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conservation law foundation

For a thriving New England

CLF Vermont
15 East State Street, Suite 4
Montpelier, VT 05602
P: 802.223.5992
F: 802.223.0060
www.clf.org

H. 448 – Act 250 Agricultural Resources Protections

Sandra Levine, Senior Attorney; February 19, 2014

Conservation Law Foundation **opposes proposed changes in H.448** to the agricultural resources protections provided in Act 250 as introduced.

The proposed changes **reduce protection for agricultural resources** in Act 250 by expanding the use of off-site mitigation and reducing the ratios for off-site mitigation.

Overall the bill provides for less protection in Act 250 for valuable and irreplaceable agricultural resources and should not be approved by the House Agriculture Committee.

History –

Criterion 9B has provided **important protections for agricultural resources**. It has given Vermont tools to stop paving over important agricultural land and require that projects moving forward be designed in a way to avoid agricultural resources.

At a time when agriculture continues to blossom in Vermont and more farms, including farms close to town and on smaller tracts of land are profitable with **new generations of farmers looking for good land,** it is more important than ever to maintain the agricultural resources we have and not diminish the protections provided in Act 250.

Expansion of off-site mitigation –

Proposed changes to 10 V.S.A. sec. 6093 would expand off-site mitigation beyond development in designated growth centers. When the legislature passed the growth center law in 2006 the use of off-site mitigation was specifically limited to growth centers. This is consistent with prior Environmental Board precedent that **recognizes off-site mitigation should only be used as a "last resort."** See *Southwestern Vermont Health Care Corp.* #8B0537-EB at pg 44 (2001)("Thus, *Mitigation Agreements should be used only as a last resort – only when an applicant has seriously attempted, but failed, to meet the subcriteria*. … if efforts to reduce the impacts of a project are not even attempted, then Mitigation Agreements will be seen as no more than a cost of doing business." (emphasis in original)).

Off-site **mitigation does not "protect" agricultural resources**. Instead it results in a lower, but sanctioned rate of destruction of agricultural resources. A mitigation ratio of 2:1 means that 1/3 of the state's agricultural soils will be destroyed.

Off-site mitigation is a practice that has been accepted, but its **use should be limited**.

Combined mitigation –
Proposal allows for combinations of on and off-site mitigation on any parcel. This greatly expands use of off-site mitigation and moves away from it being used only as a "last resort" and **returns to the practice of off-site mitigation being a cost of doing business**.

Standards for use of off-site mitigation should be very limited and the strong preference for **on-site mitigation outside of growth centers** should remain. The exceptions should be very narrowly tailored. The proposal allows a combination of on and off-site mitigation on nearly any parcel.

The language proposed for allowing a combination of on and off-site mitigation fails to be **location specific** and fails to adequately protect agricultural resources in areas outside of growth centers.

The Committee should reject the Chamber of Commerce's recommendations to allow even greater expansion of off-site mitigation when fewer than all the criteria are satisfied. This is an even greater reduction in protection of agricultural resources that is not justified.

The proposal gives **too much discretion to the Agency of Agriculture**. It alone can decide if devoting land to agricultural uses is impractical. This language eliminates the District Commission and could leave the Agency subject to undue political pressure to approve off-site mitigation. It could lead to a return of the time when off-site mitigation was allowed for all projects based only on the recommendation of the Agency of Agriculture, and allow mitigation in areas far removed from the proposed project.

Proposed Exit 4 (Randolph) Development project. The Committee should be careful not to write **standards based on one development project**. Peter Van Oot testified earlier on this bill. He is the lawyer for a large development project at Exit 4 that has had numerous communications with the Shumlin Administration over the past year about the agricultural soils requirements, and suggestions to change them. The developer has sought to avoid obligations to mitigate on-site for the extensive agricultural soils at Exit 4. The statute should not be changed to meet the desires of one developer, or one project.

Definition of agricultural soils –
CLF supports a definition that is **based more on the soil characteristics** and their capability to support agriculture. Agriculture has changed significantly in the past decades and will change again. The focus needs to be on **maintaining the resource to support future agriculture operations** and NOT on whether the land is being farmed now or has been farmed recently. Many areas of **good agricultural land around the state have been rejuvenated**. One example is the Intervale in Burlington. It has very valuable agricultural soils but was not used for farming for many years. It is now a very valuable agricultural resource that under the proposed language could have been paved over because it had not been used for farming.