

## REGULATORY

# 18. Writing Clear Definitions

## Overview

Unambiguous regulations are essential to identify, assess and mitigate the impacts of development on natural resources. For regulations to be clear, they must have two things: specific definitions of the resources to be protected; and clear standards to review and evaluate the impacts of development and the level of impact that will be allowed. This topic paper focuses on clear definitions. (See *Chapter 11, Writing Standards for Development Review* for more on this related topic.)

Zoning and subdivision regulations typically include a “definitions” section – but natural resources referenced in the text of the regulations often are not defined. For example, a 2011 review of zoning regulations found that, while 99% of towns refer to wildlife habitat in their town plans, only 2% of the towns with these regulations actually define “wildlife habitat.”<sup>1</sup> Regardless of whether a resource is limited to a particular area (a wetland, for example) or presented more broadly (like a large forest block or a wildlife connectivity corridor), it needs to be clearly defined in the regulations. It also helps to identify regulated resources on maps referenced in the regulations.

### JAM Golf: A Lesson in Specificity

A Vermont Supreme Court decision (*In re: Appeal of JAM Golf, LLC, 2008 VT 110*) underscored the importance of having clear language in town plans and bylaws. The court ruled that parts of the town’s bylaw were “unenforceable” because they were too vague, and struck those provisions of the regulations. The court concluded that the standards that apply to resource protection must be clearly defined in the regulations. Otherwise, there is a risk that the applicant – and the natural resources to be protected – may be subject to the “unfettered discretion” of the reviewing body.

It’s also been established through similar cases that municipal plan policies, including policies for conserving and protecting natural resources, must also be consistent, clear and unambiguous to be considered in local and state regulatory proceedings (e.g., in Act 250). Clear policy language is also easier to translate into local regulations.

Clearly defining and delineating resources:

- Conveys which resources need to be considered in site planning and development review;
- Indicates where these resources are located;
- Provides clear guidance to both applicants and the review board;
- Provides clear guidance to the courts, enabling the regulations to withstand legal challenges that can stem from the use of vague terminology.



A. Blake Gardner

Text definitions, narrative descriptions, and referenced maps should provide sufficient information for both applicants and board members to identify and address resources that are likely to be present on a property. However, because of map scales and accuracy limitations, it’s usually also necessary to verify natural resource information – including the type and extent of resources actually found on a particular site – through site planning by the applicant, and site visits by the review board.

Key characteristics of good definitions include:

- **Natural resources identified in zoning and subdivision regulations are clearly defined. To the greatest degree possible, natural resources should be indicated on resource maps referenced in the regulations.**
- **Resource maps that are updated on a regular basis, for example, as part of the update of the municipal plan.** Municipal plan maps, however, may not provide enough detail for regulatory (zoning) purposes. It is important that resource maps used in regulation be specific enough to inform development review, and to indicate where more site level information might be needed.
- **In order to be comprehensive, regulations must include both definitions for important features,**



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**and approaches (standards) for avoiding or mitigating the adverse impacts of development.**

- **Since what is ecologically important differs from one place to another, boilerplate or standardized definitions need to be reviewed carefully for local appropriateness.** For example, towns in the Champlain Valley may have important habitat for grassland birds, while towns along the spine of the Green Mountains may have habitat for Bicknell’s Thrush. Each town should tailor their definitions to address these local resources.

Where resources need to be identified more specifically on the ground, bylaws should include language that requires the applicant to conduct an inventory as part of site planning and assessment. Bylaw language should also call for the review board to conduct site visits. In addition, language should also be included that allows the review board to request additional information, possibly prepared by a qualified professional, as needed to determine project conformance with resource protection standards.

### Statutory Authority

24 V.S.A. §4303

Vermont planning statutes do not specify that bylaws must include definitions. However, definitions are a common feature of regulations so that key terms and standards can be clearly interpreted and consistently applied over time by everyone involved in the review process. The importance of good bylaw definitions has clearly been established by the courts (see sidebar on the *JAM Golf* case on the previous page). In the absence of definitions, the courts look to “plain language” (e.g., dictionary definitions), which are not especially helpful in addressing natural resource protection. The Vermont Planning and Development Act (24 V.S.A. Chapter 117) comes with its own set of definitions (including a definition of “land development”) that control for purposes of local land use regulation. Local bylaw definitions must be consistent with the statutory definitions, but can also be more specific or restrictive in their application.

