

# 1.7 Agricultural Incentive Zoning

## BACKGROUND AND PURPOSE

Agriculture has long been an important part of the economic, social, and cultural fabric of New Hampshire. Farmers have been producing crops from New Hampshire soil for 375 years. Today, although agriculture is important to communities, it is facing significant challenges, not only from the increasing pressures of growth and development, but also from municipal regulations that may be inhospitable to many agricultural practices.

The definition of agriculture under New Hampshire state law is very broad (RSA 21:34-a). According to the RSA, agriculture includes all aspects of breeding, raising, and selling livestock, silviculture (timber and logging), honey and maple syrup production, and crops ranging from vegetables and fruit to hay and seeds along with the processing, storage, and transportation of the agricultural products. The purpose of this chapter is to provide tools to planning boards aiming to preserve the diverse agricultural lands and uses in New Hampshire.

According to the American Farmland Trust (AFT), Rockingham, Hillsborough, and Merrimack counties are part of the southern New England region that is ranked tenth on the list *Top 20 Most Threatened High-Value Farmland Regions*. Sections of Cheshire, Sullivan, and Grafton counties are included in the number 19-ranked Connecticut River Valley. Studies by the AFT also show that the highest-value and more perishable foods are produced closest to population centers. Across the United States, this means that 87 percent of fruits, 86 percent of vegetables, and 79 percent of milk and dairy products are produced in urban-influenced counties (NH OEP). Rockingham and Hillsborough Counties are among the top 20 counties in the US in direct-to-consumer farm sales. With almost 96 percent of New Hampshire farms classified as “small farms” by the US Department of Agriculture’s definition of sales below \$250,000, farmers find that their greatest asset is their land. When farms are profitable, farmers are able to keep their farms and woodlands undeveloped. If a farmer goes out of business or sells their land to move to an area with less development pressure, the community is affected by the potential conversion of the land.

Many community master plans cite “preserving rural character” as one of the main goals. There are many aspects to rural character in New England. The character of the landscape is epitomized by the traditional village center surrounded by a landscape of working farms and open space. The character of the community is likewise

### RELATED TOOLS:

- Density Transfer Credit
- Habitat Protection
- Village Plan Alternative
- Urban Growth Boundary
- Conservation Subdivision

Agriculture makes vital and significant contributions to the food supply, the economy, the environment and the aesthetic features of the state of New Hampshire.

—NH Right to Farm Law

exemplified by people seeking to hold onto and promote the traditional rural or small-town values of family, community, independence, responsibility, self-government, conservation, entrepreneurship, and strong work ethic (NH OEP). Given agriculture's traditional appeal as a core community value, many planning boards desire zoning, subdivision, and site plan regulations that aid with retention or encouragement of agricultural activities and open space. These measures are especially important when economic competition from development threatens conversion of prime agricultural land to non-agricultural land uses. The zoning ordinance, along with the subdivision and site plan regulations, may create a flexible regulatory environment that encourages and promotes agriculture and open space.

## APPROPRIATE CIRCUMSTANCES AND CONTEXT FOR USE

Although many people enjoy farmland for its open spaces or the fresh vegetables available at the farm stand, farming is fundamentally a business and land use. One

... leading farmland preservation counties employ at least six techniques: a comprehensive plan, transfer or purchase of development rights, differential assessment, right-to-farm laws, agricultural zoning, and urban growth boundaries.

—APA

unique aspect of agriculture is that it does not fall neatly into a prescribed area of a community like a traditional commercial or industrial zone. Instead, productive farms are located where the physical characteristics of the land, such as prime soils and adequate water supply, occur regardless of the zone. Wherever farms are located, communities need to carefully consider both the benefits of and challenges to sustaining agriculture.

Moreover, one farmland preservation technique cannot succeed alone; a coordinated package of financial incentives and land use regulations are preferred. According to the American Planning Association (APA), in the United States, leading farmland preservation counties employ at least six techniques: a comprehensive plan, transfer or purchase of development rights, differential assessment, right-to-farm laws, agricultural zoning, and urban growth boundaries.

