

Act 250 Jurisdiction over Agricultural Businesses: A report to the Vermont Legislature



Prepared by the Natural Resources Board

January 15, 2023

Introduction

As part of [Act 182](#) enacted in 2022, the Legislature directed the Natural Resources Board to issue a report with recommendations on how Act 250 jurisdiction should apply to agricultural businesses, including those located on properties already operating as farms:

“The Board shall consult with the Agency of Agriculture, Food and Markets, the Vermont Planners Association, the regional planning commissions, and other interested stakeholders. The report shall include recommendations as to how to clarify what is and what is not an accessory on-farm business. The report shall address the current land use planning requirements for farms and farms with accessory on-farm businesses and whether different types of businesses associated with farms and farming require different levels of review. The report may consider whether or not the location of such businesses is relevant and may consider the designation or adoption of agricultural business innovation zones with different levels of review.”

As an independent body within state government, the Natural Resources Board is responsible for administering Act 250, Vermont’s pioneering land use and development law.

As such, this report is intended to inform the Legislature, the Administration and Vermonters on current Act 250 permitting and policies as they relate to farming and agriculture and to evaluate potential statutory and policy modifications that can clarify and improve understanding of Vermont’s land use regulations as they apply to farming and agricultural businesses.

Agriculture in Vermont, 2022

Vermont is a small state defined by its rural character, but its population and land management practices are changing.

Twenty-five years ago, there were 5,828 farms in Vermont, encompassing 701,000 acres of open, working landscape (U.S. Census of Agriculture, 1997). By 2017, data shows a substantial increase in the number of farms (6,800), but those farms used far fewer acres of open landscape (592,000) for farming and agriculture (U.S. Census of Agriculture, 2017). Losing 109,000 acres of open farmland in 25 years is concerning, and the pressures on farmers have continued and/or increased in the last five years.

Dairy farms and dairy farm acreage have been hit particularly hard. As recently as 2012, there were 972 cow dairy farms. According to the Vermont Agency of Agriculture, Food and Markets, by the end of 2021, there were only 568. This 42% reduction over 10 years threatens Vermont’s working landscape, particularly when considering that

Vermont dairy farms manage about 80% of the land base and generate the vast majority of economic activity in the agricultural sector.

Skyrocketing property values have added pressures to working agricultural landscapes: In 2009, the calculated land use value was \$199/acre. It more than doubled to \$405/acre by 2021.

The high value of land for commercial or residential development coupled with higher taxes for agricultural use creates a wedge that squeezes farmers into selling their land for higher value non-farming uses. Since the onset of the pandemic, AAFM reports Vermont has lost more than 110 cow dairies. From the time the Legislature passed the language directing this report, another 35 farms have ceased operations, with 530 left as of Nov. 30.

Vermont farms are reinventing themselves, but they need state support as we work collaboratively to redefine some aspects of “farming” in Vermont. If Vermont farmers do not continue tilling and utilizing our farmland, it will be lost, and with it, an important part of the state’s character.

Agricultural businesses – including accessory on-farm businesses – help farms diversify to continue to be economically viable. As UVM aptly [states](#), “Vermont farms are increasingly opening their doors to the public. This agritourism connects people with where their food comes from and grows appreciation for the working landscape. This increases economic opportunity for farm businesses in rural areas where farmers can direct-market their own agricultural products — and those from neighboring farms — to consumers. These business relationships are both common and necessary to sustain working farms.”

Should Act 250 jurisdiction change? And how?

In preparation for this report, staff from the Natural Resources Board and the Agency of Agriculture, Foods and Markets conducted a stakeholder survey for both farmers and municipalities around challenges and opportunities with accessory on-farm businesses and Act 250. The survey data served as the foundation for three multi-hour stakeholder meetings in September, October and November (see list of participants [here](#)).

Based on the survey results from [municipalities](#) and [farmers](#), the state agencies identified key objectives for discussion and input from stakeholders as follows:

- Appropriate land uses that support on-farm businesses, preserve farmland, and increase farm viability.
- Knowledge of resources and needs, and opportunities and barriers to growth in the agriculture industry.

- Regulatory consistency and certainty for on-farm businesses that allow operations to grow in place and at the appropriate scale.
- Mutual understanding of terms used across regulatory jurisdictions.
- Update, modernize and support agriculture and farming for the next generation.

Each stakeholder meeting was designed to solicit feedback and build on prior work. The September meeting served as an introduction and an opportunity to discuss current conditions. The October meeting established working groups in which participants discussed the main topics that arose from the survey and followed up on the discussion during the September meeting. At the November meeting, the NRB and AAFM staff shared some proposals to stakeholders, and the staff shared a draft of this report at a December meeting aimed to familiarize the general public with its content.

During the three stakeholder meetings, participants were encouraged to discuss the key topics as a group and in smaller discussion sections. From these discussions, the following themes emerged:

1. Compliance with and administration/tracking of items that are “principally produced” on farms (known as the “50% rule”) is challenging to farmers and regulators;
2. The desire to promote consistency and clarity throughout the state in Act 143 implementation on the local level (zoning and municipal regulations); and
3. Concerns over the complexity/potential redundancy of land use regulation where there is oversight from at least three entities (municipalities, NRB, and AAFM).

From those themes, the stakeholders identified three potential areas in which to develop proposals for a more consistent and navigable framework to better support farming for the next generation while maintaining appropriate oversight for these enterprises.

Compilation of stakeholder group discussion points regarding Act 250 and municipal jurisdiction over accessory on-farm businesses:

Each proposal presented here provides a snapshot of current Act 250 and municipal jurisdiction, regulations and statutory definitions while presenting other potential statutory, regulatory or policy changes informed by our external stakeholder meetings.

