

1 Requested by Reps. McCullough and Squirrell

2 TO THE HOUSE OF REPRESENTATIVES:

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

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

9 § 6001. DEFINITIONS

10 In this chapter:

11 * * *

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

13 * * *

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

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

17 * * *

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

21 * * *

1 (38) “Forest block” means a contiguous area of forest in any stage of
2 succession and not currently developed for nonforest use that is mapped as an
3 interior forest block within the 2016 interior forest block dataset created as part
4 of resource mapping under section 127 of this title, as that dataset may be
5 updated pursuant to procedures developed in accordance with that section. A
6 forest block may include existing recreational trails, wetlands, or other natural
7 features that do not themselves possess tree cover, and improvements
8 constructed for farming, logging, or forestry purposes.

9 (39) “Fragmentation” means the division or conversion of a forest block
10 or habitat connectivity area by the separation of a parcel into two or more
11 parcels; the construction, reconstruction, conversion, structural alteration,
12 relocation, or enlargement of any building or other structure, or of any mining,
13 excavation, or landfill; and any change in the use of any building or other
14 structure, or land, or extension of use of land. However, fragmentation does
15 not include the division or conversion of a forest block or habitat connectivity
16 area by an existing or repaired recreational trail or by improvements
17 constructed for farming, logging, or forestry purposes below the elevation of
18 2,500 feet.

19 (40) “Habitat” means the physical and biological environment in which
20 a particular species of plant or animal lives.

1 (41) “Habitat connectivity area” refers to land or water, or both, that
2 links patches of habitat within a landscape, allowing the movement, migration,
3 and dispersal of animals and plants and the functioning of ecological
4 processes. A habitat connectivity area may include existing or repaired
5 recreational trails and improvements constructed for farming, logging, or
6 forestry purposes.

7 Sec. 2. 10 V.S.A. § 6086 is amended to read:

8 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

11 * * *

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

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

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

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

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

7 (B) Forest blocks.

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

11 (I) the development or subdivision will avoid fragmentation of
12 the forest block through the design of the project or the location of project
13 improvements, or both;

14 (II) it is not feasible to avoid fragmentation of the forest block
15 and the design of the development or subdivision minimizes fragmentation of
16 the forest block; or

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

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

1 (I) Locating buildings and other improvements to avoid or
2 minimize incursion into the forest block, including clustering of buildings and
3 associated improvements.

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

8 (C) Habitat connectivity areas.

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

12 (I) the development or subdivision will avoid fragmentation of
13 the habitat connectivity area through the design of the project or the location of
14 project improvements, or both;

15 (II) it is not feasible to avoid fragmentation of the habitat
16 connectivity area and the design of the development or subdivision minimizes
17 fragmentation of the area; or

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

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

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

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

8 (III) when there is no feasible site for construction of buildings
9 and other improvements outside the area, designing the buildings and
10 improvements to facilitate the continued viability of the area for use by
11 wildlife.

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

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

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

20 * * *

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

2 § 6088. BURDEN OF PROOF

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

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

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

10 § 6094. MITIGATION OF FOREST BLOCKS AND HABITAT

11 CONNECTIVITY AREAS

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

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

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

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

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

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

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

19 (c) All forest blocks and habitat connectivity areas preserved pursuant to
20 this section shall be protected by permanent conservation easements that grant
21 development rights and include conservation restrictions and are conveyed to a

1 qualified holder, as defined in section 821 of this title, with the ability to
2 monitor and enforce easements in perpetuity.

3 Sec. 5. RULE ADOPTION: SCHEDULE; GUIDANCE

4 (a) Rulemaking.

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

8 (2) On or before March 1, 2018, the NRB shall finally adopt rules to
9 implement Sec. 4 of this act, 10 V.S.A. § 6094, unless such deadline is
10 extended by the Legislative Committee on Administrative Rules pursuant to
11 3 V.S.A. § 843(c).

