

MVC POLICY FOR DRI REVIEW

1. Open Space Preservation



This policy gives guidance to applicants seeking approval of Developments of Regional Impact (DRIs) by the Martha's Vineyard Commission with respect to the preservation of open space. The aim is to ensure that the most significant parts of properties are identified and preserved as permanently protected open space. For example, the policy favors clustering, in order to safeguard natural resources, rural viewsheds, and contiguous open space. This document describes the procedure for establishing how much and which parts of a property should be preserved.

This policy is one of a series prepared to help Applicants and members of the public understand how the Martha's Vineyard Commission evaluates proposed Developments of Regional Impact (DRI), as mandated by its enabling legislation, Chapter 831 of the Acts of 1977 as amended.

The Commission is mandated to weigh the benefits and detriments of certain proposals to determine whether they should be approved, approved with conditions, or denied. Consult the Commission's website (www.mvcommission.org/DRI) or office (508-693-3453) to obtain the other documents. This policy reflects MVC practices in reviewing subdivisions and development over the past generation. It is set forth in order to assist Applicants in preparing proposals that address the Commission's concerns.

The Commission will use this policy during review of the benefits and detriments of a DRI and to formulate conditions attached to the DRI if it is approved. It should therefore be used by the Applicant to help design projects and could serve as the basis of proposals, or "offers", to offset anticipated detriments. Applicants are invited to consult the MVC's DRI Coordinator and Commission staff for help in identifying which policies apply to their project.

This policy is generally a good indication of the Commission's concerns and can help the Commission evaluate the merits of a proposal. However, the Commission weighs the overall benefits and detriments of all aspects of a project, and evaluates each proposal on its own merits. Based on the particular circumstances of each proposal, the Commission could deny a project that respects some or even all of the policy or might approve one that does not meet all parts of the policy. The Commission recognizes that there might be special circumstances whereby deviations from the policy are appropriate.

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Adopted by the Martha's Vineyard Commission on May 11, 2006.

The preparation of this policy including related research was funded in part by a Smart Growth Technical Assistance Grant from the Executive Office of Environmental Affairs.

Cover: Keith Farm, Chilmark. Much of this property was preserved as permanent open space, while other parts were developed, based on a plan prepared by the Vineyard Open Land Foundation.

1 BACKGROUND

Past Practice: Martha's Vineyard is one of the most exceptional places in America, with rare natural and cultural landscapes of regional, statewide, national, and in some cases global importance.

Martha's Vineyard has seen substantial growth over the past generation. Thanks to considerable community effort, the Island has done better than most other areas with similar development pressure to preserve its environmental quality and distinct rural character. A number of key properties have been protected through individual donations and the efforts of several land conservation groups. Also, the Martha's Vineyard Commission (MVC) and the Island towns have used their regulatory processes to shape development to minimize negative impacts on environmental resources and scenic values. One of these tools has been the MVC's practice of requiring open space preservation in Developments of Regional Impact.

The Challenge Today: Presently, about one-third of the Vineyard is preserved open space, owned either by a public entity or conservation organization, or permanently protected through conservation restrictions. A slightly larger portion of the Island is developed.

About 29% of the land is "available" – neither developed nor preserved. Most of this land has significant open space value; some areas are especially critical. If all this land were built on, it would dramatically undermine the Vineyard's unique environment and character. It is therefore critical that a considerable proportion of the "available" land is preserved as open space as future development takes place. It would be desirable that the most significant land be preserved through acquisition or placement of conservation restrictions

In addition, strong action by the MVC and Island towns can ensure that a considerable amount of open space is preserved by requiring that a considerable portion of each parcel is set aside as open space as it is developed or subdivided. This policy addresses preservation of open space in projects that come before the MVC.

Best Practices: This Open Space Preservation Policy is based on past MVC practice as well as the principles of *Open Space Residential Design* (OSRD) or *Conservation Subdivision Design*, an evolution of cluster zoning used for many decades. OSDR differs from the first generation of cluster planning/zoning that was often purely arithmetically based and often led to the preservation of fragmented and less desirable parts of a property, left over after the development or subdivision had been laid out (sometimes referred to "SLOP", Space Left Over in Planning). The methodology in OSRD and in this policy reverses the process, by first delimiting the area to be preserved as open space.

