



To: House Environment & Energy Committee

Date: March 11, 2024

Re: H. 128- My Farm's experience with a small Accessory on Farm Business, Act 250 & the rest of the regulatory framework of Vermont

From: Laura Olsen, Farmer/Co-Owner, Green Mountain Girls Farm

"Thank you for contacting the Natural Resources Board. Act 250 jurisdiction related to commercial activities at farms isn't straightforward"

This was our farm's introduction to Act 250. I hope my farm's experience last year may help you in your consideration of H. 128. We ran into this because we wanted to serve people, quite occasionally, our farm food. Food that we already could prepare legally, we just didn't have a license to serve it on a plate and have them eat it while they were still on the farm where the food originated.

Below is a bit about my farm and our experience. Thank you for reviewing this as you consider H.128. I also want to thank you for caring about the experience of small businesses and thinking about how the state can make it easier for small farms & businesses to operate, thrive and grow while improving our natural resources which are fundamental to Vermont's economy and health.

Introduction of our Farm

Green Mountain Girls Farm is steeped in the rich culture of Vermont's working landscape and is one of a few Vermont pilot farms certified by the Vermont Environmental Stewardship Program. Our regenerative practices aim to grow food in ways that capture the greatest potential of the sun, rain, and natural systems, while enhancing food quality, plant health, soil life and ecosystems. We also host tours; farm experiences and stays as well as farm-to-table meals.

Our customers and guests choose us because they want their food and tourism choices to support social and ecological health. They satiate their senses, satisfy their quest for connection, and deepen their appreciation of Vermont and small family farms everywhere.

By any measure we are a small-scale operation, growing and grazing on about 20 acres of land in Northfield & Williamstown, with gross annual sales peaking under \$200,000, roughly 65% from our food (farmstand, farmshares) with the remainder agritourism income (tours, experiences and stays).

Cognizant that small, diverse ecological hill farms like ours have been at best [marginally viable](#) for decades, we are none-the-less optimistic for the future of small-holder farms. The global syndemic of obesity, undernourishment, and chronic disease together with ecosystem degradation and climate change, create an opportunity for us to meet emerging needs and succeed via regenerative approaches. The COVID-19 crisis

further opens opportunities to increase resilience as well as participation in conscious travel. We believe regenerative agritourism increases viability for farms and working lands everywhere and already contributes significant value to Vermont's overall brand.

We are a "newer" farm, only 15 years old, we started selling in 2009 after returning to Vermont after a few decades out of state. Mari grew up in Rutland and I grew up in Illinois, but had gone to UVM. Our farmhouse and most farm buildings are in Northfield, but most of our farmland is in Williamstown. We are one of those cross town/cross county properties.

Why Agritourism (Accessory On Farm Businesses)

From the beginning, we planned to do local production as well as agritourism. We planned to pair the two both because our site and experience are well suited to it and because we knew the margins on food, especially sustainably/regeneratively grown food, is slim to none and tourism would be key to helping us be viable.

What we've done historically

For years have tried a mix of "accessory on farm businesses", though we just called it agritourism and supplementing our farmstand, to supplement & increase the sales of our farm raised food. Over the past 15 years we have done:

- Meeting space rentals with a farm lunch
- Classical concerts with Scrag Mtn Music (who were members) with a farm dinner prior
- Stand alone Farm suppers or lunches with a tour
- Farm tours
- Farmstays with included farm tours
- Workshops & classes to inspire folks to buy more....milk, meat, veggies, fruit, etc
- Farm Experiences with or without a farmstay (learn to milk, welcome baby chicks, meet the baby ____; harvest your meal)
- We even served Lattes on the Hoof
- Value added products for our farm-stand, including securing a Retail cutting license from the Agency of Agriculture so we could process our meat

The offerings with a prepared meal we were able to do within the bounds of existing rules, without any special food serving license if they were no more than once a month. This limited the amount we could do such that for many years they functioned primarily as marketing events to get folks to our farm so they'd shop at our farmstand then and hopefully come back. Marketing events that did also bring in some money and work through excess farm food. The menus ALWAYS reflected the abundance of the season, using our excess was a linchpin to having them not cost us too much money.

