



Preserving Small Town Character and Protecting Open Space

Prepared by Friends of Midcoast Maine

Condensed from *Model Sustainable Development Ordinances*, Bilko Associates, Inc.

Introduction

There are several tools a town may use to preserve open space and to preserve small town character. This paper assumes that a community has already identified the goal of protecting open space and preserving small town character through a citizen driven visioning and comprehensive planning process. Tools that will be discussed are the following:

- Growth Management Boundary
- Agricultural and Forest Protection District
- Conservation Subdivision Zone
- Transfer of Development Rights
- Subdivision ordinance

It is essential that a community defines the areas that are most appropriate to accommodate growth and areas where resources will be protected. A **growth boundary** is established through the comprehensive planning process. The boundary location takes into account population, commercial and industrial growth. Denser development is promoted within the boundary and services can then be directed to these areas to maximize the community's investment in infrastructure.

Districts and programs outside the boundary are directed to promoting those industries that are dependent upon land based resources (**agriculture and forestry**) and protecting the natural resources important to the community. This zone encompasses the areas that have historically supported agriculture and forestry and have soils and land suited to these uses.

The **conservation subdivision** zone is a residential zone that communities may choose to use in more rural areas. This allows residential development to occur in clusters while permanently protecting large blocks of open space and natural areas. It is not a staging area for future dense development. Residents must understand the limits of building in this zone. They will not receive "city" services such as public utilities, road expansions, street lighting, etc., in the future.

Purchase of Development Rights (PDR) and **Transfer of development rights** (TDR) are two more sophisticated tools that can be used by towns to protect open space and rural districts. In a PDR program, a landowner is paid to permanently restrict the future development of parcels. PDR programs are often targeted to protecting agricultural and natural areas. In a TDR program, a land owner sells development rights to a private developer. The rights are sold from areas that are designated to remain rural and transferred to areas that are designated for more urban or denser development.

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A **subdivision ordinance** can be used to ensure that sustainable development goals are met in new development. They often include a large number of procedural details and requirements.

Growth Boundary

A growth boundary is an established line beyond which urban services such as public sewer and water and transportation improvements will not occur. The town promotes efficient compact development within the boundary and discourages the premature low density development of rural areas. It can be a tool to preserve the small town character in many Maine towns.

In order to work, a community must define zones outside the boundary that will deter leapfrog development. If the zones outside the boundary allow sprawling small lot development on septic systems, developers will choose to develop in rural areas. The combination of a well-defined growth boundary and a transitional Rural Conservation Subdivision Zone immediately outside the Growth Boundary, and a surrounding Agricultural and Forest protection zone will provide strong incentives for developers to develop within the urban areas or within the constraints of the Rural Conservation Subdivision Zone.

In a rural area, an urban boundary can help protect small town quality of life, directing denser development to the center or downtown. In both rural and more urban areas, Growth Boundaries help ensure an efficient use of road, water, sewer and other infrastructure by keeping development adjacent to areas already served by urban services. Growth boundaries can also protect the discernable boundaries between cities, instead of cities blending unrecognizably into one another.

Choosing a growth boundary should be based upon the following information:

- An analysis of estimated population growth for a given planning period, often twenty years;
- An inventory of projected needs analysis of public facilities and infrastructure based on desired densities and patterns of development;
- An estimate of the amount of land needed and available for development at the desired densities to meet the population growth.

The established growth boundary should be clearly mapped and incorporated into the community's comprehensive plan and adopted by the community as policy. A model ordinance is available from Friends of Midcoast Maine to codify and implement a defined growth boundary.

A Growth Boundary does not have to remain static. As areas within the Growth Boundary are developed to their maximum capacity, the boundary can be modified to include once rural areas that

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are now contiguous to the expanding growth area. This will provide clear boundaries for planned phased development.

The following diagram shows the growth boundary and other districts that might be chosen by a town that wishes to protect open space and agricultural uses and focus development in areas where community services already exist.

GROWTH BOUNDARY



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Agriculture and Forest Protection District

An agricultural and forest protection district can protect natural resources and basic economic activities while preventing inefficient development outside the growth area. In order to establish this district for farming and timber harvesting, a town should have agricultural soils and forested lands for timber production. Farming and timber harvesting are both natural resource based activities that can be conducted in a sustainable manner using renewable resources. Farms can also provide locally grown food to the community.

