

NOTICE OF PUBLIC HEARING for Brandon Development Review Board (DRB)

On Wednesday, January 27, 2021 at 7:00 PM, via Zoom remote conferencing, the Brandon DRB will hold a Public Hearing to review Application #6118 from Evelyn & James des Marais, of 215 Ella Dean Rd. (Parcel #09-01-32)

Application #6118 requests approval for seasonal use of a barn and adjacent grounds located on Ella Dean Road to host weddings and other social events. This is a conditional use the Neighborhood Residential Zoning District. A full copy of the application is posted in Town Office, 49 Center St. and at www.TownofBrandon.com

This Meeting & Hearing will be conducted remotely by Zoom audio & visual programs; and access instructions are posted on Town website, Post Offices, and Town Office.

Interested Parties are to be registered and present testimony, or have submitted written testimony to the Town, by 7:15 pm of the Hearing date or they may forfeit their right to appeal any decision of the DRB to VT Superior Court (Environmental Division).



ZOOM VIDEO or TELEPHONE CONFERENCING INSTRUCTIONS

To attend this meeting you have 2 options:

Option 1: Video Conference This option is available only if:

You have a computer with a built-in or external camera and microphone (Zoom Software download required)

Have a phone with a built-in camera (Zoom App download required)

- Visit: <https://us02web.zoom.us/j/84094564293> (This will prompt the download if you do not have the software/app already installed)

Meeting ID (840-9456-4293)

Option 2: Conference Call: To dial in for audio only:

1. Dial: (929) 205 6099
2. Follow instructions to enter Meeting ID (840-9456-4293) then confirm by hitting pound (#)
3. When prompted to enter participant ID, just hit pound (#) again to enter meeting

If you have questions, I will be available by Cell at (802) 770-0380

Application No.: 6118

<i>Town Office Use Only</i>			
Town of Brandon 49 Center Street Brandon, Vermont 05733	Tax Map # <u>09-01-32</u>	Parcel ID # <u>0068-0016</u>	Date Completed: _____
Phone: (802) 247-3635 ext. 202	No. of Acres <u>1251.35</u>	Fee \$ _____	Decision: _____
FAX: (802) 247-5481	Zone <u>RD</u>	Check # _____	Rec'd by _____
		Deed Reference <u>BK 223 Pg 394</u>	

APPLICATION FOR LAND USE PERMIT

Name and Address of Owner(s):

Evelyn L. des Marais

JAMES F DES MARAIS

215 ELLA DEAN RD BRANDON 05733

Home Phone: 802-247-7777

Work Phone: 802-345-9958

Fax Phone: _____

E: SWALLOWBNESTVT@GMAIL.COM

**Name and Address of Applicant(s)
(if different from property owner):**

Home Phone: _____

Work Phone: _____

Fax Phone: _____

Current property information/location (for boundary adjustments include for all parcels involved):

FARM LOCATED AT 215 ELLA DEAN ROAD BRANDON VERMONT

SLIDE 6-42, MAP BK

THIS APPLICATION IS FOR: (Check all that apply)

- Division of parcel into two or more parcels (Please complete Addendum B)
- Construction, reconstruction, conversion, structural alteration, relocation, enlargement of any building or other structure
- Landfill, mining, or excavation operations
- Substantial change in nature or intensity of the current use of any building, structure or parcel of land see 2 c it involves an additional use of an existing farm structure. the structure will continue with its current use and add a use.
- Extension of current use of land
- Increase in number of dwelling units on a parcel of land
- Razing any structure, temporary or otherwise, over 500 sf or any structure in the Central Business District
- Interior renovations to residential structure in contemplation of increase in number of bedrooms or dwelling units
- Interior renovations to a nonresidential primary structure done in contemplation of a change in use or intensity of use.
- Home occupation
- Sign(s) (Please complete Addendum C)
- Development in Flood Hazard Area (Please Complete Addendum E)

ADDENDUM MAY BE REQUIRED FOR THE FOLLOWING:

Development Review Board Hearings: (Check all that apply)

- Hearing
- Appeal
- Variance
- Conditional Use
- Major Subdivision
- Planned Unit Development
- Local Act 250 Review

RECEIVED

DEC 11 2020

TOWN OF BRANDON

1. Give a detailed description of the CURRENT use of the property, how many buildings and their respective uses, dimensions, setbacks, etc: PLEASE SEE ATTACHED SHEET

2. Give a detailed description of the PROPOSED project:
 - a) Describe the construction (include building dimension, size and location), and the proposed use: PLEASE SEE ATTACHED SHEET NO CONSTRUCTION OR ALTERATION TO CURRENT BUILDINGS ON FARM
 - b) Does it involve erecting a sign (*Please complete Addendum C attached*), fence, pre-made structure or installing a pool? NO If yes, describe dimension, size and location: _____
 - c) Does it involve a change of use? YES If yes, describe current use and proposed use: IT INVOLVES AN ADDITIONAL USE. THE BARN IN QUESTION IS EMPTY FROM MAY THROUGH OCTOBER
 - d) Does it involve a subdivision or boundary line adjustment? NO If Yes, Please complete *Addendum B attached.*
 - e) Does it involve construction of an agricultural structure or use? NO If Yes, Please complete *Addendum D attached.*
 - f) Does it involve development or construction in a flood hazard area? NO If Yes, Please complete *Addendum E attached.*
3. Give the estimated cost of the project: \$0
4. Answer ALL questions on Addendum A to this Application, pertaining to the Performance Objectives and Standards in Section 601 - 627 in the Brandon Land Use Ordinance, for ALL applications.
5. Attach a site plan or use the grid on the last page to draw an ACCURATE sketch of the lot showing all EXISTING structures and all PROPOSED construction. Give all dimensions of lots and structures, as well as the distance from property lines, other structures and septic.

