



State of Vermont
Natural Resources Board
Act 250 Jurisdictional Opinion
JO-7-288

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:

Karl Wiedemann
973 Ridge Road
Kirby, VT 05851

PROJECT DESCRIPTION:

On a ±14.7 acre parcel (to be subdivided, and currently owned by DOR Associates), that is subject to Act 250 #7C0600 and amendments: grow grapes, produce and store wine, market and sell wine. The “Darling Vines” winery project includes construction of a “multi-purpose” building and related infrastructure, for wine production, storage, tasting and sales, marketing, education, and for special events such as rehearsal dinners. The building can be converted into a single family residence if the winery is sold. The project is located on Darling Hill Road, Lyndon, and is further detailed in an email dated 4-8-19 from Karl Wiedemann to Kirsten Sultan, with attachments.

It is noted that the Agency of Agriculture Food & Markets issued a determination (letter dated 3-25-19 by Anson Tebbetts, AAFM Secretary providing, in part, as follows: *“The Agency renders opinions, based on the Agency’s Required Agricultural Practices Regulations (RAPs) as to whether an individual is farming and the RAPs apply to the operation [...] Section 2.15 of the RAPs states a “farm structure” means a structure that is used by a person for farming, including a silo, a building to house livestock,... or customarily used to carry out the agricultural practices defined in Section 3.2 [of the RAPs]...”. A farm structure also must be used by a person who can demonstrate meeting the minimum threshold criteria as found in Section 3.1 of the [RAPs]. A building that includes a tasting room in addition to a production facility does not meet the definition of a farm structure. Tasting agricultural products and construction of a tasting room are not a RAP regulated by the Agency [...] the proposed cultivation of land for the production of wine/vineyard is considered an agricultural practice governed by the RAPs. The building associated with wine tastings and its construction is not a farm structure”.*

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:

The “multi-purpose” building and related infrastructure and activities (e.g. driveway; parking; wastewater and stormwater improvements; water supply; patio; special events to include rehearsal dinners; landscaping, exterior lighting and signage, etc.) encompass uses that are beyond the Act 250 definition of “farming”, are a “material change” to the Act 250 development subject to jurisdiction via Act 250 #7C0600 and amendments, pursuant to Act 250 Rule 2c(6), and thus require an Act 250 permit amendment pursuant to Act 250 Rule 34, prior to commencing construction.

Further, the on-site growing, harvesting and storage of grapes, and manufacture and bottling of wine from the on-site grapes following grape maturity, all qualify as “farming” for which an Act 250 permit amendment is not required pursuant to 10 V.S.A. §6001(3)(D)(i), §6001(22)(A), and §6001(22)(E).

Note: wine sales and/or wine education are a component of both the “multi-purpose” building and the exempt farming; precedent supports that these uses (sales, education) fall within the scope of the project for which a permit amendment is required. Also, manufacture and bottling of wine from grapes procured from off-site, falls under the jurisdiction of Act 250, for the planned “start-up” period (3-4 years?) when the crop of on-site grapes are not yet mature, and when grapes are procured from off-site to produce wine, i.e. in the instance when less than 50% (either by volume or weight) of the ingredients or materials contributing to the production of wine, are grown or produced on the on-site farm, pursuant to Rule 2(C)(19)(b); as such, this “early wine production” does not qualify as “farming”, is a material change pursuant to Rule 2c(6) and requires an Act 250 permit amendment pursuant to Rule 34.



SIGNATURE: _____
Kirsten Sultan, Coordinator, District #7 Environmental Commission
Telephone: (802) 751-0126 Email: kirsten.sultan@vermont.gov
374 Emerson Falls Road, Suite 4, St. Johnsbury, VT 05819

DATE: April 11, 2019

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. As of May 31, 2016, with the passage of Senate Bill 123 (Act number pending), Act 250 Rule 3(C) (Reconsideration by the Board) is no longer in effect. Instead, 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 and the 5% surcharge required by 32 V.S.A. § 1434a(a), which is \$262.50. 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.

From: [Sultan, Kirsten](#)
To: [St. Sauveur, Gina](#)
Subject: FW: Darling Hill Vineyard
Date: Wednesday, April 10, 2019 2:29:19 PM
Attachments: [2019 Farm Determination Form_Darling Vines_Signed.pdf](#)
[Darling Hill Map.pdf](#)
[Darling Vines V2.pdf](#)

From: Karl Wiedeman <karl@brickpr.com>
Sent: Monday, April 8, 2019 9:34 AM
To: Sultan, Kirsten <Kirsten.Sultan@vermont.gov>
Subject: Darling Hill Vineyard

Hi Kirsten,

I hope you had a great weekend and that most of your snow is melting away. Thank you again for your time on the phone on Friday. I appreciate your insight in navigating the world of Act250.

Attached please find:

The Survey Map of the land (we are the 14.7 acres at the bottom of the page).

