

*Jamey Fidel*  
2.9.16

To: House Natural Resources and Energy Committee

From: Jamey Fidel, Vermont Natural Resources Council on behalf of the VNRC, the Vermont Land Trust, the Nature Conservancy (Vermont Chapter), Audubon Vermont, The Trust For Public Land and Vermont Conservation Voters.

Date: February 9, 2016

Re: Follow Up Recommendations to Address Forest Integrity

**Land Conservation:**

1. Full funding of approximately \$19.5 million to fulfill statutory formula for real estate transfer tax for VHCB.
2. Community Forest Investment Fund - Celebrating 100 years of Town Forests by investing in local community forest conservation.
  - For 100 years Vermont towns have been investing in forest land as a community asset to provide opportunities for income from sustainable timber harvests, hunting, fishing and other recreation activities, and water quality and flood control.
  - Investing in Community-level Forest Protection - Building on the 2015 Department of Forests, Parks and Recreation Forest Fragmentation Report's call to invest in forest land conservation to address forest fragmentation, a Community Forest Investment Fund would provide towns with a funding source that can match local conservation funds or local fundraising efforts.
  - With an initial investment of \$1 million, the legislature could establish a fund to match funds raised at the local level for community forest conservation projects. Sources of local funding could include town conservation funds that dedicate a portion of property taxes to local conservation projects, and/or other local fundraising efforts. Local funds would be matched 1:1 with funds from the Community Forest Investment Fund. Non-federal dollars could be used to match and leverage federal Community Forest Program or Forest Legacy Program funding. And local and federal funds, in turn, could be used to match and leverage VHCB Community project funds.
  - The state's initial investment of \$1 million could be augmented by forest fragmentation mitigation funds that may accrue through Act 250 or Act 248 mitigation requirements (see Land Use Planning recommendations).

Requested Action: Committee could craft a letter to committees of jurisdiction supporting funding mechanisms.

**Landowner Incentives:**

1. Create incentives for donations of easements on certain un-fragmented forest ownerships through a pilot program to remove that land value from estate taxes under certain circumstances.

- The undeveloped forest land would have to be at least partially within a Highest Priority Ecologically Functional Landscape Forest Block (VT F&W map) and be at least 100 acres in size.
  - Landowner must be 65 or older on the date of donation, or the donation can be made by the person's estate.
  - At a minimum, easement must prohibit all subdivision and prohibit all residential structures and use except for one recreational cabin with intermittent use.
  - If above conditions are met, the land value would be removed from the valuation of the estate for Vermont estate taxes purpose.
  - Program would sunset after 5 years unless renewed by the legislature.
2. Convene a legislative task force to develop recommendations for a statewide program to improve the capacity of providing successional planning technical assistance to forestland owners in Vermont. Since the average age of a woodland owner is approximately 65 years old in Vermont, more resources are needed to help these landowners plan the future ownership of their land to improve the chances that the land will remain intact when the land is inherited by heirs, etc.

Requested Action: See proposed language.

**Land Use Planning:**

1. Strengthen Chapter 117 of Title 24.
- Adding language to the definition and goals section of municipal and regional planning to address forest resources and maintenance of forest blocks, working forests, and habitat connectivity;
  - Adding more clarity to what is required in the land use plan map for forest resources.
  - Adding the concept of promoting the maintenance of forest blocks and connectivity as a principle in the creation of forest districts;
  - Adding language to subdivision bylaw requirements to require standards for the protection of natural resources, including forest blocks.
  - Expressly enabling consideration of criteria related to natural resource as part of conditional use review under § 4414(3)(B).
2. Modernize Act 250 to better address forest fragmentation and the maintenance of intact forest blocks and connectivity.
- Add definitions to Act 250 so that features of forest integrity can be addressed.
  - Update criterion to focus on the maintenance of intact forest blocks versus just the maintenance of forest soils. The current criterion related to forest soils is outdated, underutilized, and not effective in maintaining the integrity of forests.
  - Update criterion to promote development that is designed to maintain working forests and the maintenance of forest blocks and habitat connectivity areas.
  - Consider requiring mitigation for impacts to forest blocks and direct mitigation to high priority forestland protection. The mitigation requirement could be limited to impacts in high priority forest blocks.

