

**Evergreen Commons LLC – OSRD Subdivision Special Permit
Draft Findings & Special Conditions**

Use of Acronyms

Hereinafter:

- “OSRD” shall refer to the Open Space Residential Development (OSRD) project depicted on the above-referenced and approved plans;
- “OSRD-DSP submittal” shall refer to the Definitive Subdivision Plan filed with the Planning Board in accordance with this Open Space Residential Development Special Permit (OSRD-SP);
- “CSP” shall mean a Conventional Subdivision Plan;
- “NZO” shall refer to the Newburyport Zoning Ordinance; and
- “WRPD” shall refer to the Water Resource Protection District (WRPD), Section XIV of the NZO; and
- “DPS” shall mean the City of Newburyport Department of Public Services (DPS)
- “Property” shall refer to the property at 18 Boyd Drive and 5 Brown Avenue as included on the OSRD application.

Findings

The Property, known as the Evergreen Golf Course consists of 36.84± acres of golf course landscaped and related water features. Additionally, the Property includes a single family home lot located at 5 Brown Avenue.

The proposed development will yield a maximum of thirty-eight (38) proposed single-family residential units with accompanying roadways and infrastructure on 13.36± acres while preserving the remaining 22.12± acres. The proposed OSRD plan is based in part upon a 43-lot “yield” obtained from the applicant’s proposed CSP for the same site. Additionally, the applicant proposes to deed 0.61± acres of land along the easterly property line to the City, as indicated on the above-referenced and approved plans. This land will allow for greater flexibility in relocating the existing City water supply (Well # 2) if necessary in the future.

This site is of particular importance to the greater Newburyport community as it sits adjacent to City-owned property where ‘Well 2’, a public drinking water well which is a part of the City’s public water supply, is located. The proposed stormwater treatment areas will be on the westerly side of the Property, away from the property line shared with the City of Newburyport Well # 2. The Applicant will provide fully engineered stormwater plans in the next stage of permitting for this proposed development (the OSRD-DSP) that must be designed to meet both state and local standards with regard to stormwater management in a Zone II Water Resource Protection District. The applicant proposes to employ Low Impact Development (LID) techniques including bio-retention areas and constructed stormwater wetlands as well as more traditional techniques. All stormwater discharges into wetland resource areas shall meet all state and local stormwater discharge regulations.

Special conditions must be imposed on this OSRD project in order to protect the City’s fragile and irreplaceable water supply (in particular adjacent Well #2) due to a combination of factors that make this site uniquely important:

1. The site topography is bowl-shaped with no way for water to leave the site other than infiltration (which will ultimately reach groundwater); and
2. The site is in the Zone II WRPD as set forth in the NZO; and
3. The hydrology of the site and its subsurface groundwater flows toward the City's public water supply (Well # 2); and
4. Soils on the site are such that the subsurface transmissivity level is high; and
5. Groundwater obtained from Well #2 is untreated and is pumped directly into the City's water supply; and
6. According to the above referenced 1985 "Lally Report": "...Increased sodium, sulfate, chloride and specific conductance readings were recorded in the Spring of 1974 during when it is understood, that extensive filling of this abutting land took place with salt marsh dredging material from off-site locations"; and
7. According to an email from City Engineer, John-Eric White dated October 21, 2016, the contractor that had imported fill (salt marsh dredging material) from out of town, TL Norton, remembers importing of salty soils in 1968 and placing them near the water features in the southeast corner of the site; and
8. The #2 Well was closed some time thereafter due to excessive increases in sodium levels; and
9. Although a 1985 Special Permit issued by the Newburyport Zoning Board of Appeals required (consistent with the "Lally Report") that the applicant and property owner submit groundwater monitoring reports to the City on a yearly basis, this permit obligation does not appear to have been properly complied with, despite having been recorded at the Registry of Deeds; and
10. The results of recent City testing for approximately 250 chemicals in monitoring wells near City Well # 2 showed no significant contamination of the groundwater reaching Well # 2 from those chemicals tested.

