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Agricultural Economic Development

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LOCAL LAND USE PLANNING AND ITS EFFECT ON DIVERSIFIED ON-FARM ENTERPRISES

VERMONT
AGENCY OF AGRICULTURE, FOOD & MARKETS
www.VermontAgriculture.com

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EXECUTIVE SUMMARY

Vermont's working landscape is critical to the state's economy, environment and its brand. This landscape is rooted in traditions, yet increasingly farmers, especially smaller operations, rely on diversification so they can continue farming the land. Not all the land uses on diversified farms are traditionally considered farming, but take place on a farm and provide many benefits that help keep our landscape working. These benefits include activities that support agricultural literacy, increase farm profitability, and ensure agricultural operations stay viable and farmland remains open and in production.

Non-traditional on-farm activities test Vermont's current land use planning and regulatory framework. The Vermont Agency of Agriculture, Food and Markets (the 'Agency') wants to encourage strong planning for the preservation of agricultural land and a clear regulatory path for on-farm business expansion to promote agricultural economic growth. With assistance from the Department of Housing and Community Development (DHCD) and stakeholders, the Agency identified existing and emerging agricultural related land use challenges and associated regulatory gaps experienced by farmers. It looked at policies and programs that foster diversification and growth of on-farm businesses. This analysis of policies and programs resulted in suggested approaches to modify the existing framework, and promote consistency and predictability to farmers interested in diversifying their businesses. Also included are ways to encourage substantive planning addressing agriculture. The stakeholders considered the complexity of interconnections between various local, state, and federal policies and programs, and recognized the existing body of work addressing these challenges. This report will serve as a tool for direct engagement with farmers, municipal and regional officials, service providers and others.

The Agency began its work by surveying municipal officials, farmers, service providers and others. It convened a stakeholder group representing diverse interests to review the survey's findings, establish desired planning and land use outcomes, and approaches to achieve those outcomes in support of the agricultural industry.

The identified approaches specifically tackle land use planning and regulatory challenges that currently have the potential to impede on-farm agricultural enterprises. At the local level, there is confusion about where regulatory jurisdiction rests with respect to activities on farms not considered "traditional"

farming. This uncertainty challenges a town's ability to plan for the preservation of farmland and promote appropriate economic development in the state's rural areas.

The broad desired outcomes identified by the stakeholder group were

1. Appropriate land uses that support on-farm businesses, preserve farmland, and increase farm viability.
2. Knowledge of resources and needs, and opportunities and barriers to growth in the agriculture industry.
3. Regulatory consistency and certainty for on-farm businesses that allow operations to grow in place and at the appropriate scale.
4. Mutual understanding of terms used across regulatory jurisdictions.

Two subcommittees formed to determine how achieve these outcomes. Guided by the Agency, the subcommittees offered a variety of approaches.

1. Develop a list of "agricultural uses" appropriate for inclusion in agricultural zoning districts.
2. Develop sample land use standards that promote agriculture as the primary use in an agricultural zoning district.
3. Encourage the use of local "conditional use review" for development of residential uses in agricultural zoning districts.
4. Revise the Agricultural Lands Identification Process
5. Enable "Agricultural Districts" as a planning tool that allows for a limited land use district, acknowledges the trend towards diversified operations including agricultural enterprises, and allows residential development to the extent that it supports farm operations.
6. Review state, regional and local statutory planning goals/ guidance to ensure they acknowledge planning for agricultural economic development; and comprehensive agricultural economic development strategies by region
7. Link services and funding to planned agricultural use areas.
8. Address on-farm business growth appropriately via statutory thresholds and as applied by municipalities with land use regulations.
9. Align definitions of common terms established in case law, statutes and rules, and provide guidance to municipal officials on incorporation into land use regulations.

The subcommittees acknowledged the necessity for continued education and technical assistance using a variety of methods and to a diverse audience of farmers, municipal and regional officials, service providers, and others to nurture the best outcomes for the industry.

The varied approaches include guidance, possible statutory changes, and suggestions for long term comprehensive strategic planning that will support rural economic development and protect the working landscape.

While this report focuses on land use planning and regulation, and fostering an environment supportive of a diversified agricultural industry, the Agency is aware that the suggested approaches could affect other state programs and a farmer's ability to participate in those programs.
The matrix in Appendix V that outlines the challenges, desired outcomes, and approaches, highlights some of these potential intersections. The Agency is wary of creating flexibility in one area, which could then influence or restrict access to other programs. To the extent possible, the state should attempt to advance coordinated policies.

In addition to having coordinated policies, many state agencies and departments, and partner organizations have undertaken land use initiatives supportive of rural economic development. These initiatives may already include planning and regulatory guidance to municipal officials and in many cases frame next steps. The Agency recognizes this complementary work and aims to build on it and provide consistency and clarity across jurisdictions. The Agency will continue to coordinate with and support the efforts of the Department of Housing and Community Development, Vermont Association of Planning and Development Agencies, Vermont Housing and Conservation Board, University of Vermont Extension, Northeast Organic Farming Association, Vermont Sustainable Jobs Fund, the Vermont League of Cities and Towns, and regional development corporations.

In light of this work, the interconnectedness of programs, other parallel efforts, the Agency's next steps include fleshing out the identified approaches and building support and capacity among those most directly affect by any changes. This work draws attention to the need for continued coordination with our partners on land use planning and regulatory issues both now and into the future.

SECTION I: MAKING THE CASE

Farm innovation and expansion, and policies that encourage diversification of Vermont's agricultural industry in some instances present land use regulatory challenges to producers with on-farm businesses. The Agency of Agriculture, Food & Markets has long been interested in exploring ways to support producers' ability to expand and diversify their operations, increase their viability, preserve the working landscape, and encourage agricultural literacy as society becomes further removed from raising its food. Land use planning guidance and statewide policies are evidence of supporting the growth of on-farm businesses, and the need for clarifying municipal, state and other regulatory jurisdiction over such operations. Policies supporting the agricultural industry also promote other statewide goals, such as incenting the historic settlement pattern of compact village and urban centers separated by rural countryside. The Agency firmly believes that planning policies that foster preservation of agricultural land and offer a clear regulatory path for on-farm business expansion will promote rural economic growth and incent desired development patterns around the state.

