

## Introduction

This review of local zoning and subdivision regulations and other local laws evaluates the extent to which local land use regulations in Monroe County constrain or support agriculture and related businesses.

Zoning regulations typically list permitted uses that are allowed “by right,” with zoning permits administered by the code enforcement officer without any board review.

Certain uses may require a site plan review which allows for site-specific review by an appointed board, typically the Town Planning Board, of considerations such as how the proposed use or structure is laid out on the parcel, the adequacy of access, screening, drainage and the protection of natural resources.

Uses allowed with a special permit require approval by an appointed board, often the Planning Board, if certain conditions are met. If the use as proposed does not meet those conditions, the board responsible for review may deny the special permit request.

Zoning regulations may also include, establish minimum lot sizes, setbacks from lot lines, and other provisions. These dimensional requirements typically vary based on the type of use and/or the zoning district

Subdivision regulations govern the way lots are split off from a parent parcel. Municipalities may adopt subdivision regulations as a local law or through

Provisions for “cluster” or “conservation” subdivisions allow a residential subdivision to include lots that are smaller than required by zoning, provided that a portion of the parent parcel is set aside as open space and the average density does not exceed that required in a traditional subdivision. Some subdivision regulations allow for additional units as a “bonus” if additional land is set aside for open space.

Incentive zoning offers bonuses or incentives to developers, such as increased density, when the project incorporates certain amenities, such as preservation of agricultural land.

This review evaluates municipal land use regulations in the Towns of Chili, Gates, Henrietta, Penfield, Sweden, Webster, and Wheatland based on the following:

1. Do local land use regulations unreasonably restrict standard farm practices?
2. Do land use regulations accommodate agriculture-related business on farms?
3. Do land use regulations include considerations of agricultural impacts as part of development review?
4. How well do land use regulations direct development away from high quality farmland?
5. Do subdivision regulations include provisions to minimize impacts on farm operations?

## 1. Do local land use regulations unreasonably restrict standard farm practices?

NYS Agricultural Districts Law (Agriculture and Markets Law (Agriculture & Markets (AGM) Chapter 69, Article 25-AA) authorizes the Department of Agriculture and Markets to determine whether the enforcement of municipal land use laws unreasonably restricts standard farm practices. The NYS Department of Agriculture & Markets has published several guides to help municipalities determine what comprises reasonable local regulation. Those relevant to communities in Monroe County are referenced in this report.

This assessment of whether local laws unreasonably restrict agricultural practices applies the following general principles:

- a) *The definition of farming should be broad enough to include all types of farming.*
- b) *Agriculture should be permitted in all areas of the Town where it occurs.*
- c) *Zoning requirements for agricultural uses should be based on public health and safety, rather than aesthetics or nuisance.*
- d) *A special use permit should not be required for agricultural uses or farm practices.*
- e) *Site plan review criteria for agricultural facilities should be limited to those that protect public health and safety.*

## 2. Do land use regulations accommodate agriculture-related businesses on farms?

Certain agriculture-related businesses are included in the definition of farm operations that are protected by NYS Agricultural Districts Law as “practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise.” Agriculture-related businesses that may support a farm operation include:

- small-scale manufacturing to produce value-added products
- retail sales of farm and other products
- agritourism enterprises that bring people to the farm to purchase farm products

NYS Agricultural Districts Law prevents unreasonable enforcement of laws that restrict on-farm businesses that directly support an agricultural operation within an Agricultural District. To be protected by Agricultural District law, the revenue generated by the related business must be secondary to the revenue generated by the sale of farm products.

An example of an agricultural support businesses that would be protected through Ag & Markets is a “corn maize” that attracts visitors to a farm to purchase farm products. A winery is considered part of a farm operation if the grapes used to produce the wine are predominantly grown on the farm. See NYS Ag & Markets guidance relating to wineries for more information about this distinction.

- *“Farm friendly” land use regulations would allow a variety of agriculture-related on-farm businesses as accessory uses to the farm.*

### 3. Do land use regulations accommodate non-agriculture-related secondary business on farms?

Some farmers operate businesses on their farms that are unrelated to agriculture to supplement their income. Non-agricultural secondary businesses that may co-locate with agricultural uses include:

- Equipment repair
- Manufacturing, such as wood products or baked goods
- Fuel sales

If the business is located on the same parcel as the farmstead, it be regulated as a “home occupation” or a “home business.” If the business is on a separate parcel from the farm, it would be subject to regulations as a business or industrial operation. Municipal zoning regulations in Monroe County generally require non-agricultural business uses to be located in industrial or commercial zoning districts. These uses also typically require site plan review.

- *“Farm-friendly” zoning regulations would allow for certain non-agriculture-related business to operate on a farm, subject to reasonable design standards and special permit approval.*

### 4. Do site plan review criteria and subdivision regulations require considerations of potential impacts to adjoining or nearby farmland as part of development review?

When reviewing applications for site plan or subdivision approval in agricultural areas, municipal boards should consider the potential impacts of the proposed development on farmland and agriculture. For example, the site plan or subdivision application should identify any accessways to existing farm fields and existing agricultural infrastructure such as tile drainage. Regulations should include criteria to allow the board to require modifications to the proposed development that would minimize these impacts.

NYS Agricultural Districts Law (§305-B) requires any application for a special use permit, site plan review, use variance or subdivision approval on property within a NYS-certified Agricultural District that contains or is within 500 feet of a farm operation within an Agricultural District, to prepare and submit an “Agricultural Data Statement” that describes the project and lists the owners of land with farm operations within 500 feet of the project.

Several municipal zoning regulations in Monroe County note that an “Agricultural Data Statement” must be submitted with an application for development that affects land within a NYS-certified Agricultural District. However, specific criteria in land use regulations are recommended to help the boards responsible for the review of site plans and special permits to minimize the impact of new development on nearby farm operations.

Subdivision regulations enable the municipal planning board to review the proposed layout of lots. At this stage of the development review process, it is possible to plan the lot layout to avoid siting house lots on the most viable farmland and to avoid impacts on natural resources such as streams and woods.

Well-designed subdivisions should:

- avoid fragmentation of farmland;
- maintain existing access to farm fields; and
- minimize disruption of drainage patterns that would affect agricultural lands.

These considerations should be included in the criteria for subdivision review and applied by the planning board during subdivision review.

For subdivisions of five or more lots, cluster or conservation subdivisions offer a mechanism to permanently protect farmland, natural resource protection or open space. The challenge is to design the conservation subdivision to ensure that the preserved land is large enough and configured in such a way that it continues to be viable.

## 5. How well do land use regulations direct development away from high quality farmland?

Zoning regulations in rural areas often state that the intent of the regulation is to direct development away from high quality farmland. In practice, however, it is difficult to limit development in high quality agricultural areas while allowing landowners to sell lots for development. As land use regulations generally permit residential development in agricultural areas, the impact of new development driven by market demand can be managed but, generally, not avoided.

Some rural communities enact large minimum lot sizes with the intent of protecting rural character. However, requiring lot sizes of more than two acres results in more conversion of farmland, as each house lot would require more land than is needed and the excess generally must be maintained as lawn or grows into scrub.

To effectively limit residential development in agricultural areas, zoning provisions that prevent scattered residential would need to limit the creation of new lots to a minimum of 20 acres or more, consistent with the size required to operate a farm operation, and/or to prohibit residential development that is not associated with farm use. Few communities in New York State have adopted exclusive agricultural zoning because of the extent to which it limits landowner options. No municipalities in Monroe County have exclusive agricultural zoning and this approach is not recommended at this time.