### Implementation

#### Municipal Plan

*Use the municipal plan as a guide for developing definitions (and making other zoning bylaw updates).*

The municipal plan provides specific information about your community’s natural resources and values; therefore use it as a guide to craft customized bylaw definitions to protect important community resources. The plan’s goals, policies and actions identify both the types of resources to

be protected, and the strategies recommended to protect them. (Remember, if the plan does not provide a basis for regulatory or non-regulatory action, it needs to be updated before action can be taken.) For consistency, some plans include a glossary of terms that can also be incorporated under bylaw definitions – and that also support use of the plan in regulatory proceedings such as Act 250.

**Review municipal plan maps.** Use existing municipal plan maps as a starting point for developing resource maps for inclusion or reference in the bylaws and for purposes of resource identification. Consider these questions: Do the municipal plan maps include resources that are not yet included in your town’s bylaws? Will additional information, conservation planning, or inventories be needed before you can develop maps that can also be used for regulatory purposes?

#### Zoning and Subdivision Regulations

**Review your zoning and subdivision regulations.** Read through your regulations to identify terms that may need additional clarification or definition.

- In the zoning bylaw, check district purpose statements (the sections that explain what each district is trying to accomplish); application requirements for zoning permits, site plan or conditional use review; and associated development review standards – each of these sections may contain terms that need to be defined consistently in the bylaw’s definition section.
- Within the subdivision regulations, check application requirements and standards for natural resource terms that may need to be defined.
- Review existing zoning and subdivision definitions to determine whether they are vague and in need of updating.

**Add or update definitions.** When it comes to natural resource definitions, a good place to start is to consider existing state program or statutory definitions – e.g., under 24 V.S.A. §4303 (planning statutes) and 10 V.S.A. §6001 (Act 250 definitions). This helps maintain consistency between local and state development review, to the benefit of

Natural resources terms found in Chapter 117 (planning statutes)	Natural resources terms found in Chapter 151 (Act 250)
Fluvial erosion	Endangered species
River	Necessary wildlife habitat
River corridor protection area	Productive forest soils
Wetland	Shoreline
	Stream

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applicants. State definitions are also generally accepted by the courts.

Definitions should be the same in both zoning and subdivision regulations to avoid confusion and ensure that regulations are consistently applied. Some subdivision regulations address this by simply incorporating the definitions in the zoning bylaw by reference.

A list of sample definitions related to forest resources and development are included at the end of this chapter.

**Indicate on a map where important natural resources are located.** Definitions and resource maps used in development review must be based on good information and good science. This often starts with a natural resources inventory, which is a key component of any conservation planning effort (see *Chapter 4, Conservation Planning*). Resource inventories do three things:

- 1) They more specifically identify and delineate generally mapped resources, often through field work;
- 2) They help illustrate why review and regulation are needed;
- 3) They inform the types of regulation that are most appropriate.

The time and expense of conducting inventories used as the basis for regulation can be a serious obstacle; however, there are a variety of options. For example:

- It is helpful to start by determining what resource mapping is already available. The Vermont Agency



Vermont Department of Fish and Wildlife

of Natural Resource's web-based "Vermont Natural Resources Atlas" and "BioFinder" can help with this (see the *Resources* section at the end of this guide for more information).

- It's also important to see what mapped data are available from your regional planning commission (RPC). The RPC may have conducted more detailed, resource-specific inventories (e.g. for river corridors) for use by its member communities, and in regional plan updates. The RPC is also a good source for maps produced using digitally mapped data and imagery available through the Vermont Center for Geographic Information (VCGI).
- Another option is "desktop mapping" which uses higher resolution aerial and satellite imagery (e.g., digital orthophotos developed for the state, by region) to identify where resources are located. This type of mapping is typically done by someone who is trained to interpret and integrate different types of imagery. Some digital map information is available from RPCs, state and federal agencies, and local universities, but at the town level, the services of a consultant may be needed.
- More detailed field inventories can be conducted by a professional (such as a forester, wildlife biologist or an ecologist), or even trained volunteers (a form of "citizen science"). There may be times when it is useful to clearly state if a certain professional qualification or skill is required for a service (for example, land surveys by volunteers would never be acceptable).

Once resources are identified, they can be delineated on a map that is then included (as a resource overlay) or referenced (for purposes of resource identification) in the regulations. Remember, even once these maps have been developed, site-specific information may still need to be collected as part of the development review process.

