

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resources, Fish and Wildlife to which was
3 referred House Bill No. 233 entitled “An act relating to to protecting working
4 forests and habitat” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 10 V.S.A. § 6001 is amended to read:

8 § 6001. DEFINITIONS

9 In this chapter:

10 * * *

11 (3)(A) “Development” means each of the following:

12 (i) The construction of improvements on a tract or tracts of land,
13 owned or controlled by a person, involving more than 10 acres of land within a
14 radius of five miles of any point on any involved land, for commercial or
15 industrial purposes in a municipality that has adopted permanent zoning and
16 subdivision bylaws.

17 (ii) The construction of improvements for commercial or
18 industrial purposes on more than one acre of land within a municipality that
19 has not adopted permanent zoning and subdivision bylaws.

20 * * *

1 or a habitat connectivity area that is classified as a highest priority connectivity
2 block by the Vermont Conservation Design.

3 * * *

4 (D) The word “development” does not include:

5 (i) The construction of improvements for farming, logging, or
6 forestry purposes below the elevation of 2,500 feet.

7 * * *

8 (8) “Productive forest soils” means those soils which are not primary
9 agricultural soils but which have a reasonable potential for commercial forestry
10 and which have not been developed. In order to qualify as productive forest
11 soils, the land containing such soils shall be of a size and location, relative to
12 adjoining land uses, natural condition, and ownership patterns so that those
13 soils will be capable of supporting or contributing to a commercial forestry
14 operation. Land use on those soils may include commercial timber harvesting
15 and specialized forest uses, such as maple sugar or Christmas tree production.

16 * * *

17 (12) “Necessary wildlife habitat” means concentrated habitat which is
18 identifiable and is demonstrated as being decisive to the survival of a species
19 of wildlife at any period in its life including breeding and migratory periods.

20 * * *

21 (19)(A) “Subdivision” means each of the following:

1 (i) A tract or tracts of land, owned or controlled by a person,
2 which the person has partitioned or divided for the purpose of resale into 10 or
3 more lots within a radius of five miles of any point on any lot, or within the
4 jurisdictional area of the same District Commission, within any continuous
5 period of five years. In determining the number of lots, a lot shall be counted
6 if any portion is within five miles or within the jurisdictional area of the same
7 District Commission.

8 (ii) A tract or tracts of land, owned or controlled by a person,
9 which the person has partitioned or divided for the purpose of resale into six or
10 more lots, within a continuous period of five years, in a municipality which
11 does not have duly adopted permanent zoning and subdivision bylaws.

12 (iii) A tract or tracts of land, owned or controlled by a person,
13 which have been partitioned or divided for the purpose of resale into five or
14 more separate parcels of any size within a radius of five miles of any point on
15 any such parcel, and within any period of ten years, by public auction.

16 (I) In this subdivision (iii), “public auction” means any auction
17 advertised or publicized in any manner, or to which more than ten persons
18 have been invited.

19 (II) If sales described under this subdivision (iii) are of interests
20 that, when sold by means other than public auction, are exempt from the
21 provisions of this chapter under the provisions of subsection 6081(b) of this

1 title, the fact that these interests are sold by means of a public auction shall not,
2 in itself, create a requirement for a permit under this chapter.

3 (iv) A tract or tracts of land, owned or controlled by a person,
4 located outside a designated center, if each of the following apply:

5 (I) The person has partitioned or divided for the purpose of
6 resale within a continuous period of five years into:

7 (aa) three or more lots, in a municipality that does not have
8 duly adopted permanent zoning and subdivision bylaws; or

9 (bb) six or more lots, in a municipality that does have duly
10 adopted permanent zoning and subdivision bylaws.

11 (II) Each of the lots created within this period is wholly or
12 partially within a forest block that is classified as a highest priority interior
13 forest block or a habitat connectivity area that is classified as a highest priority
14 connectivity block by the Vermont Conservation Design.

