 1.

4. A description of the proposed conservation restrictions that will permanently protect these parcels.

5. A description of proposed arrangements for the long-term stewardship of the common open space including management objectives and techniques for each parcel or area together with an indication of who will have the primary and secondary responsibilities for this.

6. Further subdivision of the common open space and/or recreation land and its use for other than non-commercial recreation, agriculture, forestry and/or conservation purposes, except for easements for underground utilities and subsurface wastewater disposal systems, shall be prohibited. Structures and buildings accessory to non-commercial recreational or conservation uses may be erected on the common land. When open space is to be owned by an entity other than the town, there shall be a conservation easement deeded to the town prohibiting future development.

7. **Monitoring Fee:** The Planning Board may require a fee for the ongoing monitoring of the management of the common open space and/or recreation land, in compliance with the requirements of the approved plan.

E. Homeowners Association Requirements: Any homeowner's association shall be established pursuant to Section "**11.10**" (**should be changed in all locations to 11.9**). Home Owner/Property Owner's Associations.

SECTION 11.3 CLUSTERED HOUSING DEVELOPMENT AND OPEN SPACE DEVELOPMENT [AMENDED 6/19/21]

A. Purpose:

1. The purposes of these provisions are as follows:
 - a. To conserve open land, including, but not limited to areas containing unique or environmentally sensitive natural or cultural resources such as stream corridors, wetlands, wildlife habitats, woodlands, existing and future water supplies, scenic areas and significant archaeological sites, by setting them aside from development;
 - b. To implement the Comprehensive Plan, including the Open Space Plan, to create a Royal River Corridor¹ and other conservation networks for the benefit of present and future residents;
 - c. To provide for the conservation and maintenance of open land for active or passive recreational use;
 - d. To provide greater design flexibility and efficiency in siting of services and infrastructure, including reductions in the length of roads and utility runs, and the amount of paving required for development;
 - e. To provide for a diversity of lot sizes, building densities and housing choices to accommodate a variety of age and income groups, and residential preferences;
 - f. To create neighborhoods with direct visual access to open land, with amenities in the form of neighborhood open space, and with a strong neighborhood identity.

¹ The Royal River Corridor includes the Royal River, Chandler Brook and the East Branch, and at least 500 feet on both sides of these water bodies.

- g. To conserve scenic views and elements of the town's rural character, and to minimize perceived density, by minimizing views of new development from existing public roads.
2. To achieve these purposes, the Planning Board may approve clustered housing development and open space development in accordance with the provisions of this section. In approving any subdivision in any district, the Planning Board may approve clustered housing development where lot sizes, lot widths, lot coverage, street frontages and building setbacks can be reduced below the minimum requirements of Section VII. Zoning District Regulations, and any land gained thereby is set aside as open space. Clustered housing development is optional in the growth districts and mandatory in the rural districts². In approving subdivisions, the Planning Board may also approve open space development in the rural districts as an alternative to clustered housing development. Open space development requires very low residential densities and permanent preservation of designated high value open space.

B. **Applicability:** This section is applicable to the development of residential subdivisions, as follows:

1. **Farm and Forest District, Residential Shoreland District and Resource Protection District:** Clustered Housing Development or Open Space Development and the provisions of this section shall be **mandatory** for all residential subdivisions located within the Farm and Forest District, the Residential Shoreland District and the Resource Protection District.
Waivers: The Planning Board may waive the mandatory Clustered Housing Development or Open Space Development requirement under the following conditions:
 - a. For minor subdivisions of less than five (5) lots where the applicant demonstrates that there will be minimal benefits in keeping with the purposes of Section 11.3, and where the development does not provide an opportunity to enhance the Royal River Corridor, Pratt's Brook, Toddy Brook or Deer Brook corridors, open space associated with Knight's Pond or existing and future public water supplies.
 - b. For subdivisions within and/or adjacent to the Royal River Corridor, when a developer or landowner demonstrates to the Planning Board the following:
 - 1) The property was a lot of record³ at the time of the adoption (June 14, 2005) of this provision (Section 11.3.B.1.b), and the developer was the owner of the property at the time of the adoption of this provision;
 - 2) The mandatory Clustered Housing Development or Open Space Development requirement would result in a significant loss of otherwise buildable lots under the other provisions of Section 11.3.B.1. A significant loss of otherwise buildable lots is defined as the loss of more than 30 percent of the total number of buildable lots due to the prohibition against new residences within subdivisions within the Royal River Corridor area between two hundred (250) feet from the normal high water mark of the Royal River, Chandler Brook or the East Branch and five hundred (500) feet from the high water mark of these water bodies; and
 - 3) The developer and/or landowner calculates the number of buildable lots lost as a result of Section 11.3.B.1 and obtains subdivision approval for a plan that meets the other criteria of this Ordinance and the Subdivision provisions prior to January 1, 2010.
 - 4) **Sunset Clause:** Section 11.3.B.1.b will terminate on January 1, 2010.

