

MEMO



To: Shelburne Planning Commission
From: PlaceSense
Date: 29 January 2023
Re: Article 6. Environmental Protection Standards

This memo is intended to assist in your review of the first draft of Article 6. Environmental Protection Standards. We have attempted to provide a crosswalk between the adopted and the proposed language where it is directly comparable (much of it is not).

Article 6 makes extensive use of reference maps, accepted standards and guidance documents maintained by federal and state agencies. In addition, it makes use of maps prepared for these regulations, as well as maps and policies contained in the 2019 Shelburne Town Plan. Some of these reference materials are maintained online by the responsible agencies, while others will need to be included in the adopted bylaw. These materials include:

- Vermont Shoreland Protection Act rules and mapping
- Vermont Hydrography Dataset (DEC)
- Significant Wetlands Inventory Map (DEC)
- Wetland Advisory Maps (DEC)
- Vernal Pool Atlas (DEC)
- VT Standards and Specifications for Erosion Prevention & Sediment Control (DEC)
- Natural Heritage Inventory (Vermont Fish and Wildlife)
- Chittenden County Soil Survey (USDA, Natural Resources Conservation Service)
- Special Flood Hazard Area (FEMA)
- Steep slope advisory map (derived from state data by PlaceSense)
- 2023 Shelburne Forest Habitat Block Assessment & Ranking Report (town)
- Priority forest habitat block map (derived from town data by PlaceSense)
- Shelburne Town Plan viewshed map (town)

Article 6 deploys well recognized standards to ensure that the information applicants need to produce a complete development application is verifiable and where possible meets accepted standards for environmental review commonly used in other jurisdictions.

The proposed draft consolidates environmental protection standards that were distributed throughout Shelburne's adopted zoning and subdivision regulations into one article. Many elements have been clarified and/or strengthened in line with the recommendations in the 2019 Town Plan. Consequently, a direct comparison between existing and proposed language is difficult.

Figure 6-01 (at the top of Article 6) summarizes the resource feature, if environmental review is required, whether the feature is included or excluded from the development envelope, or whether the land is considered unbuildable due to the presence of one or more resource feature(s).

Each chapter establishes the types of development applications and/or the locations that are subject to the standards that follow. As noted in previous chapters, we strongly encourage you to review those applicability sections carefully and think about the thresholds being set. Additionally, the notes summarize key information by section and pose questions for Planning Commission discussion.

DRAFT	ADOPTED	NOTES
Chapter 6000 Surface Water & Wetlands	V, XVII, XVIII of zoning	This chapter consolidates standards from several parts of the adopted regulations. We have established a Flood Hazard Area (FHA) Overlay District which replaces Art. XVIII. Only lands in the mapped SFHA are subject to this regulation (adopted regulation extends 37 feet beyond). The need for federal and/or state permits (in addition to Shelburne) is stated.
6002 Applicability		The standards of the chapter apply to lakes/ponds, shorelands, rivers/streams, wetlands and vernal pools. Those resources are shown on the enclosed map.
6003 General		This section specifies what development is allowed in or in proximity to the listed features. It provides a pathway to allow development through a waiver with specific criteria for the DRB to apply. The PC should look at the list in Paragraph E(1) carefully.
6004 Lake and Pond	XVII of zoning	The standards that will be applied along Lake Champlain and Shelburne Pond remain largely unchanged from adopted zoning. We are recommending that Shelburne <u>not</u> seek municipal delegation of the state Shoreland Protection Act. We are also recommending that the town <u>not</u> repeat the state rules or deal with enforcing those rules. Therefore, there is no riparian buffer established for Lake Champlain or Shelburne Pond as those lands are state regulated.
6005 Water Dependent	XVII of zoning	The standards for water dependent structures remain largely unchanged from adopted zoning. Standards for boathouses have been proposed (none exist in the adopted regulations).
6006 Constructed Ponds		There are no standards for constructing a pond in the adopted regulations.
6007 Wetlands & Vernal Pools	XIX, XX of adopted zoning	Sets out when field delineations of wetlands may be required on a site proposed for development.
6008 Riparian Buffers	XX of adopted zoning	New approach for establishing the width of riparian buffers, maintenance requirements and allowed uses. This aligns with town plan policies and strengthens the existing provisions for buffers considerably. Note that the widest buffers are required on the smallest streams. This aligns with science-based recommendations about the higher level of hazard mitigation and multiple environmental benefits resulting from maintaining vegetation along the upper reaches of small streams. Whereas on the larger streams, the primary benefit is pollution reduction and that can be achieved with less buffer width.