Intended Start Date: SUMMER 2021 PERMITS RECEIVED AND COVID COMPLIANCE

Intended Completion Date: _____

I certify that the statements made by me in this Application For Land Use Permit are accurate and complete. **I hereby grant permission to the Town of Brandon to allow its agent to inspect this property relative to this application for both approval and to ensure compliance once project is complete.** I understand that this is an application for a local permit. To find out if State permits may be needed, I should contact the Rutland Offices of the District Environmental Commission at 802-786-5900 and the Department of Labor and Industry at 802-786-5867.

Date DECEMBER 9, 2020

Landowner Jim Des Marais

Landowner Evelyn L. Des Marais

If different from landowner, Applicant _____

Comments by the Administrative Officer: REVISED 12/11/2020, REVIEWED 1/5/21 - INCOMPLETE APPLIC. (FEE)
ACT 250 Non-JURISDICTION DETERMINATION (w/CONDITIONS) 12/15/2020
VT AGENCY OF AG, FOOD & MARKETS DETERMINATION LETTER 12/14/2020
VT PERMIT SPECIALIST PROJECT REVIEW SHEET 12/21/2020 APPLICATION COMPLETE 1/7/2021
REFERRED TO DRB FOR CONDITIONAL USE REVIEW (COMMUNITY SUPPORT & RECREATION USE) IN RURAL DEVELOP. ZONE, PER SECTION 306 (BLUD) ON 1/11/2021 QW13/ZA

ADDENDUM A

Performance Objectives and Standards Information

All references are to the Brandon Land Use Ordinance - Article VI, Section 600. A copy can be reviewed at the Town Offices and on the Town of Brandon website (www.townofbrandon.com). Answer ALL questions with a yes, no or (x) in the appropriate area. Give explanations where needed.

- 601 If Wastewater to the property is/will be disposed by: () town sewer () private septic () not required. x dundons port a potties
Are you increasing the number of bedrooms? NO, if so, how many? _____
Are you increasing the number of dwelling units? NO, if so, how many? _____
If this is a business/home occupation, how many employees are expected? SELF; how many customers are expected per day? _____
If you propose a new, or an increase to an existing, (a) connection to a municipal wastewater supply attach a sewer capacity permit; or (b) private wastewater disposal system attach a certification of a designer licensed by the State of Vermont or state permit approval.
- 602 Access for emergency vehicles is (will be) provided by: () town highway, () State highway, () class 4 or private road, () right of way which must be at least 20' wide and maintained in all-weather and kept unobstructed.
- 603 If Water supply is (will be) provided by: () town water by connection to Brandon Fire District 1 or 2 (attach approval letter), () private well or water source (attach state permit approval), () not required.
X CATERERS REQUIRED TO BRING IN
- 604 Will this project create an increase in the intensity of traffic? YES
If yes, explain and attach an access permit if required ON event days there will be vehicles associated with the event. they will include guests, caterers, vendors like dundons, photographers.
Will traffic flow generated be beyond the capacity of local roads? no
Attach certification by Public Works that local roads are adequate or scheduled to be upgraded.
- 605 Does the design of the intersection (of the access road [driveway] to the site) with local roads conform with the requirements of Vermont Department of Highways (Doc B-71)? yes Will all new driveways have an area to turn around on site? _____ Attach access (driveway cut) permit. How many parcels will access drive serve? _____
- 606 Will the project destroy or significantly alter wetlands or natural areas? NO What steps will be taken to minimize environmental damage? _____
- 607 Does your project involve any areas of steep slope? NO What is the grade of the slope? _____
What percentage of slope will be developed, regraded or stripped of vegetation? _____ Attach certification by a professional engineer.
- 608 Will there be an increase in noise levels as a result of the project? NOT KNOWN noise level exceed 70 decibels during daylight house or 60 decibels during other times of the day at the property line?
SWE INTEND BY CONTRACT TO REQUIRE ALL USING OUR FARM TO ADHERE TO BRANDON'S NOISE ORDINANCE AND CURFEW
- 609 Will the project result in any noticeable, clearly apparent vibration on the property of another landowner?
NO If yes, explain _____

Will there be any hammering, drilling, cutting or blasting within 100 feet of any underground tank used to store petroleum projects? NO If so, what tests have been done to insure the soundness of the tanks?

