

ADOPTED: August 26, 1991 Proposed 3/14/91

## TOWN OF PARIS RESIDENTIAL OPEN SPACE ORDINANCE

### SECTION 1. PURPOSE

The purpose of this ordinance is to allow for the preservation of open space in order to maintain community character, to provide for public or private use or enjoyment, to be used for non-commercial recreation, to protect natural resource areas, or to maintain agricultural use. Application of this ordinance will allow greater flexibility in the creation of open space in residential subdivisions.

### SECTION 2. AUTHORITY, ADMINISTRATION AND ENFORCEMENT

A. AUTHORITY. This ordinance is adopted pursuant to and consistent with Home Rule Powers as provided for in Article VIII of the Constitution of the State of Maine and Title 30-A Section 3001, 51.R.S.A. (3iome Rule) and 30-A Section 4401 et.seq.

B. ADMINISTRATION. The Planning Board of the mown of Paris shall administer this ordinance in conjunction with the administration of the Subdivision Standards of the Town of Paris, otherwise titled" Planning Board Standards for Reviewing Land Subdivisions".

C. ENFORCEMENT. Enforcement shall be as specified in Article VIII of the Subdivision Standards.

### SECTION 3. DEFINITION OF TERMS

Accessible: Available for use with access not restricted by property line or structure.

Agriculture: The use of land, not requiring any structures, for production of crops, nurseries, or any allied activity. Buffered: Separated from the surrounding plots of land by a strip of sand with vegetation. Density: The number of dwelling units per unit of land. Developer: The individual or organization proposing or conducting division of a tract or parcel of land into three or more lots within any five-year period, whether accomplished by sale, lease, buildings, development, or otherwise, Development: Any change to real estate, including but not restricted to carts movement, paving, construction of buildings, etc. Dwelling: Any building or structure or portion thereof designed or used for residential purposes, including single-family, two-family (duplex, and multi-family three families or more) dwelling units. Dwelling unit: Habitable rooms used as a housekeeping unit for one or more individuals living as a family, and containing living, cooking, sleeping, bathing, sanitary or other similar facilities. Frontage: The horizontal distance abutting the road and measured In a straight line between the intersections of the side lot lines with the road line. Infrastructure: Improvements to the land designated as open space, including but not Limited to subsurface sewage disposal systems, drinking water

systems, lighting, landscaping, and furniture. Lot: A ~parcel of land owned by a single landowner, as differentiated from land owned in common or subject to common rights or uses. Net Residential Area: The net area of a parcel of land that is suitable, in its natural state, for residential development. This is determined by subtracting areas unsuitable for residential development, which include:

1. Land with sustained slopes of twenty-five percent or more.
2. Land that is cut off from the main parcel by a road, by existing land uses, or where no means of access is provided, so that the land is isolated and unavailable for building purposes or common uses.
3. Land situated below the high water mark of any water body.
4. Any inland wetland.
5. Land within the 100-year floodplain.
6. Land which is part of a right of way or easement that potentially restricts its use as residential or common area.
7. Land area consisting of unreclaimed gravel pits.

Open Space: Land which is available for public or private non-commercial: recreation use, natural resource protection, or agriculture. It shall be free of structures and other intensive development. Open Space Development: A residential subdivision of land in which residential lot sizes, frontages, and/or setbacks are reduced in order to preserve open space for public or private non-commercial recreation use, natural resource protection, Or agriculture. Setback: The minimum distance from the front, side, or rear lot line that establishes the boundary of the area in which principal or accessory structures may be placed. Subdivision: A subdivision is a division of a tract or parcel of land into three or more lots within any five-year period, as defined in the Subdivision Standards .A subdivision may be classified as major or minor. Subdivision, Major: ~Any subdivision containing more than nine lots, or any subdivision requiring any new public street extension, or the extension of municipal facilities. Subdivision. Minor: A subdivision containing not more than nine lots. Subdivision Standards: The Town of Paris Planning Board Standards for Reviewing Land Subdivisions. Town Ordinances: Ordinances, standards, and regulations enacted by the Town of Paris, including but not limited to the Subdivision Standards, the Building Code, and the Site Plan Review Ordinance. Wetland: An area of any size that is inundated or saturated with surface or ground water at a frequency or duration sufficient to support, and which under normal circumstances does support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

#### SECTION 4. APPLICABILITY

A. This ordinance shall apply to all subdivisions, as defined by State law or Town ordinance, for which a reduction in lot size or frontage proposed in order to create open space by a method henceforth referred to as Open Space Development.