Challenges

Staying within the 1 time in 30 day frequency has some serious limitations, especially to stay 30 days apart when the logical timing that makes sense to do many of those offers would be clumped a bit not spread evenly 1 month apart, even if we didn't do more than 12 per year. And it thus also prohibited some offers like hosting a 2 day meeting with farm lunches both days. Since we couldn't do a splash of events in one short timeframe, we lost the ability to share the set-up costs & gain the efficiency of one clean-up/set up. As my wife says, we lost the Gladys effect. Her Rutland grandmother was known to host 3 events back-to-back – dinner, luncheon, tea.... If you were going were going to get the good dishes & linen out and ready, use them several times back-to-back.

We are not restaurant or hotel with a dedicated dining space or a big parking lot, so each event required creative space set up. Which ultimately, we deemed took A LOT of time and made many of the events not worth the effort.

Given the limitations of the “occasional event” for years we considered pursuing a catering license (at least we thought that was what was necessary) so that we could serve our farm food to folks more often than 30 days apart. But for years we put it off knowing that it could open a whole list of headaches. And we were doing small events. Meetings for 10-20; even our occasional concerts w/ dinner averaged 40-50, with a few large up to 60-70. Our spaces aren’t big. But it was daunting to think about embarking on it, not knowing what it would take.

What we just tried to expand to & why

Last year, we were approached by a national tour operator to see if we would provide a “Be My Guest” experience for their series of Fall Foliage bus tours which would ideally be a farm tour or hands-on activity and a “elevated meal experience” where the guests could really connect with us, our farm and what is important to us. It offered a real boost in income potential both from highlighting & selling experiences and moving food and products.

The package was hard to pass up:

- 15-20 tours over 4 weeks
- Groups of 40-50 arriving in 1 vehicle (no parking team needed) for 2-3 hours at a time.
- 1 contract & negotiation, they came to us, 0 PR [well 15 years of flamboyant agritourism marketing]
- 500-800 tourists coming through our farmstand
- And a budget that recognized the value of a hands-on, intimate, authentic experience

It was real money that would allow us to put farms in the foreground for foliage season, instead of just the bucolic background; “sell” our excess food in a lunch; have the captive attention of 500-800 folks to inspire them about local food, Vermont & regenerative agriculture; and pull in other local businesses and partners. It was all very appealing because it is HARD to sell enough food locally at a price that allows farm owners to get paid.

The ideal way to really leverage the experience was if our team could prep a meal entirely from the food grown on our farm & partner farms. We already had our retail cutting license which allowed us to make & sell all of the items that would make a logical farm meal, so we could prep & freeze elements ahead. BUT, we would need a catering (we assumed) license to be the ones serving 15 lunches in a month and not incurring the cost of hiring a caterer. So we pursued a catering license for the farm so that we could serve our own food to guests.

And we figured, if we had a catering license, we could add a few other small activities to increase our income and try to keep us viable, such as offering prepared meals to farmstay guests or ready to eat products, actually made from VT food, at our Farmers Market.

How it went....

Given we already had a retail cutting license from the Agency of Agriculture for our farm kitchen, which allows us to process and sell value added products with meat for later consumption, [Soups, sausage, prepped dishes or meals] I hoped that it wasn’t a huge lift to go to a catering license.

I was wrong and in ways and places I hadn't even anticipated.

I thought the challenge was going to be meeting the health departments rules and where they were different from Agency of Agriculture and that may still be one of our challenges.

I hadn't anticipated that for a small addition to our farm business that I'd also have to:

- Secure a jurisdictional opinion on whether we needed an Act 250 permit for catering
 - Which also triggered a look at whether our other agritourism work required (retroactively) an Act 250 permit
- Worry about town permitting.
- Secure a ruling on if we needed a wetlands permit
- Talk to at least 3 agencies & 8 state staff
- Search out and pay handsomely an engineer to assess our wastewater permit and consider whether we needed an amendment
- And this is all before I can even apply for a catering license

We were right early on to be fearful of expanding our farm business and dipping our toes in the regulatory, bureaucratic world.