610 Will the project involve the emission of any smoke? NO _____

611 Will the project result in fly ash, dust, fumes, vapors, gasses or other forms of air pollution? NO If yes, explain _____

612 Will the emission of detectable objectionable odor result from your project? NO If yes, explain _____

613 Will the project result in any fire, explosive, or other safety hazard? NO If yes, explain _____
Will you be storing greater than 500 gallons of flammable liquids in tanks above ground? _____ If yes, explain _____

614 Will your project have: flickering, pulsing, rotating, or flashing lights? NO _____; lights that will distract drivers on roads in the vicinity? _____ lights that illuminate in excess of 0.5 footcandles when measured at adjacent residential boundaries? _____

615 Will any hazardous materials be used in this project? NO If yes, explain procedures for handling and containment _____

616 Will a sufficient number of off-street parking spaces be provided*? YES What is the maximum number of vehicles expected on site at any given time? 100 Attach a parking plan showing 9' x 18' spaces for each vehicle. *Not required if property is located in Central Business District.

617 Will the use require loading and unloading of commercial products? NO Is there adequate space within the boundaries of the lot for loading and unloading? _____

618 Is this a structure over 400 cubic feet in volume (incl. mobile homes)? NO Will it be installed and anchored as required? _____

619 Does your project involve farm animals? NO If yes, is the lot at least one acre in area? _____ What is the minimum distance of: animal housing and piles of manure, feed or bedding from any lot line? _____ manure piles to wells and surface waters? _____
Is the proposed use agricultural? _____ If yes, will the requirements of this section be met? _____
Has the Secretary of Vermont Agency of Agriculture, Food and Markets indicated that the farm operation complies with the Accepted Agricultural Practices? _____
(Please complete Addendum D attached)

620 Does your project involve use of pesticides herbicides, and fertilizers within 400' of any well or fire district? NO, if yes, explain _____

621 Does the proposed use involve forest harvesting? NO If yes, will the requirements of this section be met? _____

622 Is the proposed use in the Aquifer District? NO _____

623 Will the project cause an excessive increase in quality, rate or rechanneling of water runoff on neighboring properties? NO If yes, what provisions have been made to avoid this possibility? _____

624 Will there be an outdoor display of retail products? NO Is this display within the required setback from a street or road? _____ If yes, does it: impede the flow of pedestrian traffic in the CBD? _____ What is the distance of the closest residence in HDMU? _____ Is it a farmstand? _____

625 Will there be development within 100' from the mean high water mark of named river and streams? NO, if yes explain _____

Attach Vermont State Floodplain Coordinator approval, if necessary.

626 Will there be any excavation or blasting of the clay layer that protects the public water supply? NO

627 Will there be any storage of junk or uninspected/unregistered junk vehicles visible from the traveled way of a highway or abutting landowners, or within 50' of any property line? NO
For "junkyards" provide state certification.

ADDENDUM B

Subdivision / Boundary Line Adjustment Information

1. Pre-subdivision/line adjustment property size (in acres): N/A
2. Is the parcel located within a subdivision previously approved by the Development Review Board: _____
If Yes, name of subdivision: _____
3. Number of lots, including the resized original parcel(s), that will be created: _____
4. Number of lots created from the original parcel in the last five years, including the lots being created at this time: _____ Do you plan to create additional lots from this parcel in the future? N/A
5. If this subdivision is approved, do you plan to develop it? _____ . If Yes, you will need to request approval prior to initiating any land development on the property.
6. Do you plan to utilize cluster development? _____ . If Yes, Please explain: _____
7. Do you plan to dedicate any portion of this parcel as open space or common land? _____ . If Yes, Please explain: _____
8. Please attach a plan showing the original lot boundary lines and the proposed new boundary lines and dimensions (including acreage).

Appendix ~~To~~ land use permit Town of Brandon

Current Use

We run Des Marais Farm as a business. We are licensed and regulated by the State of Vermont as a small farm for the purposes of the Required Agricultural Practices (RAPS). We produce organic hay, honey, flowers, and herbs. We provide farm stays from May through October. That produces three agriculturally related income streams for our farm. We have two additional income streams from conservation practices. Farms like ours, require large amounts of money for maintenance and operation costs. We are always looking at ways that will augment our income without compromising or changing in any way our farm or way of life.

We have four barns. The smallest is in the best shape. We use it for storage. From May through October most of the machinery it holds is or can be outdoors. Therefore, with no changes to buildings, our land or how we farm, we can offer this empty space up for events including weddings.

Plans for Additional Use:

We are planning on limiting the number of events to 14, for each May to October season. The events, whatever they are, will supplement but not supplant, our farming. We intend to remain a working farm in the Vermont landscape.

Traffic

All traffic would use Union Street to access Ella Dean Road. All events would take place on the west side of Ella Dean Road on our farm.

Noise

We intend to follow Brandon's noise ordinance and curfew.

Parking

We anticipate needing up to 100 spaces for vehicles. We have up to 20 spaces (9' x 12') at the carriage barn, up to 40 spaces (9' x 12') in overflow area one (see attached map) and an additional 40 (9'x 12') in overflow area two (see same attached map). We can also use the verge of Ella Dean Road. Due to the weather, crops, seasons and wildlife, we may desire to use any combination of parking or to vary parking places to reduce any compacting of our clay soils.

As we read Vermont law, if anyone who rents our site serves alcohol in any capacity, they must provide transportation. Therefore, we also have room for all required turn around space at the carriage barn and at various locations along Ella Dean Road for vans and buses to park and turn around.

