



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

Brittany Shumway (via email: morrillb3@icloud.com)  
200 Middle Road  
Swanton, VT 05488  
Shumberries, LLC

RE: Determination of a Farm Operation and Farm Structure/Variance

Dear Brittany Shumway,

Thank you for submitting your “farming” and “farm structure” requests. The Agency of Agriculture, Food & Markets (the Agency) renders opinions, based on the Agency’s Required Agricultural Practices Regulations (RAPs) as to whether a person is “farming” and the RAPs apply, and/or whether the construction of a proposed structure will be used for farming and is a “farm structure.”

After reviewing your request, the Agency determines that you are “farming” and required to comply with the RAPs. Further, the proposed structure, as described below, has been determined to meet the definition of a farm structure. The Agency provides more detail below.

#### Farm Operation Determination

This letter is documenting that activities occurring on a **5 total acre farm operation**, located at **200 Middle Road, Swanton, 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.

In part, you have described your **farm operation** as a **U-pick strawberry farm with a farm stand selling pre-picked fruit**, and therefore meets the definition of farming in Section 2.16 of the RAPs 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; and**
- (e) the on-site storage, preparation, and sale of agricultural products principally produced on the farm.**

Your description also suggests that your farm meets the minimum thresholds enumerated in Section 3.1 of the RAPs that

makes the RAPs applicable. You indicated that you meet at least the following minimum criteria in Section 3.1:

- (b) has produced an annual gross income from the sale of agricultural products of \$2,000.00 or more in an average year; and
- (c) is preparing, tilling, fertilizing, planting, protecting, irrigating, and harvesting crops for sale on a farm that is no less than 4.0 contiguous acres in size.

### Farm Structures

Section 2.15 of the RAPs, in part, states a “farm structure” means a structure that is used by a person for farming, including a silo, a building to ... raise horticultural or agronomic plants, or customarily used to carry out the agricultural practices defined in Section 3.2 [of the RAPs].

... A farm structure also must be used by a person who can demonstrate meeting the minimum threshold criteria as found in [the RAPs]. Any structure that involves human habitation, or is not customarily used to carry out agricultural practices, would not fall under the definition of a farm structure and would therefore not be regulated by the Agency or the RAPs.

You have indicated that you plan to build an **18’ x 10’ outside farm stand structure used to sell farm products**. The structure would be located at **200 Middle Road, Swanton, VT**. According to the information submitted to the Agency the structure as proposed currently meets the locally established municipal setbacks and therefore does not require a variance.

### Agency Determination

Based upon this information presented at this time, the Agency has determined the activities described above occurring at **200 Middle Road, Swanton, VT**, meet the definition of farming pursuant the RAPs and are therefore considered a farming operation. Further, the proposed structure, as described above, has been determined to meet the definition of a farm structure.

Additional 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)).

This farm operation and farm structure determination does not exempt the Farm from compliance with any other provisions of the RAPs or any other laws or regulations.

Farm operations that fall under the jurisdiction of the RAPs and operate an Accessory on Farm Business may be required to obtain site plan review from their municipality. The Agency recommends that farms discuss their future operational plans with the municipality and aim to comply with Accessory on Farm Business requirements upfront to ensure a successful business plan. An Accessory on Farm Business is defined as:

- the storage, preparation and sale of qualifying products, provided that more than half of the sales are from qualifying agricultural products principally produced on the farm; and
- educational, recreational, and social events that feature agricultural practices and /or qualifying agricultural products.

For more information, please visit: <https://agriculture.vermont.gov/land-use-renewable-energy-0/accessory-farm-business>

This letter outlines the Agency’s position based on the information provided and may change should the relevant information change. Please be aware that you will be required to comply with the Required Agricultural Practices (<https://agriculture.vermont.gov/rap>) by virtue of this determination by the Agency, and any other regulations applicable to your operation.

Please reach out with any additional questions.

Sincerely,

DocuSigned by:  
  
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Laura DiPietro  
Director of Water Quality  
Agency of Agriculture, Food & Markets

10/28/2024 | 5:04:02 EDT

\_\_\_\_\_  
Date

CC: Amy Giroux - Zoning Administrator, Swanton, VT (sent via email: SWANZA@swantonvermont.org)

Please also be aware of the following, and contact the appropriate authorities if necessary:

Flood Hazard Area and River Corridor Construction: Construction of farm structures otherwise exempt from municipal regulation are subject to the [Flood Hazard Area and River Corridor Rule](#) administered by the Department of Environmental Conservation, Agency of Natural Resources. Obtaining appropriate permits in advance of construction will ensure compliance with National Flood Insurance Program (NFIP) criteria and enhance flood resilience.

Public Drinking Water Supplies: Nutrients, sediment, organic matter and microorganisms may also impact drinking water supplies derived from surface waters. Agricultural operations should be aware of the locations of surface drinking water source intakes and appropriately manage agricultural activities to reduce potential negative impacts.

