

April 6, 2018

Fayston Selectboard
866 North Fayston Road
Fayston, Vermont 05660

Re: Comments from February 19, 2018 Selectboard Meeting

Dear Members,

Thank you for the opportunity to present the draft Land Use Regulations (LURs) at your last meeting. It was good to see the public well-represented. We received your February 26th email with questions for us regarding the LURs. Our responses are below:

- 1) *What are the factors/reasons for the change in LURs? Are there inherent weaknesses/shortcomings? Is the present system of rules and enforcement falling short?*

The primary reason for updating the LURs is to bring them into compliance with the Town Plan, which sets the policy for land use development in the town. The Fayston Town Plan adopted at the end of 2014 placed increased emphasis on ecological and stormwater protection, in response to the two most recent town surveys, and to more stringent state requirements.

The 2014 Fayston Town Plan points to the need to design land subdivisions in a way that minimizes development on and fragmentation of land characterized by significant wildlife habitat and travel corridors, riparian lands and river corridors, high elevations (above 1,500 feet), scenic viewsheds and adjacency to conserved lands. For example,

- “Ensure that land subdivision minimizes or mitigates adverse impacts to significant wildlife habitat, productive forest land, scenic viewsheds, shallow soils and headwater streams.”
- “Consider restrictions on further subdivision, taking into account the numerous undeveloped lots already in existence.”

The Plan also directs the DRB to use the ecological maps found in appendix of the Plan to guide them in their decisions.

- “Review the land use regulations in the context of data gathered in the 2007 Natural Heritage Inventory as well as the Tiered Ecological Priorities map developed by the FWC Project to ensure that the goals of maintaining unfragmented tracts of large forest are facilitated by the regulations.”
- “The Planning Commission and FNRC should work together to develop a wildlife habitat protection plan that includes a habitat map to guide the DRB in their development review process.”

Further, the Plan indicates that the 2013 Tiered Ecological Priorities Map (found in Appendix A of the Plan) should be used as a guide for DRB development review process.

The 2014 Fayston Town Plan also urges the Town to take actions to reduce or eliminate the long-term risk to human life and property from flooding and fluvial erosion. Such policy language helps bring the Town in conformance with the State and Federal Government requiring municipalities become more resilient to the increasing likelihood of flood and erosion storm events, e.g.:

- “Encourage the protection and restoration of floodplains and upland forested areas that attenuate and moderate flooding and fluvial erosion.”
- “Develop regulations for driveway culverts.”

Other amendments in the 2014 Fayston Town Plan included additional emphasis on individual on-site energy sources, and the need to update the zoning bylaw to prohibit large-scale systems, particularly at the higher elevations, but to encourage wind and solar systems on a smaller scale below 1,700 feet elevation. The Plan directs the Town to ensure that the siting of energy and telecommunication facilities do not have an adverse impact on Faystons’ landscape and environment. For example,

- “Amend the LURs as necessary to ensure that all new facilities meet community standards.”

The Plan also encourages the use of passive solar design and residential scale hydroelectric generation.

In terms of the Town Plan chapter on the Economy, the it states that any new business development must be compatible with the town’s values as reflected in the Town Survey, and must preserve the Town’s natural features such as ridgelines, open fields, wildlife habitat and corridors, water quality and wetlands, e.g.:

- “Encourage the location of commercial activities along Route 17, near Irasville, at the Mount Ellen base area, and adjacent to Waitsfield’s Mad River Park.”

Also, we should encourage the development of sustainable land-based economic activities and improve the viability of agriculture and forestry, and make sure that the LURs support and promote home-based employment.

The Planning Commission’s work on the LURs was done in order to implement the town policies set forth in the existing Town Plan. The Town Plan sets policy for the town; the LURs are there to implement that policy. Public opinion expressed through town-wide surveys (one in 2006 and another in 2012) provided much of the foundation for the policies set forth in the Fayston Town Plan. The Fayston Planning Commission is dedicated to receiving public input in the drafting of any public policy. The next item on the Planning Commission’s agenda, once the LURs are adopted, is to revise the Town Plan. We encourage the public to speak up and participate in this process - anticipated to take place over the next 18 months.