Our caring for the environment is one of our core values. We currently rigorously recycle, compost and reduce trash. We pick up the roadsides frequently all along our farm especially along Union Street to keep it out of the wetlands and Otter Creek. We have removed tons and tons of trash in old dumps abandoned on the property and properly disposed of them. We recently removed, with assistance, 6,000 pounds of trash from Otter Creek. We are deeply concerned about global warming and are doing our part to reduce our emissions. We have installed solar energy to help run the farm. We are acutely aware of noise and light pollution and always are considerate in what we do. Although our nearest neighbor is 8/10th of a mile away, we ensure quiet for the wildlife who make their home here.

We do all this already. There will be no change. It is who we are. We will run our events in the same manner. We will also use all events as an opportunity to educate others on how we farm here, how we augment soil health, how we farm both for profit and for a healthy environment.

Permitting

We have reached out to the state of Vermont this past week to four different departments. We began with the VAAF to discuss the RAPS, accessory on farm businesses and Agritourism rules and regulations. We have been in touch with the state Fire Marshal, with the District 1 Act 250 coordinator, Kim Lutko and with DEC, Rick Oberkirk. We will be working closely with them to determine what we need to do to get all required state permitting.

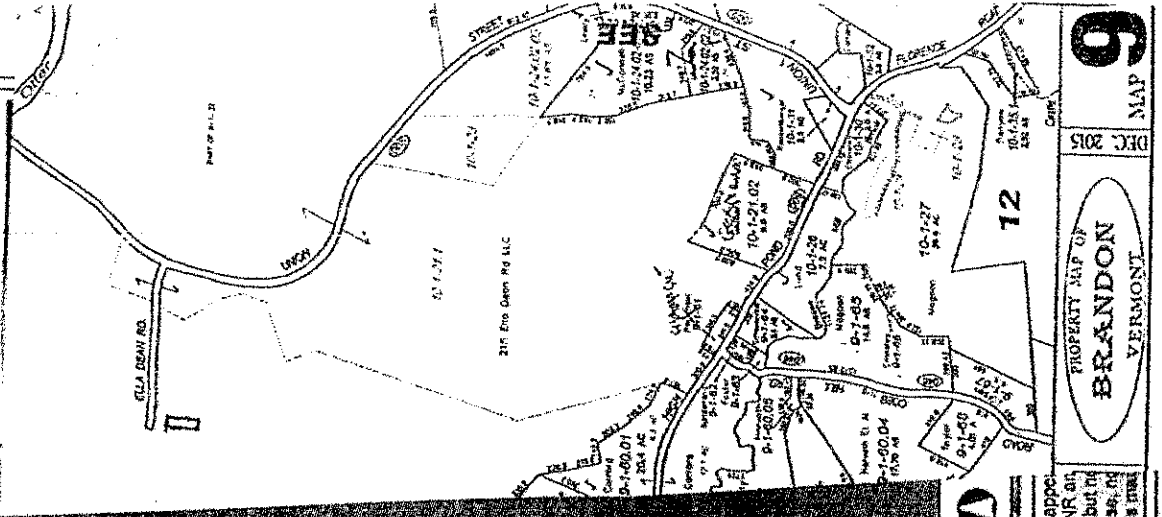
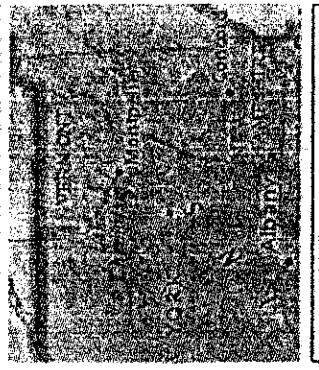
APPLICATION 6118 PORTION OF 9-1-32



Natural Resources Atlas
Vermont Agency of Natural Resources

P = PARKING AREAS

vermont.gov



165.0 82.00 0 165.0 Meters
1" = 271 FT. 1cm = 33 Meters
WGS_1984_Web_Mercator_Auxiliary_Sphere
© Vermont Agency of Natural Resources
THIS MAP IS NOT TO BE USED FOR NAVIGATION

1: 3,251
July 2, 2019

DISCLAIMER: This map is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. ANR and the State of Vermont make no representations of any kind, including but not limited to, the warranties of merchantability, or fitness for a particular use, and are any such warranties to be implied with respect to the data on this map.

PROPERTY MAP OF
BRANDON
VERMONT

DEC 2015

MAP
9

Project Review Sheet

Date Initiated	12/17/2020	ANR PIN#		WW Project#		Pre-application Review	<input type="checkbox"/>
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Project Information

General Information

PROJECT NAME (if applicable) James & Evelyn L Des Marais - Utilize an existing Barn structure as an event venue - weddings, reunions	PROJECT TOWN Brandon
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PROJECT LOCATION (911 address if available) 215 Ella Dean Road	SPAN(S) (if available)
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Contact(s)

CONTACT TYPE Landowner	NAME James & Evelyn L Des Marais	ORGANIZATION NAME (if applicable)		
ADDRESS 215 Ella Dean Road		TOWN Brandon	STATE VT	ZIP 05733
PHONE 1-802-247-7777	CELL PHONE	EMAIL Lyn.desmarais@gmail.com		

Project Description

ENTERED BY Rick Oberkirch	INFORMATION SOURCE Individual	DATE ENTERED 12/21/2020 11:15 AM
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PROJECT DESCRIPTION
Utilize the existing barn for events of up to 50 people, events would include weddings inside the barn. All food and drink (including water) is to be brought on to the site by the renter of the venue. No water or sewer service to the building. All portable toilets and water needed for washing hands etc would be brought on site. This parcel greater than 1 acre in Brandon.