### Things to Consider

**Writing clear definitions improves the development review process.** Clear definitions aren't just about avoiding legal trouble. Defining what you mean by terms like "natural resources," "core forest blocks," and "significant wildlife habitat" also helps applicants and the local zoning administrator (ZA) and review board since clear definitions reduce ambiguity and subjectivity in the development review process. Involve your ZA and review board early in the process of developing definitions and standards.

**Use caution when adapting definitions for local use.** Many examples of definitions can be found in the bylaws of neighboring communities, and it can be tempting to cut and paste these into your community's regulations. However,



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any sample definitions should be evaluated very carefully before being adopted in your bylaw. Some generic definitions mention a broad range of resources – some of which may not even be present in your town. For example, the sample definition of “significant wildlife habitat” on page 72 includes nine different habitat types, but only seven of these may be present in your community. Work with the Vermont Department of Fish and Wildlife, your county forester, your regional planning commission, or a wildlife biologist to ensure that the definitions you are using a) make sense for the local environment and b) align with the purposes of your regulations.

**Consider using state definitions for consistency.** Aligning local with state program definitions (where appropriate) provides consistency, avoids confusion, and makes multi-jurisdictional reviews clearer for everyone involved. But make sure that state definitions are sufficient to meet local goals and objectives. If not, they should be adapted as needed for local use to be more inclusive or restrictive.

**Reach out to local groups for assistance in developing definitions.** Harness local knowledge to develop definitions that capture the characteristics of your community’s natural resources. Community members — especially those with forest and wildlife expertise — can serve as resources for

### Sample Definitions Related to Forest Resources and Development

The following definitions are provided as guidance for developing locally appropriate definitions that relate to forest and wildlife resources. These are samples only – there is no “one size fits all” definition. These definitions should be updated based on your location, community values, and after appropriate consultation with the town attorney and Vermont Agency of Natural Resources.

#### Sample Definitions

**Contiguous Forest:** An area of forestland comprised predominantly of one or more large parcels with either no roads or low densities of class 3 roads and little or no human development (buildings, parking areas, lawns, gravel pits, etc.)

**Development (or building) Envelope:** A specific area of a lot, delineated on a subdivision plat or site development plan, within which structures, parking and loading areas shall be located, and outside of which no structures, parking or loading areas shall be located. A building envelope shall be defined by required minimum setback and height distances, unless otherwise specified in these regulations. This also may be referred to as the “buildable area” of a lot.

**Forest Fragmentation:** The division or conversion of large tracts of contiguous forest or formerly contiguous forest into smaller pieces leaving remnant patches of forest that vary in size and isolation separated by non-forested lands or other vegetation and land-use types. Fragmentation can reduce the viability of forests for forest management, hinder ecological functions such as watershed protection, disrupt wildlife corridors, and

render core habitat and other habitats unsuitable for certain species of plants and animals.

**Habitat Block:** An area of natural cover (forested, wetland, woodland, or old field) surrounded by roads, development, and agriculture. Habitat blocks may be large or small.

**Forestry:** The growing and harvesting of trees or timber under proper forest management for purposes other than their fruit. For the purposes of these regulations, the term “Forestry” shall also include the use of temporary processing equipment such as chippers and portable sawmills, which are used in association with harvesting operations, not exceeding a maximum of one year, and are removed from the site once harvesting operations are complete. This definition specifically excludes permanent sawmills, lumber yards and other similar facilities used for the processing, manufacturing and/or storage of wood and wood products.

**Habitat Fragmentation:** The division or conversion of tracts of significant wildlife habitat into smaller pieces leaving remnant patches of habitat that vary in size and isolation separated by developed or, otherwise non-forested lands. The reduction in size of significant wildlife habitat as a result of fragmentation can disrupt wildlife corridors and render core habitat and other habitats unsuitable for certain species of plants and animals.

*(continued on page 72)*

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defining, describing and mapping the community's natural resources. Conservation commissions, hunting and angling groups, youth organizations, science classes, and others can become part the "citizen science" that's incorporated in local regulations. Involving a broad group of community members is educational and can help build support for regulating the impacts of development on locally important resources.

***Don't underestimate the importance of field checking your mapped data.*** It's 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. This information should be field checked as part of the application

and development review process to ensure that it's current and correct.