Our farm determination letter

Out business overview plan including proposed building, yearly production, etc.

In regards to the farm determination letter, I received this note from the Town of Lyndon about the accessory on-farm business...

"Based on what I understand you would like to do with the property, i.e. grow grapes, make wine, host a tasting room, and hold events featuring the wine, it would appear that the storage, preparation, processing, and sale of the wine may still need conditional use review as you won't meet the 50 rule for at least first three years (see definition of accessory on-farm business below). That said, the tasting room and the hosting of events appears to meet the definition of an accessory on farm business regardless of the origin of the grapes so that should make review of any adverse traffic impacts much smoother!

24 V.S.A. § 4412(11) Accessory on-farm businesses. No bylaw shall have the effect of prohibiting an accessory on-farm business at the same location as a farm. "Accessory on-farm business" means activity that is accessory to a farm and comprises one or both of the following:

- I. The storage, preparation, processing, and sale of qualifying products, provided that more than 50 percent of the total annual sales are from qualifying products that are principally produced on the farm at which the business is located.
- II. Educational, recreational, or social events that feature agricultural practices or qualifying products, or both. Such events may include tours of the farm, farm stays, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products."

Please let me know if you have any other questions or need more information from me.

Thanks!

-Karl

Karl Wiedemann

President / Owner

e: Karl@brickPR.com

p: 203-906-5806

w: www.brickPR.com

Representing – Park Tool, Rab, Lowe Alpine, Sigma Sport, CampoVelo and Kingdom Cycling & Experiences

The logo for 'brick' is displayed in a bold, lowercase, sans-serif font. The letter 'i' is stylized with a red dot above it.

From: [Sultan, Kirsten](#)
To: [St. Sauveur, Gina](#)
Subject: FW: Darling Hill Vineyard
Date: Wednesday, April 10, 2019 2:29:31 PM
Attachments: [image003.png](#)

From: Sultan, Kirsten
Sent: Wednesday, April 10, 2019 2:27 PM
To: Karl Wiedeman <karl@brickpr.com>
Subject: RE: Darling Hill Vineyard

Hi Karl,

Thank you again for contacting my office and for submitting information for review, this week. I am writing to let you know that I've finished reviewing the information submitted, and I have also completed some related research.

In short, the "multi-purpose" building and related infrastructure and activities (e.g. driveway; parking; wastewater and stormwater improvements; water supply; patio; special events to include rehearsal dinners; landscaping, exterior lighting and signage, etc.) encompass uses that are beyond the Act 250 definition of "farming", are a "material change" to the Act 250 development subject to jurisdiction via Act 250 #7C0600 and amendments, pursuant to Act 250 Rule 2c(6), and thus will require an Act 250 permit amendment pursuant to Act 250 Rule 34, prior to commencing construction.

Further, it is my opinion that the on-site growing, harvesting and storage of grapes, and manufacture and bottling of wine from the on-site grapes following grape maturity, all qualify as farming and thus would be exempt, i.e. would not require an Act 250 permit amendment.

I note that wine sales and/or wine education are a component of both the "multi-purpose" building and the exempt farming; precedent supports that these uses (sales, education) fall within the scope of the project for which a permit amendment is required. Also, manufacture and bottling of wine from grapes procured from off-site, falls under the jurisdiction of Act 250, for the planned "start-up" period (3-4 years?) when the crop of on-site grapes are not yet mature, and when grapes are procured from off-site to produce wine, i.e. in the instance when less than 50% (either by volume or weight) of the ingredients or materials contributing to the production of wine, are grown or produced on the on-site farm, pursuant to Rule 2(C)(19)(b); as such, this "early wine production" should be included in a permit application.

I appreciate this isn't the answer you were hoping for. A more formal signed jurisdictional determination will follow under separate cover. I would be happy to meet with you to aid your preparation of an Act 250 permit application. Please don't hesitate to contact me with any questions.

All best,

Kirsten



Kirsten Sultan, P.E., District Coordinator
District #7 Environmental Commission
[phone] 802-751-0126 [fax] 802-748-6687
[email] kirsten.sultan@vermont.gov
[website] www.nrb.vermont.gov
Natural Resources Board
374 Emerson Falls Road, Suite 4
St. Johnsbury, VT 05819

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Sent: Monday, April 8, 2019 9:34 AM
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CERTIFICATE OF SERVICE

I hereby certify that I, Gina St Sauveur, Natural Resources Board Technician, District #7 Environmental Commission, sent a copy of the foregoing document Jurisdictional Opinion # JO 7-288 for Karl Wiedemann, Kirby VT by U.S. Mail, postage prepaid to the following individuals without e-mail addresses and by e-mail to the individuals with e-mail addresses listed, on this 11th day of April, 2019.

Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or e-mail below. If you have elected to receive notices and other documents by e-mail, it is your responsibility to notify our office of any e-mail address changes.

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Kirby, VT 05851
karl@brickpr.com

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Technician