

STATE OF VERMONT
ENVIRONMENTAL BOARD
10 V.S.A. CHAPTER 151

RE: **"Waterland"**
Montgomery, Vermont 05470

DECLARATORY RULING
No. 113

This is a petition pursuant to Environmental Board Rule 4 for a declaratory ruling on the applicability of Act 250 to a **proposed** rainbow trout hatchery called **"Waterland"**, to be built in Montgomery, Vermont. The petition was filed on February 5, 1980. The Board held a hearing on the petition on March 11, 1980. Present at the hearing were: Ed Deptula for the petitioner, and Stephen Kerr of the Vermont Department of Agriculture. On March 24, 1980, petitioner submitted additional information on the project to the Board in writing.

Petitioner claims an exemption for the proposed hatchery under the language of 10 V.S.A. **§6001(3)** which states that "construction for farming, logging or forestry purposes below the elevation of 2500 feet" is not "development" requiring a permit under Act 250. The request raises two questions: (1) whether the raising of fish for food, in general, is "farming" within the meaning of the Act; and (2) if so, whether this particular project qualifies for that exemption.

FINDINGS OF FACT

1. Petitioner proposes to construct and operate a fish hatchery on a 26-acre parcel of land off Route 242, Montgomery Center, Vermont. The hatchery will consist generally of hatchery buildings and raceways; a fresh water supply system; and a number of stocking ponds to hold trout above fingerling size.
2. Petitioner expects to sell its trout in the following markets: to state agencies for the stocking of streams; to local business groups for recreational stream and pond stocking; and to local restaurants and stores for human consumption. In addition, Waterland proposes to provide fry and fingerlings to local farmers to raise in their own ponds, and then to buy full-grown fish back from the farmers, flash freeze them and sell them for human consumption.
3. Aside from the general outline of the petitioner's proposal as summarized above, petitioner has not developed any plans for this project that would assist the Board in determining its basic elements, size, or potential impacts under the criteria of Act 250. Petitioner has not, for example, stated definitively whether fish will be raised above fingerling size in ponds on the site or developed solely by local farmers; whether the fish will be marketed for stream stocking or for human consumption; whether the fish will be processed on site before shipment to restaurants or stores; or whether they might open a fishing-for-fee pond on the site to attract customers and **dispose** of some of their stock.

3/27/80

CONCLUSIONS OF LAW

1. We conclude that, in general, the raising of fish for direct human consumption is "farming" within the meaning of that term in 10 V.S.A. §6001(3). However, the raising of fish for other purposes, such as fee fishing, is not "farming". The processing of fish for market by freezing or other methods is not "farming".
2. We are unable to conclude whether the petitioner's project would qualify as "farming" under §6001(3) or whether it would require a permit under 10 V.S.A. §6081. The petitioner's project proposal is at this time far too general in nature to permit us to draw a conclusion on this issue. The additional information submitted after the hearing also fails to resolve the key definitional questions raised in this proposal. As presented to the Board, the proposal contained potential elements that would constitute "development" under §6001(3). Because the exact nature of the project is unknown, we are presently unable to grant the exemption requested. At such time as the petitioner has developed more precise information on the elements, scope, and nature of the project, it should either apply for an Act 250 permit or request a jurisdictional review from the District Environmental Commission.

Dated at Montpelier, Vermont this 27th day of March, 1980.

ENVIRONMENTAL BOARD

By



Margaret P. Garland
Chairman

Members participating
in this decision:

Margaret P. Garland
Ferdinand Bongartz
Melvin H. Carter
Michael A. Kimack
Daniel C. Lyons
Roger N. Miller
Donald B. Sargent
Leonard U. Wilson