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Ron Sheems

NATURAL RESOURCES BOARD
Dewey Building
National Life Drive
Montpelier, Vermont 05620-3201

May 16, 2013

Via e-mail only

Peter Van Oot, Esq.
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Re: Sammis Exit 4 Project and "Appropriate Circumstances"

Dear Pete,

I understand that Secretary Spaulding has responded to Mr. Sammis's correspondence. I also wanted to close the loop with you.

Thank you for proposing amendments to the NRB's "appropriate circumstances" policy for off-site mitigation of impacts to primary agricultural soils (PAS). Significant changes to this policy are not timely. As you know, there is legislation pending that would clarify and codify when off-site mitigation would be appropriate. We are also considering engaging in a stakeholder process this summer to further refine legislation regarding PAS mitigation. Changes in our policy should be guided by these processes, rather than by a specific case.

In the absence of new legislation, I am also concerned that your proposal goes beyond the bounds of 10 V.S.A. § 6093. Section 6093 sets a clear preference for on-site mitigation of primary agricultural soils. Two exceptions are specified: First, developments in growth centers designated by the Downtown Board are allowed full off-site mitigation. Second, off-site mitigation or some combination of on-site and off-site mitigation "may, in appropriate circumstances" be allowed for development outside of a designated growth center 10 V.S.A. § 6093(a)(2)(B). Your proposal would allow off-site mitigation when "the project has been designed to realize the maximum economic development potential of the project tract . . ." and meets local and regional planning goals. This would effectively allow off-site mitigation for any development that meets Criterion 10. This exception would swallow the whole and result in a policy that exceeds the limited scope of the off-site mitigation allowed under § 6093.

Specific to the Exit 4 Project, and following up on your thought that lands around the Three Stallion Inn could be used for PAS mitigation, I wonder if you have explored whether those lands could instead be used for the residential component of the Project.



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Page 2 of 2

The lands on the north side of Route 66 could then be used for partial PAS mitigation. Such a configuration could be consistent with 10 V.S.A. § 6086(a)(9)(B)(ii) and make use of the lands around the Inn that are not mapped as PAS.

As you know, we readily assist applicants and other persons with the Act 250 process. Please let me know if you have any questions. I look forward to continuing our conversation.

Sincerely,



Ron Shems
Chair
Natural Resources Board

c: Michael Zahner
Chuck Ross
Lawrence Miller
Jeb Spaulding

