

Findings of Fact and Substantial Reasons for a Loudoun County Definition of “Farm”



Prepared by: Maura Walsh-Copeland



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Findings of Fact and Substantial Reasons for a Definition of “Farm”

Abstract

“Agriculture” in Loudoun County is not the same as it was 20 years ago when the primary operations were crops, livestock including dairy, horticulture, and silviculture. Since the last zoning ordinance update in 2006, agriculture has dramatically changed with the addition of new uses and business models for tourism and sustainable agritourism operations. Supported by the plain language of the Code of Virginia, only being located in a district labeled “Agricultural” does not sufficiently define “farm” or “farming” requirements for agricultural products and production in the current zoning ordinance rewrite. Requests for a definition of “farm” were first raised by County Staff in 2014 with the introduction of new State licensed uses, and the 2016 approval of many new uses in Agricultural Rural districts.

A definition of “farm” would assist compliance review for Code of Virginia Right to Farm regulations, VaABC licensing, zoning ordinance requirements, Planning and Zoning permit, location, and application review, zoning enforcement, and Building and Development application and exemption requirements. A definition would better protect the County from potential legal jeopardy of non-compliance with Code of Virginia or approval of applications without bona fide agricultural operations, and provide clarity for Internal Revenue Code, financial and insurance regulations. A definition would also relieve an external organization from quasi-regulatory actions and protect individuals from making potentially perjurious statements.

Actions taken to complete this report included review of Code of Virginia regulations, Board of Supervisor advisory group and public input submitted through the Zoning Ordinance Rewrite since 2020, and direct input from subject matter experts. The findings of fact and substantial reasons applied the standard of review such that a reasonable mind would accept the information provided as adequate to support a conclusion. Of note, the input for this report covers a wide array of substantial reasons, none of which intend or will cause existing operations that are legal today to be closed. The follow-on phase would be to obtain agreement to work with the County Attorney’s Office to review and address any specific legal or definition “conflicts” as outlined the County Staff’s July 26th Board of Supervisors Public Hearing Packet.

Author Note

In June 2023 the retiring Deputy County Administrator, Charles Yudd, requested assistance to outline the stakeholder perspectives and substantive reasons the Zoning Ordinance Rewrite (ZOR) should include a definition of the word “farm.” The author is directly aware of definition requests since 2015 and has compiled this report input in a management consulting intermediary capacity across stakeholder positions held. The author’s background and select qualifications for compiling this report include:

- MBA, Management Consultant with consulting engagement expertise in zoning analysis, legal review, and public input program management,
- Member of the Zoning Ordinance Committee (ZOC) and Rural Economic Development Council (REDC) ZOR Ad hoc Committee Board of Supervisory Advisory Groups,
- LCPCC Executive Committee member, ZOR Work Group Chair, and Hillsboro Preservation Foundation officer,
- Member of the Purcellville Business Association and Greater Hillsboro Business Alliance,
- Farm Bureau member, co-owner of a Virginia Century Farm (operated by the same family for over 255 years).

TABLE OF CONTENTS

SECTION 1: FINDINGS OF FACT	4
CHRONOLOGY OF REQUESTS FOR A DEFINITION OF “FARM”	4
1. Prior Loudoun County Staff and Supervisor Requests for Definition of “Farm.”	4
2. Board of Supervisor Requests for Definition of “Farm”	4
3. Public Input Comments and Support for a Definition of “Farm” – 2020 to 2023	5
CHRONOLOGY OF “FARM” DEFINITIONS DURING ZONING ORDINANCE REWRITE	5
4. Prior 1993 Zoning Ordinance definition of Farm	5
5. Staff April 2022 proposed definition of “Farm” for ZOC and public input review	6
6. Staff January 2023 definition of “Farm” for Planning Commission work session discussions	7
7. The April 2023 definition of “Farm”	8
RELEVANT CODE OF VIRGINIA CITATIONS OF “FARM”	8
8. Code of Virginia § 3.2-6400 Definition of “Farm or Ranch”	8
9. Code of Virginia § 46.2-698.C. Definition of “Farm”	9
10. Code of Virginia § 36-97 and VAC 13VAC5-63-200 “Farm Building or Structure”	9
11. Code of Virginia § 15.2-2288.6 applies to “Agricultural Operations” as defined in § 3.2-300	9
12. Code of Virginia § 4.1-206.1 – “Farm” location requirements for VaABC Licensed Uses	9
13. Code of Virginia § 36-98.4 and Senate Bill 1305. Agritourism event buildings	10
14. Virginia ABC-Related Legislation Effective July 1, 2023, Winery and Farm Winery	11
SECTION 2: SUBSTANTIAL REASONS FOR DEFINITION OF “FARM”	12
IMPACTS TO UNDERSTANDING AND HEALTH, SAFETY AND WELFARE	12
15. Clarity for uses of the word “Farm” versus “Agriculture”	12
16. Consistency with Loudoun County Land Use Assessment Regulations	12
17. Use of word “Farm” Causes Confusion and Obfuscation	12
18. Business Management – Department of Economic Development (DED)	13
PROCESS REQUIREMENTS TO CONFIRM “FARM” OPERATIONS	14
19. County To State License Approval Process Disconnects	14
20. Inspections to confirm Code of Virginia requirements for “farm” products and operations	14
21. Lack of annual VaABC inspection for ongoing “ <i>agricultural products . . . grown on the farm.</i> ”	15
22. Farming Operation and Agricultural Operations	15
FARM BUILDING OR STRUCTURE – EXEMPTION REQUEST PROCESS	17
23. Farm Building or Structure – SB 1305	17
24. Building & Development Farm Structure Exemption Request	17
IMPACTS TO ORGANIZATIONS AND OTHER CONSIDERATIONS	18
25. Exemption Request Impacts to Loudoun Soil & Water Conservation District (LSWCD)	18
26. Self-Declaration of “Farm” – Farm Bureau Input	19
REAL ESTATE, FINANCE, AND INSURANCE CONSIDERATIONS FOR “FARMS”	20
27. Real Estate Implications for “Farms”	20
28. Internal Revenue Code compliance	20
29. Financial and Insurance impacts for “farm”	20
SECTION 3: FOLLOW-ON REVIEW ACTIONS	22
30. Identification of Conflicts	22
31. Primary follow-on review actions	22

SECTION 1: FINDINGS OF FACT

CHRONOLOGY OF REQUESTS FOR A DEFINITION OF “FARM”

1. Prior Loudoun County Staff and Supervisor Requests for Definition of “Farm.”

- a. As early as 2014 the Department of Planning and Zoning (DPZ) Staff outlined factors to be considered for uses that would be permitted by-right “*on a farm.*” DPZ highlighted that 2014 adopted State legislation for uses on a farm did not equally require a minimum acreage for the farm or specify the percentage of agricultural products that must originate on the farm¹
- b. During data gathering for a 2017 case study titled, “*The Problem with Permits*”² Loudoun County staff from multiple departments and Virginia State agencies stated a definition of “farm” would assist in the permit evaluation and enforcement of uses, plans, and structures that are required to be directly associated with a “farm” and farming operations.