- Consider addressing jurisdictional loopholes that are leading to increasing fragmentation, for example by reinstating the road rule (this would apply to roads or driveways, not forestry roads).
  - Clarify that in regards to triggering jurisdiction, forestry and logging operations would still be exempt from Act 250 review. The goal is to maintain intact forest blocks for forestry and other natural resource values.
3. Expand purview of Regional Planning Commissions staff to promote natural resource conservation and flood resiliency. Full funding of real estate transfer tax allocation to Municipal and Regional Planning Fund would provide much needed funding.

Requested Action: See proposed language.

**Forest Products Economy:**

1. Support an allocation of \$1 million for the Working Lands Enterprise Board to fund programs, especially the Farm and Forest Viability Program which offers one-on-one, in-depth business planning, technical assistance and management coaching to Vermont farm, food and forestry enterprises in order to improve the economic viability of Vermont's working landscape.
2. Support buying local wood. A broad umbrella of programs could be created that stimulates interest in utilizing local products for as many applications as possible. One option is to encourage architects and builders to specify and use local wood in manufacturing and design standards. Another option is to promote the use of Vermont wood through state sponsored projects and contracts.
2. Support efforts to lower workers compensation rates for the forest products sector.

Requested Action: Consider drafting language to address #2 and #3. Funding for the Working Lands Enterprise Board could be covered in a committee letter as outlined above under Land Conservation.

## **Estate tax reduction to preserve un-fragmented forest land**

Add the following section to Title 32: Taxation and Finance Chapter 190 Estate and Gift Taxes  
Subchapter 003: Estate Tax

### *Section 7443b*

*Any undeveloped forested land parcel that is at least 100 acres in size and is at least partially within one or more Highest Priority Interior Forest Block, Highest Priority Connectivity Block, or a Physical Landscape Diversity Block, as defined at the time of easement recording by maps within the Vermont Conservation Design produced by the Agency of Natural Resources in December 2015, or its successor document and associated equivalent maps, shall not be taxed under section 7442a of this chapter, provided it meets the following additional conditions: 1) is subject to a donated conservation easement whose primary purpose in maintenance of interior forest conditions and which is held by a 501(c)(3) charity whose mission is the conservation of land; 2) the easement has been donated by the landowner prior to death or by a landowner's estate administrator after death between the dates of January 1, 2016 and January 1, 2021; and 3) the conservation easement language must be approved by the Vermont Agency of Natural Resources.*

*Any parcels, or aggregate of parcels owned by the same landowner, meeting the above criteria but larger than 500 acres in aggregate area and at least 50% within one or more of the three maps defined above, shall, in addition to the provisions of the above paragraph, have their appraised fair market value subtracted from decedent's total gross estate value subject to Vermont estate tax under section 7442a of this chapter.*

There is created a Forestland Intergenerational Transfer Study Committee to develop recommendations for a statewide program to improve the capacity of providing successional planning technical assistance to forest landowners in Vermont. The Committee shall recommend ways to expand succession planning for forestland owners, and strategies for improving conservation investments that facilitate the intergenerational transfers of intact forestland, and other strategies for lessening the impact of estate taxes or other pressures that could lead to the breaking up and subdivision of intact forest parcels. The Committee shall issue a report on or before January 15, 2017, and the report shall be submitted to the House Committees on Agriculture and Forest Products, Natural Resources and Energy, and on Ways and Means and the Senate Committees on Finance and on Natural Resources and Energy. The members of the Study Committee shall be:

