

## SECTION XVIF. NATURAL RESOURCE PROTECTION (NRP) DEVELOPMENT

*(Editor's Note: Section XVIF added 1/9/14 to reflect new provisions adopted under Article 28 at 2013 ATM)*

### A. PURPOSE

To allow innovative, context sensitive design of large subdivisions as a matter of right where such design shall achieve the following:

1. To allow for greater flexibility and creativity in the design of residential developments.
2. To minimize the destruction of, and to encourage the permanent preservation of open space, wildlife habitat, recreational uses and other resources including aquifers, water bodies and wetlands, groundwater, historical, cultural and scenic areas.
3. To promote a less sprawling, less intense and more sustainable and efficient form of development that consumes less open land and conforms to existing topography and natural features.
4. To minimize the total amount of disturbance, grade changes and run-off on or from the site.
5. To facilitate the construction and maintenance of housing, streets, utilities, and public services in a more economical and efficient manner.

### B. DEFINITIONS

Primary Conservation Areas – Areas of a potential development site that are protected or where development is limited by federal, state or local law or private land use restrictions including, without limitation:

1. Easements (including, without limitation, easements or restrictions for conservation, preservations, agricultural use, aquifer protection or similar easements and restrictions) and similar covenants land use restrictions;
2. Wetlands, Isolated Wetlands, Bordering Vegetated Wetlands, and the 25-foot No-Disturbance Zone as defined in the Wellesley Wetlands Bylaw;
3. Vernal Pools as defined in the Wellesley Wetlands Bylaw;
4. 100 Year Flood Plain as defined by SECTION XIVB.FLOOD PLAIN OR WATERSHED DISTRICTS;
5. Wildlife habitat;
6. Steep slopes having a grade over 10% or as defined by federal or state law or regulation, whichever is the lesser grade; and
7. Lakes, ponds, rivers, streams, and brooks;

Secondary Conservation Areas – Areas of a potential development site that contain valuable natural or cultural resources including, but are not limited to:

1. Specimen trees;
2. Stone walls;
3. Significant geological features, including, without limitation, eskers, exposed ledge and significant boulders;
4. Mature woodlands;
5. Scenic and wet meadows;
6. Historical or archaeological sites; and
7. Portions of a site within a Scenic Road or Scenic Road Layout.

Yield Plan – A conceptual subdivision plan containing all of the elements required by the Subdivision Rules and Regulations that depicts the number of single family house lots that could reasonably be developed according to local, state and federal law.

#### C. APPLICABILITY

1. NRP Development is required as a matter of right for any property that would yield 5 or more residential lots. To determine yield, the Planning Board shall consider the following:
  - a. The following formula shall be used for yield determination related to NRP Development:

Where A = Total Property Area

PCA = Area of primary conservation areas

10% = Assumed infrastructure area such as roads, etc. In the formula below, this is expressed as the inverse (i.e., multiplying by 90%)

L = Minimum Lot Size per SECTION XVIII. AREA REGULATIONS, without regard to Subsection F. ALLOWABLE DESIGN FLEXIBILITY of this Section.

Y = Assumed number of residential units

$$\frac{(A-PCA) * 0.9}{L} = Y$$

- b. Separate contiguous properties under common ownership, or contiguous properties that will otherwise be connected through future development activity, shall be considered in the aggregate when determining applicability through the yield calculation. The intent and requirements of this Section shall not be avoided by segmentation or any incremental approach to development.
  - c. Where a property owner believes that the property is encumbered by physical, legal or other unforeseen constraints that would reduce the property yield to below 5 lots, the property owner may develop a Yield Plan to demonstrate that the actual expected yield is below 5 lots and therefore NRP Development is not required. The Yield Plan shall contain the information required in the *Rules and Regulations Governing the Subdivision of Land* and shall be submitted to the Planning Board. The Planning Board's determination as to the accuracy of the Yield Plan shall be made at a regularly scheduled Planning Board meeting within 45 days of the submittal of an adequate Yield Plan. The determination of the Planning Board shall be used only to establish whether or not NRP Development is required and shall not be interpreted as approval of a subdivision or the vesting of any development yield on the property.
2. This Section does not apply to the construction of homes or businesses on individual lots that existed prior to the effective date of this Section of the bylaw.
  3. A Special Permit application to the Planning Board is required for any subdivision that does not conform to the development requirements herein. In order to approve such Special Permit, the Planning Board must find that the proposed alternative plan advances the purposes of the NRP Development bylaw as well as or better than a plan that conforms to this Section. If the Planning Board determines that the land with the greatest natural resource value (as identified in the required materials) cannot be protected except by the use of a NRP Development plan, the Planning Board shall deny the Special Permit for the deviation and require the applicant to submit a plan that complies with the requirements of the NRP Development process. The Planning Board may impose conditions on the grant of any such Special Permit.

