

2020 ACT 250 LEGISLATION COMPARISON

FRAGMENTATION

Prepared for Senate Natural Resources & Energy by Ellen Czajkowski, Legislative Counsel, June 4, 2020

S. 165 (H.233/H.904)

- Language from H.233 of 2017 & H.904 of 2018
- Adds new definitions to Act 250
- Adds new fragmentation subcriteria to criterion 8-8(B) Forest Blocks and 8(C) Habitat connectors
- The burden of persuasion for new subcriteria on applicant
- Adds new section to Act 250 to establish a procedure for mitigation of fragmentation of forest blocks and habitat connectors
- Requires the NRB to adopt rules for the new mitigation and guidance for applicants on how to meet the new criteria
- Requires ANR's mapping to include forest blocks

H.926

- Adds the same new definitions to Act 250
- Amends criterion 8
- The burden of persuasion for new subcriteria on applicant
- Also shifts burden of persuasion for 8(A) to applicant
- Adds a new jurisdictional trigger- the Road Rule
- Requires NRB to work w/ANR to create rules for 8(C)
- Requires ANR's mapping to include forest blocks and study on whether there should be resource maps for the Capability and Development Plan

EXISTING CRITERION 8

- (a) Before granting a permit, the District Commission shall find that the subdivision or development:
- (8) Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.
 - (A) Necessary wildlife habitat and endangered species. A permit will not be granted if it is demonstrated by any party opposing the applicant that a development or subdivision will destroy or significantly imperil necessary wildlife habitat or any endangered species; and
 - (i) the economic, social, cultural, recreational, or other benefit to the public from the development or subdivision will not outweigh the economic, environmental, or recreational loss to the public from the destruction or imperilment of the habitat or species; or
 - (ii) all feasible and reasonable means of preventing or lessening the destruction, diminution, or imperilment of the habitat or species have not been or will not continue to be applied; or
 - (iii) a reasonably acceptable alternative site is owned or controlled by the applicant which would allow the development or subdivision to fulfill its intended purpose.

SIDE BY SIDE OF NEW CRITERION 8

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(B) Forest blocks

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

- (I) the development or subdivision will avoid fragmentation of the forest block through the design of the project or the location of project improvements, or both;
- (II) it is not feasible to avoid fragmentation of the forest block and the design of the development or subdivision minimizes fragmentation of the forest block; or
- (III) it is not feasible to avoid or minimize fragmentation of the forest block and the applicant will mitigate the fragmentation in accordance with section 6094 of this title.

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

- (I) Locating buildings and other improvements and operating the project in a manner that avoids or minimizes incursion into and disturbance of the forest block, including clustering of buildings and associated improvements.
- (II) Designing roads, driveways, and utilities that serve the development or subdivision to avoid or minimize fragmentation of the forest block. Such design may be accomplished by following or sharing existing features on the land such as roads, tree lines, stonewalls, and fence lines.

(C) Habitat connectors

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

- (I) the development or subdivision will avoid fragmentation of a habitat connector through the design of the project or the location of project improvements, or both;
- (II) it is not feasible to avoid fragmentation of the habitat connector and the design of the development or subdivision minimizes fragmentation of the connector; or
- (III) it is not feasible to avoid or minimize fragmentation of the habitat connector and the applicant will mitigate the fragmentation in accordance with section 6094 of this title.

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

- (I) locating buildings and other improvements at the farthest feasible location from the center of the connector;
- (II) designing the location of buildings and other improvements to leave the greatest contiguous portion of the area undisturbed in order to facilitate wildlife travel through the connector; or
- (III) when there is no feasible site for construction of buildings and other improvements outside the connector, designing the buildings and improvements to facilitate the continued viability of the connector for use by wildlife.

(8) Ecosystem protection; scenic beauty; historic sites.

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

~~(A)~~(B) Necessary wildlife habitat and endangered species. A permit will not be granted if unless it is demonstrated by any party opposing the applicant that a development or subdivision will not destroy or significantly imperil necessary wildlife habitat or any endangered species; and or, if such destruction or imperilment will occur:

- (i) the economic, social, cultural, recreational, or other benefit to the public from the development or subdivision will not outweigh the economic, environmental, or recreational loss to the public from the destruction or imperilment of the habitat or species; or
- (ii) all feasible and reasonable means of preventing or lessening the destruction, diminution, or imperilment of the habitat or species have not been or will not continue to be applied; or
- (iii) a reasonably acceptable alternative site is not owned or controlled by the applicant which that would allow the development or subdivision to fulfill its intended purpose.

