NORTHSTAR PLANNING

MEMORANDUM

TO: Lisbon Planning Board

CC: Mark Stambach, Code Enforcement Officer

From: Kate Burch, Planner, North Star Planning

RE: ROS-II and Open Space Subdivision Zoning Changes

Date: April 18, 2024 – *updated with Board changes 5/1/24*

Background

North Star Planning has developed a series of proposed ordinance changes regarding land use needs in the Rural Open Space zones. These changes are an incremental approach to respond to resident feedback that more flexibility is desired for landowners in these zones.

Public feedback also emphasized the need for town programmatic and communications regarding easements, economic development, and understanding accessory dwelling units and the impact of LD2003. We recommend these needs are also presented to the Town Council when these zoning changes move forward.

The Planning Board held several workshops in 2023 to discuss this issue. An online survey was opened to the public from December 2023-January 2024 for feedback. The Board held a public workshop on January 25, 2024, and then discussed the results and recommendations in a workshop at the February 22, 2024 meeting.

The Board has held two workshops to review the proposed changes outlined in this memo, on March 14, 2024 and March 28, 2024. The meeting on April 11, 2024 will be the first reading of these ordinance changes.

Overview of Zoning Changes

Changes are proposed to ROS-II and to the Open Space Subdivision ordinance. No changes are proposed for ROS-I at this time. The zoning changes proposed are a targeted adjustment. There are no major changes to existing policy.

There are three major policy changes proposed that the Board should review and discuss.

1. Change zoning (Sec. 70-362) to allow residential subdivisions in ROS-II.
2. As a result, Sec. 66-154 will go into effect, requiring Open Space Subdivision design for all subdivisions over 10 acres in ROS-II.
3. Road and driveway standards have been added to the Open Space Subdivision ordinance (Sec. 66-155) to be more consistent with general road standards (with context-sensitive waivers permitted.)

The remainder of the changes consist of clean-up and revisions of the Open Space Subdivision ordinance language to make it clearer and more concise – in "plain English." No additional policy changes were made.

Consistency with Comprehensive Plan
The 2019 Comprehensive Plan set the policy to "Provide for innovative development options that conserve farmland." Several strategies follow, including disallowing new residential subdivisions in the ROS-II zone.

While we are proposing to repeal this ordinance provision, the proposed ordinance changes remain consistent with the policy to conserve farmland and is consistent with the Comprehensive Plan.

Proposed Zoning Changes - Redlined

Chapter 70, Article IV, Division 5A: Rural Open Space II Zoning District

Sec. 70-362. - Performance or land use standards.

Permitted uses and conditional uses in this division shall conform to the performance standards delineated in article VI of this chapter and the following:

~~(1) After the effective date of this amendment, residential subdivisions are prohibited.~~

(2) After the effective date of this amendment, rear lots are prohibited.

Chapter 66, Article III, Division 2

Sec. 66-155. - Open space subdivisions.

(a) *Purpose*. It is the policy of the Town of Lisbon to encourage the use of open space subdivisions in order to preserve ~~a sense of~~ open space, provide for agriculture and forestry as well as recreational land, preserve other resources identified in the Town of

Lisbon comprehensive plan, and harmonize new development with the traditional open, wooded, agricultural and village landscapes.

A open space subdivision achieves the purposes of this performance standard by reducing the lot size, frontage and setback requirements as contained in Chapter 70, modifying the road design standards and clustering housing and uses in those areas where they have the least impact on identified environmental, agricultural and other open space resources. These resources are then permanently preserved by the use of covenants and restrictions or conservation easements that run with the land. The open space principle can be applied to subdivisions of any size. It shall not be construed as granting variances from dimensional standards when the planning board grants waivers provided for in this section as allowed for in 30-A M.R.S.A. § 4353.4-C.

~~This standard is intended to implement that policy by providing incentives that afford flexibility to a subdivider in road and lot layout and design, placement of residential structures and road frontage requirements and by allowing the planning board to waive or reduce certain otherwise applicable standards and provisions of this chapter and Chapter 70, Zoning, if the subdivider commits to the permanent preservation of important open space resources. It shall not be construed as granting variances from dimensional standards when the planning board grants waivers provided for in this section as allowed for in 30-A M.R.S.A. § 4353.4-C. These incentives are designed to encourage greater flexibility and more innovative approaches to housing and environmental design that will promote the most appropriate use of land and will preserve, as permanent open space, agricultural or forestry land, important natural features, wildlife habitat, water resources, ecological systems, and historic and scenic areas for the benefit of present and future residents.~~

(b) *Applicability*. The provisions of this ordinance shall be mandatory for all subdivisions of 10 acres or greater in the ROS-I and ROS-II zones, and optional for all subdivisions in any other zone.