Wetlands: Although wetlands are not mentioned in the RAPs, landowners need to be aware of existing rules pertaining to wetlands under state and federal jurisdiction. The Natural Resources Conservation Service, U.S. Army Corps of Engineers, and the Vermont Department of Environmental Conservation coordinate all agriculture/wetland issues in Vermont. It is strongly suggested that landowners contact the U.S. Army Corps of Engineers at 802-872-2893 and the Vermont Department of Environmental Conservation at 802-241-3760 before initiating farm related activities in or near wetlands.

Construction of New Farm Structures: Construction of new farm structures, specifically buildings and other farm related structures that disturb one or more acres of land must obtain authorization from the ANR before commencing with land disturbance or construction activities. Approval will be issued by ANR upon receipt of a Notice of Intent (NOI) which certifies that adequate measures for the control of erosion and sedimentation will be used during land disturbance and construction efforts. Persons needing additional information about the Construction General Permit/NOI concerning one or more acres of land disturbance are advised to contact the Water Quality Division of the Department of Environmental Conservation at 802- 241-3770 or visit the web site at [www.vtwaterquality.org/stormwater](http://www.vtwaterquality.org/stormwater). Authorization by ANR is not needed for construction or land disturbance related to cultivation, irrigation, drainage and fencing.

Vermont Fire and Building Codes: Farm structures, as determined by the Vermont Agency of Agriculture, Food & Markets (the Agency), may be required to comply with all applicable Vermont fire and building code regulations. In no way does a designation as a farm structure by the Agency limit the need for the structure to meet requirements listed under Title 20 of the V.S.A. Chapter 173, including obtaining a construction permit for eligible structures as defined in Chapter 173. For more information please visit: [www.firesafety.vermont.gov](http://www.firesafety.vermont.gov)

Solid and Hazardous Waste Management: Agricultural operations are advised to manage all wastes generated on the farm consistent with all applicable solid waste rules and hazardous waste rules. Information regarding the proper storage and disposal of waste oil, petroleum products and empty containers can be obtained from the Vermont Waste Management Division at 802- 241-3888.

Wastewater Management and Residuals Management: Farm operations generating wastewater indirect discharges or discharges to underground injection wells are advised that permits may be required from the Department of Environmental Conservation Watershed Management Division or Groundwater Protection and Management Division. The management of sewage, biosolids, and septage on a farm must be conducted consistent with the Vermont Solid Waste Management Rules and any Solid Waste Management Facility Certification authorizing these activities. Information regarding these requirements can be obtained by calling (802) 828-1535.

Water Withdrawal and Irrigation: Farm operations utilizing surface waters for irrigation purposes are advised that water withdrawals above a de minimis rate are required to obtain a permit from the Department of Environmental Conservation consistent with the Procedure for Determining Acceptable Minimum Stream Flows. More information regarding water withdrawals for irrigation purposes and permitting requirements can be obtained by calling the Watershed Management Division at (802) 828- 1535.

Alteration of Streams: Stream alteration permits regulate activities that take place in or along streams. The permit program is intended to prevent the creation of flood hazards, protect against damage to aquatic life, and protect the rights of neighboring landowners. The types of activities that are regulated include streambank stabilization, road improvements that encroach on streams, bridge construction or repair, and utility crossings under streambeds. More information regarding stream alteration and permitting requirements can be obtained by calling the River Management Division at (802) 828-1535.

Spill Prevention, Control, and Countermeasure (SPCC): EPA's oil pollution prevention regulation requires facilities that are subject to regulation to prepare and implement a plan to prevent any discharge of oil into navigable waters or adjoining shorelines of the U.S. A farm must prepare a SPCC Plan if it has an aggregate aboveground storage capacity of greater than 1,320 gallons. Only containers of oil with a capacity of 55-gallons or greater are counted toward this aggregate capacity threshold. The plan is referred to as a Spill Prevention, Control, and Countermeasure (SPCC) plan. More information regarding SPCC and permitting requirements can be obtained by calling the Environmental Assistance Office at 1(800) 974- 9559.

Vermont Act 250: Act 250 is Vermont's land use and development law, enacted in 1970 at a time when Vermont was undergoing significant development pressure. The law provides a public, quasi-judicial process for reviewing and managing the environmental, social and fiscal consequences of major subdivisions and developments in Vermont. "Farming" is defined similarly under both Act 250 and the RAPs, and "farming" is generally exempt from Act 250 review. But, the Agency does not have the authority to determine whether Act 250 applies to your farming activities and/or building project. If there are questions regarding whether Act 250 applies, please contact the Natural Resources Board (NRB) [District Coordinator](#). Please also be advised that if you have an existing Act 250 permit it may attach to your new activity or project. The NRB District Coordinator can help you assess the potential impact. More information regarding Act 250 can be obtained by calling the NRB at (802) 828-3309.