Caroline Sherman-Gordon LL.M.
Legislative Director, Rural Vermont
46 East State Street
Montpelier, VT 05602

Vermont Senate Committee on Agriculture
Room 28
115 State Street
Montpelier, VT 05633-5301

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Request for clarification of the exemption of multi-use agricultural structures from Act 250 permitting in H.484

Dear Senate Committee on Agriculture,

Whereas testimonials provided by our members and allies during Small Farm Action Days don't always reflect the position or policy priorities of Rural Vermont, I welcome the opportunity to testify today on behalf of my organization in support of the request of Fable Farm, Eastman Farm and the Feast and Field collective made on March 26 and April 23 to this committee.

Rural Vermont has worked diligently alongside a diversity of stakeholders, including Agency staff, town and municipal planners, farm business viability staff, farmers and many more since 2017 at in person meetings, by email, and at the Statehouse to collaboratively develop and advocate for legislation related to Accessory On-Farm Businesses which passed into law as Act 143. These meetings have specifically been held in relation to potential jurisdictional conflicts or statutory uncertainties related to differing definitions across policy, including the law on Act 250 in Title 10 V.S.A. and municipal zoning in Title 24 V.S.A. This history and current participation in the dispute between the Feast and Field collective and the newly created Land Use Review Board (LURB) shows that Rural Vermont is committed to the ongoing process of determining how best to educate about, regulate, and promote Accessory On-Farm Businesses as a critical part of fostering farm viability, agricultural literacy, and community connection.

I personally want to share gratitude for the leadership of Vice Chair Senator Major and his efforts to seek relief for the subject of the multi-use structure at Fable Farm being requested to undergo Act 250 permitting within the pending House Miscellaneous Agricultural Bill, H.484.

The language in Section 4 and 5 of Draft No. 1.1 from April 17 is overshooting the mark by aiming to explicitly exempt all construction types of new buildings for event spaces on farms from Act 250 permitting while also establishing an entire new system of regulating the event activity itself on a case-by-case basis through newly created "special event permits." Neither Section 4 nor Section 5 would specifically clarify the regulatory status of multi-use structures with regards to existing Act 250 provisions.

It is Rural Vermont's recommendation to strike Section 4 and 5 as drafted and to insert in lieu thereof the following language as Section 4 in H.484:

"No permit or permit amendment is required for the construction of improvements used as part of an accessory on-farm business as defined in 24 V.S.A. § 4412(11), including for hosting events, as long as the new or existing structure is primarily used as a farm structure as defined in 24 V.S.A. § 4413(d)(2)(A). This subsection shall apply to new or existing structures."

Farming is exempt from Act 250 permitting. 10 V.S.A. §6081 lays out that "no person shall… commence development without a permit." The exemption for farming is nestled in the definition of the term "development" in 10 V.S.A. §6001 where it states that "the word "development" does not include: The construction of improvements for farming…" Act 250 then has its own definition of "farming" - which, by the way, includes the on-site storage, preparation, and sale of agricultural products principally produced on the farm.

The Act 250 statute is silent about multi-use structures, yet it may very well be argued that multi-use structures are already exempt from Act 250. Here is why. The language in 10 V.S.A. §6081 outlines the specific permitting requirements and subsection (s)(1) reiterates from the definitions section that no permits are required for farming. Subsection (t) regarding Accessory On-Farm Businesses was added last year with Act 181 and it's clarifying that no Act 250 permitting is required for structures that serve the purpose of storing, selling or preparing of agricultural products in redundancy of these activities being defined as farming and therefore already out of the purview of Act 250 permitting. The bill that led to this change, H.128, did not pass the House and was not endorsed by Rural Vermont or other farmer-led organizations to our knowledge. The language of H.128 was included last minute without any consideration in the Senate and became Section 18 of Act 181 (2024).

Instead of doing anything for Accessory On-Farm Businesses Act 181 included the confusing last sentence that excluded the "construction of improvements related to hosting events or farm stays" from the exemption of Accessory On-Farm Businesses from Act 250 permitting. However, and this is the crucial part, there is no blanket provision in 10 V.S.A. § 6081 that then goes on to positively require any and all improvements related to farm events or farm stays to trigger Act 250. Ergo, such improvements would still need to meet the definition of the term "development" and at least affect a tract of land involving more than 10 acres within a zoning district or involve more than 1 acre for commercial purposes in a municipality that has not

adopted permanent zoning (10 V.S.A. § 6001 3(A)(i) and (ii)). Structures for farm stays would need to encompass at least 10 or more units to trigger Act 250 permitting (10 V.S.A. 3(A)(iii)).

