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# Memo

DATE: 1/4/19

TO: Williston Selectboard

FROM: Erik Wells, Assistant to the Town Manager

RE: LEGAL OPINION ON CATAMOUNT ENVIRONMENTAL / BRELLA

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A legal opinion was sought from Town Attorney Bob Fletcher to assess any risk associated with the environmental concern identified on the property and the Town enrolling in the BRELLA program. Attached to this memo is Mr. Fletcher's legal opinion on the matter.

An additional detail came to light after the writing of the opinion. The report from environmental consultant LE Environmental that Mr. Fletcher reviewed recommended further delineation of petroleum contaminated soil followed by removal of a limited amount of soil in the source area. Shawn Donovan of the Department of Environmental Conservation (who will be in attendance at the meeting) stated via email "soil and groundwater contamination begins at approximately 3 feet below ground surface in the source area and deeper downgradient; therefore, there is a low risk for direct contact/exposure for site users... To date we only have two rounds of groundwater data which is not sufficient to determine a trend in contaminant concentrations. I recommend we get another round of sampling and evaluate that data at which point we can discuss the need for soil removal."

With this information Mr. Fletcher provided the additional response:

**From:** Robert Fletcher <[RFletcher@firm SPF.com](mailto:RFletcher@firm SPF.com)>  
**Sent:** Friday, January 4, 2019 2:07 PM  
**To:** Erik Wells <[ewells@willistonvt.org](mailto:ewells@willistonvt.org)>  
**Cc:** Richard McGuire <[rmcguire@willistonvt.org](mailto:rmcguire@willistonvt.org)>  
**Subject:** RE: Catamount Environmental Opinion- Additional Detail

Erik

The continued presence on-site of contaminants increases the possibility a user of the site may come into contact with the contaminants or contaminated environmental elements. It also raises the probability of down-gradient migration of contaminants, and impacts to neighboring properties (think wells) and natural resources. The risk from a legal perspective is not quantifiable in percentages, or other metrics.

Your original inquiry was as to the "risk" of BRELLA v. no BRELLA. BRELLA only mitigates state-initiated enforcement risk, not other risks. Inasmuch as the State appears to be dictating whether the contaminants and affected environs are removed or not, it would have a difficult time in my view

1/4/19

bringing an enforcement action UNLESS the owner/operator of the site in some way aggravated the current condition(s) so as to increase the discharge or contamination.

Bob