

February 2, 2024

## **Regional Planning Commission Comments on H.687 to the House Committee on Environment and Energy - An act relating to community resilience and biodiversity protection through land use**

**Submitted by:** Chris Company, Executive Director, Windham Regional Commission on behalf of the VAPDA Government Relations Committee (Charlie Baker, Committee Chair; Catherine Dimitruk, VAPDA Chair)

### **Questions? Please contact:**

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**Note: These comments are in response to a request to testify on the “Tier 2 and 3 elements” of the bill.**

### **Regarding Sec. 20. 10 V.S.A. § 6086(a)(8)(B) Forest Blocks & (C) Connecting Habitat**

The bill language states that a permit will not be granted for a development or subdivision within or partially within a forest block unless the applicant demonstrates that:

- 1) The development or subdivision will avoid fragmentation through design or location or both;
- 2) It is not feasible to avoid fragmentation and the design of the development or subdivision minimizes fragmentation; or
- 3) It is not feasible to avoid fragmentation of the forest block and the applicant will mitigate in accordance with section 6094

It is not clear how this will ultimately preclude forest block fragmentation if any project can be mitigated.

The same conditions apply to Sec. 20. 10 V.S.A. § 6086(a)(8)(C) Connecting Habitat. Applicants ultimately appear to have the option of fragmenting connecting habitat if mitigated per 6094.

If the concern is avoiding the effect of a taking, explicitly define when mitigation is acceptable (i.e., mitigation is allowed in instances where the inability to avoid fragmentation would deny the construction of a dwelling or all economic use).

### **Regarding Sec. 22. 10 V.S.A. § 127 Resource Mapping**

The regional planning commissions request clearer guidance on mapping and consistent criteria for use across plans, including future land use plans and regional energy plans. For instance, the [Energy Planning Standards](#) require regional planning commission regional energy plans to identify “known constraints” (see page 12). Per the standards these are:

“Known constraints (signals likely, though not absolute, unsuitability for development based on statewide or local regulations or designated critical resources) to include:

- Vernal Pools from Vermont Center for Ecostudies (VCE; confirmed layers)
- DEC River Corridors
- FEMA Floodways
- State-significant Natural Communities
- Rare, Threatened, and Endangered Species
- National Wilderness Areas
- Class 1 and Class 2 Wetlands (VSWI and advisory layers)
- Regionally or Locally Identified Critical Resources *If areas are constrained for the development of renewable energy due to the desire to protect a locally designated critical resource (whether a natural resource or a community-identified resource), then the land use policies applicable to other forms of development in this area must be similarly restrictive; for this category, policies must prohibit all permanent development (and should be listed in the Notes column). These areas should be subtracted from raw renewable energy resource potential maps to form Secondary Resource Maps”*

#### **Regarding Sec. 23. 10 V.S.A. § 6001 Definitions**

“Critical resource area” is defined to include a river corridor. River corridor itself is not defined. If the intent is to include river corridors as defined elsewhere in Vermont statute that should be noted to avoid confusion, such as 10 V.S.A. § 1427.

We suggest that river corridors would best be regulated by the State of Vermont through a permit process similar to that established for wetlands or shorelands. Because river corridors would be considered “critical resource areas” it would seem to bring any proposed development in a river corridor into the Act 250 process. While we commend state regulation of river corridors, we suggest this is best done through a standard permitting process.

We suggest the state assume regulation of river corridors per 10 V.S.A. § 1427, giving municipalities the option of opting in to assume regulatory responsibility if they can demonstrate sufficient bylaws and administration and enforcement capacity.