### Benefits of Agriculture

Farms are sources of fresh produce and other products that connect people to their food supply in ways not possible when produce travels thousands of miles from the field to a local supermarket (NH OEP). As a land use, agriculture broadly promotes environmental quality, scenic vistas, and cultural activities. Farm and forestlands help to protect water quality by absorbing and filtering water. They also provide habitat and travel corridors for wildlife, and often provide recreational and educational opportunities for the community. Agricultural businesses in New Hampshire are typically small and family-owned, and reflect local market conditions.

There are economic benefits associated with agriculture above and beyond its direct tax contributions. According to the report, *The Impact of Agriculture on NH's Economy in FY02*, agriculture's overall total economic impact from direct, indirect, and induced spending was over \$2.3 billion; of this amount \$930 million was in direct spending. The report notes that approximately 18,000 jobs are related in some way to agriculture. Working farms also help to attract tourists and retain businesses that have nothing in common with agriculture, such as software and high-tech firms that locate in New Hampshire for the quality of life and the rural character. Cost of community service studies show that land held as open space, whether it is farmed

or not, requires fewer community resources than what it contributes in property and other taxes. On the other hand, land used for residential purposes is often known to demand more resources than it contributes in taxes.

## CHALLENGES TO SUSTAINING AGRICULTURE

Although there are many benefits to agriculture, there are some significant challenges that need to be addressed by the community. The primary challenge is that a farm is a working business. Depending on the type of farm there is the possibility of truck traffic, signage, increased traffic from customers, noise, and in some cases smell from livestock. Another challenge is that farms frequently require accessory dwellings and other structures that are usually not permitted under standard zoning ordinances and subdivision and site plan regulations. Finally, the engineering and site design requirements in municipal regulations can be expensive, making it difficult to expand the farm. Farms implementing best management practices (BMPs) can reduce their impact on the environment from fertilizer application and pesticide use.

## BUILDING THE CASE FOR AGRICULTURE IN YOUR COMMUNITY

Agricultural incentive zoning, like all other zoning, requires a solid foundation in the community's master plan and a clear understanding of the role agriculture plays in the community. In order to gain that understanding, the following steps should be carried out during the master planning process to ensure success with local land use regulations.

1. **Participation by the local agricultural community.** The local agricultural community should include, but is not limited to: local farmers, the New Hampshire Department of Agriculture, UNH Cooperative Extension Service, the New Hampshire Farm Bureau, the New Hampshire Farmers Market Association, and others. These stakeholders know how existing ordinances and regulations affect farming and are local experts on the needs and concerns that are unique to farming, which should be considered when developing a zoning ordinance.

The New Hampshire Farm Viability Task Force recommends creation of agricultural commissions, which promote farms and offer advice to other municipal boards on how to encourage communities to be farm-friendly.

2. **Identification of significant farmland soils within the community.** Undeveloped prime agricultural lands are an important natural resource that should be protected for future agricultural activities. The GRANIT system at the University of New Hampshire stores digital soils maps prepared by the Natural Resources Conservation Service (NRCS); both organizations, as well as the regional planning commissions and county conservation districts, can provide data or expertise with soils mapping.
3. **A comprehensive agricultural profile of the town.** A community agricultural profile can identify historic, existing, and potential agricultural activities. The profile helps to establish a basic understanding of agriculture, and serve as a base for the zoning regulations. For example, the profile could include a map highlighting the agricultural lands and their correlation to the 100-year floodplain elevations.
4. **A concerted public outreach program.** Educating the public about how agriculture works in their community is essential to a successful relationship between

the farmers and community members. For example, mailers included with the water bills could highlight the benefits of zoning the 100-year floodplain as “agricultural use” to decrease development and possible flooding within these areas. The better the public understands agriculture, the more likely they are to support ordinances that benefit agricultural activities in their community.

## LEGAL BASIS AND CONSIDERATIONS FOR NEW HAMPSHIRE

There are several New Hampshire statutes that address agriculture. The definition of agriculture is found in NH RSA 21:34-a, as follows:

### 21:34-a Farm, Agriculture, Farming.

- I. The word “farm” means any land, buildings, or structures on or in which agriculture and farming activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on such land. Structures shall include all farm outbuildings used in the care of livestock, and in the production and storage of fruit, vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of annual or perennial plants; and any other structures used in operations named in paragraph II of this section.
- II. The words “agriculture” and “farming” mean all operations of a farm, including:
  - (a) (1) The cultivation, conservation, and tillage of the soil.
  - (2) The storage, use of, and spreading of commercial fertilizer, lime, wood ash, sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules and regulations, other lawful soil amendments.
  - (3) The use of and application of agricultural chemicals.
  - (4) The raising and sale of livestock, which shall include, but not be limited to, dairy cows and the production of milk, beef animals, swine, sheep, goats, as well as domesticated strains of buffalo or bison, llamas, alpacas, emus, ostriches, yaks, elk (*Cervus elephus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), and reindeer (*Rangifer tarandus*).
  - (5) The breeding, boarding, raising, training, riding instruction, and selling of equines.
  - (6) The commercial raising, harvesting, and sale of fresh water fish or other aquaculture products.
  - (7) The raising, breeding, or sale of poultry or game birds.
  - (8) The raising of bees.
  - (9) The raising, breeding, or sale of domesticated strains of fur-bearing animals.
  - (10) The production of greenhouse crops.
  - (11) The production, cultivation, growing, harvesting, and sale of any agricultural, floricultural, viticultural, forestry, or horticultural crops including, but not limited to, berries, herbs, honey, maple syrup, fruit, vegetables, tree fruit, grapes, flowers, seeds, grasses, nursery stock, sod, trees and tree products, Christmas trees grown as part of a commercial Christmas tree opera-

- tion, trees grown for short rotation tree fiber, compost, or any other plant that can be legally grown and harvested extensively for profit or subsistence.
- (b) Any practice on the farm incident to, or in conjunction with such farming operations, including, but not necessarily restricted to:
- (1) Preparation for market, delivery to storage or to market, or to carriers for transportation to market of any products or materials from the farm.
  - (2) The transportation to the farm of supplies and materials.
  - (3) The transportation of farm workers.
  - (4) Forestry or lumbering operations.
  - (5) The marketing or selling at wholesale or retail, on-site and off-site, where permitted by local regulations, any products from the farm.
  - (6) Irrigation of growing crops from private water supplies or public water supplies where not prohibited by state or local rule or regulation.
  - (7) The use of dogs for herding, working, or guarding livestock, as defined in RSA 21:34-a, II (a)(4).
  - (8) The production and storage of compost and the materials necessary to produce compost, whether such materials originate, in whole or in part, from operations of the farm.
- III. A farm roadside stand shall remain an agricultural operation and not be considered commercial, provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms of the stand owner.
- IV. Practices on the farm shall include technologies recommended from time to time by the university of New Hampshire cooperative extension, the New Hampshire department of agriculture, markets, and food, and appropriate agencies of the United States Department of Agriculture.
- V. The term “farmers’ market” means an event or series of events at which 2 or more vendors of agricultural commodities gather for purposes of offering for sale such commodities to the public. Commodities offered for sale must include, but are not limited to, products of agriculture, as defined in paragraphs I-IV. “Farmers’ market” shall not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.
- VI. The term “agritourism” means attracting visitors to a working farm for the purpose of eating a meal, making overnight stays, enjoyment of the farm environment, education on farm operations, or active involvement in the activity of the farm which is ancillary to the farm operation.

NH RSA 432:33 (the Right to Farm Law) is intended to protect agriculture from nuisance lawsuits. NH RSA 672, the general planning and zoning authorization, states that: “Agriculture makes vital and significant contributions to the food supply, the economy, the environment and the aesthetic features of the state of New Hampshire, and the tradition of using the land resource for agricultural production is an essential factor in providing for the favorable quality of life in the state. Natural features, terrain and the pattern of geography of the state frequently place agricultural land in close proximity to other forms of development and commonly in small

parcels. Agricultural activities are a beneficial and worthwhile feature of the New Hampshire landscape and shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers.”

NH RSA 674:21 authorizes innovative land use controls, and mentions agriculture specifically in the village plan alternative where only 20 percent of a parcel may be developed and the other 80 percent must be set aside by easement for agriculture, forestry, conservation, or public recreation.

## MASTER PLAN

Because the master plan provides the basis for a community’s zoning ordinance, it is very important that the steps outlined in Section II of this chapter are followed. There are many opportunities to discuss agriculture in the master plan, such as the economic development chapter, the land use chapter, or the natural resources chapter. Existing conditions and the vision of the community should be reflected in the plan.