Application: This policy applies to all projects that have been referred to the Commission as DRIs and involve subdivision of land, as well as building projects on three or more acres of land. The policy calls for setting off a proportion of the overall subdivision or project area as open space protected by a permanent conservation restriction.

Many proposed developments are also subject to review by other entities that might require open space preservation. For example, town conservation commissions review developments within buffer areas around wetlands, rivers and streams. The state Department of Conservation and Recreation must review projects affecting state-defined Priority Habitat, about 40% of the Island.

Open Space and Natural Resource Significance of a Property: The Martha's Vineyard Commission has produced an *Open Space and Natural Resource Significance Map*¹ in conjunction with the preparation of this policy. This map designates the Open Space Significance of all land on Martha's Vineyard into one of four categories: 1) Exceptional, 2) Important, 3) Notable, or 4) Basic based on a series of criteria. Familiarity with this map is important for understanding this policy.

The Open Space and Natural Resource Significance Map gives a good initial indication of the significance of natural features in an area. However, the categorization of a property might differ from the area average and should be reviewed with a site-specific analysis.

Limitations of this Policy: A considerable amount of the Vineyard has been subject to sprawling large-lot development that has spread across the countryside, sometimes violating smart growth principles. This policy deals with some issues associated with sprawl by organizing development spatially on a given parcel to meet certain open space preservation objectives, however, it does deal with broader issues of how much development should take place in various parts of the Island.

Reference to Other Policies: The methodology outlined in this policy should be followed in laying out the development of a property. Other relevant MVC policies can be found at the Commission's website www.mvcommission.org.

Technical and Financial Assistance: Several organizations on Martha's Vineyard can assist a property owner to pursue open space preservation through preparation of a conservation development plan, exploration of tax benefits and/or funding of conservation restrictions, and other related matters. These organizations include:

- The Martha's Vineyard Land Bank;
- The Nature Conservancy;
- The Sheriff's Meadow Foundation;
- The Vineyard Open Land Foundation.
- The Trustees of Reservations
- The Vineyard Conservation Society

Careful analysis and planning at the start of a development project will save time and professional fees, and will result in proposals that are better received by neighbors, by town boards and officials, and by the MVC.

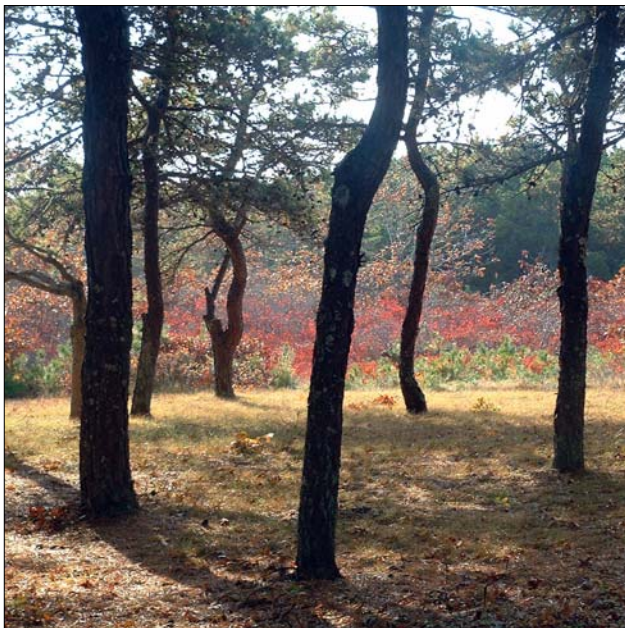
¹ This map is based on the *Open Space and Natural Resource Suitability Map* compiled in 2004 as part of the preparation of *Community Development Plans for Martha's Vineyard*. The MVC worked with the six Island towns to analyze presently undeveloped and unprotected land to identify its suitability for open space and natural resource protection using the same criteria as noted above.