Figure 1. North Hollow Farm, with a Working Lands Grant, will build an on-farm USDA meat processing plant to process its own raised livestock, and for other farms/homesteaders seeking USDA inspected processing opportunities.

Multiple planning guidance documents address preservation and planning for the working landscape. In 1994, the Department of Agriculture, Food & Markets issued the *Sustaining Agriculture: A Handbook for Local Action*. In 2014, Vermont Sustainable Jobs Fund updated this document, *Sustaining Agriculture: Agriculture& Food Systems Planning,* to reflect the changes in Vermont law, highlight the programs and policies to protect Vermont's farmland, and discuss how municipal governments can support on-farm business expansion. Other documents that explore the diversification of Vermont's farms include *Facilitating Innovative Agricultural Enterprises*, and the Vermont Sustainable Jobs Fund's *Farm to Plate Strategic Plan*, which continues to be a leading document in the support of rural economic development.

The Legislature passed several bills that support diversified on-farm businesses and more broadly support rural economic development in both the farm and forestry sectors. For example, Act 143 in 2004 created the Farm Viability Enhancement Program[1]. The purpose of the program is to assist Vermont farmers to ensure their financial success and maintain long-term viability of Vermont agriculture. More recently, the Legislature established the Working Land Enterprise Initiative under Act 142, with the purposes of spurring economic growth in the agricultural and forest product sectors by increasing value added processing, developing markets, and attracting entrepreneurs and new producers to the state.
Other land use related programs that have the potential to encourage agricultural economic development include:

- Vermont Housing and Conservation Board's Farmland Conservation program;
- Vermont's Use Value Appraisal program; and,
- Act 250, the statewide regulatory program administered regionally by District Environmental Commissions, through its protection of primary agricultural soils.

Programs that support new and growing agricultural businesses can be stifled due to planning and implementation barriers at the local level. A producer may discover that they cannot grow an agricultural enterprise in place, using existing infrastructure. Local regulation can stall on-farm business expansion and diversification that is otherwise supported by business assistance programs. Regulations can prohibit:

1. Value-added processing facility for products NOT "principally produced on the farm;"
2. Lease of a production/processing facility to another farm operation;
3. Events on a farm property;
4. On-farm restaurants or agricultural product tastings;
5. Farm stay or lodging on the farm;
6. Classes on the farm; and,
7. Other forms of agritourism where the public is invited on to a property.

> A Vermont vineyard wants to hold more events on its farm, but the local planning commission is reluctant to make changes to the zoning bylaws- it doesn't want to take chances and wants some cover to make sure it is doing the right thing- Notes from September 3, 2014 Rural Enterprise Stakeholder Meeting, Randolph

Local regulatory barriers also exist to expansion of traditional farming operations. These barriers are not always readily apparent to either the municipality or the farmer. Municipalities could even support expansion, but are uncertain what changes to regulations, if any, need to occur locally. Barriers that could impact the success of a farm operation include:

1. Zoning limitations on construction of farm worker housing;
2. Restrictions on business signage in rural agricultural zoning districts; and,
3. Zoning standards that are more restrictive for farms in rural agricultural zoning districts then they are for residential development.

[1] This program has been expanded to include farms and forests.

Adopted August 21, 2012

Section 1003: RURAL AGRICULTURAL DISTRICT (RA-10)

A. Objectives and Guidelines

This district shall be located in all areas of the Town not designated by any of the other proposed districts herein and as specifically delineated on the zoning map. The land in this area is well suited for agricultural uses and other compatible uses such as open space, conservation and certain forms of outdoor recreation. The land generally consists of poor quality soils for residential development so residential development is restricted to a minimum lot size of ten (10) acres per dwelling unit.

Section 1003-A: SPECIFIC STANDARDS FOR RA-10 DISTRICT

	Residential	Non-Residential
Lot area minimum	10 acres	10 acres
Minimum acreage required for each dwelling unit	10 acres	-------
Lot frontage minimum	600 feet	600 feet
Lot depth minimum	700 feet	700 feet
Front yard setback minimum	~~100 feet~~	~~150 feet~~
Rear yard minimum	25 feet	75 feet
Side yard minimum	25 feet	75 feet

Figure 2 The minimum setback from the highway is more restrictive for non-residential development in an Rural Agricultural Zoning District where the land is described as being suitable for agricultural uses.

Act 59 directed the Department of Housing and Community Development (DHCD) to make recommendations to improve its five designation programs. The Legislature also directed DHCD to look at issues around agricultural development. In an effort to understand these issues it convened an "Agriculture Working Group" and held meetings to chart a course for the Agency to follow. As part of DHCD's work, the Agricultural Working Group recognized regulatory uncertainty as an issue and its potential to be a barrier to on-farm diversification and enterprises. The Agency participated in these stakeholder meetings to understand its role in supporting the agricultural industry and value added on-farm enterprises that could also foster "the development of compact centers and an active and robust working landscape."

The following are the broad recommendations addressing agriculture from the Act 59 Report.

1. Retain the Agency's jurisdiction over [farming and accepted agricultural practices], but continue discussions on how farm-based enterprises fit into the definition of "farming" used in land use permitting.
2. Consider aligning the definitions of farming that govern state and federal laws pertaining to labor, public safety, and land use on farms.
3. Educate farmers and communities about permitting requirements and the benefits of agricultural enterprises.
4. Protect large contiguous blocks of farmland and promote the farm economy by ensuring farms are profitable businesses.

This review of existing state policies and programs that focus on expanding opportunities for rural economic growth and the preservation of farmland, and the desire for regulatory clarity, consistency, and predictability drive the need for continued action by the Agency. Coupled with the Agency's mission to "facilitate, support and encourage the growth and viability of agriculture while protecting the working landscape, human health, animal health, plant health, consumers and the environment" positioned it to continue this work.

SECTION II: ENGAGING STAKEHOLDERS

Spring-Fall 2014

The work completed under Act 59 set the stage for the Agency to work with stakeholders and determine how it could promote agricultural economic development and provide clarity, consistency, and predictability for individuals interested developing appropriately scaled and complementary businesses in the rural areas of the state.

