

# Working With Farms Regulated by the Required Agricultural Practices



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Vermont Agency of Agriculture, Food and Markets  
VT ANR Municipal Day  
October 20, 2023

# Outline:

- **Title 24: Section 4413(d)**
- **The Required Agricultural Practices**
- **Farm Operations**
- **Farm Structures**
- **Flags for Zoning Administrators**

# Authority

## Section 4413(d) of Title 24 (Municipal and County Government)

<https://legislature.vermont.gov/statutes/section/24/117/04413>

(d)(1)A bylaw under this chapter shall not regulate:

(A) **required agricultural practices**, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets

(2) As used in this section:

(A) **"Farm Structure"** means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as "farming" is defined in 10 V.S.A. § 6001(22), but excludes a dwelling for human habitation.

(3) A person shall **notify a municipality of the intent to build a farm structure** and shall abide by setbacks approved by the Secretary of Agriculture, Food and Markets. No municipal permit for a farm structure shall be required.



# Authority

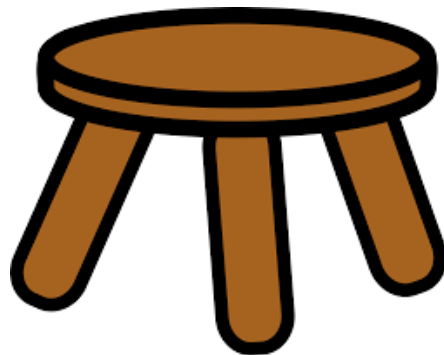
## Title 6: Agriculture

### Chapter 215: Agricultural Water Quality

<https://legislature.vermont.gov/statutes/chapter/06/215>

## VT Ag Non-Point Pollution Control Program

- Rules & Regulations
- Education & Outreach
- Technical & Financial Assistance



#### Title 6: Agriculture

#### Chapter 215: Agricultural Water Quality

#### Subchapter 1: General Provisions

#### § 4801. Purpose; State policy

It is the purpose of this chapter to ensure that agricultural animal wastes do not enter the waters of this State. Therefore, it is State policy that:

(1) All farms meet certain standards in the handling and disposal of animal wastes, as provided by this chapter, and the cost of meeting these standards shall not be borne by farmers only, but rather by all members of society, who are in fact the beneficiaries. Accordingly, State and federal funds shall be made available to farms, regardless of size, to defray the major cost of complying with the requirements of this chapter. State and federal conservation programs to assist farmers should be directed to those farms that need to improve their infrastructure to prohibit direct discharges or bring existing water pollution control structures into compliance with U.S. Department of Agriculture (U.S.D.A.) Natural Resources Conservation Service standards. Additional resources should be directed to education and technical assistance for farmers to improve the management of agricultural wastes and protect water quality.

(2) Officials who administer the provisions of this chapter:

(A) shall educate farmers and other affected citizens on requirements of this chapter through an outreach collaboration with farm associations and other community groups;

(B) shall, in the process of rendering official decisions, afford farmers and other affected citizens an opportunity to be heard and give consideration to all interests expressed; and

(C) may provide grants from a program established under this chapter to eligible Vermont municipalities, local or regional governmental agencies, nonprofit organizations, and citizen groups in order to provide direct financial assistance to farms in implementing conservation practices. (Added 2003, No. 149 (Adj. Sess.), § 2, eff. June 3, 2004; amended 2013, No. 83, § 10, eff. June 10, 2013.)

VERMONT  
REQUIRED AGRICULTURAL PRACTICES RULE  
FOR  
THE AGRICULTURAL NONPOINT SOURCE POLLUTION  
CONTROL PROGRAM

(Effective November 23, 2018)



116 STATE STREET  
MONTPELIER, VERMONT 05620-2901  
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# The Required Agricultural Practices (RAPs)

## *Brief History*

- Accepted Agricultural Practices 1995-2016
- VAAFM was directed by the Legislature to draft the RAPs pursuant to Act 64, signed into law on June 16, 2015.
- 2016 - RAPs amended per ACT 64
- 2022-2023 proposed amendments to include TSP certification

## *What changed?*

- Act 64 required that the revised RAPs include requirements for:
  - **small farm certification,**
  - nutrient storage,
  - soil health,
  - buffer zones,
  - livestock exclusion, and
  - nutrient management.