## Evaluation of Land Use Regulations

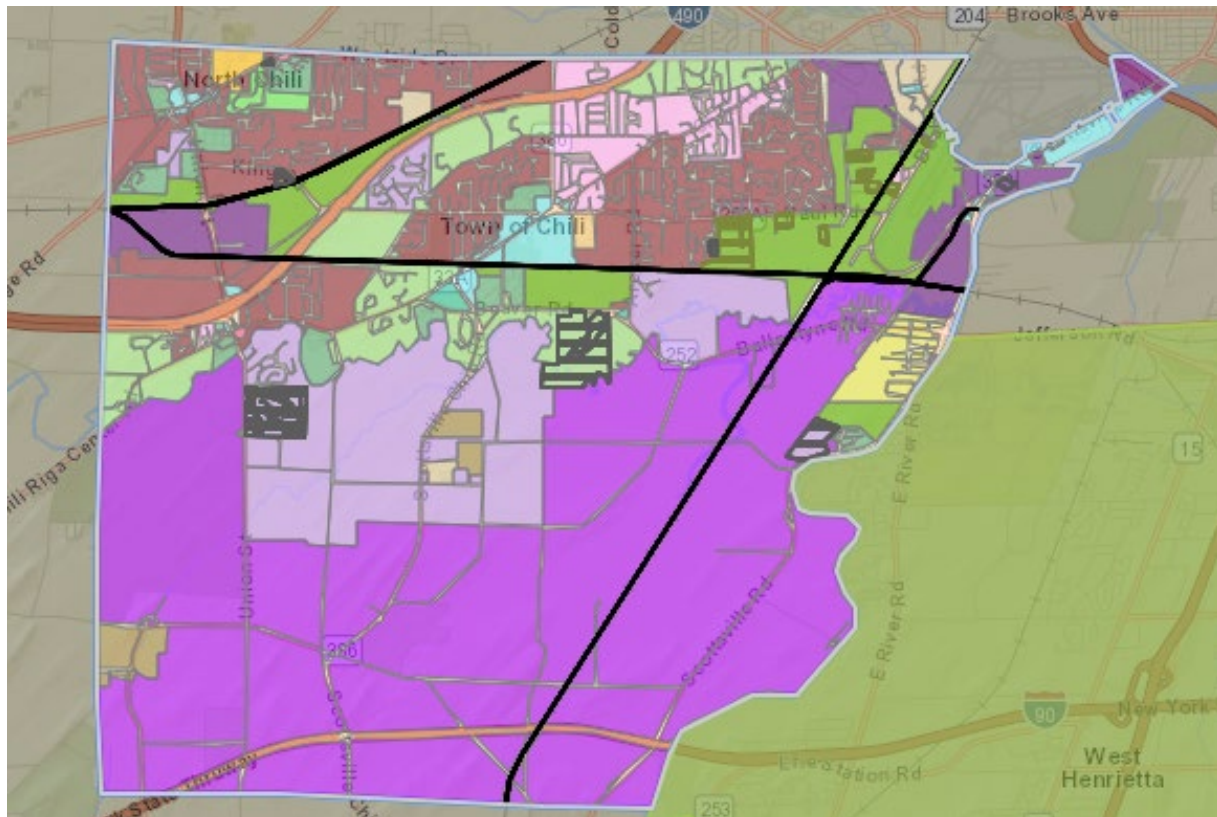
### 1. Town of Chili

The Town of Chili zoning regulations are codified as [Chapter 500](#) of the Town Code.

Most of the farmland in Chili is within the AC Agricultural Conservation zoning district (dark purple in the map below). Some farms and land in NYS-certified Agricultural Districts are in the R-1-15 Residential Single Family zoning district (dark green) and the PRD Planned Residential district (light purple.)

The Zoning Map is reproduced below from a screen shot of the Town's [interactive zoning map](#).

#### Town of Chili Zoning Map



#### 1. Do local land use regulations unreasonably restrict standard farm practices?

- a) *The definition of farming should be broad enough to include all types of farming.*

The Town's zoning regulations define agriculture and related uses as follows:

- **AGRIBUSINESS** - Agriculture or farming engaged in as a large-scale business operation including the production, processing, and/or distribution of agricultural products.

- AGRICULTURAL BARN - A farm building used solely and directly for the storage of agricultural materials or products or equipment or other agricultural purposes.
- AGRICULTURE or FARMING - The use of the land for agricultural purposes, including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, apiaries and animal and poultry husbandry, and the necessary accessory uses for storing produce; provided, however, that the operation of any such accessory use shall be incidental to that of normal agricultural activities, and provided further that the above uses shall not include the operation of a feed lot or other commercial feeding of animals or the manufacturing or processing of agricultural products as a principal use

*b) Agriculture should be permitted “as of right” in all areas of the Town where it occurs.*

In the AC Agricultural Conservation District, the list of permitted uses includes:

- Agriculture and farm operations as first defined within Article 25-AA of the New York State Agriculture and Markets Law.
- Commercial greenhouses (that occupy not more than 30% of an actively farmed parcel of land), nurseries, forest and wildlife preserves, (on land not being used as a part of any established agricultural operation).
- Farm labor housing. Detached, single-family dwelling units, as regulated by the New York State Uniform Code, the New York State Office of Housing and Urban Development and the Monroe County Department of Health, may be permitted on the same lot/parcel where other farm structures are located, provided such unit/ are occupied by a farm labor employee and their immediate family. A detailed site plan is not required for the first farm labor employee dwelling unit to be erected on a lot/parcel of land that is related to an established farming operation. However, a detailed site plan is required to be approved by the Planning Board for a second or more farm labor employee dwelling unit(s) to be erected on land that is part of an established farming operation. Such dwelling unit(s) shall be sited in such a manner as to cause the least disruption to established agricultural operations occurring on the farm lot/parcel. Each such type of dwelling unit shall have a minimum of 850 square feet of habitable floor area. Each such dwelling unit shall be an independent living unit having separate eating, living, laundry and bathroom facilities. At least one of the farm labor housing tenants must be legally employed by the farm operator and their primary place of employment shall be the farm on which the farm labor dwelling unit either is located, or adjacent land owned by the farm labor housing tenant's employer.

Permitted accessory uses include, “On an agricultural related lot/parcel within the AC District, those customary accessory uses to the established agricultural/farm operation are allowed.”

*c) Zoning requirements for specific agricultural practices should be based on public health and safety.*



In the RA Agricultural Conservation District, the minimum lot area for a farm is 10 acres, with the following exception: “Land under 10 acres that will qualify as land used in agricultural production, provided an annual gross sales or \$50,000 or more of agricultural products [§ 304(4) Agriculture and Markets Law]. Minimum acreage for an equine operation shall be seven acres.”

In the RA district, “Any building housing livestock or any noxious commodity shall not be located closer than 100 feet to any lot line, except when abutting another use district. In such instances, the minimum distance shall be 200 feet.”

Based on guidance prepared by NYS DAM, setbacks from lot lines may be unreasonable as applied to farm operations in certified Agricultural Districts Law. Reasonable setbacks related to health or safety would specify distance from a waterbody or drinking water source. As applied to certain farm operations, the required setbacks from lot lines may be found to be unreasonable by NYS DAM.

- d) *A special use permit should not be required for agricultural uses or farm practices.*

In the AC Agricultural Conservation District, a special permit is required for, “Confined or concentrated animal feeding operation (CAFO) as may be further regulated by the New York State Department of Environmental Conservation and or New York State Agriculture and Markets.”

***Recommendations:*** Consider eliminating the requirement for a special permit for CAFOs and allow them with the requirement that they comply with all applicable NYS DEC regulations.

- e) *Site plan review requirements should be limited to those that protect public health and safety.*

Agricultural uses do not require site plan review.

## 2. Do land use regulations accommodate agriculture-related business on farms?

As the Town’s definition for “farm operation” references the definition in NYS Agricultural Districts Law, it includes on-farm retail, packing, packaging and agritourism operations which would be considered “practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise.”

## 3. Do land use regulations accommodate non-agricultural secondary business on farms?

Business uses that are not directly related to the agricultural operation must be located in a Business or Industrial zoning district.

## 4. Do land use regulations include considerations of agricultural impacts as part of development review?

The Town’s criteria for reviewing special use permits and site plan review do not include provisions to consider potential impacts on adjoining or nearby agricultural operations.

***Recommendation:*** Incorporate provisions into site plan review and special permit criteria that require applications to delineate farm access roads, drainage infrastructure, and other agricultural resources within and adjoining the proposed development.

**5. How well do land use regulations direct development away from high quality farmland?**

Land use regulations allow residential development in the same zones as those that permit agriculture and do not limit development in areas with high quality farmland.

The Town's Incentive Zoning provisions allow for increased residential density and other incentives in exchange for certain amenities, including, "Preservation, to the greatest extent possible, of prime and/or unique classified agricultural soils for farm operations.

**6. Do subdivision regulations include provisions to minimize impacts on farm operations?**

Subdivision regulations are not codified with the Town Code and were not reviewed.

