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RE: Testimony on Act 59 implementation and the draft “Inventory Report” as submitted to the House Committee on Environment and Energy

Dear Chair Sheldon and Members of the Committee:

Thank you for this opportunity to submit testimony regarding the implementation of Act 59, specifically the draft “Inventory Report” submitted to the House Committee on Environment and Energy and available for public comment through July 19th.

The following testimony is submitted on behalf of my client, Standing Trees. Incorporated in 2021, Standing Trees is a Vermont nonprofit that works to protect and restore forests on New England’s public lands. Standing Trees’ members are located throughout Vermont and support its vision of managing state and federal public lands to restore old growth forests for the benefit of biodiversity, flood attenuation, clean water, climate mitigation, and human health. Standing Trees was deeply involved in the conception and early drafting of Act 59, and testified on several occasions after the bill was introduced.

Top-Level Messages for Committee Members:

- 1) The Report unlawfully includes all protected agricultural lands in the Natural Resource Management Area category, including those lands that are not required to be sustainably managed, which flatly contradicts Act 59;
- 2) The Report unlawfully includes all protected forestlands in the Natural Resource Management Area category, including those lands that are not required to be sustainably managed, which again flatly contradicts Act 59;
- 3) As a result of these two errors, the Report overstates the current acreage of conserved land that meets the goals of Act 59, and thereby precludes the future protection of hundreds of thousands of additional acres of land that does, in fact, satisfy the definitions of conserved land in Act 59;
- 4) Aggravating these errors, the Report lacks transparency about the permanency of “conserved.” Did its authors limit the acreage to land that is conserved in perpetuity and protected from conversion by examining each deed and each conservation easement—or did they rely on some unidentified source for this information? The report neither answers this question nor provides a map or list of conserved properties so that this Committee or the public can determine if the stated acreage is reliable.

Detailed Testimony

1. Act 59 and Vermont Conservation Design.

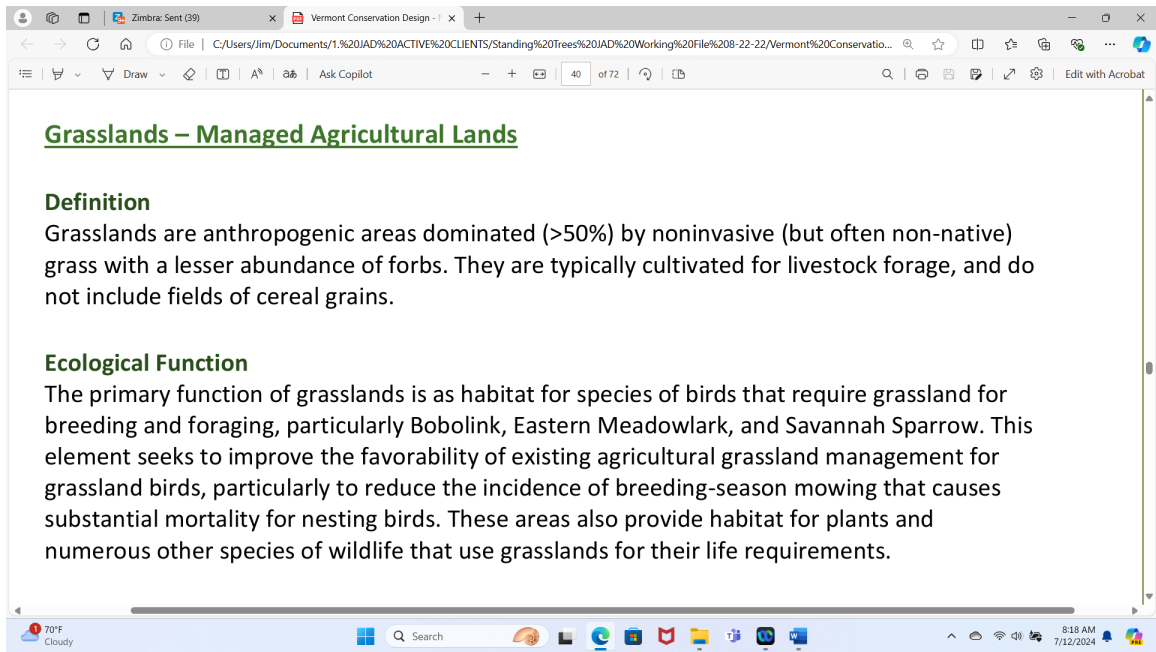
Passage of Act 59 in 2023, thanks to the leadership of this Committee, marked an historic inflection point for land conservation in Vermont. Among other provisions, Act 59 establishes Vermont Conservation Design (VCD) as the guiding light for statewide land conservation; defines categories of permanent conservation that contribute to the ecologically functional landscape envisioned in VCD; sets measurable, time-bound conservation goals; and requires both a conservation inventory and plan to achieve the vision of the legislation. Section 2802(d) states:

In order to support an ecologically functional and connected landscape with sustainable production of natural resources and recreational opportunities, the approximate percentages of each type of conservation category **shall be guided by the principles of conservation science and the conservation targets within Vermont Conservation Design**, prioritizing ecological reserve areas to protect highest priority natural communities and maintain or restore old forests.

Because Act 59's purpose is to implement VCD, in order to comprehend the failings in the Report, one must start with the VCD.

2. VCD: Preserve Conserved Grasslands -- Not Conserved Cornfields.

The VCD makes very clear that not all conserved agricultural land qualifies as a natural community that should be protected. Managed grasslands and the upland shrub-forb habitat are the only managed agricultural lands identified in the VCD as worthy of protection. For example, grasslands that are managed to protect habitat for Bobolinks, Eastern Meadowlarks and Savannah Sparrows (and upland shrub-forb habitat that is managed appropriately) qualify as natural communities needing conservation. What follows is from page 40 the VCD Technical Report.



