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H.233

Introduced by Representatives Sheldon of Middlebury, McCullough of
Williston, McCormack of Burlington, Squirrell of Underhill,
Sullivan of Burlington, and Wood of Waterbury

Referred to Committee on

Date:

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

Statement of purpose of bill as introduced: This bill proposes to amend the
criteria and jurisdiction of the State land use law, known as Act 250, to protect
forest resources in order to support the forest economy, water quality, and
habitat.

13 An act relating to protecting working forests and habitat

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

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

16 § 6001. DEFINITIONS

17 In this chapter:

18 * * *

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

1 (i) The construction of improvements on a tract or tracts of land,
2 owned or controlled by a person, involving more than 10 acres of land within a
3 radius of five miles of any point on any involved land, for commercial or
4 industrial purposes in a municipality that has adopted permanent zoning and
5 subdivision bylaws.

6 (ii) The construction of improvements for commercial or
7 industrial purposes on more than one acre of land within a municipality that
8 has not adopted permanent zoning and subdivision bylaws.

9 * * *

10 (iv) The construction of housing projects such as cooperatives,
11 condominiums, or dwellings, or construction or maintenance of mobile homes
12 or mobile home parks, with 10 or more units, constructed or maintained on a
13 tract or tracts of land, owned or controlled by a person, within a radius of five
14 miles of any point on any involved land, and within any continuous period of
15 five years. However:

16 (I) A priority housing project shall constitute a development
17 under this subdivision (iv) only if the number of housing units in the project is:

18 * * *

19 (v) The construction of improvements on a tract of land involving
20 more than 10 acres that is to be used for municipal, county, or State purposes.
21 In computing the amount of land involved, land shall be included that is

1 incident to the use such as lawns, parking areas, roadways, leaching fields, and
2 accessory buildings.

3 (vi) The construction of improvements for commercial, industrial,
4 or residential use above the elevation of 2,500 feet.

5 * * *

6 (xi) The construction of improvements for commercial, industrial,
7 or residential use if such an improvement at any point is more than 350 feet
8 within a forest block that is classified as a highest priority interior forest block
9 or a habitat connectivity area that is classified as a highest priority connectivity
10 block by the Vermont Conservation Design.

11 * * *

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

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

15 * * *

16 (8) “Productive forest soils” means those soils which are not primary
17 agricultural soils but which have a reasonable potential for commercial forestry
18 and which have not been developed. In order to qualify as productive forest
19 soils, the land containing such soils shall be of a size and location, relative to
20 adjoining land uses, natural condition, and ownership patterns so that those
21 soils will be capable of supporting or contributing to a commercial forestry

1 operation. Land use on those soils may include commercial timber harvesting
2 and specialized forest uses, such as maple sugar or Christmas tree production.

3 * * *

4 (12) “Necessary wildlife habitat” means concentrated habitat which is
5 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 (19)(A) “Subdivision” means each of the following:

9 (i) A tract or tracts of land, owned or controlled by a person,
10 which the person has partitioned or divided for the purpose of resale into 10 or
11 more lots within a radius of five miles of any point on any lot, or within the
12 jurisdictional area of the same District Commission, within any continuous
13 period of five years. In determining the number of lots, a lot shall be counted
14 if any portion is within five miles or within the jurisdictional area of the same
15 District Commission.

16 (ii) A tract or tracts of land, owned or controlled by a person,
17 which the person has partitioned or divided for the purpose of resale into six or
18 more lots, within a continuous period of five years, in a municipality which
19 does not have duly adopted permanent zoning and subdivision bylaws.

20 (iii) A tract or tracts of land, owned or controlled by a person,
21 which have been partitioned or divided for the purpose of resale into five or

1 more separate parcels of any size within a radius of five miles of any point on
2 any such parcel, and within any period of ten years, by public auction.

3 (I) In this subdivision (iii), “public auction” means any auction
4 advertised or publicized in any manner, or to which more than ten persons
5 have been invited.