A. THE AGENCY'S INTERESTS

To guide the Agency's process of engaging stakeholders, it identified its interests while looking at its current programs and the work complete by DHCD.
The Agency identified three major goals:

1. Preserve an individual's right to engage in "accepted agricultural practices" and construct "farm structures" on his or her land, without local or state land use permitting.
   - Clarify the definitions of "farming," and "farm structures"
   - Clarify jurisdiction of town and state review of agricultural related land uses
   - Clarify what the statement "agricultural products principally produced on the farm" means as contained in the Accepted Agricultural Practices regulations
   - If possible, provide consistency among different state and federal regulatory schemes addressing the above.

2. Create a statewide regulatory framework that allows for the expansion of on-farm agricultural enterprises.
   - Provide a "soft landing" for individuals that diversify their farm operations by giving limited permitting authority to municipal jurisdictions of land uses associated with a farming operation, which are not considered "farming" that also achieve other goals associated with education of the public and support the profitability of farms.
   - Address issues that arise when land uses change from an activity that is regulated by the Agency to an activity regulated by a municipality, which creates a regulatory cliff for an individual/farmer.
   - If possible, provide consistency among different state and federal regulatory schemes addressing the above.

3. Provide continuing education and technical assistance to municipal, state and regional officials, producers, farm service providers, and the public in multiple platforms and venues (with the assistance of partner organizations and other state agencies and departments) on the following:

- Vermont's laws and Agency rules governing the limitation of municipal land use regulation to regulate accepted agricultural practices and construction of farm structures.
- The required farm practices in order to be in compliance with environmental and public health regulations, (water quality, pesticide application, public health, housing etc.).
- The existing laws that protect farmland at the state level and provide guidance or a planning framework for how to address at the local level.
- Promote and plan for farming as a vital part of Vermont's economy, character, and culture.

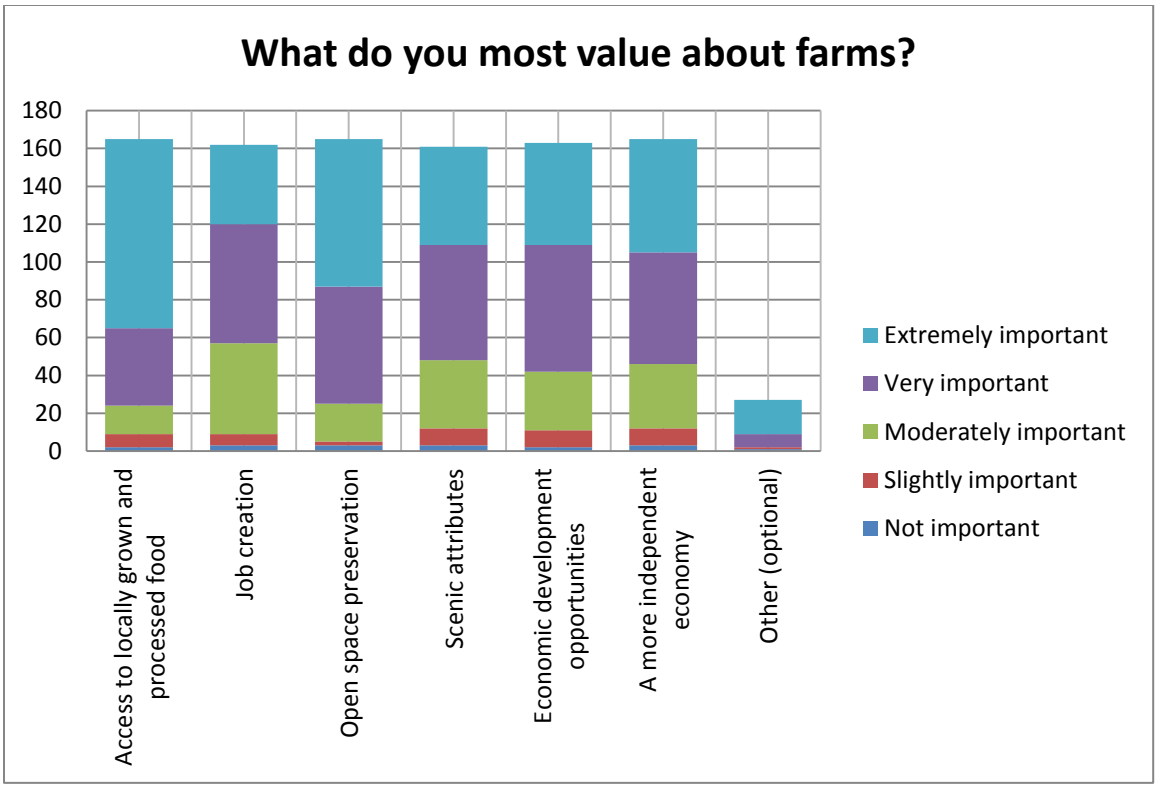
In spring 2014, the Agency conducted a survey engaging landowners, officials at the municipal, state and regional levels, farm service providers and business owners to help the Agency understand the values placed on the various benefits of keeping land in production, and to identify ways to support agricultural enterprises and maintain their profitability. This survey resulted in the Agricultural Enterprises Report. The survey helped the Agency understand whether its interests aligned with the survey participants.

B. Stakeholder Process: Comparison of Survey and Agency of Agriculture's Interests

The information gathered from the survey resulted in key findings covering a range of topics. It helped the Agency understand why individuals farm, and the perceived economic, social and environmental benefits of farming to the state. It also allowed the Agency to gauge interest in different types of on-farm business diversification, and understand perceptions of land use policies and their support of farms. It highlighted the need for technical assistance on how to open up your farm to the public, how to plan for an agricultural economy, and education on the Agency's regulatory jurisdiction.

Respondents to the survey agreed that farms provide Vermont with many benefits including

1. Provide access to locally grown and processed food;
2. Create jobs and foster an independent economy;
3. Preserve open space, which contributes to the state's rural character;
4. Provide on-farm educational opportunities; and,
5. Have environmental benefits (stormwater control, flood mitigation, diversity of wildlife habitat).



The survey showed support for the following broad economic development goals related to farming, such as:

1. Promoting local businesses and the local economy;
2. Supporting agricultural land uses and related businesses development;
3. Making farmland available to farmers;
4. Protecting and preserving agricultural soils;
5. Incentivizing development in downtowns and villages and protecting surrounding countryside for agriculture and forestry; and
6. Expanding agriculture related businesses.