DEC Prior Permits

PERMIT TYPE	PERMIT NUMBER No prior permits known
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Jurisdictional Opinion(s) for permits that may be needed from the District Environmental Office **PRIOR TO COMMENCEMENT OF CONSTRUCTION**

Act 250 Jurisdictional Opinion

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(A). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. Effective May 31, 2016, 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, which is \$295.00. The appellant also must serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.


PERSON REQUESTING JURISDICTIONAL OPINION Lyn Des Marais	REQUESTOR TYPE Landowner/Agent	ACT 250 PERMIT NUMBER (if any) No prior permits known	HAS THE LANDOWNER SUBDIVIDED BEFORE? <input type="checkbox"/> Yes <input type="checkbox"/> No
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TYPE OF PROJECT (check all that apply)

Commercial
 Residential
 Agricultural
 Municipal
 State
 Federal

IS AN ACT 250 PERMIT REQUIRED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	COPIES SENT TO STATUTORY PARTIES? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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BASIS FOR DECISION
The landowners have represented that no improvements will be constructed as part of their plans to rent their property for events. Therefore, it is my opinion that renting the barn and the property to others for events, such as weddings, does not require an Act 250 permit. Any construction of any improvement on the land or to any structure or facility located on the land, including work preparatory to construction, such as clearing, the staking out or use of a right-of-way, or in any way incidental to altering the land according to a plan or intention to improve it for a commercial purpose other than farming as defined under 10 V.S.A. § 6001(22)(E), will provide cause for me to revisit this opinion.

DISTRICT COORDINATOR SIGNATURE  2020.12.17 16:28:54 -05'00'	Aaron Brondyke, State Coordinator [phone] 802-595-2735 [email] aaron.brondyke@vermont.gov Natural Resources Board 10 Baldwin Street, Montpelier, VT 05633-3201
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Wastewater System & Potable Water Supply Permit Jurisdictional Opinion

IS A WASTEWATER SYSTEM & POTABLE WATER SUPPLY PERMIT/APPROVAL REQUIRED? <input type="checkbox"/> Yes <input type="checkbox"/> Permit application currently under review <input checked="" type="checkbox"/> No <input type="checkbox"/> Permit issued on _____	PERMIT NOT REQUIRED? <input type="checkbox"/> Boundary Line Adjustment <input type="checkbox"/> Home Occupation <input type="checkbox"/> Clean Slate <input type="checkbox"/> Notice of Permit Requirement
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BASIS FOR DECISION
 Based on the information provided, the proposed project appears to qualify for the permitting exemption described in §1-304(27) of Chapter 1 of the Environmental Protection Rules, provided that it will be configured and operated in full compliance with all of the exemption criteria specified therein.

REGIONAL OFFICE STAFF SIGNATURE  2020.12.21 11:08:10 -05'00'	Dave Swift, Regional Engineer [phone] 802-345-7493 [email] dave_swift@vermont.gov Department of Environmental Conservation Drinking Water & Groundwater Protection Division - Rutland Regional Office 450 Asa Bloomer Office Bldg., Rutland, VT 05701-5903
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The following are preliminary, non-binding determinations made by DEC Permit Specialists identifying other permits that may be needed
PRIOR TO COMMENCEMENT OF CONSTRUCTION

SPECIAL WETLANDS DISCLAIMER

A desktop review cannot definitively confirm the presence or absence of a wetland in or within fifty feet of your project site. This review sheet is the result of a desktop review that included reviewing the project site with these mapping tools available at <https://anr.vermont.gov/maps>. Many wetlands do not appear on these maps. You are advised to review the site on the ground for wetlands, regardless of whether this box is checked or not (<https://dec.vermont.gov/watershed/wetlands/what/guide>). To confirm the presence/absence of wetlands, contact a qualified environmental consultant (<https://dec.vermont.gov/watershed/wetlands/what/id/wetland-consultant-list>) or the State Wetlands Program (<https://dec.vermont.gov/watershed/wetlands>).

Preliminary, Non-binding Determination of the Applicability of Other State Permits
 Note: Fact Sheet numbers below refer to permit fact sheets available at <http://dec.vermont.gov/permits/handbook/info-sheets>

Department of Public Safety <input checked="" type="checkbox"/> Construction Permit Fire Prevention, Electrical, Plumbing, Accessibility (ADA) [Fact Sheets #49, 50, 50.1, & 50.2] <input checked="" type="checkbox"/> Rutland: 802-786-5867
Secretary of State <input checked="" type="checkbox"/> Business Registration [Fact Sheet #90.1] Phone: 802-828-2386
Department of Taxes <input checked="" type="checkbox"/> Income and Business Taxes (sales, meals/rooms, etc.) [Fact Sheets #91, 92, 93, 94, 95, & 96] Phone: 802-828-2551
Local Permits <input checked="" type="checkbox"/> See your Town Clerk, Zoning Administrator, Planning Commission or Public Works

