

To Senate Natural Resources and Energy Committee

Testimony of Jamey Fidel, Forest and Wildlife Program Director/General Counsel  
Vermont Natural Resources Council on S.234

February 4, 2022

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Thank you for the opportunity to testify on the forest related provisions of S.234. I am testifying on behalf of Vermont Natural Resources Council, and can also offer perspective on behalf of The Forest Partnership, which is comprised of Audubon Vermont, The Trust for Public Land, the Vermont Chapter of the Nature Conservancy, Vermont Land Trust, Vermont Natural Resources Council, and Vermont Conservation Voters.

### **The Need to Address Forest Fragmentation in Act 250**

Vermont is the 4<sup>th</sup> most heavily forested state in the country, and while 74% of the state is covered by forests, a closer look reveals that our forests are being converted and fragmented by rural sprawl.

The breaking up of large parcels of land into smaller and smaller parcels is a significant issue, and the outright conversion of forestland is a growing concern in Vermont and the region for the climate resiliency implications, and other considerations such as continuing loss of ecosystem services, biodiversity, and working lands.

While it is hard to pin down the exact amount of forest acreage that has been lost to development, for the first time in a century our forests are declining in extent. For example:

- An estimated 14,746 acres of forestland is being converted on an annual basis to development.<sup>1</sup> At this rate 427,634 acres of forestland will be converted by 2050.<sup>2</sup>
- A report published by the Vermont Natural Resources Council in late 2017 reveals that according to Grand List data, undeveloped woodland as a land use category in Vermont decreased by about 147,670 acres from 2004 to 2016 while residential acreage increased by almost 162,670 acres. During the same study period, parcels less than 50 acres in size with houses increased by 20,747 parcels. This highlights an increasing trend in Vermont; undeveloped land is being converted to residential development with dwellings and associated infrastructure, and smaller parcels are being created through the fragmentation and parcelization of forestland from subdivision and development.<sup>3</sup>

### **Over 15 Years of Study to Address Forest Fragmentation in Act 250**

VNRC has spent decades researching and examining the issue of forest fragmentation. We have consulted many professionals about the adequacy and shortcoming of our land use regulations to address forest fragmentation. This work has included fifteen years of discussion at our statewide

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<sup>1</sup> USDA Forest Service. 2020. Forests of Vermont, 2019. Resource Update FS-243. Madison, WI: U.S. Department of Agriculture, Forest Service. 2p. <https://doi.org/10.2737/FS-RU-243>.

<sup>2</sup> The USDA Forest Service estimates 2,652 acres of nonforest revert to forest every year, so the overall net reduction of forest may be closer to 350,726 by 2050. *See id.*

<sup>3</sup> Fidel, J., McCarthy, K., & Voigt, B. (2018, October 2). *Tracking Parcelization Over Time: Updating the Vermont Database to Inform Planning and Policy (Phase III Report)*. Retrieved from <https://vtforeststrends.vnrc.org/reports>

Forest Roundtable, which resulted in a final report with land use recommendations, and a Land Use Forest Fragmentation Action Plan, developed with state government and land use planning experts.

In 2007, the Forest Roundtable convened with approximately 100 participants that included consulting foresters, professional planners, government officials, landowners, representatives from the forest products industry, conservation groups, rural economic development, and researchers at academic institutions. Together, they published a Roundtable Report on Parcelization and Forest Fragmentation. The report included 27 priority recommendations. One of the priority recommendations was to “identify and correct gaps in Act 250 and other land use regulations to attenuate the rate of parcelization and forest fragmentation in Vermont.”

In 2014, the land use planning community developed a Forest Fragmentation Action Plan with input from 100 local planning and conservation commissions members, selectboards, regional planning commissions, the VT Dept. of Forests, Parks and Recreation, the VT Fish and Wildlife Department, the VT Dept. of Housing and Community Development, the VT Planners Association and UVM Extension. As part of the process, twenty-eight strategies were identified and ranked. The top nine were selected to highlight in the action plan. One of the top identified strategies was to pursue legislative changes at the state level to modify Act 250 to address forest fragmentation, and add new criteria to review and mitigate forest fragmentation.

**Furthermore, The Vermont Legislature has commissioned three reports over the past three years requesting strategies to address forest fragmentation, including land use strategies.**

These reports have created a long and deep examination of the issue of forest fragmentation and how to address it.