DRAFT	ADOPTED	NOTES
Chapter 6100		
6102 Applicability		Except for erosion control, the standards in the chapter apply to subdivisions/PUDs, development envelopes and construction of structures subject to site plan approval. Erosion control applies to all activities disturbing soil.
6103 Steep Slopes	References to 'steep slopes' in several sections of zoning, none in subdivision 1930.2.C for PUDs	<p>Current regulations state that land with a slope of 15% or more will be considered undevelopable. The proposed regulations retain the 15% threshold but add a minimum size area to qualify as a steep slope. This is because current lidar data can identify very small areas of steep slope (like the sides of drainage ditches along the road).</p> <p>The draft does not prohibit development on steep slopes but requires conditional use approval with additional review criteria. Steep slopes will not count towards the amount of buildable land on a site and must be excluded from development envelopes 'to the greatest extent practicable'. This language is repeated in several other sections. It is intended to recognize that given site-specific conditions it may not always be possible to avoid some impact to a resource. The DRB discretionary review process will weigh the potential impacts and benefits of the proposed development against specific criteria when reviewing applications.</p>
6104 Unstable & Unsuitable Soil	'Soil conditions' referenced generally in several sections of zoning, none in subdivision	Provides more guidance on what soil conditions would make a site unsuitable for development. Relies on soil information and mapping provided by the USDA NRCS.
6105 Erosion Control	1900.3-4 Zoning Site Plan Standards Article VIII Subdivision Planning Standards	<p>Currently DRB is authorized to require erosion control plans and measures for subdivision applications and development subject to site plan review. The adopted regulations reference state standards.</p> <p>Proposed language refers to same state standards, but has specific triggers for when an erosion control plan will be required (6105.B). All activities that disturb soil must implement appropriate erosion control practices, which means if there is a problem on a construction site the town could enforce this section to remedy the problem.</p>
6106 Soil Preservation	810 Subdivision (site preservation)	This expands on the limited language existing in the subdivision regulations. It ties into the landscaping and stormwater standards in Article 4.
6107 Fill & Debris	810 Subdivision (site preservation)	This expands on the limited language existing in the subdivision regulations and is consistent with state regulations.

DRAFT	ADOPTED	NOTES
Chapter 6200		
6202 Applicability		<p>The standards in this chapter apply to major subdivisions/ PUDs and development envelopes. There is an exemption for development in the serviced zoning districts that meet specified criteria (small lot, previously developed, affordable housing). The PC should consider those thresholds and be prepared to discuss what types of applications and areas of town to review under these standards.</p>
6203 General		<p>Requires applicants to submit a habitat assessment report because the available mapped data (primarily provided by the VT Agency of Natural Resources) is often not reliable at the scale of an individual property and/or is out-of-date. Reviewing proposed development based on current data collected in the field is strongly recommended.</p> <p>This section also provides a pathway for waiving the standards with specific review criteria for the DRB to consider. The PC should look at the list in Paragraph C(1) carefully.</p>
6204 Significant Natural Communities	810 Subdivision (site preservation)	<p>There are no clear standards in the adopted zoning regulations specifically crafted to protect significant natural communities. There is some language in the subdivision regulations that speaks to 'avoiding necessary wildlife habitat and endangered species' and not having 'an undue adverse impact on rare and irreplaceable natural area.' This mirrors language found in the Act 250 rules. The current regulations look to the state to define and identify those features.</p>
6205 Uncommon & RTE Species		<p>The proposed language references specific state data layers for greater clarity. We have enclosed a map showing the data that is available from the state.</p>

DRAFT	ADOPTED	NOTES
6206 Forest Habitat Blocks		<p>There are no clear standards in the adopted regulations specifically crafted to protect forest habitat blocks. The 2019 Shelburne Town Plan did not identify important forest blocks. The 2023 Arrowwood study did map and rank the town's forest habitat blocks. That study did not make a recommendation about which blocks should be considered 'high priority' or 'important' under the provisions of Act 171.</p> <p>The draft language suggests extending a higher level of review and protection to the highest value forest habitat blocks in Shelburne. The PC may want to review the map in the Arrowwood report and consider the proposed language in Paragraph A, which suggests that the highest value blocks will be defined as those with a final score of 4.5 (out of 10). We have enclosed a map showing those areas.</p> <p>This section is seeking to balance strong community interest in protecting wildlife habitat and travel corridors with other town goals, particularly in the serviced area where both state and town policies direct future growth. The PC should be prepared to discuss where to set the threshold for review in this section.</p>
Chapter 6300		
6302 Applicability		<p>The standards of this chapter apply to major subdivisions/ PUDs and development envelopes in the two rural districts intended primarily for agricultural and aligned uses rather than for residential use – RL-HT and RL-RP. The reason for this is that these are the areas of Shelburne where the agricultural landscape is significantly intact with only limited fragmentation due to rural residential development. The areas that meet the definition of working lands are mapped in the town plan.</p>
6303 General		<p>There are two strategies applied to working land. One is to ensure that when working lands are set aside to meet open space requirements, there will be an approved plan for their future use and management for agricultural production. The other is to avoid fragmentation by locating development envelopes entirely off working lands or along the periphery of fields and pastures.</p>
Chapter 6400		
6402 Applicability		<p>The standards of this chapter apply to major subdivisions/ PUDs in all three rural districts (RL-RES, RL-HT and RL-RP).</p>
6403 General		<p>The scenic resources to be protected are those mapped as a significant view in the town plan. The proposed language requires applicants to provide a viewshed analysis, primarily focused on the view of the development site from the public road. The viewshed analysis then serves as quantitative evidence of the level of impact to guide the applicant in project design and the DRB in reviewing the application. It allows the DRB to place conditions on development to mitigate impacts to those resources.</p>