B Open Space Residential Design (OSRD) Site Plan Ordinance
(Ord. No. 105, 12-29-05)

This Open Space Residential Design Site Plan Ordinance encourages land-sensitive construction, siting and design of significant new residential projects through a cooperative exploration of alternatives which allows relaxation of current zoning and subdivision dimensional standards and which permits increased density in return for achievement of open space preservation targets.

I. Purpose and Intent

1. The Primary Purposes for this OSRD ordinance are the following:

(a) To allow for greater flexibility and creativity in the design of residential developments;

(b) To encourage the protection and permanent preservation of open space, forestry land, wildlife habitat, other natural resources including public water supplies, aquifers, water bodies and wetlands, and historical resources in a manner that is consistent with Beverly's Master Plan and Open Space and Recreation Action Plan (together, the "Master Plans");

(c) To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision;

(d) To minimize the total amount of disturbance on the site;

(e) To further the goals and policies of the Master Plans;

(f) To facilitate the construction and maintenance of housing, streets, utilities, and public service in a more economical and efficient manner;

(g) To protect the regional water supply from contamination and to ensure it will be adequate to serve population requirements in the future.

2. The Secondary Purposes for the OSRD ordinance are the following:

(a) To protect the value of real property;

(b) To provide for a diversified housing stock;

(c) To provide affordable housing to persons of low and moderate income.

II. Applicability

1. Covered Projects. A covered project shall include any development or construction of new housing (including a condominium) on a tract of land that

(a) will create four (4) or more buildable lots by reason of a subdivision in the R-10, R-15 and R-22 zones or
(b) will create four (4) or more new dwelling units (excluding new units in an existing building) in the R-10, R-15 and R-22 zones or
(c) consists of an area of 2 acres or more in the R-10, R-15 and R-22 zones or
(d) consists of an area of 180,000 square feet (i.e. just over 4 acres) or more in the R-45 zone and will create three (3) or more buildable lots by reason of a subdivision or four (4) or more dwelling units (excluding new units in an existing building) or
(e) consists of an area of 300,000 square feet (just under 7 acres) or more in the R-90 zone and will create three (3) or more buildable lots by reason of a subdivision or four (4) or more dwelling units (excluding new units in an existing building)

shall be subject to this OSRD ordinance.
(Ord. No. 24, 7-2-08)

2. Zoning Classification. This OSRD ordinance shall apply only to those tracts (or to the portions thereof) located in one or more of the City's R-10, R-15, R-22, R-45, and R-90 residential zoning districts, but shall not apply to any tract or portion of a tract in an R-6, RSD, RHD or RMD zoning district. Any other residential project in a zoning district other than R-6, RSD, RHD, or RMD, may elect to be subject to this OSRD ordinance, but such election shall not eliminate the requirement to obtain a use variance or special permit where otherwise required in such non-residential zoning district.

3. Tract. A "tract" for the purposes of this OSRD ordinance shall consist of one or more contiguous lots under single legal or beneficial ownership or proposed to be developed as a single project, including in phases. Lots separated only by a private way shall be considered contiguous for the purposes of this OSRD ordinance.

   The calculation of the area of a "tract" shall be the same as the calculation of the area of a lot as set forth in the definition of "Lot" in Section 29-2 of this ordinance.
   (Ord. No. 24, 7-2-08)

   This ordinance shall not prevent endorsement of any qualified Approval Not Required ("ANR") plan but shall apply to all Covered Projects after ANR endorsement has been received or obtained.

   The Planning Board may waive the requirements of this Ordinance for any Approval Not Required ("ANR") plan, provided that it finds that:

   (a) no new building lots are being created; or
   (b) no more than two (2) new building lots are created **and**

      (i) the owner and his/her successors in title, through deed restriction, relinquish all rights of future division that will create additional building lots together or in conjunction with land outside the tract; and
      (ii) the applicant provides a plan identifying and delineating primary and secondary conservation areas, potentially buildable areas, and, where possible, proposed house location(s); and
      (iii) the applicant satisfies the Planning Board that siting of the new house(s) and associated site improvements, including stormwater management, conform to the purposes and intent of this Ordinance.
      (Ord. No. 24, 7-2-08)

4. OSRD Site Plan Approval. No building permit shall be issued for, nor any construction or foundation work be commenced on, any portion of a Covered Project without first obtaining OSRD Site Plan Approval pursuant to this OSRD Ordinance for the entire project.