- (1) the Commissioner of Forests, Parks and Recreation or designee;
- (2) a member of the House appointed by the Speaker of the House;
- (3) a member of the Senate appointed by the Committee on Committees;
- (4) a member of the public appointed by the Governor who shall be a forestland owner;
- (5) an estate planning consultant or attorney appointed by the Governor;
- (6) the Vermont Extension Forester at the University of Vermont or a designee;
- (7) a representative of the Vermont Woodlands Association;
- (8) a representative of Vermont Coverts;
- (9) a representative of the Vermont Land Trust;
- (10) a representative of Vermont Natural Resources Council, and
- (11) a representative of the Farm and Forest Viability Program at Vermont Housing and Conservation Board.

**Chapter 117 Proposed Language**  
February 9, 2016

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**24 V.S.A. §4303. Definitions.**

“Forest blocks” means contiguous areas of forests, which could include wetlands and other natural features, that are not fragmented by roads, development, and agriculture. (This could be further defined by percent of forest cover).

“Habitat connectivity” means lands and waters that link patches of wildlife habitat within a local or regional landscape, allowing the movement, migration, and dispersal of animals and plants and the functioning of ecological processes.

Note: The Agency of Natural Resources has developed maps to help identify these features.

**24 V.S.A. §4302. Purpose; goals**

...

(6) To maintain and improve the quality of air, water, wildlife, forests, and other land resources.

(A) Vermont's air, water, wildlife, mineral and land resources should be planned for use and development according to the principles set forth in 10 V.S.A. § 6086(a).

(B) Vermont's water quality should be maintained and improved according to the policies and actions developed in the basin plans established by the Secretary of Natural Resources under 10 V.S.A. § 1253.

(C) Vermont's forestlands should be managed so as to maintain and improve forest blocks and habitat connectivity.

...

(9) To encourage and strengthen agricultural and forest industries.

(A) Strategies to protect long-term viability of agricultural and forest lands should be encouraged and should include maintaining low overall density and intact forest blocks.

...

(C) The use of locally-grown food and forest products should be encouraged.

## 24 V.S.A. §4348a. Elements of a regional plan

(a) A regional plan shall be consistent with the goals established in section 4302 of this title and shall include the following:

(A) indicating those areas proposed for forests, forestry, recreation, agriculture (using the agricultural lands identification process established in 6 V.S.A. section 8) residence, commerce, industry, public, and semi-public uses, open spaces, and areas identified by the State, regional planning commissions or municipalities, which require special consideration for aquifer protection, wetland protection, the maintenance of forest blocks, wildlife habitat, and habitat connectivity, or for other conservation;

(F) indicating those areas that would maintain forest blocks, wildlife habitat, and habitat connectivity, and recommendations to promote the health, viability, and ecological function of forests.

## 24 V.S.A. §4382. The plan for a municipality

(2) A land use plan:

(A) consisting of a map and statement of present and prospective land uses, indicating those areas proposed for forestry, recreation, agriculture (using the agricultural lands identification process established in 6 V.S.A. § 8), residence, commerce, industry, public, and semi-public uses and open spaces those areas reserved for flood plain, wetland protection, the maintenance of forest blocks, wildlife habitat and habitat connectivity, or other conservation purposes;

(5) A statement of policies on the preservation of rare and irreplaceable natural areas, scenic and historic features and resources, and forest blocks, wildlife habitat and habitat connectivity.

## 24 V.S.A. §4414. Zoning; permissible types of regulations

(1) (B) Agricultural, rural residential, forest, and recreational districts. Where, for the purposes set forth in section 4302 of this title, it is deemed necessary to safeguard certain areas from urban or suburban development and to encourage that development in other areas of the municipality or region, the following districts may be created:

(i) Agricultural or rural residential districts, permitting all types of agricultural uses and

prohibiting all other land development except low density residential development.

(ii) Forest districts, encouraging the maintenance of forest blocks, and permitting ~~commercial forestry~~ forestry operations, forest management and related uses and prohibiting all other land development.

