

## REGULATORY

# 14. Overlay Districts

## Overview

An “overlay” district is a resource-based zoning district. It is superimposed over underlying zoning districts to limit the impacts of development on resources that are found within more than one zoning district, or within only a portion of an underlying district. Since overlay districts follow the resource, they may apply to only a portion of a parcel — allowing development on land outside of the overlay district, while protecting resources on land within the district.

Overlay district boundaries are drawn around resource areas that have been identified for special consideration. In Vermont, overlay districts are commonly used to regulate development in flood hazard, wetland and riparian areas, but are increasingly being used to protect other natural resources, such as significant natural communities, wildlife habitat areas and travel corridors. “Special considerations” usually include different standards of review – for example, further limits on allowed uses, conditional use review of uses that require only administrative review in the underlying district, and/or district standards that apply to all uses in the overlay district. These supplement and are applied in addition to the underlying district’s standards.

Forest overlay districts are not common since many forested areas are made up of large, contiguous parcels, making inclusion in an underlying forest district more appropriate. (See *Chapter 13, Forest Zoning Districts*.) Some forested natural communities, areas characterized by one or more type of wildlife habitat, and areas that provide connectivity between large forest or habitat blocks, however, are particularly well suited for protection through an overlay district. Additionally, all forests, and the issue of forest fragmentation, can — and should — be considered within resource protection, conservation, ridgeline/hillside, and/or critical habitat overlays.

*As of 2010, 24 Vermont towns (11% of all towns) had natural resources overlay districts. Fourteen of these mention wildlife, but an additional 2 towns have overlay districts specifically for wildlife.*

— *Wildlife Considerations in Town Planning: An Evaluation of a Decade of Progress in Vermont.*  
VNRC. 2011.

Common components of overlay districts include:

- **Further limits on uses** that are otherwise allowed within the underlying zoning district.
- **Different density and dimensional standards** for development within the overlay district.
- **District standards** that guide the siting of development, and help evaluate the impact of development on resources included in the overlay district, for example, development clustering, setback and buffering requirements.
- **Consultation with natural resources specialists** to understand and evaluate site-specific resources, for example, with the town’s conservation commission, a private consultant, or the Vermont Department of Fish and Wildlife.

## Statutory Authority

24 V.S.A. §4414(2)

Vermont planning statutes authorize municipalities to adopt overlay districts to “supplement or modify” the requirements of underlying zoning districts with “provisions for areas such as shorelands and floodplains, aquifer and source protection areas, ridgelines and scenic features, highway intersection, bypass, and interchange areas...” (24 V.S.A. §4414(2)). Overlay districts are a specialized tool to carry out municipal plan policies and recommendations, and help communities manage these resources in ways that further local, regional, and state planning goals.

## Implementation

### Municipal Plan

**Inventory and map important natural resources.** Town plans often include natural resource maps, which are typically developed using available statewide data for resources such as deer wintering areas, rare, threatened, and endangered species, significant natural communities and wetlands. While these offer a starting point for creating an overlay district, they should be supplemented by additional inventories, field research and/or local data to update information and include additional resources, such as wildlife corridors.

Natural resource inventories and community values



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mapping can help further define important community resources. It is also important to understand and plan for local resources within their regional context (at the “landscape” level) since most natural resources exist and function across municipal (as well as zoning district) boundaries. (See *Chapter 4, Conservation Planning*, for more on these topics.)

### ***Include policies to protect important natural resources.***

Town plans should discuss local goals for natural resources, and then identify the resources that would be best served by an overlay district, especially in areas of town where natural resources are most under pressure due to development. For example, a town plan might address rare natural communities or critical wildlife habitat, such as key wildlife corridors and crossings.

### ***Include overlay district implementation strategies.***

Any proposed natural resources overlay districts should be mentioned in the natural resource, land use and implementation sections of the municipal plan, as the basis for amending zoning bylaws.

## Zoning Bylaw

***Define the purpose of the overlay district.*** Include a district statement or description that clarifies the purpose of the district. This statement should describe the resource(s) to be protected and incorporate related plan goals and policies specific to that resource. When conditional uses are being

reviewed, the purpose statement is referenced, since it helps define the “character of the area” meant to be created by the district. It can also be useful to cite the statutory authority that enables this type of district.