Based on the above findings, the developer's plans for construction on this site must minimize reliance upon future homeowner behavior to ensure water quality protection as there will be no meaningful way to effectively monitor homeowner behavior or expect compulsory compliance with chemical prohibitions laid out in Homeowners Association documents. The applicant must therefore utilize an overall site design in which proposed homes, BMPs and stormwater discharges are located as far as possible from any resource areas and ILSF (which may in turn provide direct transference of contamination to the groundwater/aquifer accessed by City Well # 2).

Special Permit Criteria

The Planning Board grants this OSRD-SP since the proposed OSRD will have a less detrimental impact on the subject Property, neighborhood and City as a whole than a CSP.

The Board finds that this project fulfills the criteria required by NZO Section X-H.7, as follows:

- The single-family residential use is allowed on this parcel, which is zoned R1. It is also an allowed use in the WRPD, as listed in Section XIX-E of the Ordinance. The smaller lot sizes allow for greater open space conservation are consistent with the purpose and intent of the City's OSRD ordinance.
- The proposed development will not create undue traffic congestion or impair pedestrian safety in the surrounding neighborhood. The applicant is proposing two points of access into the new development

– Boyd Drive and Brown Avenue. This will both promote neighborhood connections and better vehicular circulation while providing traffic calming due to the use of two existing 90-degree turns onto Laurel Ave and Briggs Ave.

- The proposed development should not overload public water, drainage or sewer systems provided that certain conditions of approval are faithfully complied with by the applicant and future home owners within the proposed OSRD. This project will improve water and sewer connections in the surrounding neighborhood through looping all of the water mains for safety and water quality and by replacing the sewer pump/lift station located at the bottom of Boyd Drive.
- The design of this OSRD is in harmony with the purpose and intent of the City's OSRD regulations in that the compact layout of the lots, the open space, the homes on the lots and the interplay of the lots and the open space are in compliance with the criteria of the Zoning Ordinance. The open space will include biking and walking trails with a connection to the new multi-modal path ("Garrison Trail") adjacent to I-95.

Additionally, Board finds that this Project fulfills the criteria required by NZO Section XIV-K as follows:

- The proposed development is consistent with the purposes and intent of the OSRD Ordinance as identified in Section XIV-A and has a less detrimental impact on the subject tract of land and advances the interests of the community further than a CSP. Indeed, the Planning Board has determined that the proposed OSRD plan is the only acceptable method of constructing a new residential neighborhood in this area of the City (within the Zone II WRPD) and that approval of a CSP for this tract of land would be detrimental to the City's water supply due to the increased site disturbance and coverage associated with such a development scheme.
- The proposed OSRD is consistent with the Newburyport Master Plan through consolidation of the "footprint" (magnitude and extent) of roadway and utility infrastructure required for this single family residential development.
- The proposed reduction of dimensional requirements, as shown on the above referenced and approved plans is consistent with the requirements for issuance of an OSRD-SP.
- The applicant's "Yield Plan," based on a CSP layout, depicts forty-three (43) single family house lots, whereas the OSRD plan depicts thirty-eight (38) house lots in a more compact form with significantly less roadway and infrastructure required to serve the proposed house lots. This reduction in the horizontal spread of roadways, utilities and infrastructure will in turn minimize overall the level of site disturbance commonly referred to as "sprawl." The Planning Board finds that the alternative OSRD plan is preferable to the CSP. The OSRD Plan minimizes environmental and community impacts from the proposed residential development, including, but not limited to: preservation of open space and the promotion of more efficient land use in harmony with natural features; conservation of natural resources and scenic qualities; and variety in the development pattern of the community.
- The applicant is providing roadway connections to existing streets within the surrounding neighborhoods, thereby creating better site and traffic circulation. The roadways shall be constructed

with a sufficient width to ensure that first responders are able to efficiently access the new homes in the event of an emergency.