PERMIT SPECIALIST SIGNATURE  2020.12.21 11:16:38 -05'00'	Rick Oberkirch, Permit Specialist [phone] 802-282-6488 [email] rick.oberkirch@vermont.gov Department of Environmental Conservation Environmental Assistance Office - Rutland Regional Office 450 Asa Bloomer Office Bldg., Rutland, VT 05701-5903
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DEC 15 2020

TOWN OF BRANDON



12/14/2020

Evelyn Des Marais (via email: lyn.desmarais@gmail.com)
 215 Ella Dean Road
 Brandon, VT 05733
 Des Marais Farm

RE: Determination of farm operation

Dear Ms. Des Marais,

The Agency of Agriculture, Food & Markets (the Agency) renders opinions, based on the Agency's Required Agricultural Practices Regulations (RAPs) as to whether an individual is farming, if the RAPs apply to the operation, and/or whether a structure is used for farming and is therefore considered a farm structure.

Farm Operation Determination

This letter is documenting that activities occurring on a 165 acre parcel or parcels of land located at **215 Ella Dean Rd. Brandon, VT 05733**, meets the definition of "farming," per the RAPs.

Section 2.14 of the RAPs in part, states "farm" means a parcel or parcels of land owned, leased, or managed by a person and devoted primarily to farming, ... and that meets the threshold criteria as established in Section 3 of the RAPs, provided that the lessee controls the leased lands to the extent they would be considered as part of the lessee's own farm.

Section 2.16 of the RAPs states "farming" means:

- (a) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural, silvicultural, and orchard crops; or
- (b) the raising, feeding, or management of livestock, poultry, fish, or bees; or
- (c) the operation of greenhouses; or
- (d) the production of maple syrup; or
- (e) the on-site storage, preparation, and sale of agricultural products principally produced on the farm; or
- (f) the on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm; or
- (g) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines.

You have indicated that your farm operation, **described as: a small organic farm, raising bees (8 hives at present), vegetables, berries, herbs, flowers, plants, and shrubs. We are building a nursery business which was supposed to start commercial operations in 2020, but due to COVID-19 has not opened yet. We are going to be selling honey on line as well in early 2021,** meets the above definition of farming by meeting the provisions listed below:

- (a) **the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural, viticultural, and orchard crops; or**
- (b) **the raising, feeding, or management of livestock, poultry, fish, or bees; or**
- (e) **the on-site storage, preparation, and sale of agricultural products principally produced on the farm;**

The respective farm operation falls under threshold of the RAPs as a Small Farm Operation (SFO), by meeting the definition laid out in Section 3.1 through the following provision of this definition:

(b) has produced an annual gross income from the sale of agricultural products of \$2,000.00 or more in an average year;

Farm Structures

Section 2.15 of the RAPs, in part, states a “farm structure” means a structure that is used by a person for farming, including a silo, a building to ... raise horticultural or agronomic plants, 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 [the RAPs]”. Any structure that involves human habitation or is considered multiuse, including both farming and non-farming activities, would not fall under the definition of a farm structure and would therefore not be regulated by the Agency or the RAPs.

Agency Determination

Based upon this information presented at this time, the Agency has determined the activities occurring at **215 Ella Dean Rd. Brandon, VT 05733**, meet the definition of farming pursuant the RAPs and are therefore considered a farming operation.

Farm operations that fall under the jurisdiction of the RAPs and operate an Accessory on Farm Business may be required to obtain site plan review from their municipality. An Accessory on Farm Business is defined as:

- the storage, preparation and sale of qualifying products, provided that more than half of the sales are from qualifying agricultural products principally produced on the farm; and
- educational, recreational, and social events that feature agricultural practices and /or qualifying agricultural products.

For more information, please visit: <https://agriculture.vermont.gov/land-use-renewable-energy-0/accessory-farm-business>

This letter outlines the Agency’s position based on the information provided and may change should the relevant information change. Please be aware that you will be required to comply with the Required Agricultural Practices (<https://agriculture.vermont.gov/rap>) by virtue of this determination by the Agency, and any other regulations applicable to your operation.

Please reach out with any additional questions.

Sincerely,

Kaitlin Hayes
Agricultural Water Quality Specialist
Agency of Agriculture, Food & Markets

CC: Jeffery Biasuzzi - Zoning Administrator, Brandon, VT (sent via email: Zoning@townofbrandon.com)

Please also be aware of the following, and contact the appropriate authorities if necessary:

Flood Hazard Area and River Corridor Construction: Construction of farm structures otherwise exempt from municipal regulation are subject to the Flood Hazard Area and River Corridor Rule administered by the Department of Environmental Conservation, Agency of Natural Resources. Obtaining appropriate permits in advance of construction will ensure compliance with National Flood Insurance Program (NFIP) criteria and enhance flood resilience.

Public Drinking Water Supplies: Nutrients, sediment, organic matter and microorganisms may also impact drinking water supplies derived from surface waters. Agricultural operations should be aware of the locations of surface drinking water source intakes and appropriately manage agricultural activities to reduce potential negative impacts.

Vermont Fire and Building Codes: Farm structures, as determined by the Vermont Agency of Agriculture, Food & Markets (the Agency), are required to comply with all applicable Vermont fire and building code regulations. In no way does a designation as a farm structure by the Agency limit the need for the structure to meet requirements listed under Title 20 of the V.S.A. Chapter 173, including obtaining a construction permit. For more information please visit: www.firesafety.vermont.gov.