(c) *Planning board review.*

(1) The planning board shall review the application in accordance with 30-A M.R.S.A. § 4404 and the chapter as modified by the provisions of this section.

(2) The submissions for an open space subdivision shall include all plans and materials required for a conventional subdivision under this chapter.

(3) *Lots and Dwelling Units.* In planning board review and approval of an open space subdivision, the following requirements shall apply and shall supersede any inconsistent or more restrictive provisions of this chapter or Chapter 70, Zoning.

a. All open space subdivisions shall meet the use standards of the zoning district in which they are located.

b. The overall density of the subdivision shall not exceed the density requirements of the zoning district in which it is located. ~~In the event that an open space subdivision is located in more than one zoning district, the overall density of the subdivision shall not exceed the combination of the density requirements of the districts in which the open space subdivision is located.~~ In calculating overall density the land area contained in road rights-of-way ~~that are proposed for public acceptance~~ shall be deducted prior to determining density.

c. A lot for a dwelling unit created as part of an open space subdivision shall not be further divided. ~~, except that a lot for a dwelling unit created as part of an open space subdivision where such lot shall have within its bounds designated open space may not be further divided if the original approved plan shall have reserved future development of such lot, but any such further division shall only be made in accordance with this standard.~~

d. *Density bonus.* The planning board may grant a density bonus of one lot or dwelling unit for each ten lots or dwelling units when it makes a written finding that the open space subdivision design provides public access to open space or pedestrian friendly layouts through the use of sidewalks or trail systems. ~~within the project or provides linkages for pedestrian movements between adjoining properties which contributes to town wide open space planning. The planning board must find that the project can provide for adequate subsurface wastewater disposal and adequate supply and quality of water for both domestic and firefighting purposes, if public sources are not available, to grant the density bonus.~~

(d) *Layout and siting standards.* In planning the location and siting of residential structures in an open space subdivision, priority should be given to the preservation of the open space for its agriculture or natural resource value with ~~human habitation activity~~ residential structures located and sited on the lower valued natural resource portion of a parcel ~~taking into account the contours of the land and the reasonableness of slopes~~.

The building lots and designated open space ~~and/or residential structures~~ shall be laid out and be sited according to the following principles to the greatest extent feasible. The planning board in its discretion shall resolve conflicts between these principles as applied to a particular site.

(1) Maximize contiguous usable area for agriculture, forestry, conservation areas, or open space for recreation;

(2) Preserve essential habitats of rare, threatened or endangered wildlife, rare or exemplary plants and natural communities, and high value plant and animal habitat areas identified on State Beginning with Habitat maps in protected open space;
(3) Preserve rural landscape features, including significant trees, tree lines, stone walls, and other natural features;
(4) Create linkages to existing open space, trails, natural areas, and habitat corridors where possible;
(5) Lots within woodlands or along the far edges of open fields to allow new residential structures to be visually absorbed by natural landscape features;
(6) Lots where scenic views from public roadways are least likely to be blocked or interrupted;
(7) Architectural compatibility of new construction with existing buildings in the community.

~~(1) In the least suitable agricultural soils and in a manner which maximizes the useable area remaining for the designated open space use, where agricultural, forestry, or recreational, existing or future uses, are particularly sought to be preserved;~~

~~(2) Within woodlands, or along the far edges of open agricultural fields adjacent to any woodland to reduce encroachment upon agricultural soils, to provide shade in the summer, and shelter as well as solar gain in the winter, and to enable new residential development to be visually absorbed by natural landscape features;~~

~~(3) In such manner that the boundaries between residential lots and/or structures and active agricultural or forestry land are well buffered by vegetation, topography, roads or other barriers to minimize potential conflict between residential and agricultural or forestry uses;~~

~~(4) In locations where buildings may be oriented with respect to identified scenic vistas, natural landscape features, topography and natural drainage areas, in accordance with an overall plan for site development, scenic vistas may be addressed by creating at least one scenic window per development with at least one turnout suitable for public use;~~

~~(5) In locations that provide compatibility in terms of physical size, visual impact, intensity of use, proximity to other structures, and density of development with other permitted uses within the zoning district;~~

~~(6) In locations such that diversity and originality in lot layout and individual building, street, parking layout is encouraged; and~~

~~(7) So that individual lots, buildings, street and parking areas shall be designed and situated to minimize alterations of the natural site, to avoid the adverse effects of shadows, noise and traffic on the residents of the site, to conserve energy and natural resources, and to relate to surrounding properties, so as to improve the view from and of buildings.~~

(e) *Space standards.*

(1) Shore frontage, shore setback and shoreland density requirements shall not be reduced below the minimum required in the zoning district.

