

To: Commission on the Future of Act 250  
From: Vermont Forest Partnership  
Date: September 14, 2018

Thank you for the opportunity to provide comments on potential revisions and improvements to Act 250, Vermont's Land Use and Development Act. The following comments are from the Vermont Forest Partnership, which consists of Audubon Vermont, The Trust for Public Land (TPL), Vermont Chapter of The Nature Conservancy (TNC), Vermont Land Trust (VLT), Vermont Natural Resources Council (VNRC) and Vermont Conservation Voters (VCV).

Our comments relate to two topics: addressing forest fragmentation and jurisdiction for trails.

Summary of key points:

- Vermont's forests are invaluable assets to the state, providing a host of significant benefits for people and nature including jobs, revenue, clean air and water, flood attenuation, climate change mitigation, habitat for native plants and animals, outdoor recreation, health and well-being, and sense of place. The financial value of these benefits is well into the billions of dollars per year.
- For the first time in a century the area in Vermont covered by forests is declining, and our forests are becoming increasingly fragmented by parcelization and development.
- Act 250 has a critical role to play in helping maintain the integrity of Vermont's forests for all the benefits they provide. But the Act in its current form is not adequately addressing the challenges of forest fragmentation from parcelization and development, and improvements are needed to better protect forest integrity.
- To address these inadequacies, Act 250 should be improved in two ways:
  1. Strengthen the criteria to avoid or minimize the fragmentation of intact forest blocks and wildlife habitat connectivity, and require appropriate mitigation in situations where it is not feasible to avoid or minimize fragmentation through good site design, like that required for unavoidable impacts to prime agricultural soils;
  2. Modify jurisdiction to require review of projects that may fragment priority forest blocks and habitat connectivity areas.
- We are currently engaged in a conversation with trail groups to understand the challenges that Act 250 presents, and to consider potential policy options that would support trail development while maintaining appropriate review. We plan to follow up with the Commission if we reach any recommendations based on our current effort to identify potential solutions.

### **Forest Fragmentation:**

Our organizations are concerned about fragmentation because our forests are vital to the well-being of our state. Our forests provide billions in direct revenue and other financial value to the state by supporting the forest products industry, outdoor recreation, air and water quality, flood attenuation, climate change mitigation, habitat for wildlife, and other benefits. For example, a just released economic analysis by The Trust for Public Land of the return on the State of Vermont's investment in land conservation over the past 30 years found that every state dollar invested in land conservation returned \$9 in natural goods and services (such as water quality protection, food

production, flood control, wildlife habitat, and carbon sequestration and storage). In addition, based on existing, peer reviewed academic research applicable to Vermont's land cover types, the estimated annual per acre value of natural goods and services of forestland in Vermont ranges from \$180/acre for deciduous forest to \$168/acre for evergreen forest. Emergent herbaceous wetlands, which many forest blocks are home to, have a per acre annual value as high as \$580/acre.<sup>1</sup>

But as our forests become more fragmented, they lose their ability to provide this wide range of invaluable benefits.

In Act 171 passed in 2016, the General Assembly made the following legislative findings:

- Private and public forestlands constitute unique and irreplaceable resources, benefits, and values of statewide importance; contribute to the protection and conservation of wildlife habitat, air, water, and soil resources of the State; mitigate the effects of climate change; and benefit the general health and welfare of the people of the State;
- Forestry operations are adversely affected by the encroachment of urban, commercial, and residential land uses throughout the State that result in forest fragmentation and conversion and erode the health and sustainability of remaining forests; and
- As a result of encroachment on forests, conflicts have arisen between traditional forestry land uses, and urban, commercial, and residential land uses convert forestland permanently to other uses, resulting in an adverse impact to the economy and natural environment of the State.

The Vermont landscape has an appearance of densely forested lands; however, a closer look reveals that our forests are being fragmented by rural sprawl. The breaking up of large parcels of land into smaller and smaller parcels is a significant issue in Vermont and parcelization trends are noticeable.

