

Agricultural Enterprise Meeting

Regulatory/Legislative Subcommittee

November 14, 2014

2nd Floor Conference Room, AAFM, Montpelier, Vermont

Participants: Bob Livingstone, East Shore Vineyard; Melanie Kehne, NRB/Act 250; Chris Sargent, TRORC; Jane Clifford, Green Mountain Dairy; Chris Company, WRC.

By Phone: Regina Mahoney, CCRPC; Nancy Everhart, VHCB

Host: Stephanie Smith, AAFM

The Agency distributed agendas to individuals in the room that followed the previously distributed and explained what was heard at the last meeting on Oct 31, which builds on previous discussion heard at stakeholder meetings in Richmond and Woodstock.

- supporting diversified on-farm enterprises,
- providing predictability and consistency for agricultural producers with diverse operations,
- encouraging efficient use of agricultural infrastructure while addressing associated impacts,
- defining frequently used terms and developing a common understanding by all entities, and
- providing tools and guidance to encourage effective agricultural planning.

The Agency also sent out links with information from NY State regarding [wineries and breweries](#), [digester tax assessment guidance](#) from the Vermont Tax Department, and VHCB's guidance on [Conservation of Agricultural Lands](#) and [Rural Enterprises](#). These are examples of policies in state government (both Vermont and New York) or as adopted by Agency partners that govern Rural Enterprises.

Nancy Everhart, VHCB, explained the purposes of VHCB's Rural Enterprise guidance. It outlines that conserved farms may engage in some land uses with approval from easement co-holders. The guidance allows uses that will not have an effect on agriculture land, comply with the purposes of the easement, and will support the farm operation. They include some non-agricultural uses. Nancy mentioned that VHCB Renewable Energy guidelines provide a definition of rural enterprise.¹

The members of the group described various activities uses that are not covered by the Agency's Accepted Agricultural Practices (AAP); dinner theater, lodging, processing of agricultural inputs when a majority comes from off the farm, and commercial events on the farm.² However, the group

¹ Rural Enterprises: agricultural, forestry and other commercial uses on conserved farms or working forests operated at a scale that does not detract from the easement purposes and which enables the farm or forest owner to supplement their agricultural or forestry income. Renewable energy installations may be approved as rural enterprises generally following VHCB's Guidelines for Rural Enterprises on Farmland (September 2003).

² For the purposes of this discussion, "agricultural enterprises" could be uses that occur on a "farm" that are not considered "farming" or an "accepted agricultural practice," however helps a farm remain profitable, and may not be related to farming but could be accessory to farming. A definition of agricultural enterprise may be needed.

understood that many of these land uses are tools for marketing, and support the viability of a farm operation. Many are linked “agritourism” and provide opportunities for agricultural literacy. The town through its zoning authority may regulate these uses.

- The requirement for a property owner to obtain a permit is not a bad thing. Permits protect property owners, and let them know what is expected-permits provide a clear direction. This is also true for those producers engaged in businesses not considered farming or an AAP.
- A producer that gets a permit for construction of a building or a particular use can have the certainty that they are in compliance with local regulations.³
- Producers should not hide behind “agriculture” to avoid obtaining permits and complying with all necessary regulations to expand their businesses.
- Standards addressing impacts for other similar uses should be same as the uses located on farms; farms shouldn’t be held to a different standard.

What are the potential impacts to expanded agricultural businesses or agricultural enterprises?

- Solid waste – ANR through its Solid Waste Management Program regulates and certifies facilities. This program also provides solid waste technical and financial assistance to towns and solid waste districts. Municipalities also have some jurisdiction regarding solid waste and adverse impacts related to a land use.⁴
- Traffic - State statute provides the regulation for weight limits on municipal and state highways, as well as a highway reclassification process if development requires an upgrade to a municipal highway.⁵
- Odor- A municipality can adopt standards to address odors through performance standards. [24 VSA §4414 (5)]
- Noise- Authority vested with municipality to regulate through performance standards [24 VSA §4414 (5)]
- Lighting- A municipality may regulate through both site plan review and performance standards [24 VSA §§ 4416, 4414 (5)]
- Hours of operation- Authority found in conditional use review and performance standards [24 VSA § 4414 (3) and (5)]
- Wastewater - The state regulates wastewater (either AAFM or DEC); or a municipality regulates with delegation from the state.

