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February 2, 2017

James R. McCullough, Manager  
James M. McCullough and  
Dylan C. McCullough  
dba Sugarwood Meadow, LLC  
2236 Sewall Brook Road  
Bethel, VT 05032

Re: Jurisdictional Opinion 3-191, Commercial Use of Barn, Royalton

Dear Jim, Dylan and Rupert:

This letter is in response to your written request, dated December 27, 2016, for a jurisdictional opinion regarding whether renting your barn and property out to others for events, such as weddings, requires an Act 250 permit. As explained below, it is my opinion that an Act 250 permit is not required. The facts relied upon are based on a site visit on November 15, 2016, communications with you, and a conversation with Terry Shearer, Regional Engineer, Agency of Natural Resources (ANR), Drinking Water and Groundwater Protection Division.

**I. Background:**

1. You own 100+ acres in Royalton, Vermont, located at 2366 Sewall Brook Road. Access to the land is off North Road and up Sewall Brook Road for approximately one mile. Sewall Brook Road starts out from the North Road as a Class 3 town highway, but becomes a Class 4 road prior to where it serves as an access to the Sugarwood Meadow, LLC property.
2. Approximately eight years ago, an existing, restored 1800's barn was deconstructed and moved from a New Hampshire location, and reconstructed on a new foundation at its current site. The barn is approximately 30-feet by 40-feet, and is two stories with a pitched metal roof. The siding is natural wood.
3. To date, the purpose of the barn has been for personal use by your family and friends, who have used the barn and site for family reunions and have spent much time enjoying the solitude and privacy that the site offers. The upstairs loft of the barn is sparsely furnished, and farm equipment is stored in the barn. The meadow has been maintained by mowing.

4. There is an outhouse for personal use, a shed for a generator, and an outdoor kitchen area with a "patio." There are a couple of picnic tables on site and a few chairs.
5. Non-potable water is sometimes hauled up to the barn and stored in a tank. The water is mostly used to water plants. There is no potable water on site.
6. You and your family, dba Sugarwood Meadow, LLC, now plan on leasing the barn and property to others for events, such as weddings or other gatherings. In addition to the rental fee, you will also require a trash deposit.
7. No construction of improvements to the barn or the premises are proposed. There will be no clearing of trees.
8. Guests will park their vehicles in the meadow. No road improvement is proposed.
9. An event may be catered, and prepared food brought to the site; however, food will not be prepared on site. Grills may be provided for barbequing.
10. You will require that the renter provide portable toilets for guests, and that the waste be properly disposed.
11. The renters will make their own arrangements for portable toilets, tents, catering, food, beverages, and any other necessities for the event. The renter will be responsible for bringing "everything in and everything out."
12. There will be seven or fewer events per year. The events will be scheduled between April 1 and October 30.
13. I spoke with Terry Shearer, Regional Engineer, Agency of Natural Resources (ANR), Department of Environmental Conservation, Drinking Water and Groundwater Protection Division, regarding the use of the barn and premises as you have described. He directed me to the Handwashing and Toilet Facilities guidance document on the ANR website at <http://dec.vermont.gov/sites/dec/files/dwgwp/roguidance/pdf/alternativetoiletpractice.pdf>. Pursuant to the Handwashing and Toilet Facilities guidance, a Wastewater Disposal and Water Supply Permit may be needed when there is a single event lasting more than one week in any year or when there are events lasting more than two consecutive days and occurring more frequently than once per month.
14. A wedding was held at Sugarwood Meadows on June 25, 2016. The event was catered and live music provided.
15. Royalton has not adopted permanent zoning and/or subdivision bylaws.

16. You have requested that this jurisdictional opinion be rendered as a final determination pursuant to 10 V.S.A. § 6007(c). As such, this jurisdictional opinion will be distributed to the adjoining landowners and other persons likely able to demonstrate a particularized interest protected by the 10 Criteria of Act 250 [10 V.S.A. § 6086(a)(1) through (10)] (names and addresses as provided by you), and, as required, notice of the issuance of the opinion will be published in The Herald of Randolph, a local newspaper generally circulating in the area.

## II. Relevant Rules and Law:

1. 10 V.S.A. § 6081 requires an Act 250 permit prior to commencing development.
2. 10 V.S.A. § 6001(3)(A), in part, defines “development” as:
  - (ii) The construction of improvements for commercial or industrial purposes on more than one acre of land within a municipality that has not adopted permanent zoning or subdivision bylaws.
3. Act 250 Rule 2(C)(2) “*Commencement of construction*” means the construction of the first improvement on the land or to any structure or facility located on the land, including work preparatory to construction such as clearing, the staking out or use of a right-of-way or in any way incidental to altering the land according to a plan or intention to improve or to divide land by sale, lease, partition, or otherwise transfer an interest in the land.
4. Act 250 Rule 2(C)(3) “*Construction of improvements,*” in part, means any physical change to a project site . . .
5. Act 250 Rule 2(C)(4) “*Commercial purpose*” means the provision of facilities, goods or services by a person other than for a municipal or state purpose to others in exchange for payment of a purchase price, fee, contribution, donation or other object or service having value.

## III. Discussion and Analysis:

Eight years ago, you reconstructed the barn on a foundation on your property. Your intention for reconstructing the 1800’s barn was for personal use, not to rent out to others; therefore, the construction was not for commercial purpose.

You are now proposing to continue offering your existing barn and premises, as is, for lease to others for a fee. Payment of rent creates a “commercial purpose.” *Re: S-S Corporation/Rooney Housing Developments*, DR #421, Findings of Fact, Conclusions of Law and Order at 7 (Nov. 25, 2003), affirmed, 2006 VT 8 (Vermont Supreme Court). Therefore, what you are proposing is for a commercial purpose.

However, no new construction is proposed, and the site will be rented out seven times or less during the period April through October.

An Act 250 permit is not required because you are not constructing any improvements for commercial purpose, you are merely offering your existing barn and premises to others for a fee for only seven events per year.

Any change in use of the barn and/or premises, or facts relied upon in this opinion, may require an Act 250 permit and/or Wastewater Disposal and Water Supply Permit. Prior to changing the use of the barn and/or premises, contact Act 250 District Coordinator and Regional Engineer in the Drinking Water and Groundwater Protection Division for a determination as to whether these permits are required.

#### **IV. Conclusion**

It is my opinion that renting your barn and property out to others for events, such as weddings, does not require an Act 250 permit.

Please contact me at [Linda.Matteson@vermont.gov](mailto:Linda.Matteson@vermont.gov) or 802-289-0598 with any questions.

Best regards,



Linda Matteson  
District 3 Coordinator  
802-289-0598  
[Linda.Matteson@vermont.gov](mailto:Linda.Matteson@vermont.gov)  
<http://www.nrb.state.vt.us/lup/index.htm>

cc: See 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. Any appeal of this decision must be filed with the Superior Court, Environmental Division (32 Cherry Street, 2<sup>nd</sup> Floor, Ste. 303, Burlington, VT 05401) 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 \$295.00. The appellant also must 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 Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

**E-Notification CERTIFICATE OF SERVICE # JO 3-191**

I hereby certify that I, the undersigned, sent a copy of the foregoing Jurisdictional Opinion JO 3-191 on February 2, 2017 by U.S. Mail, postage prepaid, to the individuals without email addresses, and by electronic mail to the following with email addresses. All email replies should be sent to [NRB.Act250Springfield@vermont.gov](mailto:NRB.Act250Springfield@vermont.gov). **Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the NRB 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 the District Office of any email address changes.**

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**FOR INFORMATION ONLY**

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By:



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