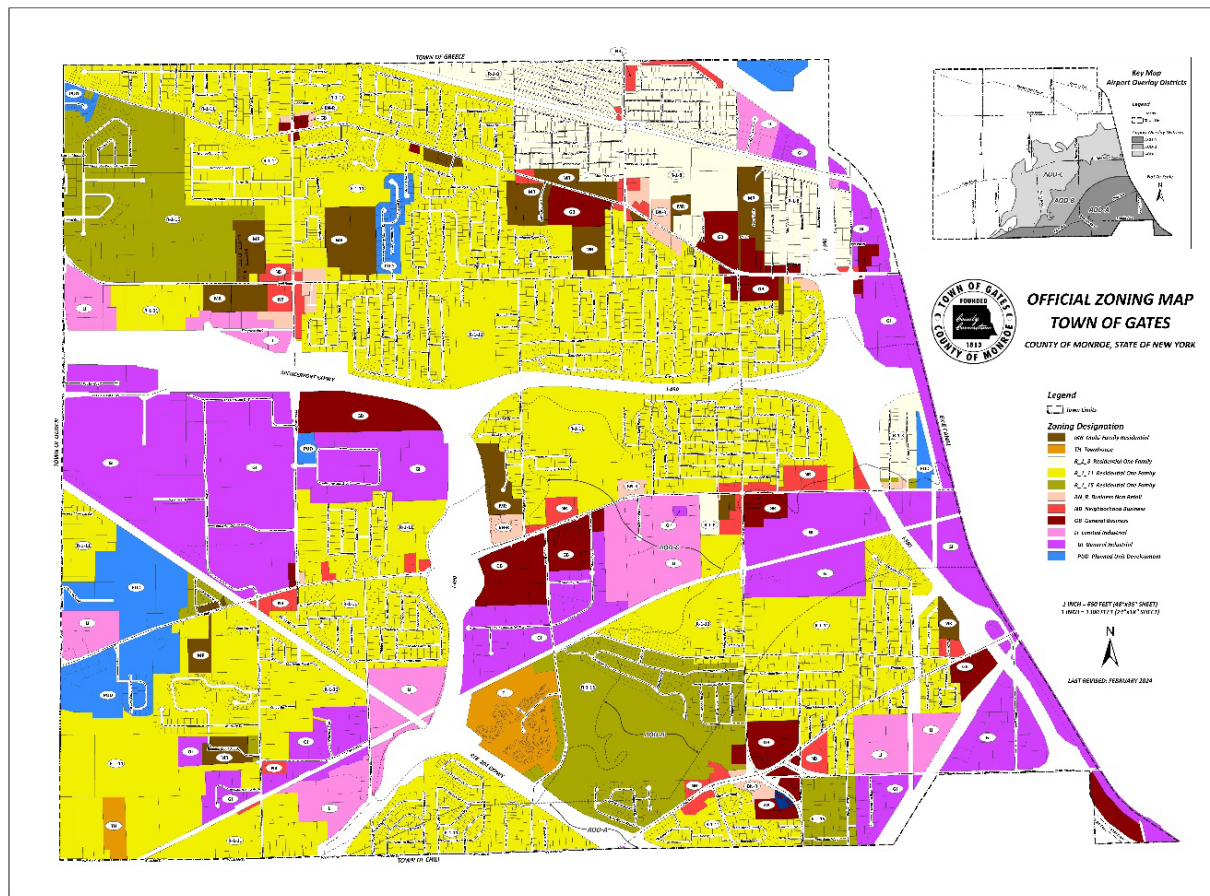


## 2. Town of Gates

The Town of Gates zoning regulations are codified as Chapter 190 of the Town Code. Agricultural parcels and lands within NYS-certified Agricultural Districts in the Town are located in the R-1-11 zoning district (nursery on Buffalo Road) and R-1-15 zoning district (15-acre parcel on Lyell Road). Farmland may be within the Floodplain Overlay district. The Zones below apply to agricultural lands within the Town of Gates:

| Zoning District                  | Label |
|----------------------------------|-------|
| Floodway District                | FW    |
| Floodplain Overlay District      | FPO   |
| Single-Family Residence District | R-1   |

### Town of Gates Zoning Map



## 1. Do local land use regulations unreasonably restrict standard farm practices?

- a) *The definition of farming should be broad enough to include all types of farming.*

The Town's Code defines "agriculture or farming" as follows:

- AGRICULTURE OR FARMING - The use of the land for agricultural purposes, including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, apiaries and animal and poultry husbandry, and the necessary accessory uses for storing produce; provided, however, that the operation of any such accessory use shall be incidental to that of normal agricultural activities, and provided further that the above uses shall not include the operation of a feed lot or other commercial feeding of animals or the manufacturing or processing of agricultural products as a principal use.

This definition is broad and encompasses the various processes and procedures that constitute normal farm practices. It also includes accessory uses related to agriculture and farming.

- b) *Agriculture should be a permitted use in all areas of the Town where it occurs.*

Agriculture is permitted in different intensities depending on the zone.

Permitted uses in the R-1 Residence Districts include "farming, excluding animal husbandry and breeding and the storage of manure". The exclusion of animal husbandry may be unreasonable as applied to farm operations within a NYS-certified Agricultural District.

The Floodway Overlay District applies to lands along Little Black Creek. Development within the Floodway District Zone requires site plan approval and review by the United States Army Corps of Engineers or Town Engineer. Although these areas do not appear to include any agricultural uses, the list of permitted uses in the Floodway Overlay District include the following agricultural uses:

- General farming, including but not limited to the growing and raising of trees, shrubs, vines, berries, vegetables, nursery stock, hay, grains and similar food and fiber crops, pasturing and grazing;
- Animal husbandry, including the breeding and raising of cattle, sheep, horses, goats, pigs and rabbits; and
- Temporary and/or seasonal stands for the sale of agricultural products grown, raised or produced on the premises.

- c) *Zoning requirements for agricultural uses should be based on public health and safety.*

While the Town's prohibition of animal husbandry and breeding, and manure storage, in the R-1 Residence Districts may be intended to minimize odor and noise concerns for nearby properties, it may be unreasonable as applied to a farm operation within a NYS-certified Agricultural District that is using standard farming practices. Reasonable design

standards would be appropriate to separate animal housing and manure storage from streams and public water supplies.

***Recommendation:*** No changes are recommended to zoning regulations. However, the Town should limit enforcement where the regulations would unreasonably restrict a farm operation within a NYS-certified Agricultural District.

## 2. Do land use regulations accommodate agriculture-related and other business on farms?

In the R-1 Residence Districts, uses allowed with a Conditional Use Permit from the Town Board include, “Sale of agricultural products, limited to those products grown on the site in question and only during the harvesting season.” As applied to a farm operation within a NYS-certified Agricultural District, requiring a Conditional Use Permit may be unreasonably burdensome.

## 3. Do site plan review criteria and subdivision regulations require considerations of potential impacts to adjoining or nearby farmland as part of development review?

The Site Plan Review requirements in the Town Code do not require applicants to identify or note agricultural uses/operations on or adjoining lands subject to an application. As the Town of Gates is nearly completely built-out and little farmland remains, subdivision of farmland is not a significant issue

***Recommendation:*** Add provisions to require consideration of potential agricultural impacts during the review of proposed site plans and special use permits.

## 4. How well do land use regulations direct development away from high quality farmland?

Zoning Districts that permit agriculture and farming also permit single-family dwellings as-of-right and other uses through a conditional use permit.

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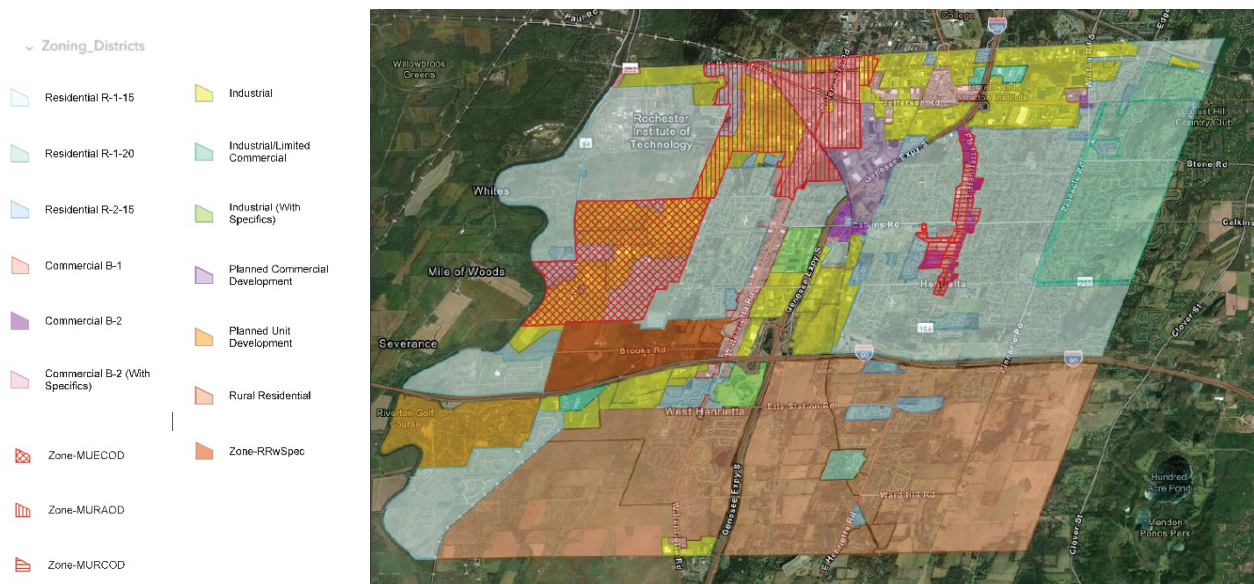
### 3. Town of Henrietta

The Town of Henrietta's zoning regulations are codified as Chapter 295 of the Town Code.

Zoning Districts that apply to agricultural lands in the Town include the Residential Districts R-1-20 and Residential R-2-15, Rural Residential District RR 2, Industrial district, and Commercial district B-1.

The Zoning Map is reproduced below from the Interactive Map downloaded on 3/18/25 from the [Town website](#).

#### Town of Henrietta Zoning Map



#### 1. Do local land use regulations unreasonably restrict standard farm practices?

a) *The definition of farming should be broad enough to include all types of farming.*

The Town's zoning regulations define agriculture and related uses as follows:

- **AGRIBUSINESS** - Activities conducted on a farm that are dependent upon an agricultural operation, including, but not limited to, on-farm bed-and-breakfasts, farm stay programs, U-pick operations, seasonal events, pumpkin patches, farm breweries, farm cideries, farm distilleries and farm wineries, and offering to the public, or to invited groups, the sale of agricultural products, education, recreation or active involvement in the farm operation. An agribusiness activity may be conducted in an accessory structure where the use is secondary to the primary farm use on a property. The Alcoholic Beverage Control Law (ABC Law) provides the standards which must be met for farm brewery, cidery, winery and distillery licenses.
- **AGRICULTURAL AND FARMLAND PROTECTION** - The preservation, conservation, management or improvement of lands which are part of viable farming

operations, for the purpose of encouraging such lands to remain in agricultural production