¹ Growth Districts include the Village Center District and Village Residential District.

² Rural Districts include the Farm and Forest District, Residential Shoreland District and Resource Protection District.

³ Definition: "Lot of Record: A lot that exists as shown or described on a plat or deed in the records of the Cumberland County Registry of Deeds."

c. In all cases, waivers shall only be granted in accordance with subsections B.1.a and B.1.b, above. The Planning Board shall assure preservation of high value open space in keeping with the goals of the Royal River Corridor Overlay District to the greatest extent practical. In granting the waiver the Planning Board may allow smaller lot sizes and/or allow for limited residential development within the area between two hundred (250) feet from the normal high water mark of the Royal River, Chandler Brook or the East Branch and five hundred (500) feet from the high water mark of these water bodies.

2. **Village Center District and Village Residential District:** The provisions of this section shall be **optional** in the Village Center District and Village Residential District. Applicants shall be encouraged to utilize cluster housing development when these designs can be shown to increase housing affordability and/or enhance neighborhood cohesion, aesthetics, open space and recreational amenities.

a. When a subdivision application/sketch plan does not propose clustered development, the Planning Board may, in its discretion, ask the applicant to submit an alternative sketch plan showing a clustered housing development.

b. If the Planning Board, after a site walk and after such consultation with appropriate agencies or non-profits as the Planning Board deems appropriate, concludes that the parcel shown on the alternative sketch plan contains open fields, pasture, wetlands, waterways, wildlife habitat, scenic vistas, historic and/or archeological assets, rare flora or fauna or notable stands of forest, any of which could be preserved by clustering, the Planning Board may request that the applicant revise the application and propose a clustered housing development.

c. A request under paragraph (b) above will not bind the applicant; but if the applicant decides not to propose a clustered housing development, the Planning Board may consider the absence of clustering when it determines if the application meets the review criteria of Section V. Subdivision Review Procedures and Criteria.

C. General Standards for Clustered Housing Development and Open Space Development:

1. Developments proposed under the terms of this section shall meet all the requirements for a subdivision, *Section VIII Section 8.4 Design and Construction Standards for Roads and Driveways*, and all other applicable town ordinances including the general performance standards of this Ordinance, unless otherwise noted.

2. Each lot or building must be an element of an overall plan for site development. When the development consists of the creation of lots, the

plan shall establish a building envelope for each lot that identifies the area within which the buildings will be located. When the development involves the construction of multiple buildings on one or more lots, the plan shall show the location of each building.

3. Developments shall be designed to preserve valuable open space consistent with the town's OpenSpace Plan, and any other areas worthy of conservation as established through the sketch plan process. No dwelling units, structures associated with dwelling units, or uses accessory to a dwelling unit shall extend into the required minimum protected open space. Open space shall be generally contiguous, and shall be designed to connect with valuable open space or conservation land on adjacent properties to the greatest extent possible. The creation of open space networks and expanses of conservation land to provide wildlife habitat and corridors, to provide land for future trail systems and passive recreation land, and to protect other cultural and natural resources is required. The addition of open space and conservation land to the Royal River Corridor including the Royal River, Chandler Brook and

the East Branch, and Pratt's Brook, Toddy Brook, Deer Brook including the Deer Brook wetland, and Knight's Pond, areas that will add to protection for existing and future public water supplies are high priorities. The Planning Board may require public access to open space areas, unless the open space is an environmentally sensitive area where public access would be detrimental. There must be a demonstrated need for the public access, such as access to a water body, access to a trail system or the need for passive open space for recreation within the area.