2. Board of Supervisor Requests for Definition of “Farm”

The Transportation Land Use Committee (TLUC) October 15, 2019 packet for *Rural Uses and Performance Standards Phase 3 ZOAM* included the following text/requests³

a. October 15, 2019 TLUC Text

Agricultural Operations

Proposal: Add new “Agricultural Operation,” “Agricultural Products,” and “Farm” definitions. Comments: The Zoning Ordinance currently does not define the terms Agricultural Operation, Agricultural Products, or Farm; however, these terms are consistently referenced throughout the Zoning Ordinance. Code of Virginia statutes that apply to certain agricultural activities and local regulation of such agricultural activities (e.g., Limited Distillery, Limited Brewery, Farm Winery, and Agricultural Processing) also reference these terms. The proposed amendment intends to establish new definitions for these terms in order to: 1) clarify the distinction between the types of agricultural properties and functions, 2) maintain consistency with the Code of Virginia, and 3) ensure that these terms are used consistently in the Zoning Ordinance. Recommendations: REDC, ZOAG, and Visit Loudoun recommend the Phase 3 ZOAM includes definitions for the above terms “Agricultural Operation,” “Agricultural Products,” and “Farm”. (emphasis added).

- b. The Board of Supervisors (BOS) November 21, 2019 Action Report included the approval for the Resolution of Intent to Amend (ROIA) the Rural Uses and Performance Standards Phase 3 Zoning Ordinance Amendment.⁴

¹ [ZOAM-2014-0003 Department of Community Planning Referral, August 8, 2014](#)

² Contracted consulting engagement conducted by Walsh-Copeland Consulting LLC

³ [Item 06 Rural Uses Standards Phase 3.pdf](#)

⁴ [11-21-19 Business Meeting Minutes .pdf](#)

3. Public Input Comments and Support for a Definition of “Farm” – 2020 to 2023

Throughout the Zoning Ordinance Rewrite requests were made for a definition of “farm” by multiple public input stakeholders and BOS Advisory Groups (Zoning Ordinance Action Group/Zoning Ordinance Committee and Rural Economic Development Council), with justifications stated as

a. Zoning Ordinance Rewrite 2021 Public Input Round Two⁵

The lack of a clear definition of what a “Farm” really is or is not in Loudoun County has caused inconsistent determinations for uses, abuse from applicants, and confusion for residents throughout the county. With the ever-diminishing actual “farm” and “farmland” throughout the County, a definition must be determined if the Rural Policy Area and Rural Tourism are to be protected as stated in the 2019 Comprehensive Plan.

b. Zoning Ordinance Committee Input. A definition of Farm was discussed by the ZOR Subcommittee with a majority vote by the full ZOC to approve ⁶

“Agricultural” use should require a recognizable level of farming on-site,” and “Agricultural” uses should require conservation of farmed areas on-site.

c. Rural Economic Development Council April 2022 90-Day Public Input⁷ and comments on April 2022 draft definition included that,

“The definition of “farm” should be amended such that processing by itself does not define a farm. Processing should be eliminated from the ‘Farm’ definition.”

Because Agricultural Processing is a separate use, there is no need to include “processing” in the definition of “farm.”

Business uses allowed on Farms not currently covered by an agricultural production requirement should as best practice have a farm plan identifying what crops would be suitable for the property and acreage assigned as part of their process.

CHRONOLOGY OF “FARM” DEFINITIONS DURING ZONING ORDINANCE REWRITE ZOR Draft definitions of Farm and Public Input – 2020 to 2023

4. Prior 1993 Zoning Ordinance definition of Farm

The definition of “farm” included in the zoning ordinance was part of the definition of Brewery Limited in final approval 2015.

⁵ Zoning Ordinance Rewrite [Public Input - Round Two.Pdf](#)

⁶ [ZOC Findings & Recommendations Report-July-2022](#)

⁷ [REDC July 15 2022 Zoning Ordinance Rewrite Public Input, \(PDF p. 424\).](#)

- a. The initial definition for the September 16, 2014, Planning Commission Public Hearing ZOAM 2014-0003 and BOS November 14, 2014 Public Hearing did not include a definition of "farm."

Brewery, Limited: A brewery licensed as a limited brewery and is located on a farm in the Commonwealth on land zoned agricultural.

- b. The new use definition was revised at the November 21, 2014, TLUC meeting⁸ to add the 10 acre minimum owned or leased, with undetermined notice or comments by the public prior to approval at the January 21, 2015 BOS Board Meeting.

Brewery, Limited: A brewery licensed as a Limited Brewery in accordance with Section 4.1-208 of the Code of Virginia, as amended, and located on a farm in the Commonwealth on land zoned agricultural. For the purposes of this definition, "farm" shall be defined as one or more contiguous parcels of land, totaling a minimum of 10 acres in size, owned or leased by such licensed limited brewery. (Underline added)

5. Staff April 2022 proposed definition of "Farm" for ZOC and public input review⁹

- a. The following definition was proposed by Staff in April 2022 with the assumed review by the County Attorney's Office to meet their requirements to address parcels that were adjacent or contiguous and under the same ownership.

***Farm:** An agricultural use of one or more parcels of land, whether abutting or not, having a minimum of 5 acres and operated under the same ownership or stewardship, used for the production, cultivation, growing, harvesting or processing of agricultural or horticultural products or for animal husbandry purposes. Also reference "Agriculture, Bona Fide.*

- b. Rural Economic Development Council (REDC) and Stakeholder January 2023 comments from ZOR public input files¹⁰ commented that,

The definition of "farm" should be amended such that "processing" by itself does not define a farm. This was done, however the Jan. 2023 edits removed actual "farm" activities.