- This OSRD-SP will result in a project that is in harmony with the surrounding neighborhoods.
- This OSRD-SP promotes the preservation of open space and recreation in the City through the permanent conservation of the open space as depicted on the approved plans, as well as the creation of bike and walking trails, a connection to the multimodal path, which is proposed to traverse the Merrimac River, revitalization of a wetlands area, ponds that may be used for ice skating or other recreational activities, and a central greenspace and neighborhood gathering area.
- This OSRD-SP, as conditioned by this decision, addresses comments and concerns raised by other City departments, boards and commissions, as well as abutters and other interested parties.

Special Conditions

[NOTE: All of the typical boiler plate conditions regarding recording the decision, utilities meeting national and local standards, etc. will be included. The list below represents potential SPECIAL CONDITIONS for the decision.]

- Modifications to Approved Plans: The Applicant and property owner, and their successors or assigns, shall adhere to the above referenced and approved plans which are incorporated herein by reference. Should the applicant and/or property owner determine that a plan (or plans) needs to be modified, they shall notify the Board of the proposed modifications in writing, and obtain approval from the Planning Board for such modifications prior to making any changes “in the field.” The Board shall then determine whether such modifications are minor or major in nature and shall subsequently schedule a public meeting or hearing, respectively, to review the proposed changes. While the OSRD-DSP shall be substantially in conformance with the above referenced and approved OSRD plan, the Board recognizes that the OSRD-DSP may include minor adjustments.
- Consistency of Definitive Filing with OSRD Approval: Any plans filed for Definitive Subdivision approval on the subject property shall comply with this decision and be substantially in conformance with the above referenced and approved plans. In accordance with this OSRD-SP the OSRD-DSP shall contain no more than thirty-eight (38) lots.
- Public Water Supply Protection: In order to ensure protection of the City’s public water supply, in particular the adjacent “Well # 2,” the applicant and property owner shall comply with the following conditions:
 - Installation of Monitoring Wells: Prior to any on-site construction activities, including but not limited to site clearing, earth removal, fill or grading, the applicant and/or owner shall:
 - Install a minimum of three (3) groundwater monitoring wells along the north-eastern property line that is shared with the adjacent City-owned land where Well 2 is located, as shown on the plan entitled “Groundwater Monitoring Wells” dated February 7, 2017. If the well at location B-6 is viable, it may be used. The new wells shall be located as shown on the plan. In the event refusal is met during drilling, a well will be located as

close to the proposed location as is reasonably possible. Installation of these monitoring wells shall be in compliance with Massachusetts Department of Environmental Protection (DEP) Standard References for Monitoring Wells (WSC #91-310) and the Newburyport Department of Public Services (DPS), Water Division (or its designated consultant), may observe said installations. The applicant shall reimburse the City for the cost of any such consultant services forthwith upon receipt of an invoice from the City.

- Provide copies of fully executed and recorded easements granting access to the City's Water Department for the purpose of accessing these wells for the purpose of ongoing monitoring of groundwater quality. The terms of said easements shall be subject to review and approval of the Office of Planning and Development, Department of Public Services and the City's legal counsel. The City shall indemnify and hold harmless the Applicant as part of the easements as well as provide the Applicant an annual Certificate of Insurance naming the Applicant, its assigns or devisees as a loss payee thereon. Any testing results received by the City shall be provided contemporaneously to the Applicant, its assigns or devisees.
 - Deposit \$50,000 into a City account for the purpose of offsetting the cost to the City (and its tax-payers) of undertaking groundwater monitoring and testing activities at the newly installed wells both during and after OSRD construction as a consequence of this development. Any unused funds shall be returned to the Applicant upon sale of the final lot within the OSRD.
- Initial Groundwater Testing at Monitoring Wells: Prior to any on-site construction activities, including but not limited to site clearing, earth removal, fill or grading, the applicant and/or owner shall undertake initial groundwater quality tests on the subject property utilizing the above referenced monitoring wells, in accordance with specifications provided by the Newburyport Department of Public Services (DPS), Water Division and which are dated November 8, 2016 in an electronic mail from Doug Gove, P.E. of AECOM and which includes Table 1 and 2 and a soil and water sample location sketch map (the "Testing Protocol"). The applicant and/or owner shall undertake such testing under supervision of the Newburyport Department of Public Services (DPS), Water Division or its designated consultant, and reimburse the City for the cost of any such consultant services forthwith upon receipt of an invoice from the City.
 - Initial Soils Testing: Prior to the filing of a Definitive Subdivision Plan for the subject property, the applicant and/or owner shall undertake initial soils testing on the subject property in accordance with the Testing Protocol. Said soils tests shall confirm the presence or absence of a various chemicals and substances considered to be a potential threat to the City's public water supply. The list of said chemicals and substances, and protocols to be followed during such testing shall be as agreed to by the Newburyport Department of Public Services (DPS), Water Division. The applicant and/or owner shall undertake such testing under supervision of the Newburyport Department of Public Services (DPS), Water Division or its designated consultant, and reimburse the City for the cost of any such consultant services forthwith upon receipt of an invoice from the City. Copies of the results of such testing shall be provided to the DPS, Water

