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January 12, 2017

District 2 Environmental Commission  
100 Mineral Street, Suite 305  
Springfield, VT 05156

**RE: In Re Town of Chester, et al. Act 250 Permit #2S0214-8**

Dear Commissioners:

This office has just been retained by the Town of Chester in connection with the captioned Act 250 Permit and related Findings issued on December 30, 2016. We respectfully submit this letter as a Motion to Alter pursuant to Act 250 Rule 31(A).

The Permittee would request alteration of Conditions 20 and 21 of the Permit, and any related Findings, which deal specifically with allowed future development within the Deer Wintering Area that subsumes a portion of the Project tract. As the Commission is aware, the Permittee had extensive discussions with the Department of Fish and Wildlife concerning this particular issue and the preservation of the remainder of the Deer Wintering Area all as recited in Exhibit 49, which is a letter dated September 6, 2016, from the Vermont Department of Fish and Wildlife.

The language in the Department's letter, including language that was intended to be included in the Conditions of the Act 250 Permit, was carefully negotiated and agreed upon between the Town and the Department. However, Conditions 20 and 21 as actually included in the Permit alter or omit some crucial details of that language, such as failure to provide for a potential additional 3 acre area of development in the future.

Accordingly, the Permittee would respectfully request that Conditions 20 and 21 be revised to track the language agreed upon by the Applicant and the Department as follows:

**20. The permanent conservation easement shall be for all of the Deer Wintering Area that was mapped by the Department in 2006, as the same may be subsequently modified by the Department, except that the easement shall allow for the construction and maintenance of the water tower and a road to access the water tower consistent with the conditions of this Land Use**

**Permit and shall allow, subject to the approval of the Department which approval shall not be unreasonably withheld:**

- a) development including, but not limited to, municipal buildings on no more than 5 acres proposed by the Permittee, located within the previously disturbed DWA and permitted DWA extraction area on the property, or**
- b) future sand and gravel extraction on not more than 5 acres of DWA proposed by the Permittee, or**
- c) a combination of development and extraction on no more than 5 acres.**

**The easement shall further allow the Department in its sole discretion to approve the development or extraction of up to 3 additional acres of DWA proposed by the Permittee, if the Department determines that the development or extraction is consistent with the purposes of the grant.**

**21. Future development and/or earth extraction shall be limited to areas outside the Deer Wintering Area mapped by the Department in 2006, as the same may be subsequently modified by the Department, or the areas identified in the foregoing Condition 20, as contemplated in Exhibit 49, Letter from the Department of Fish and Wildlife, dated September 6, 2016. All such future development and /or earth extraction will be fully reviewed by the District Commission at the time a specific development plan is proposed.**

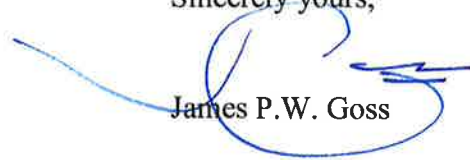
The Permittee would note two particular aspects of the foregoing language. Firstly, as it is unknown how long in the future extraction and/or development within the new areas might occur, these revised Conditions make allowance for the fact that the boundaries of the Deer Wintering Area may be amended in the future or modified given particular site circumstances.

Secondly, the Applicant is requesting that the reference to Act 250 Rule 34(E) be removed from Condition 21. Both the Department of Fish & Wildlife's letter and the Permit itself contemplate that future amendment of the Permit may be considered to allow development in the future extraction areas. The so-called *Stowe Club Highlands Test* embodying Rule 34(E) is intended to apply to a circumstance where a permit condition essential to the issuance of the permit is being deleted or modified. This is an extra level of review prior to consideration of the merits of an amendment request which involves the determination of whether the Commission should consider the amendment request at all. The Permittee believes that the addition of this term in a permit such as this where a future amendment application is expressly contemplated by the parties and by the permit is not appropriate. The Permittee understands that the foregoing does not prohibit review of future development under the 10 Criteria, including the potential for denial. It simply means that the extra hurdle of getting past the *Stowe Club Highlands Test* will not exist because it is not appropriate in this particular case.

The Permittee has been authorized to state that the Department of Fish and Wildlife has no objection to this Motion to Alter and that the Department agrees that the language proposed by the Permittee for Conditions 20 and 21 tracks the agreement between the Applicant and the Department.

Should you have questions or require further information, please feel free to contact me.

Sincerely yours,



James P.W. Goss

JPWG:clk

Enclosure

cc: Town of Chester  
James F. Carroll, Esq.  
Parties on the Certificate of Service

CERTIFICATE OF SERVICE #2S0214-8

I, James P.W. Goss, Esq., hereby certify that on January 12, 2017, I sent a copy of the foregoing Letter to the District 2 Environmental Commission representing Permittee's Motion to Alter dated January 12, 2017, to be sent by U.S. Mail, postage prepaid, to the following individuals at the email addresses listed.

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Dated at Rutland, Vermont, this 12<sup>th</sup> day of January, 2017.

By: \_\_\_\_\_

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