- **AGRICULTURAL BUILDING** - A structure designed and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products, excluding any structure designed, constructed or used, in whole or in part, for human habitation, as a place of employment where agricultural products are processed, treated or packaged, or as a place used by the public
- **AGRITOURISM** - Activities conducted by a farmer on-farm for the enjoyment or education of the public, which primarily promote the sale, marketing, production, harvesting or use of the products of the farm and enhance the public's understanding and awareness of agriculture, farming and farm life
- **CANNABIS PRODUCTION, MAJOR** - Based on licenses from the New York State Cannabis Law, an establishment involving the cultivation and/or processing of cannabis, including Tiers 2, 3, and 4 under a cultivator license, a business with a processor license that processes cannabis from other cultivators, and/or a business with a distributor license that distributes cannabis from other cultivators
- **CANNABIS PRODUCTION, MINOR** - Based on licenses from the New York State Cannabis Law, an establishment involving the cultivation and/or processing of cannabis, limited to a microbusiness license or to Tier 1 under a cultivator license.
- **COMMERCIAL HORSE BOARDING OPERATION** - An agricultural enterprise, consisting of at least seven acres and boarding at least 10 horses, regardless of ownership, that receives \$10,000 or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production.
- **COMPOSTING, AGRICULTURAL** - The on-farm processing, mixing, handling or marketing of organic matter converted into compost, mulch, or other organic biomass products in order to process such farm's agricultural waste or otherwise for use at the farm, including where either a) the source organic matter is generated on the farm where the composting is taking place, or b) the source organic matter is generated off-farm but utilized on-farm, all as more fully defined at New York Agricultural and Markets Law, Article 25-AA, Section 301.
- **COMPOSTING, MULCHING OR OTHER ORGANIC BIOMASS CROPPING** - The on-farm processing, mixing, handling or marketing of organic matter that is grown or produced by such farm operation to rid such farm operation of its excess agricultural waste; and the on-farm processing, mixing or handling of off-farm-generated organic matter that is transported to such farm operation and is necessary to facilitate the composting of such farm operation's agricultural waste. This shall also include the on-farm processing, mixing or handling of off-farm-generated organic matter for use only on that farm operation. Such organic matter shall include, but not be limited to, manure, hay, leaves, yard waste, silage, organic farm waste, vegetation, wood biomass or by-products of agricultural products that have been processed on such farm operation. The resulting products shall be converted into compost, mulch or other organic



biomass crops that can be used as fertilizers, soil enhancers or supplements, or bedding materials

- CROPS, LIVESTOCK AND LIVESTOCK PRODUCTS - Shall be defined as defined in § 301 of the New York Agriculture and Markets Law (AML)
- FARM or FARM OPERATION. Shall be defined as defined in § 301 of the New York Agriculture and Markets Law (AML)
- FARM STAND or FRUIT AND VEGETABLE STAND. An incidental and subordinate activity of a farm, nursery or greenhouse involving seasonal retail sale of primarily locally raised agricultural products, and may include activities in which retail customers pick or select their own produce from the fields or growing areas.
- FARM WOODLAND; FOREST FARMING OPERATION. The land used for the production of woodland products intended for sale, including but not limited to logs, lumber, posts and firewood. Farm woodland shall not include land used to produce Christmas trees or land used for the processing or retail merchandising of woodland products.
- FARM or FARM OPERATION - Shall be defined as defined in § 301 of the New York Agriculture and Markets Law (AML).
- FARM STAND or FRUIT AND VEGETABLE STAND - An incidental and subordinate activity of a farm, nursery or greenhouse involving seasonal retail sale of primarily locally raised agricultural products, and may include activities in which retail customers pick or select their own produce from the fields or growing areas
- FARM WOODLAND; FOREST FARMING OPERATION - The land used for the production of woodland products intended for sale, including but not limited to logs, lumber, posts and firewood. Farm woodland shall not include land used to produce Christmas trees or land used for the processing or retail merchandising of woodland products
- GREENHOUSE, GARDEN NURSERIES or NURSERY (EXTERIOR) - A place where trees, shrubs, vines and/or flower and vegetable plants are propagated or grown for a period of at least six months and/or where flowers and vegetables of an annual variety are germinated before being offered for sale and transplanting. (This definition shall not encompass those retail establishments that buy most of their horticulture stock wholesale, not propagating it themselves).
- STABLE, PRIVATE - An accessory structure in which horses are kept for private use and not for hire, remuneration or sale
- STABLE, PUBLIC - A building in which any horses are kept for remuneration, hire or sale

The Town's zoning references Section 301 of NYS Agriculture & Markets Law, which includes the following definitions:

2. "Crops, livestock and livestock products" shall include but not be limited to the following:

- a. Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.
- b. Fruits, including apples, peaches, grapes, cherries, berries, and tree nuts.
- c. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.

d. Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.

e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, wool bearing animals, such as alpacas and llamas, milk, eggs and furs.

f. Maple sap.

g. Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.

h. Aquaculture products, including fish, fish products, water plants and shellfish.

i. Woody biomass, which means short rotation woody crops raised for bioenergy, and shall not include farm woodland.

j. Apiary products, including honey, beeswax, royal jelly, bee pollen, propolis, package bees, nucs and queens. For the purposes of this paragraph, "nucs" shall mean small honey bee colonies created from larger colonies including the nuc box, which is a smaller version of a beehive, designed to hold up to five frames from an existing colony.

k. Actively managed log-grown woodland mushrooms.

l. Industrial hemp as defined in section five hundred five of this chapter.

m. Cannabis when cultivated in accordance with the cannabis law.

3. "Farm woodland" means land used for the production of woodland products intended for sale, including but not limited to logs, lumber, posts and firewood. Farm woodland shall not include land used to produce Christmas trees or land used for the processing or retail merchandising of woodland products.

11. "Farm operation" means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a "commercial horse boarding operation" as defined in subdivision thirteen of this section, a "timber operation" as defined in subdivision fourteen of this section, "compost, mulch or other biomass crops" as defined in subdivision seventeen of this section and "commercial equine operation" as defined in subdivision eighteen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

b) *Agriculture should be permitted "as of right" in all areas of the Town where it occurs.*

In the Rural Residential District, the list of permitted uses includes:

- Farm and farm operations as defined under the State Agriculture and Markets Law (see § 295-2, Word usage and definitions).
- Farm stands and fruit and vegetable stands.



- Commercial and private stables.
- Farm woodland; forest farming operation.
- Agribusiness and agritourism, subject to obtaining a special use permit. Such uses are allowed only as a subordinate use to the primary farm operation, and such subordinate use shall terminate upon the cessation of the farm operation
- Commercial composting, subject to obtaining a special use permit

In the R-1 Residential District, the list of permitted uses includes, "Farms, greenhouses, plant nurseries and customary agricultural operations in connection therewith, but excluding within 100 feet of any lot line any stabling of a farm animal, storage of manure or other odor- or dust-producing substance or use."

Farm operations are not listed as permitted uses in the Business or Industrial zoning districts. Farm operations that were in operation before zoning was established are allowed to continue as pre-existing non-conforming uses.

§295-42. Animals in residential districts prohibits keeping farm animals in residential zoning districts. However, the regulation specifically exempts farms from this requirement: "Notwithstanding the foregoing, nothing herein contained shall prohibit the raising or harboring of domestic animals or poultry on any farm within the Town of Henrietta within the definition of the term 'farm.'" Similarly, regulations that require a license for raising backyard chickens (§295-52.3) exempt keeping chickens on a farm.

Regulations on Fires and Open Burning (Town Code §121-3.G) allow for burning of organic agricultural wastes on lots larger than 5 acres and agricultural burning otherwise permitted by NYS DEC regulations.

***Recommendation:*** Clarify that farm operations that meet the threshold for protection under NYS Agricultural Districts Law are permitted uses in all districts, including Business and Industrial zoning districts.

- c) *Zoning requirements for specific agricultural practices should be based on public health and safety.*

Zoning regulations that apply to the RR and R zoning districts require setbacks of 100 feet from lot lines for animal housing and manure storage.

Based on guidance prepared by NYS DAM, setbacks from lot lines may be unreasonable as applied to farm operations in certified Agricultural Districts Law. Reasonable setbacks related to health or safety would specify distance from a waterbody or drinking water source.

- d) *A special use permit should not be required for agricultural uses or farm practices.*

Agricultural uses do not require special use permits.

- e) *Site plan review requirements should be limited to those that protect public health and safety.*

The Town's zoning regulations grant the Planning Board authority to review and approve site development plans for all uses that require a building permit except for single-family

detached dwelling units. It is not clear whether agricultural facilities require a building permit and site plan review. Commercial and industrial facilities as part of a farm operation may be subject to site plan review and approval.

## **2. Do land use regulations accommodate agriculture-related business on farms?**

As the Town's definition for "farm and farm operation" references the definition of "farm operation" in NYS Agricultural Districts Law, it would include "practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise." This would accommodate a range of processing, packing retail, agri-tourism and other agriculture-related enterprises on the farm.

"Farm stands and fruit and vegetable stands" are listed permitted uses in the Rural Residential zoning district.

In the B-1 Commercial and the PCD Planned Commercial Districts "Fruit or vegetable stands" and "other roadside stands" require a special use permit.

## **3. Do land use regulations accommodate non-agricultural secondary business on farms?**

Business uses that are not directly related to the agricultural operation must be located in a Business or Industrial zoning district.

## **4. Do site plan review criteria and subdivision regulations require considerations of potential impacts to adjoining or nearby farmland as part of development review?**

The Town Planning Board is responsible for the review and approval of both site plans and special use permits. The Town's Site Plan Review criteria include requirements for buffers between agricultural and non-agricultural uses. For proposed agricultural uses located outside a certified Agricultural District, a 100-foot setback to adjacent properties is required "for any part of such agricultural use which is materially odorous."