Wetlands: Although wetlands are not mentioned in the AAPs, landowners need to be aware of existing rules pertaining to wetlands under state and federal jurisdiction. The Natural Resources Conservation Service, U.S. Army Corps of Engineers, and the Vermont Department of Environmental Conservation coordinate all agriculture/wetland issues in Vermont. It is strongly suggested that landowners contact the U.S. Army Corps of Engineers at 802-872-2893 and the Vermont Department of Environmental Conservation at 802-241-3760 before initiating farm related activities in or near wetlands.

Construction of New Farm Structures: Construction of new farm structures, specifically buildings and other farm related structures that disturb one or more acres of land must obtain authorization from the ANR before commencing with land disturbance or construction activities. Approval will be issued by ANR upon receipt of a Notice of Intent (NOI) which certifies that adequate measures for the control of erosion and sedimentation will be used during land disturbance and construction efforts. Persons needing additional information about the Construction General Permit/NOI concerning one or more acres of land disturbance are advised to contact the Water Quality Division of the Department of Environmental Conservation at 802- 241-3770 or visit the web site at www.vtwaterquality.org/stormwater. Authorization by ANR is not needed for construction or land disturbance related to cultivation, irrigation, drainage and fencing.

Solid and Hazardous Waste Management: Agricultural operations are advised to manage all wastes generated on the farm consistent with all applicable solid waste rules and hazardous waste rules. Information regarding the proper storage and disposal of waste oil, petroleum products and empty containers can be obtained from the Vermont Waste Management Division at 802- 241-3888.

Wastewater Management and Residuals Management: Farm operations generating wastewater

indirect discharges or discharges to underground injection wells are advised that permits may be required from the Department of Environmental Conservation Watershed Management Division or Groundwater Protection and Management Division. The management of sewage, biosolids, and septage on a farm must be conducted consistent with the Vermont Solid Waste Management Rules and any Solid Waste Management Facility Certification authorizing these activities. Information regarding these requirements can be obtained by calling (802) 828-1535.

Water Withdrawal and Irrigation: Farm operations utilizing surface waters for irrigation purposes are advised that water withdrawals above a de minimis rate are required to obtain a permit from the Department of Environmental Conservation consistent with the Procedure for Determining Acceptable Minimum Stream Flows. More information regarding water withdrawals for irrigation purposes and permitting requirements can be obtained by calling the Watershed Management Division at (802) 828- 1535.

Alteration of Streams: Stream alteration permits regulate activities that take place in or along streams. The permit program is intended to prevent the creation of flood hazards, protect against damage to aquatic life, and protect the rights of neighboring landowners. The types of activities that are regulated include streambank stabilization, road improvements that encroach on streams, bridge construction or repair, and utility crossings under streambeds. More information regarding stream alteration and permitting requirements can be obtained by calling the River Management Division at (802) 828-1535.

Spill Prevention, Control, and Countermeasure (SPCC): EPA's oil pollution prevention regulation requires facilities that are subject to regulation to prepare and implement a plan to prevent any discharge of oil into navigable waters or adjoining shorelines of the U.S. A farm must prepare a SPCC Plan if it has an aggregate aboveground storage capacity of greater than 1,320 gallons. Only containers of oil with a capacity of 55-gallons or greater are counted toward this aggregate capacity threshold. The plan is referred to as a Spill Prevention, Control, and Countermeasure (SPCC) plan. More information regarding SPCC and permitting requirements can be obtained by calling the Environmental Assistance Office at 1(800) 974- 9559.

From: lyn.desmarais@gmail.com
To: [Lutchko, Kim](#)
Subject: Act 250 permit determination
Date: Thursday, December 3, 2020 7:33:42 PM

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Good Evening Kim,

We know it's becoming super popular, competitive, and "everyone with a barn and a view", is trying to do this, but we'd like to offer weddings on our farm, to complement other farm income.

Could we please set up a zoom meeting to discuss whether we will need to apply for an Act 250 permit?

Here's a brief description of who we are:

We are located on Ella Dean road off of Union Street in Brandon, VT.

We are a working organic farm. We produce organic hay, herbs, flowers, honey and vegetables (for home use only). I am working toward establishing a plant nursery.

We are a farm for the purposes of the RAPs.

We propose using our farm for these events as it is.

We propose to host up to 14 events per year offering couples to hold, at our farm, their wedding ceremony and tent reception and/or the use of a current storage barn.

We intend to offer our farm grown flowers, herbs and honey for all events.

Both water and port a potty's (provided by Dundon's) are required to be brought on site by the couples. They will also have to provide tables chairs etc etc. We provide only the site and electricity.

The barn is quite small so we anticipate that some events would desire a tent.

We have plenty of land for parking.

We intend to follow all Town of Brandon noise ordinances and the Town of Brandon curfew.

Our nearest neighbor is more than 8/10 th of a mile away in any direction.

Our farm is on the Vermont state historical register as the Seager-Dean Farm Historical district of local significance. I'm not sure what it means.

We look forward to talking with you.