## CURRENT USE

According to the New Hampshire Farm Viability Task Force, “current use taxation greatly reduces the property taxes on farmland and is the single most important public policy benefit for farm owners.” Still, if the value of a farmer’s land rises to the point where it eclipses his income potential, then there is increased pressure to sell the land, with or without the current use law. Transferable development/density rights or the purchase of development/density rights are other important tools for the community and the farmer to consider. Both provide options for a farmer to receive capital for the increased value of his real estate and encouragement to maintain the farm.

Current use taxation... is the single most important public policy benefit for farm owners.

—NH Farm Viability Task Force

## EXAMPLES AND OUTCOMES

### CONCORD, NEW HAMPSHIRE

In its master plan, the city of Concord determined that most agricultural uses were located either on the rural outskirts of the city or along the flood plains of the Merrimack and Contoocook Rivers. In 2001, the city adopted agricultural zoning based on the master plan. The 2001 zoning ordinance allows for agricultural uses in the Open Space Zone (RO) and the Medium Density Zone (RM). Agricultural, horticultural, and silviculture operations are permitted uses in both districts. Raising poultry and keeping stables and nurseries are permitted uses only in the RO zoning district. All other agricultural uses are allowed only by special exception of the zoning board of adjustment.

#### Seasonal Help

Concord’s zoning ordinance allows for housing seasonal workers on farms, as needed in the RO and RM districts. These uses must also be reviewed under the provisions of the city’s site plan review regulations, however, the applicants are provided a more expedited review process than in normal site plan review applications. The provisions for seasonal help only allow for a maximum of ten employees, and require at least 150 square feet of housing per person or meet OSHA standards, whichever is greater.

## Site Plan Review Regulations

Since the new regulations were adopted, only two applicants, Apple Hill Farm and Carter Hill Orchards, have come before the planning board. In both cases, the applicants wanted to expand housing for their seasonal help. The planning board determined that both applications fell under the provisions of a minor site plan review. Therefore, both applicants were allowed to prepare their own plans using available information, and to submit the plans to the planning board and the architectural design committee without architectural or engineering stamps on the plans.

## Preserving Agricultural Land

In recent years, the city of Concord has recognized that its agricultural resources are a significant asset to the community. In 2001 the city, along with land trusts and private individuals, purchased development rights and agricultural easements on Carter Hill Orchards. This saved a very popular orchard, and added recreational opportunities for multiple uses such as hiking and cross-country skiing. In addition, the city of Concord and various land trusts are about to close on another property that abuts the Carter Hill Orchards. The property produces strawberries, pumpkins, and Christmas trees. The plan is to expand the hiking and cross-country skiing opportunities across the two properties.

Another significant cooperative venture was the purchase of a major portion of the agricultural land in the flood plain of the Merrimack River. Not only were public private partnerships instrumental to the sale, but also the landowner agreed to a bargain price for the property, which led to a reduction in their tax burden. This property is intended to continue to be used for raising of feed corn and sod. The property is leased to the people who were farming the property under the previous owners, and the lease funds are being used to help pay down the bond used to purchase the land and the agricultural rights to the property.

The city, along with land trusts, also purchased Diamond Hill Farm, a property with farm buildings and a variety of agricultural uses. The purpose is to lease the farm and the property at an affordable rate to maintain its agricultural use. Like the other properties, the lease would be used to pay down the bonds used to finance the purchase.

## Farm Stands

Since the ordinance was established in 2001, no farm stands have been built or proposed in Concord. Farm stands are only allowed as an accessory use to the principle agricultural use on the same parcel of land. The ordinance does not allow for construction of off-site farm stands or for the sale of agricultural products, unless part of a larger retail market or at an organized farmers market.

## WAKEFIELD, NEW HAMPSHIRE

The town provides for agricultural use of open space that could be used for agricultural purposes in open space and cluster developments, which are permitted in several districts (Zoning Ordinance Article 12). This helps to satisfy one of the master plan goals to preserve agricultural lands. The open space/cluster development section of the zoning ordinance requires that 50 percent of the open space be buildable land and that it be designated as permanent open space. The planning board is required to look at open space and consider land areas designated as prime agricultural soils as part of its review of open space.

## Model Language and Guidance for Implementation

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A successful agricultural incentive zoning ordinance will grant the maximum possible flexibility to agricultural practices. The following four items outline key issues that communities should consider when developing ordinances and regulations regarding agricultural activities.

