



State of Vermont
Natural Resources Board
Act 250 Jurisdictional Opinion
JO-7-325

This is a Jurisdictional Opinion based upon available information and a written request from the Landowner/Agent or Other Person identified below. This Jurisdictional Opinion will become final and any person or entity who is individually notified will be bound by this Opinion unless that person or entity files a timely request for reconsideration (see bottom of page). This Jurisdictional Opinion addresses Act 250 Jurisdiction only. Other permits may be required (see <http://www.anr.state.vt.us/dec/permits.htm>). For additional information, please contact the Agency of Natural Resources permit specialist (see <http://www.anr.state.vt.us/dec/ead/pa/index.htm>).

I hereby request a jurisdictional opinion from the District Coordinator regarding the jurisdiction of 10 V.S.A. Chapter 151 (Act 250) over the project described below:

Landowner Agent Other:

Jim Crone
Burklynn Inn, LLC
2864 Darling Hill Road
East Burke, VT 05832
Jim@BURKLYNINN.COM

PROJECT DESCRIPTION:

Determine if a planned pub-restaurant, proposed to be located within an existing barn (to be expanded with a deck(s)), requires an Act 250 permit in consideration of new information provided by the JO Requestor in support of an apparent claim of pre-existing development status. The project is further identified in the JO Request and Exhibits (1-10) on the [Act 250 Database](#) (see Project Number JO 7-325). Following are noted:

- A JO was previously issued for the project, on 1-14-2019, see Exhibit 3 (the 2019 JO)
- JO requestor's new information and evidence is identified within the JO request, Exhibit 2
- The improvements to be constructed include a new exterior deck, new (replacement) water supply (already constructed reportedly 2 years ago) and as-needed replacement of a septic system (existence of a septic system has not been verified by the Coordinator, no details were received)
- Project progress plan, received in 2019, depict construction of a bar, dining area, women and men's restrooms, kitchen, and two exterior decks (Exhibit 10, page 5).
- The project will access via driveway(s) from Darling Hill Road
- Parking improvements will include addition of gravel to formalize 25 spaces of parking in an area mapped as 9B primary agricultural soils (see Exhibit 6)
- The barn is located on the tract where a bed and breakfast (located elsewhere) operates, that is the subject of JO 7-283 issued in 2018 (see Exhibits 4 and 5), noting that the 2018 JO expressly did not encompass review of the subject restaurant pub project
- If the subject barn ever operated as a restaurant pub (this has not been substantiated by the Coordinator), it has not been operated as such for many years. The Coordinator has observed the subject project area (which is readily visible from the public road), for 20+ years, at least annually, since May 2000 or earlier, and has never observed a restaurant pub operating in the subject project area of the tract
- The project site appears to qualify as a historic site (see photos, Exhibit 10)
- The tract is 80+ acres, partially located in Burke and partially located in Lyndon (Exhibits 7, 8)
- The towns of Burke and Lyndon have both adopted permanent zoning and subdivision bylaws and are so-called "10 Acre towns" for purpose of Act 250 jurisdiction

Project Type: Commercial Subdivision Municipal/State Mixed
 Farming/Forestry Housing Other:

Has the landowner or affiliated person subdivided before? Yes No N/A

AN ACT 250 PERMIT IS REQUIRED: **YES** **NO**

BASIS FOR DECISION: As identified in the 2019 JO (Exhibit 3), the project is a “development” pursuant to 10 V.S.A. §6001(3)(A)(i). Additionally, the new information (Exhibit 2) has been considered, and the JO requestor (petitioner) (i) has not demonstrated that the subject restaurant pub project was in existence prior to June 1, 1970, and (ii) has not demonstrated that the restaurant pub project (if such project existed) was not abandoned. Lastly, even if petitioner demonstrated and established pre-existing development status for a commercial restaurant pub use in the subject barn structure, the pub restaurant project has potential for impact under several criteria (i.e. 1 and 8, noise (new exterior decks); 1B waste disposal; 2 and 3 water supply; 5 traffic and parking; 8 aesthetics and historic sites; 9B primary agricultural soils, 10 town plan) thus would constitute a “substantial change” pursuant to Act 250 Rule 2C(7) for which an Act 250 permit is required.

Following excerpts from the NRB Environmental Case Notes (i.e. the ENotes, available at <https://nrb.vermont.gov/sites/nrb/files/documents/E-NOTES.pdf>) are noted:

* To establish that project is exempt as a preexisting development, Petitioner must demonstrate that it was in existence before, and has not been abandoned since, June 1, 1970. Re: Hale Mountain Fish and Game Club, Inc., DR #435, FCO at 15 (8/04/05), reversed and remanded on other grounds, In re Hale Mountain Fish and Game Club, Inc., 2007 VT 102 (9/13/07)(mem.); Re: Champlain Marble Corp. (Fisk Quarry), DR #319, FCO (10/2/96).

* Plant is pre-existing where it was built prior to 1970 and has been in continuous commercial use. Kelly Green Recycling Facility, DR #293 (8/24/94).

* To qualify for exemption as a pre-existing development, one must establish that the particular land use has not been abandoned. U.S. Quarried Slate Products, Inc., DR #279 and #283 (10/1/93) (20-30 year lapse in use of a quarry pit constitutes abandonment); Village of Cambridge Water System, DR #272 (9/15/93).

SIGNATURE: 

DATE: May 5, 2022

Kirsten Sultan, Coordinator, District #7 Environmental Commission
Telephone: (802) 751-0126 Email: kirsten.sultan@vermont.gov
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Jurisdictional opinions are 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. Appeals of jurisdictional opinions 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). 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.