Scale - Both Act 250 and the Agency regulated the “51% rule” based on complaints.

- Another way to look at scale would be to scale at production output. Some operations- wineries or dairies- must keep records for their industry related to production. It could be an easy way to manage scale of an operation by providing a ceiling of output of product related to industry standards; or
- frame regulations in the positive way- regulating for what one wants to occur.

³ SS Note: but it also provides the stage for an appeal that otherwise might not be necessary if the activity meets the definition of farming and an AAP.

⁴ Authority is vested in a municipality through its zoning bylaws “to specify the levels of operation that are acceptable and not likely to affect adversely the use of the surrounding area by the emission of such ... objectionable elements as ... solid refuse or wastes.” [24 VSA §4414 (5)]

⁵ SS Note: As brought up in previous meetings municipalities can regulate traffic through land use regulations, too.

How does someone separate the impacts of odor, noise, hours of operation associate with an agricultural enterprise, when some of these concerns are related to “farming” and AAPs and otherwise would not be regulated by a municipality? Act 250 must make this distinction, too.⁶

If standards, either statewide or locally, existed for the above impacts, how could be they integrated into a regulatory framework to address agricultural enterprise expansion. Some options to address new or expansion of agricultural enterprises included:

- Use a similar treatment in statute that is used for accessory dwelling units in 24 VSA § 4412(1)(E), where an agricultural enterprise could be a by right use if certain standards were met and require the issuance of a municipal permit. These standards could be a mix of state standards (wastewater) and local standards (flood plain, traffic and noise). This type of approach could
 - provide consistency across the state regarding what is a permitted use on a farm if specific standards are met;
 - clarifies for municipal officials and farmers that certain uses occurring on farms, may not meet the definition of “farming” and are not an AAP, and therefore require review; and
 - provide opportunities for growth while considering impacts
- Include in the limitations on municipal bylaws found in 24 VSA § 4413(a)(1), which limits review to specific criteria. This approach is not as consistent as the above and is difficult to administer at the local level.
- Encourage municipalities to adopt local regulations to address the issues. The Sustaining Agriculture Planning Guide provides examples of local regulations that address agricultural enterprises, <http://www.vtfoodatlas.com/story/sustaining-agriculture-land-use-planning-modules>. Shelburne’s zoning regulations contain uses that allow for agricultural enterprises, and is highlighted in this document.
- Explore how some on farm uses could come under a home occupation statute as permitted under 24 VSA § 4412(1)(E). This would be a local review of a proposal under existing law
 - Concerns exist that an incubator type of a business might be ok for the beginning stages of a business but could lead to trouble if the business grows.

⁶ “10 VSA § 6001 (3)(E) When development is proposed to occur on a parcel or tract of land that is devoted to farming activity as defined in subdivision 6001(22) of this section, only those portions of the parcel or the tract that support the development shall be subject to regulation under this chapter. Permits issued under this chapter shall not impose conditions on other portions of the parcel or tract of land which do not support the development and that restrict or conflict with accepted agricultural practices adopted by the Secretary of Agriculture, Food and Markets. Any portion of the tract that is used to produce compost ingredients for a composting facility located elsewhere on the tract shall not constitute land which supports the development unless it is also used for some other purpose that supports the development.”

- Is this any different from how the statute is used today? Are home occupations a part of a business plan, or are home occupations meant to be only those businesses that will thrive and still meet the standards?

There are some definitions of terms that already exist in statute.