4. Where a development abuts a water body, a portion of the land along the water shall be useable for passive recreation. This open space land shall have a minimum depth of five hundred (500) feet for areas abutting the Royal River, Chandler Brook and/or the East Branch. This open space land shall have a minimum depth of one hundred fifty (150) feet for areas abutting Pratt's Brook, Toddy Brook, Deer Brook, the Deer Brook wetland and Knight's Pond. The minimum depth requirement of 500 feet for areas abutting the Royal River, Chandler Brook and/or the East Branch may be reduced to two hundred fifty (250) feet only in accordance with Section 11.3.B.1, above.
5. Notwithstanding the provisions of Section VII. Zoning District Regulations relating to minimum lot size, street frontage and setbacks, and maximum lot coverage, the Planning Board, in reviewing proposed clustered housing developments and open space development may modify said provisions relating to minimum lot size, street frontage, setback, and lot coverage to permit innovative approaches to development and environmental design in accordance with the standards of this section. The Planning Board may reduce lot frontage and front setback requirements as well as reduce side and rear setbacks without percentage limitation. The Planning Board may reduce lot area

requirements, but only if a net residential acreage at least equal in area to the cumulative lot size reduction is maintained as common or public land. The modification of these standards shall not require a variance and no finding of undue hardship shall be required.

6. In the **Farm and Forest District, Residential Shoreland District and Resource Protection District**, the following shall apply:

- a. The maximum residential density for clustered housing development shall be one (1) residential unit per three (3) net residential acres.
- b. The maximum residential density for open space development shall be (1) residential unit per ten (10) net residential acres.
- c. The total area of permanently preserved open space within clustered housing developments and open space developments shall be a minimum of fifty percent (50%) of the total area of the parcel. The Planning Board may not waive the minimum open space requirements.
- d. No individual lots shall have direct driveway access to Routes 231, 115 or 9, or North Road.
- e. No individual lots shall have direct driveway access to any other public road, which existed prior to the time of the development, unless the applicant demonstrates to the Planning Board's satisfaction that there is a unique situation where the configuration of the parcel and an environmental constraint, such as a high value wetland, prohibits driveway access to an internal subdivision road, or is preferable to impacting the high value wetland.

7. In the **Village Center District and Village Residential District**, the following shall apply: [Amended 06/16/12]

- a. Clustered housing development shall be a minimum of five (5) lots or five (5) residential units.
- b. The Planning Board may grant a density bonus of twenty percent (20%) for clustered housing development that provides useable public open space for recreation pursuant to Section 10- 22 Recreation and Open Space Land in Developments, protects high value scenic vistas as identified in the Comprehensive Plan, and/or provides affordable housing pursuant to the provisions of Section 11.2 Affordable Housing.
- c. No individual lots shall have direct driveway access to routes 9, 231, 115 or North Road.

8. All sewage disposal systems shall meet the requirements of Section 10.16. Sewage Disposal and Section 10.23. Water Supply. [Amended 06/16/12]
9. **Minimum Lot Area Requirements:** [Amended 06/16/12]
 - a. The minimum lot area requirement may be reduced to twenty thousand (20,000) square feet under either of the following conditions:
 - 1) When the lot is served by public sewer, or
 - 2) When the lot is served by an advanced wastewater treatment system where a hydrogeological assessment pursuant to Section 10.24. Water Quality, has demonstrated that water quality will not be degraded.
 - b. The minimum lot area requirement may be reduced to ten thousand (10,000) square feet when both public water and public sewer serve the lot.
10. The Planning Board may reject a proposed Clustered Housing Development or Open Space Development that does not permanently preserve a sufficient amount of open space, or permanently preserve high value open space areas as identified in the Comprehensive Plan and Open Space Plan. [Amended 06/16/12]
11. There shall be no further subdivision of lots within clustered housing developments or open space developments located in the Farm and Forest District, Residential Shoreland District, or Resource Protection District. The Planning Board may require that there be no further subdivision of lots within clustered housing developments within the Village Residential District and/or Village Center District, to maintain the long-term integrity of the development in meeting the intent and purposes of the Clustered Housing provisions and this Ordinance. [Amended 06/16/12]

D. Other Siting Standards:

1. Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, south-facing slopes (where possible) and natural drainage areas, in accordance with an overall plan for site development and landscaping.
2. Buildings shall be located within forested portions of the development and not in open fields. When the development contains no forest, or insufficient forestland to include all buildings, the development shall be designed to minimize views of buildings that will be visible from existing public streets. When a development contains a scenic ridgeline, buildings should be placed fifty (50) feet vertical distance below the ridgeline and tree removal should be limited. Restrictions minimizing views of

buildings shall be included on the plat and in the deed to each lot.