2) *What percent of the town is in the Natural Resource Overlay District (NROD)?*

Fayston total acreage:	23,369	
NROD total acreage:	13,778	(59%)
Forest Reserve and Phen Basin land in NROD:	5,348	
Maximum developable area in NROD*:	8,430	(36% of Fayston)

The PC worked with Jens Hilke to develop an alternative version of an NROD, which does not include the stream buffers and Forested Riparian Habitats. The amounts for that version are:

Fayston total acreage:	23,369	
NROD alternative total acreage:	11,539	(49%)
Forest Reserve and Phen Basin land in NROD alternative:	5,088	
Maximum developable area in NROD alternative*:	6,451	(28% of Fayston)

*Both the proposed NROD and the alternative NROD contain steep slopes, conserved lands, and other undevelopable land.

Fayston's Land Use Regulations already contain many of the considerations included in the NROD language. The distinction is that most of those considerations are 'suggestions' and not mandated to be taken a look at when considering development or subdivision applications. What the NROD does is to designate specific sections of Town where there are important natural resource features, and *requires* that impacts be taken into account when reviewing these applications.

The NROD includes the following resources/features:

- Streams with a 50' buffer
- Forested Riparian Habitats
- Lands above 1700' elevation (including high elevation Bicknell's Thrush habitat)
- Rare, Threatened, and Endangered Species
- Wetlands (class I and II) with a 50' buffer
- Bat Hibernacula with a 300' buffer
- Vernal Pools with a 100' buffer
- FEMA 100-yr floodplain
- S1, S2, S3 Natural Communities
- Wildlife Road Crossings with ¼ mi buffer

3) *What are the number of parcels in the Natural Resource Overlay District?*

Total Parcels in the NROD (estimate)**:	275
Already developed/development highly unlikely to be affected by NROD:	165
Number of parcels where development is <i>potentially</i> impacted by NROD:	110

Many of these 110 parcels are in areas where there are features such as streams and steep slopes, which means that they would need to go through Conditional Use Review even without the NROD in place.

**These numbers do not include the parcels which are in the proposed NROD due solely to stream buffers and Forested Riparian Habitats, as development there will be impacted by the buffer even without NROD considerations.

4) *Will we become more restrictive than other towns in The Valley? The region?*

As mentioned during the Selectboard meeting, the Natural Resource Overlay District (NROD) does not pose restrictions on properties per se, but requires landowners to look at their property and determine which areas have features (e.g. wetlands, streams, steep slopes) that are less suitable for development and have the potential for ecological impact. Of the three criterion listed above, we have compared the proposed LURs to the existing regulations in the towns of Warren, Waitsfield, Bolton, Duxbury, Waterbury and Middlesex.

As discussed during the selectboard meeting, the Town of Waitsfield uses a variable setback approach for development along streams. This approach can be more restrictive than Fayston's proposed LURs if (when) slopes on a site are greater than 8%:

- 0-8% 50 feet
- 9%-15% 75 feet
- 15%-20% 90 feet
- 20%-30% 100 feet
- Above 30%: 20 feet for every additional 10% of slope
- Headwaters: 150 feet

In the Town of Warren, a 50 foot setback from the top of bank is established, identical to the proposed regulations. A conditional use review is also required when construction is proposed within 100 feet of a stream, as with the new LURs.

The Village of Waterbury has an overlay district similar to the NROD. In their Ridgeline/Hillside/Steep Slope (RHS) district, development above 1,200 feet is subject to additional requirements.

The Town of Middlesex recently updated their LURs in 2017, and they have adopted stream setbacks, and a recommendation that landowners ask the Agency of Natural Resources to see if wetlands exist on their site.

The Town of Bolton requires a 100 foot buffer from the larger brooks and streams (the ones with names), and 50 feet from the small unnamed streams (more seasonal?), as well as 200 feet from ponds.

Little information on wetlands and streams is provided for the Town of Duxbury.

A summary table of the information studied is attached for your further review.

