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15. Subdivision Regulations

Overview

While zoning defines the land uses allowed in different areas throughout town, subdivision regulations guide the *pattern* of development for the community (i.e., the division of a parcel of land for sale, development, or long-term lease). Traditionally, subdivision regulations have been used to ensure the efficient development of a community's built environment, focusing on the configuration of building lots to be served by municipal or private roads and infrastructure. However, because of the focus on how land is divided, subdivision regulations are also an important tool for reducing forest and habitat fragmentation, and reducing impacts on other natural resources.

Subdivision regulations can accomplish this by establishing standards for evaluating the impact of land subdivision on natural resources. This evaluation happens when land is being divided – before building permits are issued – and makes it easier to configure parcel lines, utilities, and roads to minimize impacts.

This is important because land subdivision (or “parcelization”) is typically the first step in resource fragmentation. Whether subdivided land is ultimately developed or not, the division of land into multiple parcels can impact our forests since, with multiple owners, coordinated management of the land (like sustainable forestry) becomes difficult, and the large-scale functions of forests (like wildlife connectivity and flood mitigation) may become compromised. A lot line that divides a resource area (as shown on a “plat,” a type of map that shows how the subdivision's parcel lines and roads will be laid out) initially may be invisible on the ground, but over time the land will likely show the effects of separate ownership and management.

Many communities not only regulate the configuration of lots under subdivision regulations, but also the location and extent of site disturbance and site improvements, including

A 2011 study by VNRC and the Vermont Fish and Wildlife Department found that approximately 51% of Vermont municipalities had stand-alone subdivision regulations, and nearly 90% of these had specific standards for subdivision review. Of the regulations with specific standards, 82% mentioned natural resources. In addition, the study found that subdivision regulations appear to better reflect key conservation concepts expressed in municipal plans than do zoning bylaws.

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



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the future location of development roads, building sites or “envelopes,” and supporting infrastructure. Some subdivision regulations establish formulas for regulating density based on both natural resources and a distance from a village in order to protect natural resources and direct development to existing centers. Other communities, such as Warren, Charlotte, and Fletcher, VT, require “conservation subdivision design,” in which the subdivider must document the steps taken to identify and protect specified primary and secondary resources on the parcel, as defined by the community, and then incorporate these areas as conserved open space.

VNRC published a study in 2010 documenting subdivision trends in Vermont. One of the findings from case studies of subdivisions that took place between 2002 and 2009 in eight Vermont towns, was that *only approximately 1% of those subdivisions, accounting for less than 8% of all lots*

*created (89 out of 1,159) in those towns, would independently trigger Act 250 review.*¹ While Act 250 did have jurisdiction over some additional parcels, due to prior development of the involved land, the remaining subdivisions relied entirely on local review, making clear how important it is to adopt local subdivision regulations that address a community's – and the state's – natural resource protection goals.

Subdivision standards – including standards that may be specific to subdivisions within a forest or conservation zoning district – can be used to:

- **Protect natural resources identified in the regulations**, including forestland, wildlife habitat, steep slopes, etc., via standards for lot layout and open space protection (preferably including provisions ensuring that designated open space is of a size adequate to support forest management and ecological goals).
- **Guide the subsequent development of subdivided lots** through the designation of building or development envelopes that limit the extent of clearing

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and the location of development on a parcel.

- **Limit resource fragmentation** associated with driveways, roads and utility corridors (e.g., by limiting the extent of private road construction and the upgrade of Class 4 roads, and by requiring shared road and utility corridors wherever feasible).
- **Consider current forest management/stand types**, in locating and configuring building lots and access roads, as needed to ensure ongoing forest management after subdivision.

In communities with an active forest industry, subdivision regulations may exempt from review the leasing of parcels for forestry purposes as long as accepted management practices for forestry are followed.

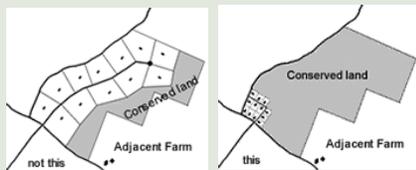
Conservation Subdivision Design

Conservation development is a type of land subdivision designed around the site's natural resources. This approach allows for the same number of homes to be built as in a standard subdivision, but in a less land-consumptive manner. At least 50% of the remaining land is permanently protected and added to an interconnected network of open space.