3. Buildings shall be designed and laid out to protect bedroom windows from light invasions by vehicle headlights or glare from existing outdoor lighting or illuminated signs where allowed, insofar as practical.
4. Where parking spaces or storage areas are located in areas abutting existing residential properties, a permanent wood or masonry screen at least four (4) feet high shall be erected along the property line in addition to the green perimeter strip described below.
5. Other than in the Resource Protection District, a green perimeter strip not less than twenty (20) feet wide shall be maintained with grass, bushes, flowers, or trees along all lot lines (except for entrance and exit driveways). Such green strip shall not be built on or paved or used for parking or storage. There shall be no removal of trees over four (4) inches in diameter within this buffer. In the Resource Protection District, vegetation shall be retained in its natural state, although tree planting shall be permitted as a matter of right. Restrictions protecting this green perimeter strip shall be included on the plat and in the deed to each lot. Alternatively, such areas may be protected by a conservation easement.

E. Dedicated Open Space Land:

1. There shall be no further subdivision of dedicated open space. Open space land shall be used only for agriculture, forestry, conservation, and/or non-intensive public outdoor recreational activities that do not require modifications or improvements to the land other than access points or trails, including bridges for trails (such as hiking, bird watching, nature study, cross country skiing, snowmobiling, and hunting). Vehicular use and hunting and trapping may be prohibited. Subsurface sewage disposal systems, wells, and easements for public utilities, but no structures, may be permitted in open space areas.
2. Open Space land set-aside in clustered housing development or open space development shall be protected as required by this sub-section. Land set aside as protected open space may be a separate parcel. In Farm and Forest District, Residential Shoreland District and Resource Protection District developments only, such land may be included as a portion of one or more parcels on which dwellings and other structures are permitted, provided that a conservation easement is placed on such land and that the Planning Board approves the configuration of the open space land and finds that the proposed development plan will not compromise the conservation value of the open space land.
3. **Fee Simple Dedication to Town, State, the Royal River Conservation Trust or Other Conservation Organization:** Fee simple dedication of protected open space land to the town, state, Royal River Conservation Trust or another conservation organization approved by the Planning Board is an acceptable method of protection.

4. Dedication of Conservation Easement to the Royal River Conservation Trust, Town, State or Federal Agency, or Other Conservation Organization:
 - a. A perpetual conservation easement restricting development may be granted to a qualified non-for-profit conservation organization or land trust, such as the Royal River Conservation Trust, the town, the state or a federal agency.
 - b. Such conservation easement shall be approved by the Planning Board, Town Attorney, and shall be required as a condition of approval by the Planning Board.
 - c. The conservation easement shall be recorded in the Cumberland County Registry of Deeds prior to or simultaneously with the filing of the final subdivision or site plan. In the case of minor site plans, a deed restriction enforceable by the town may be substituted for a conservation easement.
 - d. The conservation easement may permit only those uses authorized through the development review process.
5. **Deed Restrictions:** As a last resort in the event that a conservation easement is not accepted by the third party or by the town, a deed restriction shall be required of the applicant, which shall meet the requirements of these provisions.
6. **Private Ownership of Open Space Land:**
 - a. In the **Farm and Forest District, Residential Shoreland District and Resource Protection District**, open space land may be owned by private landowner(s) including individuals, families, partnerships, trusts, non-profit organizations, home/property owner's association or governmental entity, as long as it is protected from development by conservation easement. The open space land may occur on one or several lots, depending on the preferences of the applicant.
 - b. In the **Village Center District and Village Residential District**, open space land shall be set-aside in one or more parks, greens, or other recreational open space land areas owned by a home/property owner's association or at the owner's option, dedicated to the Friends of the Royal River, the town or an other conservation or governmental entity. A conservation easement may be required depending upon the environmental, aesthetic, recreational, cultural or historic significance of the land.
 - c. If any of the open space and/or facilities are to be reserved by the individual unit owners as common open space, each unit owner shall own a fractional interest in the common open space and the developer shall be required prior to final subdivision plan approval to

incorporate a homeowners' association consisting of the individual unit owners, which incorporation must comply with Section 11.10. Home Owner/Property Owners' Associations.

