

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

March 15, 2017

Thank you for the opportunity to testify today on H.233. I am testifying on behalf of the following organizations: Audubon Vermont, The Trust for Public Land, Vermont Chapter of the Nature Conservancy, Vermont Land Trust, Vermont Natural Resources Council, and Vermont Conservation Voters.

We have spent the last decade researching and examining the issue of forest fragmentation, and we have consulted many professionals in the forest policy and planning community about the adequacy and shortcoming of our land use regulations to address forest fragmentation. This work has included ten years of discussion at our statewide Forest Roundtable, which resulted in a final report with land use recommendations, and a Land Use Forest Fragmentation Action Plan, developed with state government and land use planning experts.

We have also published two reports, one compiling information on statewide subdivision and parcelization trends, and another examining the interplay of Act 250, local regulations and subdivision activity in twenty-two case study towns.

In addition there have been three legislatively commissioned reports over the past three years requesting strategies to address forest fragmentation, including land use strategies. These reports have created a long and deep examination of the issue of forest fragmentation and how to address it.

From above, the Vermont landscape has an appearance of densely forested lands; however a closer look reveals that our forests are being fragmented by rural sprawl. The breaking up of large parcels of land into smaller and smaller parcels is a significant issue in Vermont and parcelization trends are noticeable.

While it is hard to pin down the exact amount of forest acreage that has been lost, between 1982 and 1997, 51,000 of forested acres were outright converted to other land uses. A more recent Forest Service report suggests that Vermont may have lost up to 75,000 acres of forestland from 2007 to 2013, although the Forest Service does not report this as a statistically significant change due to the margin of error in the analysis.

Another set of data from the Forest Service demonstrates that we lost five percent of forests over 100 acres in size between 2001 and 2006. Furthermore, according to a VNRC report published in 2010, the amount of land in Vermont in parcels larger than 50 acres decreased by about 42,000 acres between 2003 and 2009. This correlated with an increase of 4,300

parcels under 10 acres in size between 2003 and 2009. This highlights an increasing trend in Vermont; smaller forest parcels are being created through the fragmentation and parcelization of land from subdivision.

It is clear that based on our research and collaborative work with many land use experts in the state 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.

In addition, Criterion 9(C) appears to be significantly underutilized, and is not well understood. 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). It is possible District Commissions may have denied some projects based on Criterion 9(C), but often times, when a project is denied, it will be appealed to the Environmental Court - or previously the Natural Resource Board. At the appellate level, we could only find one case where a project was found to have a significant reduction in forestry soils, which is very telling about the lack of relevance of the criteria.

Furthermore, compounding the limitation of Criterion 9(C), is the fact that very little subdivision activity appears to trigger Act 250. Our research of subdivision activity in 22 case study towns between 2003 and 2009 found that out of 925 subdivisions creating 2,749 lots and affecting a total of 70,827 acres, only 1-2% of the subdivisions triggered Act 250 (the exception was land already under Act 250 jurisdiction which boosted the overall Act 250 review to 10% of the subdivisions).

A natural question is why doesn't Act 250 review more subdivisions? One of the reasons is the average subdivision we reviewed was between 2-4 lots; therefore many subdivisions do not trigger Act 250 jurisdiction (Act 250 reviews 6 or more lots in a town without zoning, or 10 or more lots in a town that has zoning and subdivision regulations).

In addition, two provisions in Act 250 that used to review fragmenting type of development have been rescinded; the road rule and the review of secondary impacts from utility lines, meaning the impacts of development associated with the utility line. When the "road rule" was rescinded, which reviewed roads over 800 feet in length, Act 250 lost the ability to review the impacts of incremental development with long roads that penetrate intact forest blocks. In addition, when the review of secondary impacts of utility lines was stripped from Act 250, we lost our ability to consider the impacts of growth associated with utility line extensions.

This leads us to conclude that Act 250 should be improved in two ways: strengthen the criteria to maintain intact forests and wildlife connectivity, and modify Act 250 jurisdiction to review projects that may fragment priority forest blocks and connectivity areas.

H.233 does this in two ways. First, it adds new criteria under Criterion 8 to review whether a project has been designed to either avoid or minimize forest fragmentation through proactive site design. If it is not feasible to avoid or minimize fragmentation through good site design, then mitigation is an option, much like mitigation exists as an option for impacts to prime agricultural soils. It is important to note that forestry and agricultural activities like sugaring would remain exempt from Act 250 review and this new criteria, unless forestry is conducted above 2,500 feet, which is rare in Vermont.

Second, H.233 addresses the loopholes that have limited the review of development that penetrates intact forest blocks and connectivity areas, but it does this in a more selective way than the road rule. Instead of reviewing the impacts of any long road in Vermont, H.233 limits Act 250 jurisdiction to the highest priority forest blocks and connectivity areas in the state identified by the Agency of Natural Resources in their Conservation Design process. The highest priority blocks or connectivity areas is a subset of all forest blocks and connectivity areas in the state, and they were selected by the ANR as the most important areas to maintain the biological the ecological integrity of our forests.

According to H.233, if development occurs within 350 feet of one these select areas, it would trigger review. In addition, a lower threshold of lots would also trigger review. So instead of 6 or 10 lots triggering review, depending on whether a town has zoning and subdivision regulations, 3 or 6 lots would now trigger review. In addition, a utility line extension that extends into a priority forest block or connectivity area would also trigger review, and this review would consider the impacts of the line and the secondary impacts of line, meaning the potential growth associated with the line extension.

We see H.233 involving two important concepts; improving the criteria to promote good site design to minimize forest fragmentation, and expanding Act 250 jurisdiction to review development that would impact the highest priority forest blocks and connectivity areas in the state.

Out of these two options, we would prioritize updating the criteria to address forest fragmentation. Without this first step, Act 250 will continue to be severely limited in its ability to minimize fragmentation. As a final thought, we would like to note that the Public Service Board has, through several of its decisions permitting wind projects, determined that forest fragmentation impacts should be considered and addressed. We could certainly debate whether these projects should have been permitted, but it is important to note that there is no parity in Act 250. Large subdivisions, which are affecting tens of thousands of acres in Vermont, have no requirement to limit or mitigate the effects of forest fragmentation, and this shortcoming in Act 250 will continue until there is legislative action.