5) *What is the science behind proposing such a district?*

Arrowwood Environmental completed inventories of the natural communities in Warren, Waitsfield and Fayston between 2007 & 2008. These ecological inventories involved identifying, assessing, and ranking wildlife habitat, upland and wetland natural communities, vernal pools, connecting lands, and rare elements. As a deliverable, Arrowwood Environmental generated GIS maps that highlighted key resource areas in the three towns, providing information about key natural communities and ultimately providing valuable data for future management and conservation. These maps were presented in a report that was given to Fayston, Warren, and Waitsfield, and were met with excitement and support from the three towns. The 2007 *Natural Heritage Inventory and Assessment* for Waitsfield & Fayston is linked on the web through the PC section of the Fayston website. Arrowwood's natural heritage inventories and assessments across the three-town provided the basis for the Forests, Wildlife & Communities Project, which began in 2008. The Forest, Wildlife & Communities Project was a collaboration among the Mad River Valley Planning District (MRVPD), local and state conservation organizations, state and federal agencies, and representatives from towns in the Mad River Valley to implement a regional and landscape level approach to wildlife and forestland conservation by engaging and assisting landowners, residents, and local officials about community oriented and landowner based strategies for forestland and wildlife habitat conservation. The FWC Project culminated in the 2011 report *Ecological Mapping and Build-out Analyses in the Mad River Valley*. A section of MRVPD's website is devoted to the [Forest Wildlife and Communities Project](#), which also has links to the Tiered Ecological Priority Maps and other resources. There is also a publication created by Vermont Natural Resources Council (VNRC) that is helpful in explaining the science: [Community Strategies for Vermont's Forests and Wildlife](#). And there are numerous other studies on a statewide and national level that have shown the impacts of development on forests and wildlife.

6) *Why eliminate biking and horseback riding trails in the Forest Reserve District? Couldn't we allow the various user groups to present the proposed trails, and demonstrate the use of "best practices" in their design, upkeep, and usage? The MRVPD and the Valley Chamber are trying to promote The Valley Trail systems for tourist recreation. Restricting the expansion of these trails goes counter to these efforts.*

The proposed elimination of biking and horseback riding trails in the Forest Reserve District was made based on concerns of erosive conditions in high elevation, steep slope sensitive areas. Following the meeting in February, the PC conducted a meeting with the Mad River Riders and learned that they already are working on a couple of planned trails that will either exceed or are very close to the 2500' elevation. The Mad River Riders go through a permitting process and use US Forest Service and use International Mountain Bike Association (IMBA) trail building guides/standards in the process. Best practices in design, upkeep and usage could be used to reduce the potential impact to these areas. We feel that if this path is chosen, it is crucial that there are inspections during and after construction to ensure that the work was performed in

accordance with those guidelines. Long term, it is essential that these trails be inspected and maintained regularly.

7) *There is a concern regarding affordability of property and decreased property values due to the impacts of:*

- *Clustering (Sec 6.3 (C))- this works in a village setting, but most people buying property in this part of VT want “space” from their neighbors. Is there a less restrictive way to avoid fragmentation?*

Not really. Cluster subdivisions are a tried and true land development tool used by communities to protect open space or environmentally-sensitive lands, including hazard-prone lands. Clustering development simply means grouping or directing new development to relatively less sensitive areas within a subdivision, away from more sensitive areas like open space, steep slopes, or floodplains. A simple example of a clustered versus a non-clustered development is attached to this letter.

Cluster subdivisions (also sometimes known as “conservation subdivisions”) generally do not increase the overall density of a development but rather allow dwellings to be grouped (or “clustered”) on smaller lots away from sensitive areas such as rivers or defined natural hazard areas. The key benefit to a developer is smaller lot sizes than otherwise permitted by the subdivision regulations in exchange for the conservation of sensitive lands. A developer also may benefit from local incentives that encourage the use of clustering, such as density bonuses, or state incentives, such as water rights.

Clustering is not a new tool, and has been in our regulations for at least 20 years, although it has not been taken advantage of. Waitsfield and Warren have utilized this technique more. People think that clustering means being on top of your neighbor, but it doesn't. Each lot can be of sufficient size to provide privacy, without being a large lot. For example, a one-acre lot with the right landscaping provides adequate privacy and access to plenty of undeveloped land if in a clustered subdivision.