### ***Define the area to be included in the overlay district.***

Overlay districts can be used for species-specific protection (e.g., bear habitat; rare, threatened, or endangered species habitat) or for larger areas that cross underlying district boundaries (e.g., wildlife corridors that connect core habitat areas). The resources included should be based on a local inventory and identified in the town plan, then delineated on the zoning map (or a resource map referenced in the bylaw) and carefully defined in the text of the bylaw. (See *Chapter 18, Writing Clear Definitions*.) This is important so that the district’s boundaries can be easily identified on the ground. Overlay districts defined in zoning bylaws should also be referenced and incorporated under local subdivision regulations to limit land subdivision and resource fragmentation within these areas.

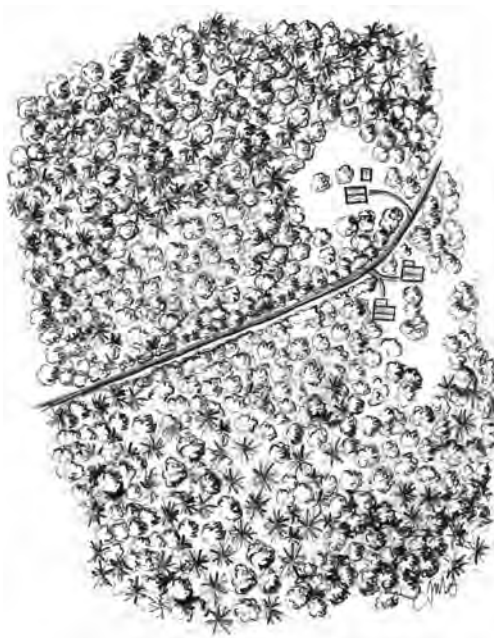
***Identify permitted and conditional uses.*** These will vary depending on the overlay district’s purpose and focus. Overlay districts can be used to exclude incompatible uses otherwise allowed in the underlying district, while still allowing for development of land that is outside of the overlay. The overlay can also be used to make uses that are permitted in the underlying district – including single-family

## Overlay District

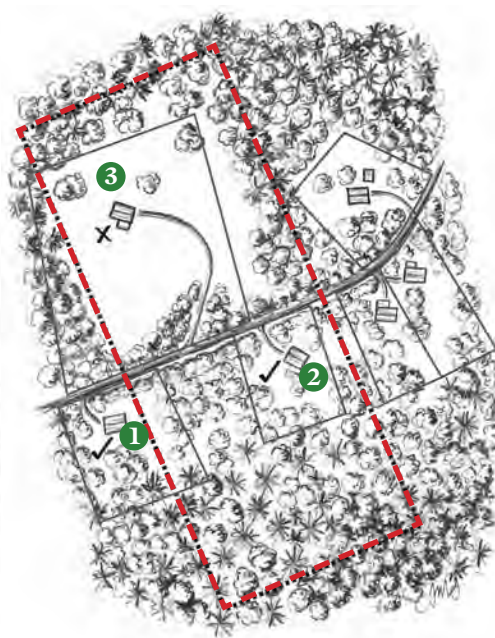
The illustration on the left shows a parcel before development. The forested area represents a wildlife corridor. The illustration on the right shows good and bad examples (numbered in green) of how houses can be sited in an overlay district.

- 1 Development should be kept outside of the overlay whenever possible.
- 2 When a whole parcel is within an overlay district, development should be as close to the edge as possible.
- 3 Development that fragments the resource should be prohibited or discouraged.

- ✓ = Appropriate Building & Clearing
- ✗ = Inappropriate Building & Clearing
- = Parcel Boundary
- = Overlay District



Forest cover before development



Development within the overlay district

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dwellings and other residential uses – conditional uses in the overlay district in order to apply district-specific standards for siting and resource protection.

**Develop review standards.** Overlay districts work by providing an additional layer of review within the district boundaries. This is done by applying additional, resource focused standards, which supplement the standards of the underlying district, and help avoid or limit impacts to the protected resources. These can be district standards, which apply to all development within the overlay district, or specific conditional use standards, which apply only to conditional uses within the overlay district. When communities choose to apply natural resource focused standards in the overlay district, they must have appropriate data to back it up.

For examples of standards that you can use in an overlay district, see *Chapter 11, Writing Standards for Development Review*.