6 (II) If sales described under this subdivision (iii) are of interests
7 that, when sold by means other than public auction, are exempt from the
8 provisions of this chapter under the provisions of subsection 6081(b) of this
9 title, the fact that these interests are sold by means of a public auction shall not,
10 in itself, create a requirement for a permit under this chapter.

11 (iv) A tract or tracts of land, owned or controlled by a person,
12 located outside a designated center, if each of the following apply:

13 (I) The person has partitioned or divided for the purpose of
14 resale within a continuous period of five years into:

15 (aa) three or more lots, in a municipality that does not have
16 duly adopted permanent zoning and subdivision bylaws; or

17 (bb) six or more lots, in a municipality that does have duly
18 adopted permanent zoning and subdivision bylaws.

19 (II) Each of the lots created within this period is wholly or
20 partially within a forest block that is classified as a highest priority interior

1 forest block or a habitat connectivity area that is classified as a highest priority
2 connectivity block by the Vermont Conservation Design.

3 (B) The word “subdivision” shall not include each of the following:

4 (i) a lot or lots created for the purpose of conveyance to the State
5 or to a qualified organization, as defined under section 6301a of this title, if the
6 land to be transferred includes and will preserve a segment of the Long Trail;

7 (ii) a lot or lots created for the purpose of conveyance to the State
8 or to a “qualified holder” of “conservation rights and interest,” as defined in
9 section 821 of this title.

10 * * *

11 (30) “Designated center” means a downtown development district,
12 village center, new town center, growth center, Vermont neighborhood, or
13 neighborhood development area designated under 24 V.S.A. chapter 76A.

14 * * *

15 (38) “Forest block” means a contiguous area of forest in any stage of
16 succession and not currently developed for nonforest use. A forest block may
17 include existing recreational trails, wetlands, or other natural features that do
18 not themselves possess tree cover, and improvements constructed for farming,
19 logging, or forestry purposes.

20 (39) “Fragmentation” means the division or conversion of a forest block
21 or habitat connectivity area by the separation of a parcel into two or more

1 parcels; the construction, reconstruction, conversion, structural alteration,
2 relocation, or enlargement of any building or other structure, or of any mining,
3 excavation, or landfill; and any change in the use of any building or other
4 structure, or land, or extension of use of land. However, fragmentation does
5 not include the division or conversion of a forest block or habitat connectivity
6 area by an existing recreational trail or by improvements constructed for
7 farming, logging, or forestry purposes below the elevation of 2,500 feet.

8 (40) "Habitat" means an area of land or water inhabited or used by a
9 particular species of wildlife or a community of wildlife species.

10 (41) "Habitat connectivity area" refers to land or water, or both, that
11 links patches of habitat within a landscape, allowing the movement, migration,
12 and dispersal of animals and plants and the functioning of ecological
13 processes. Such land may include existing recreational trails and
14 improvements constructed for farming, logging, or forestry purposes.

15 (42) "Vermont Conservation Design" means:

16 (A) the Vermont Conservation Design published by the Agency of
17 Natural Resources in December 2015; or

18 (B) its successor document and associated equivalent maps published
19 by the Agency of Natural Resources, provided that the classification and
20 mapping of forest blocks and connectivity blocks in the successor document
21 and maps are solely science-based.

1 Sec. 2. 10 V.S.A. § 6081 is amended to read:

2 § 6081. PERMITS REQUIRED; EXEMPTIONS

3 (a) No person shall sell or offer for sale any interest in any subdivision
4 located in this State, or commence construction on a subdivision or
5 development, or commence development without a permit. This section shall
6 not prohibit the sale, mortgage, or transfer of all, or an undivided interest in all,
7 of a subdivision unless the sale, mortgage, or transfer is accomplished to
8 circumvent the purposes of this chapter.

