

Senate Natural Resources and Energy Committee

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

April 11, 2018

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

The Issue Being Addressed in H.233:

Our forests provide billions in revenue to the state, but as they become more fragmented, they lose their ability to maintain water quality, attenuate floods, provide recreational opportunities, mitigate the effects of climate change, provide habitat for wildlife, and support viable working forests for the forest products industry.

A Decade of Process and Research in Support of H.233:

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.

In 2007, the Forest Roundtable convened with approximately 100 participants that included consulting foresters, professional planners, government officials, landowners, representatives from the forest products industry, conservation groups, rural economic development, and researchers at academic institutions. Together, they published a Roundtable Report on Parcelization and Forest Fragmentation. The report included 27 priority recommendations. One of the priority recommendations was to “identify and correct gaps in Act 250 and other land use regulations to attenuate the rate of parcelization and forest fragmentation in Vermont.”

In 2014, the land use planning community developed a Forest Fragmentation Action Plan with input from 100 local planning and conservation commissions members, selectboards, regional planning commissions, the VT Dept. of Forests, Parks and Recreation, the VT Fish and Wildlife Department, the VT Dept. of Housing and Community Development, the VT Planners Association and UVM Extension. As part of the process, twenty-eight strategies were identified and ranked. The top nine were selected to highlight in the action plan. One

of the top identified strategies was to pursue legislative changes at the state level to modify Act 250 to address forest fragmentation, and add new criteria to review and mitigate forest fragmentation.

The Vermont Legislature has commissioned three 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.

In 2015, the Vermont Department of Forests, Parks, and Recreation submitted the Vermont Forest Fragmentation Report to the Vermont Legislature. That report stated that in order to provide the appropriate tools and clear authority for Act 250 to protect forest blocks there are a number of amendments to Act 250 to consider including:

- Adding definitions for significant forest blocks and significant connecting habitat so that those features of forest integrity can be addressed specifically in Act 250.
- Criterion 8A could be enhanced to include explicit consideration of significant forest blocks and connecting habitat. Currently, Act 250 does not specifically consider these elements of forest integrity and given the nexus between significant forest blocks and the Department of Fish and Wildlife's assessment of high ranking forest blocks, criterion 8A appears the most appropriate place to add this consideration. This change would give the Act 250 district commissions the necessary tools to moderate the impacts from development on the most critical forest blocks across the state.

In 2016, as part of Act 171, the Legislature enacted a study committee to examine potential revisions to Act 250 to protect contiguous areas of forestland from fragmentation and promote habitat connectivity between forestlands.

The 2017 study group report includes a matrix of policy options, including concepts embedded in H.233. The study committee cover letter explains that the study group was unable to reach consensus agreement on specific recommendations, which is understandable based on the diversity of participants, but the report also clarifies that at the last meeting, study committee members put forward recommendations for inclusion in the final report, and members voted whether to support each recommendation. The December 18, 2016 meeting minutes reflect that all members present at the meeting expressed their support or possible support for the concept of enhancing Criterion 8 to include consideration of significant forest blocks and connecting habitat.

In addition, beyond these legislative reports, VNRC has published multiple 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, and these reports highlight the challenges with the continuing breaking up of larger forestland parcels into smaller and smaller parcels.

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 removed 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. The House Committee on Natural Resources Fish and Wildlife decided to take out the jurisdictional changes, with the acknowledgement that the larger Act 250 Commission is focusing on jurisdictional issues, but the Committee, and ultimately the House, prioritized fixing the criteria gap in Act 250. While we believe both jurisdictional and criteria improvements are necessary, H.233 provides a timely opportunity to act on a policy that has been under consideration for over ten years.

Without this first step, Act 250 will continue to be severely limited in its ability to minimize fragmentation. 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. 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.

What H.233 Does:

- The bill would add new criteria to Act 250 under Criterion 8 to require *large development projects that are already going through Act 250*, such as commercial development and large subdivisions consisting of more than 6 or 10 lots depending on whether or not the town has zoning and subdivision regulations, to either avoid or minimize the fragmentation of the state's highest priority contiguous forest blocks, and habitat connectivity areas. The forest blocks that are covered in the bill are a subset of all mapped forest blocks.
- 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 develop rules to implement the mitigation in coordination with the Vermont Housing and Conservation Board and Dept. of Forests, Parks and Recreation.
- Like they do for other criteria, the Natural Resources Board and Agency of Natural Resources would develop guidance outlining how subdivision projects and other types of development could minimize fragmentation to comply with the criteria.

What the Bill Does *Not* Do:

- It 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 already required to go through the Act 250 review process.
- It 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, it allows for the mitigation of impacts.
- It does not prohibit forestry, logging, or agriculture: These activities remain exempt from Act 250 (logging below 2,500 feet).
- It does not prohibit trail development. Recreational trails would be exempt from the fragmentation criteria if they are not paved, and used for recreational purposes including hiking, walking, bicycling, cross-country skiing, snowmobiling, all-terrain vehicle riding, and horseback riding.