B. The requirements specified herein may be used in place of the minimum lot size, frontage, and other requirements of town ordinances and where such reductions are proposed shall be used to establish density and open space provisions for residential development which requires subdivision review.

C. Unless otherwise specified herein all provisions of all other Town ordinances shall apply.

D. The standards and procedures established by this ordinance shall be a voluntary method of land subdivision in the Town unless a zoning, land use, or other ordinance enacted by the Town specifically requires or prohibits the use of open space design.

## SECTION 5. APPLICATION PROCEDURES

A. The application procedure will be the same and concurrent with the subdivision review procedure established by Articles IV, 7, VI, and VII of the Subdivision Standards. Procedural requirements and their reference paragraph in the Subdivision Standards are listed below:

1. Preapplication (a) procedure (4.1) (b) Submissions (4.2)
2. Minor subdivision (a) General (5.1) (b) Procedure (5.2) (c) Submissions (5.3)
3. Preliminary Map for a major subdivision (a) Procedure (6.1) (b) Submissions (6.2.1) (c) Preliminary Diagram (6.2.2)
4. Final Map for a major subdivision (a) Procedure (7.1) (b) Inspection (7.2) (c) Submissions (7.3) (d) Final approval and filing (7.4) (e) Plan revisions (7.5) (f) Public acceptance (7.6)

B. For proposals intended for review as open space development, the following information should be submitted: 1. As part of the Preliminary Application, whether for a Major or Minor

Subdivision: (a) A map specifically identifying wetlands, hydric soils, sustained slopes of 25% or more, the land within the 100 year floodplain, surface water bodies, and the area proposed as open space. (b) The extent and final contours of and proposed changes to the areas specified as open space. (c) The proposed use of the open space areas. (d) The proposed method(s) to protect, manage, and maintain the open space, which may include but shall not be limited to covenants, deed restrictions, association bylaws, and/or agreements with land trusts.

(e) Proposed method(s) to maintain common facilities and utilities which may include, but shall not be limited to, association bylaws with assessment Provisions. 2. As part of the Final Application: (a) The final Map to be recorded shall indicate open space and clearly identify its boundaries, its use,

and extent of any clearing. The Man shall also clearly indicate that open space shall not be subdivided or further developed. (b) A complete set of documents establishing the Homeowners Association or other entity responsible for maintaining and managing common facilities, utilities, and open space. (c) Legal documents protecting, in perpetuity, open space from subdivision or further development and insuring maintenance as specified in the application.

## SECTION 6. BASIC REQUIREMENTS

**MINIMUM AREA.** The land to be subdivided shall contain the following minimum area: 1- Five acres, if the development is of individual lots for single family detached or two-family dwellings. 2. Five acres per dwelling unit, if the development is of one or more multi-family dwellings.

**B. OPEN SPACE AREA.** A minimum of 40% of the open space development (subdivision) shall be reserved as open space In compliance with the standards specified herein.

**C. ROAD FRONTAGE.** The land to be subdivided shall normally have a frontage of 200 feet or more on an existing public right of way. The Planning Board shall have the authority to reduce this distance to no less than 100 feet if the open space development design, location, and surrounding architecture so warrant.

**D. DENSITY.** The maximum density of the open space development thus created shall in no case be greater than that otherwise specified for any subdivision, and shall be calculated as follows: 1. Determine the net residential area of the parcel. 2. To determine the maximum number of dwelling units allowed, divide the net residential area by the minimum land area per dwelling unit otherwise specified by town ordinance.