III. Initial Review

1. Initial Review. Prior to submitting its application for an OSRD site plan approval, the applicant shall participate in initial review at one or more meetings of the Planning Board.

(a) The Planning Board shall send prior written notice of such review to the Beverly City Council, the Beverly Conservation Commission, the Beverly Board of Health, the Beverly Open Space and Recreation Committee, and such other municipal or regional entities as it shall judge appropriate. Such Council, Commission, Board, Committee, or other entity may send a representative to speak in an official or unofficial capacity during such review. In addition, the Planning Board shall, at the applicant's expense, send written notice, at least seven (7) days prior to the initial meeting at which such review shall take place, to each abutter and abutter of an abutter of the tract. The Planning Board shall also, at the applicant's expense, send legal notice of the initial meeting for publication in a newspaper of general circulation at least seven (7) days prior to said meeting. The purpose of initial review is to commence discussions with the Planning Board at the earliest possible stage in the development.

(b) At or during the initial review, the applicant shall submit two or more conceptual plans showing materially different alternative development configurations, shall describe the development and how it furthers the goals of this ordinance, shall incorporate the four-step General Design Process described in Section V.3 below, seek feedback from the Planning Board and/or its technical experts, and indicate a possible timetable for submittal of a formal application. Conceptual plans shall not be detailed, but shall show the general features of the site and the possible location of structures and ways. Imaginative and creative land use planning should be applied with the aim of furthering the purposes of this ordinance.

(c) At the expense of the applicant, the Planning Board may engage technical experts to perform preliminary review of the plans submitted by the applicant in order to facilitate selection of a Preferred Plan (as described in Section III.2 below) and submittal of a formal application for OSRD site plan approval. Prior to the initial review meeting, the Planning Board shall request comments from the Conservation Commission on all ecologically sensitive areas within its jurisdiction, including, but not limited to, wetlands, water bodies, and their buffer zones.

(d) The initial review may extend over more than one meeting or session and shall not constitute or require a public hearing. However, members of the public shall be welcome to speak during a required public comment period to be held prior to the selection of a Preferred Plan. The public is also encouraged to

submit comments in writing to the Planning Board with respect to any proposed concept plan or Preferred Plan.

(e) The applicant is encouraged to meet with abutters and neighbors prior to submitting a Preferred Plan to discuss the applicant's intentions and possible alternative configurations. The applicant shall inform the Planning Board of the substance of its meetings with abutters and neighbors.

2. Preferred Plan. At least one concept plan submitted during the initial review shall be amended, refined and conditioned so as to constitute a "Preferred Plan" as described below. Submission during the initial review stage of at least three concept plans showing alternative development configurations is strongly encouraged.

   (a) The applicant shall not submit a Preferred Plan until the Planning Board and the applicant have discussed the initial concept plans and alternative development and conservation configurations so that the input of the Planning Board and Conservation Commission can be taken into account in the creation of a Preferred Plan depicting the configuration which best addresses the objectives of this OSRD ordinance.

   (b) Preferred Plan shall address the general features and topography of the land, identify major types and the size of vegetation, and give configurations of the lots. The Preferred Plan shall also show roadways, open space, wetlands, water bodies, and their buffer zones and shall include such other information as may be required in the OSRD Site Plan Rules and Regulations.

   (c) The applicant must demonstrate that the Preferred Plan incorporates the four-step General Design Process set forth in Section V below, and the Design Standards according to VI.3 below, when determining a proposed design for the development.