Kindly,

Lyn Des Marais
1-802-345-9958



ACT 250
JURISDICTIONAL OPINION NO. 1-394

State of Vermont

Natural Resources Board

District 1 Environmental Commission

440 Asa Bloomer State Office Building

88 Merchants Row, 4th Floor

Rutland, VT 05701

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

[phone] (802) 786-5920

This is a Jurisdictional Opinion based upon available information and a written request from the landowner. Any notified person or entity will be bound by this opinion unless that person or entity files a request for reconsideration with the State 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 Permit Specialist serving your area: (<https://dec.vermont.gov/environmental-assistance/permits/specialists>).

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

Evelyn and James Des Marais
215 Ella Dean Road
Brandon, VT 05733

- Landowner
 Agent
 Other

Project Description:

The landowners propose to rent out a portion of their property for weddings and similar events. The 1,250+/- acre property is already improved with a homestead, a guest house, and a complex of historic agricultural structures. The landowners would like to utilize one of those barns for events—the historic carriage barn that is located on Ella Dean Road just to the west of their existing homestead.

The property is currently dedicated to farming. The landowners propose to host up to 14 events per year. The landowners do not propose to make any improvements to the property whatsoever for the purpose of holding events. The historic carriage barn will be offered for use during events, as-is. The property includes open fields that can be utilized for parking without



any improvements. The landowners will provide the site and electricity. All other items, such as tents, chairs, and toilet facilities must be brought onto the property by the renters. Renters will be responsible for removing all of the aforementioned items and garbage from the premises after the event is finished.

Existing Act 250 permit number(s) or series: N/A

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:

10 V.S.A. § 6081 requires an Act 250 permit prior to commencing development or construction on a development.

10 V.S.A. § 6001(3)(A) defines "development," in relevant part, as:

(iii) The construction of improvements for commercial or industrial purposes on a tract or tracts of land, owned or controlled by a person, involving more than one acre of land within a municipality that has adopted permanent zoning and subdivision bylaws, if the municipality in which the proposed project is located has elected by ordinance, adopted under 24 V.S.A. chapter 59, to have this jurisdiction apply.

The Town of Brandon has adopted permanent zoning and subdivision regulations, but has elected to remain a "one-acre town" for the purposes of "development" under 10 V.S.A. § 6001(3).

Act 250 Rule 2(C)(2) defines "commencement of construction" as:

The construction of the first improvement on the land or to any structure or facility located on the land, including work preparatory to construction such as clearing, the staking out or use of a right-of-way or in any way incidental to altering the land according to a plan or intention to improve or to divide land by sale, lease, partition, or otherwise transfer an interest in the land.

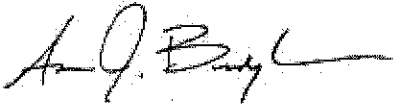
Act 250 Rule 2(C)(3) defines "construction of improvements," in relevant part, as:

"... any physical change to a project site . . ."

Act 250 Rule 2(C)(4) defines "commercial purpose" as:

"The provision of facilities, goods or services by a person other than for a municipal or state purpose to others in exchange for payment of a purchase price, fee, contribution, donation or other object or service having value."

The landowners propose to offer their existing barn and premises, as is, for rental to others for a fee. Payment of rent creates a "commercial purpose." However, the landowners have represented that no improvements will be constructed as part of their plans to rent their property for events. Therefore, it is my opinion that renting the barn and the property to others for events, such as weddings, does not require an Act 250 permit. Any construction of any improvement on the land or to any structure or facility located on the land, including work preparatory to construction, such as clearing, the staking out or use of a right-of-way, or in any way incidental to altering the land according to a plan or intention to improve it for a commercial purpose other than farming as defined under 10 V.S.A. § 6001(22)(E), will provide cause for me to revisit this opinion.



DATE: December 15, 2020

Aaron J. Brondyke, State Coordinator
Natural Resources Board
10 Baldwin Street
Montpelier, VT 05633-3201
802-595-2735
NRB.Act250RutlandStaff@vermont.gov

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. Any appeal of this decision must be filed with the Superior Court, Environmental Division 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 the entry fee required by 32 V.S.A. § 1431 with the Notice of Appeal, which is \$295.00. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

E-Notification CERTIFICATE OF SERVICE JO 1-394

I hereby certify that I, the undersigned, sent a copy of the foregoing Jurisdictional Opinion 1-394 on December 18, 2020 by electronic mail to the following email addresses. All email replies should be sent to NRB.Act250Rutland@vermont.gov.

Evelyn and James Des Marais
215 Ella Dean Road
Brandon, VT 05733
Lyn.desmarais@gmail.com

Seth Hopkins, Chair
Brandon Selectboard
shopkins@townofbrandon.com

Michael Shank, Interim Chair
Brandon Planning Commission
Michael.john.shank@gmail.com

Jeffrey M. Biasuzzi, Brandon Zoning
Administrator
biasuzzi@townofbrandon.com

Rutland Regional Planning Commission
Ed Bove, Executive Director
ebove@rutlandrpc.org

Agency of Natural Resources
Office of Planning & Policy
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901
anr.act250@vermont.gov

Division for Historic Preservation
National Life Building, 6th Floor
Drawer 20, Montpelier, VT 05620-0501
Accd.projectreview@vermont.gov

Rick Oberkirch, Permit Specialist
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NRB
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By: 
Sabrina Urich
NRB Technician
sabrina.urich@vermont.gov