LEGISLATIVE TESTIMONY

To: Senate Natural Resources and Energy Committee
FROM: Daniel H. Hudnut
Society of American Foresters, Certified Forester #2254
Maine Licensed Forester #3307
Vice President, Wagner Forest Management, Ltd.
Resident and landowner, Sharon, VT
DATE: February 13, 2014
RE: S.100 An Act Relating to Forest Integrity

I would like to thank the Committee for the opportunity to share my perspective and comments on S.100. I am a professional forester, employed by Wagner Forest Management, Ltd., a firm that manages over 2.5 million acres of timberland in the northeastern United States and eastern Canada on behalf of private investors and in conformance with accepted principles of sustainable forest management. In Vermont, Wagner manages just over 20,000 acres for our clients; most of these lands are under Vermont's Use Value Assessment program. It is primarily in my professional capacity that I come before you, but I am also a landowner and resident of rural Sharon, Vermont, with concerns about whether this bill may shift local land use decisions to state regulators under Act 250.

I agree whole-heartedly with the first finding listed: namely, "Vermont's forests are a unique resource that provides habitat for wildlife, a renewable resource for human use, and jobs for Vermonters in timber and other forest-related industries." I find that much of what follows focuses on wildlife habitat, though, excluding economic development considerations. As a forester, I recognize the importance of maintaining and managing wildlife habitat, but I also recognize the importance of producing renewable forest products to support the rural economies and communities. Sustainable forest management encompasses these concerns and more.

The policy statement that follows in §2601a loses this balance. "Preserve" is a troubling word to those of us who wish to maintain traditional working forests. Further, this does not appear to be one goal that will be balanced with others; there is no explicit consideration of the forest products industry or rural economies. I would urge the Committee to maintain the integrative view presented in the bill's first finding and explicitly acknowledge the role of traditional working forests in the state. I note that the policy statement in paragraph (a) becomes a State government directive through paragraph (b), so it is imperative to get it right. I have suggested replacement language in my end notes. My language would broaden the directive to support the full suite of benefits inherent in large contiguous forests, and to support the State's forest products industry, which is symbiotically linked to the State's working forests.

From this policy statement, the bill moves to define certain activities as "development" subject to Act 250 review – the heart of the bill. The language that follows is unclear at best, and relies extensively on definitions that are insufficiently precise. This is a critical problem.

How is a landowner, town, or state official supposed to know what lands are (x) located within "a forest that …consists of 1,000 acres or more of contiguous forestland", and (y) "located more than 1,000 feet from a building, structure, or permanent road", and therefore would be subject to Act 250 review for the specified activities? Has anyone seen a map? Is anyone willing to pay for this mapping? How much?

I have attached to my notes Map 7 from the 2010 Vermont Forest Resources Plan, which shows forest blocks over 500 acres in size. Of course, these cover most of the state. I don't believe anyone has an equivalent map with a 1,000-acre threshold, and I couldn't tell you what assumptions went into this map, but I am certain there were many.

In concert with this map, I would point out that no one has good data about forest fragmentation, so we don't know

a. where has it occurred or is occurring,
b. how quickly it has occurred or is occurring, and
c. how it has affected (or is affecting) wildlife habitat, the forest products industry, and scenic character. On these issues, we can surmise effects, but not document them.

That said, subdivision and development are most likely to continue to occur where they are already occurring, namely (with reference to the map, and its interspersed pattern of forest and non-forest)

d. proximate to existing population centers and along existing public roads
e. within 1,000 feet of existing buildings, structures, or permanent roads and
f. therefore not subject to the provisions of this bill.

No one knows how much land would be subject to the new limitations on development activity. No one knows where these lands are located, or what uses local planning or zoning documents have set out for them. A lack of data is not a reason for the legislature to sit on its hands. However, the lack of data makes Act 250 a very coarse tool for addressing forest fragmentation.

It has been said that this bill does not increase regulatory burdens on forestry activities. However, it clearly increases regulatory burdens on forest land, diminishes management alternatives for landowners, and reduces land values. Just because a forest landowner is not using certain rights does not mean that the landowner did not pay for those rights, that the rights have no value to the landowner, or that he or she wants to cede them to the state!

