



576 US Route 2, Kirby, VT  
www.kirbymulchcompany.com

**TO:** House Environment & Energy  
**FROM:** Heath W. Bunnell, Owner Kirby Mulch Company  
**DATE:** March 6, 2024  
**RE:** H. 128 and ACT 250 Testimony

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I am Heath Bunnell, the owner of Kirby Mulch Company, located in Kirby, Vermont. As a business owner with over 25 years of experience in the logging and forestry industry and as an owner of HB Logging LLC, which employs a crew of 13 and grosses approximately \$4.5 million in annual revenue, I opened Kirby Mulch Company in Kirby, Vermont in 2021 to provide a viable local market for secondary wood byproducts in the rural Northeast Kingdom.

## **BUSINESS DETAILS**

Kirby Mulch Company produces and sells, both retail and wholesale, a wide variety of mulch products for landscaping, farm support of plant growth for apple trees and blueberry bushes, mulch for erosion control, and even playground wood chip products. In addition, we produce, sell, and deliver green and seasoned firewood. All the materials to make the mulch and firewood are harvested in the Vermont and New Hampshire forests and sold within a 50-mile radius of our Kirby, Vermont location.

As a receiver of low-grade wood, Kirby Mulch Company serves as a valuable component of the forest and waste management sector's supply chain. We support a sustainable forest economy in the Northeast Kingdom by connecting various forestry-related stakeholders. In addition, we stimulate the local economy through livable wage job creation. In 2023, Kirby Mulch Company produced and sold 7,412 yards of locally produced mulch to over 75 local landscapers, hardware stores, resellers, businesses, hospitals, schools, and local homeowners. Everything about our business is forestry-based and local.

## ACT 250 PERMITTING

We opened Kirby Mulch Company in the spring of 2021, but the dream of starting this business began three years earlier in 2018, when I purchased the 26-acre Kirby Mulch Company property. Prior owners utilized the property for farming; more recently, a brick manufacturing factory and welding shop were located on the property, which was and is zoned as commercial. Even though required, neither the brick factory nor the welding shop were permitted under ACT 250.

It took three years to get through the ACT 250 process. As you know, if I were a farmer on the same property, ACT 250 would not apply to my business. Kirsten Sultan, the District 7 Coordinator, who was exceptionally helpful through the permitting process, indicated in the beginning that this property had many issues that would make getting an ACT 250 permit challenging.

First, we had to get permission to remove the barn on the property, which was over 100 years old, dilapidated, structurally unsafe, and had been significantly modified by prior owners in the past 25 years. However, we still had to go through a review by the Vermont Division for Historic Preservation. Even though extensive documentation concerning the poor condition of the barn was provided to the Vermont Division of Historic Preservation, a site visit was scheduled, and further research was conducted until the Division eventually agreed with my original position that the barn was no longer historically significant.

The Vermont Advisory Council on Historic Preservation then had to review the Division of Historical Preservation opinion. The Council discussed at length if an additional engineering study should be required (at a cost of approximately \$4,500 with engineering and consulting fees) before determining the barn's historical significance. With further input from the Division of Historical Preservation representative, common sense prevailed, and the Council voted that the barn was no longer historically significant. However, one member of the Council abstained from the vote, claiming that under no circumstance could he ever vote in favor of a determination that would result in demolishing a barn. This small example clearly displays the uncertainty and potential additional cost (\$4,500) of addressing just one of the Act 250 criteria. Multiply the process by the ten criteria, and it is easy to understand how the Act 250 application process impedes sustainable business development in Vermont.

To follow is a list of permit issues that had to be worked through before starting Kirby Mulch Company:

- Review by the State of Vermont Division for Historic Preservation and the Vermont Advisory Council to receive permission to remove the large, dilapidated barn on the property.
- Before dismantling the barn, an assessment was required to ensure we were not disturbing any bat habitat.
- Wetland delineation.
- The hiring of a river scientist (\$6,500) to determine the river corridor boundaries, and even after hiring an expert, their findings were not accepted by the Agency of Natural Resources.

- There were numerous flood plain assessments, site visits, and conversations.
- An engineering assessment was required to determine the line of sight for the planned second driveway.
- The fields were assessed for archeological significance, even though the soil has been farmed and turned for over 100 years.
- I paid a premium for the mitigation of primary agricultural soils.

Dealing with multiple state agencies and requirements took significant time and financial resources. Even though my original plan included utilizing the fields for compost production, I eventually eliminated composting from my business model due to permitting challenges.

Regarding ACT 250 compliance, there are numerous businesses in the area that I must compete with that have not complied with the ACT 250 permit requirements. The Natural Resources Board website states that the goal of the enforcement program is to address Act 250 violations across Vermont in a **comprehensive, fair, and even-handed manner** to protect the environment, public health, and the integrity of the Act 250 program. Act 250 enforcement is also intended to **prevent any unfair economic advantage** gained through violations and deter repeated violations of Act 250.

Fundamentally, I believe forestry-related businesses, like farming, should be exempt from ACT 250. Forestry-related businesses use Vermont's natural resources, add value to the local forest supply chain, and enhance Vermont's economy by selling products within the State. The cumulative cost of the Act 250 application for Kirby Mulch Company LLC was \$61,624, a 30-month process, and included the assistance of four hired consultants. These costs added to my business start-up costs. They impacted my ability to operate the new business in an economically sustainable manner in the first few years of operation when any new business is most vulnerable.

Markets for forest products and wood byproducts are shifting, and it is important to encourage new local opportunities for these markets to promote economic development and discourage land fragmentation. Innovative business models like Kirby Mulch Company provide valuable new local forestry markets within the supply chain. The State should modernize regulatory requirements for the forest products sector to strengthen, promote, and protect the Vermont forest products industry instead of hampering business development with uncertain, inefficient, and unfair permitting requirements under ACT 250.

Thank you for considering my comments as you work on this important initiative.



Heath Bunnell, Owner Kirby Mulch Company, LLC

### BUSINESS DETAILS

- Mulch & Firewood Producer - Wholesale & Retail
- Produced & Sold 7,412 Yards of Mulch in the NEK in 2023
- Heath is a Master Logger with 25 Years' Experience
- Business Opened Spring 2021
- Profitable in First Year of Operation
- FY19 \$130,000 Working Lands Grant Recipient

### ACT 250 / ADDITIONAL PERMITTING

- |                        |                        |
|------------------------|------------------------|
| • Historic Barn        | • Wetland Buffers      |
| • Ag Soil Requirements | • Stormwater Rules     |
| • River Corridor       | • Composting Rules     |
| • Driveway Permit      | • Archeological Review |

**30 Months**  
Timeframe to Complete  
ACT 250 Permitting

**\$61,624**  
ACT 250 Permitting  
Related Costs

**Four**  
Number of  
Consultants Hired  
to Complete ACT  
250 Permitting



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