

**Agriculture and Food Systems Stakeholder Group Input
To the reinstatement of the Municipal Exemption of Farming
& the codification of the Right to Grow Food**

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Context:

The Vermont Supreme Court ruled on May 30, 2025, that farming is not exempt from all municipal regulation. Instead, the court interpreted the “ag exemption” in 24 V.S.A. § 4413(d)(1)(A)¹ [the Municipal Zoning Statute] as a reference only to the policies and standards intended to reduce agricultural water pollution. The court concluded that municipalities may regulate all aspects of farming that do not relate to water quality, thereby setting a new precedent in stark contrast to the previous statewide understanding that farming is exempt from municipal zoning regulations.

Granting municipalities this new authority allows them to determine where farming may or may not occur, and potentially require new permitting for events, farm structures, and other farming activities, all of which would add regulatory hurdles, operational costs, and additional burdens to farms, many of which already struggle with financial vulnerability and viability. As all qualifying farms are subject to the RAPs² overseen by VAAFM regardless of their relationship to a water body, this ruling and newly granted authority creates a confusing and complex mosaic of regulatory oversight that farms now face, in which depending on where a farm is located it could be subject to different levels of local regulations and oversight that others are not exposed to. Town-by-town farm regulation variances will create a patchwork of regulatory frameworks across the state which will be difficult to navigate and administer. This ruling also raises questions for farmers whose operations cross town lines; potentially requiring different regulations for different parts of their farm properties, all subject to change over time.

Most importantly, the court's ruling will impact the Vermont farm community at a time when farmers are already grappling with many emergent challenges, including flooding and other impacts of a changing climate, changes to federal funding, and widespread inflation. Opening the door for municipal regulation of farms contradicts the longstanding policies, culture, and precedent that has protected Vermonters' rights to farm on the land they have access to, hindering Vermont's ability to produce its own food, and by extension compromising the state's food security.

¹ <https://legislature.vermont.gov/statutes/section/24/117/04413>

² <https://agriculture.vermont.gov/rap>

The longstanding interpretation, and legislative intent, has been that agriculture is not subject to municipal regulations, including practices defined by the RAPs (previously the Accepted Agricultural Practices (AAPs)) as they fall under the regulatory jurisdiction of the Agency of Agriculture, Food & Markets. The new ruling diverges from this interpretation and intent, and now draws a distinction between the regulation of agricultural practices broadly, and the regulation of agricultural practices as they apply specifically to water quality impacts. The goal of the coalition is to remedy this divergence and return the “ag exemption” of 24 V.S.A. § 4413(d)(1)(A) back to its original intent as well as to codify a Right to Grow Food for anyone engaging in subsistence or cultivating practices that are beneath criteria of the RAP rule in order to protect the rights of the public to engage in food growing practices on any land they have access to.

Talking Points:

- We believe a clear and consistent regulatory framework across municipalities is best for farms and towns. We want to avoid a patchwork regulatory environment for farming in Vermont that is confusing for both farmers and municipalities, and would be a continued source of contention and acrimony in our communities.
- This needs to include the establishment of a Right to Grow Food so that by-laws cannot prohibit food growing practices.
- We want to ensure that farms are regulated by a common authority (VAAFM) which has sufficient agricultural expertise and can offer technical and financial assistance to producers, while applying a common set of standards and rules for agricultural practices (RAPs). Doing so removes local bias, either in the positive (i.e., preferential treatment) or negative (i.e., discrimination or inter-personal conflict).
- This issue can be addressed without opening the RAPs. The RAPs are most appropriately amended through opening up a public rulemaking process. Preserving the existing qualifying income and Schedule F tax filing standards in the RAPs keeps as many farms as possible under the RAPs, ensuring that as a state we meet environmental and water quality standards, and that farms of all scales qualify for and can access available grants and technical assistance.
- Affirming and protecting the right to grow food throughout all types of development - rural, urban, peri-urban, “growth centers”, etc. - is important to fostering equitable access to farming and food for all Vermonters. This leads to a more resilient and food secure Vermont, with greater opportunities for growing culturally appropriate foods and direct access to learning about farming, gardening, and foodways.
- The Vermont Supreme Court suggested the current criteria are ambiguous for the applicability of the RAP rule, resulting in “anomalous results.” We seek to clearly define the municipal exemption in Title 24 without substantively changing how it has been implemented and understood for decades by farmers, municipalities, and communities.
- Once ag land is gone to development it is gone forever - we need to protect and grow agricultural land, not create new ways to threaten its existence.
- Land access and affordability is one of the primary issues affecting farmers in VT and nationally - especially for young, beginner, and historically marginalized farmers. Accessing

rural farm land and housing is very economically challenging; and farming is itself economically extremely difficult.

- A broad and diverse coalition of agricultural organizations have agreed to our proposed legislative language (see below): Rural Vermont, the Vermont Farm Bureau, Agri Mark, Cabot, the Vermont Dairy Producers Alliance, NOFA-VT, the Vermont Association of Conservation Districts, the Connecticut River Watershed Farmers Alliance, Farm to Plate, and the Land Access and Opportunity Board. We collectively represent a significant portion of VT's farming community and food system stakeholders, and what we have determined to advocate for is what we collectively feel is appropriate at this time. We have been doing, and will continue to do outreach and education in our communities about this issue - and support them coming before the legislature to share their experiences, ideas, and needs.