2 GOAL AND OBJECTIVES

Goal: The goal of this policy is to preserve the most significant parts of a property approved as a DRI as permanently protected open space by first identifying these special natural and other features, and then by laying out the development to retain these features to the greatest possible extent.

Objectives: The Open Space Preservation Policy seeks to address the following objectives:

- Permit a more efficient use of land;
- Preserve valuable open space and significant natural features; habitat types and plant/animal assemblages;
- Protect soils suitable for agriculture and working landscapes;
- Protect the supply of drinking water;
- Enhance scenic values and cultural landscapes;
- Minimize negative impacts of development on abutters.
- Minimize the suburbanization of remaining large tracts of developable land.
- Protect and restore natural resources such as fin and shellfish resources, agricultural soils, areas vulnerable to erosion,
- Minimize habitat fragmentation and other negative impacts.



Some potential side effects of concentrating development and preserving open space can be:

- Promoting social interaction among neighbors;
- Allowing for the creation of recreational facilities;
- Reducing the cost of development, notably the cost of infrastructure, both now and in the future;
- Enhancing property values through proximity of protected open space, attractive views, and recreational opportunities.

3 POLICY

The key elements of this policy call for:

- Preservation of open space within subdivisions and large-lot developments,
- Provision of public access where appropriate,
- Preservation of the natural features of *Large Rural Residential Lots*.

3.1 Preserve Open Space Within Subdivisions and Large-Lot Developments

3.1.1 Area and Delineation of Open Space: For all subdivisions as well as any development on a parcel greater than three acres:

- Preserve the Primary Open Space Preservation Area – this is the area which must, under existing regulations (e.g. designated wetlands, flood hazard areas, zone 1 of public well) be preserved as open space, and
- Preserve the Secondary Open Space Preservation Areas – this is the additional open space that should be delineated according to following targets – based on a percentage of the remaining area of the property after the Primary Open Space has been excluded (the Theoretically Developable Area) – and using the methodology described below to include the most environmentally significant parts of the property.

Table 1: **Target Size of Secondary Open Space Preservation Area**

	<i>Category</i>	<i>Target Percentage</i>
1	Exceptional	80%
2	Important	60%
3	Notable	40%
4	Basic	20%

This table describes the targets for the area of the Secondary Preservation Area on a given property, based on the significance of the property as identified on the Open Space and Natural Resource Significance Map, or through a more precise calculation by the Commission

3.1.2 Permanent Restriction: Protect these open spaces with a permanent restriction.

- Place a permanent restriction (conservation, agricultural protection, or similar) in favor of a government entity, a land trust, a not-for profit organization, or a charity with a mandate that includes land conservation.

In the case of a smaller residential subdivision with more limited open spaces to be used primarily by homeowners, the Commission may accept as adequate protection the combination of homeowners' covenants and the conditions in the Commission decision.

3.1.3 Ownership: The ownership of the open space (beyond the areas that must remain as parts of the private lots in order to meet zoning requirements) shall be one or more of the following:

- A land trust, a non-for-profit organization or a charity whose primary purpose is the conservation of open space;
- The town conservation commission or another public agency;
- A homeowner's association.

3.1.4 Infrastructure in Open Space: The Commission may authorize limited infrastructure in the open space.

- A minimal amount of infrastructure, such as water and sewer lines, and, in some cases an access road, may be located within the Open Space Preservation Areas provided it does not significantly impact the features to be preserved.
- If the applicant demonstrates that there are practical difficulties in locating required septic fields within the areas to be developed, the fields may be located in adjacent parts of Secondary Open Space Preservation Areas provided that this does not conflict with the reason that these parts of the land were designated as open space. (For example, it might be appropriate in a meadow or playing field but not in a wooded area or significant/priority habitat area.)

3.2 Provide Public Access Where Appropriate



3.2.1 Where there is substantial public benefit, it is desirable to provide public access to some or all of the preserved open space. This is most useful for large open spaces, for open spaces adjacent to publicly accessible open spaces, and to provide critical links to adjacent trail networks.

