

Municipal Regulation of Agriculture

House Committee on Agriculture, Food Resiliency, and Forestry
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Scan of the Cover of the 1994 *Sustaining Agriculture* handbook

SUSTAINING AGRICULTURE:

A Handbook for Local Action

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Cover of a module of the updated *Sustaining Agriculture* handbook published by Farm to Plate in 2014



There is a great deal of confusion and controversy over the extent to which a town plan or ordinance can regulate agriculture or agricultural practices. Within Vermont's Planning and Development law is the following statement:

*"No plan or bylaw adopted under this chapter shall restrict accepted agricultural or silvicultural practices as defined by the commissioner of agriculture or the commissioner of forests, parks and recreation, respectively, under 10 V.S.A. Sections 1021(f) and 1259(f)."*¹

Although there are essentially no records documenting the legislature's intent, a common belief is that 24 V.S.A. Section 4495 was adopted to protect farmers from unreasonable local regulations that threaten the viability of agriculture. In recent years farmers have complained about municipal regulations that zone out agriculture, prohibit roadside stands or signs for roadside stands, impose unduly restrictive regulations to protect scenic views or historic districts, or restrict agriculture in other ways that threaten its economic viability. And, even though some of the

¹ 24 V.S.A. Section 4495.

Currently, the official definition of Accepted Agricultural Practices (AAPs) is found in the Vermont Department of Agriculture's 1987 publication entitled, "Defining Accepted Agricultural Practices in Vermont." The publication provides a list of agricultural activities similar to that found in Act 250. If the practices used to conduct those agricultural activities satisfy some broad criteria and are not included in the publication's list of "unaccepted" practices, then they are presumed to be "accepted."



Excerpt from
1994
*Sustaining
Agriculture*

The current definition of AAPs may change as part of a proposed memorandum of understanding between the Agency of Natural Resources and the Department of Agriculture, Food and Markets. The new definition will be developed through an administrative rule-making process and will be subject to public hearings and legislative review. Until this process is complete, the 1987 definition will apply.

In theory, 24 V.S.A. Section 4495 was intended to remedy this problem by providing in all towns at least some degree of exemption from regulation. How much of an exemption was intended is hotly debated. Did the legislature intend for all agricultural activities following Accepted Agricultural Practices to be exempt from all restrictions imposed by local plans, zoning regulations and subdivision regulations?

In May of 1992, the Lamoille Superior Court concluded the answer was yes. The Court's decision stated "Section 4495 pre-empts any municipal zoning regulation which confines or keeps within limits, accepted agricultural practices."² The decision was not appealed to Vermont's Supreme Court.

Agricultural Exemptions and Accepted Agricultural Practices (AAPs)

Regulation of agripreneurial uses in Vermont varies among municipalities and many exist in a grey area. Municipal authority to regulate agricultural land uses is strictly limited, referred to as the agricultural exemption and described under Title 24 V.S.A. § 4413 (d). This preempts municipalities from applying local land use regulations to certain agricultural activities and farm structures subject to regulations adopted by the Agency of Agriculture, Food, and Markets, called the Accepted Agricultural Practices, or AAPs.² Determining what agricultural land uses and structures are exempt from local regulation (i.e. preempted from local review) can be confusing and difficult.

Agricultural activities that are exempt from local land use regulation include the “*on-site storage, preparation, and sale of agricultural products **principally produced on the farm***”³ (emphasis added), among many other activities. This includes value-added production such as cheese making or selling from a farm stand, provided the products are “principally produced” on the farm.

The AAPs outline farm management practices, with an emphasis on water quality. AAPs refer to a wide range of land use issues from solid waste storage to the siting and construction of farm structures. Encouraging other agripreneurial enterprises, such as agritourism, may not fit into the agricultural exemption and may need innovative town plan and regulatory language or zoning alternatives to help them move forward.

When the planning guide was updated, the grey area for municipal exemption was generally understood to be centered around accessory on-farm businesses (agripreneurial enterprises as they were called at the time). Activities not associated with water quality – e.g., “on-site storage, preparation, and sale of agricultural products principally produced on the farm” – were understood to be exempt from municipal regulation.




