

FARMLAND EXEMPT FROM ACT 250 JURISDICTION

by Jon Anderson, Esq.

The Environmental Division of the Vermont Superior Court recently clarified that Act 250 applies only to the portion of any farm developed for commercial activity. *WhistlePig, LLC Act 250 Land Use Permit*, Decision on Motions dated September 2, 2015.

When a project subject to Act 250 jurisdiction is constructed, in most cases, Act 250 jurisdiction applies to the entire parcel. 10 V.S.A. § 6001(3)(E), however, limits Act 250 jurisdiction on farms to only those portions of the parcel or tract that support commercial development regulated by Act 250. The Vermont Natural Resources Board (“NRB”), which administers Act 250, argued that growing rye grain for distillation supported the distillery operation. The Environmental Division rejected this argument, ruling:

The statute states unambiguously that “only those portions of the parcel or tract that support the development shall be subject to regulation under this chapter.” . . . It is clear that the Legislature intended to limit the scope of Act 250 regulation to only the portion of farm land dedicated to and supporting the commercial development. . . . We believe that the reason and spirit of the statute is clear from its plain language: to prevent Act 250 regulation of land dedicated to farming. As the NRB succinctly stated, “Act 250 regulates the development, not farming.”

When a farmer processes his harvest into products, his processing operation is subject to Act 250 jurisdiction unless he grows a majority of the ingredients in his products on his farm. The WhistlePig ruling now clarifies that only that limited portion of a farm that is used to process crops not grown at the farm will be subject to Act 250 jurisdiction.

Two farmers in particular—long-time Farm Bureau President Eric Chittenden and Senator Robert Starr—assisted WhistlePig’s Attorneys Jon Anderson and Alexander J. LaRosa in the presentation of WhistlePig’s case.