However, respondents generally felt policies and programs were average to below average at achieving these goals. The Agency interpreted these findings as interest in strengthening policies and programs at both the state and local level to support the preservation of farmland and make it available to farmers, and to reduce regulatory barriers to farmers that want to diversify their operations, including value added processing of agricultural products or other agriculture related businesses.

SECTION III: DESIRED OUTCOMES

The Agency reconvened the original Agricultural Enterprise Working Group from the Act 59 outreach process, and reached out to state legislators, agricultural associations, farm operators, state governmental partners, regional planning commissions and development corporations, service providers, and consultants to municipalities and farm operators. It shared the findings from the survey with this expanded group. The dialogue that followed resulted in identification of desired outcomes to address the challenges and bring parity to rural economic development programs and the land use planning and development framework.

DESIRED OUTCOMES

- Understand the resources and needs for rural economic growth, and opportunities and barriers to that growth; and promote policies and programs to support the agricultural industry at the regional and local level.
- Enable/encourage appropriate land uses that support on-farm businesses, preserve farmland, and increase farm viability.
- Provide certainty for producers addressing regulation of on-farm businesses, consistency across jurisdictions, and clarity allowing operations to grow in place.
- Develop commonly used terms to foster a common understanding by all interests.

This working group broke into two subcommittees in an effort to provide solutions guided by the desired outcomes. The Regulatory/Legislative subcommittee brainstormed and reconsidered suggestions to the DHCD from the 2013 Agricultural Enterprises Working Group meetings, and entertained new solutions. The varied suggested approaches include guidance and possible statutory changes in the short term. They also include suggestions for long term comprehensive strategic statewide planning. The approaches found in Appendix III are not mutually exclusive of each other but are a menu of opportunities, which address different avenues for change.

The Educational/Technical Assistance subcommittee met once and shared information about the many existing groups that currently deliver education and business planning services around the state, and discussed the breadth of issues/topics addressed by these providers. The subcommittee recognized the variety of audiences and outreach methods necessary to provide meaningful outreach. This subcommittee discussed gaps in education and technical assistance concerning land use planning and permitting, and possible resources for answers and guidance. It recognized that coordination among service providers to both

producers and municipal officials is necessary to ensure consistent messaging with those that are most affected by existing or a new regulatory framework.

To capture and communicate these discussions more broadly, the Agency created an Agricultural Enterprises webpage that contains links to all the work performed to date, including all meeting notes.

SECTION IV: PLANNING, DEVELOPMENT, AND REGULATORY APPROACHES

The Regulatory and Legislative subcommittee focused on vetting land use planning and regulatory approaches to achieve desired outcomes identified by the Agricultural Enterprise Working Group.

The identified approaches include technical assistance to municipalities to help them implement policies that support agricultural economic development. This category of suggested approaches would support town planning for agriculture, and sustain farms by reducing regulatory barriers. They also have the potential to address conflicts between land uses, and could provide clarity to some existing regulatory jurisdictional questions about farming and accepted agricultural practices.

- Develop a list of "agricultural uses" appropriate for inclusion in agricultural zoning districts.
- Develop sample land use standards that promote agriculture as the primary use in an agricultural zoning district.
- Encourage the use of local "conditional use review" for development of residential uses in agricultural zoning districts.
- Revise the Agricultural Lands Identification Process.
- Enable "Agricultural Districts" as a planning tool that allows for a limited land use district, acknowledges the trend towards diversified operations including agricultural enterprises, and allows residential development to the extent that it supports farm operations.

Another group of approaches looks more broadly at statewide planning policies and ensuring that regions and municipalities consider agriculture as an economic development tool in the rural areas. It also suggests that the funding and services be targeted to specific areas that are planned for agriculture.

- Review state, regional and local statutory planning goals/guidance to ensure they acknowledge planning for agricultural economic development; and comprehensive agricultural economic development strategies by region.
- Link services and funding to planned agricultural use areas.

One approach originated with the Act 59 discussions and carried through the Agency's work. There was a desire for consistency and predictability across municipal boundaries to allow non-traditional farm related businesses, or agricultural enterprises, to start and grow on

the farm. The types of businesses that fall in this category include agritourism, value added processing that is not "farming," and restaurants on the farm, and the ability to lease farm property for events. Specifically, the suggestion is for statutory change that includes thresholds allowing for appropriately scaled business growth on a farm that aids in farm viability and doesn't impact agricultural resources.

The last category suggests developing a common language for commonly used terms. This can provide some consistency and clarity for regulatory purposes. A common understanding of terms may also clarify existing jurisdictional issues. Align definitions of common terms established in case law, statutes and rules, and provide guidance to municipal officials on incorporation into land use regulations.

Appendix V is a matrix that includes the Challenges, the Desired Outcomes, and the Suggested Approaches. It also includes specific actions that could be required in statute or as guidance to a particular group and reference to work already completed or underway that can influence next steps.

SECTION V: NEXT STEPS

The Agency will continue its work by convening additional meetings around the state and sharing this report, which serves as a tool for direct engagement with farmers, municipal and regional officials, service providers and others. The report outlines actions that align the goals of Agricultural Enterprise Survey participants, the desired outcomes of stakeholders and the interests of the Agency. These actions include planning and implementation guidance to municipalities and regional entities, and possible statutory changes that would support rural economic development. Finally, it highlights the complexity of the issues and the interconnection between various local, state, and federal policies and programs.

Developing guidance and statutory tools with partners is an opportunity to identify the issues and build support among those directly affected by policy changes. This deliberate engagement may help encourage appropriate regional and local land use planning and regulation in rural areas of the state and greater local resource protection. Other reasons for a deliberate approach are because of recently released guidance and other efforts by partner organizations, the complexity of the issues and interconnectedness, and the changing policy landscape including:

1. Farm to Plate's, recent guidance issued to municipalities that addresses land use planning and implementation opportunities[Sustaining Agriculture: Agriculture & Food Systems Planning]
2. Specific food systems planning work by regional planning commissions that may guide local government planning
3. Revisions to the Agency's Accepted Agricultural Practices regulations
4. Working Lands Enterprise Initiative

This report frames next steps and will foster continued dialogue with partners about opportunities. It highlights that even if this work results in additional planning tools, a common language, or substantive guidance there is always need for education and technical assistance and the strong connection between agricultural industry and municipalities that must plan for growth and resource protection.

