



ACT 250
JURISDICTIONAL OPINION NO. 4-279

State of Vermont

Natural Resources Board

District 4 Environmental Commission

111 West Street

Essex Junction, VT 05452

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

[phone] 802-879-5614

This is a Jurisdictional Opinion based upon available information and a written request from the landowner/agent or other person. 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.

Patrick Dunseith, Land Manager
Intervale Center
180 Intervale Road
Burlington, VT 05401

- Landowner
 Agent
 Other

Project Description: The Intervale Center proposes to construct a cold storage building with footprint dimensions of 20 feet by 30 feet. The building foundation will be a concrete slab on grade, and the building will be constructed using insulated panels. The building will be used for the storage of non-saleable produce for donation to the charitable food system, as well as for the Intervale Center's free CSA program. The majority of the produce would come from the Intervale's tenant farms. A small amount of produce would be brought in from farms offsite.

Existing Act 250 permit series: 4C1206

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. § 6001(3)(D)(i) exempts “the construction of improvements for farming...below the elevation of 2,500 feet” from land use permit jurisdiction.

10 V.S.A. § 6001(22)(E) defines “Farming,” in relevant part, as follows:

“the on-site storage, preparation and sale of agricultural products principally produced on the farm.”

Act 250 Rule 2(C)(18) defines “The Farm” as follows:

“lands which are used for any purpose outlined in 10 V.S.A. § 6001(22), which are owned or leased by a person engaged in the activities stated in 10 V.S.A. § 6001(22), if the lessee controls the leased lands to the extent that they would be considered to be the lessee’s own farm. Indicia of such control include whether the lessee makes the day-to-day decisions concerning the cultivation of the leased lands, subject to incidental conditions of the lessor, and whether the lessee works the leased lands during the lease period.”

Act 250 Rule 2(C)(19) states, in relevant part, that “principally produced” means:

“For purposes of 10 V.S.A. § 6001 (3)(D)(vii)(II), that more than 50% (either by volume or weight) of the ingredients or materials contributing to a final agricultural product or products which results from the activities stated in 10 V.S.A. § 6001(22)(A)-(D), and which is stored, prepared or sold at the farm, is grown or produced on the farm.”

The proposed cold storage building appears to meet the farming exemption under 10 V.S.A. § 6001(3)(D)(i). In order to fully meet the farming definition, the products stored in the proposed cold storage building must be ones that are “principally produced on the farm.” You have represented that more than 50% (by volume or weight) of the products to be stored in the proposed cold storage building will be produced on Intervale farmland owned or controlled by either the Intervale Center or by its tenant farmers. Any change in the use of the proposed building that extends beyond the definition of “principally produced” in Act 250 Rule 2(C)(19) will provide cause for me to revisit this opinion.



DATE: September 18, 2020

State Coordinator

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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.