While it is hard to pin down the exact amount of forest acreage that has been lost to development, for the first time in a century our forests are declining in extent. For example:

- Between 1982 and 1997, 51,000 of forested acres were outright converted to other land uses.
- A more recent U.S. Forest Service report suggests that Vermont may have lost up to 75,000 acres of forestland from 2007 to 2013, although the Forest Service does not report this as a statistically significant change due to the margin of error in the analysis.<sup>2</sup>
- Another set of data from the Forest Service demonstrates that we lost five percent of forests over 100 acres in size between 2001 and 2006.<sup>3</sup>
- The 2017 Vermont Forest Carbon Inventory documented that “The total annual (carbon) uptake was less in 2015 [the end of the period of analysis] than in previous decades, in part due to decreasing acres of forest land<sup>4</sup>.”

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<sup>1</sup> [tpl.org/Vermont-roi](http://tpl.org/Vermont-roi)

<sup>2</sup> [https://www.fs.fed.us/nrs/pubs/ru/ru\\_fs119.pdf](https://www.fs.fed.us/nrs/pubs/ru/ru_fs119.pdf)

<sup>3</sup> Email communication between Jamey Fidel and Forest Service.

<sup>4</sup> [http://fpr.vermont.gov/sites/fpr/files/Forest and Forestry/The Forest Ecosystem/Library/Forest%20Carbon%20Inventory%20 Mar%202017 final.pdf](http://fpr.vermont.gov/sites/fpr/files/Forest%20and%20Forestry/The%20Forest%20Ecosystem/Library/Forest%20Carbon%20Inventory%20Mar%202017_final.pdf)

- Furthermore, according to a VNRC report published in 2010, the amount of land in Vermont in parcels larger than 50 acres decreased by about 42,000 acres between 2003 and 2009. This correlated with an increase of 4,300 parcels under 10 acres in size between 2003 and 2009.
- A more recent report about to be published by VNRC reveals that according to Grand List data, undeveloped woodland in Vermont decreased by about 147,670 acres from 2004 to 2016 while residential acreage increased by almost 162,670 acres. During the same study period, parcels less than 50 acres in size with dwellings increased by 20,747 parcels. This highlights an increasing trend in Vermont; undeveloped land is being converted to residential development with dwellings and associated infrastructure, and smaller parcels are being created through the fragmentation and parcelization of forestland from subdivision and development.<sup>5</sup>

Our organizations have spent the last decade researching and examining the issue of forest fragmentation. We have consulted many professionals in the forest policy, planning, and forestry community about the adequacy and shortcoming of Vermont’s land use regulations to address forest fragmentation.

For example, in 2007, VNRC convened the Forest Roundtable to address forest fragmentation with approximately 100 participants including consulting foresters, professional planners, government officials, landowners, representatives from the forest products industry, conservation groups, rural economic development, and researchers at academic institutions. Together, the Roundtable published a Report on Parcelization and Forest Fragmentation. The report included 27 priority recommendations. One of those was to “identify and correct gaps in Act 250 and other land use regulations to attenuate the rate of parcelization and forest fragmentation in Vermont.”<sup>6</sup>

In 2014, the land use planning community developed a Forest Fragmentation Action Plan with input from 100 local planning and conservation commissions members, selectboards, regional planning commissions, the VT Dept. of Forests, Parks and Recreation, the VT Fish and Wildlife Department, the VT Dept. of Housing and Community Development, the VT Planners Association and UVM Extension. As part of the process, twenty-eight strategies were identified and ranked. The top nine were selected to highlight in the action plan. One of the top identified strategies was to pursue legislative changes at the state level to modify Act 250 to address forest fragmentation and add new criteria to review and mitigate forest fragmentation.<sup>7</sup>

In addition, the Vermont Legislature has commissioned three reports over the past three years requesting strategies to address forest fragmentation, including land use strategies. These reports have created a long and deep examination of the issue of forest fragmentation and how to address it.

In 2015, the Vermont Department of Forests, Parks, and Recreation submitted the Vermont Forest Fragmentation Report to the Vermont Legislature. That report stated that in order to provide the

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<sup>5</sup> Contact VNRC for copy of full report.