Photo Credit: Vermont Livestock, Slaughtering & Processing

Agricultural Economic Development

Appendices

I List of Participants
II Accepted Agricultural Practices
III Enterprise Survey Infographics
IV Planning, Development, and Regulatory Approaches
V Additional Considerations

LOCAL LAND USE PLANNING AND ITS EFFECT ON DIVERSIFIED ON-FARM ENTERPRISES

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I List of Participants

The Agency would like to thank the following individuals that were able to help shape the Agency's work on this report. The Agency will continue to engage these individuals and others as it continues this process.

Representative Alison Clarkson
Ben Waterman, University of Vermont Ext
Bob Livingstone, East Shore Vineyard
Representative Carolyn Partridge
Chris Callahan, University of Vermont Ext
Chris Campany, Windham Regional Commission
Chris Granstrom, Lincoln Peak Vineyard
Chris Sargent, Two Rivers Outaquechee Regional Commission
Ed Bove, Rutland Regional Planning Commission
Ela Chapin, Vermont Farm and Forest Viability Program
Enid Wonnacott, Northeast Organic Farming Association-VT
Jamie Renner, Vermont Law School
Jane Clifford, Green Mountain Dairy Farmers Cooperative Federation
Representative John Bartholomew
Karen Horn, Vermont League of Cities and Towns
Kathy Davis, Lake Champlain Regional Chamber of Commerce
Loralee Morrow, Two Rivers-Ottauquechee Regional Commission
Lou Borie, Natural Resources Board
Louise Waterman, Agency of Agriculture, Food & Markets
Matt Gordon, VT. Maple Sugar Makers Association
Melanie Kehne, Natural Resources Board
Nancy Everhart, Vermont Housing and Conservation Board
Patricia Richardson
Peg Elmer, C.R.O.
Reg Godin, Agency of Agriculture, Food & Markets
Regina Mahoney, Chittenden County Regional Planning Commission
Robin Sheu, Addison Count Economic Development Corporation
Ron Shems, Natural Resources Board
Sharon Murray, Vermont Planners Association
Stephanie Gile, Natural Resources Board
Steve Justis, VT Tree Fruit Growers
Taylar Foster, Lamoille County Planning Commission

Meetings hosted by
Stephanie Smith and Diane Bothfeld, Agency of Agriculture, Food and Markets
Noelle Mackay and Faith Ingulsrud, Department of Housing and Community Development

II Accepted Agricultural Practices: A Regulatory Primer

The state legislature recognizes the importance of Agriculture in Vermont in a number of statutes, including the state's "right to farm" law. Agriculture's benefits include economic development, promoting the health and self-sufficiency of its people, and environmental and scenic resource protection that contribute to tourism and the iconic Vermont landscape. This protection of the right to farm is not at the expense of the public health, safety and welfare or the right to enjoy one's property. There are many laws and regulations to mitigate nuisance and to safeguard the public and a property owner from undue adverse consequences arising from agricultural practices. These exist in various sections of Vermont law. However, local land use laws, enabled under Chapter 117 of Title 24, a common source of regulation for the protection of property rights at the local level, is limited in its application to accepted agricultural practices.

The limitation provides that "accepted agricultural… practices, including the construction of farm structures" [AAP] are not regulated at the local level. The Agency of Agriculture, Food & Markets (Agency) regulates these activities through environmental standards outlined in the Accepted Agricultural Practice Regulations, and these apply to all individuals engaged in farming in the State of Vermont. "Persons engaged in farming, as defined in 10 V.S.A. § 6001, who follow these practices shall be presumed to be in compliance with water quality standards." [6 V.S.A. §4810(a)(1)]. The purpose of these standards are to reduce the potential for polluting surface and groundwater, and require those who farm to properly manage manure, agricultural product processing waste, pesticide, fertilizer, and animal mortalities.

This limitation on the application of local land use regulations in some cases leads to confusion about whether a municipality can regulate any activities that occur on a farm. Currently, activities that are not "farming" or an "accepted agricultural practice" as defined in the Accepted Agricultural Practices Regulations [AAP Sections 2.05 and Section 3.2 respectively] are subject to regulation by the town under Chapter 117. Examples of some activities potentially regulated under municipal zoning are on-farm restaurants and events, and sales or processing of products that are *not* "principally produced on the farm." In other words, it is important to understand that not all land use activities occurring on a farm are considered "farming" and otherwise regulated by the Agency.

Another point of confusion concerns the construction of "farm structures," also defined in the AAPs. [AAP Section 2.06]. Buildings on a farm property that are accessory to residential uses, such as a garage or an apartment; or buildings that contain a mixture of uses, for example, a cheese processing facility using milk from the farm that has an apartment above would not meet the definition of a "farm structure" and may be regulated by the town.

The construction of farm structures, moreover, still requires that the farmer must notify the town of their intent to construct a farm structure [AAP Section 4.07 and 24 V.S.A. §4413(d)(2)], and the Secretary of the Agency applies the locally adopted setbacks, unless the Secretary approves an alternate setback in accordance with the AAPs. It is important to note

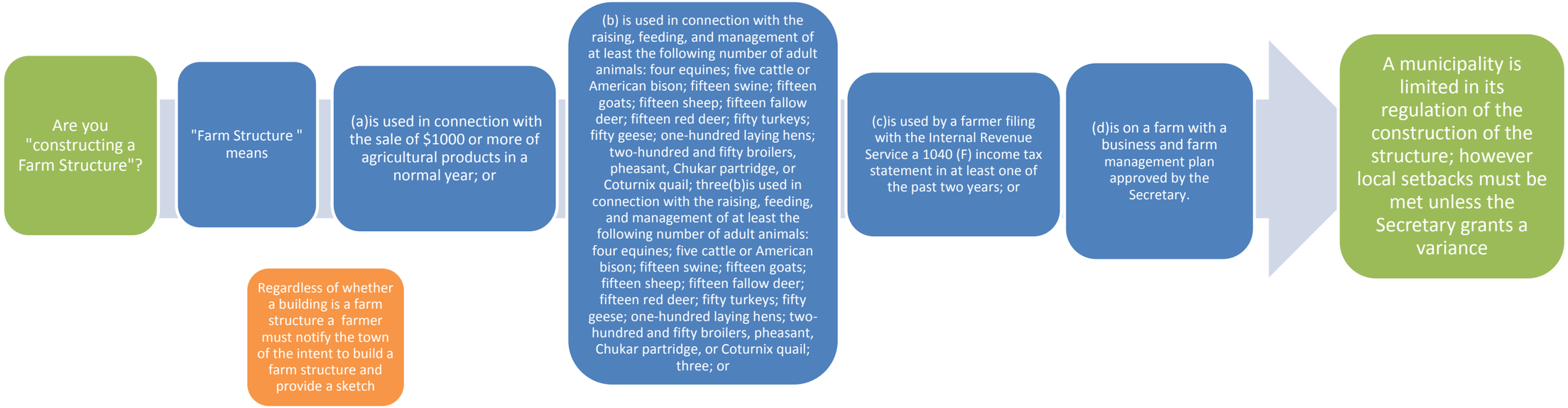
however, the Agency does not have the authority to approve construction of a farm structure within a state or municipal highway right of way.