3. Yield Plan. Before approval of the Preferred Plan by the Planning Board in the initial review, the applicant shall submit a Yield Plan (as defined in Section IV. below). Approval of a yield plan shall be subject to a public hearing, which shall occur as early in the initial review process as reasonably possible but no later than 45 days after submission of the Initial Review Application. The Planning Board shall, at the applicant's expense, send written notice, at least seven (7) days prior to the public hearing, to each abutter and abutter of an abutter of the tract. The Planning Board shall also, at the applicant's expense, send legal notice of the public hearing for publication in a newspaper of general circulation at least seven (7) days prior to said meeting.

(Ord. No. 24, 7-2-08)

4. Rules and Regulations. The Planning Board shall adopt rules and regulations relative to the size, form, number and contents of the Conceptual plans, Preferred plan, Yield plan and OSRD Site Plan. (Ord. No. 24, 7-2-08)

5. Approval of Preferred Plan. A Preferred Plan which does not exceed the Basic Maximum Number of dwelling units possible under the Yield Plan shall be approved by the Planning Board subject to such conditions as it deems appropriate to achieve the goals of this OSRD ordinance. When the Planning Board approves the Preferred Plan, the applicant may then file an application for OSRD Site Plan Approval. Approval of a Preferred Plan shall not foreclose further review or amendment of the Yield Plan or Preferred Plan during public hearings on an OSRD Site Plan Application under Section VI below.

IV. Basic Maximum Number (Of Lots/Units)

In order for a Preferred Plan to be approved, the number of lots or dwelling units on the tract shall not exceed the Basic Maximum Number, as defined below.

1. The Basic Maximum Number shall be the maximum number of lots (or, where no subdivision or lot division is involved, number of dwelling units) that could be placed upon the tract under a conventional subdivision or development plan pursuant to then applicable zoning and subdivision requirements (other than this OSRD ordinance), without variances or waivers of any kind, including from other bodies having regulatory authority over the development or any portion thereof (such as the Conservation Commission and Board of Health) unless such variances or waivers have already been obtained from such other authority, and accurately depicted on a "Yield Plan". Waivers from the Planning Board's Rules and Regulations Governing the Subdivision of Land are permitted in determining the Basic Maximum Number. Such waivers must be sought and obtained during the OSRD process, but prior to acceptance of a Yield Plan. The Yield Plan shall display the general features and topography of the land shown on the Preferred Plan, the dimensions, areas, and locations of the lots, open space, roadways, wetlands, water bodies, and their buffer zones and such other information as is required from time to time by the OSRD rules and regulations.
(Ord. No. 24, 7-2-08)

2. The applicant shall have the burden of proof in establishing the Basic Maximum Number of lots (or dwelling units) resulting from the design and engineering specifications shown on the Yield Plan. The Planning Board shall consider at least the following factors in determining if such burden of proof has been met:

   (a) the applicant has demonstrated through title insurance or other acceptable evidence that it is the owner of, or in control of, the entire tract depicted within the OSRD Site Plan;

   (b) the existence of wetlands pursuant to an approved Abbreviated Notice of Resource Area Delineation ("ANRAD") as described in Section V.1. below and other environmental and regulatory constraints upon development has been adequately shown and dealt with; and

   (c) the applicant demonstrates that under then current market conditions the number of dwelling units, and their related improvements and infrastructure, as shown on the Yield Plan could be reasonably and economically constructed.

V. General Design Process

During the OSRD site plan initial review and approval process, but no later than the time of submittal of the Preferred Plan described above, applicants shall demonstrate to the Planning Board that the following steps, in the order indicated, (i) were performed by a licensed Landscape Architect and Registered Professional Engineer and (ii) were followed in determining the layout of proposed streets, buildings, house lots, and open space as shown on the required plans.

1. Step One: Identifying Conservation Areas. Identify preservation land by two steps.

   First, Primary Conservation Areas (such as wetland resource areas, riverfront areas, and floodplains regulated by local, state or federal law) and Additional Conservation Areas (including elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as historic sites, historic structures, and scenic views) shall be identified and delineated. Wetlands resource areas shall be determined by the Conservation Commission pursuant to the ANRAD process under the Beverly wetlands ordinance and regulations.