# Definitions

- 2.14 Farm means a parcel or parcels of land owned, leased, or managed by a person and devoted primarily to farming, as defined in Section 2.16 of this rule, and that meets the threshold criteria as established in Section 3 of this rule, provided that the lessee controls the leased lands to the extent they would be considered as part of the lessee's own farm. Indicators of control may include whether the lessee makes day-to-day decisions concerning the cultivation or other farming-related use of the leased lands and whether the lessee manages the land for farming during the leased period
- 2.15 Farm Structure means a structure that is used by a person for farming, including a silo, a building to house livestock or raise horticultural or agronomic plants, or customarily used to carry out the agricultural practices defined in Section 3.2 of this rule. A farm structure includes a barnyard or waste management system, either of which is created from an assembly of materials, including the supporting fill necessary for structural integrity, but excludes a dwelling for human habitation. A farm structure also must be used by a person who can demonstrate meeting the minimum threshold criteria as found in Section 3.1 of this rule
- 2.16 Farming means: (a) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural, viticultural, and orchard crops; or (b) the raising, feeding, or management of livestock, poultry, fish, or bees; or (c) the operation of greenhouses; or (d) the production of maple syrup; or (e) the on-site storage, preparation, and sale of agricultural products principally produced on the farm; or (f) the on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm; or (g) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines.



# Who is regulated by the RAPs?

- Operate **4 or more acres for farming**; OR
- Operate **4 or more acres for the raising** of at least one of the following:
 

|                                                              |                                      |
|--------------------------------------------------------------|--------------------------------------|
| 4 horses                                                     | 3 camelids (alpacas, llamas)         |
| 5 cattle, cows, or bison                                     | 4 ratites (emus)                     |
| 15 pigs/swine                                                | 30 rabbits                           |
| 15 goats                                                     | 100 ducks                            |
| 15 sheep                                                     | 1,000 pounds cultured trout/aquatics |
| 15 cervids (deer, elk)                                       | Other livestock type or combinations |
| 50 turkeys                                                   |                                      |
| 50 geese                                                     |                                      |
| 100 laying hens                                              |                                      |
| 250 broilers, pheasant, Chukar partridge, or Corturnix quail |                                      |
- Have filed a **1040(F) Tax Form** once in the last 2 years; OR
- Earn an **annual gross income of more than \$2,000** from the sale of agricultural products; OR
- Has an **approved prospective business plan** that describes how the farm will meet the threshold requirements of RAP Section 3.1



Photo: VAAFM



# Farm Sizes

- **Small Farm Operations (SFO)**
- **Certified Small Farm Operations (CSFO)**
  - Annually certify
  - Inspected every 7 years
- **Medium Farm Operations (MFO)**
  - Annually report
  - General 5-Year Permit
  - Inspected every 3 years
- **Large Farm Operations (LFO)**
  - Annually report
  - Individual Permit
  - Inspected every year



Photo: VAAFM

# Who is regulated by local towns/municipalities?

## “Non-RAP Operations”

- Parcels smaller than **4 acres** that
- Gross less than \$2,000 from Ag Sales
- Have not filed a 1040(F) once in last two years

A farm can demonstrate they are a farm that should be regulated under the RAPs by income or a prospective business plan.

Secretary can designate that a Non-RAP Operation must follow the RAPs if causing an adverse water quality impact.