In contrast to cluster development, conservation design follows a particular five-step process for developing a site that includes determining a site's yield, identifying key natural and cultural resources to be protected, locating home sites, connecting roads and trails, and drawing lot lines. (For more details on this process, see the case study below about Warren, VT's approach to subdivisions.)

Like any tool, conservation developments have their strengths and limitations. For more information on conservation development, visit <http://vnrc.org/resources/community-planning-toolbox/tools/conservation-developments/>. See also *Conservation Design for Subdivisions: A Practical Guide to Creating Open Space Networks* by Randall Arendt (1996).

These images show two different approaches to zoning and subdivision patterns. The image on the left represents five-acre lots, no limitations on how much land can be cleared, and a long road to maintain and plow. The image on the right shows a conservation design that leaves intact forest and open space.



Statutory Authority

24 V.S.A. §§4418, 4463

According to Vermont law, subdivision regulations must conform to and implement the municipal plan. They must also contain standards for the protection of natural resources and the preservation of open space, as deemed appropriate in the municipality. At a minimum, subdivision regulations must include:

- **The procedures and requirements for the design, submission and processing of subdivision plats, drawings and plans, and other supporting documentation** (such as maps and management plans for identified natural resources);
- **Standards for the design and configuration of parcel boundaries** as necessary to implement the municipal plan and to achieve desired settlement patterns for the neighborhood or district in which the subdivision is located;
- **Standards for the design and layout of supporting infrastructure** (e.g. streets, sidewalks, water, sewer and utility lines, stormwater management facilities, etc.).

Subdivision regulations may also include development standards that promote energy conservation and renewable energy. Municipalities may also choose to include (by reference) Act 250's ten criteria, and use those as local development review standards.

Municipalities may lay out a process for preliminary reviews prior to approval – including a less formal “sketch plan review” that allows an applicant to propose a subdivision in concept, and identify key resources to be protected prior to incurring the expense of a survey and preparing a more formal subdivision application.

Implementation

Municipal Plan

Establish the need for subdivision regulations. If your municipality does not currently have subdivision regulations, the intent to enact them should be written in the municipal plan. Here is an example of possible municipal plan language for doing this:

- “Regulate the creation of new parcels to ensure that the subdivision of land a) creates the desired settlement pattern for the district in which the subdivision is located, b) allows for the efficient and cost-effective provision of infrastructure and services to these areas and c) minimizes the impacts to natural resources as defined on [map] and described in chapter [x] of this plan.”

Add action steps. “Adopt subdivision regulations,” and “update subdivision regulations to include standards for

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evaluating impacts on forest resources and wildlife habitat” are actions that can be added to advance the protection of forest and wildlife resources under new or updated subdivision regulations.

Zoning Bylaw

Utilize subdivision regulations in tandem with zoning bylaws. Combining the subdivision and zoning bylaws into a single document (referred to in statute as a “Unified Development Bylaw”) can streamline various steps in the review process, for example, by providing for a single or concurrent review process (e.g. incorporating conditional use review, PUD review, subdivision review and site plan review) – saving time for both local officials and applicants. In addition, it is helpful to coordinate zoning and subdivision standards by, for example, targeting different subdivision standards to appropriate zoning districts.

Subdivision Regulations

Establish community support. Creating a subdivision regulation “from scratch” should be done in consultation with your town planner, regional planning commission, or a planning consultant, and of course, community members. Particularly for communities that have previously handled subdivisions within the zoning bylaw, it will be important to communicate how a stand-alone regulation will better serve the community’s goals – rather than being just another layer of regulation.

Update natural resource standards in existing subdivision regulations. As previously noted, under Vermont law subdivision regulations must include “standards for the protection of natural resources and cultural features and the preservation of open space, as appropriate in the municipality.” To meet this statutory requirement and achieve local goals, existing subdivisions can be updated to:

- **Add protection standards** to avoid the undue fragmentation of forest resources and productive forestland.
- **Promote the maintenance of lot sizes large enough** for forest management and enrollment in the Current Use Program.
- **Include specific standards** that govern the subdivision of productive or priority forestland (if mapped) by requiring the preparation of a forest management plan. In this case, the purpose of the plan is to ensure that the layout of the subdivided parcels will not unduly limit the opportunity for ongoing management. (Limitations can happen when management areas are fragmented, or conflicts arise between management activities and residential development.)
- **Use road or driveway length as a trigger for “major”**

subdivision review. The length of a road or driveway serving a subdivided parcel, which can be an indication of encroachment into an undeveloped forest block, can be used to trigger the specific type of subdivision review undertaken.