(2) Distances between residential structures shall be a minimum of the height of the tallest adjacent structure.

(3) When individual lots will be laid out, the required minimum lot size or minimum land area per dwelling unit for the building envelope may be reduced. Unless public sewage collection and treatment is provided, no lot shall be less than 20,000 square feet.

(4) Minimum road frontage requirements may be waived or modified by the planning board provided that:

a. Any applicable provisions regarding roads in subsection (g) of this section are satisfied; and

b. Adequate access and turnaround to and from all parcels and/or structures by fire trucks, ambulances, police cars and other emergency vehicles can be ensured by private roads and/or common driveways.

(5) A reduction of required setback distances may be allowed at the discretion of the planning board, based upon the public benefits to be achieved from the design. ~~provided that the front and rear setbacks shall be no less than 25 feet or that required for the applicable zoning district, whichever shall be less. For the perimeter of cluster development, overall development setback shall not be reduced below the minimum front, side and rear setbacks required in the zoning district unless the planning board determines a more effective design of the project can better accomplish the purposes of this performance standard.~~

(6) No individual lot or dwelling unit shall have direct vehicular access onto a public road existing at the time of development.

(f) *Utilities*.

(1) All utilities shall be installed underground unless specifically waived by the Planning Board. Transformer boxes, pumping stations and meters shall be located so as not to be unsightly or hazardous to the public.

(2) All structures requiring plumbing in the development shall be connected to the public sewer system, individual septic systems, or a shared subsurface disposal system in accordance with the minimum standards set forth in the State of Maine Subsurface Wastewater Disposal Rules. Proposed systems shall in no way endanger groundwater supplies which are currently being utilized as a water source for any existing development or which are to be utilized as a common or individual water supply for the proposed development.

(3) Shared subsurface disposal systems may be permitted in designated open space provided that requirements of the Maine State Plumbing Code are met, including appropriate provisions for legal obligations related to maintenance and replacement.

~~At the discretion of the planning board, in order to achieve the most appropriate design and layout of lots, residential structures and open space, utilities including individual wells and septic systems may be located on designated portions of the open space, if necessary, provided they shall not unreasonably interfere with the open space purposes or uses to be achieved under this section.~~

~~(1) All structures requiring plumbing in the development shall be connected the public sewer system, to individual septic systems or a private central collection and treatment system in accordance with the minimum standards set forth in the State of Maine Subsurface Wastewater Disposal Rules. Proposed systems shall in no way endanger ground water supplies which are currently being utilized as a water source for any existing development or which are to be utilized as a common or individual water supply for the proposed development.~~

~~(2) If a private central collection system is proposed, the applicant must show either that at least one designated site for each lot, in the open space or on the lot, has adequate soils and land area suitable for subsurface waste disposal for each lot in accordance with the minimum standards set forth in the State of Maine Subsurface Wastewater Disposal Rules, or that a second site on the parcel has the size, location and soil characteristics, to accommodate a system similar to the one originally proposed.~~

~~(3) If a private central collection system is proposed, the system shall be maintained by an homeowners' association or under an agreement of the lot or unit owners in the same fashion required for maintenance of the open space by a homeowners' association or the lot or unit owners in common and written evidence of said~~

~~maintenance agreement shall be submitted to the planning board. The planning board may require the developer and homeowners association to retain a qualified third party to inspect and approve the system from time to time and furnish a copy of his report to the code enforcement officer.~~

(g) *Roads and common driveways*. The planning board shall require private roads and common driveways to comply with the design standards set forth in this chapter except as provided in subsection (g)(4) of this section.

(1) Common driveways are allowed and encouraged where appropriate to access individual lots. The following design and construction standards shall apply:
   (a) A common driveway serves up to 2 lots.
   (b) The maximum length shall not exceed 1000 feet.
   (c) All common driveways in excess of 500 feet shall contain at least one 20 foot by 30 foot turnout. The exact size and location shall be determined by the Planning Board with the review of the Fire Department.
   (d) The common driveway shall have a minimum 25 foot right of way (ROW) for up to 2 lots or dwelling units
   (e) The travel way shall be 12 feet wide and shall be located as close as possible to the ROW centerline.
   (f) The travel way shall be constructed of a minimum of 18 inches of gravel.
   (g) Drainage ditches and culverts shall be provided as necessary.