Photo: <https://modernfarmer.com/2014/07/raising-backyard-chickens/>

# What Activities do the RAPs Regulate?

**3.2 The agricultural practices on farms meeting the minimum threshold criteria set forth in Section 3.1 that are governed by this rule include:**

- (a) the confinement, feeding, fencing, and watering of livestock;
- (b) the storage and handling of agricultural wastes principally produced on the farm;
- (c) the collection of maple sap principally produced from trees on the farm and/or production of maple syrup from sap principally produced on the farm;
- (d) the preparation, tilling, fertilization, planting, protection, irrigation, and harvesting of crops;
- (e) the ditching and subsurface drainage of farm fields and the construction of farm ponds;
- (f) the stabilization of farm fields adjacent to banks of surface water, and the establishment and maintenance of vegetated buffer zones and riparian buffer zones;
- (g) the construction and maintenance of farm structures, farm roads, and associated infrastructure;
- (h) the on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm;
- (i) the on-site storage, preparation, and sale of agricultural products principally produced on the farm from raw agricultural commodities principally produced on the farm;
- (j) the on-site storage of agricultural inputs for use on the farm including, but not limited to, lime, fertilizer, pesticides, compost and other soil amendments, and the equipment necessary for operation of the farm; and
- (k) the management of livestock mortalities produced on the farm.

# Is a farm determination required?

## IT DEPENDS!

- There is no Statewide requirement that SFOs “register” with the State related to the RAP regulations

CSFOs, MFOs, and LFOs have annual certification or permitting requirements

- When asked the State can provide its opinion on whether an operation is “farming” (typically submitted by the landowner)
- Some towns have adopted guidance/practice to have farms get farm determinations

ex) Milton, Charlotte, Warren

(2) The Zoning Administrator may request that landowners provide a written determination from the Vermont Agency of Agriculture, Food and Markets as to whether proposed land development qualifies as an exempt farm structure.

1103.B **Farm Structures.** In accordance with state statute, landowners do not need to obtain a zoning permit to build a farm structure in accordance with state regulations and the following:

- (1) Landowners must submit a zoning permit application demonstrating that proposed development qualifies as an exempt farm structure, but they do not have to pay the associated application fee.
- (2) The Administrative Officer may require landowners to provide a written **determination** from the Vermont Agency of Agriculture, Food and Markets as to whether proposed development qualifies as an exempt farm structure.



# Example Farm Operations – RAP Regulated?

We have a 17-acre farm and grow fruits and vegetables, raise swine and poultry for meat production and raise goats for dairy. We grow for our own personal use and for sale. We grossed more than \$2,000 last year from sales. We currently have 3 pigs, 12 goats, and 60 chickens.”

**YES, this is a farm regulated by the RAPs.**

We recently bought a 3-acre farm and have started to grow flowers. We plan to sell our flowers through a summer CSA and wholesale to a local farmers market. We anticipate making over \$2,000 annually once the flowers are mature and ready to sell.

**MAYBE, If the farm is seeking a farm determination for this year they would need to submit a business plan to be reviewed and approved by the Agency.**

We have a 1-acre parcel in our village and have 25 laying hens and grow vegetables. We use the eggs and vegetables for our own consumption and do not sell any produce.

**NO, this person may be engaged in agricultural activities but does not meet the threshold requirements to be regulated by the RAPs. They need to comply with local zoning bylaws as applicable.**

# Why do farms request farm determinations and farm structure determinations?


1. Construction of a Farm Structure
2. Construction & Alternative Setbacks
3. Accessory On Farm Business (AOFB)
4. Town requested they get one
5. For their own records/understanding

# How do farms request farm determinations and/or structure determinations?

1. Landowner submits an online Farm Determination Request Form
  1. Farm Determination
  2. Farm Determination and Farm Structure Determination/Variance
  3. Farm Structure Determination/Variance
2. Provides supporting information/documents
  1. Business Plans
  2. For construction – Letter informing town of proposed construction
  3. For construction – Site plan including building location, setbacks, nearby surface waters, parcel boundaries, roads, wetlands, etc.
3. Agency reviews, notifies town ZA, and provides determination

## Determination Letters

- Description of Farm
- Farming Activities
- What Threshold Requirements are met
- Proposed construction, description of structure and proposed use
- Copy sent to town ZA



AGENCY OF AGRICULTURE, FOOD & MARKETS  
116 State Street  
Montpelier, VT 05620-2901  
Agriculture.vermont.gov

6/22/2022

Adam's Berry Farm  
Adam Hausmann (via email: adam@adamsberryfarm.com)  
985 Bingham Brook Road  
Charlotte, VT 05445

RE: Determination of Farm Operation

Dear Adam Hausmann,

The Agency of Agriculture, Food & Markets (the Agency) renders opinions, based on the Agency's Required Agricultural Practices Regulations (RAPs) as to whether an individual is farming, if the RAPs apply to the operation, and/or whether a structure is used for farming and is therefore considered a farm structure.