Excerpt from 2014
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	Farmer Coalition Proposed Changes	VAAFM Proposed Changes	Alignment between proposals
24 V.S.A. § 4413. Limitations on Municipal Bylaws	<p>(d)(1) A bylaw under this chapter shall not regulate:</p> <p>(A) the Right to Grow Food, which includes:</p> <p>(i) the cultivation or other use of land for growing plants, including for food, fiber, Christmas trees, maple sap, or horticultural, silvicultural, and orchard crops.</p>	<p>(d)(J) A bylaw under this chapter shall not regulate:</p> <p>(A) the cultivation or other use of land for growing plants, including for food, fiber, Christmas trees, maple sap, or horticultural, silvicultural, and orchard crops,</p>	Virtually identical
	<p>(d)(1) A bylaw under this chapter shall not regulate:</p> <p>(A) the Right to Grow Food, which includes:</p> <p>(ii) raising, feeding, or managing livestock, provided the land base is sufficient for appropriate nutrient and waste management. The Secretary of Agriculture has the discretion to determine whether the land base is adequate for managing the number and type of livestock in compliance with the Required Agricultural Practices. However, municipalities may pass ordinances that regulate the presence of roosters within areas zoned primarily for residential use.</p>	<p>(d)(1) A bylaw under this chapter shall not regulate:</p> <p>(B) the raising, feeding, or management of a small backyard poultry flock, excluding roosters;</p>	Some alignment. Farm coalition position is more expansive to include exemptions for all livestock types (including poultry); VAAFM only includes backyard poultry. Both would add provision for Secretary review, but VAAFM proposes this in RAPs while farm coalition presents it in Title 24

	Farmer Coalition Proposed Changes	VAAFM Proposed Changes	Alignment between proposals
24 V.S.A. § 4413. Limitations on Municipal Bylaws	(B) farming that meets the minimum threshold criteria in the Required Agricultural Practices Rule and is therefore required to comply with the Required Agricultural Practices Rule and is not protected by the Right to Grow Food in 4413 (d)(1)(A)	(C) farming that meets the minimum threshold criteria in the Required Agricultural Practices Rule and is therefore required to comply with the Required Agricultural Practices Rule	Virtually identical
	(2) As used in this section: (A) "Farming" has the same meaning as in 10 V.S.A. § 6001(22) or in the Required Agricultural Practices Rule	(2) As used in this section: (A) "Farming" has the same meaning as in 10 VS.A. § 6001(22) or in the Required Agricultural Practices Rule	Identical
	N/a	(2) As used in this section: (D) "Poultry has the same meaning as in 6 V.S.A. §' 1459(4)	Because farm coalition calls for broad livestock exemption, and does not name poultry, they did not see a need to include reference to statutory definition
	(C) the construction of farm structures, including as defined in the Required Agricultural Practices Rule;	(D) the construction of farm structures, including as defined in the Required Agricultural Practices Rule;	Identical
CVR 20-010-008; Required Agricultural Practices	No change – coalition advocates for keeping income threshold for RAPs at \$2,000	(b) has produced an annual gross income from the sale of agricultural products of \$2,000 \$5,000 or more in an average year; or	Not aligned

	Farmer Coalition Proposed Changes	VAAFM Proposed Changes	Alignment between proposals
<p><u>Rule, § 3.1, 3.2</u></p> <p>CVR 20-010-008; Required Agricultural Practices <u>Rule, § 3.1, 3.2</u></p>	No change – (e) would remain as currently written	<p>Would change (e) of the RAPs from: (e) is raising, feeding, or managing other livestock types, combinations, and numbers, or managing crops or engaging in other agricultural practices on less than 4.0 contiguous acres in size that the Secretary has determined, after the opportunity for a hearing, to be causing adverse water quality impacts and in a municipality where no ordinances are in place to manage the activities causing the water quality impacts;</p> <p>To: (e) is raising, feeding, or managing livestock on at least 1.0 and less than 4.0 contiguous acres and has sufficient land base for appropriate nutrient and waste management. The Secretary has the discretion to determine whether the land base is adequate to properly manage the number and type of livestock while evaluating whether compliance with the Required Agricultural Practices is reasonable or impracticable; or</p> <p>(f) is raising, feeding, or managing livestock on less than 1.0 contiguous acre or on between 1.0 and 4.0 contiguous acres in a municipality that lacks ordinances or bylaws to regulate livestock, and the Secretary determines, after an opportunity for a hearing, that the livestock are causing significant adverse water quality impacts and the Required Agricultural Practices should apply to protect water quality;</p>	The farmer coalition finds the full regulatory implications of VAAFM's proposed changes to (e) into two parts (e & f) difficult to interpret. By adding the Secretary determination for livestock into 4413, the coalition does not see a need to make alterations to (e) within the RAPs

	Farmer Coalition Proposed Changes	VAAFM Proposed Changes	Alignment between proposals
CVR 20-010-008; Required Agricultural Practices Rule, § 3.1, 3.2 <div>  (Ctrl) ▾ </div>	No change – the coalition advocates for keeping (f) as is	(f) is managed by a farmer filing with the Internal Revenue Service a <u>1040(F) income tax statement</u> in at least one of the past two years	Not aligned