   Second, the Potentially Developable Area will be identified and delineated. To the maximum extent feasible, the "Potentially

Developable Area" shall consist of land outside identified Primary and Additional Conservation Areas. The Potentially Developable Area shall not be construed as the final "Buildable Area" as defined by Section VIII.1.(b).
(Ord. No. 24, 7-2-08)

2. Step Two: Locating Housing Sites. Locate the approximate sites of all residential buildings within the Potentially Developable Area.
(Ord. No. 24, 7-2-08)

3. Step Three: Aligning Streets and Ways. Align streets in order to access the house lots and residential buildings. Additionally, new access ways should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks, trails and bicycle paths.

4. Step Four: Lot Lines. Draw in new lot lines (where applicable) and include the delineation of private yards, exclusive easement areas, and shared amenities, with a design that seeks to encourage an integrated community within the proposed development and further the goals of the Master Plan and the Open Space and Recreation Action Plan. Shared amenities should be located so as to encourage use by persons inside and outside of the Covered Project.
(Ord. No. 24, 7-2-08)

VI. Site Plan Approval Process

1. OSRD Site Plan. A proposed OSRD Site Plan shall be a fully engineered plan, conforming to the provisions of this OSRD ordinance, all the provisions of the OSRD Site Plan Rules and Regulations, and the City of Beverly Site Plan Zoning Ordinance Section 29-29.C.2, to the extent that Section 29-29.C.2. does not conflict with this ordinance. The proposed OSRD Site Plan shall incorporate the features and comply with the conditions of the approved Preferred Plan and in addition shall also include storm-water management including Best Management Practices, wastewater management, utilities, and all other information as required by subdivision ordinances, rules and regulations.
(Ord. No. 24, 7-2-08)

2. General Procedures.

   (a) When an application for approval of an OSRD Site Plan is filed with the Planning Board, the applicant shall also file, within five (5) working days of the filing of the completed application, a copy of the full application, including proposed site plan and other documentation, with each of the Board of Health, Conservation Commission, Building Inspector, Design Review Board, Parking

and Traffic Commission, Department of Public Works, Police Chief, Fire Chief, and City Engineer for their consideration, review, and report. The applicant shall furnish the copies necessary to fulfill this requirement. Reports from other boards and officials shall be submitted to the Planning Board within forty-five (45) days of receipt by the reviewing party of all of the required materials. In the event that the public hearing by the Planning Board is commenced prior to the expiration of the 45 day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that forty-five (45) day period.

(b) The Planning Board shall hold a public hearing within ninety (90) days of receipt of a complete application. The decision of the Planning Board shall be upon a majority of its members. After consideration of the public's concerns, the Planning Board shall make and file its decision with the City Clerk within sixty-five (65) days from the close of the public hearing, and shall notify the applicant of its decision. A copy of the decision, certified by the City Clerk as appropriate, shall be recorded with the Essex South District Registry of Deeds or the Essex South Registry District of the Land Court, as appropriate, by the applicant prior to the commencement of work. The decision shall be binding on the land depicted on the approved Site Plan.

(c) OSRD Site Plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended from time to time in writing by the Planning Board, without public hearing, upon the written request of the applicant.

3. Design Standards. In approving an OSRD Site Plan, the Planning Board may impose conditions to ensure that the site plan furthers the objectives of the Master Plans and complies with the following design standards.

(a) Generic Design Standards

(i) The site plan shall promote more effectively permanent preservation of open space, agricultural land, forestry land, natural resources and historical and archeological resources than would a conventional subdivision (for purposes of this OSRD ordinance a "conventional subdivision" shall mean a subdivision designed in full accordance with applicable subdivision rules and regulations [other than pursuant to this OSRD ordinance] without waivers of any kind).

(ii) The site plan shall consume less undeveloped land and shall conform to existing topography and natural features more than a conventional subdivision.

(iii) The site plan shall have less total amount of disturbance on the site than a conventional subdivision.

(iv) The site plan shall facilitate the construction and maintenance of streets, utilities, and public service in a more economical, safe and efficient manner than a conventional subdivision and all utilities shall be underground within the proposed development.