- The Commission recognizes that there are some situations where providing public access would provide little advantage, such as for smaller residential subdivisions where it could seriously compromise privacy. Also, there might be situations where fragile environmental resources would be better protected by prohibiting public access.
- The Commission might consider reducing the total area of open space

to be preserved, if the conservation restriction specifies that the open space is publicly accessible.

3.3 Preserve the Natural Features of Large Rural Residential Lots

With a subdivision comprised exclusively of large rural residential lots of six acres or more that are permanently covenanted to prohibit further subdivision, the Commission might consider an alternative approach outlined in this section. This would allow achievement of the policy's goals and objectives by preserving a significant proportion of each lot as open space.

3.3.1 Development Envelopes:

Designate a *Development Envelope* on each property as the area to be used for construction of buildings, other structures, and driveways, and as well as the area for regularly maintained lawns, gardens and other non-native landscaping.

3.3.1 Protected Open Spaces:

Designate the area outside the *Development Envelope* exclusively as protected open space where no construction is permitted.

- The protected open space can be:
 - 1) a natural area where no alteration of the land and natural vegetation is permitted other than minimal normal maintenance (no-cut/no-build),
 - 2) actively used farmland, or
 - 3) another approved appropriate use.
- The total area outside the *Development Envelope* must be at least as large as the percentage of open space required for the property according to Policy 3.1.1.
- The Commission may call for the protected open space outside the *Development Envelope* to be larger than the targets in table 1 to compensate for the lack of clustering.
- The area to be preserved as open space should be protected with a conservation restriction or other permanent restriction (see section 3.1.2).



3.3.3 Barriers and Trails: Ensure that no barriers to the movement of wildlife are erected outside the *Development Envelope*, other than as required for agricultural purposes, and that all prospective public trails and paths have been provided for.

4 APPLICATION OF THE POLICY

This section describes the keys steps for laying out a property in accordance with the Open Space Preservation Policy. Applicants are encouraged to consult the staff of the Martha's Vineyard Commission for assistance in application of the policy to their properties. The steps are:

- Step 1: Identify the Primary Open Space Preservation Area
- Step 2: Identify the Significant Natural Features of the Property
- Step 3: Delineate the *Secondary Open Space Preservation Area* of the Property
- Step 4: Lay Out the Development or Subdivision

A detailed discussion of these steps is included in this section.

Step 1: Identify the *Primary Open Space Preservation Area*

Identify what areas of the property, if any, cannot be developed under existing regulations because they are, or are likely to be, any of the following:

- Designated wetlands,
- Ponds and streams,
- Flood hazard areas,
- Zone 1 protection areas around public water supply wells,
- Cemeteries or archeological sites of unidentified human burials,
- Any other regulatory constraints, covenants, and conservation restrictions.

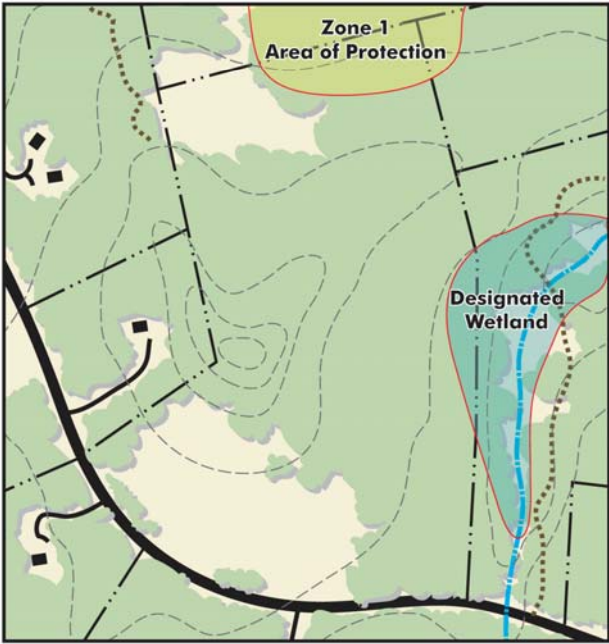
These portions of a property constitute the Primary Open Space Preservation Area.