Division, Board of Health, Conservation Commission and Office of Planning & Development. No on-site construction activities shall commence until the Newburyport Department of Public Services (DPS) and Board of Health have confirmed in writing to the Office of Planning & Development that there are no chemicals detected in the tested soils at any levels which raise concern for protection of the public water supply. Should any such chemicals be found within the initial soils testing, the applicant and/or owner shall return to the Planning Board to adequately address the mitigation and removal of all contaminated soils consistent with recommendations from the Newburyport Department of Public Services (DPS) and Board of Health prior to construction activities.

- Groundwater Testing at Monitoring Wells During & After Construction: Every six (6) months during construction and for the first two (2) years following the completion of on-site construction activities (including roadways, drainage systems and homes), the applicant and/or owner shall undertake additional groundwater quality tests on the subject property utilizing the above referenced monitoring wells, in accordance with the Testing Protocol. The applicant and/or owner shall undertake such testing under supervision of the Newburyport Department of Public Services (DPS), Water Division or its designated consultant, and reimburse the City for the cost of any such consultant services forthwith upon receipt of an invoice from the City. The applicant shall forthwith provide a copy of the test results to the DPS, Water Division.
- Insurance Policy During Construction: Prior to any on-site construction activities, including but not limited to site clearing, earth removal, fill or grading, the Applicant and/or owner shall provide to the City an insurance policy for the purposes of mitigating the cost of any adverse impact to the City's water supply which is a result of construction of this project. The insurance policy shall provide a minimum of \$2 Million of coverage with the City named as an additional insured party. The applicant and/or owner shall be responsible for paying any and all costs associated with maintaining said insurance policy throughout construction of the project until such time as the last house lot within the OSRD is sold.
- Site Design Elements: With the filing of the OSRD-DSP, and prior to approval of the OSRD-SP, the Owner shall demonstrate to the satisfaction of the Board that the proposed stormwater management system, utilities, roadway, and overall site design is not likely to cause contamination of the public water supply through effective use of the following measures:
 - Best Management Practices: Use of the most current available Best Management Practices (BMPs) to treat site and roadway runoff. Priority shall be given to the use of Low Impact Development (LID) techniques, such as constructed stormwater wetlands, vegetated bio-swales, rain gardens and bio-retention areas.
 - Underground Infrastructure: Underground infrastructure and utilities shall be located so as to minimize the likelihood of soil and ground water contamination.
 - Distance Between Stormwater Discharges & Wetland Resource Areas: The proposed stormwater discharges (outlets) and all proposed houses shall be located a minimum of one hundred (100) feet from any nearby wetland resource areas. Any Isolated Land Subject to Flooding (ILSF) on the site shall be reconfigured so as not to encroach upon any residential building lots. A minimum of two (2) feet vertical separation shall be

provided between stormwater infiltration systems and discharges and seasonal high groundwater levels.