Despite S.100's recognition of the importance of "jobs for Vermonters in timber and forest-related industries", incremental regulatory measures such as this only make Vermont less and less attractive as a place to own lands for timberland management. If the State of Vermont wants to maintain a healthy forest products industry, as a means of maintaining healthy forests and rural communities, it needs to recognize private forestland owners and forest products businesses as part of the solution, and encourage our ongoing contributions to one of Vermont's sustainable and renewable core businesses. Regulating our lands sends the wrong message.

The Use Value Assessment program provides appropriate incentives for landowners to practice forest management as a positive alternative to exercising development rights. Use Value is a program that works, and that creates incentives for forest landowners to keep their lands as forest, manage them well, and harvest timber. These are all outcomes that fight forest fragmentation! With plenty of upside for UVA enrollments, UVA could certainly play a larger role in conserving working forests, including large contiguous tracts.

Fundamentally, this bill uses the coarse tool of Act 250 review imprecisely, and enactment would likely lead to uncertainty, substantial mapping and administrative expenses, and litigation. I recommend that the Committee vote against this bill as drafted. The purpose is reasonable, but the means are flawed.

More specific observations and questions about the language of the proposed bill follow. I would be happy to elaborate on them at your request.

- Sec. 1. Findings. Item (2). In fact, "large areas of contiguous forest are" not "essential … to implement best practices in forest management." Best practices in forest management may be and are regularly practiced on small forest areas.
- Sec. 2. 10 V.S.A. §2601a. (a). Change to

> *(a) The State of Vermont shall ~~preserve~~ work to conserve Vermont's traditional working forests, where possible in large contiguous blocks ~~without permanent roads, buildings, or other construction~~ in order to:*
>
> *(1) provide habitat for wildlife, especially animals that range over large areas of land, including bear, moose, bobcat, lynx, and deer;*
>
> *(2) protect the watersheds and Vermont's streams and rivers so as to maintain the quality of Vermont's waters and to reduce the risk of flooding;*
>
> *(3) support and foster (i) the sustainable harvesting of timber, (ii) the training of skilled workers in the woods and in the state's forest products industry, and (iii) the growth of the state's forest products industry;*
>
> *(4) maintain public recreational opportunities on privately owned lands; and*
>
> *(5~~3~~) preserve the scenic qualities of the Vermont landscape.*