Theoretical Example: Existing 24 Acre Parcel

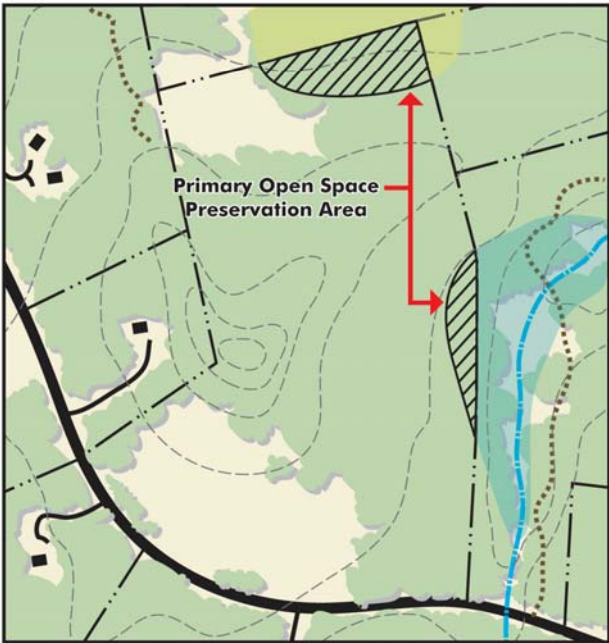
Setting aside this area along with an additional 10% of the property for roads and other infrastructure, permits calculation of the *Theoretically Developable Area*.

In this example (drawing to the left), there is a 24-acre property on a road in an area with 2-acre zoning. Most of the property is wooded, with a field along part of the road and a meadow towards the back. The adjacent property to the right is public land. The property is rated as Important.



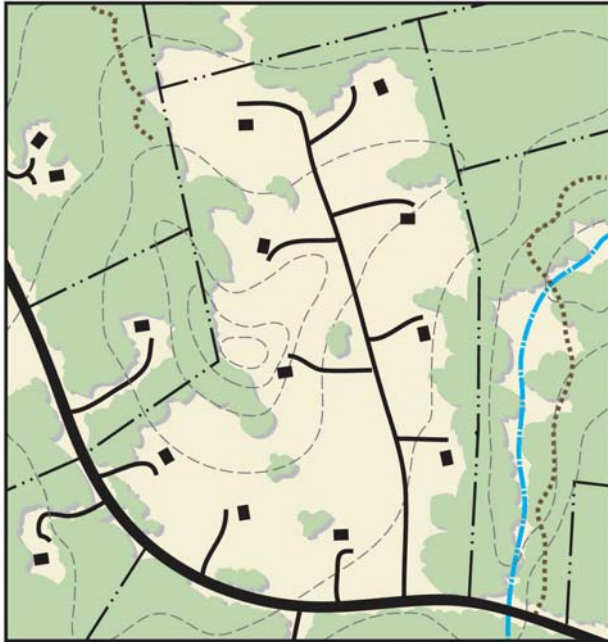
**Theoretical Example:
Determining Primary Open Space Preservation area**

The Primary Open Space Preservation Area (drawing left) is that part of the property that cannot be developed under existing regulations, in this case, a Zone 1 Area of Protection around a public well and the designated wetland.



**Theoretical Example:
Primary Open Space Preservation Area**

In our example (left) the 2-acre Primary Open Space Preservation Area is indicated in the cross-hatching. The remaining 22 acres, less 10% for roads, is the "Theoretically Developable Area", namely 20 acres.



Conventional Development: Yield Plan

Ordinary development would allow subdivision of the 20 acres of Theoretically Developable Land into ten 2-acre lots. There is no protection for the roadside field, the meadow or the woodland, and the two segments of trail are not connected. The overall character is one of typical suburban sprawl that could be anywhere in America.