15 (B) The word “subdivision” shall not include each of the following:

16 (i) a lot or lots created for the purpose of conveyance to the State
17 or to a qualified organization, as defined under section 6301a of this title, if the
18 land to be transferred includes and will preserve a segment of the Long Trail;

19 (ii) a lot or lots created for the purpose of conveyance to the State
20 or to a “qualified holder” of “conservation rights and interest,” as defined in
21 section 821 of this title.

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(30) “Designated center” means a downtown development district, village center, new town center, growth center, Vermont neighborhood, or neighborhood development area designated under 24 V.S.A. chapter 76A.

* * *

(38) “Forest block” means a contiguous area of forest in any stage of succession and not currently developed for nonforest use. A forest block may include existing recreational trails, wetlands, or other natural features that do not themselves possess tree cover, and improvements constructed for farming, logging, or forestry purposes.

(39) “Fragmentation” means the division or conversion of a forest block or habitat connectivity area by the separation of a parcel into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill; and any change in the use of any building or other structure, or land, or extension of use of land. However, fragmentation does not include the division or conversion of a forest block or habitat connectivity area by an existing **or repaired** recreational trail or by improvements constructed for farming, logging, or forestry purposes below the elevation of 2,500 feet.

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

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

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

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

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

17 (B) Forest blocks.

18 (i) A permit will not be granted for a development or subdivision
19 to be located on or adjacent to a tract that contains a forest block unless the
20 applicant demonstrates that:

1 (I) the development or subdivision will avoid fragmentation of
2 the forest block through the design of the project or the location of project
3 improvements, or both;

4 (II) it is not feasible to avoid fragmentation of the forest block
5 and the design of the development or subdivision minimizes fragmentation of
6 the forest block; or

7 (III) it is not feasible to avoid or minimize fragmentation of the
8 forest block and the applicant will mitigate the fragmentation in accordance
9 with section 6094 of this title.

10 (ii) Methods for avoiding or minimizing the fragmentation of a
11 forest block may include:

12 (I) Locating buildings and other improvements to avoid or
13 minimize incursion into the forest block, including clustering of buildings and
14 associated improvements.

15 (II) Designing roads, driveways, and utilities to avoid or
16 minimize fragmentation of the forest block. Such design may be accomplished
17 by following or sharing existing features on the land such as roads, tree lines,
18 stonewalls, and fence lines.

19 (C) Habitat connectivity areas.

1 (i) A permit will not be granted for a development or subdivision
2 to be located on or adjacent to a tract that contains a habitat connectivity area
3 unless the applicant demonstrates that:

4 (I) the development or subdivision will avoid fragmentation of
5 the habitat connectivity area through the design of the project or the location of
6 project improvements, or both;

7 (II) it is not feasible to avoid fragmentation of the habitat
8 connectivity area and the design of the development or subdivision minimizes
9 fragmentation of the area; or

10 (III) it is not feasible to avoid or minimize fragmentation of the
11 habitat connectivity area and the applicant will mitigate the fragmentation in
12 accordance with section 6094 of this title.

13 (ii) Methods for avoiding or minimizing the fragmentation of a
14 habitat connectivity area may include:

15 (I) locating buildings and other improvements at the farthest
16 feasible location from the center of the area;

17 (II) designing the location of buildings and other improvements
18 to leave the greatest contiguous portion of the area undisturbed, in order to
19 facilitate wildlife travel through the area; or

20 (III) when there is no feasible site for construction of buildings
21 and other improvements outside the area, designing the buildings and

1 improvements to facilitate the continued viability of the area for use by
2 wildlife.

3 (D) Availability of options; forest blocks; connectivity areas. Under
4 subdivisions (B) and (C) of this subdivision (8):

5 (i) The District Commission shall not issue a positive finding
6 based on minimization of fragmentation unless it finds that avoidance of
7 fragmentation is not feasible.

8 (ii) The District Commission shall not issue a positive finding
9 based on mitigation of fragmentation unless it finds that avoidance and
10 minimization of fragmentation are not feasible.

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

15 * * *

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

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

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

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

14 * * *

15 Sec. 3. 10 V.S.A. § 6088 is amended to read:

16 § 6088. BURDEN OF PROOF

17 (a) The burden shall be on the applicant with respect to subdivisions
18 6086(a)(1), (2), (3), (4), (8)(B) and (C), (9), and (10) of this title.

