



ACT 250 JURISDICTIONAL OPINION NO. 1-394

State of Vermont

Natural Resources Board

District 1 Environmental Commission

440 Asa Bloomer State Office Building

88 Merchants Row, 4th Floor

Rutland, VT 05701

<https://nrb.vermont.gov/>

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This is a Jurisdictional Opinion based upon available information and a written request from the landowner. Any notified person or entity will be bound by this opinion unless that person or entity files a request for reconsideration with the State Coordinator or an appeal with the Superior Court, Environmental Division within 30 days of the issuance of this opinion (see below). This Opinion identifies Act 250 Jurisdiction only. Other permits may be required (e.g., <https://dec.vermont.gov/permits>). For more information, please contact the Agency of Natural Resources Permit Specialist serving your area: (<https://dec.vermont.gov/environmental-assistance/permits/specialists>).

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

Evelyn and James Des Marais
215 Ella Dean Road
Brandon, VT 05733

- Landowner
 Agent
 Other

Project Description:

The landowners propose to rent out a portion of their property for weddings and similar events. The 1,250+/- acre property is already improved with a homestead, a guest house, and a complex of historic agricultural structures. The landowners would like to utilize one of those barns for events—the historic carriage barn that is located on Ella Dean Road just to the west of their existing homestead.

The property is currently dedicated to farming. The landowners propose to host up to 14 events per year. The landowners do not propose to make any improvements to the property whatsoever for the purpose of holding events. The historic carriage barn will be offered for use during events, as-is. The property includes open fields that can be utilized for parking without



any improvements. The landowners will provide the site and electricity. All other items, such as tents, chairs, and toilet facilities must be brought onto the property by the renters. Renters will be responsible for removing all of the aforementioned items and garbage from the premises after the event is finished.

Existing Act 250 permit number(s) or series: N/A

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

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

If Yes: Location: _____ no. of lots: _____ Date _____

AN ACT 250 PERMIT IS REQUIRED: YES NO

BASIS FOR DECISION:

10 V.S.A. § 6081 requires an Act 250 permit prior to commencing development or construction on a development.

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

(iii) The construction of improvements for commercial or industrial purposes on a tract or tracts of land, owned or controlled by a person, involving more than one acre of land within a municipality that has adopted permanent zoning and subdivision bylaws, if the municipality in which the proposed project is located has elected by ordinance, adopted under 24 V.S.A. chapter 59, to have this jurisdiction apply.

The Town of Brandon has adopted permanent zoning and subdivision regulations, but has elected to remain a “one-acre town” for the purposes of “development” under 10 V.S.A. § 6001(3).

Act 250 Rule 2(C)(2) defines “commencement of construction” as:

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.

Act 250 Rule 2(C)(3) defines “construction of improvements,” in relevant part, as:

“... any physical change to a project site ...”

Act 250 Rule 2(C)(4) defines “commercial purpose” as:

“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.”

The landowners propose to offer their existing barn and premises, as is, for rental to others for a fee. Payment of rent creates a “commercial purpose.” However, the landowners have represented that no improvements will be constructed as part of their plans to rent their property for events. Therefore, it is my opinion that renting the barn and the property to others for events, such as weddings, does not require an Act 250 permit. Any construction of any 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 it for a commercial purpose other than farming as defined under 10 V.S.A. § 6001(22)(E), will provide cause for me to revisit this opinion.



DATE: December 15, 2020

Aaron J. Brondyke, State Coordinator
Natural Resources Board
10 Baldwin Street
Montpelier, VT 05633-3201
802-595-2735
NRB.Act250RutlandStaff@vermont.gov

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(B). 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 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 the entry fee required by 32 V.S.A. § 1431 with the Notice of Appeal, which is \$295.00. The appellant must also 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 Vermont Rules for Environmental Court Proceedings.