I am not anti-rule or regulation, I am an environmentalist first, business owner second, but it became abundantly clear that the existing rules and regs are NOT designed for small businesses and especially not for small on-farm businesses. I thought it might be different in Vermont, given we are made up of small businesses and have so much support for farms. But in general business-related rules and regs are not well designed for small businesses and I was clearly naïve to think these would be any different.

So many times I'd get off the phone, shake my head (Ok I probably cried or yelled several times) and considered giving up. I was frustrated by the time and hurdles I had to jump through but also frustrated that this was wasting so much time of state staff. I was answering lots of questions that often weren't relevant to us, but had to be checked off, or weren't relevant because our little accessory on farm business didn't fit in one of the boxes or I wasn't yet to the right person.

All we wanted to do was serve some people, quite occasionally, on a schedule, our farm food. And we already could legally make all of the food we wanted to serve, we just didn't have a license to serve it on a plate and have them eat it while they were still on the farm where the food originated.

That small change didn't seem like it should require hours and hours of phone calls, emails, hiring an engineer, chasing 3 different permits. I could go down a rabbit hole of details... but let me focus on the Act 250 portion since that is what you are trying to address with this bill.

Where Act 250 was involved

The truth is I hadn't even considered that we might need an Act 250 permit. But when the results of the Permit Navigator popped up, there it was under "Permits Likely Needed" Act 250, Wastewater & potable water supply; Wetlands.

Just as a reminder, I was just trying to get a catering license for a farm kitchen that already exists and that has a Retail Cutting License.

Somewhat reassuring was my ANR community assistance person's note to my question about this,

“Unfortunately most of the Permit Navigator Results refer folks to Act 250 due to the wording of that Program’s questions. I would suggest contacting all those State Programs the Permit Navigator identified, even though they may not have jurisdiction, that way in the future it can’t come back to bite you. Most likely you’ll need neither the Wetlands or Act 250 Permits, just the Wastewater System and Potable Water supply.”

No problem, since as a farmer and small business owner, I had loads of time to chase answers that weren’t really needed.

And I did spend way more hours that I really had available going back and forth with various people at state agencies about whether turning our farm kitchen that has a Retail Cutting license into a spot with a catering license for limited events on farm required an Act 250 permit. I didn’t count the hours, but it took multiple emails and a phone interview where I was questioned on things that weren’t even relevant. But that is because he was also checking if our existing agritourism work required an Act 250 permit.

“But I’ll flag for you now that, while producing catering products principally produced on the farm seems likely to qualify as a home occupation or “farming” and thus not require an Act 250 permit, after checking out your website I see that you provide lodging and space events for up to 30 to 40 persons—activities that don’t fit the definition of “farming” under Act 250.”

As I didn’t know how long any of this would take and because it was all required to be addressed before I could even get to apply for the license I was seeking I felt like I had to drop most other things and prioritize this chase.

Act 250 opinion & the surprise warning...

We did receive our Jurisdiction Opinion (and I’d note that it did come quite quickly in about 2 weeks from my first inquiry to Natural Resources Board) and it was deemed that we did not require an Act 250 permit to seek a catering license.

They also deemed we didn’t have to retroactively have an act 250 permit for our agritourism work not because it is integral to the farm and helps sell farm food, but because we didn’t build any structures particularly for the agritourism.

“Based on Requestor’s representations, Act 250 jurisdiction does not attach to the farm tours, farm experiences, farm stays, and classes conducted at the farm because no “construction of improvements” occurred for these activities.”

However, it did flag that some of what they deemed “non-farm” farmstays & events could in future require a permit if we did any expansion.

“Going forward, Requestor should be aware that any construction activity associated with non-farming commercial uses of Green Mountain Girls Farm (including farm tours/experiences, lodging, classes, and events) may, depending on the statutes and rules in effect at the time, trigger Act 250 jurisdiction.”

I am hoping that the changes in this bill will clarify that we would not need an Act 250 permit if we needed to do some expansion to serve our non-production farm activities. Our farm tours, farm experiences, farmstand, farmstays and classes ARE farm activities and they engage people with our farm and food so that they deepen their commitment to buying our food, Vermont food & local food.

