

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

April 5, 2017

Thank you for the opportunity to testify today on H.233. I am testifying on behalf of the following organizations that support the bill: The Trust for Public Land, Vermont Chapter of the Nature Conservancy, Vermont Land Trust, Vermont Natural Resources Council, Putney Mountain Association, Vermont River Conservancy, and Greensboro Land Trust.

You received testimony from me on March 15, 2017 in support of H.233. My testimony outlined why we support the bill, and why it is important to address the issue of forest fragmentation in a timely manner. I would like to offer some revised thoughts after reflecting on the committee's discussion on the bill.

The bill includes two distinct policy issues: (1) whether to improve the Act 250 criteria to address impacts to forests, and (2) whether to increase the jurisdiction of Act 250 to include the review of more development in certain priority forest areas.

In regards to the first policy issue, I testified previously 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 and I have not hear anybody testify that Criterion 9(C) is working to adequately address impacts to forests.

Several weeks ago I also testified that Criterion 9(C) appears to be significantly underutilized. 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).

In light of this shortcoming, we believe the most important priority in H.233 is to update the criteria to require development that is already going through Act 250 to either minimize or mitigate the impacts of forest fragmentation so as to better maintain the overall integrity of forests when large development projects and subdivisions are going through the Act 250 process. This important step would correct a long-standing gap in the criteria.

The Committee spent some time discussing a more complicated part of the bill, that

is, whether to increase the jurisdiction of Act 250 to correct certain loopholes, and review development that penetrates the state's highest priority forest blocks and connectivity areas as identified in the Agency of Natural Resources' Conservation Design. Chairman Deen and other committee members expressed some concerns about using Conservation Design to identify areas where Act 250 oversight would be increased. The question that was posed to the Committee was if we don't use Conservation Design than what could be used in its place?

If the Committee would like to move forward with its consideration of the part of the bill that increases Act 250 jurisdiction to address forest fragmentation, one proposal would be to revisit the road rule, which no longer exists in Act 250, but which historically triggered Act 250 review for roads over 800 feet in length. This way you would not need to rely on a map such as Conservation Design, but you could review development that has a tendency to extend deep into undeveloped areas.

Another proposal would be to eliminate the parts of the bill that relate to increasing Act 250 jurisdiction, which would remove the reference to Conservation Design in the bill. Assuming H.424 becomes law, the Act 250 Study Commission could take a deeper look at the larger issue of where Act 250 jurisdiction could potentially be increased, and where it could potentially be decreased.

Eliminating the jurisdictional pieces of the bill would allow the Committee to focus on the concept of improving the criteria to address the impacts of projects already going through Act 250.

We believe H.233 lays out a beneficial process for improving the criteria to minimize fragmentation impacts in intact forest blocks and wildlife connectivity areas. H.233 provides definitions for these areas, and much like other criteria in Act 250 such as Criterion 8 (rare and irreplaceable natural areas) and Criterion 8A (necessary wildlife habitat), the definitions do not rely on a static map, but instead they rely on descriptions to define the areas that would be covered under the criteria. For example, necessary wildlife habitat is defined as concentrated habitat which is identifiable and is demonstrated as being decisive to the survival of a species of wildlife at any period in its life including breeding and migratory periods. There is no correlating map identifying all of these areas. It is based on expert opinion, input from the ANR, and a host of other considerations at the site specific level. If the Committee feels it is important to reference some kind of map to help Applicants know whether they have a development that would impact a forest block, the forest block definition could include a reference to the interior forest block data layer published by the Agency of Natural Resources in BioFinder 2.0 as a helpful guide to articulate areas that meet the forest block definition.

In addition to this potential improvement to the bill, we also think it could be would be beneficial to add a provision in H.233 instructing the Natural Resources Board, in

consultation with the Secretary of Natural Resources, to develop guidance for applicants to design recreational trails, subdivisions and site development to minimize forest fragmentation impacts in a way that would comply with the criteria. Like other criteria, it would be helpful to develop guidance to help Applicants design projects to comply with the criteria.

Finally, Act 171 from last year includes definitions for local and regional planning in Chapter 117 to identify important forest blocks and connectivity areas that warrant attention in town and regional plans. Last year, committee members worked to craft definitions that recognize the value of planning for forest blocks and wildlife connectors, but there is some potential confusion that the Act 171 definitions may have unintended consequences within other parts of Chapter 117. For example, some town plans already recognize the value of forest blocks and wildlife connector, but they may use other terms like “core habitat units” and “wildlife travel corridors” (and separately defined “forest blocks”). In order to reduce confusion before the Act 171 planning provisions go into effect in 2018, it would be helpful if H.233 could clarify that the definitions in Act 171 regarding “forest block,” “forest fragmentation,” “habitat connector,” and “recreational trail” only apply to the forest planning provisions within Chapter 117 Sec. 16. 24 V.S.A. § 4348a(a)(2) and 24 V.S.A. § 4382(a)(2) for purposes of indicating forest blocks and wildlife connectors that are important areas to maintain and minimize forest fragmentation, and not to other parts of Chapter 117 that may relate to other planning purposes.