- Each road storm drain shall have a conspicuously placed inlay that reads “Well Water Area – No Dumping.”
- Grading, Earth Removal & Fill: All plans for grading, earth removal and fill operations for this development shall be subject to final approval by the Planning Board during review of the OSRD-DSP. A bill of lading shall be provided to the Newburyport DPS Water Division for any fill brought to the site (i.e. every truck load) during construction. Said bill of lading shall, in every instance, identify the source of such fill. All fill brought to the site shall be from a location that has been previously identified as a “clean fill” source. The applicant or its designated representative shall provide written confirmation to the Office of Planning & Development that “the selected source(s) of fill [is/are] clean and free of any hazardous materials, salts, chemicals or other substances which may contribute adversely to the contamination of the public water supply.”
- Conservation Commission Approval: The Applicant shall file a Notice of Intent (NOI), as required under the Wetlands Protection Act and Newburyport Wetlands Ordinance, with the Newburyport Conservation Commission for work in areas of jurisdiction. All such plans shall comply with the ordinance, regulations and any conditions of approval required by the Newburyport Conservation Commission. If there is any inconsistency between the submitted OSRD-DSP and plans approved by the Conservation Commission, the applicant and/or owner shall submit an amended set of plans to the Planning Board for review and approval. Any amended plans shall be accompanied by a letter setting forth all changes from the original Definitive Subdivision plans and shall include revised drainage calculations and an updated stormwater management report, as applicable.
- Homeowner’s Association Documents, Deeds, Covenants & Restrictions: The OSRD-DSP filing shall include a complete draft of all Homeowner’s Association Documents, Covenants and Restrictions for the property that, at a minimum, incorporates the following:
 - Prohibited Uses: A list of prohibited uses in both the residential and open space areas. This list shall include, but is not limited to prohibition of private wells and private septic systems, as well as all those uses and activities listed as “prohibited” within the WRPD of the NZO.
 - Single Landscaping and Lawn Care Professional & Use of Chemicals: A mandate that the required Homeowner’s Association must hire a single licensed landscaping and lawn care professional to establish a single program to maintain grass and vegetation on the residential lots and any relevant open space areas. Each year, on or before February 15, the designated landscaping and lawn care professional shall submit a written copy of the proposed maintenance program to the Newburyport Department of Public Services (DPS), Water Division for review and approval, which said approval shall not be unreasonably withheld if it meets the standards set forth herein. The DPS Water Division may require modifications to the proposed maintenance program for the purposes of protecting the City’s public water supply, including but not limited to limitations on the type and quantity of any lawn and landscape care products (including but not limited to herbicides, pesticides, fungicides and/or other

chemicals/substances). Application of any such products shall be prohibited for the subsequent year until the DPS Water Division has approved the proposed maintenance program (revised as necessary) and a signed letter of commitment has been provided to the DPS Water Division that the landscaping and lawn care professional agrees to abide in every respect with the approved maintenance program.

- Maintenance of Roadway Infrastructure: The Homeowner's Association shall be responsible for ongoing maintenance of the roadways (including plowing), street lights, and street trees until such time as the proposed ways are properly accepted by the City of Newburyport. All such roadway and driveway maintenance within the OSRD shall comply with the terms of this decision.
- Maintenance of Drainage System: The Homeowner's Association shall be responsible for hiring a licensed professional to keep the drainage system in a clean and well-functioning condition as approved, and shall do nothing that would alter the drainage patterns or characteristics as indicated on approved plans. Upon acceptance of the proposed ways by the City of Newburyport, Homeowners Association responsibility shall be limited to those drainage systems and areas outside of the accepted layout (Right of Way).
- Zone II: The following language shall be included within the Homeowners Association documents: *"The subject property is located above the City of Newburyport's public water supply (an underground aquifer). See Homeowners Association documents, Covenants and Restrictions, as well as the original OSRD Special Permit decision (on record at the Registry of Deeds) for additional information on uses and activities regulated or expressly prohibited in order to protect the public water supply. All activities of the homeowners shall be conducted in a manner which respects and protects the water resource protection district and public water supply."*
- Maintenance Trash and Recycling: The Homeowners Association shall be responsible for hiring a licensed trash removal and recycling company to service the homes within the proposed subdivision until such time as the proposed roadways are accepted by the City of Newburyport, with the exception of lots 1-3 on the above referenced plans, as they are already accessible from Boyd Drive, an existing public way. At the discretion of City officials trash and recycling may be collected by the City or its designated contractor(s) prior to street acceptance provided that a license or easement is provided for physical access over such ways and for the purposes of limiting the City's liability.
- Maintenance of Street Lights: The Homeowners Association shall be responsible for the maintenance and upkeep of all street lights within the subdivision until acceptance of the proposed ways by the City of Newburyport.
- Language in Deeds: The following language shall be included directly within all subsequent deeds for properties within the boundaries of this OSRD Subdivision, and not indirectly by reference to another document: *"This property is part of the Evergreen Commons Open Space Residential Development (OSRD) Subdivision located above the City of Newburyport's public water supply (an underground aquifer). See Homeowner's Association Documents, Covenants and Restrictions, as well as the original OSRD Special Permit decision (on record at the Registry*