How Accessory On-Farm Business bill helped

I want to just note that our Town zoning administrator was awesome at calling my attention to the accessory on-farm business bill, and quickly helped me identify that our catering proposal qualified and helped point me in right direction to just get a few things on record that no town permits were needed.

Support for clarifying the difference & importance of the farm being integral in activities

I also wanted to just offer my and our farm's opinion and support for the clarification that,

"farm's activities, agricultural practices or qualifying products must be an integral component of the event to satisfy the definition of an accessory on farm business"

We strongly agree and LOVE this clarification. We look at our agritourism and even stays and rentals as a way to:

- MOVE MORE Of our product through within event purchases (class fees that pay for our meat/veg, etc.) & meals that feature or for us wholly contain our food
- Increase sales by inspiring folks to shop while at farm;
- Educate & inspire folks about the possibilities for buying, cooking & enjoying local food – ours and others and in our case also inspiring folks on the potential of regenerative ag; and
- Increase revenue

Our main purpose in pursuing a catering license is to have another venue/vehicle/way to sell the food we produce and given less and less folks cook and folks love ready to eat or meals prepared for them, it seems like the way and allows us another "product" we can sell to folks who come for farm tours or farm experiences- eating our food. We would be well above 75 or 85% by either volume or weight of products we produce on farm and nearly 100% (minus olive oil, salt & spices) from Vermont farms. We do supplement a bit for items we don't produce (wheat, etc.) but we already craft our menus to use what we have in excess.

Closing

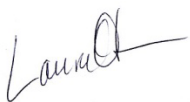
Our efforts with agritourism & accessory on farm businesses probably fit the mold of many: not huge, aware of potential impacts to our neighbors and our dirt road and designing to mitigate them but attempting to make our farm viable and able to continue.

This bill would have reduced one of the hurdles I wasn't expecting to have to cross which was the Act 250 permit evaluation. We didn't need one – which seemed obvious to me, but not the permit navigator nor the NRB staff. This seems to me like one helpful step (hopefully more will come as well) to improve support for farms and other small businesses that are trying to diversify to survive.

Attachments

Act 250 Jurisdictional Opinion

Farm supper menu or farm lunch menu



Laura Olsen
Farmer/Co-Owner
Green Mountain Girls Farm



GREEN MOUNTAIN GIRLS FARM

EAT. STAY. FARM.

Farm Taco Dinner

Pulled Turkey in Tomatillo Sauce

Pasture-raised turkey, tomatillos, onion, garlic, spices & lime juice

VT Corn tortillas

Carrot Radish Slaw

Carrots, Radishes, scallions, cilantro, Sweet Hot sauce, lime juice & spices

Summer Salad with Cilantro Lime Dressing

Salad Greens, pea shoots, radishes, carrots, with Cilantro lime vinaigrette.

Heirloom Tomato Salsa

Tomatoes, Onions, Garlic, Cilantro & Peppers from our Farm & Lime juice

Pickled Jalapeno Sour Cream

Pickled jalapeno Peppers & sour Cream

Farm Hot Sauce Selection

Tomatoes, Peppers, Onions, Garlic & vinegar

Red Velvet Brownies

Beets, Eggs, cocoa, butter, Brookfield Bees Maple Syrup, VT flour

Our livestock is all pasture raised and we follow or exceed the animal welfare and organic guidelines for our meat, vegetables, milk and eggs. The ingredients for this meal almost purely came from our farm (items in green) and all available at our farmstand which is fully stocked & staffed Thursdays 4-7pm and self-serve daily.



ACT 250 JURISDICTIONAL OPINION JO 5-67

State of Vermont

Natural Resources Board

District 5 Environmental Commission

10 Baldwin Street

Montpelier, VT 05633-3201

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

[phone] 802-476-0185

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 District 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 Environmental Assistance Office: (<https://dec.vermont.gov/assistance/permits>).

