Two Rivers-Ottauquechee
REGIONAL COMMISSION

September 23, 2016

Michael C. Snyder, Commissioner

Vermont Department of Forest, Parks and Recreation
1 National Life Drive, Davis 2
Montpelier, VT 05620-3801

Dear Commissioner:

Thank you for asking Vermont's regional planning commissions for comments on ways to avoid future forest fragmentation and parcelization. We had hoped to be part of a joint letter, but are sending these comments ahead as we are not sure if a joint letter is forthcoming.

In the land use planning and regulatory world, we see three primary areas of concern:

- Construction or upgrading of infrastructure into forest blocks – primarily roads and power lines;
- Development in more sensitive areas of forest blocks – interiors, wetlands, feeding and sheltering areas; and
- Parcelization through subdivision.

Regarding roads, towns have little ability to restrict the *private upgrading* of a Class IV road. This is done when someone buys a camp, or even a vacant lot, and then decides to put in a new home and they want a nice drive and are willing to foot the bill. This leads to greater impacts in the forest block as well as future development pressure and arguments for the eventual upgrading to a Class III road. Towns could reduce this risk, and keep the recreational access afforded by the Class IV road, by reclassifying it as a trail and reducing the right of way to 20 feet. This option needs to be better explained to towns.

Each of the above areas of concern could be addressed in local zoning and/or subdivision bylaws, increasing regulatory scrutiny. For towns with zoning, most do not regulate the construction of private roads or driveways as 'structures', but they *could*, since they often define a structure as "an assemblage of materials". This power could be *enhanced* by clearer enabling through the addition of a new 24 VSA subsection to 4411(a), "(6) private roads and driveways."

Forest zoning districts are clearly enabled under 44141(B)ii, but many towns do not have large contiguous areas where forming such a district makes sense. Rather, there are large parcels here and there in rural districts that would benefit from special provisions, but that is difficult to do on a parcel basis since zoning applies equally throughout a district. However, there is a provision in 24 VSA section 4411(b)3 that does allow for special site-based considerations, and adding a new subsection, "(l) large forest tracts" would more clearly enable the creation of a special protective standard that could apply on a parcel by parcel basis. This does not mandate such, but gives towns the opportunity.

Zoning also deals with lots once they are created, and typically the only locational requirement then is that development not occur within minimum front, side, and rear setbacks. Towns are enabled and could be encouraged to also look at *maximum* setbacks in order to keep development that does occur on a large block near the edge.

For towns with zoning and no subdivision bylaws (which is common), the attempt to limit development in undeveloped areas clumsily plays out

128 King Farm Rd.
Woodstock, VT 05091
802-457-3188
trorc.org

through adoption of large lot size requirements, often 10 acres. This of course results in lots too small for forestry or the Current Use program. Here, it would be of benefit to retain forests if towns were to adopt in their bylaws a density waiver enabled under 24 VSA section 4414(1)8. This can keep the *density* of development light, but allow for lots as small as an acre. So instead of a 40-acre lot becoming four 10-acre lots, the owner could create four one-acre lots for sale along the edge and also a 36-acre lot where development is precluded. This is perhaps the single easiest and most effective step towns could take right now.

Similarly, for towns with subdivision bylaws, they could adopt a standard that allows or even *requires* minimizing forest fragmentation through such use of density waivers as well as placement of lot lines, roads and utilities. We have a few model provisions that do this that we offer to towns, and such provisions could be more widely disseminated. The effect of such provisions is similar to the Planned Unit Development provisions enabled in 24 VSA 4417, but is much easier to administer.

Finally, transfer of development rights, which are enabled under 24 VSA 4423, can be a very useful local mechanism to channel development away from some areas while giving the owners of the undeveloped areas some financial gain, but this appears to be a complex mechanism that most towns are not familiar with or up for administering, and it requires a conservation easement. Much of the benefit of such a mechanism can be achieved by simply expanding the density waiver mentioned above across parcel lines to adjacent parcels or even distant parcels. It would be beneficial if such a model provision was developed.

Outside of the regulatory arena, these three areas of concern could also be addressed in policies in local plans and regional plans, which, if specific enough, would have weight in projects that trigger Act 250. Directive language in local plans is also the foundational step for any regulations. Both plans must also be considered during Section 248 proceedings for energy projects, but their effect there is currently relatively weak.

Besides potential statutory changes in the 248 process, we believe that local and regional plans have sufficient enabling in 24 VSA (sections 4302(c)1, 5, 6 and 9; sections 4348a(a)1, 2 and 6; sections 4382(a)2 and 5) for towns and regional planning commissions to adopt policies that would help to preserve forest tracts. Actually writing and adopting those policies is another matter. The usual best first step along that path is to develop model plan language that towns and regions can consider, as well as educational materials as to why they should consider these things. For example, while it may be obvious that keeping large blocks of forest is good for habitat, and also creates the potential for harvesting timber, it may not be so obvious that these blocks are carbon sinks, filtration and storage for groundwater supplies, recreational areas, and a draw for tourists. One task that regional planning commissions could do is develop and/or disseminate such model plan language.

We believe that Act 250 criteria found in 10 VSA section 6086(a)8A, 9C, 9L, and 10 are sufficiently broad to enable greater protection of forest tracts from incursion than has historically been the case, but this largely depends upon stronger plan language, as well as more ANR involvement in pushing the envelope inside of the existing language.

Thank you for considering these comments.

Peter G. Gregory

Peter G. Gregory, AICP

Executive Director