**Identify the review process.** Because overlay districts are meant to address specific natural resources, the review process should include an evaluation of those resources present on the site being developed. This can happen in different ways, each with varying levels of cost and complexity. To identify and evaluate those natural resources present, and identify methods to avoid or mitigate the impacts of development, the bylaw may recommend or require that:

- Natural resources identified on the site (through field surveys) are shown on the site plan submitted with the application.
- A site visit is conducted as part of the review process.
- The local conservation commission reviews the application and makes recommendations to the applicant and the review board.
- The applicant consults with the Vermont Agency of Natural Resources, especially for resources that are of state interest or significance.
- The applicant retain a qualified consultant to conduct a more detailed resource impact assessment that identifies, delineates and evaluates resources present on the site, and includes recommended mitigation measures to avoid or minimize the impacts of the development on identified resources.
- The applicant (and/or town) pays for an independent technical review of the application and proposed mitigation measures, as specified in related policies and fee schedules.

For more on this topic, see *Chapter 11, Writing Standards for Development Review*.

**Articulate how the overlay district relates to other zoning districts.** Generally, an overlay is intended to be more restrictive than the underlying district. To avoid confusion, the zoning bylaw should clearly state that a) the rules of the underlying zoning district remain applicable, and

b) the overlay district's standards, where more restrictive, are controlling.

**Define key terms.** Include resource definitions in your zoning bylaw that clarify what resources are being protected (see *Chapter 18, Writing Clear Definitions*). In an overlay district, terms like “fragmentation,” “wildlife corridor,” and “critical habitat” also need to be precisely defined to ensure that the purpose of the district is met.

## Things to Consider

**Translate science into regulation.** Development review standards must be based on good information and good science, and this often starts with a natural resources inventory. Inventories do three things: they more specifically identify and delineate generally mapped resources, inform the types of regulation that are most appropriate, and serve as “backup” information that explains why review and regulation are needed. The time and expense of conducting inventories suitable for use as the basis for regulation can be a serious obstacle. However, there are a variety of options, including consultation with the Vermont Agency of Natural Resources, collection of existing and available data, and collection of additional and more detailed data through field inventories with professional biologists or ecologists. (See *Chapter 4, Conservation Planning*.) Furthermore, this information often needs translation or other technical assistance to make it useful for planning purposes. Be sure to include enough time for education of the commissioners as well as town residents.

**Identify resources on the ground.** In order to administer and apply overlay district standards, district boundaries must be clear to both applicants and those administering the regulations. It helps to show overlay district boundaries on parcel maps or orthophotos, at a measurable scale, and to incorporate physical features (e.g., roads, streams, or tree lines) in district boundaries where appropriate. It's also important to remember that maps and inventories serve as indicators that a resource is, may be, or has been present in a proposed project area. However, this information also needs to be field checked as part of the application and development review process to ensure that it's current and correct.

**Make connections.** If an overlay district's purpose is to preserve wildlife connectivity, it should connect areas, also called “anchor blocks,” that have habitat value. Furthermore, it is important to ensure that the anchor blocks of habitat connected by a corridor overlay remain intact. This may require using different approaches – such as through the creation of a conservation or forest zoning district – to ensure that overall connectivity features between anchor blocks are maintained. For example, a corridor overlay that ends in a two acre residential zone may not ensure habitat connectivity

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given the potential fragmentation and loss of habitat at one end of the wildlife corridor; it may be better for this district to have a 25 acre minimum lot size, or require clustering of all development.

**Ensure local acceptance.** Communities wishing to protect natural resources may find that an overlay district that is limited in extent is preferable to a more inclusive conservation or forest zoning district. Essentially, an overlay district customizes regulation to targeted resource areas, unlike more broadly defined, blanket zoning district regulations.

**Consider landowner interests.** Landowner rights and interests should be considered in defining and administering overlay districts. A resource-based overlay district typically covers only a portion of a parcel, allowing the landowner to develop outside of the district; this is something to consider in defining district boundaries. In the rare instance that a parcel falls entirely within a restrictive overlay district and cannot be developed as allowed within the district, it may be necessary to ensure that the owner retains some economic use of the land.