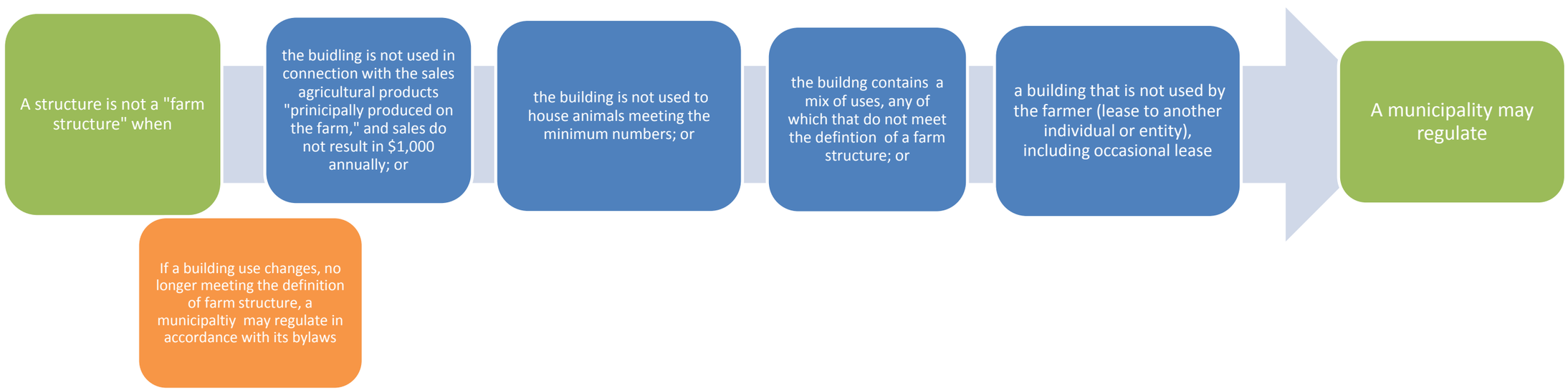
The Agency works with the Department of Environmental Conservation's Rivers Program to ensure farm structures are constructed in accordance with minimum National Flood Insurance Program (NFIP) standards, to not affect a municipality's enrollment in the NFIP. The Agency also encourages individuals to contact the Agency of Natural Resources permitting specialist for their region to make sure no additional state permits are necessary prior to construction.

Do your activities require a municipal zoning permit?

For more information about accepted agricultural practices, please contact the Agency of Agriculture, Food & Markets, *AGR.WaterQuality@state.vt.us*

When is a structure a “Farm Structure” Regulated under the Accepted Agricultural Practices Regulations?

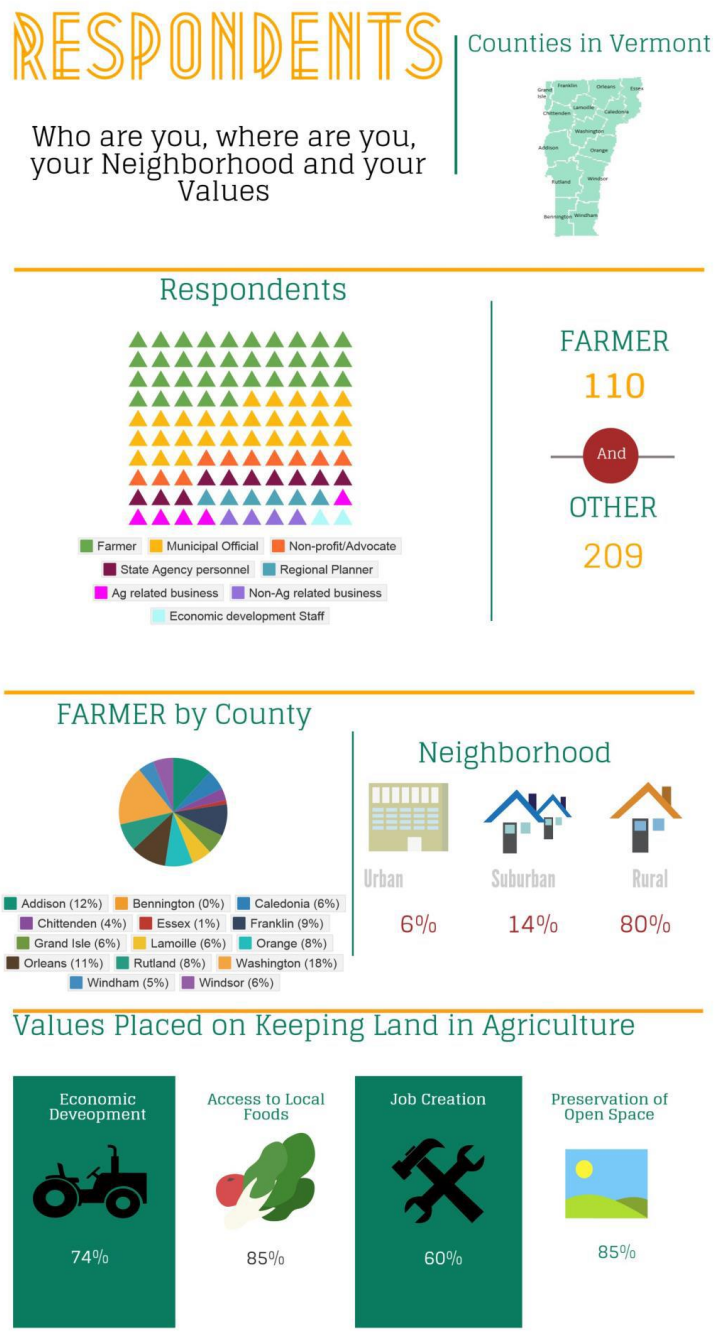




For more information about accepted agricultural practices, please contact the Agency of Agriculture, Food & Markets, *AGR.WaterQuality@state.vt.us*

III Agricultural Enterprise Survey Infographics

The full report on the survey is available on the Agency of Agriculture, Food and Markets webpage, http://agriculture.vermont.gov/protecting_lands_waters/land_use/agricultural_enterprises.