of Deeds) for additional information on uses and activities regulated or expressly prohibited in order to protect the public water supply.”

- Enforceability: Clear language granting the City authority to enforce all provisions of the Homeowners Association Documents, Covenants and Restrictions related to the above subject matters in the event the Homeowners Association is not enforcing same.
- Applicant responsibility during construction: The applicant shall be responsible for ensuring compliance with all conditions herein applicable to the Homeowners Association until such time as the last lot within this OSRD is sold.

The draft terms of said Homeowner’s Association documents, Covenants and Restrictions shall be included in and as a part of the definitive plan filing and shall be subject to review and approval of the City’s legal counsel.

- Roadways within the Subdivision: The plans accompanying the OSRD-DSP filing shall include the following roadway design details:
 - Roadway Width – Southern Loop: The loop road surrounding open space, located in the southern portion of the project, as well as the short connecting road from this loop road to Boyd Drive and the offshoot cul-de-sac to lots 9 through 14, shall be paved 24’ wide. Parking shall only be permitted on one side of the loop road. The applicant shall provide a sign detail and demarcate where ‘no parking’ signs will be located along the loop road.
 - Roadway Width – Connection to Brown Avenue: The roadway connecting the southern loop to Brown Avenue shall be paved 20’ wide. There shall be no parking permitted along either side of this roadway. The applicant shall provide a sign detail and demarcate where ‘no parking’ signs will be located along the roadway. The Board recognizes the width is smaller than the typical 24 foot width required by the subdivision regulations but the Board prefers, in this instance, a more narrow roadway. The Board agrees, that so long as the Applicant has completed the subdivision in accordance with the approved definitive plans and this OSRD decision, the Board will recommend to the City Council, upon request by the Applicant, that the roadways be laid out and accepted as public roadways within the City of Newburyport
 - Street Acceptance: It shall be the sole responsibility of the applicant to request and obtain public acceptance of, and maintenance for, the proposed ways within this OSRD from the Newburyport City Council. Grant of this OSRD-SP does not guarantee public acceptance for the maintenance of ways within the proposed OSRD. Until such time as the proposed ways are accepted by the City of Newburyport it shall be the responsibility of the applicant or designated Homeowners Association to maintain all ways and related infrastructure within this development.
 - Maintenance of Roads within the Subdivision: The roadways within this subdivision shall be considered private until accepted by the City of Newburyport. Until such time, all maintenance, including plowing, shall be the responsibility of the applicant, owner and/or proposed

Homeowners Association. No salting may be undertaken on roadways or driveways within this OSRD Subdivision without prior written approval from the DPS Water Division.

Each year, on or before September 15, until City acceptance of the proposed ways, the Homeowners Association or its designated consultant/contractor shall submit a written copy of the proposed snow and ice maintenance program to the Newburyport Department of Public Services (DPS), Water Division for review and approval. The DPS Water Division may require modifications to the proposed maintenance program for the purposes of protecting the City's public water supply, including but not limited to limitations on the type and quantity of any chemicals/substances to be applied. Application of any chemicals/substances shall be prohibited for the subsequent year until the DPS Water Division has approved the proposed maintenance program (revised as necessary) and a signed letter of commitment has been provided to the DPS Water Division that the Homeowners Association or its designated consultant/contractor agrees to abide in every respect with the approved maintenance program.

