



**NATURAL RESOURCES BOARD**  
Districts #2&3 Environmental Commission  
100 Mineral Street, Suite 305  
Springfield, VT 05156-3168

July 18, 2019

Dennis and Shelly Marquise  
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Ryegate, VT 05042  
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Jurisdictional Opinion #3-199, Log Concentration Yard, Newbury

Dear Dennis and Shelly:

This letter is in response to your request for a jurisdictional opinion, dated July 8, 2019. It is my opinion that the creation and operation of a log concentration yard with scales and a small office in Newbury does not require an Act 250 permit.

**A. Facts as I understand them:**

1. Dennis and Shelly Marquise own a 22-acre parcel off Route 302 near the Interstate 91 interchange in Newbury, VT. The tract is mostly open with no development.
2. A logger is interested in purchasing or leasing 8 or more acres of the 22 acres to operate a log concentration yard and will install scales and construct a small office building.
3. Logs from other loggers will be stored on site, sorted, and trucked to appropriate markets.
4. Logs will not be processed on site.
5. The logger will obtain a Town of Newbury permit prior to closing on the sale or lease of the 8 or more acres and will then develop the log yard, install truck scales and small office on the site. Construction and operation of the log yard will not start until the logger owns or leases the 8 or more acres and obtains the Town permit.
6. Dennis and/or Shelly Marquise have not created more than nine lot in Newbury or the district in the last five years.
7. The tract of land is below the level of 2,500 feet in elevation.
8. Newbury has adopted both permanent zoning and subdivision bylaws.

**B. Issues:**

1. Whether the creation and operation of a log transfer facility (also known as a log concentration yard) with weight scales and a small office constitutes "development" thereby requiring an Act 250 permit.
2. Will jurisdiction change if the size of the parcel to be developed is less than ten acres or more than ten acres?
3. Will it matter whether the 8-acre lot is owned or leased by the loggers?

**C. Relevant Statutes and Rules**



10 V.S.A. § 6081(a) No person shall sell or offer for sale any interest in any subdivision . . . or commence development without a permit. This section shall not prohibit the sale, mortgage, or transfer of all, or an undivided interest in all, or a subdivision unless the sale, mortgage, or transfer is accomplished to circumvent the purpose of this chapter.

10 V.S.A. § 6001(3)(A) "Development" means, in part:

- (i) The construction of improvements on a tract or tracts 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(3)(D) The word "development" does not include:

- (i) The construction of improvements for farming, logging, or forestry purposes below the elevation of 2,500 feet.

10 V.S.A. § 6001(19)(A) "Subdivision," in relevant part, means:

- (i) A tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on any lot, or within the jurisdictional area of the same District Commission, within any continuous period of five years. . .

Act 250 Rule 2(B)(1) Counting of lots for the purpose of resale. In order to determine the number of lots created by a person, a lot shall be deemed to have been created for the purpose of resale with the first of the following events:

- (a) The filing of a plot plan in the town land records depicting the subdivided lot or lots;
- (b) The issuance of any required municipal approval for the subdivided lot or lots that becomes final;
- (c) The issuance of a wastewater system and potable water supply permit for the subdivided lot or lots by the Agency of Natural Resources or delegated municipality;
- (d) In the absence of any of the above, the conveyance of a lot or lots created by a person.

#### **D. Discussion:**

The on-line Meriam-Webster dictionary defines forestry as "a) the science of developing, caring for, or cultivating forests; and b) the management of growing timber." The on-line definition also states the main objective of managing forests is to "maintain a continuous supply of timber through carefully planned harvest and replacement."

Silviculture is another name for forestry. The Society of American Foresters (SAF) Terminology describes silviculture, in part, as ". . . the science and art of cultivating forest crops . . . , the theory and practice of controlling the establishment, composition . . . and growth of forests." <sup>1</sup>

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<sup>1</sup> Forestry Handbook, 2<sup>nd</sup> edition, edited by Karl F. Wenger for the Society of American Foresters, 1984, page 414.

"Logging includes all operations from the stump to delivery to the mill, including felling, delimbing, bucking, transport to roadside, loading, and hauling."<sup>2</sup>

Executive Officer Opinion #EO-91-238, issued on July 25, 1991, by the Environmental Board's (known now as the Natural Resources Board) Executive Officer, concluded that an Act 250 permit was not required for the operation of a log transfer station in Plainfield, Vermont. The Executive Opinion also concluded that the construction of a garage used for storage of and maintenance of vehicles used in that log transfer operation and the placing of fill on the site of the log transfer operation did not require an Act 250 permit. The Plainfield project is similar to the proposed log concentration yard in Newbury. Neither operation proposes to process logs on the site, both projects involve the storage of logs obtained from other sites to be sorted for transporting to mills.

Forestry and logging below 2,500 feet in elevation is exempt from Act 250 jurisdiction. The dictionary and SAF definitions of "forestry" and "logging" include much more than cutting down trees, it also includes transporting logs to the market. The operation of the concentration yard, the installation of a scale and a small structure to use as an office, all fall within the use of the site for logging.

Because it is my opinion that the operation of a log transfer station with scales and a small office does not trigger Act 250, it doesn't matter if the size of the tract is 8 acres or 108 acres, the answer is the same. Act 250 jurisdiction does not attach.

The Marquises' have not created more than nine lots in Newbury or the district or within five miles, therefore, if they did create two lots by offering to sell or lease an 8-acre lot to others, they can do so without triggering Act 250. If the 8-acre lot was to be sold to the interested logger, the number of lots created by the Marquises would be two. If they leased the 8-acre lot to the interested logger, it may count as two lots if they were required to obtain a municipal or state permit for the creation of that 8-acre lot.

#### E. Conclusion

The operation of a log concentration yard with scales and a small building does not require an Act 250 permit.

Best regards,



Linda Matteson  
District Coordinator  
District #3 Environmental Commission  
802-289-0598 or [linda.matteson@vermont.gov](mailto:linda.matteson@vermont.gov)

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<sup>2</sup> Forestry Handbook, 2<sup>nd</sup> edition, edited by Karl F. Wenger for the Society of American Foresters, 1984, page 491.

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, 2nd 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(b)(1) (2015), which is \$295.00. The appellant also must serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the VRECP.

Attachments: Exhibit 001 EO-91-238  
Exhibit 002 Email sequence between Marquise to Matteson  
Exhibit 003 Natural Resource Atlas – location map

cc: See Certificate of Service