1. **Establish a clear definition of agricultural activities and what constitutes an agricultural use.** The state's definition is RSA 21:34-a. The definition is broad enough to reflect the diversity of agriculture in New Hampshire and allow for continuing change that will respond to the changing agricultural market. Make sure that the community master plan has a detailed section on agriculture. This section should express the value agriculture contributes to your town's quality of life through open space, wildlife habitation, watershed purification and natural resource preservation.
2. **Allow agricultural activities throughout the community.** Farms and other agricultural uses as defined under RSA 21:34a can operate near residential or commercial uses. They can provide rural relief and soften the impacts of development. When a community limits farming and agricultural activity to business and residential agricultural zoning districts it ends up counterproductive to the intent of the agricultural zoning ordinance.
3. **Be sensitive to the needs of farms.** Recognize that farming enterprises are dynamic and include agricultural accessory uses, from machinery sheds to housing, and onsite farm related business, such as farm stands or processing facilities. Farming activities that add value to the commodity being produced or that support the management of the farm are often necessary to farming operations. For instance, some farming operations require either fulltime housing or seasonal housing to assist in the operation of the farming activity, such as planting, harvesting, and tending to livestock.
4. **Adhere to the right to farm principle that is already established under state law.** Right to farm laws began to be developed in the 1970s as state lawmakers became more aware of and concerned about the loss of agricultural land. These laws are generally enacted at either the state or local level, and tend to share similar traits: they define to some degree the purpose of the law; mention the need to conserve and protect agricultural land; and protect the farm against nuisance lawsuits that result from changing land uses around a farm.

Enacting a right to farm law or ordinance protects farms from nuisance lawsuits over the grittier aspects of agriculture such as noise and smell. In New Hampshire, RSA 432:33 protects farms that have been in operation for more than a year from nuisance lawsuits, but it does not address new farms or buffers.

There are two main ways to address potential conflicts between agricultural and non-agricultural uses. One is to require that developers who wish to develop properties adjacent to farms create enough buffer so that the noise, odor, dust, and other



necessary by-products of farming operations will not affect residents of the new development. The other is to educate people who are thinking about purchasing property near an active farm about what living next door to a farm really means, and how farming practices can vary from season to season.

Agriculture may be permitted in any zone the municipality deems appropriate. This could include residential, rural residential, industrial, or commercial, depending on the community. Consideration should be given to existing and potential uses in the zone, to ensure that agricultural activities will be compatible and potential negative impacts minimized. For the purposes of this chapter, model zoning provisions are presented by topic area. Communities wishing to encourage agricultural uses in existing zones should audit existing zoning provisions, review the model language, and adopt the desired elements, as appropriate.

## ORDINANCE AND REGULATION PROVISIONS TO SUSTAIN AGRICULTURE

### Statutory Authorization

RSA 21:34-a Farm, Agriculture, Farming

RSA 432:33 Immunity from Suit

RSA 672:1(III-b) Declaration and Purpose

RSA 672:1(III-d) Declaration and Purpose

RSA 674:21 Innovative Land use Controls

RSA 674:26 Districting Under Interim Zoning Ordinance

RSA 674-32-a through c Agricultural Uses of Land

**Principles:** Community planners should consider the following principles in reviewing and amending their local land use regulations to foster continued agricultural activities.

- In order to foster agricultural enterprises, minimize review costs for commercial activities associated with farm activity. Flexibility in site plan review regulations can be used to exempt farm stands from inappropriate commercial regulation, or can allow a tiered approach to the regulating of farm stands.
- Signage is an important aspect of a viable agricultural enterprise and differs greatly from commercial uses. Consider exempting agricultural signage from regulation. Temporary signs that change with the season and crop availability and off-site signage may be critical to farm success.
- Agricultural structures, other than year-round retail operations, are different from commercial buildings and should be treated differently, and possibly exempted from review, in site plan review regulations. Defined by the Internal Revenue Service as “single purpose agricultural structure,” these include (but aren’t limited to): barns, silos, farm stands, greenhouses, stables, coolers, etc. The design criteria for these structures relate to the purpose served in the farm operation, which can frequently be in conflict with site review regulations for commercial or industrial buildings that are open to the general public.