12 (b) Guidance. On or before May 1, 2018, the NRB shall develop guidance
13 for the District Commissions, applicants, and other affected persons with
14 respect to:

15 (1) the forest block and habitat connectivity area criteria adopted under
16 Sec. 2 of this act, 10 V.S.A. § 6086(a)(8)(B) and (C); and

17 (2) designing recreational trails, subdivisions, and developments to
18 minimize impacts in a manner that complies with those criteria.

19 (b) The NRB shall develop this guidance in collaboration with the Agency
20 of Natural Resources (ANR). As part of developing this guidance, the NRB
21 shall solicit input from affected parties and the public, including planners,

1 developers, municipalities, environmental advocacy organizations, regional
2 planning commissions, regional development corporations, and business
3 advocacy organizations such as State and regional chambers of commerce.

4 Sec. 6. 10 V.S.A. § 127 is amended to read:

5 § 127. RESOURCE MAPPING

6 (a) ~~On or before January 15, 2013, the~~ The Secretary of Natural Resources
7 (the Secretary) shall complete and maintain resource mapping based on the
8 Geographic Information System (GIS). The mapping shall identify natural
9 resources throughout the State, including forest blocks, that may be relevant to
10 the consideration of energy projects and projects subject to chapter 151 of this
11 title. The Center for Geographic Information shall be available to provide
12 assistance to the Secretary in carrying out the GIS-based resource mapping.

13 (b) ~~The Secretary of Natural Resources~~ shall consider the GIS-based
14 resource maps developed under subsection (a) of this section when providing
15 evidence and recommendations to the Public Service Board under 30 V.S.A.
16 § 248(b)(5) and when commenting on or providing recommendations under
17 chapter 151 of this title to District Commissions on other projects.

18 (c) The Secretary shall establish and maintain written procedures that
19 include a process and science-based criteria for updating resource maps
20 developed under subsection (a) of this section. Before establishing or revising

1 these procedures, the Secretary shall provide an opportunity for affected parties
2 and the public to submit relevant information and recommendations.

3 Sec. 7. 24 V.S.A. § 4303 is amended to read:

4 § 4303. DEFINITIONS

5 The following definitions shall apply throughout this chapter unless the
6 context otherwise requires:

7 * * *

8 (34) As used in subdivisions 4348a(a)(2) and 4382(a)(2) of this title:

9 (A) “Forest block” means a contiguous area of forest in any stage of
10 succession and not currently developed for nonforest use. A forest block may
11 include recreational trails, wetlands, or other natural features that do not
12 themselves possess tree cover, and uses exempt from regulation under
13 subsection 4413(d) of this title.

14 ~~(35)~~(B) “Forest fragmentation” means the division or conversion of a
15 forest block by land development other than by a recreational trail or use
16 exempt from regulation under subsection 4413(d) of this title.

17 ~~(36)~~(C) “Habitat connector” means land or water, or both, that links
18 patches of wildlife habitat within a landscape, allowing the movement,
19 migration, and dispersal of animals and plants and the functioning of
20 ecological processes. A habitat connector may include recreational trails and
21 uses exempt from regulation under subsection 4413(d) of this title. In a plan or

1 other document issued pursuant to this chapter, a municipality or regional plan
2 commission may use the phrase “wildlife corridor” in lieu of “habitat
3 connector.”

4 ~~(37)~~(35) ~~“Recreational~~ As used in subdivision (34) of this section,
5 “recreational trail” means a corridor that is not paved and that is used for
6 hiking, walking, bicycling, cross-country skiing, snowmobiling, all-terrain
7 vehicle riding, horseback riding, and other similar recreational activity.

8 Sec. 8. EFFECTIVE DATES

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

10 (b) Sec. 6 shall take effect on July 1, 2017.

11 (c) Sec. 7 shall take effect on January 1, 2018 and shall supersede 2016
12 Acts and Resolves No. 171, Sec. 15. Sec. 7 shall apply to municipal and
13 regional plans adopted or amended on or after January 1, 2018.

14 (d) Secs. 1 through 4 shall take effect on May 1, 2018, except that on
15 passage, Secs. 1 through 4 shall apply to the rulemaking and guidance under
16 Sec. 5.

17

18 (Committee vote: _____)

19

20

Representative _____

21

FOR THE COMMITTEE