(v) The landscape within the site plan shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. The orientation of building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, and natural drainage ways shall be treated as primary determinants of road and lot configuration.

(vi) Streets and other ways within the site plan shall be designed, dimensioned and located, consistent with the needs of public safety, in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and insofar as practicable to preserve and enhance views and vistas on or off the subject parcel.

(vii) All open space (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

(viii) The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized, whether these exist on the site or on adjacent properties.

(ix) Parking areas shall be screened to the extent required by Section 29-25 of the ordinances of the City of Beverly.

(b) Site Specific Design Standards

(i) Parking. Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation.

(ii) Buffer Areas. A buffer area of at least twenty-five (25) feet shall be provided at the following locations: (a) perimeter of the property; and a buffer area of at least one hundred (100) feet around Primary Conservation Areas (as defined in Section V.1 above). Such buffer areas shall be free of above-ground structures and improvements, except that driveways necessary for access and egress to and from the tract and other access ways may cross such buffer areas. No vegetation in this buffer area will be disturbed, destroyed or removed, except for installation and normal maintenance of structures and landscapes approved as part of the project. The Planning Board may waive, reduce or increase the buffer requirement in those locations where it determines that a smaller or larger buffer (or no buffer) is necessary, or will suffice, to accomplish the objectives set forth herein; provided always that no buffer requirement herein shall be applied so as to render any tract unusable, and any variation from the required buffer area shall be rationally related to accomplishing the objectives of this OSRD ordinance.
(Ord. No. 24, 7-2-08)

(iii) Drainage. The Planning Board shall encourage the use of non-structural storm water management techniques (such as rain gardens and open grass and bio-retention swales) and other drainage techniques that do not create impervious surface and that enable infiltration. Storm water should be treated at the source to limit non-source pollution. Water conservation measures, including but not limited to the use of rainwater retention systems, such as rain barrels and cisterns for water irrigation purposes, are also strongly encouraged.

(iv) Common/Shared Driveways. A common or shared driveway may serve a maximum number of six (6) lots.

(v) Storm Water Management Facilities. All structural surface storm water management facilities shall be accompanied by a conceptual landscape and screening plan.

(vi) On-site Pedestrian and Bicycle Circulation. Walkways and bicycle paths shall be provided to link residences with parking areas, adjacent public transportation, recreation facilities (including parkland and open space) and adjacent land uses, such as trails and open space identified in the Open Space and Recreation Action Plan, where appropriate. The feasibility of a perimeter path shall be considered.

(vii) Undisturbed Areas. At least 50% of the total tract shall be undisturbed, whether by initial or subsequent construction or structures and, except as otherwise provided in Section VIII.1.d, shall be shown on the OSRD Site Plan as "Not To Be Disturbed." An undisturbed area is any land left in its natural vegetated state.

(viii) Disturbed Areas. Within areas to be disturbed, the applicant shall show all trees of ten (10) inches caliper or greater and present justification for their disturbance or removal.

4. Site Visit.

The Planning Board shall conduct a site visit during the site plan approval process. At the site visit, the Planning Board and its agents shall be accompanied by the applicant and its agents. Members of the general public may be included at the discretion of the applicant and the acquiescence of the Board.

5. Other Information.

The submittals and permits of this Section VI shall be in addition to any other requirements of the Subdivision Control Law, the applicable Subdivision Rules and Regulations or any other provisions of this Zoning Ordinance.

VII. Permitted Reduction of Dimensional Requirements

The Planning Board, which shall have the power in its discretion to waive or reduce frontage or other dimensional or subdivision requirements for such purpose, shall encourage applicants to modify lot size, shape, and other dimensional requirements for lots and ways within an OSRD Site Plan, in order to further the goals of this OSRD ordinance, subject to the following limitations:

1. Lots having reduced area or frontage shall not have their legal frontage on a street other than a street created by the OSRD, provided that this limitation shall not apply in the case of lots created by an ANR plan, nor shall it apply to lots created by a subdivision plan if its application would conflict with the purposes or with other provisions of this OSRD; and (Ord. No. 24, 7-2-08)

2. Reduction of otherwise applicable setback requirements shall not be permitted with respect to those setbacks measured from any exterior boundary of the tract.