In 2015, the Vermont Department of Forests, Parks, and Recreation submitted the Vermont Forest Fragmentation Report to the Vermont Legislature. That report stated that in order to provide the appropriate tools and clear authority for Act 250 to protect forest blocks there are a number of amendments to Act 250 to consider including:

- Adding definitions for significant forest blocks and significant connecting habitat so that those features of forest integrity can be addressed specifically in Act 250.
- Criterion 8A could be enhanced to include explicit consideration of significant forest blocks and connecting habitat. Currently, Act 250 does not specifically consider these elements of forest integrity and given the nexus between significant forest blocks and the Department of Fish and Wildlife’s assessment of high ranking forest blocks, criterion 8A appears the most appropriate place to add this consideration. This change would give the Act 250 district commissions the necessary tools to moderate the impacts from development on the most critical forest blocks across the state.

In 2016, as part of Act 171, the Legislature enacted a study committee to examine potential revisions to Act 250 to protect contiguous areas of forestland from fragmentation and promote habitat connectivity between forestlands.

The 2017 study group report includes a matrix of policy options, including concepts embedded in H.233. The study committee cover letter explains that the study group was unable to reach consensus agreement on specific recommendations, which is understandable based on the diversity

of participants, but the report also clarifies that at the last meeting, study committee members put forward recommendations for inclusion in the final report, and members voted whether to support each recommendation. The December 18, 2016 meeting minutes reflect that all members present at the meeting expressed their support or possible support for the concept of enhancing Criterion 8 to include consideration of significant forest blocks and connecting habitat.

In addition, beyond these legislative reports, VNRC has published multiple reports, one compiling information on statewide subdivision and parcelization trends (see statistics above), and another examining the interplay of Act 250, local regulations and subdivision activity in 22 case study towns.

This research shows that very little subdivision activity is large enough to trigger Act 250. Our research of subdivision activity in 22 case study towns between 2003 and 2009 found that out of 925 subdivisions creating 2,749 lots and affecting a total of 70,827 acres, only 1-2% of the subdivisions triggered Act 250 (the exception was land already under Act 250 jurisdiction which boosted the overall Act 250 review to 10% of the subdivisions).

A natural question is why doesn't Act 250 review more subdivisions? One of the reasons is the average subdivision we reviewed was between 2-4 lots; therefore, many subdivisions do not trigger Act 250 jurisdiction (Act 250 reviews 6 or more lots in a town without zoning, or 10 or more lots in a town that has zoning and subdivision regulations).

In addition, two provisions in Act 250 that used to review fragmenting type of development have been rescinded; the road rule and the review of secondary impacts from utility lines, meaning the impacts of development associated with the utility line. When the "road rule" was rescinded, which reviewed roads over 800 feet in length, Act 250 lost the ability to review the impacts of incremental development with long roads that penetrate intact forest blocks. In addition, when the review of secondary impacts of utility lines was removed from Act 250, we lost our ability to consider the impacts of growth associated with utility line extensions.

This leads us to conclude that Act 250 should be improved in two ways: strengthen the criteria to maintain intact, connected forests (as the House has passed twice and Senate once in previous legislation), and modify Act 250 jurisdiction to review projects that may unduly fragment our important rural land base and natural areas. In order to effectively review fragmenting development, we suggest one modification to Section 12 on Page 18:

(3)(A) "Development" means each of the following:

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(xi) The construction of a road, roads, driveway, or driveways, which as a single road or driveway is greater than 800 feet, or which in combination is greater than 2,000 feet, to provide access to or within a tract or tracts of land of more than one acre owned or controlled by a person.

Thank you for the opportunity to testify on Sections 8-12. Please let me know if you would like me to speak to Sections 13-14 regarding wood products manufacturers. In general, we have historically supported provisions to help maintain a viable forest products industry as long as they do not lead

to outright exemptions, or unduly trump the needs of neighbors or communities to address legitimate issues and environmental impacts. Having said this, we have repeatedly supported such provisions, only to watch certain representatives of the Forest Products Association oppose addressing fragmentation and maintaining a rural land base through Act 250, while supporting exemptions or modifications from Act 250. We do not support this narrow approach to maintain the viability of the forest products industry. If the goal is to support Sections 13-14, while stripping the forest fragmentation sections, as has occurred in the Senate before, VNRC will oppose the bill.