### Mapping Resources

The Vermont Agency of Natural Resources has BioFinder and a Natural Resources Atlas that you can use to map natural resources. Additionally, RPCs often have detailed maps that can be helpful. Finally, remember that the Vermont Center for Geographic Information is another resource. (See *Resources* section.)



## Sample Definitions Related to Forest Resources and Development

(continued from page 71)

**Seasonal Camp:** A building (or camper), not exceeding 720 square feet in building area nor 20 feet in building height, which has no permanent foundation and is not served by public utilities. A seasonal camp shall not be used as a primary or secondary residence, but rather as a temporary shelter for occasional use in connection with an outdoor recreational activity such as hunting or fishing. (Bennington)

**Camp:** Land or structures thereon, such as cabins, camper-trailers, shelters or tents greater than 150 square feet and less than 1,000 square feet, occupied and/or used on a temporary basis for no more than 5 months per year. Such structures, consistent with their short-term occupancy, shall not be connected to public utility services. (Waitsfield)

**Productive Forestland:** Land with soils that are capable of supporting the growth of trees and commercial forestry. Vermont's Current Use Program defines productive forest as forested areas on soils of Site Class I, II, or III (i.e., capable of growing 20 cubic feet of wood per acre per year or more).

**Significant (or Sensitive) Wildlife Habitat:** Those natural features that contribute to the survival and/or reproduction of the native wildlife of [town]. This shall include, but is not limited to, (1) deer wintering areas (i.e. deeryards); (2) habitat for rare, threatened

and endangered species (state or federally listed); (3) concentrated black bear feeding habitat (mast stands); (4) riparian areas and surface waters; (5) wetlands and vernal pools; (6) wildlife travel corridors; (7) high elevation bird habitat (8) ledge, talus and cliff habitat; and (9) habitat identified by the Vermont Department of Fish and Wildlife as either significant wildlife habitat or necessary wildlife habitat in accordance with 10 V.S.A. § 6086(a)(8)(A).

### Small Scale Processing of Raw Agricultural and Forest Products:

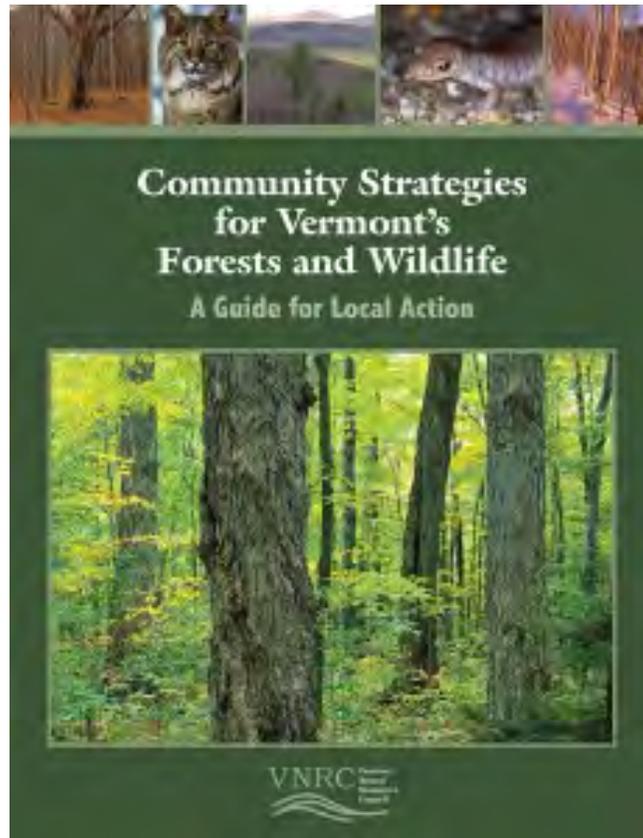
A facility for the processing of raw agricultural or forestry products. This includes, but may not be limited to, sawmills and specialty food manufacturers. (Note: In defining "small scale processing," a municipality may wish to define "small scale" based on performance standards related to scale, intensity of use, and other impacts such as traffic.)

**Wildlife Travel Corridor:** A large area that permits the direct travel or spread of animals or plants from one area or region to another, either by the gradual spread of a species' population along the route or by the movement of individual members of the species. Generally, this area is likely to include several specific wildlife road crossing areas and is characterized by undeveloped forested corridors, including forest cover reaching to road rights-of-way, which serve to link large tracts of unfragmented forest habitat.



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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