3. Nothing in this Section VII shall permit, or be deemed to permit, the construction or use of more dwelling units per lot than is otherwise permitted in the applicable zoning district.
(Ord. No. 24, 7-2-08)

4. The dimensional requirements imposed upon any lot created by the OSRD shall not be less than a lot area of six thousand (6000) square feet, a front yard setback of twenty (20) feet, a side yard setback of ten (10) feet on one side (one side yard may have a zero (0) foot side yard setback provided that only a lot line created by the proposed OSRD may have such a zero [0] foot side yard setback), and a rear yard setback of twenty-five (25) feet: nor shall a building height greater than thirty-five (35) feet be permitted. However, a dimensional limitation imposed by this paragraph shall not apply to a lot if a majority of members of the Planning Board entitled to vote, determines that such an application unnecessarily frustrates the purposes of this Ordinance.
(Ord. No. 24, 7-2-08)

5. The subdivision requirements imposed upon any roadway created within the OSRD development shall not be less than a right of way width of forty (40) feet, a roadway width of twenty-four (24) feet, and a maximum roadway grade of eight (8) percent. However, a dimensional limitation imposed by this paragraph shall not apply to an OSRD development if a majority of members of the Planning Board entitled to vote, determines that such an application unnecessarily frustrates the purposes of this Ordinance.
(Ord. No. 24, 7-2-08)

6. The sidewalk requirements for any way created within the OSRD development shall be the following: A sidewalk shall extend the full length of one side of the way and shall be a minimum width of five (5) feet. The Planning Board may allow pedestrian access that is not parallel to the street in lieu of one (1) or more sidewalks as described above. The sidewalk requirement may be eliminated by the Planning Board if it makes a finding that the connecting, existing roadways do not have existing sidewalks, or if alternative pedestrian access is provided within the OSRD development. When it determines that it is appropriate to do so, the Planning Board may waive the sidewalk requirement if it makes a finding that other provisions are made within the tract to safely and adequately lead pedestrians to connecting sidewalks outside of the tract.
(Ord. No. 24, 7-2-08)

VIII. Open Space Requirements

1. Open Space. A minimum of fifty percent (50%) of the Buildable Area (as defined below in Section VIII.1(b)) shown on the OSRD site plan shall be open space meeting the following criteria:

   (a) All proposed open space shall be conveyed to at least one Conservation Entity (as defined below in Section VIII.2) for conservation purposes. The open space shall be perpetually preserved in an open or natural state as described below exclusively for the purposes set forth herein, and shall be maintained in a manner which will ensure its suitability for such intended purposes.

   (b) The Buildable Area shall consist of that portion of the tract that does not consist of either (i) wetlands, (ii) that portion of the wetland buffer zone within twenty five feet (25') of a wetland, or (iii) areas having a slope of more than twenty percent (20%); however, the Planning Board may reduce such open space requirement in any instance where the strict application thereof would render a tract effectively unbuildable. Input from the Conservation Commission concerning the wetland resources shall be requested.

   (c) The open space sufficient to meet the minimum requirements shall be contiguous. Open space shall be considered contiguous if a roadway or an accessory amenity separates it.

   (d) The primary purpose of the open space shall be for wildlife habitat and conservation. The open space can also be used for the following secondary purposes: historic preservation, education, outdoor education, passive recreation, or a combination of these uses, and shall be served by suitable access. The Planning Board may permit up to five percent (5%) of the open space to be paved for the dedicated use of such open space (e.g., pedestrian walks and bike paths). Limited portions of the open space may be reserved for active outdoor recreation when consistent with the goals of the Beverly Open Space and Recreation Plan, provided that such reservation is not materially inconsistent with the wildlife habitat and conservation purposes of this ordinance.