Because "agricultural processing" is a separate use, there is no need to include "processing" in the definition of farm. Delete the word "processing" from the definition.¹¹

⁸ [11-21-14 TLUC Meeting Summary.pdf](#)

⁹ [2022-04-26 ZORW Subcommittee Use Standards, p.5](#)

¹⁰ [ZOR Comments on the Draft Zoning Ordinance files](#)

¹¹ <https://www.loudoun.gov/DocumentCenter/View/172777/2-Online-Form-Comments>, p. 5, <https://www.loudoun.gov/DocumentCenter/View/172779/4-Emails>, Walsh Family Winery, p. 14; stakeholder organizations and multiple citizens.

Current Proposed [Jan. 2023] Definition of "Farm" states, "One or more adjacent or contiguous parcels of land, having a minimum of 5 acres and operated under the same ownership or stewardship, used for agriculture or animal husbandry uses.

ISSUE: Replacing the ag-specific activities with "Agriculture" would broaden the definition beyond the initial true intent of "farming" not just "ag use." Return to the original [April 2022] identification of farming-related activities.

The REDC and stakeholder comments regarding the exclusion of "processing" is supported by the definition of "production agriculture" as defined in § 3.2-300 (see below).

Production agriculture and silviculture" means the bona fide production or harvesting of agricultural or silvicultural products but does not include the processing of agricultural or silvicultural products. (emphasis added)

6. Staff January 2023 definition of "Farm" for Planning Commission work session discussions¹²

- a. The following definition was proposed by County ZOR Staff for Planning Commission review, with assumed review by the County Attorney's Office.

Farm: *One or more adjacent or contiguous parcels of land having a minimum total size of 5 acres and operated under the same ownership or stewardship, used for agriculture or for animal husbandry.*

Although the Farm Bureau initially was concerned about the 5-acre minimum in public comments, it was pointed out that the requirement is the same as the 1993 Zoning Ordinance that allows smaller agricultural operations to obtain a Conservation Farm Management Plan for parcels less than 5 acres. The Farm Bureau then rescinded their concern with a letter of support from multiple stakeholder organizations.¹³

- b. An alternate definition of "Farm" was suggested, however as Code of VA § 46.2-698 pertains to registration of "farm" vehicles this definition may not be wholly sufficient as a zoning ordinance definition.

Code of VA § 46.2-698. C. As used in this section, the term "farm" means one or more areas of land used for the production, cultivation, growing, or harvesting of agricultural products, but does not include a tree farm that is not also a nursery or Christmas tree farm, unless it is part of what otherwise is a farm. As used in this section, the term "agricultural products" means any nursery plants; Christmas trees; horticultural, viticultural, and other cultivated plants and crops; aquaculture; dairy; livestock; poultry; bee; or other farm products.

¹² [Item 1 - Draft Zoning Ordinance .pdf](#), p. 362, Planning Commission 1/24/2023 Public Hearing

¹³ <https://www.loudoun.gov/DocumentCenter/View/172778/3-Letters---Organizational-Statements>

(Piedmont Environmental Foundation, Friends of the Blue Ridge Mountains, Loudoun County Farm Bureau, Loudoun Wildlife Conservancy, Save Rural Loudoun, Hillsboro Preservation Foundation, Virginia Piedmont Heritage Area Association, Blueridge Mountain Civic Association)

7. The April 2023 definition of “Farm”

- a. A definition based on Code of Virginia §3.2-6400, included in a letter from Visit Loudoun¹⁴ and referenced by a citizen/winery owner report¹⁵, references the January 12, 2023 opinion by Jason S. Miyares Virginia Attorney General advisory opinion¹⁶ for “*short-term rental accommodation at an operating farm:*”

A “farm or ranch” is “one or more areas of land used for the production, cultivation, growing, harvesting or processing of agricultural products.”

- b. Visit Loudoun commented that, “*The ‘processing of agricultural products’ is a part of the definition of ‘farm’ in addition to ‘cultivation, growing, harvesting’ so limiting it to only one element of the definition is too narrow in scope,*” with reference to “beer” production.

The Code of Virginia §4.1.206 provides for “*Manufacturer licenses.*” The word “processing” is not used in Code of Virginia §4.1.206 (Distiller, Limited Distiller, Brewery, Limited Brewery, Winery, and Farm Winery manufacturer licenses).

RELEVANT CODE OF VIRGINIA CITATIONS OF “FARM”

8. Code of Virginia § 3.2-6400 Definition of “Farm or Ranch”

- a. Section 3.2-6400 of the Code of Virginia¹⁷ pertains to “*Agritourism Activity Liability*” definitions, under Title 3.2 Agriculture, Animal Care and Food, Subtitle V. Domestic Animals.

The purpose of this section is to define agritourism liability to the public and the notice requirements informing the public of inherent risks of agritourism activities, including the potential for injury or death, and that patrons are assuming the risk of participating in agritourism activity.

The signs and contracts described in subsection A shall contain the following notice: “WARNING” or “ATTENTION” followed by “Under Virginia law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity.”

- b. In discussion with the County Attorney’s Office on July 10, 2023, this definition would be insufficient for use as a zoning ordinance definition of “farm.”

¹⁴ Visit Loudoun April 8, 2023 letter, Subject: Planning Commission Subcommittee re: Chapter 3 Uses, Chapter 4 Use-Specific Standards and Chapter 13 Definitions.

¹⁵ [ZOR Public Input Letters, dated April 19, 2023, Steve Bozzo, Bozzo Family Vineyards](#)

¹⁶ [Kemper M. Beasley III, Esquire, 2023 WO 220315 \(Va.A.G\), January 12, 2023](#)

¹⁷ [Code of Virginia §3.2-6400](#)

9. Code of Virginia § 46.2-698.C. Definition of "Farm"

As indicated above, the definition of "Farm" from this section of the Code of Virginia pertains to registration of "farm" vehicles. As such, this definition may not be viewed as be wholly sufficient as a zoning ordinance definition by the County Attorney's Office.