(2) Roads serving open space subdivisions shall meet the following standards:
   (a) Roads serving open space subdivisions shall have a minimum 16-foot travel way with a minimum shoulder width of 3 feet, and a maximum pavement width of 20 feet. All roads shall have a minimum 50-foot ROW.
   (b) Where feasible, road alignments shall work with the topography and existing site conditions to follow the natural contours and avoid physical features that give the land its character.
   (c) Drainage ditches and culverts shall be provided as necessary.

   (d) The subdivision plan shall show the road clearly labeled "private road."

~~(1) The subdivider shall submit to the planning board as part of the application for approval a professional engineers drawing showing the location and drainage characteristics, dimensions and grade of roads and common driveways as well as specifications setting forth their proposed composition.~~

~~(2) The subdivision plan shall show the road clearly labeled "private road."~~

~~(3) Whenever possible and as far as practicable, the roads and common driveways shall:~~

~~a. Follow natural contours in an effort to limit phosphorous export;~~

~~b. Be limited in width, curvilinear in design, and keeping within the rural character of the town;~~

~~c. Turn away from the front access to public roads, and shall use sufficiently dimensioned culverts to accommodate pre-development and post-development drainage and flows, where necessary.~~

~~(4) Travelways and shoulders of roads and common driveways within open space subdivisions shall meet the following minimums:~~

~~a. Common driveways serving three or fewer dwelling units: 12 foot travel way.~~

~~b. Roads serving four units: 16-foot travel way and three-foot shoulders.~~

~~c. Roads serving five to ten units: service 16-foot paved travel way and three-foot shoulders.~~

~~d. Roads serving 11 to 50 units: 20 foot paved travel way and three-foot shoulders.~~

(h) *Open space requirements.* In planning board review and approval of an open space subdivision, the following requirements shall apply and shall supersede any inconsistent or more restrictive provisions of this chapter or Chapter 70, Zoning.

(1) Designated Open Space.
- *(a)* In all districts, an area of at least 50 percent of the gross acreage of the parcel being divided shall remain as open space.
- (b) Open space shall not include individual lots, driveways, roads, or road rights of way.
- (c) Designated Open Space shall be shown on the plat plan with the following notation: "Designated Open Space shall not be further subdivided or used for future building lots."
- (d) Designated Open Space shall be marked in the field to distinguish those areas from private property.
- (e) Open space areas shall be contiguous, where possible, to allow linking of open space areas throughout the town.

(2) *Open space uses.* Uses are limited to passive recreation, passive outdoor activities, agriculture, forest management, and for preserving the natural areas or habitat. Potential uses (e.g., farming) may be by the subdivider, owners or residents, or a

lessee. The use of any open space may be further limited or controlled at the time of final subdivision approval as necessary to protect adjacent properties.

(3) Ownership. Designated Open Space shall be owned, preserved, and maintained as required by this section by any of the following mechanisms or combinations thereof as a condition of subdivision approval:

(a) Dedication of open space to the Town or a suitable land trust, if either is willing to accept the dedication.

(b) Dedication of development rights of open space to a suitable land trust with ownership by a private individual or homeowners association.

(c) Ownership of the open space by a homeowners' association which assumes full responsibility for its maintenance with open space protection deed restrictions enforceable by any landowner in the subdivision, any owner of separate land parcels abutting the open space, or the municipality

(d) For open space reserved for agriculture or woodlot use, ownership by a private individual with open space protection deed restrictions enforceable by any land owner within the subdivision, any owner of separate land parcels abutting the open space, or the municipality.

(4) *Maintenance standards*. Ongoing maintenance standards and the entity responsible for stewardship and management shall be established as a condition of subdivision approval. Such maintenance standards may include such conditions, obligations, or costs to maintain their use, facilities, and maintenance of vegetation.

(5) *Final plan.* The final plan shall include information or provide reference to a legal document which defines use, ownership, management, method of preservation, and the rights, if any, of the owners in the subdivision to such land or portions thereof, and shall contain a reference or notation indicating any conservation easements, deed restrictions, or other documents regarding those provisions required to be recorded to implement such reservations, restrictions or provisions.