Areas of strong alignment between Coalition, VAAFM, and VLCT:

Broadly, the three are in agreement around restoring agricultural exemptions from municipal zoning. VLCT has confirmed in conversation that municipalities do not want to take on regulatory responsibility over agriculture in most cases - though they do want to preserve some authority that the SC decision has enabled. Specifically, the three groups agree in principles on the following Chapter 24 Municipal exemption language for agriculture:

- (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; (see 10 VSA § 6001(22)(A) and "farming" definition in RAPs)
- (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.

Proposed legislative language, differences between the Coalition, VAAFM, and VLCT:

While there is agreement that exceptions should exist for the Chapter 24 exemptions named above, The Coalition, VAAFM, and VLCT have variances in proposed language and legislative tact (e.g., changes within Chapter 24 vs RAP rules). Each group has agreed on the notion that in principle exceptions should also exist "when farming occurs on less than one acre".

Our Coalition proposes the following draft legislative language in difference to the VLCT and VAAFM:

Section 2: 24 VSA § 4413 is amended to read:

§ 4413. Limitations on municipal bylaws

[...]

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

(A) the Right to Grow Food, which includes:

(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.

(ii) The Right to Grow Food includes 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.

(AB) 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, except when farming occurs on less than one acre and is not protected by the Right to Grow Food in 4413 (d)(1)(A) or within a downtown, village center or planned growth area as defined in 24 V.S.A. § 4348a(a)(12). required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets; or

(C) the construction of farm structures, including as defined in the Required Agricultural Practices Rule;

(BD) accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices that are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation; or

(GE) forestry operations.

- (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;
- (AB) “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.

- (BC) “Forestry operations” has the same meaning as in [10 V.S.A. § 2602](#).
- (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.

— *end of draft legislative language* —

In explanation of the same:

- The Secretary of Agriculture would have authority to enforce the RAP rule and regulate livestock number and type on subsistence farms and farms beneath the RAP threshold on a case by case basis if the land base is not sufficient for appropriate nutrient and waste management, and without contingency would allow for municipal regulation over the presence of roosters.
- One area of clarity needed as written, is whether the RtGF livestock exemption, and the determination by the Secretary, is only meant for livestock farms of less than one acre. In this proposal there are differences between the Coalition’s proposal that seeks to apply the RAP rule for all agricultural practices on more than 1 acre of size in a coherent way vs. the VAAFM proposal, and existing statute, which creates some ambiguity and possibly confusion regarding livestock on fewer than 4 acres.

Differences are:

- **VLCT’s framework proposes:** that exceptions should exist when farming “occurs on less than one acre or within a downtown, village center or planned growth area as defined in 24 V.S.A § 4348a(a)(12).³”³
- **VAAFM’s proposal:** would define exceptions by making the following changes to the RAPs - therefore the exceptions are embedded within the RAPs⁴ named in the exemptions contained within (B) of Chapter 24:
 - Add to 3.1 of the RAPs “and are not subject to municipal zoning bylaws.”
 - 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;

³ <https://legislature.vermont.gov/statutes/section/24/117/04348a>

⁴ https://agriculture.vermont.gov/sites/agriculture/files/documents/RAPFINALRULE12-21-2018_WEB.pdf

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

(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;

The Coalition finds these changes to (e) and the addition of (f) (though it's an addition by the subtraction of the schedule F criteria currently in the RAPs which currently occupies the (f) position), to be confusing and unnecessary if the 1 acre exemption can be more directly addressed within Chapter 24. Also, as written, it is not clear if the rulings for farms between 1-4 acres in (e) holds if the municipality has ordinances or bylaws to regulate livestock between 1-4 acres.

Areas of clear disagreement between the groups (e.g., differences across all three groups, or areas where there is clear divide in positions):

A lack of consensus around:

- Changing the income threshold in the RAPs:
 - Coalition position: do not open the RAPs, keep the threshold as is at \$2,000
 - VAAFM position: has suggested to VLCT raising the threshold to \$5,000. Not clear how strongly tied to this VAAFM is.
 - VLCT position: in the proposed framework, they are recommending raising the threshold to \$10,000.
- Keeping or removing Schedule F criterion of the RAPs:
 - Coalition position: keep as is
 - VAAFM position: remove
 - VLCT position: remove

On these two points, the coalition believes the changes are unnecessary as they do not directly help to address the key points of contention that the Vermont Supreme Court raised, and amongst other things would create unintended consequences in regards to a class of farms that would potentially fall outside of both municipal and VAAFM regulatory oversight. This seems to be in difference to the Vermont Supreme Court's guidance that suggests avoiding incoherent regulatory results or anomalies.

- The Coalition and VAAFM both do not agree with VLCT's approach to grant broad exceptions to the exemption for farming occurring "within a downtown, village center or planned growth area" for the following reasons:

- Currently, the VLCT framework proposes this as an “or” rather than an “and” to the less than one acre exception. As is, this would grant more expansive regulatory authority to towns than what the Coalition thinks is warranted given the issues it is meant to address, and creates further friction and uncertainty with other laws (e.g., Right to Farm) and established norms for agriculture in Vermont.
- Planned growth areas in particular are highly concerning to the Coalition, as these areas are yet to be defined, can change over time, and could bring existing farms under new regulatory requirements they previously weren’t exposed to. This level of uncertainty and shifting regulatory ground is exactly what the Coalition would like to avoid enshrining into statute. There is concern regarding downtowns and village centers, though not as elevated as planned growth areas.
- Lastly, the Coalition does not agree with VAAFM’s approach of addressing exceptions to exemptions within the RAPs rather than directly in Chapter 24 (which in turn, may require technical corrections to the RAPs that would result from changes to Chapter 24). It is not clear where VLCT stands on this or if they have a strong position one way or the other.