- Animal density is an important consideration for community planners because it goes directly to the issues of farming and potential conflicts with dissimilar land uses. Animal density issues are addressed in best management practices for manure handling, as specified by the NH Department of Agriculture, Markets, and Food.
- Housing is an integral component of an agricultural enterprise. Agricultural housing takes several different forms and raises several different issues from the perspective of municipal government. Farms have historically been and are typically operated by the members of a single extended family. In addition to family members there is a need for agricultural related housing for non-family employees.

**Zoning Provisions:** Communities wishing to promote agricultural use should audit their existing land use regulations to see if they present barriers to agriculture. Listed by topic below are sample zoning provisions addressing various agricultural issues.

## INTENT AND PURPOSE

- A. **Intent:** The Agriculture Conservation District is intended to protect areas of the community that are well suited for agriculture. It is also the intention of this ordinance to minimize conflicts between incompatible uses by directing non-farm residential uses to other districts within the community.
- B. **Purpose:** The purposes of the Agriculture Conservation District are:
1. To protect and promote the continuation of farming in areas with the most suitable soils.
  2. To protect and promote the continuation of farming in areas of the community that have historically contained these areas and therefore have developed compatible residential patterns and transportation infrastructure.
  3. To permit primarily agricultural land uses and activities.
  4. To separate agricultural land uses from potentially incompatible residential, commercial, and industrial development, and public facilities that may interfere with normal agricultural operations.
  5. To achieve the goals stated in the master plan, including preservation of rural character, continuation of agriculture, economic development, and natural resource protection.
  6. To preserve wetlands and natural areas associated with farms, that because of their natural physical features, are useful, as water retention and ground-water recharge areas, and as wildlife habitat; and that have an important aesthetic and scenic value, which contributes to the unique character of the community.
  7. To encourage the viability of agricultural soils for agricultural use.
  8. To maintain and enhance food self-sufficiency, including: local food for local people; reduced energy consumption; and employment opportunities in the community.

## DEFINITIONS

**Accessory Structure:** Any structure including but not limited to seasonal housing for seasonal farm employees, barns, equipment storage, feed storage, farm stand, greenhouses, lath houses, energy producing devices that provide energy primarily for farm use, cold storages, manure and compost storage, and product processing centers.

**Agriculture and Farming:** agriculture and farming as defined in RSA 21:34-a.

**Agritourism:** attracting visitors to a working farm for the purpose of eating a meal, making overnight stays, enjoyment of the farm environment, education on farm operations, or active involvement in the activity of the farm which is ancillary to the farm operation.

**Farm:** any land, buildings, or structures on or in which agriculture and farming activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on such land. Structures shall include all farm outbuildings used in the care of livestock, and in the production and storage of fruit, vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of annual or perennial plants; and as defined in RSA 21:34-a. as amended.

**Farmers' Market:** means farmers' market as defined in RSA 21:34-a.

**Farm Parcel:** A tract or parcel of land devoted primarily to agricultural uses may contain a dwelling or other accessory uses.

**Farm Roadside Stand:** Means an on-farm, agricultural retail operation provided that: (A) at least 35 percent of the product sales in dollar volume is attributable to products from the farm or farms of the farm stand owner or farm stand operator; and (B) product sales not attributable to the farm or farms of the farm stand owner or farm stand operator shall be agriculturally related and may include, but not necessarily limited to, the sale of garden accessories, cheese, home crafts, cut flowers, dried flowers, value added products such as jams, jellies and baked goods from a farm stand kitchen. Proof of farm income may be required to determine conformity with these provisions.

**Farm Worker Dwelling:** A dwelling located on a farm for the purpose of housing an employee of that farm operation and his/her family. Also included in this use type would be multi-family dwelling(s) for seasonal employees in connection with an orchard or other agricultural use, which relies on seasonal employees who must be housed.

## PERMITTED USES

- A. Agriculture.
- B. Farm worker dwellings.
- C. Farm roadside stand.
- D. Accessory structures for agricultural use.
- E. Agritourism.

These definitions should be incorporated into the definition section of the ordinance, especially if the municipality decides to allow agriculture in multiple zones. See Section III for complete legal definition in New Hampshire.