- **Require disclosure of subsequent development plans to foster better planning.** At a minimum, this should include a simple written statement of proposed development plans, if any (e.g., the parcel is to be conveyed as a woodlot). For more complex, phased subdivisions, the submission of a master plan may be required, as a way to get a general sense of how the land will be developed over time. A master plan at a minimum should identify mapped conservation, forest and open space areas to be considered in future phases of development, based on best available information. The town of Warren, as discussed below, has this provision in the subdivision section of its unified bylaw (Article 7.2(H)(3)).
- **Limit the amount of site clearing.** Subdivision regulations can require the designation of a building envelope, and limit clearing to the area within the envelope, except as required for driveway/utility corridors. Clearing limits are also often specified on accompanying erosion control plans.

More Information

- **Subdivision and Parcelization Trend Information** for each Vermont town was compiled in an online database (reflecting data from 2003 and 2009 only) as part of a subdivision trends analysis by VNRC. The database includes information such as the number of large parcels in each town, the percentage of large parcels that have been subdivided, the percentage of those enrolled in the Current Use Program, and more. www.vnrc.org/subdivisionreport
- **Community Planning Toolbox: Subdivision Regulations** gives a general overview of this land use tool. <http://vnrc.org/resources/community-planning-toolbox/tools/subdivision-regulations/>
- **Community Planning Toolbox: Conservation Developments** summarizes this land use concept. <http://vnrc.org/resources/community-planning-toolbox/tools/conservation-developments/>
- **Land Use Planning and Implementation Manual, Topic Papers 18, Open Space & Resource Protection Programs, 19, Open Space & Resource Protection Regulations and 30, Zoning Regulations.** <http://vpic.info/ImplementationManual.html>



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For examples of standards that achieve each of these goals, see *Chapter 11, Writing Standards for Development Review*.

