



June 24, 2020

Dear Senate Natural Resources & Energy Committee Chair and members,

My name is Annette Smith. I am Executive Director of Vermonters for a Clean Environment. Thank you for allowing me to testify today on the draft Act 250 bill.

My comments are focused on the Forest Blocks section of H. 926 Draft 1.1, 6/24/20 beginning on page 27.

Although the Forest Blocks section of the draft bill is being promoted by "environmentalists" as critical to protecting core forests, I believe the provision as written is deeply flawed, and I will explain why.

The Definitions section for connecting habitat and forest blocks and fragmentation allow for "recreational trails, improvements constructed for farming, logging and forestry purposes." This committee needs to hear directly from wildlife expert Susan Morse, who speaks factually and eloquently about impacts to wildlife from trails. I recall her statement, "how would you like to have someone walking or biking through your bedroom?" Please invite an expert's testimony to assist in shaping these definitions to assure they achieve the purpose of preserving functioning ecological processes. At present, they do not.

Allowing "improvements constructed for farming, logging and forestry purposes" is another flawed approach. As I speak, an energy developer who is suing the Agency of Natural Resources, VTrans, the Public Utility Commission, and numerous individual Vermonters, is clearing a forested site in Sen. Champion's district "for agricultural purposes." Though denied by the PUC and without a Certificate of Public Good, the developer is apparently proceeding with clearing the forest -- while awaiting final decisions on the energy project -- for allowable uses under Vermont law that do not require permits -- a sheep farm with shelters, and a hemp farm with a 169' long, 30' tall hemp storage facility next to one of the neighbors who is being sued, effectively blocking her view of the Bennington Battle Monument and Mount Anthony. We have real world examples of what happens with exemptions as allowed for in this bill.

The question in the first instance is not how to enable economic development. The question should be how to protect the natural world. After looking at real protections for the natural world, then we should be evaluating how to make those protections economically viable for landowners.

A week ago Sunday I sent an email to this committee with information about an expert in Massachusetts, Dr. William Moomaw, a retired professor emeritus from Tufts University who has been working with others in our neighboring state on this very

issue. He brings science to the topic of the value of forests and I highly recommend that the committee invite him to testify. I believe that hearing from him will update your thinking and bring new ideas to this topic.

For instance, in a recent talk (I sent you the video) he recommends providing landowners with incentives for keeping forests intact. His idea makes a lot of sense to me. I have forest land in current use, and the very first forest management plan my forester prepared was to leave the forest alone. The land is a north facing hillside at the bottom of a watershed with numerous springs and two streams running through it. There is good reason to leave this land in its natural state. It is a wildlife corridor, extremely difficult to get to by machine, challenging to log in all conditions except summer drought. But that initial plan was rejected, with the note that if I wanted to leave it alone, I could donate the land to The Nature Conservancy. The amount of tax benefit I currently get from having the land in current use, updating the forest management plan that requires logging is hardly worth being in the program anymore.

Incentives to pay landowners to leave the forest intact would be a far more effective approach to protecting the natural world while providing economic benefit to landowners.

My next issue with this draft language, as seen on p. 914 of the Senate Journal (see above) in (C) is about the language that a permit may only be granted “if effects are avoided, minimized, and mitigated...”

What this legislation allows is the continuation of the “pay to play” program where damage to nature can be “offset” by paying into a fund or conserving land elsewhere (mitigated), or doing less than originally proposed (minimized) or avoided (destroying some of the area but avoiding the worst impacts).

We know that mitigation for wildlife does not work. I recall when Patrick Berry, former Commissioner of Fish & Wildlife, worked at VNRC he said there was a study of mitigation for deeryards that showed it was not effective. That was 20 years ago. VCE’s experience with the very first deeryard mitigation in Clarendon required 30 acres of clearing to be “mitigated” by purchasing 300 acres elsewhere. A neighbor of the 30 acres put up a sign, “deer, 8 miles that way -->.” Forester Mark Skakel told me there were no deer in the mitigation lands a decade later. But the deer kept going back to the former deeryard.

The PUC has incorporated undue adverse impacts to forest fragmentation and habitat blocks in their review of energy projects. I do not know how or when those criteria were incorporated into their review of projects. I do know some examples of how that is playing out in the regulatory process, and imagine the same would occur with the NRB, whereby ANR would be the agency making the determinations which would be brought into Act 250, just as they are with the PUC.

-- To destroy critical bear habitat, developers were directed to purchase equivalent habitat elsewhere. When the developer couldn't find equivalent habitat, the PUC complied with their request, supported by ANR and VNRC, to allow the project to proceed without any mitigation lands secured, and acquisition of mitigation lands was shifted to ANR with no time frame for finalizing the acquisition.

-- To convert a farm field with prime bobolink habitat into an energy project, the developer pays into a fund to offset the damage.

-- To convert a farm field with rare, threatened or endangered species into an energy project, the developer pays into a fund to offset the damage.