#### D. DESIGN STANDARDS

The following Design Standards shall apply to all plans for NRP Development and shall govern the development and design process:

1. Overall site design and development shall be performed in a manner that protects the conservation areas identified pursuant to the procedures established in the *Rules and Regulations Governing the Subdivision of Land*. Techniques to ensure adequate protection shall include, but shall not be limited to:
  - a. Avoidance and protection of Primary and Secondary Conservation Areas that are to be preserved both during and after construction.
  - b. Installation of natural boundaries or demarcation markers to ensure the protection of sensitive resources. Markers such as boulders, wooden fencing, and similar features may be used for this purpose.

- c. Proper selection, installation, and maintenance of erosion and sediment control practices during construction activities.
  - d. Fencing used to protect trees during construction activities installed minimally to the drip line of the tree(s).
  - e. The recording of any easements or covenants required for the long term maintenance of any access ways or open space as described in Subsection G.
  - f. To keep storm water run-off from any parcel on such parcel to the fullest extent reasonably practical, employing low impact development techniques when practicable.
2. Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill, to handle storm water run-off (if any) through low impact design techniques, and to preserve and enhance views and vistas on or off the subject parcel.
  3. Dwellings shall be oriented and placed on lots in such a manner so as to promote visual interest, while preserving the neighborhood streetscape, if applicable.
  4. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover.
  5. All open space shall be set aside and/or designed to add to the visual amenities of the area through the siting of houses, the creation of “no-cut” buffers, low impact trail design, or other similar methods.
  6. Open space parcels with public access shall have physical and legal access from a street of not less than 20 feet in width. Such access shall be demarcated by stone bounds to distinguish between the edge of the public access and amenities from private property.
  7. The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.
  8. Exterior lighting shall be only as needed to accomplish safety and design objectives and shall be arranged so as to minimize the impact on neighboring properties.
  9. Shared driveways may be constructed to access a maximum of three (3) residences and shall comply with the following standards:
    - a. Shared driveways shall have a minimum surface width of sixteen (16) feet along that portion that is shared by more than one residence.

- b. No shared driveway shall be connected or attached to any other driveway, nor shall any common driveway be extended without prior approval of the Planning Board.
- c. Shared driveways shall be located within an easement which may allow space for installation of water lines and utilities as needed.
- d. Shared driveways shall not exceed three hundred (300) feet in length, measured from the street line to the end of the shared portion of the driveway.
- e. To provide better traffic safety and reduce the visual impacts of traffic on abutting properties, the Planning Board may require shared driveways to be set back from lot lines and/or screened with a buffer of trees and/or shrubs.
- f. Sight distances at the entrance of a shared driveway along the intersecting road shall be at least one hundred (100) feet along the intersected roadway or as far as the next intersection, whichever distance is shorter.

#### E. DESIGN PROCESS

At the time of the application for NRP Development, applicants shall demonstrate to the Planning Board that the following design process was performed, in the order so prescribed, by a Multidisciplinary team of qualified professionals to determine the layout of proposed streets, house lots, including designation of all common areas and open space.

1. Identifying Conservation Resources. Identify Primary and Secondary Conservation Areas. The Potentially Developable Area of the site shall consist of land outside identified Primary Conservation Areas to the extent required by this Section, and outside the Secondary Conservation Areas to the fullest extent practicable.
2. Locating House Sites. Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community within the subdivision.
3. Locating Streets and Trails. Layout streets in order to access the house lots. Trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.
4. Lot Lines. Draw in the lot lines using assumed lot lines if the ownership is in condominium, cooperative or other similar form of common ownership.

#### F. ALLOWABLE DESIGN FLEXIBILITY

Dimensional Requirements. To facilitate the design process provided in Subsection E. above, the following housing and dimensional standards shall apply to NRP Development.

1. Housing Types. Only detached single family homes are allowed in NRP Development.
2. Lot Dimension. To facilitate the design process provided in Subsection E above, the following housing and dimensional standards shall apply to NRP Development.

Table 1.

Area Regulation District	SINGLE RESIDENCE DISTRICT				
	10,000 s.f.	15,000 s.f.	20,000 s.f.	30,000 s.f.	40,000 s.f.
Minimum Lot Size	7,500 s.f.	7,500 s.f.	10,000 s.f.	15,000 s.f.	20,000 s.f.
Minimum Frontage	50 ft.	50 ft.	75 ft.	100 ft.	100 ft.
Minimum Front Yard Width	50 ft.	50 ft.	75 ft.	100 ft.	100 ft.
Minimum Front Yard Depth (Setback)	30 ft.	30 ft.	30 ft.	30 ft.	30 ft.
Minimum Side Yard Width	15 ft.	15 ft.	20 ft.	20 ft.	25 ft.
Minimum Rear Yard Depth	15 ft.	15 ft.	20 ft.	25 ft.	30 ft.

3. Frontage and Setbacks. Lots having reduced area shall not have frontage on a street other than a street within the NRP Development.
4. Accessory Structures. Detached accessory structures over 100 square feet shall have a minimum side yard and rear yard setback of fifteen (15) feet.