Once again, prior to adopting an ordinance, the town should establish the goals and policies of supporting the protection of agriculture and forested lands in the comprehensive plan. These goals should state the sustainability and natural resource based reasons for protecting and maintaining agricultural and forested lands within the community.

There are several methods of protecting agricultural and forested lands through ordinances. Common to all of these is the town's decision to direct non-farm and non-forest land uses away from farming and forested areas.

The following sample combines a community agricultural and forest protection district. Both uses have similar characteristics: the need for large contiguous parcels of land for economic use and conflicts with residential uses that arise from the industrial aspects of agricultural (dust, chemical applications and odor) and forestry (use of large machinery and the change in the visual aspect of the forest by cutting.)

The boundaries of this district are tied to soils types and are typically in areas that historically have been farming areas. Obviously, good soils can not be moved and non-farm development on these soils diminished the quantity available for agriculture. Farming does not occur exclusively on good soils but farms can include soils that are good, poorer and forested. If a community wants to protect just agriculture or just forests lands, the ordinances can be modified to specify just that aspect.

The following language is a sample Agricultural and Forest Protection District. The remainder of this proposal is available upon request from Friends of Midcoast Maine.

Agricultural and Forest Protection District

I. Intent and Purpose

- A. Intent. The Agricultural and Forest Protection District is intended to protect areas of the community which are well suited for production of food, fiber and wood fiber. It is also the intent of this ordinance to minimize conflicts between incompatible uses by directing non-farm/forestry residential uses to other districts within the town.*

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B. Purpose. The purposes of the Agriculture and Forest Protection District are:

- 1. To protect and promote the continuation of farming in areas with the most suitable soils.*
- 2. To protect and promote the continuation of forestry as a long-term industry in areas suitable to forestry.*
- 3. To protect and promote the continuation of farming and forestry in areas of town that have historically contained these uses and therefore have developed compatible residential patterns of transportation infrastructure.*
- 4. To permit primarily agriculture and forestry land uses and activities.*
- 5. To separate agriculture and forestry land uses and activities from incompatible residential, commercial and industrial development, and public facilities.*
- 6. To achieve the goals of growth management, natural resource protection, and economic diversity as stated in the Comprehensive Plan.*
- 7. To prevent the conversion of agricultural and forest land to scattered non-farm/forest development which when unregulated, unnecessarily increases the cost of public services to all citizens and often results in the premature disinvestment in agriculture or forestry.*
- 8. To preserve wetlands and natural areas associated with farms and forest land which because of their natural physical features, are useful, as water retention and groundwater recharge areas, and as habitat for plant and animal life; and which have important aesthetic and scenic value which contributes to the unique character of the community.*

II. Definitions. For the purpose of this Ordinance, certain words and phrases are defined as follows:

Agricultural Land: Land whose use is devoted to the production of livestock, dairy animals, dairy products, poultry, poultry products, nursery plants, Christmas trees, forages and sod crops, grains and feed crops, and other similar uses and activities including equestrian activities.

Farm or Forest Parcel: A tract or parcel of land containing at least 25 acres, devoted primarily to agricultural or forestry uses, may contain a dwelling or other accessory uses.