Farm Operation Determination  
This letter is documenting that activities occurring on **20** acres of a **35** total acre farm operation, located at **985 Bingham Brook Road, Charlotte, VT**, meets the definition of "farming," per the RAPs.

Section 2.14 of the RAPs in part, states "farm" means a parcel or parcels of land owned, leased, or managed by a person and devoted primarily to farming, . . . and that meets the threshold criteria as established in Section 3 of the RAPs, provided that the lessee controls the leased lands to the extent they would be considered as part of the lessee's own farm.

Section 2.16 of the RAPs states "farming" means:

- (a) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural, silvicultural, and orchard crops; or
- (b) the raising, feeding, or management of livestock, poultry, fish, or bees; or
- (c) the operation of greenhouses; or
- (d) the production of maple syrup; or
- (e) the on-site storage, preparation, and sale of agricultural products principally produced on the farm; or
- (f) the on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm; or
- (g) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines.

You have described your farm operation as: **A VOF certified organic berry farm established in 2001 that grows strawberries, blueberries and raspberries primarily for the wholesale market. Also operate a pick your own and attend farmers markets.**, meets the above definition of farming by meeting the provisions listed below:

- (a) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural, viticultural, and orchard crops; or
- (e) the on-site storage, preparation, and sale of agricultural products principally produced on the farm; or



What does the determination do for a farm?

**Determines that the farm is  
regulated by the State Required  
Agricultural Practices**

# What does the farm determination NOT do for a farm?

- A Farm Determination Letter from the Agency of Agriculture is not a “Free Pass”
- It does not exempt the Farm from compliance with any other provisions of the RAPs or any other laws or regulations.
- It does not automatically exempt them from meeting local setback requirements
  - There is a Variance process for alternative setbacks
- It does not provide Tax Exemption (Department of Taxes)
- It does not enroll the farm in Current Use

# What does the farm structure determination NOT do for a farm?

**Does not exempt the Farm from compliance with any other provisions of the RAPs or any other laws or regulations.**

Construction requirements outlined in RAP Section 9 include:

- **notifying the local zoning administrator** of the proposed project prior to construction (RAPs Section 9(a)(1));
- obtaining a Flood Hazard Area and River Corridor Permit from ANR if construction is in Flood Hazard Areas and River Corridors (RAPs Section 9(a)(3)); and
- obtaining authorization from ANR before commencing with land disturbance or construction activities if construction will disturb one or more acres of land (RAPs Section 9(a)(4)).

\*ACT 250

\*Vermont Fire and Building Codes – Title 20 of the V.S.A Chapter 173

\*Wastewater Management (ANR)

\*Wetlands (ANR)

\*Solid and Hazardous Waste (ANR)

\*Alterations of Streams (ANR)





# Flags for Zoning Administrators

- **Wetland Rules – Regulated by DEC**

Farming is not always exempt from the Vermont Wetland Rules. All new farming activities within significant wetlands or their 50 foot buffer zones will likely require permits to:

- Clear a wetland and/or buffer of woody vegetation to create pasture or field conditions;
- Put in an access road if it goes through a wetland to access other areas; and
- Place any buildings or farm ponds within a significant wetland as part of an expansion or creation of a new farm.