- Sec. 3. 10 V.S.A. §6001(3)(A)(xi) Change to

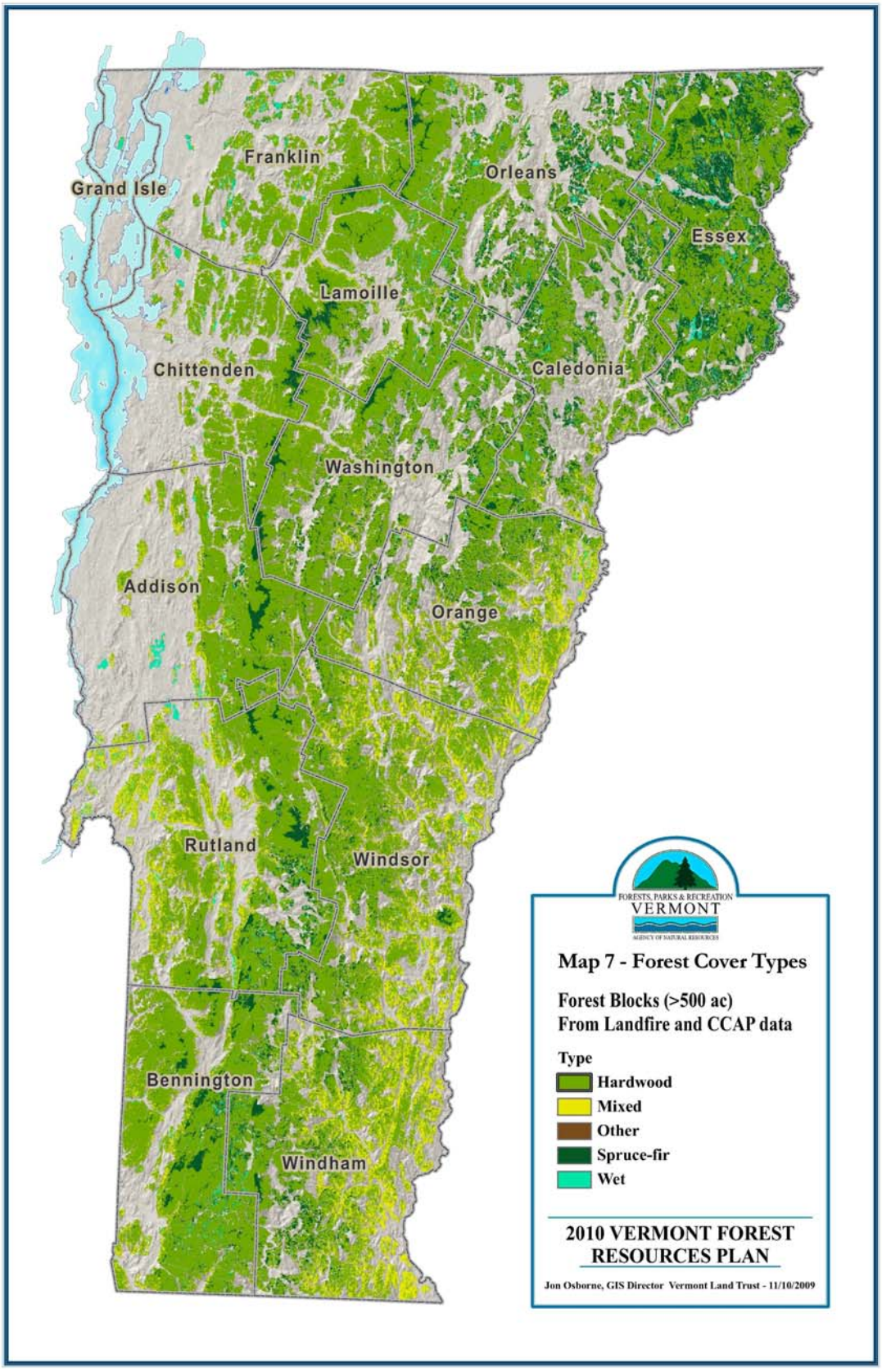
> *(xi) The construction of a building, structure, or permanent road~~,~~ (including any driveway and excluding any forestry road), any portion of which is located more than 1,000 feet from a building, structure, or permanent road~~,~~ (including any driveway ~~but~~ and excluding any forestry road), that was in existence as of the effective date of this subdivision (xi) and is located within a forest that, as of the effective date of this subdivision (xi), consists of 1,000 acres or more of contiguous forestland. However, this subdivision (xi) shall not apply to the construction of any building, structure, or permanent road (including any driveway and excluding any forestry road) that is below the elevation of 2,500 feet and is to be used solely for farming, logging, or forestry purposes or, in the case of a road, public safety purposes, including fire suppression.*

  - At a minimum, a functional definition of "Contiguous forestland" will require further definitions of "forested", "low densities of class 4 roads", and "little… land development". If you do not define these, the courts will.
  - I am unclear on what "permanently" and "open to… general circulation of vehicles" portend under the definition of "Permanent road". If a road is seasonally maintained, it is not permanent? Or if a private road is gated, it is not permanent? I also wonder about the wisdom of creating new definitions of types of roads without involving the Agency of Transportation.

- Sec. 5. 10 V.S.A. §6086(a)(9)(C)(ii)
    - Sub-paragraphs I through III, what are the criteria for "practicably", "reasonably available", "all practicable", and "practically"?

    - Moreover, the definition of "fragmentation of forestland" which is central to evaluating permits, remains poorly defined, as "separation of forestlands". The language under (ii) also suggests that a development or subdivision does not have to cause fragmentation in order to have to be subject to these provisions, it must only contribute to fragmentation (plausibly on lands not owned or controlled by the party seeking the permit).

    - The final provision, for at least a 4:1 set aside in permanent conservation, requires a determination of the area of the forestland fragmented by the development or subdivision. If a new utility corridor bisects a contiguous forest area, is the fragmented area simply equal to the area cleared for the corridor? Or the area of contiguous forest separated from an area of contiguous forest that is at least 1,000 acres in size? So if it separates two contiguous forest areas that are both more than 1,000 acres, there is no set-aside required? But if it separates two contiguous forest areas that are both 990 acres, then 7,920 acres (990 * 4 * 2) of set-aside would be required?



Map 7: Forest Cover Types

Links to text: Forested Land Area