For proposed projects located adjacent to an existing agricultural use, "it shall be the responsibility of the proposed use to provide a sufficient setback against any materially odorous condition that may be a part of the agricultural use." (§295-60.E.(7)). Site Plan Review criteria do not include provisions to consider potential impacts on adjacent agricultural operations from a proposed development.

Regulations for large-scale solar projects require decommissioning plans to "demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction, including, where applicable, made suitable for agricultural use as existed prior to construction."

Subdivision approval regulations are within the Town's Code. While "agriculture" is not explicitly mentioned in these regulations, provisions regarding Cluster development are described could have the effect of conserving agricultural land(s) by concentrating residential lots.

### ***Recommendations:***

- *Incorporate provisions into site plan review and special permit criteria that require applications to delineate farm access roads, drainage infrastructure, and other agricultural resources within and adjoining the proposed development.*
- *Incorporate criteria to ensure that farmland proposed to be protected as part of a cluster subdivision is designed to be viable for continued agricultural use.*

**5. How well do land use regulations direct development away from high quality farmland?**

Land use regulations allow residential development in the same zones as those that permit agriculture and do not limit development in areas with high quality farmland.

#### 4. Town of Penfield

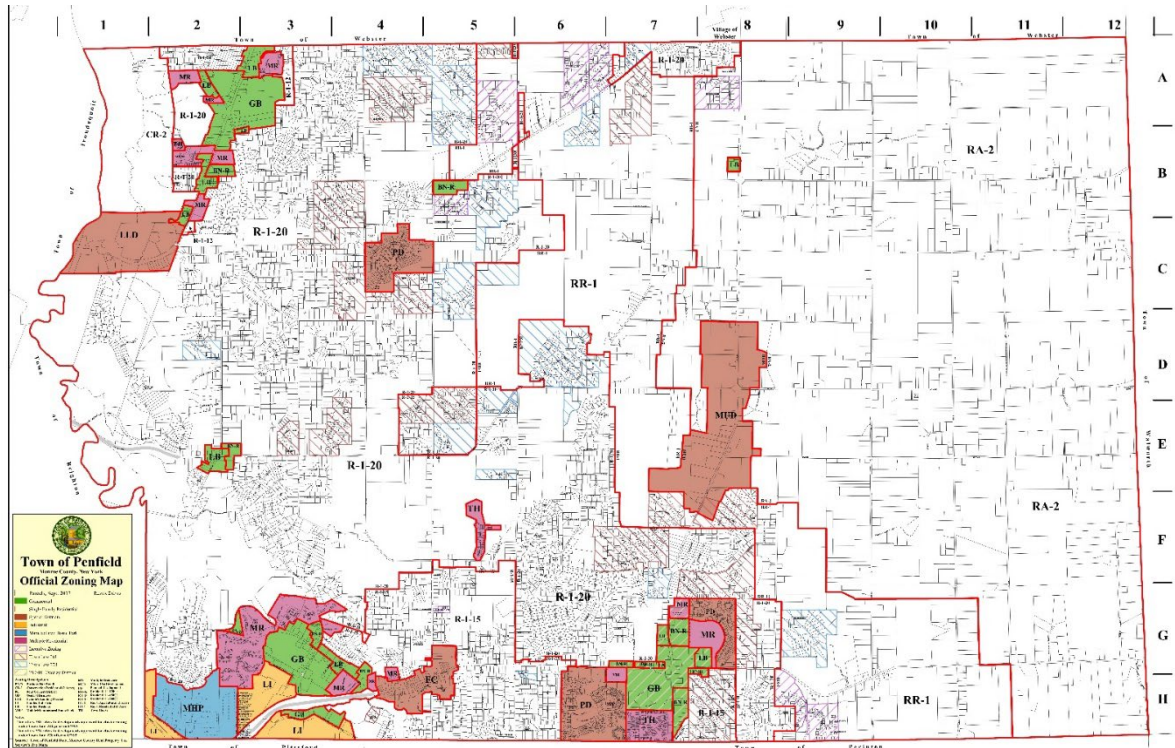
The Town of Penfield Zoning and Land Use Regulations are codified as Chapter 250 of the Town Code.

Six single-family residential zoning districts and eight Overlay Districts apply to lands where agriculture occurs.

|                                            |                                         | Label   |
|--------------------------------------------|-----------------------------------------|---------|
| <b>Single-family residential Districts</b> | Rural Agricultural District             | RA-2    |
|                                            | Conservation Residential District       | CR-2    |
|                                            | Rural Residential District              | RR-1    |
|                                            | Residential 1-12                        | R-1-12  |
|                                            | Residential 1-15                        | R-1-15  |
|                                            | Residential 1-20                        | R-1-20  |
| <b>Overlay Districts</b>                   | Historic Preservation Overlay District  | HPOD    |
|                                            | Routes 250/441 Overlay District         | TFOD    |
|                                            | Wetland Protection Overlay District     | EPOD(1) |
|                                            | Steep Slope Protection Overlay District | EPOD(2) |
|                                            | Woodland Protection Overlay District    | EPOD(3) |
|                                            | Floodplain Protection Overlay District  | EPOD(4) |
|                                            | Watercourse Protection Overlay District | EPOD(5) |

The five Environmental Protection Overlay Districts within the Town each regulate a specific natural resources but specifically exempt “Customary agriculture, except structural activities” from the permit requirements and regulations.

## Town of Penfield Zoning Map



### 1. Do local land use regulations unreasonably restrict standard farm practices?

#### a) Agriculture should be permitted in all areas of the Town where it occurs.

The list of permitted uses in Penfield's single-family residential zoning districts (R-1-12, R-1-15, and R-1-20) include "customary agricultural operations."

#### b) The definition of farming should be broad enough to include all types of farming.

The definition of "customary agricultural operations" includes a range of livestock and animal agricultural uses as well as farm structures and roadside stands.

- Customary Agricultural Operations - The use of a parcel of land of five acres or more for gain in the raising of agricultural products, livestock, poultry, and dairy products. It includes necessary farm structures and roadside stands within the prescribed limitations and the storage of necessary equipment. It includes also the use of a parcel of land of less than five acres, except that on such parcels, the raising of fur-bearing animals, livery or boarding stables, dog kennels and the raising of livestock and poultry for sale and slaughter is excluded and therefore prohibited. No housing of poultry or stabling of livestock or storage of manure or other odor- or dust-producing material shall be allowed within 100 feet of any lot line. When, in conjunction with the customary agricultural operation, the lodging for hire of more than four persons is prohibited, in no event shall customary agricultural operations be construed to mean, be, include, or authorize within the Town natural gas and/or petroleum exploration activities, natural gas and/or

petroleum extraction activities, a land application facility, a natural gas and/or petroleum exploration, extraction or production wastes disposal/storage facility, a natural gas and/or petroleum extraction, exploration or production wastes dump, or any other explicitly prohibited use.

The definition excludes “the raising of fur-bearing animals, livery or boarding stables, dog kennels and the raising of livestock and poultry for sale and slaughter” on lots smaller than five acres. As NYS Agriculture & Markets Law protects farm operations within certified Agricultural Districts, regardless of lot size, from unreasonable restrictions, the five-acre size requirement described in the above definition should not apply to lots that include a farm operation within a NYS-Certified Agricultural District that meets the threshold for protection under NYS Agricultural Districts Law.

c) *Zoning requirements for agricultural uses should be based on public health and safety.*

Within the definition of “customary agricultural operations” is a required setback for poultry, livestock, manure, and other odor or dust generating material: “No housing of poultry or stabling of livestock or storage of manure or other odor- or dust-producing material shall be allowed within 100 feet of any lot line.” This setback, as well as the minimum five-acre lot size for animals, is also within the Dimension Requirements of the single-family residential district:

- Any building housing livestock or any noxious commodity shall be no nearer than 100 feet to any lot line.
- No barn, silo, water tower or tank or other farm building or structure on a farm shall be greater than 100 feet in height or be located less than 100 feet from any property line.
- Any lot housing livestock shall be at least five acres in size.

For parcels that are part of farm operations within certified Agricultural Districts and protected by Agriculture & Markets Law, setbacks from lot lines may not be appropriate as they do not directly relate to health and safety.

d) *A special use permit should not be required for agricultural uses or farm practices.*

No agricultural uses require a special use permit.

e) *Site plan review requirements for agricultural facilities should be limited to those that protect health and safety.*

The Town does not appear to require site plan approval for agricultural facilities. Commercial and industrial facilities as part of a farm operation may be subject to site plan review and approval.

## 2. Do land use regulations accommodate “value added” and other agriculture-related business on farms?

As roadside stands and farm markets are specifically included in the definition for “customary agricultural operations,” these uses are permitted in the zones where agriculture occurs, subject to compliance with size, storage, setback, and display regulations of §250-7.18. As these



regulations are connected to health and safety (i.e., traffic and vehicular circulation) they are not overly burdensome.

The requirements for roadside stands limit sellable products to only agricultural products sold on the seller's premises within the Town. This requirement may be overly restrictive as applied to farm operations eligible for protections under NYS Agricultural Districts Law, as sellers may farm land outside the Town boundary.