(C) Will not result in an undue adverse impact on forest blocks, connecting habitat, or rare and irreplaceable natural areas. If a project as proposed would result in an undue adverse impact, a permit may only be granted if effects are avoided, minimized, and mitigated in accordance with rules adopted by the Board.

STANDARDS OF REVIEW

S.165 (H.233/H.904)

- Avoid, minimize, mitigate fragmentation
- Provides examples
- Allows for payment of mitigation fee under 6094

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- Undue adverse impact on forest blocks, connecting habitat, rare and irreplaceable natural areas
 - Used for current criteria 8 & 8(A)
 - 8- rare and irreplaceable natural areas-
 - Adverse impact- Quechee Lakes test: is it in harmony with surroundings? Does it fit with the area?
 - Undue impact- failure to take reasonably available mitigating steps
- Does include avoid, minimize, mitigate

NEW DEFINITIONS

- (38) “Connecting habitat” refers to land or water, or both, that links patches of habitat within a landscape, allowing the movement, migration, and dispersal of wildlife and plants and the functioning of ecological processes. A connecting habitat may include recreational trails and improvements constructed for farming, logging, or forestry purposes.
- (39) “Forest block” means a contiguous area of forest in any stage of succession and not currently developed for nonforest use. A forest block may include recreational trails, wetlands, or other natural features that do not themselves possess tree cover and improvements constructed for farming, logging, or forestry purposes.
- (40) “Fragmentation” means the division or conversion of a forest block or connecting habitat by the separation of a parcel into two or more parcels; the construction, conversion, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill; and any change in the use of any building or other structure, or land, or extension of use of land. However, fragmentation does not include the division or conversion of a forest block or connecting habitat by a recreational trail or by improvements constructed for farming, logging, or forestry purposes below the elevation of 2,500 feet.
- (41) “Habitat” means the physical and biological environment in which a particular species of plant or wildlife lives.
- (42) As used in subdivisions (38), (39), and (40) of this section, “recreational trail” means a corridor that is not paved and that is used for recreational purposes, including hiking, walking, bicycling, cross-country skiing, snowmobiling, all-terrain vehicle riding, and horseback riding.

H.926- THE RETURN OF THE ROAD RULE

(xii) The construction of a road or roads and any associated driveways to provide access to or within a tract of land of more than one acre owned or controlled by a person. For the purposes of determining jurisdiction under this subdivision, any new development or subdivision on a parcel of land that will be provided access by the road and associated driveways is land involved in the construction of the road. Jurisdiction under this subdivision shall not apply unless the length of the road and any associated driveways in combination is greater than 2,000 feet. As used in this subdivision, “roads” shall include any new road or improvement to a Class IV road by a private person, including roads that will be transferred to or maintained by a municipality after their construction or improvement. For the purpose of determining the length of any road and associated driveways, the length of all other roads and driveways within the tract of land constructed within any continuous period of 10 years commencing after July 1, 2020 shall be included. This subdivision shall not apply to a State or municipal road, a utility corridor of an electric transmission or distribution company, or a road used primarily for farming or forestry purposes. The conversion of a road used for farming or forestry purposes that also meets the requirements of this subdivision shall constitute development.

ELEMENTS OF ROAD RULE

- construction of a road or roads and any associated driveways
- to provide access to or within a tract of land of more than one acre owned or controlled by a person
- any new development or subdivision on a parcel of land that will be provided access by the road and associated driveways is land involved in the construction of the road
- length of the road & driveways in combination is greater than 2,000 ft
- “roads” shall include any new road or improvement to a Class IV road by a private person, including roads that will be transferred to or maintained by a municipality after their construction or improvement
- the length of all other roads and driveways within the tract of land constructed within any continuous period of 10 years commencing after July 1, 2020 shall be included
- Does not apply to: State or municipal road, a utility corridor of an electric transmission or distribution company, or a road used primarily for farming or forestry purposes
- But: the conversion of a road used for farming or forestry purposes that also meets the requirements of this subdivision shall constitute development