Things to Consider

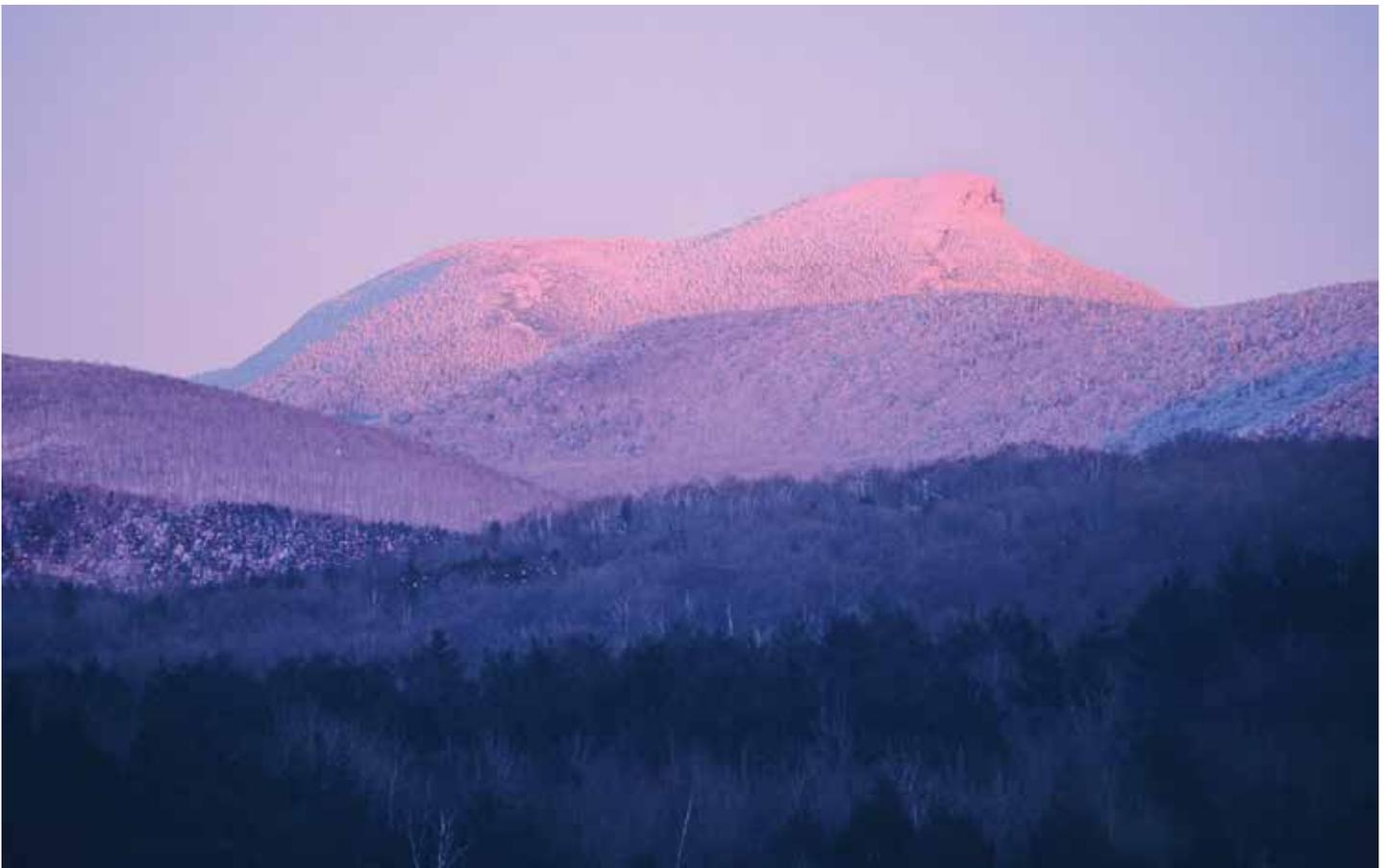
Review subdivisions through the zoning bylaw. Zoning bylaws and subdivision regulations are separate documents. While many communities have zoning bylaws, a number do not have subdivision regulations, and thus, dividing land in those communities does not require a formal review (though subdivision plats must still be recorded, under separate state statutes). A few towns regulate subdivisions under zoning, using the statutory definition of “land development,” which can be a straightforward way to deal with keeping track of parcelization and recorded plats. This approach often reviews subdivisions by looking at basic qualitative standards (e.g. lot size, setbacks) through site plan review or administrative review by a zoning administrator. The challenge is that this approach typically includes few review standards, which makes it less useful for addressing

A Unified Development Bylaw is different than reviewing subdivisions via the zoning bylaw. Whereas a Unified Development Bylaw includes all of the elements of a stand-alone subdivision regulation as required by 24 V.S.A. §4418, this is not a requirement of subdivision review via the zoning bylaw.

specific natural resource concerns. Along with forest and conservation districts, a standalone subdivision regulation is one of the most powerful tools that communities can use to protect their landscape, forest economy, and wildlife habitat.

Establish a stand-alone subdivision bylaw or a unified bylaw. Subdivision regulations can be turned into stand-alone regulations, or into a unified bylaw that contains zoning and subdivision in one document, and aligns review processes. Doing this addresses the absence of

standards that can happen when subdivision review is treated as a part of zoning, since statute requires that certain standards be included in a stand-alone or unified subdivision bylaw. It also makes it easier to establish a phased review process (including an initial “sketch plan review” meeting), outline the necessary administrative procedures for plat filing that would help with long-term enforcement of any conditions for approval (as well as with municipal property records), and include more comprehensive review criteria and resource protection standards.



Wayne Fawbush

Case Study

Conservation Subdivisions: Warren, VT

The Town of Warren uses a form of “conservation subdivision design” – a method for promoting conservation by requiring creative development design – in the review of major subdivisions. Conservation subdivisions first emerged in the 1990s in Massachusetts, largely through the work of the Lincoln Institute of Land Policy and Randall Arendt, a well-known author and advocate for conservation planning and site design.

Under Warren’s subdivision regulations, applicants are required to follow a design process that emphasizes the protection of “primary” and “secondary” conservation areas, as defined in the bylaws and identified during sketch plan review. This process is “intended to ensure compliance with the Warren Town Plan, and that maximum consideration is given to the identification and protection” of important areas when land is subdivided and buildings are sited. (page 83).

