

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 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 \* \* \*

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

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

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 \* \* \*

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 recreational trails, wetlands, or other natural features  
7           that do not themselves possess tree cover, and improvements constructed for  
8           farming, logging, or forestry purposes.

9           (39) “Fragmentation” means the division or conversion of a forest block  
10           or habitat connector by the separation of a parcel into two or more parcels; the  
11           construction, conversion, relocation, or enlargement of any building or other  
12           structure, or of any mining, excavation, or landfill; and any change in the use  
13           of any building or other structure, or land, or extension of use of land.

14           However, fragmentation does not include the division or conversion of a forest  
15           block or habitat connector by ~~an existing, repaired, relocated, or extended a~~  
16           recreational trail ~~or a new recreational trail~~ or by improvements constructed  
17           for farming, logging, or forestry purposes below the elevation of 2,500 feet.

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

20           (41) “Habitat connector” refers to land or water, or both, that links  
21           patches of habitat within a landscape, allowing the movement, migration, and

1 dispersal of animals and plants and the functioning of ecological processes. A  
2 habitat connector may include recreational trails and improvements  
3 constructed for farming, logging, or forestry purposes.

4 (42) As used in subdivisions (38), (39), and (41) of this section,  
5 “recreational trail” means a corridor that is not paved, **that has a minor**  
6 **impact on the values of a forest block or habitat connector,** and that is used  
7 **for recreational purposes including hiking, walking, bicycling, cross-country**  
8 **skiing, snowmobiling, all-terrain vehicle riding, **and** horseback riding, **and****  
9 **other similar recreational activity.**

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

11 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

14 \* \* \*

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

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

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

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

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

11 (B) Forest blocks.

12 (i) A permit will not be granted for a development or subdivision  
13 unless the applicant demonstrates that:

14 (I) the development or subdivision will avoid fragmentation of  
15 a forest block through the design of the project or the location of project  
16 improvements, or both;

17 (II) it is not feasible to avoid fragmentation of the forest block  
18 and the design of the development or subdivision minimizes fragmentation of  
19 the forest block; or

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

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

6                    (I) Locating buildings and other improvements and operating  
7 the project in a manner that avoids or minimizes incursion into and disturbance  
8 of the forest block, including clustering of buildings and associated  
9 improvements.

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

14                   (C) Habitat connectors.

15                   (i) A permit will not be granted for a development or subdivision  
16 unless the applicant demonstrates that:

17                   (I) the development or subdivision will avoid fragmentation of  
18 a habitat connector through the design of the project or the location of project  
19 improvements, or both;



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 CONNECTORS

12 (a) A District Commission may consider a proposal to mitigate, through  
13 compensation, the fragmentation of a forest block or habitat connector if the  
14 applicant demonstrates that it is not feasible to avoid or minimize  
15 fragmentation of the block or connector 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 connector of a value equal to or greater than the block  
20 or connector 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        connector to be preserved in relation to the block or connector 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 connector of similar  
10       quality and character to the block or connector 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.

14           (i) This mitigation fee shall be derived as follows:

15            (I) Determine the number of acres of forest block or habitat  
16       connector, or both, affected by the proposed development or subdivision.

17            (II) Multiply this number of affected acres by the ratio set forth  
18       in the rules.

19            (III) Multiply the resulting product by a “price-per-acre” value,  
20       which shall be based on the amount that Commissioner of Forests, Parks and  
21       Recreation to be the recent, per-acre cost to acquire conservation easements for



1 forest blocks and habitat connectors of similar quality and character in the  
2 same geographic region as the proposed development or subdivision.

3 (ii) The Vermont Housing Conservation Board shall use such a fee  
4 to preserve a forest block or habitat connector of a value equal to or greater  
5 than the value of the block or connector affected by the development or  
6 subdivision.

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

8 (c) The ~~rules shall identify options and establish methods under which~~  
9 ~~the~~ mitigation of impact on a forest block or a habitat connector, or both, ~~may~~  
10 ~~shall~~ be structured also to mitigate ~~the~~ impacts, ~~under the criteria of~~  
11 ~~subsection 6086(a) of this title other than (8)(B) and (C), to land or~~  
12 ~~resources within the block or connector, such as necessary wildlife habitat~~  
13 ~~and threatened or endangered species.~~

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

19 Sec. 5. RULE ADOPTION; SCHEDULE; GUIDANCE

20 (a) Rulemaking.

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

4           (2) On or before March 1, 2018, the NRB shall finally adopt rules to  
5           implement Sec. 4 of this act, 10 V.S.A. § 6094, unless such deadline is  
6           extended by the Legislative Committee on Administrative Rules pursuant to  
7           3 V.S.A. § 843(c).

8           (b) Guidance.

9           (1) On or before May 1, 2018, the NRB shall develop guidance for the  
10          District Commissions, applicants, and other affected persons with respect to:

11           (A) the forest block and habitat connector criteria adopted under Sec.  
12          2 of this act, 10 V.S.A. § 6086(a)(8)(B) and (C); and

13           (B) designing recreational trails, subdivisions, and developments to  
14          minimize impacts in a manner that complies with those criteria.

15          (2) The NRB shall develop this guidance in collaboration with the  
16          Agency of Natural Resources (ANR). As part of developing this guidance, the  
17          NRB shall solicit input from affected parties and the public, including  
18          planners, developers, municipalities, environmental advocacy organizations,  
19          regional planning commissions, regional development corporations, and  
20          business advocacy organizations such as State and regional chambers of  
21          commerce.

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

2 § 127. RESOURCE MAPPING

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

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

16 (c) The Secretary shall establish and maintain written procedures that  
17 include a process and science-based criteria for updating resource maps  
18 developed under subsection (a) of this section. Before establishing or revising  
19 these procedures, the Secretary shall provide an opportunity for affected parties  
20 and the public to submit relevant information and recommendations.

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

2 § 4303. DEFINITIONS

3 The following definitions shall apply throughout this chapter unless the  
4 context otherwise requires:

5 \* \* \*

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

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

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

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

1 commission may use the phrase “wildlife corridor” in lieu of “habitat  
2 connector.”

3 ~~(37)(35)~~ “Recreational As used in subdivision (34) of this section,  
4 “recreational trail” means a corridor that is not paved and that is used for  
5 hiking, walking, bicycling, cross-country skiing, snowmobiling, all-terrain  
6 vehicle riding, horseback riding, and other similar recreational activity.

7 Sec. 8. EFFECTIVE DATES

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

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

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

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

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18 (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

Representative \_\_\_\_\_

FOR THE COMMITTEE