19 (b) ~~The~~ Except for subdivisions 8(B) and (C) of this title, the burden shall
20 be on any party opposing the applicant with respect to subdivisions 6086(a)(5)
21 through (8) of this title to show an unreasonable or adverse effect.

1 Sec. 4. 10 V.S.A. § 6094 is added to read:

2 § 6094. MITIGATION OF FOREST BLOCKS AND HABITAT

3 CONNECTIVITY AREAS

4 (a) A District Commission may consider a proposal to mitigate, through
5 compensation, the fragmentation of a forest block or habitat connectivity area
6 if the applicant demonstrates that it is not feasible to avoid or minimize
7 fragmentation of the block or area in accordance with the respective
8 requirements of subdivision 6086(a)(8)(B) or (C) of this title. A District
9 Commission may approve the proposal only if it finds that the proposal will
10 meet the requirements of the rules adopted under this section and will preserve
11 a forest block or habitat connectivity area of a value equal to or greater than the
12 block or area affected by the development or subdivision.

13 (b) The Natural Resources Board, in consultation with the Secretary of
14 Natural Resources, shall adopt rules governing mitigation under this section.

15 (1) The rules shall state the acreage ratio of forest block or habitat
16 connectivity area to be preserved in relation to the block or area affected by the
17 development or subdivision.

18 (2) Compensation measures to be allowed under the rules shall be based
19 on the ratio of land developed pursuant to subdivision (1) of this subsection
20 and shall include:

1 (A) Preservation of a forest block or habitat connectivity area of
2 similar quality and character to the block or area that the development or
3 subdivision will affect.

4 (B) Deposit of an offsite mitigation fee into the Vermont Housing
5 and Conservation Trust Fund under section 312 of this title, at the fee rate set
6 forth in the rules. The Vermont Housing Conservation Board shall use such a
7 fee to preserve a forest block or habitat connectivity area of a value equal to or
8 greater than the value of the block or area affected by the development or
9 subdivision.

10 (C) Such other compensation measures as the rules may authorize.

11 (c) All forest blocks and habitat connectivity areas preserved pursuant to
12 this section shall be protected by permanent conservation easements that grant
13 development rights and include conservation restrictions and are conveyed to a
14 qualified holder, as defined in section 821 of this title, with the ability to
15 monitor and enforce easements in perpetuity.

16 **Sec. 5. RULE ADOPTION: SCHEDULE; GUIDANCE**

17 (a) **Rulemaking.**

18 (1) On or before September 1, 2017, the Natural Resources Board
19 (NRB) shall file proposed rules with the Secretary of State to implement Sec. 4
20 of this act, 10 V.S.A. § 6094.

1 (2) On or before March 1, 2018, the Natural Resources Board shall
2 finally adopt rules to implement Sec. 4 of this act, 10 V.S.A. § 6094, unless
3 such deadline is extended by the Legislative Committee on Administrative
4 Rules pursuant to 3 V.S.A. § 843(c).

5 **(b) Guidance. On or before May 1, 2018, the Natural Resources Board**
6 **shall develop guidance for the District Commissions, applicants, and other**
7 **affected persons with respect to the forest block and habitat connectivity**
8 **area criteria adopted under Sec. 2 of this act, 10 V.S.A. § 6086(a)(8)(B)**
9 **and (C).**

10 **(1) The NRB shall develop this guidance in collaboration with the**
11 **Agency of Natural Resources (ANR).**

12 **(2) As part of developing this guidance, the NRB shall solicit input**
13 **from affected parties and the public, including planners, developers,**
14 **municipalities, environmental advocacy organizations, regional planning**
15 **commissions, regional development corporations, and business advocacy**
16 **organizations such as State and regional chambers of commerce.**

17 Sec. 6. EFFECTIVE DATES

18 (a) This section and Sec. 5 shall take effect on passage.

19 (b) The remainder of this act shall take effect on **May 1, 2018**, except that
20 on passage the remainder of the act shall apply to the rulemaking **and**
21 **guidance** under Sec. 5.

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3 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE