To: House Committee on Natural Resources, Fish and Wildlife

From : Jamey Fidel, General Counsel and Forest and Wildlife Program Director, Vermont Natural Resources Council

Date: April 14, 2022

Re: S.234

Thank you for the opportunity to testify on H.234. I have already testified on forest related provisions in the bill, but wanted to follow up with the following recommendations based on Draft No. 1.1 – S.234 4/12/2022. This an updated version from my testimony this morning.

- We support the forest blocks and connecting habitat criterion and accompanying rulemaking. On page 12, lines 7 and 8 (and lines 21-22), the language currently reads that you either have to avoid undue adverse effects, or minimize and mitigate in accordance with rules adopted by the Board. Originally, I believe the intent was to first show how you can avoid undue adverse effects. If that is not possible, then minimize undue adverse impacts, and if that is not feasible based on a justified reason, then mitigate impacts as circumstances allow under the rules. There will be situations where it should be possible to minimize impacts and not have to mitigate at the same time if a project is designed well, so we support reverting back to "avoided, minimized, or mitigated in accordance with the rules" or developing different language to make this clear.

- On page 13, we suggest modifying lines 4-5 to say "Criteria to identify the circumstances when a forest block or connecting habitat is eligible for mitigation." It should not be assumed that all areas are appropriate for mitigation due to their sensitivity or significance. This should get fleshed out in the rulemaking.

- We support adding the definition of forest fragmentation back into Section 7 of the bill. This definition was in the bill as introduced in the Senate and it helps to describe how fragmentation of forest blocks and connecting habitat will be avoided or minimized in the rulemaking. Here is the language that was in S.234 as introduced in the Senate:

  "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.

- In regards to the provisions related to permit conditions on a wood products manufacturer, we do support trying to help maintain viable forest processing in Vermont, while balancing how to address the impacts of operations on affected neighbors or communities. We read the provisions that allow flexibility for hours of operation and delivery of wood heat fuels to allow for flexible time tables while still ensuring that permit conditions must be followed in

order to mitigate adverse impacts under subdivision (a)(1), (5), or (8). In other words, the flexible times of operation and delivery do not outright trump legitimate permit conditions to mitigate adverse impacts, and district coordinators and commissions can decide how to balance mitigating impacts while allowing more flexibility to move wood products when seasonal conditions are favorable. Because of this balance, we support this provision.

- While, in general, we do not support weaking primary agricultural soils mitigation, we believe allowing a 1:1 mitigation for wood products manufacturers to mitigate impacts to primary agricultural soils could be supported based on the premise that this is the same mitigation ratio that is allowed for industrial parks. With this consideration in mind, we support allowing a 1:1 mitigation.

- We do not support outright exemptions for smaller scale wood products manufacturers as suggested in H.581. We did support previous legislation several years ago, which is now codified in statute (10 VSA § 6084(g)), allowing smaller scale operators to be automatically processed as a minor permit, and we believe this should help expedite the permitting process.

- We support the intent language for the section pertaining to one-acre towns.

- In regards to the report/study in Section 16, we are still reviewing the language, but support the report items. We would suggest that DHCD oversee the designation study, but perhaps have the Natural Resources Board oversee the other report sections? In regards to the study on location-based jurisdiction, we believe it could be hopeful to reference the Commission on Act 250 Report and expand some of the issues for review (such as looking at tiers such as designated areas to encourage development, a middle tier to maintain intact and working lands, and a heightened level review for sensitive natural resource features – see pages 34-35 of the Final Report).

- In regards to the inclusion of Accessory On-Farm Business provisions (from H. 704) within S. 234, as we testified on March 11th, VNRC was involved in the negotiations about AOFB a couple of years ago as part of the On-Farm Enterprise working group, and supports AOFBs as a mechanism to increase the vitality of our working lands and for Vermont farmers to diversify their business and earn additional income.
  - While we see some pathways to continuing to support farmers' success through AOFB, the provisions included in H. 704 - particularly those related to the exemption of AOFBs from Act 250 - are complex and deserve further discussion.
  - Our primary concern is that the **lack of clarity around the definition** and enforcement of AOFBs, in conjunction with the incentive AOFBs create to develop enterprises that are only loosely (if at all) associated with the primary farm business, would contribute to **sprawl** and **undermine local zoning**.
  - RECOMMENDATION: We support the study of AOFBs as currently proposed in S. 234
    - "…whether different types of businesses associated with farms and farming require different levels of Act 250 review, whether or not the location of such businesses is relevant, and whether agricultural business innovation zones with different levels of review"

- We would also add the consideration of:
  - Clarifying and narrowing the definition of qualifying "farms" to ensure the appropriate application of the intent of AOFBs.
    - *For instance, currently qualifying farms (as part of the RAPs) include one that sells just $2,000 worth of product a year.*
    - *The term "accessory" could also benefit from further definition and clarification.*
  - Removing the burden of determining which farms qualify as an AOFB from municipalities and moving to another entity with greater capacity to interpret the statute, such as the Agency of Agriculture or the Natural Resources Board.
    - This change is particularly important to help towns without zoning and/or staff to make informed and timely decisions.
  - Exploring an appropriate jurisdictional trigger, if the study finds AOFBs require different levels of Act 250 review.
    - VNRC does not support the use of "area disturbed" as a trigger, due to its lack of clarity.