Cornfields are not included, regardless of whether they are preserved against development in perpetuity.

3. Act 59: “Conserved” Land Does Not Include Protected Cornfields

Act 59’s third category, Natural Resource Management Areas, is defined as those lands which are subject to “long term sustainable land management.” Sustainable land management is defined as limited to those forests, wetlands, grasslands and other lands that are managed to sustain biodiversity.

“Sustainable land management” means the stewardship and use of forests and forestlands, **grasslands**, wetlands, riparian areas, and other lands, including the types of **agricultural lands that support biodiversity**, in a way, and at a rate, that maintains or restores their biodiversity, productivity, regeneration capacity, vitality, and their potential to fulfill, now and in the future, relevant ecological, economic, and social functions at local, State, and regional levels, and that does not degrade ecosystem function.

In contrast, much protected Vermont agricultural land consists of vast cornfield monoculture that is maintained through the use of herbicides that destroy all vegetation other than corn and horsetail fern and that is dependent on chemical fertilizers.

The Act 59 Draft Report includes within its inventory all protected agricultural land, including lands managed to grow corn using herbicides and chemical fertilizers. See, for example, page 29, stating that all protected land used to grow “crops” was included.

The Report does not explain why this decision is consistent with the definition in the Act, which states that this category consists of “forests and forestlands, grasslands, wetlands, riparian areas, and other lands, including the types of **agricultural lands**

that support biodiversity.” The Report does not attempt to argue that permanently protected land used for herbicide-dependent monoculture supports biodiversity and “does not degrade ecosystem function.” That would be an absurd argument.¹

This omission is a critical flaw. With regard to the 30% target, land is to be considered “conserved” **only** if it meets the definitions of ecological reserve, biodiversity conservation area or natural resource management area. If other lands are permanently protected against development in perpetuity, that of course has value, but the lands are not “conserved.” Similarly, with regard to the 50% target, the land must consist “primarily” of permanently protected land within these three categories.

“Conserved” means permanently protected **and** meeting the definition of ecological reserve area, biodiversity conservation area, or natural resource management area as defined in this section for purposes of meeting the 30 percent goal in subsection 2802(b) of this title. For purposes of meeting the 50 percent goal of subsection 2802(b) of this title, “conserved” primarily means permanently protected and meeting the definition of ecological reserve area, biodiversity conservation area, or natural resource management area as defined in this section,

By including all permanently protected agricultural lands, including lands used to grow crops that harm or do not support biodiversity, the Report overlooks the definition of “conserved.” The Report ignores the words “and” in the first sentence of the definition and the words “primarily” and “and” in the second sentence.

The over-inclusion of all protected agricultural lands clearly was not intended by the legislature. In addition to the plain meaning of the definitions, in section 2803(b) the statute states that the Report was supposed to develop criteria “to determine the types of agricultural lands that will qualify as supporting and restoring biodiversity and therefore count towards the natural resource management category.” The Report fails to develop and use those criteria, and instead lumps all agricultural lands into the natural resource management category. A reasonable legislator or judge who reads the statute and then the Report is likely to conclude that the Report has been prepared in blatant defiance of the statute.

¹ See, for example, Horrigan et al 2002, “How Sustainable Agriculture Can Address the Environmental and Human Health Harms of Industrial Agriculture.” Environmental Health Perspectives.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1240832/pdf/ehp0110-000445.pdf>

4. Conclusion: The Draft Report Violates Section 2803's Requirement of an Inventory of "Conserved Land" by Including Agricultural Land that Is Not "Conserved Land."

Section 2803 requires that VHCB submit an inventory of "conserved land." The Report, however, includes in the inventory all permanently protected agricultural land, not just "conserved land." The Draft Report includes no Inventory of "conserved land" as the statute defines that term. The Report fails to fulfill its mandated purpose and must be revised to inventory only "conserved land."

5. The Report Also Includes Forest Land That is Not Required to be Sustainably Managed.

Some permanent conservation easements limit land use to forestry, and prevent conversion to construction of homes or other buildings—but do not require sustainable forestry. While there are public benefits to such easements, they fall outside the definition of "sustainable land management:"

"Sustainable land management" means the stewardship and use of forests and forestlands, grasslands, wetlands, riparian areas, and other lands, including the types of agricultural lands that support biodiversity, **in a way, and at a rate, that maintains or restores their biodiversity, productivity, regeneration capacity, vitality, and their potential to fulfill, now and in the future, relevant ecological, economic, and social functions at local, State, and regional levels, and that does not degrade ecosystem function.**

Regrettably, the Draft Report does not distinguish between forest land that is subject to permanent, legally enforceable limitation to sustainable harvesting and other forest land that is subject to conservation easements that lack these standards. This too falls short of the requirements of the Act.

6. The Report Does Not Reveal How It Determined that Land Has Been Permanently Protected.

Some conservation easements for forest land are limited in time, rather than in perpetuity. Others are subject to contingencies that remove the restriction. The Report does not reveal how its authors determined that the included lands are subject to permanent restrictions. Without that explanation, or at least a map showing each parcel and why it was included, it is impossible for this Committee or the public to assess the reliability of the Report.

7. A Revised Report Is Necessary

The Draft Report overstates the current acreage of conserved land that meets the goals of Act 59, and thereby precludes the future protection of hundreds of thousands of additional acres of land that does, in fact, satisfy the definitions of conserved land in Act 59. A revised report is necessary.

Sincerely,
James A. Dumont
James A. Dumont, Esq.
for
Standing Trees