~~Open space set aside in an open space subdivision shall be permanently preserved as required by this section except where open space is dedicated by a landowner under contract with the town for a term of years as set forth below. Land set aside as permanent open space may, but need not be, a separate tax parcel. Such land may be included as a portion of one or more large parcels on which dwellings are permitted provided that a conservation easement or a declaration of covenants and restrictions is placed on such land pursuant to subsection (h)(3) of this section and provided that the planning board approves such configuration of the open space.~~

~~(1) *Open space*. In all districts at least 50 percent of the gross acreage shall remain as open space outside of individual lots or building envelopes assigned to individual dwelling units and/or road rights-of-ways that are proposed for public acceptance.~~

~~(2) *Open space uses.* On all parcels, open space uses shall be appropriate to the site, Open space should include natural features located on the parcel(s) such as, but not~~

~~limited to, agricultural land, forested acreage, wildlife habitat and historic features and sites. Open space shall be preserved and maintained subject to the following, as applicable:~~

~~a. On parcels that contain significant portions of land suited to agriculture, open space shall be preserved for agriculture or other compatible open space uses such as forestry, recreation (active or passive) and resource conservation.~~

~~b. When the principal purpose of preserving portions of the open space is the protection of natural resources such as wetlands, aquifers, steep slopes, wildlife and plant habitats, and stream corridors, open space uses in those portions may be limited to those which are no more intensive than passive recreation.~~

~~c. Open space areas shall be contiguous, where possible, to allow linking of open space areas throughout the town.~~

~~d. The use of any open space may be limited by the planning board at the time of final plan approval where the planning board deems it necessary to protect adjacent properties or uses, or to protect sensitive natural features or resources. A proposed change in use of open space land, other than that specified at the time of plan approval, shall be reviewed by the planning board as an amendment to the approved plan.~~

~~e. Further division of open space or its use for other than agriculture, forestry, recreation or conservation, except for easements for underground utilities, shall be prohibited and shall be so stated by deed restrictions. Structures and buildings accessory to recreation or conservation uses may be erected on open space, subject to planning board approval.~~

~~(3) *Notations on plan*. Open space areas must be clearly labeled on the final plan. The final plan shall include information or provide reference to a legal document which defines open space uses, ownership, management, method of preservation, and the rights, if any, of the owners in the subdivision to such land or portions thereof. The open space land shall be permanently reserved for open space purposes and is subject to reservations for future development, including those provisions allowed under subsection (h)(4)(d) of this section. Reference or notations shall also be provided for any conservation easements or deed restrictions required to be recorded to implement such reservations or restrictions.~~

~~(4) *Preservation in perpetuity.* An owner of a parcel of land may designate all or a portion of the parcel for open space use in perpetuity if the purposes set forth in~~

subsection (h)(4)(a)—(f) of this section are achieved and all other requirements of this performance standard are met subject to the following conditions:

a. A perpetual conservation easement, or declaration of covenants and restrictions, restricting development of the open space land must be incorporated in the open space plan.

b. The conservation easement may be granted to or the declarations may be for the benefit of a private party, third party or other entity, the town, with the approval of the council or to a qualified not-for-profit conservation organization acceptable to the planning board.

c. Such conservation easement or declaration of covenants and restrictions shall be reviewed and approved by the planning board and be required as a condition of plan approval hereunder.

d. The planning board may require that such conservation easement, or declaration of covenants and restrictions, be enforceable by the Town of Lisbon if the town is not the holder of the conservation easement or beneficiary of the declarations.

e. The conservation easement or declarations shall prohibit residential, industrial, or commercial use of such open space land (except in connection with agriculture, forestry and recreation) and shall not be amendable to permit such use.

f. The conservation easement or declaration shall be recorded in the Androscoggin County Registry of Deeds prior to or simultaneously with the filing of the Open Space Subdivision final plan in the Androscoggin County Registry of Deeds.

(i) *Maintenance standards*. Ongoing maintenance standards, where appropriate, shall be established, enforceable by the town against the owner(s) of common land, including open space land, roads and other facilities as a condition of subdivision approval. Such maintenance standards may include such conditions, obligations, or costs to maintain their use, facilities and/or scenic character.

(j) *Notations on plan.* Common lands, roads or facilities, including open space lands, must be clearly labeled or referenced on the final plan. The final plan shall include information or provide reference to a legal document which defines use, ownership, management, method of preservation, and the rights, if any, of the owners in the subdivision to such land or portions thereof, and shall contain a reference or notation indicating any conservation

~~easements, deed restrictions, or other documents regarding those provisions required to be recorded to implement such reservations, restrictions or provisions.~~