<sup>6</sup> See p. 13 at <http://vnrc.org/wp-content/uploads/2012/08/Forest-Roundtable-Report.pdf>

<sup>7</sup> See p. 13 at <http://vnrc.org/wp-content/uploads/2014/05/Final-Forest-Fragmentation-Action-Plan.pdf>

appropriate tools and clear authority for Act 250 to protect forest blocks there are a number of amendments to Act 250 to consider, including:

- Adding definitions for significant forest blocks and significant connecting habitat so that those features of forest integrity can be addressed specifically in Act 250.
- Criterion 8A could be enhanced to include explicit consideration of significant forest blocks and connecting habitat. Currently, Act 250 does not specifically consider these elements of forest integrity, and given the nexus between significant forest blocks and the Department of Fish and Wildlife's assessment of high-ranking forest blocks, criterion 8A appears the most appropriate place to add this consideration. This change would give the Act 250 district commissions the necessary tools to moderate the impacts from development on the most critical forest blocks across the state.<sup>8</sup>

As part of Act 171, signed into law in 2016, the Legislature developed a study committee to examine potential revisions to Act 250 to protect contiguous areas of forestland from fragmentation and promote habitat connectivity between forestlands.<sup>9</sup>

The resulting report included a matrix of policy options. The study committee cover letter explains that the group was unable to reach consensus agreement on specific recommendations, but the report also clarifies that at its last meeting, study committee members put forward recommendations for inclusion in the final report and members voted whether to support each recommendation. The December 18, 2016 meeting minutes reflect that all members present at the meeting expressed their support or possible support for enhancing Criterion 8 to include consideration of significant forest blocks and connecting habitat.<sup>10</sup>

The report acknowledges that ultimately the short time frame and diversity of perspectives prevented the study committee from reaching consensus on its final recommendations, but the minutes reflect that improving criteria to address fragmentation had strong support as a concept.

It is clear based on our research and collaborative work with many land use experts in the state that the existing Act 250 criterion related to forests, Criterion 9(C), does not adequately address impacts to forests from subdivision, nor does it address the issue of forest fragmentation. It only examines project impacts to forest soils for commercial forestry. It does not consider the overall integrity of forests and the full suite of ecological and economic benefits that forests provide. Criterion 8(A), necessary wildlife habitat, does not serve this function either.

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<sup>8</sup> See p. 51 at

[http://fpr.vermont.gov/sites/fpr/files/About\\_the\\_Department/News/Library/FOREST%20FRAGMENTATION\\_FINAL\\_rev06-03-15.pdf](http://fpr.vermont.gov/sites/fpr/files/About_the_Department/News/Library/FOREST%20FRAGMENTATION_FINAL_rev06-03-15.pdf)

<sup>9</sup>

[http://fpr.vermont.gov/sites/fpr/files/Forest\\_and\\_Forestry/Your\\_Woods/Library/2017%2002%2009.b%20Act%20171%20Forest%20Integrity%20Study%20Committee.pdf](http://fpr.vermont.gov/sites/fpr/files/Forest_and_Forestry/Your_Woods/Library/2017%2002%2009.b%20Act%20171%20Forest%20Integrity%20Study%20Committee.pdf)

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[http://fpr.vermont.gov/sites/fpr/files/Forest\\_and\\_Forestry/Vermont\\_Forests/Library/2016%2012%202013%20version%20%20Act%20171%20Forest%20Integrity%20Study%20Committee%20Meeting%20Minutes.pdf](http://fpr.vermont.gov/sites/fpr/files/Forest_and_Forestry/Vermont_Forests/Library/2016%2012%202013%20version%20%20Act%20171%20Forest%20Integrity%20Study%20Committee%20Meeting%20Minutes.pdf)

In addition, Criterion 9(C) appears to be significantly underutilized, and is not well understood. We performed an exhaustive review of appeals between 1985 and 2017 and we could only find one case where a project was found to have a significant reduction in the potential of soils for forestry under 9(C). It is possible District Commissions may have denied some projects based on Criterion 9(C), but often, when a project is denied, it will be appealed to the Environmental Court - or previously the Natural Resource Board. At the appellate level, we could only find one case where a project was found to have a significant reduction in productive forest soils, which is surprising.