Warren has defined primary conservation areas – essentially “no build” areas – to include various resources: all land within its flood hazard and meadowland overlay districts, slopes with a gradient of 25% or more, and surface waters, wetlands and associated buffer areas required under the regulations. Secondary conservation areas – in which development encroachments must be minimized – include critical wildlife habitat and wildlife corridors, groundwater source protection areas, slopes from 15% to 25%, designated historic and archaeological sites, and prominent ridgelines visible from public vantage points. These areas include much of the town’s forestland. Specific methods to avoid or minimize adverse impacts are also identified in the regulations. The town is currently reviewing its priority conservation areas in relation to recent natural resource inventories.

The subdivision design process is outlined in Table 7.1 of the regulations, and described in more detail in Section 7.3. The steps to be taken (and documented by applicants) are, in order:

1. **Identify conservation areas** – delineate the boundaries of all primary and secondary conservation areas. These areas are to be conserved under a conservation plan, and designated as open space.
2. **Identify development areas** – exclude primary conservation areas and limit, to the maximum extent feasible, adverse impacts to secondary conservation areas. Development density within these areas is to be

determined based on the zoning district requirements in which the subdivision is located. Planned unit development provisions, including density bonuses for more clustered development and open space protection, may also apply.

3. **Identify building sites, envelopes** – within designated development areas, to include building footprints and/or building envelopes in which principal and accessory structures and parking areas must be located.
4. **Lay out roads, driveways and utilities** – to connect identified building sites within designated development areas, and avoid adverse impacts to and the fragmentation of designated conservation areas.
5. **Identify proposed lot boundaries** – within designated development areas, to include building sites or envelopes, and to avoid or minimize impacts to primary and secondary conservation areas.

This process – initially used to conserve large tracts of farmland – can be readily adapted to conserve a community’s forest resources. It results in a much more site sensitive design than the standard cookie cutter process of defining building lots based on zoning lot size and road frontage requirements. Using this process and related open space standards, conservation areas are included and identified on the plat as protected open space – ideally as separately conserved lots held in common or single ownership.

Warren’s regulations are available on the town’s website: <http://www.warrenvt.org/general/ordinances.htm>.

For more information, illustrations and example language, the following resources, authored in whole or part by Randall Arendt, are especially helpful:

Dealing with Change in the Connecticut River Valley: A Design Manual for Conservation and Development, 1989: Cambridge: Lincoln Institute of Land Policy.

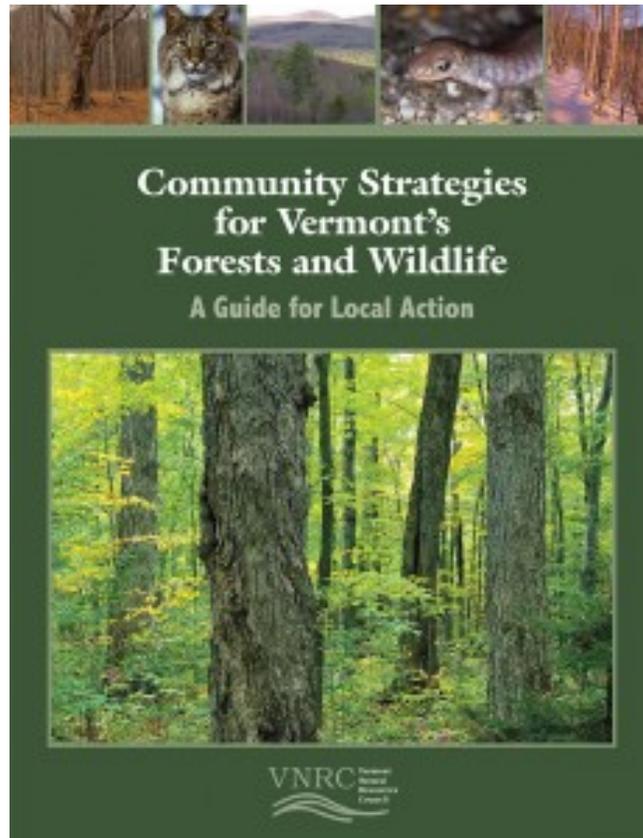
Rural by Design: Maintaining Small Town Character, 1994, Chicago: Planners’ Press.

Conservation Design for Subdivisions: A Practical Guide for Creating Open Space Networks, 1996, Washington DC: Island Press.



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/



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