



Vermont Agency of Natural Resources

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August 26, 2022

Holly R. Anderson, Clerk

Vermont Public Utility Commission

112 State Street – 4th Floor

Montpelier, VT 05620-2701

Re: Supplemental Comments on Significant Forest Clearing Definition, 19-0855-RULE

Dear Ms. Anderson:

In comments filed in Case No. 19-0855-RULE on June 24, 2022, the Vermont Agency of Natural Resources (“Agency”) recommended that the Vermont Public Utility Commission (“Commission”) consider revising the definition of “significant forest clearing” in the latest draft of Rule 5.100. Specifically, the Agency recommended: replacing the term “forest block” with “forest”; defining “forest” based on a definition of “forest land” used by the U.S. Forest Service; and excepting forest clearing in state-designated Village Centers, Downtowns, New Town Centers, Neighborhood Development Areas, and Growth Centers. The recommendations were intended, in part, to address commenters’ confusion over how to interpret “forest block.”

Upon further consideration, and to provide additional clarity to stakeholders, the Agency recommends that the Commission further refine the definition of significant forest clearing as follows.

“Significant Forest Clearing” means clearing more than one acre of forest not in a state-designated Village Center, Downtown, New Town Center, Neighborhood Development Area, or Growth Center. For purposes of this rule, the term forest means land that has at least 10 percent ~~crowns~~ canopy cover by live trees of any size or has had at least 10 percent ~~crowns~~ canopy cover of live trees in the past and has stumps, snags, or other evidence indicating that it has not been converted to a non-forest use at the time of CPG application filing. To qualify as forest.

the area must be at least one acre in size and 120 feet wide. In determining whether an area is at least one acre or 120 feet wide, any portion of a group or contiguous area of trees that extends beyond the project or parcel boundaries shall be counted. Canopy cover shall be measured from the outermost edge of tree crowns across a group or contiguous area of trees. The one-acre limit on Significant Forest Clearing is cumulative and shall include each discrete area of any forest proposed for clearing.

The Agency believes the above changes provide needed clarity in three ways:

1. By adding minimum area requirements, this revised definition clarifies that forests are not patches of woods less than one acre, hedgerows, or individual trees. While these features may possess significant conservation value (*e.g.*, roosting habitat for threatened or endangered bats), they are not typically considered forest; indeed, the U.S. Forest Service definition of “forest land” includes the same minimum area requirements.¹ Further, by excluding these smaller areas, disagreements over what qualifies as forest may be less likely.
2. By specifying where canopy cover is measured—from the outermost edge of tree crowns *across* a group or contiguous area of trees—the changes reduce uncertainty about the area over which canopy cover is averaged and help prevent the use of fields or other non-treed areas to dilute canopy cover below 10 percent. In rare cases (*e.g.*, early successional forest in old fields), it may be difficult to discern the edge of a group or contiguous area of trees. In those cases, applicants should apply reasonable professional judgement.
3. By specifying that the one-acre limit on significant forest clearing is cumulative, and thus does not allow for one acre of forest clearing in each separate forest, the revised definition eliminates another area of the definition open to interpretation.

The changes also replace “crown cover” with “canopy cover.” Though the terms are synonymous, canopy cover is the preferred term among experts.

Figure 1, below, illustrates how these recommended changes play out on a parcel with a mix of fields, forest, and other treed and non-treed areas. In this hypothetical case, hedgerows, individual trees, and groups of trees less than one acre or narrower than 120 feet would not be considered forest and thus would be available for preferred siting. The one-acre limit on forest clearing applies to the remainder of

¹ See: <https://www.nrs.fs.fed.us/fia/data-tools/state-reports/glossary/>.

the areas with more than 10 percent canopy cover (*i.e.*, forest), which are shaded in green. Importantly, area, width, and percent canopy cover measurements are not bound by parcel or project boundaries. Thus, the shaded area occupied by trees along the southern portion of this parcel, though less than 120 feet wide when measured from the parcel boundary, qualifies as forest because it is part of larger forested area. In this example, the cumulative clearing in any portion, or portions, of the shaded area would need to be limited to less than one acre to qualify for preferred siting.



Figure 1. Illustration of Proposed Revisions to "Significant Forest Clearing"

The Agency hopes the above recommended revisions make the definition of significant forest clearing clearer and more implementable. Though a shorter and more plainly worded definition may achieve similar ends (*e.g.*, "Significant forest clearing means clearing more than one acre of trees"), and the Agency would not object to such a definition, the Agency continues to find avoidance of *forest* clearing, rather than avoidance of all tree clearing, a reasonable and worthy aim of Rule 5.100's preferred siting framework.

Thank you for considering these supplemental comments. Please contact me if the Agency can be of further assistance in this matter.

Respectfully submitted,

/s/ Kevin Anderson

Kevin Anderson

Regulatory Policy Analyst

Vermont Agency of Natural Resources

cc: Service List (by ePUC only)