More information on permitting, wetland locations and regulations can be found at:

<https://dec.vermont.gov/watershed/wetlands/contact> or by emailing [ANRWetlands@vermont.gov](mailto:ANRWetlands@vermont.gov)



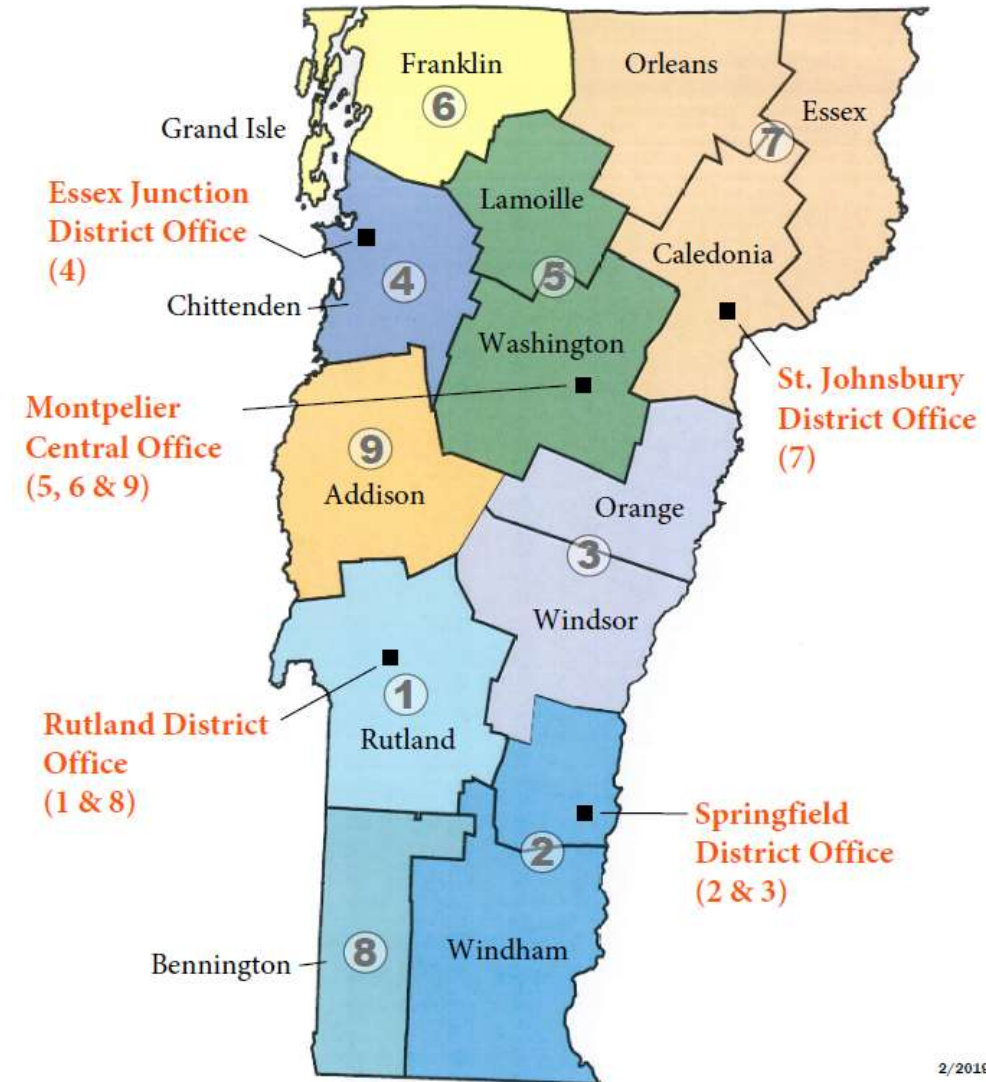
Photo: VT DEC

# Flags for Zoning Administrators

- **Act 250 – Regulated by Natural Resources Board**

If a property holds an Act 250 permit, then any new developments that occur on the property must be reviewed as amendments to the permit, regardless of the structure's status as a farm structure and exemption from local zoning.

For questions around Act 250 permits, please contact your local Act 250 District Coordinator:  
<https://nrb.vermont.gov/contact-us>





# Flags for Zoning Administrators

- **Accessory On-Farm Business (AOFB)**

Act 143: A municipality cannot prohibit a farm from having an AOFB; May require;

Site Plan Review and performance standards

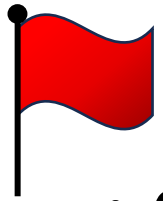
VAAFMM – May provide “farm determination”

TOWN – provides “AOFB determination”, site plan review, and applies performance standards

For more information, visit:

<https://agriculture.vermont.gov/development/accessory-farm-businesses>

- (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.



