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TO: Senate Natural Resources and Energy Committee
FROM: Catherine Dimitruk, Executive Director
DATE: April 2, 2014
RE: H. 448

Vermont's Regional Planning Commissions have been following the proposed changes to agricultural mitigation in H. 448. I will state at the outset that my opinions are shared by some of my colleagues, but my testimony is my own and I am not representing the opinions of all regional planning commissions.

Regional Planning Commissions are statutory parties to all Act 250 applications and therefore provide input to District Commissions regarding all criteria, including agricultural mitigation. For some regions, like NRPC's Franklin and Grand Isle Counties, this is among our top concerns when reviewing applications. H. 448 has many positive aspects including its focus on preservation of agricultural soils, incentives for development in planned growth areas, and additional criteria for determining whether offsite mitigation is appropriate in other areas.

The new definition included in H. 448 is a crucial step forward. It is an improvement that will add clarity to the process of identifying the state's best agricultural soils and ensuring their protection.

Consistently allowing off site mitigation and setting a lower mitigation fee in designated areas is necessary to encourage dense development in the areas targeted for growth: designated growth centers, designated downtowns and associated neighborhood development areas. This will provide for additional incentives to grow in these places instead of our rural working landscape.

Recommendation: add designated villages to the areas allowing 1:1 mitigation. There are many designated villages in Vermont; most of these districts are very tightly drawn around existing settlements. Including designated villages in the list above would provide additional incentives for infill development in these areas without a detrimental impact to the state's agricultural soils.

In areas outside of these designations, on-site mitigation or preservation must be the first option, and the presumed approach. Mitigation flexibility should never be used as a tool to 'get to yes' on projects that negatively impact agricultural soils. Projects must be designed to avoid soils or minimize the impacts as much as possible through clustered site design and/or small lots. Off-site mitigation or a combination of off- and on-site must only be allowed in specific circumstance to ensure the best protection of the resource.

Recommendation: include language to ensure that on site mitigation is designed in a way to ensure the land's availability for agriculture. Isolated tracks located at the back of subdivisions without clear access

do not further the goals of agricultural mitigation. When retaining soils on-site, it must be done in a manner that conserves their current or future use for agriculture.

Recommendation: in section 6093(b)(3) add another criteria to A-C to include that the Commission finds that the tract is located outside of designated area listed in (a)(1)(B)(i)- the designated growth centers, downtowns, etc. This will clarify that on-site mitigation is the preference for areas outside of designations.

Recommendation: in section 6093(b)(4) add language to restore avoidance of impact as one of the criteria. In many instances, creative site design can be employed to ensure that impacts on site are limited while still maximizing density.

Recommendation: in section 6093(c) delete the language that allows for the applicant to choose which mitigation option is utilized. District Commissions are the decision makers in Act 250 applications, not applicants. If flexibility is the goal, this section must be reworded to allow flexibility within the principles of agricultural mitigation and smart growth.

Thank you for considering these comments.