The Town of Penfield Zoning regulations include definitions for the following agriculture-related and agriculture business uses:

- Active Orchards
- U-Pick Operations

By defining these uses separately, it may be interpreted that the above uses are not included in the definition for "customary agricultural operations" and therefore are not permitted or considered agricultural because they are not explicitly referenced or mentioned. These uses are not listed as permitted uses in any district and the zoning regulations do not specify dimensional requirements or other regulations for these uses.

***Recommendations:***

- *Establish standards for roadside stands that do not limit products sold to those grown the seller's premises within the Town.*
- *Add "orchards" and "U-Pick Operations" to the definition of "customary agricultural operations".*

### **3. Do land use regulations accommodate non-agricultural secondary business on farms?**

Non-agricultural business that are not part of "customary farming operations" are only permitted in a "Business" or "Industrial" district.

***Recommendation:*** *Consider accommodating non-agricultural secondary businesses on farms, subject to criteria to limit impacts on roadways and neighboring properties, as a special permit use.*

### **4. Do land use regulations include considerations of agricultural impacts as part of development review?**

While the Town zoning regulations do explicitly require evaluation of proposed developments on agriculture, the Town does indicate on its website that Agricultural Data Statement Forms are to be completed in accordance with Section 283-a of New York Town Law.

***Recommendation:*** *Incorporate provisions into site plan review and special permit criteria that require applications to delineate farm access roads, drainage infrastructure, and other agricultural resources within and adjoining the proposed development,*

### **5. How well do land use regulations direct development away from high quality farmland?**

All zones that permit agriculture also permit single-family dwellings.

## 6. Do subdivision regulations include provisions to minimize impacts on farm operations?

Subdivision regulations, codified in Article XI of Chapter 250 of the Town Code, do not include any specific provisions to consider impacts on agricultural uses and support infrastructure.

The subdivision regulations allow for cluster subdivision development, which could have the effect of conserving agricultural land(s) by concentrating residential lots and preserving open space for agriculture. However, the regulations do not include specific criteria to ensure that the open space preserved as part of a cluster subdivision would be viable for continued agricultural use.

***Recommendation:*** Incorporate criteria to ensure that farmland proposed to be protected as part of a cluster subdivision is designed to be viable for continued agricultural use.

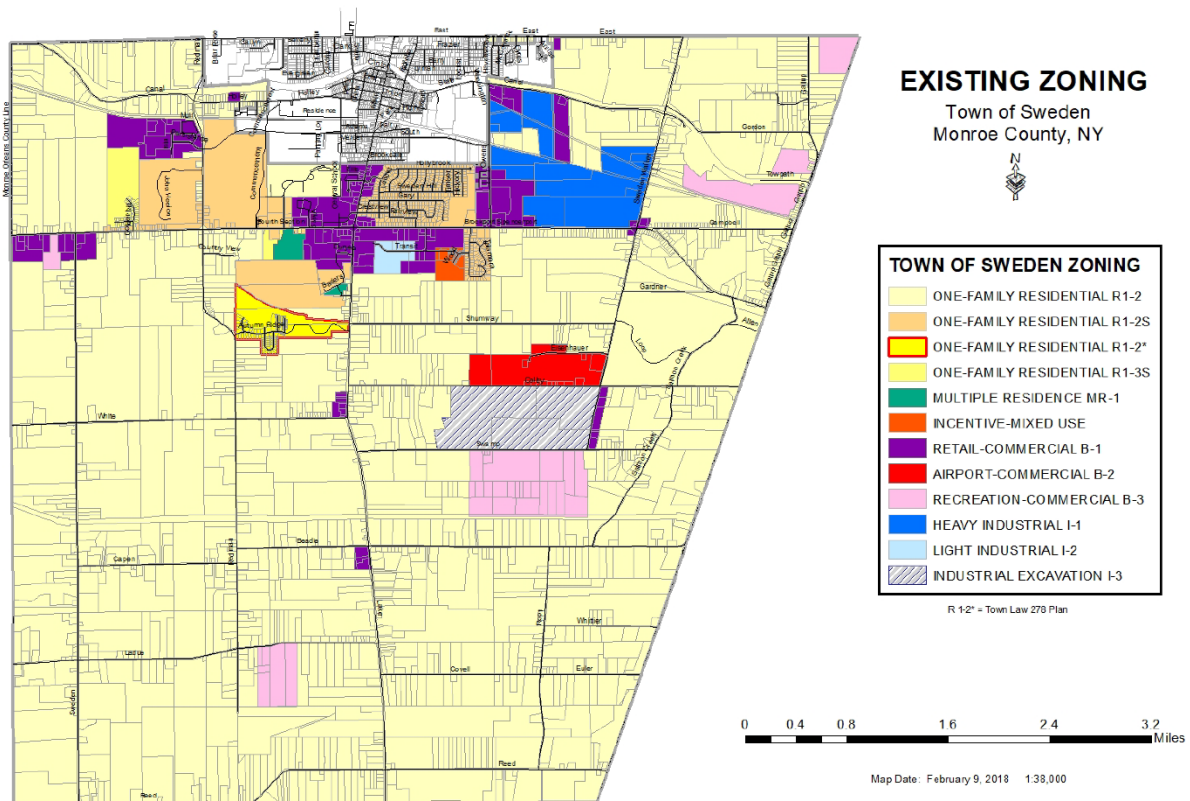
## 5. Town of Sweden

The Town of Sweden zoning regulations are codified as [Chapter 175](#) of the Town Code.

Virtually all of the farmland in Sweden is within the R1-2 One-Family Residential zoning district.

The Zoning Map is reproduced below.

### Town of Sweden Zoning Map



### 1. Do local land use regulations unreasonably restrict standard farm practices?

a) *The definition of farming should be broad enough to include all types of farming.*

The Town's zoning regulations define agriculture and related uses as follows:

- **FARM.** Any parcel of land containing at least 10 acres which is used for gain in the raising of agricultural products, livestock, poultry and dairy products. It includes necessary farm structures within the prescribed limits, and the storage of equipment used. It excludes the raising of fur-bearing animals, riding academies, livery or boarding stables and dog kennels.
- **ROADSIDE STAND.** The offering of agricultural products raised only on the premises from which they are sold.

- b) *Agriculture should be permitted in all areas of the Town where it occurs.*

In the R1-2 One-Family Residential District, as well as in the R1-2S and R1-3S districts, the list of permitted uses includes:

Customary agricultural operations; provided, however, that no storage of manure or odor- or dust-producing substance, nor barns used for housing any animals other than traditional domesticated pets, shall be permitted within 100 feet of any property line.

The term “customary agricultural operations” is not defined in the zoning regulations. The term “farm” is defined, but this term is not used in the list of permitted uses.

***Recommendation: Expand the definition of “farm” to include all types of farming. Use the term “farm” in the list of permitted uses. Incorporate appropriate setbacks and other limitations but state that they would not apply to farm operations within certified Agricultural Districts that are eligible for protections under NYS Agricultural Districts Law.***

- c) *Zoning requirements for specific agricultural practices should be based on public health and safety.*

Zoning regulations that apply to the RR and R zoning districts require setbacks of 100 feet from lot lines for animal housing and manure storage. Based on guidance prepared by NYS DAM, setbacks from lot lines may be unreasonable as applied to farm operations in certified Agricultural Districts Law. Reasonable setbacks related to health or safety would specify distance from a waterbody or drinking water source.

“Agricultural pursuits within an established state agricultural district” are exempt from lighting requirements. (§175-29.E.(5))

- d) *A special use permit should not be required for agricultural uses or farm practices.*

Agricultural uses do not require special use permits.

- e) *Site plan review requirements should be limited to those that protect public health and safety.*

The Town’s zoning regulations grant the Planning Board authority to review and approve site development plans for all uses that require a building permit except for single-family detached dwelling units. Farm buildings do not require a certificate of occupancy. (§175-13.) but do require a building permit from the Town. (§175-25.D(4).)

## 2. Do land use regulations accommodate agriculture-related business on farms?

The Town’s definition for “farm” does not clearly include agriculture-related businesses on farms, such as retail sales, processing, packing, packaging or agritourism activities.

The Town regulates signage relating to sale of agricultural products in §175-30.C.(17):

Signs advertising the name, location and type of agricultural products sold shall be allowed to be placed off site pursuant to each of the following:

- (a) Products sold shall be grown on a farm located at the location of the sale.
- (b) Products shall be directly linked to the product grown.
- (c) Signs shall be placed no longer than the season pertaining to such product.
- (d) Signs shall be limited to six square feet

**3. Do land use regulations accommodate non-agricultural secondary business on farms?**

Business uses that are not directly related to the agricultural operation must be located in a Business or Industrial zoning district.

**4. Do site plan review criteria and subdivision regulations require considerations of potential impacts to adjoining or nearby farmland as part of development review?**

The Town's criteria for reviewing special use permits and site plan review notes that the Planning Board shall comply with requirements for agricultural data statements where applicable.

Subdivision regulations are not codified with the Town Code and were not reviewed.

***Recommendation:*** Incorporate provisions into site plan review and special permit criteria that require applications to delineate farm access roads, drainage infrastructure, and other agricultural resources within and adjoining the proposed development.

**5. How well do land use regulations direct development away from high quality farmland?**

Land use regulations allow residential development in the same zones as those that permit agriculture and do not limit development in areas with high quality farmland.

The Town's Incentive Zoning provisions allow for increased residential density and other incentives in exchange for certain amenities, including conservation of agricultural lands.