A farm roadside stand shall remain an agricultural operation and not be considered commercial, provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms of the stand owner.  
NH RSA 21:34-a III

## PERFORMANCE STANDARDS FOR NON-AGRICULTURAL USES

In general, the use of land and structures within the Agriculture Conservation District shall seek to maximize agricultural productivity. The non-agricultural use of land and structures must also conform to the following design standards that create a minimum level of consistency in lot and parcel configuration:

### A. Design Standards

All residences developed either on frontage lots or within a conservation/open space subdivision shall comply with the following standards:

1. All buildings, homes and structures shall be located a minimum of 100 feet from agricultural land and shall be separated by a 50-foot wide buffer strip sufficient to minimize conflicts between farming operations and residences. This buffer shall be on the land developed for the non-farming use and may consist of trees and or fencing.
2. Each structure shall be integrated into the existing landscape on the property so as to minimize its visual impact and maintain visibility of adjacent agricultural lands from public ways through use of vegetative and structural screening, landscaping, grading and placement on or into the surface of the lot.

### B. Additional Requirements for Subdivision/Site Plan Approval

The applicant shall comply with the minimum requirements for subdivision/site plans, and shall also submit to the planning board the following information:

1. Description or illustration of the physical characteristics within and adjacent to this site, including: prime agricultural soils, soils of state and local importance, other soils and soil characteristics, areas used for crop or other agricultural production.
2. Description of compliance with Agricultural Land and Development Standards in Section 5C-E and Site Design Standards in Section 5A.

### C. Criteria for Review: The planning board shall also consider whether:

1. The development is in compliance with Agricultural Land and Development Standards (Section 5D, below).
2. The development will not interfere with farming operations on adjacent lands.
3. The development is situated on the portion of the site with soils least suitable for the production of crops or livestock.
4. The development is integrated into the existing landscape through features such as vegetative buffers, and through retention of open agricultural land.

### D. Agricultural Land and Development Standards

1. Residential subdivision developments in the Agriculture Conservation District shall be laid out according to the Conservation Subdivision standards set forth in Section [ ] of this ordinance. All buildings and roads shall be located away from soils that are most suitable for agriculture (based

Conservation subdivision requirements can either be laid out in a separate section of a community's ordinances, or the community can adopt the simpler standards set forth in the following sections.

on Natural Resource Conservation Service classifications for prime farmland soils and soils of state and local importance) to the maximum practical extent. This provision does not apply to the location of on-site septic disposal facilities that must be placed in soils meeting N.H. Department of Environmental Services rules.

2. All roads, drainage systems and utilities shall be laid out in a manner so as to have the least possible impact on agricultural lands and uses.

**E. Maximum Number of Dwelling Units**

1. The maximum number of dwelling units permitted in an open space community in the agricultural conservation district shall be calculated based upon one unit per acre for the net developable acreage remaining once the area of all wetlands and steep slopes (in excess of 15%) have been subtracted from the total acreage of the property.
2. Under the supervision of the conservation commission, all wetlands shall be identified, and their area subtracted from the net developable acreage of the total parcel.

**F. Required Open Land**

At least 50 percent of the net acreage remaining after the area of all wetlands have been subtracted shall be retained as open agricultural land. Remaining open agricultural land shall have appropriate acreage, configuration, and access to enable continued farming operations.

**G. Protection of Open Agricultural Land**

The following standards shall apply to open agricultural land to be protected as part of the development of an open space community:

1. Farmland owners are not required to sell the part of their property that is to become permanent agricultural open space, provided that they convey the development rights of that open space in a conservation easement prohibiting future development of this property to any of the official bodies named in Section G.2 below.
2. All remaining open agricultural land shall be permanently protected by either:
  - a. A permanent conservation easement or deed restriction conveyed to the municipality with municipal approval or to a non-profit farmland trust or conservation organization whose principal purpose is to conserve farmland and open space, or other suitable entity.
  - b. Ownership in fee simple conveyed to the municipality with municipal approval or to a non-profit farm trust, open space or conservation organization as a gift or for a consideration.
3. At a minimum, such an easement, fee simple ownership, or restriction shall entail the use of management practices that ensure existing fields or pastures will be plowed or mowed at least once every year.

## AGRICULTURAL MANAGEMENT STANDARDS

All farms are recommended to develop and keep current soil conservation and nutrient management plans in compliance with Natural Resource Conservation Service standards, where appropriate.

## REFERENCES

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