When residential development infringes on existing wildlife habitat, wildlife often still live nearby, but the species tend to be different over time. Development creates conditions that attract generalist species (common species able to use a wide range of resources for food and shelter), while more rare, specialized species do not thrive near houses. This happens among plants, birds, amphibians, etc., as well as mammals. Scientists refer to this as biotic homogenization or a loss of biotic integrity.

- *Permits/surveys/maps- Are these necessary? Detailed site analysis (Sec 6.3 (A), Table 6.1. Visual Impact Studies? Wildlife Impact Statement?*

These may be necessary. The regulations give the DRB the chance to decide what level of information is required to be part of the application.

- *500 foot driveways- Why limit the length of the driveway if it is properly designed to meet erosion standards? Does this apply to roads as well as driveways? Could this potentially restrict a property owner's access to parts of their property?*

The length of driveway was limited as the impacts on wildlife from development can extend away from the house, up to 600 feet. [*Make Room for Wildlife: a Resource for Landowners in the Northern Forest*, Wildlife Conservation Society] This is due to factors like noise, nighttime lighting, use of pesticides, pets running free, and physical changes to the forest. As a result, a new house has a “wildlife shadow” of 15 – 30 acres. It has been well-proven that this “shadow” can be reduced, and still achieve adequate privacy, by building reasonably close to the parcel boundary, neighbors’ houses, or the road. By keeping the driveway short and locating the house close to a road, such development maximizes the space available for wildlife. There is a lot of scientific literature out on the impact of development on wildlife. We can get you titles is you would like.

This standard does not apply to roads, only driveways.

As written, this could potentially restrict a property owner’s ability to develop some portion of their property. The Planning Commission understands the concern that some people have for limiting the length of drives and access roads in the NROD.

- *Increasing the contour requirements to 2’ on plats/maps is another cost consideration. Is this necessary?*

The proposed LURs require five-foot contours on plats/maps in most instances. The five-foot requirement for proposed plans is the base standard. Two-foot contours are proposed only on steep slopes or very steep slopes if development is occurring in those areas. The PC felt that this level of topographic resolution is needed for the DRB to fully understand the nature of a particular site.

- 8) *Undue adverse impact/adverse impact. It was discussed that just about anything could be used as an argument to prove adverse impact. Is there other language that can be used?*

We agree that ‘adverse impact’ is not a reasonable design standard, in that anything could be considered adverse. That is why we have adopted ‘undue’ adverse impact, to make sure that the adverse impact is avoidable, and if not, then to minimize it. The LUR references adverse impacts in several instances, but never as a design standard.

- 9) *Should man-made ponds be classified as wetlands and be included in the NROD? If they were permitted ponds, why should the land owner be restricted by the 50’ buffer?*

Classification of wetlands is performed by the Agency of Natural Resources Wetlands Program, not the Town of Fayston. Some activities are allowed in the vegetative buffer per the new

definition, with consultation with the Zoning Administrator (see definition). Per this definition, vegetated buffers don't apply to all man-made ponds, only to in-stream ponds, which are discouraged by the ANR.

10) *What is the impact of the NROD on Mad River Glen area development?*

Nothing outside what they already have to follow the Act 250 process, which applies to them for all development at their resort. Act 250 will ask for the same studies and information. Mad River Glen will simply be able to submit the same reports to the DRB for review.

11) *Is the driveway slope standard going back to 15%?*

Our intentions should be clarified in the LURs. Driveway slopes over 15% are prohibited. Driveways with slopes greater than 12% require a design by an engineer to ensure that the layout does not cause erosion issues in the future.

We recommend that Section 3.4(E)(1)(a) be reworded to say: "...driveways that exceed an average gradient of 12% over any 50-foot section, as determined from mapped contour intervals or site inspection, shall be designed by a qualified engineer and be subject to conditional use review..."

We also recommend that Section 3.4(E)(3)(d) be reworded to say: "Driveways and roads will follow the natural contours of the land, and shall not exceed an average finished grade of 15% over any 50-foot section [See also Section 3.1]. Driveways exceeding 12% over any 50-foot section must be designed by a qualified engineer and submitted for conditional use review for approval by the DRB."