G. OPEN SPACE

1. Minimum Open Space Requirement. A minimum of fifty percent (50%) of the site shall be protected open space. The percentage of this open space that may include wetland shall not exceed the percentage of wetland of the entire site under existing conditions.
2. Contiguous Open Space. Preserved open space shall be contiguous to the greatest extent practicable. Where noncontiguous pockets of open space are preferable to protect conservation areas, applicants shall attempt to connect these resources area to the greatest extent practicable through the use of trails and/or vegetated corridors. Open space will still be considered contiguous if it is separated by a shared driveway, roadway, or an accessory amenity (such as a barn, paved pathway or trail, or shed for the storage of recreational equipment).
3. Restrictions on Open Space. Any land required to be set aside as open space shall be permanently protected pursuant to Article 97 of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts or a perpetual restriction under M.G.L. Chapter 184 Section 31-33. Unless conveyed to the Natural Resources

Commission, the required open space shall be subject to a permanent Conservation, Watershed, or Agricultural Preservation Restriction conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, or Department of Agricultural Resources in accordance with M.G.L. Chapter. 184 Section 31-33, approved by the Planning Board and the Board of Selectmen and held by the Town of Wellesley, the Commonwealth of Massachusetts, or a non-profit conservation organization qualified to hold conservation restrictions under M.G.L. Chapter 184, Section 31-33.

The restriction shall specify the prohibited and permitted uses of the restricted land, which would otherwise constitute impermissible development or use of the open space, consistent with the Allowable Use of the Open Space Subsection of this bylaw and any permits. The restriction may permit, but the Planning Board may not require, public access or access by residents of the development to the protected land.

4. Allowable Use of the Open Space. Open space used to satisfy the minimum open space requirement shall be perpetually kept in an open state, preserved exclusively for the purposes set forth herein and in the deed and/or in the restriction, and maintained in a manner which will ensure its suitability for its intended purposes. Proposed use(s) of the open space consistent with this Section shall be specified in the application. At the applicant's discretion, conservation restrictions may be placed on open space beyond the minimum amount required by this bylaw.
  - a. The open space may be used for wildlife habitat, conservation, historic or cultural resource preservation, outdoor education, active or passive recreation, community gardens, or a combination of these uses, and shall be served by suitable access for such purposes.
  - b. Open space may include paved and/or developed areas to be paved or built upon (preferably, and to the fullest extent possible, using permeable pavement and other means of retaining natural hydrology) for structures accessory to the dedicated use or uses of such open space (e.g., parking to facilitate public access for passive recreation, informational kiosks, pedestrian walks, ADA access features, and bike paths) so long as the conservation values of the open space are not compromised.
  - c. Open space may include vegetated storm water management practices including swales, rain gardens, bio-retention facilities and constructed wetlands.
5. Ownership of the Open Space. At the Planning Board's determination, the open space may be owned by:
  - a. A private owner for agricultural, horticultural, forestry or any other purpose not inconsistent with the conservation restriction;
  - b. A non-profit organization or agency of the Commonwealth, with their consent, whose principal purpose is the conservation of open space for any of the purposes set forth herein;

- c. The Natural Resources Commission; or
- d. A homeowners association (HOA) as defined herein owned jointly or in common by the owners of lots or units within the project. If a HOA is selected as the means of ownership, the following shall apply:
  - i. The documents organizing the HOA shall be drafted and approved by the Planning Board before final approval of the NRP Development, recorded prior to the issuance of building permits, comply with all applicable provisions of state law, and pass with conveyance of the lots or units in perpetuity. Each individual deed, and the deed, trust, or articles of incorporation, shall include language designed to effect these provisions.
  - ii. Membership must be mandatory for each property owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.
  - iii. The HOA must be responsible in perpetuity for liability insurance, property taxes, the maintenance of recreational and other facilities, private roads, and any shared driveways.
  - iv. The assessment levied by the HOA must be able to become a lien upon individual properties within the development.
  - v. The HOA must be able to adjust the assessment to meet changed needs.
  - vi. The applicant shall make a conditional grant to the Town, binding upon the HOA, of the fee interest to all open space to be conveyed to the HOA. Such offer may be accepted by the Town at the discretion of the Board of Selectmen, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.
  - vii. Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual property owners in the HOA and the dwelling units they each own.
  - viii. The Town of Wellesley legal counsel must find that the HOA documents presented satisfy the conditions above, and such other conditions as the Planning Board shall deem necessary.
- e. Selection of an ownership option other than the Natural Resources Commission shall require the following:
  - i. The conveyance of a conservation restriction as outlined herein; and



- ii. The granting of an access easement over such land sufficient to ensure its perpetual maintenance as specified in the conservation easement. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town of Wellesley may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by the Town shall be assessed against the properties within the development and/or to the owner of the open space. Pursuant to G.L. Chapter 40 Section 58, the Town may file a lien against the lot or lots to ensure payment for such maintenance. Pursuant to G.L. Chapter 40 Section 57, the Town may also deny any application for, or revoke or suspend a building permit or any local license or permit, due to neglect or refusal by any property owner to pay any maintenance assessments levied.