- 1. Clarify definitions of “principally produced,” “qualifying products,” “farming” and “accessory on-farm businesses.”**

Statute: 24 V.S.A. § 4412(11)(A)(i)(I)

Currently, accessory on-farm businesses are limited by what can be sold from their farms.¹ This is also true if the AOFB wishes to be exempt from Act 250 via the farming exemption.²

Options:

A. Align the divergent standards in Title 24, Title 10, and the Required Agricultural Practices, which focus on either “total annual sales” of “qualifying products” or the “weight or volume” of agricultural products to determine whether they are “principally produced.”

Both metrics can be difficult to measure, verify or enforce, but simultaneously utilizing both existing standards is particularly complex. Another challenge is that when determining whether a new AOFB is exempt under Act 250, there is no available sales information to make a conclusive decision.

B. Allow for AOFBs to sell more qualifying products “obtained from another farm.”

There seems to be widespread agreement that farms selling agricultural products is broadly beneficial. The current framework facilitates the sale of a farm’s own products but does not readily enable farmers to work together to sell their products. Allowing the co-sales of farm products obtained directly from other farms adds new income streams for all participating farms while promoting agriculture and Vermont’s working landscapes. This could be achieved by changing the requirement that more than 50% of qualifying product sales need to be produced on the host farm, or by expanding permissible sales to include those qualifying products obtained directly from other farms. Alternatively, the Legislature could eliminate the requirement that all products sold at an AOFB must be “qualifying,” and instead simply require that 50% of products stored, prepared, processed and sold must be qualifying products (which could be produced on the host farm or not).

C. Expand the definition of “qualifying products”

Currently, qualifying products do not include any non-agricultural products such as merchandise with the farm’s logo on it. The definition of “qualifying

¹ The definition of an accessory on-farm business includes: “The storage, preparation, processing, and sale of qualifying products, provided that more than 50 percent of the total annual sales are from qualifying products that are produced on the farm at which the business is located.” 10 V.S.A. § 4412(11)(A)(i)(I).

² The definition of “farming” exempt from Act 250 includes “the on-site storage, preparation, and sale of agricultural products principally produced on the farm.” 10 V.S.A. § 6001(22)(E).

products” could either be expanded to include these, or as noted above, the Legislature could eliminate the requirement that all products sold at an AOFB must be “qualifying,” and instead simply require that 50% of products stored, prepared, processed and sold must be qualifying products (which could be produced on the host farm or not).

D. Increase AAFM educational outreach

AAFM currently determines if a “farm” is subject to the Required Agricultural Practices. AAFM has an existing obligation to provide education under 24 V.S.A. § 4412(11)(F). The applicable statutory provision could be amended to expressly require training to farms on the potential need for AOFBs to obtain an Act 250 permit (the statute currently only expressly references the potential need for a potable water and wastewater system permit, but is silent as to Act 250).

2. More precisely define what types of businesses qualify as AOFBs

Statute: 24 V.S.A. § 4412(11)(A)(i)(I)-(II)

Currently, Title 24 provides little guidance as to what types of business models are intended to constitute AOFBs. In addition to the on-site storage, preparation, processing and sale of qualifying products (see footnote 1), AOFBs include:

“Educational, recreational, or social events that feature agricultural practices or qualifying products, or both. Such events may include tours of the farm, farm stays, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products. As used in this subdivision (II), “farm stay” means a paid, overnight guest accommodation on a farm for the purpose of participating in educational, recreational, or social activities on the farm that feature agricultural practices or qualifying products, or both. A farm stay includes the option for guests to participate in such activities.” 24 V.S.A. § 4412(11)(A)(i)(II).

Options:

A. Distinguish between “educational” and “recreational, or social events.”

Activities with an explicit nexus to farming and agricultural literacy should be encouraged.

B. Specify whether restaurants and/or wedding venues constitute accessory on-farm businesses, and/or establish appropriate limitations.

Activities with an explicit nexus to farming and agricultural literacy should be encouraged.

C. Define AOFBs on a use basis

Current framework uses categories and definitions based on proportions (principally produced, 50% rule). Instead, create exemptions or regulate based on the activity, (i.e. farmstands, small engine repair, etc.).

3. Treatment of AOFBs in Act 250

Statute: 10 V.S.A. § 6001(22)

AOFBs are not exempt from Act 250 jurisdiction as a category. Only those activities that qualify as “farming” under Title 10 are currently exempt.

Options:

A. Maintain the status quo under Title 10.

AOFB businesses would then remain potentially subject to differing municipal, Act 250, and AAFM land-use regulations.

B. Exempt AOFBs under defined circumstances.

Consider factors such as the size of the AOFB itself, or whether the town has zoning and subdivision bylaws or is subject to 1- or 10-acre jurisdiction under Act 250.

C. Exempt all AOFBs from Act 250 jurisdiction.

Since exempt activities are not subject to Act 250 or municipal land use permitting or regulation in towns without zoning or regulation, more specifically tying the exemption to ‘farming’ may be an important protection.

Conclusion

Not all land uses on farms are considered farming but many related or “accessory” uses provide benefits that help keep our farmers in business and our landscape working. These benefits include activities that support agricultural literacy, increase farm profitability, entice and engage the next generation of farmers, and ensure agricultural operations stay viable and farmland remains open and in production.

A robust agricultural sector is essential to supporting Vermont's residents, building its rural economy, employing its citizens, maintaining a healthy local food supply, drawing

tourists, protecting the environment, maintaining Vermont's open and working landscape, and its unique character and beauty.

As this report reflects, it is important to balance protecting Vermont's natural resources, facilitating working landscapes, and charting a future path forward for farming at this pivotal moment.