## Case Study

### Overlay Districts

One of the earliest New England examples of a wildlife overlay district is Brunswick, Maine's "Rural Brunswick Smart Growth Overlay District" which includes "wildlife habitat block" and connecting "wildlife corridor" districts.<sup>1</sup>

Several Vermont communities – including Hartford, Marlboro, Reading, Shrewsbury, and Williston – have recently adopted or are working on overlay districts that regulate development within wildlife habitats and corridors. These overlay districts are based on mapped information, often prepared with the assistance of the Vermont Department of Fish and Wildlife or other qualified wildlife biologists. Williston, for example undertook a multi-year "Significant Wildlife Habitat and Travel Corridor Project" in association with UVM's Spatial Analysis Lab. A final report was referenced in the town plan update.<sup>2</sup> The town's conservation and planning commissions are now working on overlay district amendments to the town's bylaws.

Each bylaw includes a specific purpose statement. Hartford's "Wildlife Connector Overlay District," for example, is intended to "provide sufficient area for animals to move freely between conserved lands, undeveloped private lands, contiguous forest habitat, and other important habitat, land features, and natural communities within and beyond the boundaries of the Town in order to meet their necessary survival requirements." Shrewsbury

has included mapped deer wintering areas and wildlife corridors in a "Special Features Overlay District" that also includes surface waters, wetlands, meadowland, steep slopes and ridgelines. Reading's proposed "Significant Wildlife Habitat Overlay District" is also intended to protect the town's mapped deeryards and wildlife travel corridors.

Overlay districts trigger an additional level of review by the planning commission or review board – often in association with conditional use and subdivision review. Review standards may limit the type and density of development allowed in these areas, for example by requiring:

- Consultations with state officials, the local conservation commission, or qualified wildlife biologists, by the applicant or board, to determine the impacts of a proposed development on wildlife resources.
- The siting of development outside of the mapped overlay district wherever feasible.
- The siting of development near other existing development and roads.
- Limits on clearing, including the removal of natural cover.
- Contiguous habitat areas to be maintained within and across property boundaries.
- Mandatory buffers between development and important habitat areas – for example, around deeryards, mast stands, vernal pools, wetlands and rare or endangered plant and animal communities.

For assistance in developing wildlife habitat overlays and associated regulations, contact your regional planning commission, and the Vermont Department of Fish and Wildlife's Community Wildlife Program ([http://www.vtfishandwildlife.com/cwp\\_home.cfm](http://www.vtfishandwildlife.com/cwp_home.cfm)).

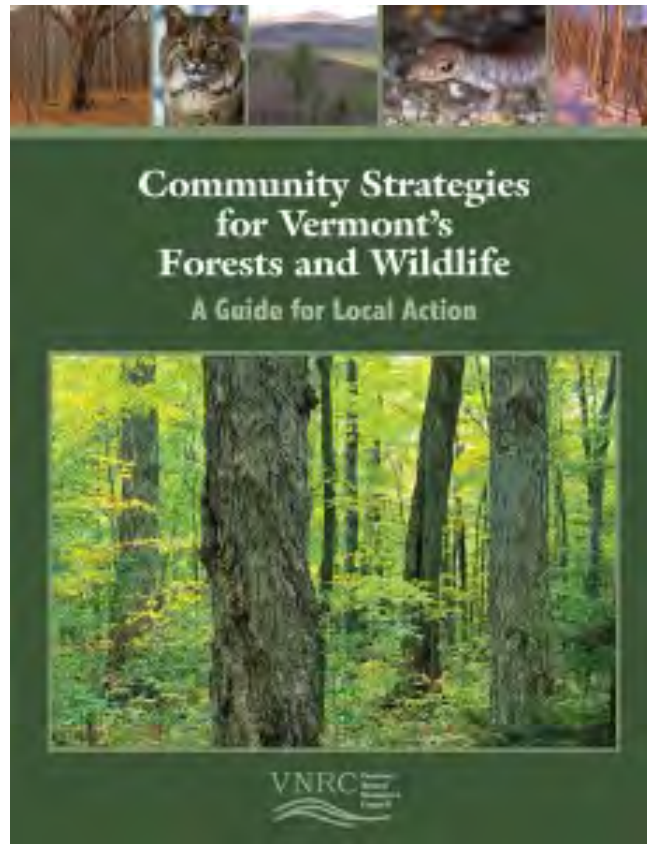


Courtesy Vermont Fish & Wildlife Department



This chapter is part of a larger publication called ***Community Strategies for Vermont's Forests and Wildlife: A Guide for Local Action***. You can download the entire publication or individual chapters (including the endnotes, resources, and credits page) for FREE at:

[www.vnrc.org/programs/forests-wildlife/guide/](http://www.vnrc.org/programs/forests-wildlife/guide/)



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