9 * * *

10 (q) For the purposes of reviewing any combination of electrical distribution
11 and communications lines and subsidiary facilities that, standing alone,
12 constitutes a development for purposes of this chapter, the actual and potential
13 impacts considered by the ~~Board or~~ District Commission under subsection
14 6086(a) of this title shall not include actual or potential impacts of the
15 construction of other improvements to be served by those lines and subsidiary
16 facilities, except that the review shall include the actual and potential impacts
17 of such other improvements if any part of the lines and facilities will be within
18 a forest block that is classified as a highest priority interior forest block or a
19 habitat connectivity area that is classified as a highest priority connectivity
20 block by the Vermont Conservation Design.

1 (r) In situations in which the construction of improvements for any
2 combination of electrical distribution and communications lines and subsidiary
3 facilities, standing alone, constitutes a development subject to the jurisdiction
4 of the Board or District Commission under this chapter, subsequent
5 construction of improvements for any combination of electrical distribution
6 and communications lines and subsidiary facilities not identified or reasonably
7 identifiable at the time construction commences, standing alone, shall be
8 considered new construction of improvements and shall not be considered a
9 material or substantial change to that previously permitted development.

10 * * *

11 Sec. 3. 10 V.S.A. § 6086 is amended to read:

12 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

15 * * *

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

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

1 (i) the economic, social, cultural, recreational, or other benefit to
2 the public from the development or subdivision will not outweigh the
3 economic, environmental, or recreational loss to the public from the
4 destruction or imperilment of the habitat or species; ~~or~~

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

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

11 (B) Forest blocks.

12 (i) A permit will not be granted for a development or subdivision
13 to be located on or adjacent to a tract that contains a forest block unless the
14 applicant demonstrates that:

15 (I) the development or subdivision will avoid fragmentation of
16 the forest block through the design of the project or the location of project
17 improvements, or both;

18 (II) it is not feasible to avoid fragmentation of the forest block
19 and the design of the development or subdivision minimizes fragmentation of
20 the forest block; or

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

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

6 (I) Locating buildings and other improvements to avoid or
7 minimize incursion into the forest block, including clustering of buildings and
8 associated improvements.

9 (II) Designing roads, driveways, and utilities to avoid or
10 minimize fragmentation of the forest block. Such design may be accomplished
11 by following or sharing existing features on the land such as roads, tree lines,
12 stonewalls, and fence lines.

13 (C) Habitat connectivity areas.

14 (i) A permit will not be granted for a development or subdivision
15 to be located on or adjacent to a tract that contains a habitat connectivity area
16 unless the applicant demonstrates that:

17 (I) the development or subdivision will avoid fragmentation of
18 the habitat connectivity area through the design of the project or the location of
19 project improvements, or both;

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

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

7 (ii) Methods for avoiding or minimizing the fragmentation of a
8 habitat connectivity area may include:

9 (I) locating buildings and other improvements at the farthest
10 feasible location from the center of the area;

11 (II) designing the location of buildings and other improvements
12 to leave the greatest contiguous portion of the area undisturbed, in order to
13 facilitate wildlife travel through the area; or

14 (III) when there is no feasible site for construction of buildings
15 and other improvements outside the area, designing the buildings and
16 improvements to facilitate the continued viability of the area for use by
17 wildlife.

18 (D) Availability of options; forest blocks; connectivity areas. Under
19 subdivisions (B) and (C) of this subdivision (8):

1 (i) The District Commission shall not issue a positive finding
2 based on minimization of fragmentation unless it finds that avoidance of
3 fragmentation is not feasible.

4 (ii) The District Commission shall not issue a positive finding
5 based on mitigation of fragmentation unless it finds that avoidance and
6 minimization of fragmentation are not feasible.

7 (9) Is in conformance with a duly adopted capability and development
8 plan, and land use plan when adopted. However, the legislative findings of
9 subdivisions 7(a)(1) through (19) of Act 85 of 1973 shall not be used as criteria
10 in the consideration of applications by a District Commission.

