

# **Natural Resources Testimony on Act 250 Jurisdiction Over Agricultural Businesses – Legislative Report**



**House Committee on Agriculture, Food Resiliency and Forestry  
January 24, 2023**

# Legislative Charge

- Report on how Act 250 jurisdiction should be applied to agricultural businesses, including:
  - How to clarify what is (or is not) an AOFB
  - Current land use planning requirements for farms & farms with AOFBs
  - Whether different types of businesses associated with farms and farming require different levels of review
  - May also consider:
    - whether or not the location of such businesses is relevant
    - Designation/adoption of “agricultural innovation zones” w/different levels of review

# Approach and Stakeholder Process

- NRB and AAFM collaboration on Stakeholder Survey to farmers and municipalities around the state;
- Targeted discussion based on survey results;
- Three multi-hour stakeholder meetings in September, October, and November;
- Three themes emerged;
- Public meeting around draft report in December.

# Current AOFBs Regulatory Landscape: Act 250

- By statute, farming exempt from Act 250 permitting.
- Development (construction of improvement for commercial purpose) on farm *may* trigger Act 250 permit requirements
- Farming includes: on-site storage, preparation, and sale of agricultural products *principally produced* on the farm
- Principally Produced = more than 50% (either by weight or volume) of the ingredients or materials contributing to a final agricultural product or products which result from farming and which is stored, prepared or sold at the farm, is grown or produced on the farm (definition in NRB rules)
- Note: when development on a farm, only those portions of the parcel or the tract that support the development shall be subject to regulation under this chapter.

# Current AOFBs Regulatory Landscape: Municipal

- No bylaw shall have the effect of prohibiting an AOFB.
- To be eligible, the farm must be subject to the Required Agricultural Practices (RAP rules) and operated by the owner, residents of, or lessee of the farm, and meet the Act 250 definition of *farming*.
- “Accessory on-farm business” means activity that is accessory to a farm and comprises one or both of the following:
  - (I) 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.
  - (II) 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.

# Current AOFBs Regulatory Landscape: Municipal

- “Qualifying product” means a product that is wholly:
  - (I) an agricultural, horticultural, viticultural, or dairy commodity, or maple syrup;
  - (II) livestock or cultured fish or a product thereof;
  - (III) a product of poultry, bees, an orchard, or fiber crops;
  - (IV) a commodity otherwise grown or raised on a farm; or
  - (V) a product manufactured on one or more farms from commodities wholly grown or raised on one or more farms.
- Location. An accessory on-farm business may take place inside new or existing structures or on the land.
- Activities of an accessory on-farm business may be subject to site plan review, and municipalities may adopt a bylaw concerning accessory on-farm businesses that is less restrictive
- Training. The Secretary of Agriculture, Food and Markets shall provide periodic written notification and training sessions to farms subject to the RAP rules on the existence and requirements of this subdivision (11) and the potential need for other permits for an accessory on-farm business, including a potable water and wastewater system permit under 10 V.S.A. chapter 64.

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

## Options:

- A. Align the different standards in Title 24, the RAPs and Title 10/Act 250 Rules
  - 1. Title 24: look at the “total annual sales” of “qualifying products” to determine whether something is an AOFB. AOFBs must be on a farm that is subject to the RAPs. More than more than 50 percent of the total annual sales must be from qualifying products that are produced on the farm at which the business is located.
  - 2. RAPs: regulate inter alia the “on-site storage, preparation, and sale of agricultural products principally produced on the farm from raw agricultural commodities principally produced on the farm”, and define “principally produced” as “more than 50% (either by weight or volume) of raw agricultural products that are stored, prepared, or sold at the farm are also grown or produced on the farm.”
  - 3. Title 10/Act 250 Rules: look at “weight or volume” of agricultural products to determine whether they are “principally produced” such that they are exempt as farming
  
- A. Allow for AOFBs to sell more qualifying products “obtained from another farm.”
  
- B. Expand the definition of “qualifying products.”
  
- C. Increase AAFM educational outreach.

# More precisely define what types of businesses qualify as AOFBs

## Options:

- A. Distinguish between “educational” and “recreational, or social events.”
- B. Specify whether restaurants and/or wedding venues constitute accessory on-farm businesses, and/or establish appropriate limitations or thresholds.
- C. Define AOFBs on a use basis.



## Treatment of AOFBs in Act 250

### Options:

- A. Maintain the status quo under Title 10.
- B. Exempt AOFBs under defined circumstances.  
e.g. size of the AOFB; if the town has zoning and subdivision bylaws
- C. Exempt all AOFBs from Act 250 jurisdiction.