7. Management and Monitoring Plan of Open Space Land:

- a. Unless otherwise agreed to by the Planning Board, the cost and responsibility of managing and monitoring dedicated open space shall be borne by the developer, property owner, homeowner's association, Friends of the Royal River, and/or other conservation organization approved by the Planning Board.
- b. The applicant shall, at the time of the preliminary plan submission, provide a Management and Monitoring Plan for the dedicated open space that has been approved by the entity that will be responsible for implementing the Management and Monitoring Plan.
- c. The applicant may be required to contribute sufficient funds for the maintenance and monitoring of the dedicated open space.
- d. In the event that the entity established to maintain and monitor the dedicated open space land, or any successor thereto, fails to maintain all or any portion thereof in reasonable order and condition, the town may assume responsibility for maintenance. The town may enter the premises and take corrective action, and the costs of such corrective action may be charged to the entity responsible for the management and monitoring of the open space land.

SECTION 11.9 HOME OWNER/PROPERTY OWNERS' ASSOCIATIONS

- A. **Purpose and Applicability:** The purpose of this section is to assure the continued maintenance of common open space, and recreational and other facilities within residential developments.
- B. **Standards and Requirements:**
1. If any of the open space, recreational or other facilities are to be reserved by the individual residential unit owners as common open space or facilities, each unit owner shall own a fractional interest in the common open space or facilities, and the developer shall be required prior to final subdivision plan approval to incorporate a homeowners' association consisting of the individual unit owners, which incorporation must comply with the following:
 - a. Proposed covenants shall be placed in each deed from the developer to the individual unit owner, which deed covenants shall require mandatory membership in the homeowners' association, and shall set forth the unit owners' rights, interests, privileges and obligations in the association and in the common open space and/or facilities, including homeowners' association's responsibility and obligation to maintain and/or monitor the common open space and/or any facilities.
 - b. The homeowners' association shall develop a system to levy and collect annual charges against any and all individual lot owners to defray any expenses connected with the maintenance of common open space and/or facilities, and this system shall be described in said deed covenant or by some other legal instrument made binding upon the individual unit owner and running with the land.
 - c. The developer shall maintain control of the common open space and/or facilities, and shall be responsible for its maintenance until seventy five percent (75%) of the residential dwelling units/lots in the subdivision have been sold, at which time, the homeowners' association shall be responsible for such maintenance, and this obligation shall be described in said deed covenant or by some other legal instrument made binding upon the individual unit owner and running with the land.
 - d. All such proposed deed covenants and other legal documents pertaining to the common open space and/or facilities shall be reviewed by the Town Attorney, and, if approved by the Planning Board, shall be recorded in the Cumberland County Registry of Deeds, and included or referred to in the deed to each unit.
 - e. All legal documents required under this subsection must be submitted with the final subdivision plan application.

XII. DEFINITIONS [AMENDED 6/19/21]

Common Open Space: Land within or related to a subdivision, not individually owned or within an individual lot, which is designed and intended for the common use or enjoyment of the residents of the development or the general public. It may include complementary structures and improvements, typically used for maintenance and operation of the open space, such as for outdoor recreation.

Proposed

“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 easement.”

Open Space: The portion of a lot or site which is maintained in its natural state or planted with grass, shrubs, trees or other vegetation and which is not occupied by buildings, structures or other impervious surfaces. A significant portion of the open space should include high value open space areas as identified in the Comprehensive Plan’s Open Space Plan.

Open Space Development: A subdivision with a very low residential density, less than one (1) residential unit on ten (10) acres, designed to preserve open space, and in particular to permanently preserve high value openspace as defined in the Comprehensive Plan’s Open Space Plan.