**E. SIZE, SETBACK, AND FRONTAGE OF INDIVIDUAL LOTS.** Modifications of standards for individual lots within the open space development shall not exceed the following:

1. Minimum size of lots on which dwellings which utilize public water and sewer are located is ten thousand (10,000) square feet per dwelling unit. 2. Minimum size of lots on which dwellings which utilize individual subsurface sewage disposal systems are located is as specified by state law, unless design of the sewage disposal system requires a larger lot size. 3. Minimum size of lots on which dwellings which utilize joint subsurface sewage

disposal systems are located is ten thousand (10,000) square feet per dwelling unit. 4. Minimum road frontage of lots created within the open space development shall be 100 ft. measured along the road. In the case of a curving road a lot on the inside of the curve shall be measured along the cord of the curve, while on the outside of the curve it shall be measured along a line tangent to the edge of the road and right angle to the side line. 5. Minimum front yard setback of lots created within the open space development shall normally be 25 feet. The Planning Board shall have the authority to reduce this distance to no less than 10 feet if the open space development design, location, and surrounding architecture so warrant. 6. Minimum side and rear setback of lots created within the open space development may be reduced by a maximum of 10 ft.

#### F. SUBSURFACE SEWAGE DISPOSAL

1. If individual subsurface sewage disposal systems are used, the Planning Board may require submission of a hydro geologic report prepared by a registered Professional Engineer or a Certified Geologist if surrounding soil conditions or development density so warrant. Such report would at a minimum evaluate nitrate loading to the ground water and recommend system Placement and design standards. 2. If a joint subsurface disposal system is used, the design of tills system must be based on the type of housing construction planned for the site, and the system must be installed prior to sale of any lots. Development may not exceed the designed capacity of that system, with restrictions included in deeds to the lots, with the Town a party to the deeds. Installation is defined as creation of a functional system, including all excavation, above and below ground structure, backfill, return of the landscape to its natural state insofar as possible, and sewer piping carried to the frontage of each lot. 3. In either case, the Town may hire a registered Professional, engineer or Certified Geologist to review the application materials. The costs of such review shall be borne by the applicant

G. BUFFERING. The open space development thus created shall be buffered from the surrounding land as follows:

1. The developed area shall normally be set back from the existing road no less than 50 feet. The Planning Board shall have the authority to reduce this distance to no less

than 10 feet if the open space development design, location, and surrounding architecture so warrant.

2. Lots and open space shall be bonded by a continuous buffer of natural vegetation, or landscaping if natural vegetation is inadequate. The width of this buffer shall normally be no less than 20 feet. The Planning Board shall have the authority to reduce this distance to no less than 10 feet if the character of the vegetation and the design and location of the open space development so warrant. 3. Where agricultural land is retained and designated as open space, the site plan shall include a buffer between residential lots and agricultural land. The width of this buffer shall be 100 feet or more if required by State Law (the Farmland Adjacency Act, 7 M.R.S.A. section

H. ROADS. Roads within the open space development shall be constructed to the standards specified in town ordinances with the intent that they be conveyed to the Town. The Planning Board shall have the authority to reduce the width of the traveled surface to no less than 13 feet, with corresponding reduction to 40 feet in the width of the right of way, and to require only one sidewalk, if the open space development design, location, and character so warrant. Except as provided herein, road construction standards may not be waived.

SECTION 7. OPEN SPACE. All land within the open space development not designated as residential lots shall be restricted from further development as set forth herein.

A. DESIGNATION ON SITE PLAN. The open space created by the development shall be shown on the recorded subdivision plan with the notation that it shall not be used for future building lots or development.

B. CONFIGURATION. All land designated as open space shall be contiguous, except the Planning Board shall have the authority to permit a portion of the open space requirement to be satisfied by areas created by the setback of lots from the existing road, the buffer from the surrounding land, and designated agricultural land retained by the original landowner as specified elsewhere in this ordinance, if the open space development design, location, and character so warrant.