- Street Trees: The Applicant and/or owner shall comply with the Subdivision Rules and Regulations with regard to the placement and installation of street trees.
- Maintenance of Street Trees: Street trees within the subdivision shall be drip-watered for two growing seasons following the completion of initial planting. Street trees that do not survive these first two seasons shall be replaced, in-kind, by the applicant and/or owner. On-going maintenance of the street trees shall be the responsibility of the Homeowner's Association until City acceptance of the proposed ways.
- Upgrades to Boyd Drive: Prior to obtaining any Occupancy Permit within this OSRD, the Owner shall mill and overlay the last 1,000 feet of Boyd Drive, including the existing circular cul-de-sac. The Owner shall replace the sidewalks on the entire west side of Boyd Drive, which is approximately 1,400 feet.
- Water and Sewer Infrastructure: As part of the OSRD-DSP submittal, the Applicant/owner shall illustrate that all water mains are looped for safety and water quality. The applicant/owner shall also submit plans to be reviewed, as part of the OSRD-DSP process, by the Board, DPS and the Board's Consultant Engineer, showing the proposed sewer pump station replacement at the bottom of Boyd Drive.
- Subsurface Utilities: All utilities within the OSRD, including electric service lines, shall be buried.
- Easement for Emergency Access: As part of the OSRD-DSP submittal, the Owner shall provide draft easement language granting the City of Newburyport access in and over any private roads and Open Space areas within the proposed subdivision for emergency maintenance access to proposed roadways and drainage systems.
- Open Space Program: As part of the OSRD-DSP submittal, the applicant and/or owner shall submit a written report prepared by a registered Landscape Architect, addressing, at a minimum, the following aspects of the proposed open space areas:

- Trails: Construct a loop trail along the western side of the property that connects Boyd Drive to Brown Avenue including a minimum 6-foot width. Connect this pathway to the Route I-95 Garrison Trail in consultation with the Office of Planning & Development and Massachusetts Department of Transportation (MassDOT). Provide details and specifications for this work as part of the OSRD-DSP filing. Remove all other existing asphalt cart paths and replace them with stone dust paths or substitute material(s) approved by the Planning Board during the OSRD-DSP process.
- Open Space Maintenance Plan: A clear, concise Operation and Maintenance plan for the Homeowners Association and its designated licensed lawn and landscape maintenance professional. This plan shall address regular mowing of fields and/or “ecological succession” within the designated open space areas for the purposes of water supply protection, in consultation with the DPS Water Division. At a minimum the plan shall specify the following:
 - Regular mowing of a strip of grass at least 5 feet on each side of the above referenced loop trail; and
 - Regular mowing of the grass inside the loop road; and
 - Minimum mowing and maintenance standards for effective operation of the BMP’s located within designated Open Space areas or elsewhere within the project.
- Control over Open Space Areas: In accordance with XIV-I (vii) of the NZO, the Applicant has proposed and the Board accepts that the Homeowners Association will hold the deed and conservation restriction for open space within the OSRD.
- Land to be Deeded to Water Department: The Applicant proposes to deed 0.61 acres of land along the easterly property line, as indicated on the above-referenced and approved plans, to the City. This land will allow for greater flexibility in relocating the existing City water supply (Well # 2) if necessary in the future. As part of the OSRD-DSP submittal the applicant and/or owner shall submit a plan and draft deed for the transfer of this land to the City (under care custody and control of the DPS Water Division) for review.
- Non-Structural Stormwater Features: In accordance with the NZO, Section XIV-I (vi) any stormwater management features within the proposed open space areas shall be “soft” (non-structural) in nature. In accordance with input from the DPS Water Engineering and Divisions clay liners shall not be used in any drainage areas. Instead, direct infiltration of stormwater shall be permitted after treatment with vegetated Best Management Practices (BMPs) and Low Impact Development (LID) techniques.
- Open Space Preservation: As part of the OSRD-DSP submittal the applicant and/or owner shall provide a draft Conservation Restriction for review by the City Solicitor prior to approval under the OSRD-DSP process. This Restriction shall protect the open space areas and shall comply with Section XIV-I(vii) of the NZO. A Conservation Restriction in accordance therewith shall be executed and recorded prior to the issuance of any Building Permit. The Applicant/owner shall include the required provisions of Section XIV-I(vii) of the NZO.