Step 2: Identify the Significant Natural Features of the Property

Identify what parts of the property fall into the following categories of noteworthy features, noting especially which portions are not within the Primary Open Space (Step 1):

- Agriculture – working farm, significant agricultural soils, or other agricultural potential (e.g. large land areas, particularly if open and/or buffered from residential areas) ;
- Wetland Buffers – within 100 feet of a wetland;
- Coasts and banks – within the *Coastal District of Critical Planning Concern*; within 200' of a river and within 100' of a stream;
- Adjacent to Surface Waters – within 100 feet from the shore of a pond or stream;
- Public Wells – within the Zone 2 Areas of Protection of a public water supply well;
- Unfragmented Woodland – particularly if it contains and/or is contiguous to an unfragmented woodland area of 50 acres or more;
- Habitat – within a mapped Priority Habitat for state-listed rare species, or within a Core Habitat or Supporting Habitat Area as designated in the Massachusetts Natural Heritage and Endangered Species Program "Biomap", or designated in other Department of Conservation and Recreation or sister agency programs, or undesignated existing or potential habitat areas or corridors linking other habitat areas;
- Special Places and Ways – within the Special Places District of Critical Planning Concern, designated a Special Way in the Island Roads District, or is an undesignated significant place or ancient way,
- Wooded Bottoms and Frost Bottoms;
- Viewsheds and Vistas – within the immediate viewshed of the public way (roads, parks, the ocean, ponds, etc.) as defined by the MVC (along roads, this typically includes fields and water bodies adjacent to the road as well as a depth of 150' along wooded areas);
- Cultural Landscapes – man-made features including stone walls, cemeteries, significant structures;

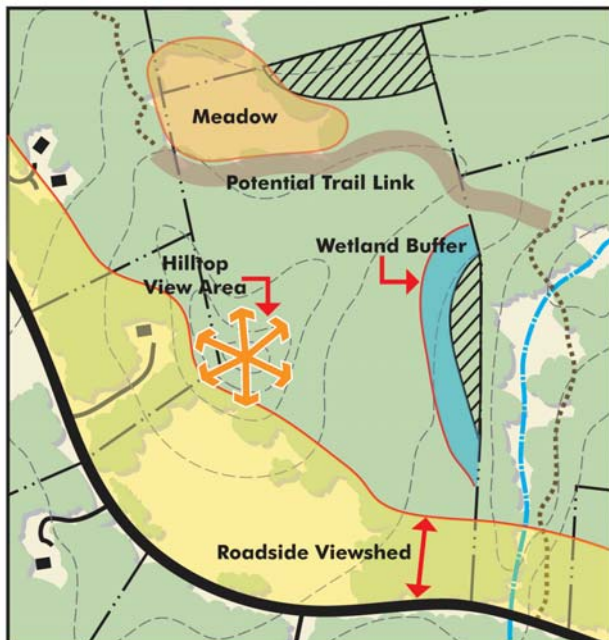
- Archeological Resources – areas of known archeological features, or having a high potential that these feature exist;
- Trails/Paths – prospective links in the Island’s network of trails or bicycle paths.

In addition, several other factors should be considered in determining the open space and natural resource significance of a property, namely:

- Whether it is abutting dedicated open space or presently conserved land of any size;
- Whether it is a large property, over 10 acres or even over 50 acres.

The Commission has compiled a map of *Existing Open Spaces and Conserved Land* on the Vineyard that should be consulted with respect to the relation of the subject property to existing nearby open spaces. There are also other Commission maps of specific resources that should be consulted in mapping the significant natural features of a specific property.

In our example, the following features are identified in the property inventory:



- The roadside viewshed, including the field and a depth within the woodland;
- The hilltop viewing area;
- The meadow at the top of the property;
- The woodland area;
- A 100’ buffer along the designated wetland;
- The potential for linking the two segments of trail.

Theoretical Example:
Identify the Significant Natural Features

Step 3: Delineate the *Secondary Open Space Preservation Area* of the Property

Delineate the Secondary Open Space Preservation Area based on:

- The target size of the Secondary Open Space Preservation Area for the property, from table 1 and based on the property’s category (page 7)
- The identification of the significant natural and other features to be protected;
- The guidelines for delineation of the open space, listed below.

This area is in addition to the Primary Open Space Preservation Area (if any) that is already legally protected.