(iii) Recreational districts, permitting camps, ski areas, and related recreational facilities, including lodging for transients and seasonal residents, and prohibiting all other land development except construction of residences for occupancy by caretakers and their families.

(2) Overlay districts. Special districts may be created to supplement or modify the zoning requirements otherwise applicable in underlying districts in order to provide supplementary provisions for areas such as shorelands and floodplains, aquifer and source protection areas, ridgelines, forest blocks, wildlife habitat and habitat connectivity, and scenic features, highway intersection, bypass, and interchange areas, or other features described in section 4411 of this title.

(3) Conditional uses.

...

(B) The general standards set forth in subdivision (3)(A) of this section may be supplemented by more specific criteria, including requirements with respect to any of the following:

(i) Minimum lot size.

(ii) Distance from adjacent or nearby uses.

(iii) Performance standards, as under subdivision (5) of this section.

(iv) Criteria adopted relating to site plan review pursuant to section 4416 of this title.

(v) Criteria related to the protection of natural resources including air and water quality, wildlife, forests, agriculture, or other natural resource features.

(vi) ~~(v)~~ Any other standards and factors that the bylaws may include.

(C) One or more of the review criteria found in 10 V.S.A. § 6086 may be adopted as standards for use in conditional use review.



**§ 4418. Subdivision bylaws**

(1) Subdivision bylaws shall be administered in accordance with the requirements of subchapter 10 of this chapter, and shall contain:

(A) Procedures and requirements for the design, submission, and processing of plats, any drawing and plans, and any other documentation required for review of subdivisions.

(B) Standards for the design and layout of streets, sidewalks, curbs, gutters, streetlights, fire hydrants, landscaping, water, sewage and stormwater management facilities, public and private utilities, and other necessary improvements as may be specified in a municipal plan. Standards in accordance with subdivision 4412(3) of this title shall be required for lots without frontage on or access to public roads or public waters.

(C) Standards for the design and configuration of parcel boundaries and location of associated improvements necessary to implement the municipal plan and achieve the desired settlement pattern for the neighborhood, area, or district in which the subdivision is located.

(D) Standards for the protection of natural resources, including forest blocks, agricultural lands, water resources, wildlife habitat, and cultural features and the preservation of open space, as appropriate in the municipality.

**Chapter 151 Proposed Language**  
**February 9, 2016**

**10 V.S.A. § 6001. Definitions**

In this chapter:

“Forest blocks” means contiguous areas of forests, which could include wetlands and other natural features, that are not fragmented by roads, development, and agriculture. (This could be further defined by percent of forest cover, or by prioritizing the most important forest blocks based on ranking by the Agency of Natural Resources).

“Forest Fragmentation” is division or conversion of 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.

“Habitat Fragmentation” is the division or conversion of tracts of wildlife habitat into smaller pieces leaving remnant patches of habitat that vary in size and isolation separated by developed or, generally, non-forested lands.

“Habitat connectivity” means lands and waters that link patches of wildlife habitat within a local or regional landscape, allowing the movement, migration, and dispersal of animals and plants and the functioning of ecological processes.

Note: The Agency of Natural Resources has developed maps to help identify these features.

**§ 6086. Issuance of permit; conditions and criteria**

(a) Before granting a permit, the District Commission shall find that the subdivision or development:

(8) Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, rare and irreplaceable natural areas, forest blocks, or habitat connectivity.

(A) Necessary wildlife habitat and endangered species. A permit will not be granted if it is demonstrated by any party opposing the applicant that a development or subdivision will destroy or significantly imperil necessary wildlife habitat or any endangered species; and

(i) the economic, social, cultural, recreational, or other benefit to the public from the development or subdivision will not outweigh the economic, environmental, or recreational loss to the public from the destruction or imperilment of the habitat or species; or

(ii) all feasible and reasonable means of preventing or lessening the destruction, diminution, or imperilment of the habitat or species have not been or will not continue to be applied; or

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(iii) a reasonably acceptable alternative site is owned or controlled by the applicant which would allow the development or subdivision to fulfill its intended purpose.

