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House Natural Resources, Fish and Wildlife Committee

Testimony of Jamey Fidel, Forest and Wildlife Program Director/General Counsel
Vermont Natural Resources Council on H.233

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Thank you for the opportunity to testify today on version 3.1 of H.233 on behalf of the following organizations that support the bill: Vermont Conservation Voters, Audubon Vermont, The Trust for Public Land, Vermont Chapter of the Nature Conservancy, Vermont Land Trust, Vermont Natural Resources Council, Vermont Center for Ecostudies, Putney Mountain Association, Vermont Chapter of the Sierra Club, Vermont River Conservancy, and the Greensboro Land Trust. Collectively, these organizations represent over 20,000 members and supporters.

This version of the bill would add new criteria to Act 250 under Criterion 8 to require development that is already going through Act 250 to either avoid or minimize the fragmentation of interior forest blocks (defined according to ANR 2016 dataset) and habitat connectivity areas. Mitigation would be allowed if it is not feasible to minimize fragmentation through proactive site design (the bill outlines several steps for encouraging proactive design).

The Natural Resources Board would need to develop rules to implement the mitigation, including the deposit of an offsite mitigation fee in the Vermont Housing and Conservation Trust Fund, which would be used to conserve a forest block or habitat connectivity areas of equal or greater value.

Like they do for other criteria, the Natural Resources Board and Agency of Natural Resources would also need to develop guidance outlining how subdivision projects, other types of development and trails could minimize fragmentation to comply with the criteria.

Based on the changes to the bill, the bill does not change the definition of development or increase the scope of areas that trigger Act 250 review. The new criteria will only apply to projects that are required to go through the Act 250 review process, and it is important to note that the criteria does not prohibit development in forest blocks or connectivity areas. It requires proactive site design to avoid or minimize fragmentation impacts, and if that is not feasible, mitigate impacts. This is the same model that we use for wetlands protection. The goal is to encourage thoughtful development in forests to maintain the integrity of intact interior forest blocks and connectivity areas.

The last time I testified, I mentioned that our organizations believed the number one priority was to add criteria to Act 250 to better maintain the function and values of

forests, including maintaining areas that could remain viable as working forests. The sections of the bill that you have removed related to increasing Act 250 review or jurisdiction in the highest priority forest blocks and connectivity areas would have addressed the shortcomings in Act 250 jurisdiction that allow for large subdivisions in these areas to remain outside the scope of state review.

Now with the removal of the section of the bill addressing gaps in jurisdiction, some have questioned why H.233 is even necessary if a large number of subdivisions don't go through Act 250. According to our research studying subdivision trends over an eight-year period in a selection of case study towns in Vermont, we found that a majority of the subdivisions were not large enough to trigger Act 250; however, the research also demonstrated that 20% of the lots that were created from the subdivisions, and almost half of the overall acreage involved in all the subdivisions, was subject to Act 250. More specifically, 55 subdivisions, affecting close to 25,000 acres resulting in 338 lots in 14 case study towns were subject to Act 250 review. It is important to note that we could only examine this trend in towns with zoning and subdivisions regulations, which about 50% of the towns. Since approximately 50% of towns in Vermont do not have subdivision regulations, Act 250 plays a more prominent role in shaping development in these towns (referred to as one-acre towns). Therefore, it is important to have functional criteria to review impacts to forests, especially since a large amount of forestland appears to be going through Act 250 review.

Along with H.424, this Committee has taken action on Act 250 policy this year. For example, the priority housing legislation is moving this year, which limits Act 250 review to accommodate housing in designated areas. Priority housing project changes have been under legislative consideration for multiple years, just like Act 250 and forest fragmentation. In fact, the policies being considered in H.233 have been discussed in the Legislature for an even longer period of time than priority housing. This is the 4th straight year of legislative consideration of policies related to gaps in Act 250 to address impacts to forests, and it is worth noting that the overwhelming number of legislative fixes to Act 250 over the past decade have involved decreasing jurisdiction to accommodate housing development. This is a rare bill to improve criteria to address natural resource impacts versus reducing Act 250 jurisdiction.

Thank you for your work on H.233. We urge you to move the bill forward this year.