**6. Do subdivision regulations include provisions to minimize impacts on farm operations?**

## 6. Town of Webster

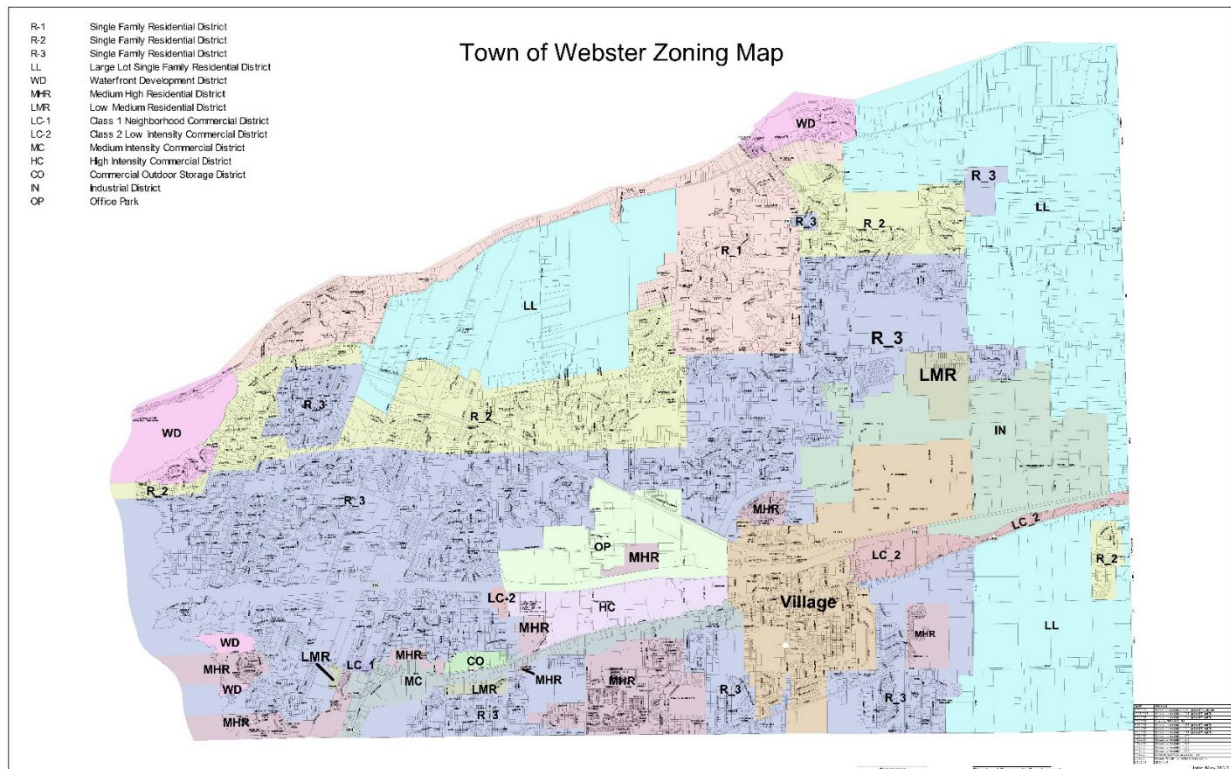
The Town of Webster zoning regulations are codified as Chapter 350 of the Town Code.

Zoning Districts that apply to agricultural lands in the Town include the R-1, R-2, R-3 and LL zones, as well as five Overlay Districts.

|                   |                                              | Label   |
|-------------------|----------------------------------------------|---------|
|                   | Single-Family Residential District           | R-1     |
|                   | Single-Family Residential District           | R-2     |
|                   | Single-Family Residential District           | R-3     |
|                   | Large-Lot Single-Family Residential District | LL      |
| Overlay Districts | Flood Damage Prevention Overlay District     | EPOD(1) |
|                   | Steep Slopes Protection District             | EPOD(2) |
|                   | Woodlot Protection District                  | EPOD(3) |
|                   | Progressive Development Overlay District     | PDD     |
|                   | Open Space Overlay District                  | OS      |

The three Environmental Protection Overlay Districts (EPODs) regulate specific natural resources and exempt “agriculture, except for woodlot management” activities, from the prescribed permitted processes.

### Town of Webster Zoning Map





## 1. Do local land use regulations unreasonably restrict standard farm practices?

a) *The definition of farming should be broad enough to include all types of farming.*

The Town's zoning regulations define agriculture and related uses as follows:

- AGRICULTURAL USE - The use of land and buildings in the raising of or production of agricultural products and nursery stock, flowers and greenhouse products, but which shall not include the raising of pigeons, swine, goats or foxes, minks, skunks and other like fur-bearing animals, except domestic animals, nor shall it include retail sales of any products not grown upon the premises, such as garden or flower equipment, tools or supplies.
- BOARDING OF HORSES - The keeping of any horse on the premises not owned by the owner or lessee of said premises, whether for a fee or otherwise.
- FARM - Any parcel of land containing at least five acres upon which is located an enterprise which is operated principally for financial gain in the raising of agricultural products, livestock, poultry and dairy products. It excludes the raising of fur-bearing animals, riding academies and livery or boarding stables.
- FARM MARKET - Retail outlet consisting of permanent structure(s) for the display and sale of agricultural and nursery products grown principally by the operator.
- HORSE - Applies to either a male or female horse or pony. It shall exclude a foal under the age of one year.
- KENNEL - A property or structure used for the boarding, breeding, or day care of six or more domesticated animals from which a profit is derived.
- LIVERY OF HORSES - Applies to the rental of horses or carriages to persons other than the owner of the horse or carriage.
- PADDOCK - Applies to an enclosure near a stable in which horses are exercised and shall include a training ring and corral.
- PASTURE - Applies to any portion of grassy land suitable for grazing.
- STABLE - A building or structure designed or used for sheltering or housing horses. This term shall specifically exclude shipping containers or crates, truck bodies, cars or any similar enclosures at any time used or designed for a use other than the sheltering or housing of horses.
- STABLE, PRIVATE - An accessory building in which horses are kept for private use and not for hire, remuneration or sale.
- STABLE, PUBLIC - A building in which any horses are kept or used for remuneration, hire or sale.

The definition of "Agricultural Use" is not clear regarding the type of farm animals permitted. It excludes "the raising of pigeons, swine, goats or foxes, minks, skunks and other like fur-bearing animals, except domestic animals;" this description is unclear.

The definition also excludes "retail sales of any products not grown upon the premises, such as garden or flower equipment, tools or supplies." The exclusion of livestock farming may be unreasonably restrictive for a farm operation in a certified Agricultural District that is protected by NYS Agricultural Districts law. In addition, the exclusions

would be more appropriate in the sections regulating uses within each zoning district or regulations that apply to all residential districts” rather than in the definitions.

***Recommendation:*** Broaden the definition of “Agricultural Use” to include all types of agriculture and accessory uses. Add limitations on animal farming to Article V: Supplementary Regulations for All Residential Districts and Uses.

Stables and greenhouses located in certified Agricultural Districts may be protected from unreasonable local regulation if they meet the thresholds for an eligible “farm operation” specified in the NYS Agricultural Districts Law.

- b) *Agriculture should be permitted “as of right” in all areas of the Town where it occurs.*

“Agricultural Uses” are listed as permitted uses in the R-1, R-2, R-3 and LL Single Family Residential Districts. These zones are applied to more than half of the lands in the Town. This definition is narrow and does not appear permit any sort of animal husbandry or livestock. The definition is unclear with regards to what animals may be kept as an agricultural use.

***Recommendation:*** Clarify that farm operations that meet the threshold for protection under NYS Agricultural Districts Law are permitted uses in all districts. Set limits and criteria for keeping animals on residential lots in the zoning sections that regulate uses rather than in the definition.

- c) *Zoning requirements for specific agricultural practices should be based on public health and safety.*

Although the definition of agricultural use” excludes the keeping or stabling of livestock or non-domestic animals, §350-41 states that “No farm animal may be stabled nor storage of manure or other odor- or dust-producing substance allowed nearer than 75 feet from any lot line in or adjacent to any residential district.”

Based on guidance prepared by NYS DAM, setbacks from lot lines may be unreasonable as applied to farm operations in certified Agricultural Districts Law. Reasonable setbacks related to health or safety would specify distance from a waterbody or drinking water source.

- d) *A special use permit should not be required for agricultural uses or farm practices.*

Agriculture uses and agriculture related uses do not require special use permits.

- e) *Site plan review requirements should be limited to those that protect public health and safety.*

The Town’s zoning regulations grant the Planning Board authority to review and approve site development plans for all uses that require a building permit except for single-family detached dwelling units. It is not clear whether agricultural facilities require a building permit and site plan review. Commercial and industrial facilities as part of a farm operation may be subject to site plan review and approval.

## 2. Do land use regulations accommodate agriculture-related and other business on farms?

The definition for “Agricultural Use” only includes the growing and production processes and explicitly excludes retail sales.

***Recommendation:*** Revise the definition of “Agricultural Use” to include accessory uses such as retail. Add appropriate guidelines for on-site retail, such as roadside stands or farm markets, to the regulations for each zoning district or regulations that apply to all residential zoning districts.

## 3. Do site plan review criteria and subdivision regulations require considerations of potential impacts to adjoining or nearby farmland as part of development review?

The Town Planning Board is responsible for the review and approval of both site plans and special use permits. Potential agricultural impacts are not addressed in site plan review criteria.