10. Code of Virginia § 36-97 and VAC 13VAC5-63-200 "Farm Building or Structure"¹⁸

Relevant to a review of "Farm," is the use of the word to determine the application of building codes. In these sections the definition (with emphasis added) is:

*"Farm building or structure" means a building or structure not used for residential purposes, located on property where **farming operations** take place, and used primarily for any of the following uses or combination thereof:*

1. Storage, handling, production, display, sampling, or sale of agricultural, horticultural, floricultural, or silvicultural **products produced in the farm**;
2. Sheltering, raising, handling, processing, or sale of agricultural animals or agricultural animal products;
3. Business or office uses relating to the **farm operations**;
4. Use of **farm** machinery or equipment or maintenance or storage of vehicles, machinery, or equipment **on the farm**;
5. Storage or use of supplies and materials used **on the farm**; or
6. Implementation of best management practices associated with **farm operations**.

11. Code of Virginia § 15.2-2288.6 applies to "Agricultural Operations" as defined in § 3.2-300

"Agricultural operation" means any operation devoted to the bona fide production of crops, animals, or fowl, including the production of fruits and vegetables of all kinds, meat, dairy, and poultry products, nuts, tobacco, nursery, and floral products and the production and harvest of products from silviculture activity. "Agricultural operation" also includes any operation devoted to the housing of livestock as defined in § 3.2-6500.

"Production agriculture and silviculture" means the bona fide production or harvesting of agricultural or silvicultural products but does not include the processing of agricultural or silvicultural products or the above ground application or storage of sewage sludge.

12. Code of Virginia § 4.1-206.1 – "Farm" location requirements for VaABC Licensed Uses

The Code of Virginia 4.1-206.1 states Virginia ABC may grant manufacturer licenses to

a. Limited distiller's:

*"to distilleries that (i) are **located on a farm** in the Commonwealth **on land zoned agricultural** and owned or leased by such distillery or its owner **and** (ii) use agricultural products that are grown on the farm in the manufacture of their alcoholic beverages."*

¹⁸ [Code of Virginia §36-97](#)

b. Limited breweries:

*“Provided that (i) the brewery is **located on a farm** in the Commonwealth **on land zoned agricultural** and owned or leased by such brewery or its owner **and** (ii) agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its beer are grown on the farm. The licensed premises shall be limited to the portion of the farm on which agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its beer are grown and that is contiguous to the premises of such brewery where the beer is manufactured, exclusive of any residence and the curtilage thereof.”*

c. Farm Winery license:

“designated either as a Class I, Class II, Class III, or Class IV farm winery license in accordance with the limitations revised as of July 1, 2023 set forth in § [4.1-219](#).”

The original 2006 §4.1-100 Farm Winery Definition included, “(i) **located on a farm** in the Commonwealth with a producing vineyard, orchard, or similar growing area” This definition was revised (SB 983, July 1, 2023) with “located on a farm” removed as the term “farm” is already referenced in the licensed use name and the new Class levels by their requirements meet the requirements of a “farm.”

13. Code of Virginia § 36-98.4 and Senate Bill 1305. Agritourism event buildings

- a. This regulation has been referenced during ZOR public comment as having direct impact to the establishment of a definition of “farm.” However, the actual language only authorizes a committee for review during the 2023 legislative session without any direct decisions on building code changes.

The Board shall appoint an Agritourism Event Structure Technical Advisory Committee, consisting of nine members. The nine members shall be appointed one each from the following: Virginia Farm Bureau Federation, the Virginia Agribusiness Council, the Virginia Wineries Association, the Virginia Craft Brewers Guild, a craft beverage manufacturer, the Virginia Association of Counties, the Virginia Fire Prevention Association, the Virginia Fire Services Board, and the Virginia Building and Code Officials Association.

- b. The result of the committee will continue the work for Senate Bill 1305 Farm buildings and structures and building code exemptions¹⁹ for Agritourism Event Buildings to establish a less stringent code requirement to accommodate “products produced on the farm.” The bill summary states,

Farm buildings and structures; building code exemptions. Requires farm buildings and structures where the public is invited to enter and that are used for storage, handling, production, display, sampling, or sale of agricultural, horticultural, floricultural, or silvicultural ***products produced on the farm*** and that are exempt from the Uniform Statewide Building Code (the building code) to have (i) portable fire extinguishers, (ii) a simple written plan in case of an emergency, and (iii) a sign posted in a conspicuous place upon entry that states that the building is exempt from the provisions of the building code. The bill also directs the Agritourism Event Structure Technical Advisory Committee to meet at least four times between the 2023 and 2024 Regular Sessions of the General Assembly and provides guidance to the Committee on topics to be considered related to fire safety and the welfare of the general public.

¹⁹ [Virginia 2023 session SB 1305 Farm buildings and structures; building code exemptions](#)

14. Virginia ABC-Related Legislation Effective July 1, 2023, Winery and Farm Winery

- a. This law (Senate Bill 983²⁰) made changes to the privileges of and requirements for winery and farm winery licenses. Such changes relate to the characteristics of and tasks to be performed on the licensed premises, license qualifications, manufacturing and sale requirements and limitations, and utilization of contract winemaking services.
- b. SB 983 made *no* changes to Limited Brewery or Limited Distiller regulations; only winery and Farm Winery regulations and privileges were modified.
- c. SB 983 also applied applicability rules stating,

any person that holds a farm winery license that was applied for prior to July 1, 2023, and granted prior to January 1, 2024, by the Board of Directors of the Virginia Alcoholic Beverage Control Authority shall, until July 1, 2028,

(i) be exempt from the requirements created by this act in §§ 4.1-219 and 4.1-231.1 of the Code of Virginia and

(ii) remain subject to the requirements of §§ 4.1-219 and 4.1-231.1 of the Code of Virginia as those sections were in effect on June 30, 2023.

²⁰ [Senate Bill 983](#)

SECTION 2: SUBSTANTIAL REASONS FOR DEFINITION OF “FARM”

IMPACTS TO UNDERSTANDING AND HEALTH, SAFETY AND WELFARE

15. Clarity for uses of the word “Farm” versus “Agriculture”

- a. The term “Agriculture” is used not only to describe the activities of a farming operation, but also as a district name (“Agricultural Rural 1 and Agricultural Rural 2), as well as a zoning ordinance category heading in Chapter 3 Uses. Standalone, the word “agriculture” is not sufficient for review, approval and enforcement of uses and definitions as defined in the Code of Virginia.
- b. The July 2023 ZOR Draft Text contains 195 uses of the word “farm.” The term is used in the name of eight uses with only one definition, specific only to Winery, Virginia Farm. A definition of “farm” would better clarify the definition of the term for all uses referencing the term.
- c. As indicated during the May 18, 2023 Planning Commission work session²¹, a definition of farm in the zoning ordinance would enable Staff and Zoning Enforcement to better define and communicate the difference between a “solar facility” versus the colloquial term of “solar farm,” the latter of which has no relation to agricultural operations or production agriculture.