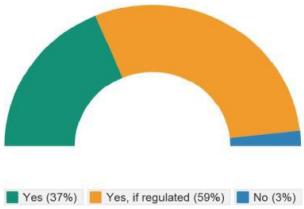
SUPPORT FOR AGRICULTURE INDUSTRY

Farmers Interested in Diversification

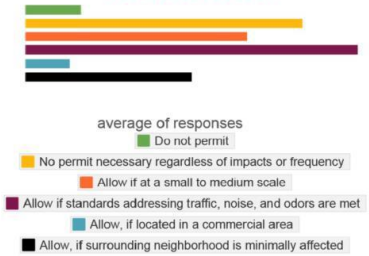
Farmers Interested in Diversification	75%
Direct to Consumer Sales	66%
On Farm Value Added Dairy Processing	31%
On Farm Value Added Meat Processing	20%
On Farm Value Added Produce Processing	27%
Off Farm Value Added Processing	19%
On Farm Value Added Processing w/ 51% of inputs coming from off the farm	6%

Way of Life
Feeding Community
Family Farm
Profession

Support for Permitting Ag Related Business



Preferred Regulatory Framework



Success of Municipal and State Policies in Achieving Goals

Making Farmland Accessible to Farmers	Incentivizing development in downtowns and villages	Promoting Agricultural land uses	Protecting and preserving agricultural Soils
21% don't know	7% Extremely Effective	36% Effective	19% Not effective at all

Identified Issue	Desired Outcome		Identified Approaches	Type of Action	Inter-related Programs, Policies or Publications	Responsibility
A need for agricultural planning and implementation technical assistance and tools	Siting appropriate land uses that support on-farm businesses, preserve farmland, and increase farm viability					
	Increase knowledge of land uses associated with agriculture that may be appropriate in Agricultural Districts ("permitting all types of agricultural uses") [1]	I	Develop a list of "agricultural uses" appropriate for inclusion in agricultural zoning districts.	Guidance to municipalities, sample regulations, and examples of municipalities addressing this issue.	Policies • Municipal and Regional Land Use Planning and Regulatory documents • Regional Food System Plans • Agricultural Lands Identification Planning Criteria, last issued in 2007 Programs • Current use • Act 250 Publications • Sustaining Agriculture: Agriculture & Food Systems Planning • DHCD Planning Manual • Facilitating Innovative Agricultural Enterprises • Farm to Plate Strategic Plan	
	Focus on agriculture as the primary use in Agricultural Districts, and residential uses as secondary; to reduce barriers to farm viability	II	Develop sample land use standards that promote agriculture as the primary use in an agricultural zoning district	Guidance to municipalities, sample regulations addressing setbacks that consider existing farm development patterns, take into account the character of the district, and consider limitations of existing infrastructure.		
	Reduce conflicts between potentially incompatible uses	III	Encourage the use of conditional use review for development of residential uses in agricultural zoning districts	Sample regulations with specific conditional use review standards for residential development in Agricultural Districts		
	Stronger planning for the preservation of farmland	IV	Revise the Agricultural Lands Identification Process	Update planning criteria as outlined in 6 V.S.A. §8[2] to assist municipal and regional officials in identifying agricultural lands		

[1] 24 V.S.A. §4414(1)(B)(i) Agricultural or rural residential, permitting all types of agricultural uses and prohibiting all other land development except low density residential development.
[2] Agricultural lands planning criteria, http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=06&Chapter=001&Section=00008.

Identified Issue	Desired Outcome		Identified Approaches	Action	Inter-related Programs, Policies or Publications	Responsibility
	Increase protection of agriculture infrastructure and the industry, and a reduce land use conflicts	**V**	Enable "Agricultural Districts" as a planning tool that allows for a limited land use district, acknowledges the trend towards diversified operations including agricultural enterprises, and allows residential development to the extent that it supports farm operations	A statutory change to 24 V.S.A. §4414(1)(B)(i) that separates "agricultural districts" and "rural residential districts" enabling municipalities to adopt dedicated agricultural only districts similar to the enabled forestry districts	Policies • Municipal and Regional Land Use Planning and Regulatory documents • Regional Food System Plans Programs • Publications • Sustaining Agriculture: Agriculture & Food Systems Planning • DHCD Planning Manual • Farm to Plate Strategic Plan	
Lack of Agricultural Economic Development Planning	Knowledge of resources and needs, and opportunities and barriers to growth in the agriculture industry					
	Planning policies and programs that support the agricultural industry at the state, regional and local level	**I**	Review state, regional and local statutory planning goals/ guidance to ensure they acknowledge the planning for agricultural economic development; and comprehensive agricultural economic development strategies by region	Revise state planning goals in 24 V.S.A. § 4302(c)(1)(B) and regional and local planning elements, 24 V.S.A. §4348a and §4382[3] and create regional agricultural economic development strategies[4] and/or Regional Food Systems Planning	Policies • Municipal and Regional Land Use Planning and Regulatory documents • Regional Food System Plans[5] Programs • Farm Viability • Working Lands Enterprise Initiative • VHCB Farmland Conservation • Federal Funding programs Publications • DHCD Planning Manual • Farm to Plate Strategic Plan	
	Prioritize funding and services in areas planned for agricultural industry growth	**II**	Link services and funding to planned agricultural use areas	Link agricultural economic development strategy and/ or regional and local land use planning policies to funding policies		

[3] 24 V.S.A. Chapter 117, http://legislature.vermont.gov/statutes/chapter/24/117

[4] Chris Campany, Executive Director of Windham Regional Commission recommended an agricultural economic development strategy to understand the regional differences in the agricultural industry and to assess needs and opportunities. This can feed into more robust land use and infrastructure planning, and the prioritization of funding and other services to producers in the state.