Furthermore, compounding the limitation of Criterion 9(C) is the fact that very little subdivision activity appears to trigger Act 250. VNRC examined subdivision activity in 22 case study towns between 2003 and 2009 and found that out of 925 subdivisions creating 2,749 lots and affecting a total of 70,827 acres, only 1-2% of the subdivisions triggered Act 250 (the exception was land already under Act 250 jurisdiction, which boosted the overall Act 250 review to 10% of the subdivisions).<sup>11</sup>

A natural question is why doesn't Act 250 require review of more subdivisions? One of the reasons according to VNRC's research is the average subdivision reviewed in the 22 case study towns was between 2-4 lots; therefore, many subdivisions do not trigger Act 250 jurisdiction (Act 250 reviews propose subdivisions of 6 or more lots in a town without zoning, or 10 or more lots in a town that has zoning and subdivision regulations).

In addition, two former provisions in Act 250 that used to require review of fragmenting types of development have been rescinded – the “road rule”, which required review of proposed roads over 800 feet in length, and the review of secondary impacts from utility lines, meaning the impacts of development associated with the utility line. When the road rule was rescinded, Act 250 lost the ability to review the impacts of incremental development with long roads that penetrate intact forest blocks. In addition, when the review of secondary impacts of utility lines was removed from Act 250, the requirement to consider the fragmenting impacts of growth associated with utility line extensions was lost.

This leads us to conclude that Act 250 should be improved in two ways: (1) strengthen the criteria to avoid or minimize the fragmentation of intact forest blocks and wildlife habitat connectivity, and require appropriate mitigation where this is not feasible; and (2) modify Act 250 jurisdiction to review projects that may fragment priority forest blocks and habitat connectivity areas.

We support recent efforts by the Vermont Legislature in H.233 to improve Criterion 8 to review whether a project has been designed to either avoid or minimize the fragmentation of forest blocks and wildlife connectivity areas through proactive site design. If it is not feasible to avoid or minimize fragmentation through good site design, then mitigation should be required, much like it is for impacts to prime agricultural soils. Since forest blocks are vitally important for working lands and places to recreate, we support exempting forestry and agricultural activities like sugaring and recreational activity from fragmentation criteria (as in H.233).

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<sup>11</sup> See pp. 8-10 at <http://vnrc.org/wp-content/uploads/2014/05/Phase-II-Subdivisions-Report-NEW-Reduced2.pdf>

A second priority is to address the jurisdictional loopholes that have limited the review of development that penetrates intact forest blocks and connectivity areas. Various options include the following:

- Reinstating the road rule, or some version of it, to review development that extends a certain distance into unfragmented priority forest blocks and connectivity areas;
- Considering resource-based jurisdiction that heightens Act 250 review in priority forest blocks and connectivity areas. This could be done by reviewing the creation of a smaller number of lots in these areas, versus the current jurisdictional triggers that result in very few subdivision proposals in forest blocks being reviewed. We also understand that outside of rural resource lands, Act 250 can play a role in supporting concentrated development in appropriate areas for targeted growth.
- Reinstating the review of secondary impacts of utility lines to consider the impacts of development that hooks up to utility line extensions in priority forest blocks and connectivity areas.

### **Act 250 and Trails:**

In the last legislative session, we supported certain steps to bring more clarity to the Act 250 process, but ultimately supported a summer study to step back and examine the role of Act 250 and trails, potential improvements, or alternative structures for promoting trail development and environmental review. We are currently engaged in a conversation with trail groups to understand the challenges that Act 250 presents, and to consider potential policy options that would support trail development while maintaining appropriate review. We plan to follow up with the Commission if we reach any recommendations based on our current effort to identify potential solutions.

Thank you for the opportunity to provide these comments. Please feel free to follow up with any questions.

Sincerely,

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