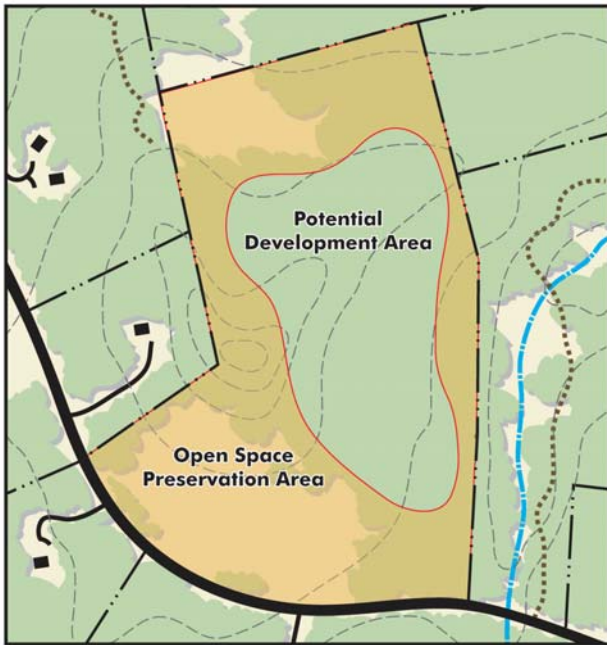
The category of Open Space and Natural Significance for the property, will normally be as indicated of the map of the same name. However if there is additional information staff will recalculate the rating using the same methodology employed for creating the original map.

After delimitation of the *Primary* and *Secondary Open Space Preservation Areas*, the rest of the property becomes the *Potential Development Area* – the area of the Applicant’s site that remains available for development.

Guidelines for the Delineation of the Open Space

- Include the significant resources that led to its original classification to the greatest possible extent.
- Design a large, contiguous area of an ecologically desirable shape. For habitat protection, this generally should be as close to a square or round shape as possible; narrow areas (less than 100 feet wide) should only be used for access, vegetative buffers along wetlands or the site perimeter, or as connections between open space areas.
- Locate the open space contiguous with protected open spaces and with habitat areas on adjacent properties.
- Include an access strip at least 20’ wide, as well as access to any water bodies.
- Maximize public visibility of, and if possible access to, the open space such as by locating it along public roads.
- Maintain a buffer strip of at least 100’ adjacent to existing conservation land, to avoid having the development intrude on the open space and natural experience enjoyed by the public. The needed width of the buffer will vary based on topography and density of vegetation and could exceed 100’.
- Consult the Martha's Vineyard Commission and the town to find out whether there is a *Map of Potential Conservation Lands* that indicates which parts of a property should be preserved in order to create a continuous network of continuous open space crossing many properties.

In most cases, the Commission will seek to preserve 40 or 60% (depending on the category) of the Theoretically Developable Area of a property. This will generally allow for development to be concentrated on the other half of the property and still be of a scale compatible with the surrounding community. On properties with exceptionally high quality natural features, the percentage of the Theoretically Developable Area of the property to be preserved as open space should be greater, going up to 80% for the most exceptional sites. Alternatively, the percentage of preservation could be reduced in town centers and dense neighborhoods and on those lots where there are no notable natural features whatsoever. Even on properties with no notable natural features, some open space should be preserved for buffering, local recreation, and, if appropriate, for open space linkages.



Theoretical Example
Deliniate Primary and Secondary Open Space
Preservation Area and Potential Development Area

In our example (left), the area in beige includes the Primary as well as the Secondary Open Space Preservation Area, 60% of the Theoretically Developable Area. It was chosen to include the entire field and roadside viewshed, the hilltop viewing point, the meadow, the 100' buffer along the wetland, and much of the woodland including land able to connect the trails. The remaining land is the Potential Development Area.

Step 4 – Lay Out the Development or Subdivision

The next step is to lay out the development in the *Potential Development Area*.

