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S.165

Introduced by Senators Bray, Balint, Campion, Clarkson, Hardy, Lyons,
McCormack and Pollina

Referred to Committee on

Date:

Subject: Conservation and development; natural resources; land use; Act 250;
forest fragmentation; habitat connectivity

Statement of purpose of bill as introduced: This bill proposes to amend the
permit criteria of the State land use law, known as Act 250, to protect forest
resources.

11 An act relating to forest fragmentation and Act 250

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. 10 V.S.A. § 6001 is amended to read:

14 § 6001. DEFINITIONS

15 ~~It~~ As used in this chapter:

16 * * *

17 (3)(A) “Development” means each of the following:

18 * * *

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

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

3 * * *

4 (12) “Necessary wildlife habitat” means concentrated habitat ~~which~~ that
5 is identifiable and is demonstrated as being decisive to the survival of a species
6 of wildlife at any period in its life including breeding and migratory periods.

7 * * *

8 (38) “Forest block” means a contiguous area of forest in any stage of
9 succession and not currently developed for nonforest use that is mapped as an
10 interior forest block within the 2016 interior forest block dataset created as part
11 of resource mapping under section 127 of this title, as that dataset may be
12 updated pursuant to procedures developed in accordance with that section. A
13 forest block may include recreational trails, wetlands, or other natural features
14 that do not themselves possess tree cover and improvements constructed for
15 farming, logging, or forestry purposes.

16 (39) “Fragmentation” means the division or conversion of a forest block
17 or habitat connector by the separation of a parcel into two or more parcels; the
18 construction, conversion, relocation, or enlargement of any building or other
19 structure, or of any mining, excavation, or landfill; and any change in the use
20 of any building or other structure, or land, or extension of use of land.
21 However, fragmentation does not include the division or conversion of a forest

1 block or habitat connector by a recreational trail or by improvements
2 constructed for farming, logging, or forestry purposes below the elevation of
3 2,500 feet.

4 (40) "Habitat" means the physical and biological environment in which
5 a particular species of plant or animal lives.

6 (41) "Habitat connector" refers to land or water, or both, that links
7 patches of habitat within a landscape, allowing the movement, migration, and
8 dispersal of animals and plants and the functioning of ecological processes. A
9 habitat connector may include recreational trails and improvements
10 constructed for farming, logging, or forestry purposes.

11 (42) As used in subdivisions (38), (39), and (41) of this section,
12 "recreational trail" means a corridor that is not paved and that is used for
13 recreational purposes, including hiking, walking, bicycling, cross-country
14 skiing, snowmobiling, all-terrain vehicle riding, and horseback riding.

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

16 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

19 * * *

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

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

5 (i) the economic, social, cultural, recreational, or other benefit to
6 the public from the development or subdivision will not outweigh the
7 economic, environmental, or recreational loss to the public from the
8 destruction or imperilment of the habitat or species; ~~or~~

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

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

15 (B) Forest blocks.

16 (i) A permit will not be granted for a development or subdivision
17 within or partially within a forest block unless the applicant demonstrates that:

18 (I) the development or subdivision will avoid fragmentation of
19 the forest block through the design of the project or the location of project
20 improvements, or both;

1 (II) it is not feasible to avoid fragmentation of the forest block
2 and the design of the development or subdivision minimizes fragmentation of
3 the forest block; or

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

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

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

13 (II) Designing roads, driveways, and utilities that serve the
14 development or subdivision to avoid or minimize fragmentation of the forest
15 block. Such design may be accomplished by following or sharing existing
16 features on the land such as roads, tree lines, stone walls, and fence lines.

17 (C) Habitat connectors.

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

1 (I) the development or subdivision will avoid fragmentation of
2 a habitat connector through the design of the project or the location of project
3 improvements, or both;

4 (II) it is not feasible to avoid fragmentation of the habitat
5 connector and the design of the development or subdivision minimizes
6 fragmentation of the connector; or

7 (III) it is not feasible to avoid or minimize fragmentation of the
8 habitat connector and the applicant will mitigate the fragmentation in
9 accordance with section 6094 of this title.

10 (ii) Methods for avoiding or minimizing the fragmentation of a
11 habitat connector may include:

12 (I) locating buildings and other improvements at the farthest
13 feasible location from the center of the connector;

14 (II) designing the location of buildings and other improvements
15 to leave the greatest contiguous portion of the area undisturbed in order to
16 facilitate wildlife travel through the connector; or

17 (III) when there is no feasible site for construction of buildings
18 and other improvements outside the connector, designing the buildings and
19 improvements to facilitate the continued viability of the connector for use by
20 wildlife.

21 * * *

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 similar quality and character to 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 similar quality and character
5 to the block or connector affected by the development or subdivision.

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

7 (c) The mitigation of impact on a forest block or a habitat connector, or
8 both, shall be structured also to mitigate the impacts, under the criteria of
9 subsection 6086(a) of this title other than subdivisions (8)(B) and (C), to land
10 or resources within the block or connector.

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

16 Sec. 5. RULE ADOPTION: SCHEDULE; GUIDANCE

17 (a) Rulemaking.

18 (1) On or before September 1, 2019, the Natural Resources Board
19 (NRB) shall file proposed rules with the Secretary of State to implement Sec. 4
20 of this act, 10 V.S.A. § 6094.

1 (2) On or before March 1, 2020, the NRB shall finally adopt rules to
2 implement Sec. 4 of this act, 10 V.S.A. § 6094, unless such deadline is
3 extended by the Legislative Committee on Administrative Rules pursuant to
4 3 V.S.A. § 843(c).

5 (b) Guidance.

6 (1) On or before May 1, 2020, the NRB shall develop guidance for the
7 District Commissions, applicants, and other affected persons with respect to:

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

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

12 (2) The NRB shall develop this guidance in collaboration with the
13 Agency of Natural Resources (ANR). As part of developing this guidance, the
14 NRB shall solicit input from affected parties and the public, including
15 planners, developers, municipalities, environmental advocacy organizations,
16 regional planning commissions, regional development corporations, and
17 business advocacy organizations such as State and regional chambers of
18 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 shall
6 identify natural resources throughout the State, including forest blocks, that
7 may be relevant to the consideration of energy projects and projects subject to
8 chapter 151 of this title. The Center for Geographic Information shall be
9 available to provide assistance to the Secretary in carrying out the ~~GIS-based~~
10 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 and Sec. 7 shall take effect on July 1, 2019.

10 (c) Secs. 1 through 4 shall take effect on May 1, 2020, except that on
11 passage, Secs. 1 through 4 shall apply to the rulemaking and guidance
12 under Sec. 5.