Subdivision approval regulations are within the Town’s Code. While “agriculture” is not explicitly mentioned in these regulations, provisions regarding Cluster development are described could have the effect of conserving agricultural land(s) by concentrating residential lots.

### ***Recommendations:***

- *Incorporate provisions into site plan review and special permit criteria that require applications to delineate farm access roads, drainage infrastructure, and other agricultural resources within and adjoining the proposed development.*
- *Incorporate criteria to ensure that farmland proposed to be protected as part of a cluster subdivision is designed to be viable for continued agricultural use.*

## 4. How well do land use regulations direct development away from high quality farmland?

Land use regulations allow residential development in the same zones as those that permit agriculture and do not limit development in areas with high quality farmland.

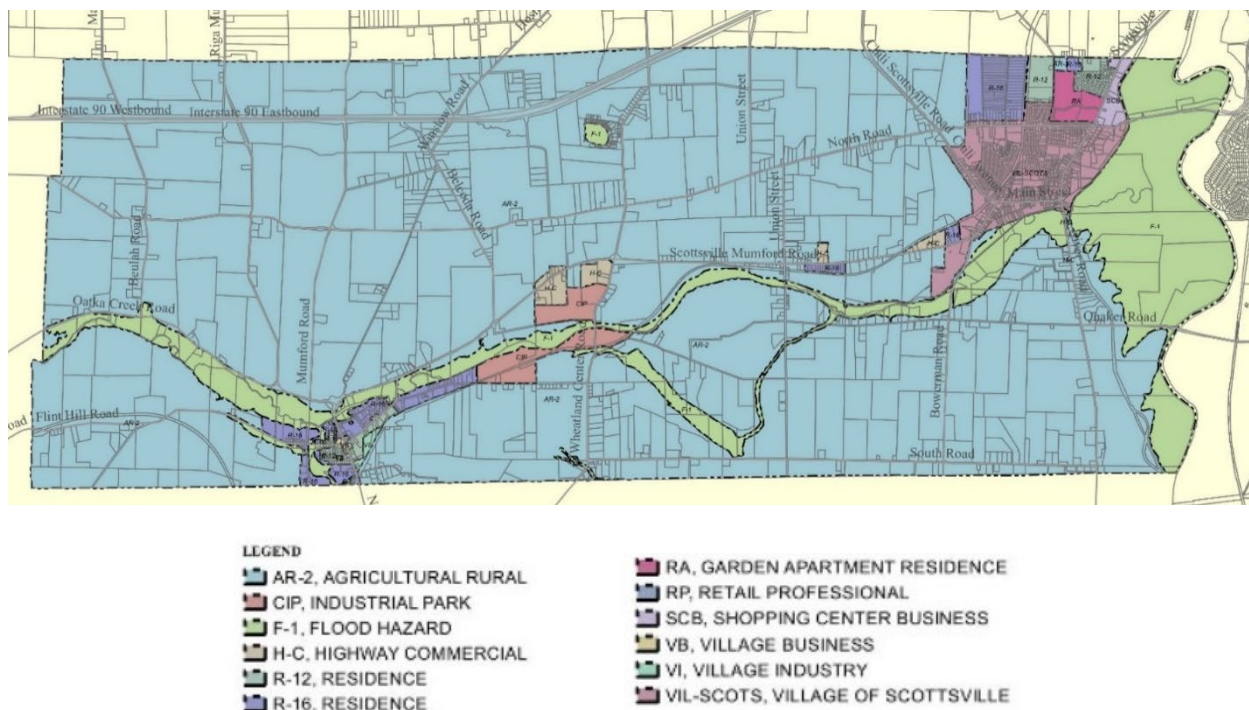
## 7. Town of Wheatland

The Town of Wheatland's zoning regulations are codified as Chapter 130 of the Town Code.

The majority of the Town is zoned Agricultural Rural. Agricultural lands in the Town of Wheatland are mostly within the AR-2 Agricultural Rural, the F-1 Flood Hazard zoning districts. Portions of farm parcels are within other residential, business or industrial zoning districts.

As per the Town's Code, the purpose of this zone is to balance fostering normal agricultural operations with low-density residential uses.

### Town of Wheatland Zoning Map



### 1. Do local land use regulations unreasonably restrict standard farm practices?

- a) *Agriculture should be a permitted use in all areas of the Town where it occurs.*

Agriculture and animal husbandry are listed as permitted uses in the Flood Hazard and AR-2 Agricultural Rural Zones. Additionally, §130-13 states that, "Agriculture may be initiate, continued and/or expanded on land in a state-certified agricultural district regardless of what zoning district the land has been placed in by the Town of Wheatland.

It should be noted that §130-10 contains a footnote referring to §130-12A that appears to prohibit agriculture uses in undersized lots in the AR-2 district. This instance is the sole reference to §130-12A in the Town Code and related provisions/details appear to be absent.

*b) The definition of farming should be broad enough to include all types of farming*

The Town Code defines the following agriculture and agriculture-related terms:

- AGRICULTURE - Agricultural practices cover a large variety of activities: field crops, fruits, vegetable, horticultural specialties, livestock, agricultural products, Christmas trees and forest products. Land used in agricultural production means not less than 10 acres of land used in a single operation in the preceding two years for the production for sale of a product.
- ANIMAL HUSBANDRY - The raising or keeping of one or more cows, cattle, horses, mules, hogs, sheep, goats, donkeys, oxen, or other similar animals, or the raising or keeping of more than four animals or combination of; ducks, chickens, rabbits, geese, quail, chinchillas, mink, or any similar small animals, excluding dogs and cats and household animals. Such uses include the pasturing, feeding, and sheltering of such animals.
- ANIMAL HUSBANDRY, COMMERCIAL - Animal husbandry, as defined herein, on a farm and incidental to a farm use or as a stand-alone commercial enterprise located within a state-certified Agriculture District.
- ANIMAL HUSBANDRY, PRIVATE - Animal husbandry, as defined herein, for personal use of the property owner, not for any commercial enterprise, and as an accessory to the principal use.

The definition of “Agriculture” encompasses the range of typical farm practices. The statement defining “land used in agricultural production” is not clear but appears to define agriculture as excluding parcels smaller than 10 acres. but do explicitly mention farm market stands or roadside stands.

Regulations for Accessory buildings and uses (§130-23) regulate “all forms of animal husbandry except the keeping of animals as household pets:”

(a) All shelters provided for livestock, fowl or furbearing animals shall be at least 100 feet from any property line, except that an existing shelter may remain and be added to, provided that the addition shall not encroach on a required yard.

(b) The disposal of animal wastes shall be provided for in such a manner as to prevent any nuisance or sanitary problems

Town Code Chapter 43, Article II, Regulation and Control of Animals, requires setbacks of 100 feet from any property line for “shelters provided for livestock, fowl or furbearing animals.” §43-23 requires setbacks of 50 feet for the same shelters.

***Recommendations:***

- *Modify definition of “Agriculture” to exclude statement about 10 acres.*
- *Revise §43-22 to remove the second sentence: “All shelters provided for livestock, fowl or furbearing animals shall be at least 100 feet from any property line, on an appropriately sized lot, except that an existing shelter may remain and be added to, provided that the addition shall not encroach*

*on a required yard” as this statement is inconsistent with the provisions in §43-23.*

- c) *Zoning requirements for agricultural uses should be based on public health and safety*

§43-23 of the Town Code also requires setback of 100 feet from an manure storage or livestock shelter from any private well and requires that animal waste shall be disposed to prevent any nuisance or sanitary problems. These provisions are reasonable as they help protect public health.

- d) *A special use permit should not be required for agricultural uses or farm practices.*

The Table of Use Regulations lists “Greenhouse, plant nursery” as a use allowed with a special exception permit in the F-1 and AR-2 zoning districts. The requirement for a special use permit may be unreasonably burdensome if applied to a farm operation within an Agricultural District that qualifies for protection under NYS Agricultural District Law.

- e) *Site plan review criteria for agricultural facilities should be limited to those that protect public health and safety.*

Except for greenhouses and plant nurseries, which require site plan review and a special use permit, site plan review does not appear to apply to agricultural uses.

## **2. Do land use regulations accommodate agriculture-related business on farms?**

The Town’s zoning regulations define “Accessory Use, Building or Structure” as “A subordinate use, building or structure customarily incidental to and located on the same lot occupied by the main use, building or structure.” It may be subject to interpretation by the Town’s zoning officer what types of agriculture-related businesses are considered “accessory” to a farm parcel.

“Major home occupations” require a Special Exception approval. It should be noted that the definition for “Home occupation” explicitly refers to “nonagricultural businesses”.

## **3. Do land use regulations accommodate non-agricultural secondary business on farms?**

Secondary businesses may be allowed as a home occupation.

## **4. Do site plan review criteria and subdivision regulations require considerations of potential impacts to adjoining or nearby farmland as part of development review?**

Criteria for site plan or special exception approval do not include review of potential impacts to agricultural lands and operations.

Farm operations are not explicitly mentioned in the subdivision regulations.

***Recommendation:*** Add provisions to require consideration of potential agricultural impacts during the review of proposed site plans, special use permits and subdivisions.



**5. How well do land use regulations direct development away from high quality farmland?**

Wheatland's Town Code permits one-family detached dwellings, places of worship, and nursery schools, in the same zones that permit agriculture. Uses permitted subject to special exception approval include public/government buildings, educational institutions and country clubs.