16. Consistency with Loudoun County Land Use Assessment Regulations

Public input through ZOR²² stated that permitted agricultural uses should be consistent with the Loudoun County Land Use Assessment program, adopted in 1973 and permitted via Sections 58.1-3229 through 58.1-3244 of the Code of Virginia.²³ A definition of “farm” that is consistent with the requirements for Agricultural Land Use would enable staff and other agencies to apply the same standards for permitting and enforcement. The Land Use Assessment regulations are:

To qualify, the property must be at least 5 qualifying acres, and devoted to the bona fide production for commercial sale of plants or animals, or plant or animal products useful to man. Generally accepted products include livestock, dairy, poultry, and crops. Proof of commercial production demonstrating gross sales income or value of products should be documented.

17. Use of word “Farm” Causes Confusion and Obfuscation

- a. Many subdivisions, roads, businesses and LLCs located on formerly owned agricultural property with agricultural operations (i.e., farms) have used the word “Farm” in name only. This has caused confusion on applications for an “XYZ Farm LLC” requesting an exemption for an “ag barn.” Examples can be found in Board of Zoning Appeal cases²⁴.

²¹ Comments made by Planning Commissioner Mark Miller, 5/18/2023

²² [Public Comments in enCodePlus](#)

²³ <https://www.loudoun.gov/652/Land-Use-Assessment-Program>

²⁴ *Aviation business – fire from several hundred Lithium-Ion batteries stored inside a “farm” building. No agricultural operations or “farming” was being done on the property. The “Flight Barn” “was constructed as an agriculture out building without permits from Loudoun County Building and Development. The building*

- b. A definition of farm in the zoning ordinance would enable Staff and Zoning Enforcement to determine the nature of a business or location more accurately, beyond the word “farm” used in name only.

18. Business Management – Department of Economic Development (DED)

- a. The DED “Start a Business” webpage²⁵ outlines the requirements for a number of rural business types for the Rural Policy Area, from agriculture to event facilities, equestrian, farm markets, lodging, Virginia ABC licensed uses, and restaurants, stating,

What is the county’s role? Our main role is to protect the safety of your customers and neighbors, care for the natural environment and make sure that your business complies with laws and regulations. Many county departments are involved in the review and approval of uses. We also assist businesses so they may thrive.

- b. The webpages descriptions and links do not provide clear reference to rural uses “farm” or “farming operation” requirements for prospective business owners and the public to determine the requirements for eligibility or compliance for various uses, such as (emphasis added),

The webpage for “Starting an Agritainment Business”²⁶ states, “Agritainment exists to support parcels actively in agricultural use by allowing associated events and activities, such as: Corn mazes; Hay rides; Petting zoos. The above examples of recreation, entertainment, and tourism activities and events must be directly tied to the ongoing, **on-site farming operation.**”

The webpage interchangeably refers to the VaABC manufacturer licensed use, “Limited Brewery” informally as a “**Farm** Brewery,” stating, “A **farm** brewery is a **farm** first and brewery second which means that your business can: Grow, produce and harvest grains, hops, fruit and other agricultural products.”²⁷

Similarly, the webpage states, “A **farm** winery is a **farm** first and winery second which means that your business can: Produce and harvest fruit and other agricultural products.”²⁸

The links for current Revised 1993 Loudoun County Zoning Ordinance links to the entire section 5-600 (pdf version), not the specific zoning ordinance sections or the enCodePlus version of current Loudoun County zoning. The pages do not link to the definitions sections of current zoning. This creates a *circular interpretation loop* for prospective business owners and the public to determine whether uses that require “farming operations” or are a “farm first” are eligible or compliant.

is used as part of [deleted name]’s business in drone engineering.”²⁴ After the fire the “Farm” LLC filed a Farm Structure Exemption Request for a replacement structure stating, “The barn will be used to house the various types of livestock fee, farming equipment, tools and supply storage, and the farm’s operations office.”

²⁵ [DED Rural Uses “Start a Business” webpage](#)

²⁶ [Steps for Starting an Agritainment Business](#)

²⁷ [Steps for Starting a Limited Brewery \(Farm Brewery\)](#)

²⁸ [Steps for Starting a Virginia Farm Winery \(Cidery, Meadery\)](#)

- c. A definition of “Farm” would clarify use requirements for the zoning ordinance and DED educational website instructions. Clarity of a “farm” definition would ensure improved business case analysis and preparation for a scale-appropriate location for activities and events beyond “sampling and sale” of manufactured products.

PROCESS REQUIREMENTS TO CONFIRM “FARM” OPERATIONS

19. County To State License Approval Process Disconnects

- a. The sequencing and approval of State licenses for uses “*on a farm*” have a process and timing disconnect with County notification and zoning permit approval. In the Virginia ABC license approval process the “County investigation” step is in the form of a letter sent to the County Attorney's Office (CAO) and the Sheriff's office asking if there are any objections to the application²⁹.

A “*no response*” from the County Attorney’s Office or Sheriff is considered “acceptance” and is noted in the application file as approved.³⁰

The point in time of receipt of the letter has been in instances months before an application for zoning permit of a use, including in cases the permitting and building of a structure. Therefore, the CAO and Sheriff have no means to verify an applicant’s compliance with the Virginia Code other than to confirm the district of the application address (not the actual business location in all instances). This results in VaABC license approval obtained prior to zoning permit approval without a CAO confirmation of “farm” applicable property in an agricultural district as required in the Code of Virginia.

- b. A definition of “farm” would assist Loudoun CAO and Sheriff review compliance with Code of Virginia regulations in a timely manner for VaABC applications, beyond only reviewing district address submitted.

20. Inspections to confirm Code of Virginia requirements for “farm” products and operations

- a. The Virginia ABC industry license application required documents³¹ outline the information needed to complete a VaABC license application.³² Section 4.1-219 and internal VaABC General Order 502 procedures³³ specifically reference a “site visit,” however, neither the required PDF

²⁹ [VaABC §4.1-230](#) and VaABC General Order 502. “*The local governing body may object to the issuance of the license when the establishment is not in compliance with the locality's ordinance regarding health, construction, sanitation, etc.*” No reference to “farm” or “agricultural products” site review.