(B) Forest blocks. A permit will not be granted unless it is demonstrated by the applicant that a development or subdivision will not have an undue adverse impact on forest blocks as defined in § 6001 of this section. Undue adverse impacts to forest blocks may be reduced or eliminated through project design that minimizes forest fragmentation, or through mitigation according to 10 V.S.A. § 6094.

Placeholder for additional guidance on how to minimize adverse impacts.

(C) Habitat connectivity. A permit will not be granted unless it is demonstrated by the applicant that a development or subdivision will not have an undue adverse impact on habitat connectivity as defined in § 6001 of this section. Undue adverse impacts to habitat connectivity may be reduced through project design that minimizes habitat fragmentation, or through mitigation according to 10 V.S.A. § 6094.

Placeholder for additional guidance on how to minimize adverse impacts.

**§ 6094. Mitigation of forest blocks and habitat connectivity.**

**(a) Mitigation for undue adverse impacts to forest blocks and habitat connectivity, and to satisfy subdivision 6086(a)(8)(B)-(C) of this title shall depend on where the project tract is located.**

(1) Project located in a designated village center, downtown, new neighborhood or growth center. If the project is located in a designated village center, downtown, new neighborhood or growth center, in order to address undue adverse impacts from development, the district commission may consider a proposal to mitigate the undue adverse impacts of the development through the protection of areas of a similar quality and character, or other compensation measures outlined by the agency of natural resources in rules, procedures of guidelines, which could include a deposit into an offsite mitigation fee into the Vermont Housing and Conservation Trust Fund established under section 312 of this title for the purpose of preserving forest blocks and landscape and habitat connectivity of equal or greater value.

(2) Project located outside designated village center, downtown, new neighborhood or growth center. If the project is not located in a designated village center, downtown, new neighborhood or growth center, mitigation may be allowed if the applicant demonstrates the following:

(A) The applicant has first avoided direct, indirect or other impacts by relocating, redesigning or making adjustments to the project so there is not forest fragmentation;

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(B) If avoidance of impacts is not possible, the applicant has minimized direct, indirect or other impacts by relocating, redesigning or making adjustments to the project to minimize forest fragmentation;

(C) If the applicant has taken all practicable measures to avoid and minimize undue adverse impacts of the development consistent with subcriteria (A) and (B) above, but there is still an undue adverse impact, the district commission may consider a proposal to mitigate the undue adverse impacts through compensation. Compensation may include the protection of areas of a similar quality and character, or other compensation measures outlined by the natural resources board in consultation with the agency of natural resources in rules, which could include a deposit into an offsite mitigation fee into the Vermont Housing and Conservation Trust Fund established under section 312 of this title for the purpose of preserving forest blocks and habitat connectivity of equal or greater value.

***This is the existing Criterion 9(C) language in statute –copied here for purposes of committee discussion***

(9) Is in conformance with a duly adopted capability and development plan, and land use plan when adopted. However, the legislative findings of subdivisions 7(a)(1) through (19) of Act 85 of 1973 shall not be used as criteria in the consideration of applications by a District Commission.

(C) Productive forest soils. A permit will be granted for the development or subdivision of productive forest soils only when it is demonstrated by the applicant that, in addition to all other applicable criteria, either, the subdivision or development will not result in any reduction in the potential of those soils for commercial forestry; or:

(i) the development or subdivision will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential; and

(ii) except in the case of an application for a project located in a designated growth center, there are no lands other than productive forests soils owned or controlled by the applicant which are reasonably suited to the purpose of the development or subdivision; and

(iii) except in the case of an application for a project located in a designated growth center, the subdivision or development has been planned to minimize the reduction of the potential of those productive forests soils through innovative land use design resulting in compact development patterns, so that the remaining forest soils on the project tract may contribute to a commercial forestry operation.