



November 14, 2012

Padhrig McCarthy
318 Eastman Cross Road
Vershire, VT 05079

Subject: Jurisdictional Opinion #3-151, Mangala Shri Bhuti, Vershire

Dear Mr. McCarthy:

This letter constitutes a jurisdictional opinion pursuant to 10 V.S.A. § 6007(C) and Act 250 Rule 3 and is issued in response to a series of Project Review Sheets (the most recent is dated September 12, 2012) for the Mangala Shri Bhuti property at 322 Eastman Cross Road, Vershire and for your property at 318 Eastman Cross Road, Vershire. This opinion considers the question as to whether or not an Act 250 permit is required for the proposed improvements to the Mangala Shri Bhuti or for the original construction of improvement for a commercial purpose on the site. It is my opinion that this project does not require an Act 250 permit. This opinion is based on the following:

FACTS

1. Vershire is a "10 acre town" because it has permanent zoning and subdivision bylaws.
2. The original parcel was approximately 64 acres.
3. In May 2004, WW-3-9540 permitted a 5 acre Lot 1, and a 58 acre Lot 2 for a "parsonage and church."
4. In November 2004, WW-3-9540-1, in part, permitted the further subdivision of Lot 2 to create a 9.8 acre lot for the "parsonage and church."
5. There was no construction of improvements for a commercial purpose until late 2004 after the McCarthy property had been subdivided and the Mangala Shri Bhuti property was 9.8 acres. The deed to the 9.8 acre Mangala Shri Bhuti property is in the name of Mangala Shri Bhuti, not in Padhrig McCarthy's name.
6. Padhrig McCarthy's involvement with the Mangala Shri Bhuti property is that he is a member of the organization and makes donations.
7. In June 2012, Mr. McCarthy became the Vice President of the Mangala Shri Bhuti organization for the East Coast. This position is an administrative position and he does not have the power to make financial decisions on behalf of the organization.

8. In 2008, some visitors to the Mangala Shri Bhuti camped on an adjacent parcel but this ceased as soon as the Mangala Shri Bhuti organization became aware of it. The Mangala Shri Bhuti organization does not allow its visitors to use the neighboring parcels and has been careful to keep visitors contained on its parcel since the isolated incident in 2008.

ISSUES

1. Whether the Mangala Shri Bhuti was construction on a parcel of fewer than 10 acres.
2. Whether Padhrig McCarthy and the Mangala Shri Bhuti enterprise are considered to be the same "person" under 10 V.S.A. Section 6001(14)(A)(iii) and Act 250 Rule 2(C)(1).
3. Whether the Mangala Shri Bhuti enterprise is using the surrounding parcels of land so that they are considered "involved land" for purposes of the 10 acre calculation. Act 250 Rule 2(C)(5).

STATUTES and RULES

10 V.S.A. §6001(3)(A) defines "development," in part, as:

(I) The construction of improvements on a tract of land, owned or controlled by a person, involving more than 10 acres of land within a radius of five miles of any point on any involved land, for commercial or industrial purposes in a municipality that has adopted permanent zoning and subdivision bylaws.

10 V.S.A. §6001(14)(A) defines "person" in part, as:

(I) shall mean an individual, partnership, corporation, association, unincorporated organization, trust or other legal or commercial entity, including a joint venture or affiliated ownership;

(iii) includes individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from the partition or division of land.

Act 250 Rule 2(C)(5)(a) defines "involved land" as:

The entire tract or tracts of land, within a radius of five miles, upon which the construction of improvements for commercial or industrial purposes will occur, and any other tract, within a radius of five miles, to be used as part of the project or where there is a relationship to the tract or tracts upon which the construction of

improvements will occur such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially affected by reason of that relationship. In the event that a commercial or industrial project is to be completed in stages according to a plan, or is part of a larger undertaking, all land involved in the entire project shall be included for the purpose of determining jurisdiction.

ANALYSIS

1. Construction of improvements for the Mangala Shri Bhuti commercial project had not begun before the original 63 acre parcel had been subdivided. Construction began after the parcel had been subdivided in November 2004 so that the Mangala Shri Bhuti organization owned and situated its commercial project on 9.8 acres. Therefore, an Act 250 permit was not required for the Mangala Shri Bhuti sanctuary based on the parcel size.
2. Padhrig McCarthy and the Mangala Shri Bhuti enterprise are considered to be the same "person" if the qualification of 10 V.S.A. Section 6001(14)(A)(iii) and Act 250 Rule 2(C)(1) are met, see above. Here, the Mangala Shri Bhuti property is deeded to the organization based in Colorado, and not to Mr. McCarthy. Additionally, Mr. McCarthy does not have any control over the finances or any of the financial decisions at the Mangala Shri Bhuti parcel. His role is administrative and he performs maintenance on the parcel. Therefore, Padhrig McCarthy and the Mangala Shri Bhuti organization are not the same "person" and an Act 250 permit is not required.
3. An Act 250 permit is required if there is the construction of improvements for a commercial purpose on more than 10 acres in Vershire. The calculation of acreage for Act 250 jurisdictional purposes includes all "involved land." Here, the Mangala Shri Bhuti organization and its members are not using any other land besides the approximately 9 acre parcel. There was one isolated incident when a neighboring parcel was used by a visitor to the Mangala Shri Bhuti parcel but there has not been another incident since. Therefore, an Act 250 permit is not required because the parcel in question is under 10 acres and there is no other "involved land" that must be included in the calculation.

CONCLUSION

The Mangala Shri Bhuti organization in Vershire, Vermont is not required to obtain an Act 250 permit because there was not construction of improvements for a commercial purpose on more than 10 acres based on the facts and analysis presented here. Please feel free to contact me with any questions at (802) 885-8842.

Best Regards,



Stephanie Gile
Assistant District Coordinator

cc: Certificate of Service

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(A).

Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address within 30 days of the date of this opinion.

Any **appeal** of this decision must be filed with the Superior Court, Environmental Division, within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 and the 5% surcharge required by 32 V.S.A. § 1434a(a), which is \$262.50 as of January 2011.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Montpelier, VT 05620-3201, and on other parties in accordance with VRECP 5(b)(4)(B).

For additional information on filing appeals, see the Court's website at:

<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> Or call (802) 828-1660. The Court's mailing address is: Superior Court, Environmental Division, 2418 Airport Road, Suite 1, Barre, VT 05641-8701.

Notification CERTIFICATE OF SERVICE #3-151

I hereby certify that I sent a copy of the foregoing Jurisdictional Opinion on November 15, 2012, by U.S. Mail, postage prepaid, to the individuals without email addresses and by electronic mail, to the following with email addresses: **Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes.** All email replies should be sent to nrb-act250springfield@state.vt.us

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BY:

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NRB Technician