³⁰ Confirmation from current Special Agent in Charge-VaABC Compliance, Marc Haalman, 8/2023.

³¹ VaABC [industry license application required documents](#) (PDF)

³² [VaABC industry application \(PDF\)](#)

³³ “*Before a license is issued the assigned territory agency shall conduct a site visit to ensure sufficient inventory of qualifying items, and other requirements relating to the licensed premises and to educate the applicant about ABC laws and regulations. If necessary, the agent will also determine if there are any objections to the issuance of the license from potentially aggrieved parties in accordance with 4.1-222.*” VaABC General Order 502

documents nor the application include any reference or confirmation of “farm,” or “products grown on the farm” as required by Code of Virginia manufacturing licensed uses for Limited Brewery or Limited Distillery.

- b. Confirmation of products grown is *only* part of a Farm Winery application process. As referenced in § 4.1-219³⁴ Limitations on Class I, II, III, and IV farm wineries, applicants must identify specific quantities of products grown, whereas applications for other VaABC manufacturer licensed uses do not.
- c. Applications for other VaABC manufacturer licensed uses do not confirm the Code of Virginia requirements. A definition of “farm” would assist Loudoun Staff and zoning enforcement ensure compliance with Code of Virginia regulations for Limited Brewery and Limited Distiller applications, not in terms of specifying quantity or dictating location, but rather ensuring “*agricultural products . . . are grown on the farm.*”

21. Lack of annual VaABC inspection for ongoing “*agricultural products . . . grown on the farm.*”

- a. Annual inspection requirements for manufacturers Code of Virginia § 4.1-204³⁵ make no reference to inspection of products grown “*on the farm*” for Limited Brewery or Limited Distillery in the list of inspections points reviewed by VaABC Special Agents on the VaABC Inspection Reports³⁶ VaABC General Orders 501 and 502 (VaABC Licensee Inspections) show no requirement for VaABC inspection of “farm” products grown for Limited Brewery or Limited Distillery, only alcohol taxing, storage and distribution.
- b. A definition of “farm” would assist Loudoun Staff and zoning enforcement ensure compliance with Code of Virginia regulations after an initial application and/or approval of a VaABC license.

22. Farming Operation and Agricultural Operations

- a. A definition of “farm” would enable County Staff (Planning and Zoning and Building and Development) to evaluate and enforce “*farming operations*” as outlined in Code of VA §36-97 and VAC 13VAC5-63-200 “Farm Building or Structure” for “*products produced in the farm,*” and be better prepared for enforcement Virginia Senate Bill 1305 to review “*products produced on the farm.*”
- b. Related public comments were submitted stating,

“The “display, sampling, or sale” provisions are highlighted in case County Staff suggest that tasting rooms are not “directly associated with agriculture.”³⁷

The public comment highlighted the “*display, sampling or sale,*” but omitted reference to the end of the sentence underlined below.

³⁴ <https://law.lis.virginia.gov/vacode/4.1-219/>

³⁵ <https://law.lis.virginia.gov/vacode/title4.1/chapter2/section4.1-204/>

³⁶ <https://www.abc.virginia.gov/library/licenses/pdfs/val/industry-license-application.pdf>

³⁷ Loudoun Local Business League letter to the Planning Commission, April 9, 2023

“1. Storage, handling, production, **display, sampling or sale** of agricultural, horticultural, floricultural or silvicultural products produced in the farm.” [Underline added]

- c. The plain language of the Code of Virginia § 3.2-300 definitions of “Agricultural Operation” and Production Agriculture relate to the

- “bona fide production of crops . . . including the production of fruits,”
- “but does not include the processing of agricultural or silvicultural products.”

As applied to Code of VA §36-97 and VAC 13VAC5-63-200, *agricultural, horticultural, floricultural, or silvicultural products not produced in/on the farm would not be “farming operations,”* therefore not eligible for exemption to the building code.

Based on the plain text, only “tasting rooms” located where there are “*agricultural products that are grown on the farm*” would be considered “*directly associated with agriculture.*” Tasting rooms without “*agricultural products grown on the farm*” are not directly associated with agriculture and therefore would not be exempt from building code.

- d. Code of VA §15.2-2288.6 applies to “*Agricultural Operations,*” defined as any operation devoted to the bona fide production of crops et.al. related to the “Right to Farm” stating,

Other activities or events that are usual and customary at Virginia agricultural operations. [i.e., bona fide production of crops et.al.]

Any local restriction placed on an activity listed in this subsection shall be reasonable and shall take into account the economic impact of the restriction on the agricultural operation [i.e., bona fide production of crops et.al.] and the agricultural nature of the activity.

Without actual “*agricultural operation*” and/or production agriculture, this provision would not apply. Staff’s Planning Commission April 10, 2023, draft text³⁸ included language requiring “Direct association to agriculture” to provide enforcement for the Code of Virginia requirements. This language was removed in the July 2023 text, but may be reconsidered by the Board during review to ensure compliance with Code of Virginia requirements.

- e. A definition of “farm” would assist Loudoun Staff and zoning enforcement ensure compliance with Code of Virginia regulations for where “*agricultural products that are grown on the farm*” is required to be used in the manufacture of products sold.

³⁸ [04-10-2023 Staff Report for Planning Commission Uses Subcommittee](#)

FARM BUILDING OR STRUCTURE – EXEMPTION REQUEST PROCESS

23. Farm Building or Structure – SB 1305

- a. For awareness, Senate Bill 1305³⁹ (in progress) separately describes “*farm structure*” for actual production agriculture from “*Farm buildings and structures*” used for agritourism or “sampling or sale” that are exempt from building codes. This bill will be discussed in the 2023 legislative session in committee, with the following proposed measures (some have called “*building code lite*”) to provide health, safety and welfare without onerous regulations for rural businesses:

... any farm building or structure (i) where the public is invited to enter for an agritourism activity, as that term is defined in § 3.2-6400, for recreational, entertainment, or educational purposes and (ii) that is used for display, sampling, or sale of agricultural, horticultural, floricultural, or silvicultural products produced on the farm or the sale of agricultural-related or silvicultural-related items incidental to the agricultural operation shall have:

1. Portable fire extinguishers for the purpose of fire suppression.
2. A simple written plan in case of an emergency, but such plan shall not be construed to be interpreted as a fire evacuation plan under the Uniform Statewide Building Code or any other local requirements; and
3. A sign posted in a conspicuous place upon entry to the farm building or structure that states that “This building is EXEMPT from the Uniform Statewide Building Code. . . .