[5] At least three regional planning commissions are drafting food system plans.

Identified Issue	Desired Outcome		Identified Approaches	Action	Inter-related Programs or Policies	Responsibility
Regulatory "gap" for on-farm enterprises that triggered municipal jurisdiction	Regulatory consistency and certainty for on-farm businesses that allow operations to grow in place, but at the appropriate scale					
	Statutory change and guidance to municipalities in application of new statute	I	Address on-farm business growth appropriately via statutory thresholds and as applied by municipalities with land use regulations	Create a "By right" on -farm enterprise statute *in Required Provisions and Prohibited Effects*, 24 V.S.A. §4412 (1)(E)	Policies • Municipal and Regional Land Use Planning and Regulatory documents Programs • Farm Viability • Working Lands Enterprise Initiative • Current Use • Act 250 Publications • DHCD Planning Manual	
Inconsistent Definitions of common terms	Mutual understanding of terms used across regulatory jurisdictions					
		I	Align definitions of common terms established in case law, statutes and rules, and provide guidance to municipal officials on incorporation into land use regulations	Develop a common language to increase understanding of issues and opportunities by consistently defining the following "the farm," "farm," "principally produced on the farm," "farming"	Policies • Municipal and Regional Land Use Planning and Regulatory documents • Regional Food System Plans Programs • Current Use • Act 250 Publications • DHCD Planning Manual • Act 250 Rules (definition of "principally produced")	

V Additional Considerations

The following is a summary of other considerations presented by participants in developing this report. They are categorized generally by impact area. The parenthetical notes attempt to provide context or additional information

Fostering rural economic development

- Right to Farm notifications/signage are commonly placed at entries into towns in Western Massachusetts. Vermont could encourage the same .
- Revisit Vermont's right to farm laws
- Community kitchens – church and school kitchens, etc. potentially meet all necessary requirements of a commercial kitchen and could be used for food processing businesses.
- Farmers' markets are evolving. Market solutions reduce liability for farmers when they are able to occupy a space that is already insured, etc.
- The Agency of Agriculture, Food and Markets should offer education on small farm regulatory requirements for grantees that receive money from the state.
- There are many organizations doing good work including outreach to farmers. The information could be collected and repackaged. A single portal of access to reliable information that is summarized and understandable would be welcome.
- Municipalities are starting to address agriculture meaningfully in town plans. Previously, agriculture tended to be a side issue in the natural resource, economic development or land use sections of a town plan, but does it deserve its own section in the town planning document?
- Encourage municipal and regional planning jurisdictions and Agricultural Associations to share information to inform a local or regional planning process (AAFM Note: At least four regional planning entities have food systems planning document).

Address regulatory jurisdiction

- Modify the "principally produced rule" -51% of agricultural products must be produced on the farm in order to be considered an accepted agricultural practice.
- Provide clarity on how a municipality should regulate a property that contains both accepted agricultural practices and other land uses that are regulated by the municipality. (AAFM Note: Similar to 10 V.S.A. §6001(3)(E), outlined in Act 250.)
- The Agency should publish categorical determinations on its website, helping municipalities and producers understand when a municipality could have jurisdiction over a particular land use.
- Explain the limitation on a municipality's ability to regulate "accepted agricultural practices" and the construction of "farm structures," and when a municipality has jurisdiction.
- In towns without zoning the issue is Act 250 and having consistent triggers for review across land use regulatory jurisdictions.
- Define "agritourism," "agricultural business/enterprise," "farmstead," "farm worker housing." No statewide definition currently in usage.
- The legislature recognizes the need to be flexible for vineyards in the start-up stage, and allows a farm to meet annual gross income requirements from the sale of farm crops and

agricultural products in order to meet the definition of "agricultural lands". (AAFM Note: in Tax Statute, 32 V.S.A. §3752 (1) (C) (iii)).

- "Principally produced" also called the "51% rule"- The harvest of a farm may change year to year depending on weather or other condition. The AAFM could consider changing the threshold or somehow enable continued use of the infrastructure and the land, and allow for greater certainty for farmers if the principally produced threshold cannot be met in a given year.
- Should the 51% rule expand to allow imports from a geographic area?
- Towns can regulate events under their authority in 24 V.S.A. §2291
- Use the same thresholds for Act 250 that are used elsewhere

Establish Land Use Regulatory Threshold concerning:

- Solid waste – ANR through its Solid Waste Management Program regulates and certifies facilities. This program also provides solid waste technical and financial assistance to towns and solid waste districts. Municipalities also have some jurisdiction regarding solid waste and adverse impacts related to a land use.
- Traffic - State statute provides the regulation for weight limits on municipal and state highways, as well as a highway reclassification process if development requires an upgrade to a municipal highway.
- Odor- A municipality can adopt standards to address odors through performance standards.
- Noise- Authority vested with municipality to regulate through performance standards Lighting- A municipality may regulate through both site plan review and performance standards
- Hours of operation- Authority found in conditional use review and performance standards
- Wastewater - The state regulates wastewater (either AAFM or DEC); or a municipality regulates with delegation from the state.
- Scale - Both Act 250 and the Agency regulated the "51% rule" based on complaints. Another way to look at scale would be to scale at production output. Some operations- wineries or dairies- must keep records for their industry related to production. It could be an easy way to manage scale of an operation by providing a ceiling of output of product related to industry standards; or frame regulations in the positive way- regulating for what one wants to occur.
- Do not look at animal units but look at size of structure (AAFM Note: animals are regulated by the AAFM under the Accepted Agricultural Practices Regulations)
- Context of a business located in a rural area could influence thresholds for an expanded business
- Livestock and nutrient management in an urban setting or on a small lot has inherent issues even though regulated by the AAFM

Beyond the scope of this report

- The Secretary of State's office- require registration of small farms and associated enterprises.

- Develop business planning/regulatory checklist for new and expanding businesses that addresses human resources, labor regulations, licenses, registrations, insurance requirements, and permitting, including land use permitting.
- Consistent and uniform oversight of Current Use enrollment. Compared to forestland, agricultural enrollments have no oversight.
- Use AAFM permitting for large/medium farms as oversight for enrollment in current use. However, that doesn't address all the small farms that are currently not required to file a nutrient management plan.
- Farm worker housing beyond the land use considerations that enable construction of housing to meet the needs of the farmer and their employees.