Agriculture and Municipalities

Municipal Day, Montpelier
October 26, 2018
The intersection of municipalities and agriculture:

- Farm/Farming
- RAPS
- On Farm Accessory
- 9 B Criteria
What is a Farm?

- $2,000.00 or more in Ag Sales
- 4.0 contiguous acres
- 4 horses, 5 cattle or Cows, 15 pigs, sheep or goats, 50 turkeys, 100 hens, 30 rabbits
- Managed by farmer filing a 1040(F) tax form in at least one of the past two years
- Prospective business or farm management plan
- Designated by the Secretary
What is Farming?

• Cultivation or other use of land for food, fiber, Xmas Trees, Maple, or orchard crops
• Livestock, Greenhouses and Maple syrup production
• Storage, prep or sale of ag products or Fuel or power from ag products or waste principally (>50%) produced on the farm
• Boarding or owning 4+horses including training, showing, or lessons
FARMS have to follow the Required Agricultural Practices

- Siting requirements for farm structures
- Erosion standards
- Floodplain management
- Streamside and Ditch Buffers and manure setbacks
  25’ all surface water, 10’ all ditches
- Livestock exclusion from surface waters
- Nutrient management (including seasonal manure application)
- EDUCATION: Farmers, Custom Operators, Technical Service Providers
- Tile drainage requirements
Construction

• Farms must notify the Town
• Must follow local setbacks unless otherwise approved
• Need to comply with Other State permit Requirements
• RAP Setbacks -
ALL NEW WASTE STORAGE FACILITIES PROPOSED ON SITES WHERE NO STORAGE FACILITY OR PRODUCTION AREA PREVIOUSLY EXISTED SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE FOLLOWING SETBACKS:

New Waste Storage Facilities
Manure Stacking Setbacks

- Property Line
- Manure Stack
- Surface Water
- Ditch
Buffers are harvestable and they can be grazed but the buffer cannot be tilled or have compost or fertilizer applied except for establishment or maintenance.
Livestock Exclusion from Surface Waters

Livestock shall be excluded from surface waters in production areas (barnyard, feedlot and heavy use areas) except at defined livestock crossings or watering areas.
Agriculture.Vermont.gov/rap
ACCESSORY ON-FARM BUSINESSES

Act 143, (H. 663)
An act relating to municipal regulation of accessory on-farm businesses and hemp cultivation
WHAT THE LAW DOES

Amends Chapter 117
Creates a statewide municipal land use category called “accessory on-farm business”

- (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 principally 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.
It defines terms for the purposes of implementing the law

- “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.

- “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.

- “Farm” shares same definition found in Required Agricultural Practices rule

- “Farming” same as Act 250, and similar to definition found in RAPs
Limits municipal regulatory authority

■ Despite local zoning regulation to the contrary, a municipality may apply site plan review and require the accessory on-farm business to meet the performance standards for a similar type of commercial business.
AAFM
RESPONSIBILITIES
Existing Responsibility of AAFM

AAFM continues to protect water quality by requiring farm operators to meet standards outlined in the Required Agricultural Practices rule.

AAFM will continue to determine whether a “farm” exists, and the Required Agricultural Practices rule applies to the operation.

AAFM authorize alternative setbacks from those outlined in a municipal bylaw, using Section 9 of the Required Agricultural Practices rule.
New Responsibility for AAFM

- Provide periodic written notification and training sessions to farms covered by the Required Agricultural Practices rule on the existence and requirements of this law

- Alert farms that in order to operate an accessory on-farm business other state permits may be necessary
FARM OPERATOR RESPONSIBILITIES
Apply for necessary permits/approvals

- Operator is responsible for
  - Applying for municipal site plan review and permits, as necessary
  - Providing evidence used in site plan review process
    - Is it a “farm” covered by Required Agricultural Practices rule?
    - Is it a business that is accessory to the primary farm use?
    - Is the business operated by farm owner, one or more persons living on the farm, or a lessee of a portion of the farm
    - Is it an educational, social or recreational event that features agricultural practices or qualifying products, or a business that sells qualifying products?
If the farm applies “agricultural pesticides”...