24. Building & Development Farm Structure Exemption Request

- a. The Department of Economic Development “*How to Start a Rural Business*” web site includes the link to the Building and Development “*Farm Structure Exemption Request*” form⁴⁰ to confirm the zoning permit requirements for all new farm buildings or structures or change of use of an existing building or structure “*regardless if the Building Official deems the building or structure exempt from the USBC (Uniform Statewide Building Code).*”

The form requests a description (emphasis added) of the

*“Farming operation taking place on the land where the **farm** building or structure is located” and “how the **farm** building or structure is used primarily for the **farm** uses defined above.”*

On page 3 the form states applicants

*may also be required to obtain a Conservation Farm Plan (also known as a **Farm Management Plan**) from Loudoun Soil and Water Conservation District (SWCD) and the Virginia Cooperative Extension Service (VCES) and provide a copy of such executed Plan.*

- b. A definition of “farm” would assist Loudoun Building & Development Staff and zoning enforcement ensure compliance with USBC requirements and the authentication of information for “*farming operation*” and “*how the farm building is used*” per the Farm Structure Exemption Request form.

³⁹ <https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0644>

⁴⁰ [B&D Farm Structure Exemption Request form](#)

IMPACTS TO ORGANIZATIONS AND OTHER CONSIDERATIONS

25. Exemption Request Impacts to Loudoun Soil & Water Conservation District (LSWCD)

Loudoun Soil & Water Conservation District contacts provided input for the definition of farm.⁴¹ A summary of input includes:

- a. On the previously cited DED “*Guide to Start a Rural Business*” website⁴² all rural businesses are advised to determine the permitting requirements for each use, including whether a “*farm building or structure*” exemption may be applied for. The website includes a direct statement to contact “*Soil and Water Conservation District (for a Conservation Farm Plan)*.”

*Loudoun is home to many iconic and historic barns and **farm structures**. Depending on when, how and why they were built, they may be exempt from certain coding regulations (**Click here to apply for an exemption**). Building and Development should make that determination before you get started . . . it is important to check with Building and Development (before any land disturbance or development activity), Planning and Zoning (before building structures or starting a use), the **Soil and Water Conservation District (for a Conservation Farm Plan)** and the Health Department (to protect against water contamination). Additional permits may be required.*

- b. A definition of “farm” would reduce the situations where county staff (Planning & Zoning, Building & Development) feel obligated to offer individuals or operation applicants who receive notice of zoning violations the opportunity for a “get out of jail free card.” Staff and the DED website encourage applicants wanting to construct an “*ag barn*” to apply for a “*farm building or structure*” building code exemption to request a “*farm plan*” from LSWCD, even for plans or operations when it is stated (and obvious) there is no agriculture or “*farming operation*” involved.

This has put LSWCD in a quasi-regulatory position of approving or denying a “farm plan” with no apparent “farming” or “ag operation” requested for the sole purpose to enable an exemption for building codes that are in place to ensure the health, safety and welfare of the public.

- c. A definition of “farm” would enable LSWCD to provide equitable determinations. A definition would also deter individuals or operations who have cleared or graded steep slopes or other sensitive areas for development/creating a view, etc. *without proper permits* from requesting LSWCD provide a conservation farm plan, and knowingly signing the form that states,

I, the undersigned:

- *do understand that any changes to the primary use of this structure or status of my farming operations, as stated above, shall be reported to the Building Official and may nullify this exemption.*
- *do hereby certify that I have read and understand the above definitions from the USBC.*
- ***do hereby certify under penalty of perjury that all statements provided by me on this application are true and accurate.***

⁴¹ LSWCD respondent: Chris Van Vlack, Urban/Ag Conservationist

⁴² <https://biz.loudoun.gov/rural-uses/>

- d. Agricultural Structure (a.k.a. tasting room) building issue. Currently property or business owners are approaching the LSWCD for “farm plans” that are required for building agricultural structures when the property is not enrolled in the Agriculture Land Use Program or have any definable agricultural operations. This is most often for equine operations that are not earning income, or small acreage properties building run in sheds or chicken coops that are too small to qualify for land use. These are reasonable and normal and a good way for property owners to get some advice and consultation on conservation practices from the LSWCD.

The problem becomes when a VaABC licensed business, (primarily Limited Breweries) approaches the LSWCD with no stated or confirmed intention of conducting any farming operation, or staff with knowledge of agriculture. These requestors are told they, “need a farm plan” in order to obtain a zoning permit for an “agricultural structure” exemption for the building so they do not have to obtain building permits or build it to USB Code. These are structures where there are large assemblies of people, that violates the intent of the exemption and the declaration required on the exemption form.

- e. LSWCD has also encountered situations where site engineers and architects have asked for a “farm plan,” not the owner or person who will actually be doing any “farming.” A farm definition would make it clear that farm plans are for agricultural uses, not solely for “making a place a farm.” This would allow LSWCD to not be placed in the position of arbiter or being coerced to provide a “farm plan” without “farming operation” or “agricultural operation” verification.

26. Self-Declaration of “Farm” – Farm Bureau Input

Farm Bureau officers provided input for a definition of “farm,” that is consistent with Zoning Ordinance Rewrite Public Input.⁴³ A summary of input includes:

- a. Properties and/or new businesses should not be allowed to “self-declare” that they are a “farm.” Likewise, VaABC licensing for “manufacturing” is a separate use, and not part of the direct “farming operation.” Code of VA requires some VaABC “manufacturing” licensed businesses to be located “on a farm,” as a county regulation requirement. Defining “farm” would therefore ASSIST County zoning staff properly evaluate a property location for compliance before a zoning permit is provided.
- b. “Processing” of agricultural products grown on site or from within Loudoun are legitimate parts of an agricultural processing and/or farming operation, but only obtaining a VaABC manufacturing license for a business use should not, in and of itself, qualify a location as a “farm.”
- c. Property owner complaints about concert noise, event center traffic or other issues have increased from 2015 through 2023.⁴⁴ While these activities might be allowed on a farm, they shouldn’t be what defines a “farm.” Property owners should be made aware that these are not “farm” uses, but instead are separate zoning issues so they aren’t attacking legitimate farming operations. A definition of farm would make sure that it is clear what a “farm” is and what it is not, to ensure there will not eventually be an effort to chip away at Virginia’s Right to Farm Law over issues that are not agriculturally related.