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

Laura Olsen (“Requestor”)
Green Mountain Girls Farm
laura@eatstayfarm.com

- Landowner
 Agent
 Other

Project Description: Construction of a commercial kitchen in an existing residence at Green Mountain Girls Farm for preparation of food products to be retailed on the farm at an existing farmstand and through direct sale to participants in farm tours, farm experiences, and farm stays, and off-site at farmers’ markets. Food products would be agricultural products principally produced on the farm. Proposed kitchen would occupy 210 square feet of the existing, 4,480-square-foot residence south of the farmstead and would be separate from the existing kitchen in this residence. Two household employees would work in the commercial kitchen, as well as one existing farm employee. No additional parking will be needed. There will be no change to the outside appearance of the property and no potential nuisances, including noise, associated with the project. About 15 buses per year visit the farm in connection with currently conducted farm tours and farm experiences. Existing residence subject to Wastewater System and Potable Water Supply Permit WW-5-5707.



Project Location: 923 Loop Road in Northfield, Vermont. Project is in Northfield. Project Tract includes land in Northfield and Williamstown.

Existing Act 250 permit number(s) or series: None

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: Project meets definition of “farming” at 10 V.S.A. § 6001(22)(E). Project also qualifies as a “home occupation” pursuant to Act 250 Rule 2(C)(17).

While researching this request for a jurisdictional opinion, I interviewed Requestor on June 29, 2023 about the farm tours, farm experiences, and farm stays currently conducted at Green Mountain Girls Farm; specifically, whether any construction of improvements specific to these activities occurred. I also asked Requestor whether any other commercial activities take place at the farm, including lodging, weddings, classes, and other events, and whether any construction of improvements specific to such activities occurred.

In response, Requestor stated that, despite information on the farm’s website to the contrary, the only events that occur at the farm are related to farming (farm tours and farm experiences) and classes about the preparation and storage of foods produced on the farm. The classes make use of existing spaces that were not constructed for the purpose of conducting classes. During non-winter months, Requestor’s parents reside in the house in which the commercial kitchen is proposed. This house is available as a vacation rental during the winter but was constructed for the purpose of housing Requestor’s parents. A finished space in the barn is available for lodging but Requestor did not finish this space; it was finished when they purchased the property. No construction of improvements occurred for farm tours, farm experiences, and farm stays, including parking and related site accommodations for farm tours.

Based on Requestor’s representations, Act 250 jurisdiction does not attach to the farm tours, farm experiences, farm stays, and classes conducted at the farm because no “construction of improvements” occurred for these activities. Going forward, Requestor should be aware that any construction activity associated with non-farming commercial uses of Green Mountain Girls Farm (including farm tours/experiences, lodging, classes, and events) may, depending on the statutes and rules in effect at the time, trigger Act 250 jurisdiction.

[Signature page follows]

/s/ Kevin Anderson DATE: July 5, 2023

Kevin Anderson

District Coordinator

Natural Resources Board

10 Baldwin Street, Montpelier, VT 05633-3201

Telephone: 802-522-6074

Email: Kevin.Anderson@vermont.gov

Any party may file within 30 days from the date of a decision of the District Coordinator a request for reconsideration with respect to the jurisdictional opinion, pursuant to Act 250 Rule 3(B). Any reply to a request for reconsideration shall be filed within 15 days of the service of the request, unless otherwise provided by the District Coordinator.

Any person aggrieved by an act or decision of a District Commission or District Coordinator, or any party by right, may appeal to the Environmental Division of Vermont Superior Court within 30 days of the act or decision pursuant to 10 V.S.A. § 8504. Such appeals are governed by Rule 5 of the Vermont Rules for Environmental Court Proceedings. The appellant must file a notice of appeal with the clerk of the court and pay any fee required under 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. The Natural Resources Board's copy may be sent to NRB.Legal@vermont.gov and/or 10 Baldwin Street, Montpelier, VT 05633-3201.

Please note that there are certain limitations on the right to appeal, including interlocutory appeals. See, e.g., 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5. For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

The foregoing statements regarding requests for reconsideration and appeals are intended for informational purposes only. They neither supplant any rights or obligations provided for by law nor do they constitute a complete statement of the rights or obligations of any person or party.

CERTIFICATE OF SERVICE

I hereby certify that I, Lori Grenier, Natural Resources Board Technician, District 5 Environmental Commission, sent a copy of the foregoing **Jurisdictional Opinion JO 5-67**, on this July 5, 2023 to the following individuals:

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 email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes.

Laura Olsen
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