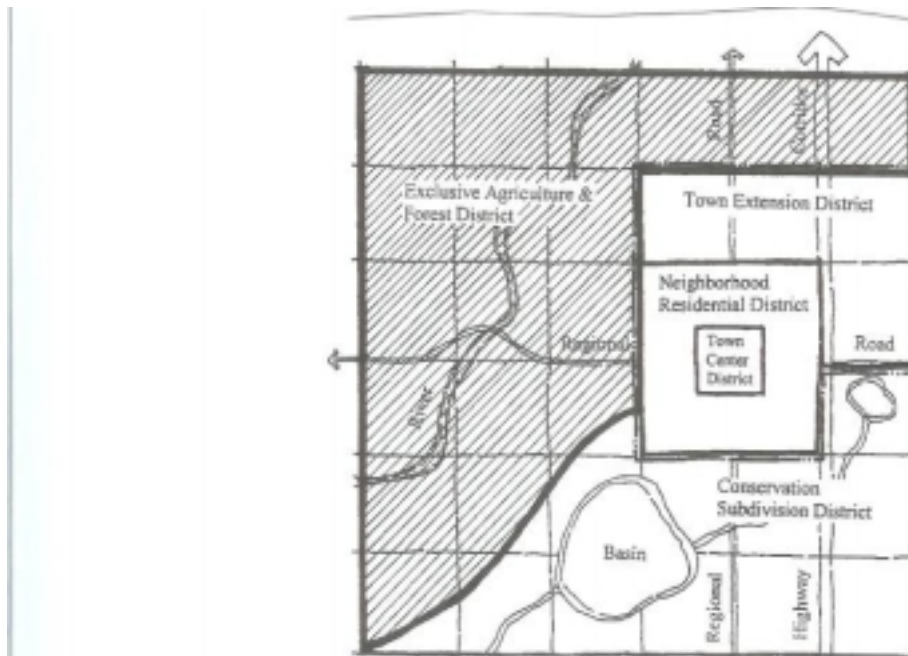
Non-farm/forest lot: A lot or parcel containing less than 25 acres and containing one or more dwelling units; or a lot within an agriculture or forest zoning district devoted to uses other than agriculture, forest or residential uses.

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The remainder of this model ordinance is available from Friends of Midcoast Maine. It includes Permitted Uses, Conditional Uses, Incompatible Uses, Minimum Area Requirements and Limitations on Subdivisions, Design Standards and Agricultural and Forest Management Standards.

AGRICULTURE AND FOREST PROTECTION DISTRICT



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Conservation Subdivision Ordinance

A conservation subdivision zone allows landowners to develop parcels by clustering residences on smaller lots while protecting remaining open space. This can be part of a growth management strategy. It can be a transition zone between clearly rural zones and more dense zones. This is a transition zone with clusters of homes and permanent open space and it can define the future outer limits of dense development. Conservation subdivisions can become a residential option in a rural area that does not have productive resources such as agricultural or forests lands.

Conservation subdivision zones should be chosen carefully. If active farming and forestry exists, it may not be appropriate for a conservation subdivision due to conflicts over noise, aesthetics and use of roads, etc. Conservation subdivisions are often seen as a quasi-urban option for limited use outside of the growth area. They are often an alternative for large lot estate lots. They contribute to a community's goals by reducing the number of individual septic systems, providing for permanent open space, reducing the amount of new road construction and reducing the amount of impervious surfaces. It should clearly be stated in the Comprehensive Plan that it is not merely a staging area for future dense urban development. The plan and ordinances should clearly state that services, such as public utilities, will not be provided to the zone.

Sample language follows. The purpose section should mimic language contained in the comprehensive plan.

Community Conservation Subdivision District

I. Intent and Purpose

- A. *Intent. The Conservation Subdivision (CS) District is intended to provide a non-farm residential development option that supports sustainable development goals of the town, protects open space and natural resources, and retains the predominantly rural character of areas outside the growth boundary. It is not the intent of the town to create a zone for future expansion of town services through this ordinance.*
- B. *Purpose. The purposes of the Conservation Subdivision Ordinance are:*
1. *To implement the goals of the Comprehensive Plan for sustainable development.*
 2. *To allow development that permanently preserves open space, agricultural lands, woodlands, wetlands, critical views, and other natural features of our rural town.*
 3. *To allow limited development in rural areas that do not contain natural resources, such as agricultural and forest lands, and significant natural areas.*

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4. *To allow limited development in areas outside the Growth Boundary where town services will not be extended.*
5. *To connect open space, trails, and recreation sites within the District and to the integrated open space and recreation system of the town.*
6. *To allow flexibility in the placement and type of dwelling units within the subdivision.*
7. *To promote the shared septic, drinking water and stormwater systems that prevent the degradation of water quality.*
8. *To reduce the amount of new roads and to allow flexibility in road specifications for roads serving residences in the District.*
9. *To reduce the amount of impervious surfaces in subdivisions, including driveways.*