-- To enable an energy project to operate evenings and at night, the developer pays into a fund to offset killing rare, threatened or endangered bats.

The Michael Moore film, Planet of the Humans, released on Earth Day, makes the point that we have limited the natural world with man's intrusions. At what point do we say, "it is time to protect nature, and not permit its destruction?" Middlebury College Herpetologist Jim Andrews told ANR Secretary Tom Torti at a public hearing during the Douglas Administration that the Agency needs to say "no." It is time. And we do not have much time left.

I want to recognize the issues for private property owners as part of this discussion. Incentives for protecting lands are the best approach. Enabling farming, forestry and logging infrastructure as well as trails as part of this legislation is so far from where we need to be right now. Let's have the conversation about how to do better, rather than continuing to allow our natural world to be destroyed by those who can afford to pay into this game.

Finally, I do not understand the need to task the NRB with rulemaking. Did the PUC engage in rulemaking to adopt these same criteria?

In addition, I believe I heard NRB Chair Diane Snelling tell you last Monday that the NRB may not have the capacity to do what this bill requires.

ANR has mapped the forest blocks and areas of connectivity, but more is needed to identify important forest blocks smaller than 20 acres. Even with these criteria already adopted by the PUC, wildlife habitat connections are being approved to be degraded rather than preserved, as seen in testimony by ANR to the PUC, using the standards proposed in this legislation – avoid, minimize and mitigate. (see Testimony of Eric Sorenson and two maps submitted with this educational testimony).

While the directive to the NRB asks the Board to set standards for mitigation, including ratios for compensation, forms of compensation and appropriate uses of on-site and off-site mitigation, the very definitions allow for damage to the natural world and tie

the hands of the NRB should their evidence-gathering find that there are no appropriate uses of mitigation.

The bar for protecting “necessary wildlife habitat” is already very high and results in destruction of lesser quality but still important wildlife habitat. Similarly, protecting the highest priority habitat blocks leaves out urban forests that have been identified as important for minimizing air pollution risks to public health.

I conclude by noting that I recently learned that the man who raised my mother was the Forest Supervisor for the White Mountain National Forest in the 1920s. His writings show that his approach was all about managing the forest for timber. In learning about him, I found a photo of him on horseback next to Aldo Leopold in this article which I recommend reading https://foresthstory.org/wp-content/uploads/2016/11/Flader_Aldo-Leopolds-Legacy-to-Forestry.pdf.



Leopold (left) as Deputy Forest Supervisor on the Carson National Forest. Ira T. Yarnall, Forest Assistant (middle) and C. C. Hall, Forest Supervisor (right). Taken at supervisor's headquarters in Tres Piedras, New Mexico, 1911.

The article ends, "A conservationist," Leopold decided, "is one who is humbly aware that with each stroke he is writing his signature on the face of the land."

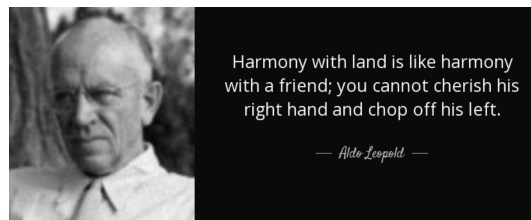
With each stroke you are writing your signatures on the face of Vermont's lands.

Thank you for hearing my testimony. I sincerely hope you will act on my recommendations.

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Recommendations for Forest Protections

- Take testimony from scientists and experts*:
 - Susan Morse, Wildlife
 - Dr. William Moomaw, Forests
 - Jim Andrews, Wetlands and Herp Species
 - Eric Sorenson, Ecologist
- Identify incentives for landowners to protect forests from development
- Incorporate protections for urban forests and smaller habitat blocks
- Explore alternatives to “avoid, minimize, mitigate” so scientists who find undue adverse impacts can just say “no”
- Add the criteria for undue adverse impacts to forest fragmentation and wildlife habitat connectivity to the criteria in statute
- Change jurisdictional elevation trigger from 2500’ to 1500’ as recommended by Ed Stanak
- Provide the Department of Fish & Wildlife Program with Regulatory authority so the program can issue and deny permits. (John Brabant of VCE attempted to bring this to the House NRF&W committee but his testimony was cut off and he was told he could come back later but he was never given more time)
- Strike “recreational trails, improvements constructed for farming, logging and forestry purposes” from the definitions of allowable uses for connecting habitat and forest blocks and fragmentation
- Strike the existing language on forest blocks, including the directive to the NRB to engage in rule-making beginning before Sept. 1, 2020
- Give Bill-back authority to Department of Fish & Wildlife



*Participants in the House testimony process who wanted to bring additional witnesses or testimony were told on the days leading up to the committee’s vote on the bill to “bring that to our friends in the Senate.” Further testimony in the Senate was always envisioned, with the understanding that the House’s language would not be adopted without further testimony in development of the legislation. This is also true for trails and the road rule.