⁴³ <https://www.loudoun.gov/5720/Comment-on-the-Draft-Zoning-Ordinance>

⁴⁴ [2023 ZOR Public Input Survey as of 6-2-2023](#)

- d. A farm definition would also help to clearly define what is an agricultural structure for purposes of tax assessment. If the property is not a farm, whether or not a structure resembles a barn, it should not be considered an agricultural structure. Likewise, if the structure is on a farm and used as part of a farming operation it should be classified as such.

REAL ESTATE, FINANCE, AND INSURANCE CONSIDERATIONS FOR “FARMS”

REDC representatives with background in Real Estate, financial lending and insurance⁴⁵ for “farms” provided input for a definition of “farm.” A summary of the input includes:

27. Real Estate Implications for “Farms”

- a. Review of a number of vacant parcel real estate listings show promotion of properties on mountainside and steep slopes stating, *“Current AR1 zoning allows by-right for a vineyard or brewery to be built on the entire property . . . among other potential agricultural uses.”* No reference is being made of requiring a “Conservation Farm Plan” to comply with zoning, which misleads the sale and purchase of the property.

A definition of “farm” included in the zoning ordinance would provide a clearer understanding of allowable uses along with their minimum lot sizes. This could be useful for the public when purchasing a property and could affect a farm's and/or farmer's relationship with the Internal Revenue Code (IRC), as well as possibly affecting types of lending options.

28. Internal Revenue Code compliance

- a. The IRC requires a producer (farmer) to raise or grow a product and sell that product and qualify as “farm income.” Per the IRC, there is a difference between considering a vineyard versus a winery as a farm. Vineyards and groves are not included in IRC Section 2032A(e)(4) and would fall under *“agricultural and horticultural commodities.”* The grapes are the product of vineyards and an agricultural commodity, thus the vineyard is a farm. A winery that produces and sells wine would not be considered a farm.
- b. A definition of “farm” versus “agritourism” may offer clarity for future owners of agriculturally based properties for possible avenues of use. Agritourism is not defined in the IRC for income tax purposes. However, Agritourism is generally considered a non-farming activity that derives income if those activities include touring, education, entertainment and retail markets (selling things not produced on that farm) which could affect a farmer’s income, local, and state tax requirements.

29. Financial and Insurance impacts for “farm”

- a. Different mortgage loans may vary widely depending upon the use, size, and improvements on an agricultural property and require the lenders to do a deep dive into what the property’s purpose is and its improvements.

⁴⁵ REDC Vice Chair, Jan Kernan, Realtor Virginia Homes & Farms, Rural Business owner of Bleu Frog Vineyards

- Fannie Mae (government entity offering a purchase mortgage security program to lenders) does not purchase or securitize mortgages for “farms or ranches” if designated as agricultural property. It will allow larger acreages into the program depending upon its intended use, which is verified by the lender.
 - Freddie Mac will purchase mortgages in rural locations if the subject property has collateral for the full transaction based on value, condition and marketability of the property. If the *primary* use of the property is *residential*, but has agricultural outbuildings, then the property is eligible for Freddie Mac program. If the property is used *primarily for farming* or ranching, then the property is not eligible.
- b. Conventional loans, based on lender requirements, put the emphasis on the residential area of a property and may stipulate a max acreage amount to consider, no matter the size of the “farm.” They may only look at the area surrounding the main residence (i.e., “curtilage”).
 - c. USDA uses acres of crops and head of livestock to determine if a place is a “farm” that can normally produce and sell at least \$1000 per year and be offered loan programs. Most farms must seek alternative funding sources such as those offered by Farm Credit.

SECTION 3: FOLLOW-ON REVIEW ACTIONS

30. Identification of Conflicts

- a. In their June 8 and July 26, 2023, Staff reports for County ZOR Staff summarized a list of activities for review for consideration and/or implementation of a definition of “farm” for the Zoning Ordinance Rewrite.
 - *Staff recommends an Agriculture/Rural Economy use ZOAM after adoption of the New Zoning Ordinance, to accommodate forthcoming Code of Virginia amendments to some Virginia Farm Winery and agritourism uses.*
 - *Staff and the County Attorney’s Office need time to verify that any definition of “farm” does not affect or contradict definitions and other provisions within the Code of Virginia concerning farms and related terms or uses.*
 - *Staff needs time to ensure there are no conflicts with other definitions and standards or no unintended consequences associated with adding the term “farm.”*
 - *Staff recommend that any future CPAM and/or ZOAM include targeted public education regarding the interplay between the Code of Virginia and local zoning regulations and permitting requirements.*
- b. At the August 8th meeting, County Administrator, Joe Kroboth, requested assistance from REDC to assist in the identification of “conflicts” for legal review.

31. Primary follow-on review actions

The following actions are proposed to complete the Findings of Fact and Substantial Reasons or a Definition of Farm, with the primary goal to 1) assist the CAO office and Staff to reduce staff time constraints, and 2) expedite review for the possible inclusion of a definition in ZOR, or in the alternative, complete review for a prioritized ZOAM in 2024 after adoption of ZOR.

- a. Confirm that the Findings of Fact sufficiently confirm the limit of impacts of the July 1, 2023, Virginia Farm Winery new legislation, and address the CAO concerns of impacts from the pending SB 1305 agritourism event building code proposed USBC changes.
- b. Confirm whether the Findings of Fact sufficiently address the CAO verification that a definition of “farm” does not affect or contradict definitions and other provisions of the Code of Virginia concerning farms and related terms or uses. If not, identify the remaining sections of the Code of Virginia for review.
- c. A preliminary review of the uses of the word “farm” in the ZOR draft text has been performed. Next steps are to obtain Senior County Administration and CAO approval for a second meeting with County Attorney Office representatives (J. Hobbie, C. Sydnor) to obtain and clarify the specific requests and areas of review to confirm “conflicts with other definitions and standards” associated with adding the term “farm.” Such a review would be conducted in conjunction with REDC ZOR Ad hoc Committee and other stakeholder reviews with the goal of presenting consolidated input.