II. Definitions: *For the purpose of this ordinance, certain words and phrases are defined as follows:*

Agricultural Land: *Land whose use is devoted to the production of livestock, dairy animals, dairy products, poultry, poultry products, nursery plants, Christmas trees, forages and sod crops, grains and feed crops, and other similar uses and activities including equestrian activities.*

Conservation easement. *As defined in Maine Statutes (Maine Conservation Easements – 33 M.R.S. § 476 et seq.) "Conservation easement" means a nonpossessory interest of a holder 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 resources; or maintaining or enhancing air or water quality of real property. [1985, c. 395, § 3 (new).]*

Conservation subdivision: *Any development of land within the boundaries of the conservation subdivision zone that incorporates the concepts of designated open space and clustering of dwelling units.*

Designated open space: *Open space that is designated within a conservation subdivision to be placed under a conservation easement permanently restricting future development.*

Developable area: *All land in a proposed subdivision that is not defined as undevelopable due to environmental conditions or in ordinances adopted by the town.*

Development: *An activity other than agricultural, forestry or mining practices which materially alters or affects the existing conditions or use of any land.*

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Gross density: *A density standard establishing the number of dwelling units allowed to be built in a conservation subdivision.*

Homeowners Association: *A formally constituted non-profit association or corporation made up of the property owners and/or residents of the development for the purpose of owning, operating and maintaining common open space and facilities.*

Open space: *Land for agriculture, forestry, natural habitat, pedestrian corridors and/or recreational purposes, that is undivided and permanently protected from future development.*

Primary Conservation Area: *Land that is identified in the resource inventory and subdivision application as having important natural values that should be permanently protected such as floodplains, wetlands, steep slopes, unique habitat, protective agricultural soils and forested land.*

Secondary Conservation Area: *Lands identified in the resource inventory and subdivision application as lands that complement or provide a buffer to the primary conservation areas, or provide additional open space or recreational lands.*

Undevelopable Area: *Those lands in a proposed subdivision that are restricted from development due to environmental conditions such as steep slopes, the presence of wetlands or waterways, or are restricted from development under ordinances adopted by the town such as Natural Resource Protection or Natural Resource Conservation Zone.*

The remainder of this model ordinance is available from Friends of Midcoast Maine upon request. It includes Development Standards: Minimum Size of Subdivisions, Maximum Gross Density, Open Space Requirements, Open Space Ownership and Management, Utilities, Lot and Building Site Design, Buffer Zones, Streets, Subdivision Process, Permitted Uses, Accessory Uses and Conditional Uses, Design Standards, Yard, Area and Building Size Requirements, Landscaping Requirements and Off-Street Parking and Loading.

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Transfer of Development Rights

Another tool used by towns to preserve open space and to channel development into the growth area is a Transfer of Development Rights (TDR) program. A TDR Program complements the underlying zoning districts. It encourages movement of development rights from one parcel of land that is designated to remain rural to a non-contiguous parcel that is designated as a growth area and able to receive denser development.

A TDR program should be based upon the comprehensive plan, which shows where dense uses should be developed and where rural areas should remain. Local government should adopt an ordinance defining sending zones, where development is discouraged and receiving zones, where dense development is encouraged. Land owners in sending zones voluntarily choose to sell development rights to developers who sue the rights to develop at increased densities in receiving zones.

The number of development rights that a landowner can sell is defined in the ordinance and is usually based on the number of acres in the selling parcel. The type of development that can occur in the receiving zones is also defined in the ordinance and is more intense than that allowed in the underlying zone. The underlying zone defines the type and amount of development that can occur if no development rights are bought or sold.

Transfer of Development Rights

I. Purpose. This ordinance is adopted for the following purposes:

- 1. To establish procedures by which development rights are grantedm conveyed, applied and recorded.*
- 2. To implement the goals of the Comprehensive Plan regarding growth management and protecting rural areas. This TDR program addresses the following specific goals as stated in the Comprehensive Plan.*
 - a. Direct development way from rural areas and areas without existing or planned infrastructure.*
 - b. Maximize the use of existing transportation and utility infrastructure before making new investments.*
 - c. Maintain a distinction between urban and rural areas.*
 - d. Preserve the rural character and landscapes of the town.*
 - e. Preserve agriculture and forestry as permanent land uses and viable economic activities in the community.*
 - f. Create an integrated system of open space, parkland and trails throughout the community.*
- 3. To serve additional public purposes through open space protection, including storm water management, and habitat protection.*