11 * * *

12 (C) Productive forest soils. A permit will be granted for the
13 development or subdivision of productive forest soils only when it is
14 demonstrated by the applicant that, in addition to all other applicable criteria,
15 either; the subdivision or development will not result in any reduction in the
16 potential of those soils for commercial forestry; or:

17 (i) the development or subdivision will not significantly interfere
18 with or jeopardize the continuation of agriculture or forestry on adjoining lands
19 or reduce their agricultural or forestry potential; and

20 (ii) except in the case of an application for a project located in a
21 designated growth center, there are no lands other than productive forest soils

1 owned or controlled by the applicant which are reasonably suited to the
2 purpose of the development or subdivision; and

3 (iii) except in the case of an application for a project located in a
4 designated growth center, the subdivision or development has been planned to
5 minimize the reduction of the potential of those productive forest soils through
6 innovative land use design resulting in compact development patterns, so that
7 the remaining forest soils on the project tract may contribute to a commercial
8 forestry operation.

9 * * *

10 Sec. 4. 10 V.S.A. § 6088 is amended to read:

11 § 6088. BURDEN OF PROOF

12 (a) The burden shall be on the applicant with respect to subdivisions
13 6086(a)(1), (2), (3), (4), (8)(B) and (C), (9), and (10) of this title.

14 (b) ~~The~~ Except for subdivisions 8(B) and (C) of this title, the burden shall
15 be on any party opposing the applicant with respect to subdivisions 6086(a)(5)
16 through (8) of this title to show an unreasonable or adverse effect.

17 Sec. 5. 10 V.S.A. § 6094 is added to read:

18 § 6094. MITIGATION OF FOREST BLOCKS AND HABITAT

19 CONNECTIVITY AREAS

20 (a) A District Commission may consider a proposal to mitigate, through
21 compensation, the fragmentation of a forest block or habitat connectivity area

1 if the applicant demonstrates that it is not feasible to avoid or minimize
2 fragmentation of the block or area in accordance with the respective
3 requirements of subdivision 6086(a)(8)(B) or (C) of this title. A District
4 Commission may approve the proposal only if it finds that the proposal will
5 meet the requirements of the rules adopted under this section and will preserve
6 a forest block or habitat connectivity area of a value equal to or greater than the
7 block or area affected by the development or subdivision.

8 (b) The Natural Resources Board, in consultation with the Secretary of
9 Natural Resources, shall adopt rules governing mitigation under this section.

10 (1) The rules shall state the acreage ratio of forest block or habitat
11 connectivity area to be preserved in relation to the block or area affected by the
12 development or subdivision.

13 (2) Compensation measures to be allowed under the rules shall be based
14 on the ratio of land developed pursuant to subdivision (1) of this subsection
15 and shall include:

16 (A) Preservation of a forest block or habitat connectivity area of
17 similar quality and character to the block or area that the development or
18 subdivision will affect.

19 (B) Deposit of an offsite mitigation fee into the Vermont Housing
20 and Conservation Trust Fund under section 312 of this title, at the fee rate set
21 forth in the rules. The Vermont Housing Conservation Board shall use such a

1 fee to preserve a forest block or habitat connectivity area of a value equal to or
2 greater than the value of the block or area affected by the development or
3 subdivision.

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

5 (c) All forest blocks and habitat connectivity areas preserved pursuant to
6 this section shall be protected by permanent conservation easements that grant
7 development rights and include conservation restrictions and are conveyed to a
8 qualified holder, as defined in section 821 of this title, with the ability to
9 monitor and enforce easements in perpetuity.

10 Sec. 6. RULE ADOPTION: SCHEDULE

11 (a) On or before September 1, 2017, the Natural Resources Board shall file
12 proposed rules with the Secretary of State to implement Sec. 4 of this act,
13 10 V.S.A. § 6094.

14 (b) On or before March 1, 2018, the Natural Resources Board shall finally
15 adopt rules to implement Sec. 4 of this act, 10 V.S.A. § 6094, unless such
16 deadline is extended by the Legislative Committee on Administrative Rules
17 pursuant to 3 V.S.A. § 843(c).

18 Sec. 7. EFFECTIVE DATES

19 (a) This section and Sec. 6 shall take effect on passage.

20 (b) The remainder of this act shall take effect on April 1, 2018, except that
21 on passage the remainder of the act shall apply to the rulemaking under Sec. 6.