Again, the law's definition of the term "development" excludes farming and it may very well be argued that any improvements that serve primarily farming purposes are exempt from Act 250 permitting even if they're used also for other purposes. There's relevant legal principles that support this understanding: 1) the principle of legal clarity emphasizes that laws need to be written in a way that is easily understood by those who are expected to comply with them, and 2) that everything which is not forbidden is allowed. In this context these principles demand that it's not enough for Act 181 to exclude improvements for farm stays and farm events from the exemption to Act 250 without also positively naming that they would trigger Act 250 permitting and under which specific requirements.

Furthermore, the language in the draft at hand supports this reading of the law. Beginning on line 19 on page 28 of Draft No. 1.1 - H.484 includes the following: "The District Commission may deny the special event permit if it determines that the event [...] (3) will require the construction of improvements for the event that would otherwise meet the definition of development under this chapter [emphasis added]." This language underscores that constructions of improvements regarding events [or farm stays] only require Act 250 permitting if that would "otherwise meet the definition of development" in 10 V.S.A. § 6001. I recommend fact-checking this interpretation of the law with your legislative council.
I find the legal principles referenced are prohibitive of a differentiating interpretation because as long as a structure is primarily used for agricultural purposes, the exemption for farming that is clearly stated in law would need to be upheld, especially in the absence of any specific language that would result in another conclusion. In addition, the provision related to Accessory On-Farm Businesses in the Act 250 statute cross references the definition of such businesses in Title 24 related to Municipal Zoning where farm structures are explicitly exempt from being subjected to municipal bylaws in 24 V.S.A. § 4413(d)(1)(A) where it states: "A bylaw under this chapter shall not regulate: (A) required agricultural practices, including the construction of farm structures… ."

Multi-use of farm structures is neither explicitly mentioned in the relevant sections of Title 10 nor in Title 24. There would have to be a law that regulates the use of a farming structure that was once legally constructed as a farming structure - free from permitting - to prohibit the multi use of any farming structures. Otherwise it must be interpreted that multi-use is already allowed (what's not prohibited is allowed).

There's probably thousands of farming structures in Vermont right now that serve some non-farming purpose - whether they're defined as an Accessory On-Farm Business or not. Let's imagine for example that a small farm might use an old barn to park their residential cars in it while also storing feed in its hayloft. Improvements to that structure would not trigger Act 250. Similarly, should a farm erect a new pole barn and park their residential cars in there and

maybe put a solar array on the roof of that pole barn while also storing hay in there - it would also be indifferent to Act 250.

Let's face it. Most developments actually don't trigger Act 250. For Rural Vermont the question really is why the Land Use Review Board seeks to expand their jurisdiction over farms, suggesting farms should be more strictly regulated than any other development. For Rural Vermont the trajectory that the LURB is embarking on with challenging the Feast and Field collective seems out of touch with the legislative intention behind Act 143 of 2017, and more importantly, the ever increasing devastating economic parameters persisting and evolving farms have to wrestle with to produce food in service of their land and their communities.

H.484 is a miscellaneous bill on agricultural subjects and traditionally such bills are used for technical corrections and clarifications not to establish new policies. What we're asking in support of our members is a clarification in 10 V.S.A. § 6081(t) or § 6001(D)(i) that farm structures that are primarily used for farming are exempt from Act 250 as the law is currently silent about multi-use farming structures. We ask for your support in finding that such clarification should be in line with the current law that exempts farm structures from Act 250 permitting requirements.

We see the current draft of H.484 Section 5 as the attempt of the Land Use Review Board to use this opportune moment to establish an entirely new policy that would regulate the use of legally constructed farming structures which would be detrimental to the farming community as it would create major bureaucratic hoops for any farm business to host events and to market their products through such events. We don't see any benefit in such a proposal for the farming community and believe it would be contrary to the committee's ambition to provide regulatory relief to the Feast and Field Collective from their penalizing confrontations with the LURB.

We trust that you as Senators will use your decision making power and vote to support the clarifying language we worked on with the attorney of the Feast and Field collective. It would be an unfortunate signal for the agricultural community if the committee wouldn't be able to move clarifying language in the remaining time, as this would perpetuate the power imbalance and potential costs that farmers have in facing the LURB and their administrative acts. But dropping Section 4 and 5 altogether would be preferred in contrast to establishing a new policy that creates new challenges without achieving the desired relief for multi-use structures.

I want to extend my gratitude for the Chair in making the time in hearing us out on this and to all Senators on the Committee for contributing to this issue constructively with their considerations on how to best move forward.

Sincerely,

Caroline Sherman-Gordon LL.M.