- Architectural Design & Structural Elements: All houses within the OSRD shall adhere to the above-referenced and approved architectural plans (elevations). Any substantive changes to the proposed house designs shall require review and approval by the Planning Board as a minor modification to this condition. As part of the OSRD-DSP submittal, the Owner shall provide architectural drawings that incorporate the following design elements for each of the proposed house styles:
 - Foundations:
 - Foundations, footings, basements and slabs shall be no less than two (2) feet above seasonal high groundwater and one (1) foot above Isolated Land Subject to Flooding (ILSF);
 - Exposed vertical raw concrete in exceedance of one (1) foot shall be prohibited unless covered by: (a) brick or stone veneer; or (b) other similar finishes subject to review and approval by the Planning Board. Once a veneer is started, it should cover the perimeter of the foundation, regardless of exposure distance.
 - The bottom of the siding shall not be step-dropped to make the siding meet grade.
 - Elevations: Houses built on lots 1-3 shall be consistent with the size and architectural style of existing houses along Boyd Drive. The first floor elevations of houses on adjacent lots shall not be more than three (3) feet in vertical separation, with the exception of lots 23-27 along the proposed access road to Brown Ave.
 - Fencing: There shall be no chain link fences within the OSRD. Additionally, no privacy fencing shall be permitted forward of the front of houses (between the front of the houses and the street).
 - Garages: Garages, whether attached to the residential unit or detached, shall be placed so that they are recessed at least five (5) feet from the front building wall of the house. Side entry and detached garages are strongly encouraged.
- Escrow Accounts:
 - Project Review Fees: Prior to the issuance of any Building Permit, Project Review Fees shall be paid in full subject to MGL c44 Sec. 53G.
 - Account Balance: The proposed construction will require regular inspection by the Planning Board's consultant engineer. Such inspections are necessary to ensure that the proposed project is constructed in accordance with the approved plans, to summarize and estimate the cost of remaining work, and to immediately address any issues that may arise during the construction of the project. The cost of such review and inspections shall be borne by the Applicant. To cover the costs of these services, the Applicant shall replenish and maintain a Project Review Fee of \$3,000. Such funds shall be held by the Planning Board in an escrow account. Whenever notified that the funds in said escrow account have depleted to less than

twenty-five (25) percent of the initial Project Review Fee, the applicant shall immediately thereupon deposit sufficient funds to return the account to the initial balance. Said funds shall be in place prior to the commencement of any site disturbance or construction activities. Upon completion of the project, any remaining funds shall be returned to the applicant.

- Initial Funding for Homeowner's Association Activities: Prior to issuance of any Occupancy Permits within the project the applicant and/or owner shall provide written confirmation that the following initial funds have been transferred into accounts to be managed by the Homeowner's Association:
 - Open Space Maintenance Fund: \$5,000
 - Stormwater Management Systems Maintenance Fund: \$3,000
 - Landscaping & Lawn Maintenance Fund: \$3,000
- Approval Subject to Compliance with Water Resource Protection District (WRPD) Ordinance: It is anticipated that the proposed OSRD will require Special Permits under the WRPD (Section XIX of the NZO), particularly with respect to the installation of drainage and stormwater management systems. Approval of this OSRD-SP is subject to compliance with all provisions of the WRPD and grant of any special permits required thereunder.
- Hours of Construction: All construction and site work related to this OSRD shall be limited to between the hours of 7am – 7pm Monday through Friday and 9am-7pm on Saturdays.
- Dust Control: The applicant shall be responsible for implementing dust control measures during all site work and construction related to this OSRD, including but not limited to wetting down soil piles throughout the project.
- Signoffs for Building & Occupancy Permits: No building permits or occupancy permits shall be granted by the Newburyport Building Commissioner within this project until the Newburyport Building Commissioner has first confirmed compliance with all applicable conditions of this decision.