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ATTORNEYS

Via Email

June 3, 2019

Kirsten Sultan, Coordinator
District #7 Environmental Commission
Natural Resource Board
374 Emerson Falls Road
Suite 4
St. Johnsbury, VT 05819-2209

Re: Jurisdictional Opinion (JO) #7-286, Request for Reconsideration
Victory Hill Trails, Victory Hil Sector, Conservation Collaboratives, LLC
± 1100 acres, Town of Victory
Existing Recreation Trails, Camping, Special Events

Dear Kirsten,

I represent Conservation Collaboratives, LLC, Victory Hill Trails, LLC, and Carol Easter. I am writing to request that you reconsider your determination that Conservation Collaboratives and/or Carol Easter must obtain an Act 250 permit related to the construction of certain mountain biking trails on my client's land in Victory, Vermont and for Ms. Easter to operate a small roadside stand. I appreciate that this is a complicated situation and arises in an area of the law that is currently in flux. We appreciate the time and effort you spent on this matter, but respectfully disagree with your conclusions. Conservation Collaboratives is the landowner, but did not develop the single track mountain bike trails, nor does it operate or maintain trails. Certain pre-existing logging roads were improved to accommodate bicycles between 2010 and 2015 solely for the purpose of the CircumBurke Challenge event, a joint venture between Conservation Collaboratives and Kingdom Trails.

Conservation Collaboratives is respectful of Vermont culture, has in the past allowed public access and trails for hunting, hiking, snowmobiling, snowshoeing, cross-country skiing, as well as biking. Conservation Collaboratives, like most hosts of trails and public access, has not gained financially from sharing its land with the public. Conservation Collaboratives is focused on long-term conservation and has worked for the last nine years, with multiple non-profit, government, private sector, and academic partners towards this goal.

Important factual discrepancies include the fact that Kingdom Trails Association (KTA) provided the only regular professional maintenance of the Victory Hill Sector trails, between 2010 and

2017. The trails were called the Victory Hill Sector because they were designed as part of the KTA. KTA, using a professional work crew, built a significant number of the trails in the Victory Hill Sector and certain of the related improvements, including the largest bridge in this area. Both Victory Hill and KTA understood that the Victory Hill Sector was part of the KTA until August of 2018. Each year, Conservation Collaboratives received an invitation to landowner appreciation events and membership cards. In addition, Conservation Collaboratives received insurance documents from KTA indicating it was covered under the KTA policy.

KTA maintained the trails and the landowner was covered by KTA's insurance policy until June 10, 2019. This is all consistent with the KTA landowner agreement signed by my clients and KTA. Therefore, we contest your conclusion that the Victory Hill Sector was never formally integrated into the KTA, and indirectly, by virtue of my client's association with KTA, into the Vermont Trail System. Shortly after learning from KTA that it no longer considered the Victory Hill Sector part of the KTA trail system, Victory Hill applied for inclusion of the Victory Hill Sector in the Vermont Trail System. That application is currently pending and has been pending for over half a year.

We also contest your conclusion that the Victory Hill Sector is not connected to the KTA network. While you are correct that a State Forest[1] separates the two trail systems, there are actually two existing trails through the State Forest that connect the two trail systems from the west and the north (the CCC/Weir Mill Trails and the 13 Bridges/"Gold" Trail). These are well-known and often used recreational trails, used by close to a thousand riders annually. The fact that the Victory Hill Sector was not included on KTA maps is not conclusive, other sections of the KTA have been omitted from such maps in the past. For example, a network in East Haven is part of KTA, but was not on the KTA map in 2017-2018.

You incorrectly determined that Victory Hill Trails was formed in 2015. It was actually formed in March of 2017. Victory Hill Trails and Victory Hill Sector are two separate legal entities.

Your conclusion about the lease is also incorrect. The lease was a proposal for the recovery of the funds previously spent by Conservation Collaboratives in improving the trails, not as a straightforward lease, and was an offer made at the suggestion of KTA as a means for Conservation Collaboratives to recover these costs.

Your statement as to the receipt of donations giving a project a commercial purpose in paragraph 20 is not correct. In the recent *Laberge* decision, the Vermont Supreme Court held that the receipt of as much as $15,000 in donations annually did not give a project a commercial purpose. *In re Laberge Shooting Range*, 2018 VT 84.

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[1] Incorrectly identified as a park in the JO.

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In paragraph 21, you overstate the amount of money spent on bike trails and omit the fact that some of these funds were paid to KTA. Much of the other funds spent were used to stabilize and improve existing logging roads.