# Flags for Zoning Administrators

- **Cannabis – Regulated by Cannabis Control Board**

**Cannabis is not considered a farming activity, but Tier I Outdoor growers have similar exemptions through the CCB.**

**H. 207, or Act 65, passed in June, amended the rules around outdoor cultivation to state:**

- (f) ...a cultivator licensed under this chapter who initiates cultivation of cannabis outdoors on a parcel of land shall:
- (1) be regulated in the same manner as “farming” and not as “development” on the tract of land where cultivation occurs for the purposes of permitting under 10 V.S.A. chapter 151;
  - (2) not be regulated by a municipal bylaw adopted under 24 V.S.A. chapter 117 in the same manner that Required Agricultural Practices are not regulated by a municipal bylaw under 24 V.S.A. § 4413(d)(1)(A);
  - (3) be eligible to enroll in the Use Value Appraisal Program under 32 V.S.A. chapter 124 for the cultivation of cannabis;
  - (4) be exempt under 32 V.S.A. § 9741(3), (25), and (50) from the tax on retail sales imposed under 32 V.S.A. § 9771; and
  - (5) (5) be entitled to the rebuttable presumption that cultivation does not constitute a nuisance under 12 V.S.A. chapter 195 in the same manner as “agricultural activities” are entitled to the rebuttable presumption, provided that, notwithstanding 12 V.S.A. § 5753(a)(1)(A), the cultivation is complying with subsections (b) and (d) of this section.



# Flags for Zoning Administrators

- **On-farm Composting**

Act 41, passed in 2021, amended the definition of “farming” to include the importation of up to 2,000 cubic yards per year of food residuals or food processing residuals onto a farm for the production of compost.

This compost must be **principally used** on the farm, *or* the compost must be produced on a farm that **raises or manages poultry**, and involves the poultry in the composting process.

Compost managed in this way is regulated as a farming activity and not under the Vermont Agency of Natural Resources’ Solid Waste Rules.

Farms are prohibited from producing compost within downtowns, village centers, town centers, neighborhood development areas or growth centers.



# 3 Big Tips for Working with Farms

## 1) Equip

- Familiarize yourself with your local municipal regulations, AAFM RAPs, and State Statute
- Reference or contact information for overlaying jurisdictions

## 2) Educate

- AAFM Farm and Farm Structure Factsheets
- Municipal outreach (website, newsletters, forms, etc.)

## 3) Engage

- Work with directly with farm to understand goals
- If issues or concerns arise, reach out to AAFM
- Subscribe to ag newsletters, attend public meetings, join stakeholder groups

## Work in Progress

- 1) AOFB implementation & Natural Resources Board “Farming” Discussions
  - Report submitted to legislature January 15, 2023
  - H. 128 & RAP revisions
- 2) Follow Up Visits and Check-Ins on New Farms/Prospective Business Plans
- 3) Outreach & Communications with local towns and municipalities





# Questions & Feedback?

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- 1) How can the Agency of Agricultural aid your town in the farm operation, farm structure space?**
- 2) What are you interested in learning more about?**



# Contact Info & Resources

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## Links to VAAFM Web Resources

- [RAPs](https://agriculture.vermont.gov/rap) - <https://agriculture.vermont.gov/rap>
- [Municipal Land Use Limitations](https://agriculture.vermont.gov/land-use-renewable-energy/municipal-bylaw-land-use-limitations) - <https://agriculture.vermont.gov/land-use-renewable-energy/municipal-bylaw-land-use-limitations>
- [Farm Definitions & Determinations](https://agriculture.vermont.gov/water-quality/regulations/farm-definitions-and-determinations) - <https://agriculture.vermont.gov/water-quality/regulations/farm-definitions-and-determinations>
- [Online Determination Form](https://agriculture.vermont.gov/form/farm-determination-form) - <https://agriculture.vermont.gov/form/farm-determination-form>
- [Accessory On Farm Business \(AOFB\)](https://agriculture.vermont.gov/development/accessory-farm-businesses) - <https://agriculture.vermont.gov/development/accessory-farm-businesses>