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II. *Definitions. For the purposes of this ordinance, certain words and phrases are defined as follows:*

Agricultural Land: *Land whose use is devoted to the production of livestock, dairy animals, dairy products, poultry, poultry products, nursery plants, Christmas trees, forages and sod crops, grains and feed crops, and other similar uses and activities including equestrian activities.*

Development: *An activity which materially alters or affects the existing conditions or use of any land.*

Development Rights: *An interest in and right to use and subdivide land for any and all residential, commercial and industrial purposes and activities which are not incident to agricultural and open space in accordance with zoning and other regulations.*

Open Space: *Land used for natural habitat, agriculture, and/or scenic views.*

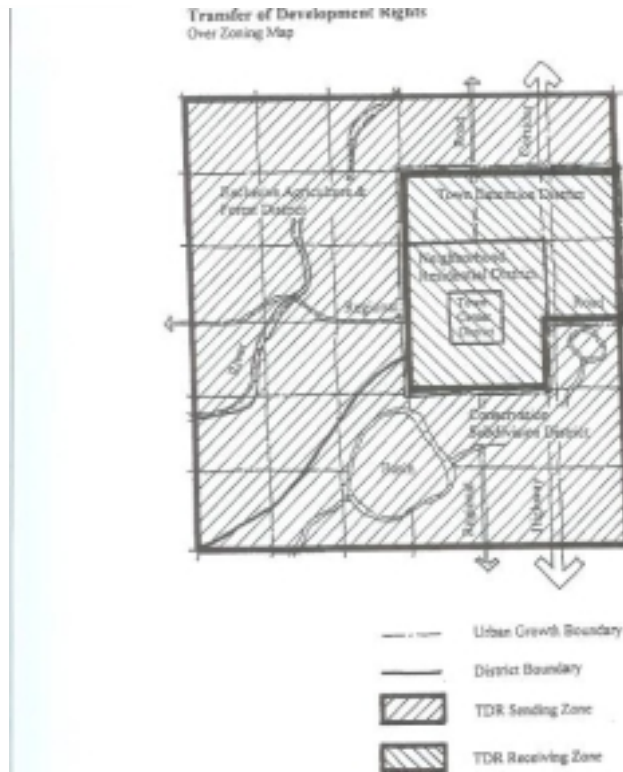
Sending zone: *A zone, defined in a TDR ordinance, designated for continued rural uses, within which landowners may sell their development rights to private individuals or a government agency. The development rights which are sold may be used to build homes in a designated receiving zone.*

Receiving Zone: *A zone, defined in a TDR ordinance, designated for urban uses, within which developers may use development rights transferred from land in a sending zone.*

The remainder of this model TDR ordinance is available upon request from Friends of Midcoast Maine. It includes The Establishment of Sending and Receiving Zones, Process for Transferring Development Rights, Using Rights in the Receiving Zone, and Public Acquisition of Rights.

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(The above information is a summary of the Model Sustainable Development Ordinances, Bilko Associates, Inc.)

Subdivision Ordinance

The subdivision ordinance includes a number of provisions outlining when and how the subdivision of lots is allowed. It identifies when the subdivision regulations are applicable, the information the developer must prepare and submit to the town, and other information. At a minimum, subdivision regulations should be adopted to take the first step in addressing the goals outlined in the comprehensive plan.

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Conclusion

Hundreds of books and articles have been written about how to preserve open space and how to preserve small town character. Perhaps best known and recommended is Randall Arendt's "Growing Greener: Putting Conservation into Local Plans and Ordinances" (Island Press, 1999). This book offers examples of additional language for codes and ordinances.

The examples offered above are not intended to be adopted verbatim. These examples are offered as suggestions for readers to consider when preparing comprehensive plans and accompanying ordinances. Any ordinances should be reviewed and modified by the town attorney prior to formal proposal and adoption.

For further information or to receive the complete text of the provisions mentioned above, contact The Friends of Midcoast Maine at 236-1077 or e-mail info@friendsmidcoast.org.

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