12) *How was the current 25,000 sq ft development envelope determined (provide the basis for this benchmark)*

The 25,000 SF development envelope is already a standard in the Soil and Water Conservation District. To make the regulations more consistent, the PC believed that the same standard should exist in the Rural Residential (RR) District. However, the proposed regulations clearly say that in the RR district, the DRB may waive this.

13) *Concern was raised that even mentioning a 100' setback from streams and wetlands will lead the DRB to the more restrictive requirement. What is rationale for changing the existing 50' setback requirement?*

The proposed LURs establish Conditional Use Review for development between 50' and 100' setbacks from streams and wetlands - not prohibition. Development is allowed within this area when standards are met. Less than 50' is still the same as the previous version: a vegetated buffer strip along streams and wetlands is required, where no development, excavation, landfill, or grading shall occur.

It has been suggested that rather than limit the buffer to undisturbed vegetation, that the regulations allow strategic planting along the strip to inhibit erosion and encouraging responsible use and careful stewardship of natural resources., placing the burden of proof on the landowner to provide a statement of the environmental impact of such plantings. This would minimize additional work on a Planning Commission or Development Review Board when considering proposals to modify land near streams and wetlands while furthering the values expressed in Land Use Regulations. This suggestion makes sense, and is incorporated in the Regulations through some activities being allowed in the vegetative buffer per the new definition, with consultation with the Zoning Administrator.

The concept of 100' setback is a policy stated in the 2014 Fayston Town Plan, based on state recommendations. Instead of an outright prohibition of any activity within this area, the Planning Commission instead chose to develop standards that are more permissive between 50' and 100'. Conditional Use Review and related standards, as applied by the DRB, will guide such activity.

14) What is the rationale for establishing a 1700' "trigger" for additional scenic, wildlife and ecological review and analysis? Concerns about cost v. benefits. Please justify this added layer of landowner expense.

This number came from the Arrowwood Inventories and the Forest Wildlife & Communities Project, and is in our 2014 Fayston Town Plan. Actually, the number there is 1500 feet, in the goals and objectives of Chapter 3. In revising the regulations to be in compliance with the Plan, we originally had two overlay districts, one at 1700 feet and the secondary one at 1500 feet. Because this became very complicated, we dropped the secondary district. Again, this is not the place to argue setting an elevation number, since this policy was specifically set in the Town Plan.

We appreciate your input on this matter. Based on the email you sent us from the Vermont League of Cities and Towns, we understand the Selectboard has the ability to make changes to the LURs, and that any changes need to be completed at least 14 days prior to the final public hearing. Please let us know how we can assist you through this process.

Sincerely,

Polly McMurtry
Chair, Fayston Planning Commission

Enclosures

Town of Fayston, Vermont

Natural Resource Setbacks of Other Towns

Town	Year Adopted	Stream Setback	Stream Setback Advisory Zone	Class II Wetland Setback	Class III Wetland Setback	Max Slope Threshold	Prohibitions on Steep Slope Activity	Other
Fayston	proposed	50	100	50'	50'	25%	-	
Waitsfield	2016	varies	no	50'	none	15%	avoid undue adverse impact	
Warren	2008	50	100	-	-	25%	-	
Duxbury	2011	-	-	-	-	-	-	
Waterbury	2016	-	-	50'	none	25%	buildings	50' wide max clearing corridor
Middlesex	2017	75	25	-	-	25%	nothing except limited work	landowner should contact ANR for wetlands evaluation



LEGEND

Roads

- Interstate
- Principal Arterial
- Minor Arterial
- Major Collector
- Minor Collector
- Local
- Not part of function Classification System

1: 2,067

1in = 172 ft.
1cm = 21 meters



105.0 0 52.00 105.0 Meters

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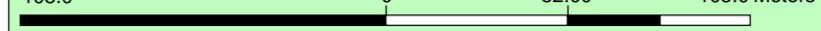
LEGEND	
Roads	
	Interstate
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