   (e) The open space shall be subject to a management plan to be approved by the Planning Board as part of the OSRD Site Plan approval. The purpose of the management plan is to provide guidance for the maintenance and stewardship of the open space and any facilities accessory thereto. Input from the Conservation Commission and Open Space and Recreation Committee concerning the management plan is encouraged.

(f) Wastewater and storm water management systems serving the OSRD may be located within the open space; however, surface systems, such as retention and detention ponds, shall not qualify toward the minimum open space required.

(g) Open space shall be disturbed to the minimum extent possible during construction upon the tract. The applicant shall show all areas proposed to be disturbed within the tract and shall present justification for the use or disturbance of those areas. A higher level of scrutiny will be applied to areas within the proposed open space that are proposed to be disturbed.

(h) No provision in this OSRD ordinance shall be deemed to preclude an applicant from providing an endowment to a Conservation Entity for the purpose of securing the maintenance, stewardship, and enforcement of the open space, and applicants are encouraged to provide such an endowment. In the case of a Conservation Entity under subsection VIII.2(c)(i) below, however, any such endowment shall be in addition to, and not in replacement of, the cash bond referred to in subsectionVIII.2(c)(ii).

(i) Each deed conveying open space to a Conservation Entity under subsection VIII.2(a) or VIII.2(b) below shall include a provision expressly stating that the preservation of such open space constitutes a public purpose within the meaning, and subject to the protections of Article 97 of the Massachusetts Constitution, as it may be amended from time to time. Each deed conveying open space to a Conservation Entity under subsection VIII.2(c) below also shall be deemed for the benefit of the owners of the lots within the OSRD Site Plan. Such deed provisions shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

(j) Nothing in this ordinance shall prohibit building within a wetlands resource area (as defined in the City of Beverly Wetlands Ordinance and Regulations) with the permission of the Conservation Commission to the extent such permission is required by law, ordinance, or regulation.

(k) Other than perimeter buffer zones required by this ordinance, required open space shall be provided to the maximum extent possible within wetlands buffer zones.

2. Ownership of the Open Space. The open space and any facilities accessory thereto shall, at the applicant's election, be conveyed to,

and shall be held as Open Space in perpetuity by, one or more of the following (each a "Conservation Entity"):

(a) the City, acting by and through its Conservation Commission or its Parks and Recreation Department or the Commonwealth of Massachusetts as part of a state forest, park, or wildlife management area; provided further that in the case of the City, any endowment provided under subsection VIII.1(h) above shall be administered by the Planning Board in the same manner as a cash bond under subsection VIII.2(c) below, except that all such endowments held by the City may be pooled and administered and applied collectively.

(b) a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;

(c) (i) a corporation or trust owned jointly or in common by the owners of lots within the OSRD Site Plan (either an "Association"). If an Association is used an ownership interest in the Association shall pass with conveyance of each of the lots in perpetuity. Physical maintenance and stewardship of the open space and any facilities accessory thereto, and legal enforcement of the provisions of the site plan approval applicable to the open space and accessory facilities, including the management plan (hereinafter the "Association Obligations") shall be permanently guaranteed by, and at the sole expense of, such Association which shall provide for mandatory assessments for such purposes to each lot.

(ii) In addition, the applicant shall post a cash bond to secure the Association Obligations. Such cash bond shall be in the initial amount of up to $25,000 per project, to be held by the City in a segregated fund for such project solely for such purposes, any use thereof to be subject to the prior approval of the Planning Board in each instance. Each Association shall be deemed to have assented to allow the City to perform maintenance of such open space and accessory facilities, if the Association fails to perform the Association Obligations and shall grant the City an easement for this purpose. In such event, the City shall first provide fourteen (14) days written notice to the Association as to the inadequate performance of the Association Obligations, and, if the Association fails to correct in a timely manner its inadequate performance, the City may perform the Association Obligations on its behalf, and the cost thereof may be paid from the cash bond and any interest accrued thereon. The City shall assess the