- In the same area as the “accessory on-farm business”
  - Post in accordance with EPA’s “worker protection standard”
MUNICIPAL RESPONSIBILITIES
Municipalities apply the law

- Determines eligibility of the proposal to qualify as an Accessory On-Farm Business, under Act 143
  - *Is it a farm owner, resident, or lessee?*
  - *Does it meet the definition of an accessory on-farm business?*

- Applies municipal site plan review and performance standards and issues decisions

*Municipalities can adopt more permissive land use regulations*
WHAT THIS LAW DOES NOT DO
It does not change the need to get other permits for development or to operate a business

- Act 250
- Fire safety
- Wastewater/ Potable Water
- Wetlands

- Health Department
- On-farm slaughter
- Raw Milk
- Stormwater

It also does not change enrollment requirements for land and buildings in the Current Use Program
Act 250, Criterion 9(B): Primary Agricultural Soils
Primary Agricultural Soils (PAS)

10 V.S.A. § 6001(15)

(A) An important farmland soils map unit that the Natural Resources Conservation Service of the U.S. Department of Agriculture (NRCS) has identified and determined to have a rating of prime, statewide, or local importance, unless the District Commission determines that the soils within the unit have lost their agricultural potential. In determining that soils within an important farmland soils map unit have lost their agricultural potential, the Commission shall consider:

(i) impacts to the soils relevant to the agricultural potential of the soil from previously constructed improvements;
(ii) the presence on the soils of a Class I or Class II wetland under chapter 37 of this title;
(iii) the existence of topographic or physical barriers that reduce the accessibility of the rated soils so as to cause their isolation and that cannot reasonably be overcome; and
(iv) other factors relevant to the agricultural potential of the soils, on a site-specific basis, as found by the Commission after considering the recommendation, if any, of the Secretary of Agriculture, Food and Markets.

(B) Soils on the project tract that the District Commission finds to be of agricultural importance, due to their present or recent use for agricultural activities and that have not been identified by the NRCS as important farmland soil map units.
ANR Natural Resources Atlas; see NRCS mapped statewide, prime, or locally important soils
Mitigation Multipliers:
10 V.S.A. § 6093(a)(2)(B)

- Soils with an agricultural value 1, multiply by 3
- Soils with an agricultural value 2, multiply by 2.75
- Soils with an agricultural value 3, multiply by 2.5
- Soils with an agricultural value 4, multiply by 2.25
- Soils with an agricultural value 5 - 7, multiply by 2

Note: 1:1 ratio applies in designated areas and Industrial Parks as defined and permitted by Act 250 as of 01/01/06.
On-site Mitigation: What is Required?

- “Innovative land use design resulting in compact development patterns which will maintain a sufficient acreage of [PAS] on the project tract capable of supporting or contributing to an economic or commercial agricultural operation.” 10 V.S.A. § 6093(a)(2).
- No requirement the soils be actively farmed today; conserving the resource for present and future use
- 2-acre minimum area (de minimis if under 2 acres mitigation; cumulative impacts)
- Soils of equal or better agricultural value to those being impacted (emphasis on “Prime”)
- No Class I/II wetlands
- Access / availability
- Enforceable by permit conditions, issued by DC (recommended by the Agency)
Example: On-site mitigation area (pink) and direct/indirect impacts (beige)
Off-site Mitigation
(by permit condition issued by Commission)

- Fee into Vermont Housing and Conservation Trust Fund, administered by VHCB, for “preserving [PAS] of equal or greater value with the highest priority given to preserving prime agricultural soils.” 10 V.S.A. § 6093(a)(1).

- VHCB leverages these funds along with those from other sources to conserve prime farmland in the region of the development through permanent conservation easements (and, pursuant to statute, to be used by AAFM to pay reasonable staff/transaction costs).

- Available for projects in designated areas (ie downtown development district; growth center; Industrial Park in existence and permitted by Act 250 as of Jan. 1, 2006). 10 V.S.A. § 6093(a)(1).

- For projects outside designated areas, available only subject to District Commission’s findings of mitigation flexibility (appropriate circumstances) for off-site or a combination of on and off-site, if consistent with agricultural elements of local/regional plans. 10 V.S.A. § 6093(a)(3). AAFM does not weight in on appropriate circumstances – leaves it to Commission.
Off-site Mitigation Rates by District

- Based on what the Secretary of the Agency has determined to be the “recent, per-acre cost to acquire conservation easements for [PAS] in the same geographic region as the proposed development or subdivision”
- Today, the Agency sets these rates annually based on recent closings on easements by VHCB
9(B) - Implications and Special Considerations for Municipalities

- Municipality as applicant
- Municipal planning implications
- Use of on-site mitigation land in municipalities
- Appropriate circumstances
- Farmland conservation
Questions?