With respect to paragraph 22, many of the trails were pre-existing and pre-dated Act 250.

With respect to paragraph 25, Conservation Collaboratives, the landowner, was a member of KTA during the time the trails were being constructed.

With respect to paragraph 27, Victory Hill did not exist until 2017.

With respect to paragraph 31, no one who rode their bike from the KTA system onto the Victory Hill Sector was ever charged a fee or asked for a donation.

With respect to paragraph 35, it should be noted that the State charges a fee for use of the trails across its forest and has not been required to obtain an Act 250 permit.

With respect to paragraph 39, we dispute that any improvements have been made sufficient to trigger Act 250 jurisdiction. The "canopy" is used to hang items on, no one actually enters the tent. The use of a pop up canopy to display a sign is a *de minimis* improvement and, standing alone, does not trigger jurisdiction. The Easter property does not generate any additional traffic as any one stopping at the Easter property would be headed for the Victory Hill Sector. No bikers would drive up Victory Hill solely to visit the Easter home. Accordingly, the Easter home occupation does not generate any additional traffic. There is no legal basis for extending Act 250 jurisdiction onto the Easter property. Ms. Easter is an elderly widow who has now been deprived of a source of additional income that is important to her, however minimal.

As to the statement about involved land, when considered in comparison to the size of the tract of land involved, the improvements are clearly *de minimis*, constituting at most 5 acres (10 miles) of new trails and 2 bridges and 3 culverts located on over 1,200 acres of land. As the trails are linear, the impact per acre is insignificant.

As to Rule 71(A), the Commission has previously used a much smaller corridor width, only 3 feet, which was expressly considered very conservative by the Coordinator, when considering mountain bike trails. See #JO7-280.

As to D.R. #430, much of the improvements made to the existing logging roads were made for silvicultural purposes and all such work is exempt.

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As noted above, the *In Re Baptist Fellowship* holding re donations is no longer good law; it was overturned by the *Laberge* decision. An entity may receive donations without triggering Act 250 jurisdiction.

The Victory Hill Sector was integrated with the KTA system through 2018. As soon as Victory Hill was informed by KTA that it was no longer considered a part of KTA it applied for status as part of the Vermont Trail System ("VTS"). The fact that Victory Hill's application has not been acted on is a fault of the pseudo-state entity charged with reviewing such applications, not my clients. Jurisdiction should not be triggered by the Vermont Trails and Greenway Council's failure to timely process the application. No basis for denying that application, or defect in the application, has been conveyed to my client. It seems entirely unfair that the State try and assert jurisdiction during this brief window when my client is not part of KTA and before its application to the VTS is acted on.

As to the commercial nature of the operation, if their application to join the Vermont Trail System is denied, they will likely stop charging a fee and simply request donations. As such, its operation would no longer have a commercial purpose under *Laberge*.

The use of the logging roads for biking does not constitute a change in use. The logging roads will still be used for logging.

We contest your conclusion that the activities at the Easter home are not a home occupation. Even if 3,000 riders visit the property yearly, none of that traffic is generated by the Easter activities alone. Second, this would result in a maximum of 15 trips a day if every single rider stopped at the Easter property, an extremely modest number. Your interpretation of the rule would eliminate any home occupations at all in Victory as any such occupation would generate a modest increase in traffic given how sparsely populated the area is. The rule does not specify a particular or actual residential area, but rather residential areas generally, so analyzing it in the context of Victory is an error. In terms of noise, the Commission permitted a 50 dog kennel just down the road from the Easter property. The alleged increased traffic is not caused by the Easter activities and would occur regardless and the purported aesthetic impact is hard to fathom as it is no more of an eye sore that a laundry line in the front yard. The Town Garage operator regularly parks heavy equipment in this same area. The Easter operation is clearly *de minimis* and a home occupation.

As a direct result of this JO, Conservation Collaboratives has determined that it will be necessary to eliminate all public access to its property, including use of the property by VAST, hunters, bikers, hikers, and all other members of the public. In addition, this JO may result in the termination of negotiations previously underway to place a conservation easement on 95% of Conservation Collaboratives' property. The Victory Hill Sector is currently closed to bikers and

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will likely remain closed until this matter is resolved to the satisfaction of the landowner.

For all the above reasons, we respectfully request that you reconsider your determination.

Sincerely,

Hans G. Huessy, Esq.
HHuessy@mskvt.com

cc: Conservation Collaboratives, LLC
Victory Hill Trails, LLC
Carol Easter

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