Association for (i) amounts so used by the City from the cash bond, and (ii) any excess above the cash bond paid or incurred by the City, in exercise of the provisions of this subsection V.2(c), including expenses of enforcing the Association Obligations. Any amounts not paid in a timely manner by the Association shall constitute a lien on each of the lots within the OSRD Site Plan, which may be collected and enforced by the City in the same manner as real estate taxes. Each individual deed, and the deed of trust or articles of incorporation of the Association, shall include provisions designed to effect these provisions. Documents creating such Association shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

(iii) Any open space conveyed to an Association shall not be deemed or required to be dedicated or conveyed for use for a public purpose, and shall be preserved as open space for the benefit of the owners of the lots within the OSRD Site Plan. Nevertheless, an applicant or an Association may elect to dedicate or convey some or all of the open space for use by the public, provided that such a dedication or conveyance shall be subject to Site Plan review and approval by the Planning Board. A second Site Plan Review and Approval shall be necessary if the Association changes the applicant's initial decision after it acquires the lots.

IX. Amendment Or Modification Of Approved OSRD Site Plans

No amendment or modifications of an approved OSRD Site Plan shall be valid unless first approved by the Planning Board, and no approval, special permit or variance with respect to same shall be required from the Zoning Board of Appeals. In its sole discretion, the Planning Board may approve without public hearing those amendments or modifications that are determined by a two-thirds (2/3) majority of the Planning Board members to be minor in nature.

X. Relationship Between The OSRD Site Plan And Definitive Subdivision Plan

1. For projects subject to this OSRD ordinance for which approval under the Subdivision Control Law is necessary, the filing of either a Preliminary or a Definitive Subdivision Plan with the Planning Board shall be deemed the start of the initial review required by Section III, unless such review has already started. Any Site Plan Approval issued by the Planning Board shall specifically state that the Definitive Subdivision Plan shall substantially comply with the approved OSRD Site Plan.

2. Upon written request of the applicant, the Planning Board in its sole discretion, may conduct the public hearings on the applications concurrently, provided:

   (a) by so requesting the applicant shall be irrevocably deemed to have requested extensions from the Planning Board of the timeframes for hearing and final action under the Subdivision Control Law in order to allow Site Plan Approval to proceed as stated in this ORSD ordinance, including the provisions of Section X.3 below,

   (b) that the Planning Board's decision on Site Plan Approval shall be rendered separately from and prior to taking final action on the Definitive Subdivision Plan, and

   (c) that the Planning Board shall take final action with respect to the Definitive Subdivision Plan not later than one hundred thirty-five (135) days after the close of the public hearing on the Site Plan Approval.

3. If such hearings are conducted concurrently, they may at any time be severed by the Planning Board and thereafter conducted separately, provided that in no event shall the public hearing on the Definitive Subdivision Plan be closed before the public hearing on the OSRD Site Plan.

4. A Definitive Subdivision Plan will be considered not to substantially comply with the approved Site Plan if the Planning Board determines that the Definitive Subdivision Plan displays, in comparison to such approved Site Plan:

   (a) an increase in the number of building lots or dwelling units;
   (b) a significant decrease in the open space acreage;
   (c) a significant change in the lot layout;
   (d) a significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
   (e) significant changes to the storm water management facilities; and/or,
   (f) significant changes in the wastewater management systems.

5. If the Planning Board determines that the Definitive Subdivision Plan does not substantially comply with the approved Site Plan, the Board may disapprove the definitive subdivision plan for failure to comply with the conditions of the Site Plan requiring that the Definitive Plan substantially comply with the Site Plan.

6. The Planning Board may conditionally approve a Definitive Subdivision Plan that does not substantially comply with the approved Site Plan. However, such conditional approval must identify where the plan does not substantially comply with the approved Site Plan and shall require that the approved Site Plan be amended to be in compliance with the significant changes identified by the Planning Board. The Planning Board shall also require that the applicant file an application to amend the Site Plan within a specified time period.

7. The public hearing on the application to amend the Site Plan shall be limited to the significant changes identified by the Planning Board in their conditional approval of the Definitive Subdivision Plan. These changes are the only considerations that the Planning Board may take into account in deciding whether to amend the Site Plan.
(Ord. No. 105, 12/29/05)