Define “farm” and or “the farm”

- “Farm” means a site or parcel on which farming is conducted . [6 VSA 21 (3)]
- “Farming” shall have the same meaning as in 10 V.S.A. § 6001(22). [6 VSA 21 (4)]
- “The farm” For purposes of 10 V.S.A. § 6001(22)(E), “the farm” means lands which are used for any purpose stated in 10 V.S.A. § 6001(22), which are owned or leased by a person engaged in the activities stated in 10 V.S.A. § 6001(22), if the lessee controls the leased lands to the extent that they would be considered to be the lessee’s own farm. Indicia of such control include whether the lessee makes the day-to-day decisions concerning the cultivation of the leased lands, subject to incidental conditions of the lessor, and whether the lessee works the leased lands during the lease period. [Act 250 Rules (18)].

Define Agritourism

- no statewide accepted definition and it was unclear whether a definition would be helpful
- Vermont Farms Association uses "a commercial enterprise on a working farm conducted for the enjoyment, education, and/or active involvement of the visitor, generating supplemental income for the farm." This does not include off farm activities.
- Farm to Plate Task Force on agritourism uses a definition that includes off farm activities
- USDA has a definition of agritourism

Act 250 has limitations on its jurisdiction on activities that are often thought of being associated with agriculture, but otherwise do not meet the definition of “farming” below the elevation of 2,500 feet, including:

- “construction of improvements for agricultural fairs that are registered with the Agency of Agriculture, Food and Markets and that are open to the public for 60 days per year or fewer, provided that, if the improvement is a building, the building was constructed prior to January 1, 2011 and is used solely for the purposes of the agricultural fair[“;] and
- “the construction of improvements for the exhibition or showing of equines at events that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.”
- “ The construction of improvements below the elevation of 2,500 feet for the onsite storage, preparation, and sale of compost, provided that one of the following applies:
 - (I) The compost is produced from no more than 100 cubic yards of material per year;
 - (II) The compost is principally produced from inputs grown or produced on the farm;
 - (III) The compost is principally used on the farm where it was produced;

- (IV) The compost is produced on a farm primarily used for the raising, feeding, or management of livestock, only from: (aa) manure produced on the farm; and (bb) unlimited clean, dry, high-carbon bulking agents from any source;
- (V) The compost is produced on a farm primarily used for the raising, feeding, or management of livestock, only from: (aa) manure produced on the farm; (bb) up to 2,000 cubic yards per year of organic inputs allowed under the Agency of Natural Resources' acceptable management practices, including food residuals or manure from off the farm, or both; and (cc) unlimited clean, dry, high-carbon bulking agents from any source;
- (VI) The compost is produced on a farm primarily used for the cultivation or growing of food, fiber, horticultural, or orchard crops, that complies with the Agency of Natural Resources' solid waste management rules, only from up to 5,000 cubic yards per year of total organic inputs allowed under the Agency of Natural Resources' acceptable management practices, including up to 2,000 cubic yards per year of food residuals[.]”

A producer that decides to engage in an agricultural enterprise, which could remove the operation from the current use program, for example charging for recreational activities on the farm, needs to be aware of the implications of engaging in the activity. However, this discussion to enable, clarify and identify an avenue for diversification of activities on a farm should not be stunted because other issues might exist for a producer that decides to expand their operations. This is an important discussion, but we need to acknowledge the potential impacts to other state programs.

Farm worker housing

Most local land use regulations do not include provision to address the development of farm worker housing without a requirement to subdivide to establish another principal use on the a lot. This requires a landowner to meet the minimum lot size of rural district zoning, which are typically large. In rural agricultural districts and for the purpose of sustaining agriculture and protecting the resources associated with agriculture this has the opposite effect, and may not meet the needs of the farmer if the housing is not near the farmstead complex.

There are big challenges to bring forth changes in Vermont law. So in order to move forward there must be coalition building with the wide-ranging groups that represent various interests. A process must include finding champions of making changes to any system that is currently in place. The goal of this work in the immediate future is a report to the legislature that identifies the issues, outlines educational needs and opportunities, and provides some suggested solutions to the issues. The Agency will begin working on the report and will share the draft report with the attendees to the subcommittee meetings.