In the case of a subdivision, this methodology reverses the traditional approach of laying out the roads first, the lots next, and the houses last. The reverse order is followed:

- a) First, locate the sites of individual houses or *Development Areas* (the part of each lot that will be used for construction or actively used exterior space as opposed to preservation of the natural vegetation). Buildings should be sited to minimize their visibility from the public way or from preserved open spaces and to maximize privacy.
- b) Then, lay out the roads and paths.
- c) Finally, draw in the lot lines. If town zoning does not specifically provide for cluster or flexible zoning, some imagination might be called for to devise lot lines that both meet the zoning regulations and respect the layout resulting from this methodology.



**Theoretical Example
Development Layout with Roads and Trails**

In our example, ten houses are sited within the Potential Development Area. Even though the houses are closer together than in a conventional layout, privacy between the houses and the rural character of the subdivision road are maintained with vegetated buffers. Also, the sense of open space for each homeowner is considerable because each house fronts onto a large open space, either the field or the preserved woodland.

Ideally, the town zoning would allow the entire Primary and Secondary Open Space Preservation Areas to be set aside in separate conservation ownership; however, current zoning regulations may not allow this. In this theoretical example, the zoning requires a minimum lot size of 1-1/4 acres with a cluster plan. Property lines are laid out so that each lot respects the minimum lot size. Those areas of each lot in the Primary and Secondary Open Space Protection Areas are protected with a Conservation Restriction.

5 SUBMITTAL REQUIREMENTS

Every subdivision as well as any development on a property greater than three acres that has been referred to the Commission as a Development of Regional Impact must submit the following documents to demonstrate adherence to the *Open Space Preservation Policy*.

- 1) Site Context Map:** A map showing the features on properties adjacent to or near the Applicant's land that would have an impact on open space preservation on the subject property including protected open space (noting whether it is publicly accessible), core and supporting habitat areas, and trail/path networks.
- 2) Site Analysis Map:** A map of the Applicant's property showing the features described in Step 1 above, as well as a delimitation of the *Primary* and *Secondary Open Space Preservation Areas*.
- 3) Conventional Subdivision Plan:** In some cases, it might be necessary to prepare a sketch of a conventional subdivision in order to calculate the maximum number of lots that would likely be permitted under conventional zoning. For straightforward sites, it should be possible to calculate the yield by simply dividing the *Theoretical Development Area* by the minimum lot size.
- 4) Conservation Development/Subdivision Plan:** The proposed layout of the development/subdivision, roads, impervious areas etc. as per this policy, with a clear indication of the proposed open space.

6 GLOSSARY

Note: terms are listed in the order that they are presented, since many build on previous definitions.

Development of Regional Impact: A development that is determined to have regional impact under the provisions of the Martha's Vineyard Commission Act (Chapter 831 of the Acts of 1977 as amended) and which may not proceed without approval by the MVC.

Primary Open Space Preservation Area: Those parts of a site that must be preserved as open space because of existing regulations or conservations restrictions e.g. designated wetlands, flood hazard areas, zone 1 of public well)

Theoretical Development Area: The part of a site on which development is permitted according to existing regulations and conservation restrictions, namely the entire site except for the Primary Open Space Preservation Area and roads (normally 10%).

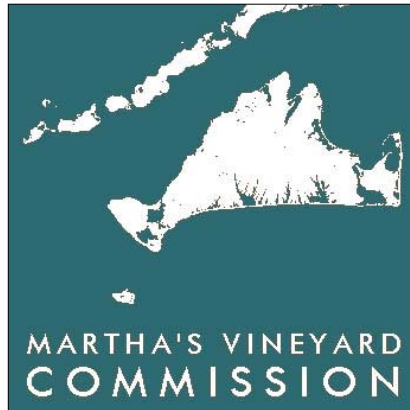
Secondary Open Space Preservation Area: Those parts of a site that are set aside for open space preservation, beyond the Primary Open Space Preservation Area, as set out in this policy.

Potential Development Area: The part of a site on which development is permitted according to the application of this policy, namely the entire site except for the Open Space Preservation Area (Primary and Secondary).

Yield Plan: The amount of development permitted in the Theoretical Development Area according to current regulations.

Large Rural Residential Lots: A rural residential lot of 6 acres or more.

Development Envelope: The area to be used for construction of buildings, other structures, and driveways, and as well as the area for lawns, gardens and other non-native landscaping.



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