C. UNSUITABLE LAND. Land determined to be unsuitable for development in the net residential area calculation is not to be designated as open space -

O. ACCESS. The open space, except That retained by the original owner for agriculture, shall be legally and readily accessible by all residents of the open space development or, if owned by the town, by all residents of Paris, and shall be readily accessible by emergency vehicles.

USES. the open space shall be intended to be used for agriculture, passive recreation, and preservation of the natural resources or natural beauty of the site. Portions of it may be used for subsurface waste disposal systems and drinking water systems. It shall not be used for:

1. Rights of way, except sewer easements. 2. Roads or sidewalks. 3. Parking areas. 4. Any use restricted by the Planning Board at the time of open space development approval

OWNERSHIP. The open space may be owned: 1. Jointly or in common by the owners of the building lots, or of the development in the case of multi-family dwelling; or 2. By the Town of Paris, subject to legal acceptance as otherwise required; or 3. By the original landowner, provided that a permanent conservation easement precluding non-agricultural development has been granted to and accepted by the Town. The agreement shall specify the rights and maintenance requirements of the owner and shall provide for reversion to the Town. The owner fails to adhere to those requirements. 4. By a Land Trust registered as such in the State of Maine.

C. PROPERTY TAXES 1. If the open space is owned jointly or in common, the property taxes for the open space shall be divided equally among the owners of the building lots. The owners shall pay these taxes directly to the own 2. if the open space is owned by the original landowner, he or she shall remain liable for the property taxes.

H. HO)IECWNER'S' ASSOCIATION. If the open space is owned jointly or in common:

1. The developer shall sign a permanent conservation easement restricting development of the open space. 2. The

definer must form and incorporate a Homeowners Association, which shall be responsible for maintenance, upkeep, and required improvements to the open space and the infrastructure. 3. The Homeowners' Association shall be funded by: (a) An agreement with the lot owners; or (b) Interest from an escrow account established by the developer, with a principal determined by the Planning Board to be adequate for current and future funding requirements. 4. If funded by an agreement with the lot owners: (a) At the time of purchase each owner must sign an agreement, approved by the Planning Board, to pay a proportional share of the annual maintenance cost of the open space and infrastructure. (b) This agreement must be made part of the deed to each lot, allowing placement of a lien against the property in the amount of the unpaid dues plus accumulated interest and collection costs, specifying that payment must be made before the property is sold. 5. The developer must retain control of the Homeowners' Association until it can carry out its responsibilities until the Planning Board determines that the Homeowners Association is actually and financially operable.

This will normally not occur until at least 51% of the properties have been sold.

SECTION 8. INTEGRATION WITH THE SUBDIVISION STANDARDS. All requirements of the Subdivision Standards shall apply to open space developments to which this ordinance applies except:

- A. The review procedure and general requirements shall apply except as specifically exempted or supplemented herein.
- B. The review standards contained in State Law 30-A.M.R.S.A. section 4402. et seq.) shall all apply
- C. The variance and waiver provision of the Subdivision Standards (article XII) shall apply.

#### SECTION 9. APPEALS

- A. An appeal of this ordinance shall be taken to the Board of Appeals within 30 days of the Planning Board decision.
- B. An appeal from a decision of the Planning Board shall be as specified in the Subdivision Standards (Article XIII).

#### SECTION 10. SEPARABILITY AND EFFECTIVE DATE



A. The invalidity of any provision of this ordinance shall not ~invalidate any other part of the ordinance or any other town ordinance.

B. This ordinance shall be effective upon the affirmative vote of the Town Meeting.

#### SECTION 11. AMENDMENTS

A. This ordinance may be amended by a majority vote of the Town Meeting.

B. Amendments shall be brought before the Town Meeting at the request of the Planning board or the Board of Selectmen, or upon petition signed by a number of voters registered in the Town of Paris equal to or greater than 1-3% of the total votes cast in the Town for governor in the most recent gubernatorial election.