

13910, (eff 3-21-24)

**Adopt Agr 700, previously effective 3-21-01, and expired 3-21-09, to read as follows:**

CHAPTER Agr 700 ACQUISITION OF AGRICULTURAL LAND DEVELOPMENT RIGHTS

Statutory Authority: RSA 432:21

PART Agr 701 DEFINITIONS

Agr 701.01 “Act” means RSA 432:18 et seq., pertaining to the acquisition of agricultural land development rights, as amended.

Agr. 701.02 “Agricultural land development rights” means “agricultural land development rights” as defined in RSA 432:18, I.

Agr 701.03 “Agricultural preservation restriction” means “agricultural preservation restriction” as defined in RSA 432:18, II.

Agr 701.04 “Agricultural use” means “agricultural use” as defined in RSA 432:18, III.

Agr 701.05 “Applicant” means the fee simple owner of a site who requests that the state of New Hampshire purchase, release, or modify agricultural land development rights, pertaining to the site.

Agr 701.06 “Commissioner” means the commissioner of agriculture, markets, and food.

Agr 701.07 “Committee” means “agricultural lands preservation committee” as defined in RSA 432:18, V.

Agr 701.08 “Conservation commission” means “conservation commission” as defined in RSA 432:18, VI.

Agr 701.09 “Filed” means the actual receipt of a document or application at the committee’s office in Concord in a form consistent with these rules.

Agr 701.10 “Governing body” means “governing body” as defined in RSA 432:18, VII.

Agr 701.11 “Municipality” means “municipality” as defined in RSA 432:18, VIII.

Agr 701.12 “Site” means “site” as defined by RSA 432:18, IX.

Agr 701.13 “Soil Potential Index (SPI)” means the official United States Department of Agriculture, Natural Resources Conservation Service measure of soil productivity under standard conditions as adjusted by the cost of overcoming soil limitations plus any continuing limitations not practical to overcome.

PART Agr 702 APPLICATIONS-FILING REQUIREMENTS

Agr 702.01 Applications.

(a) Applications for new sites shall be accepted within 90 days following an announcement made by the committee that applications will be accepted.

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(b) For the application to be considered, the proposed site shall be capable of active, productive agricultural use in its current state.

(c) Applications to modify or release existing restrictions may be filed at any time.

Agr 702.02 Application Filing.

(a) The applicant shall mail a completed application and all attachments to:

Department of Agriculture, Markets, & Food

Office of the Commissioner

PO Box 2042

Concord, NH 03302-2024.

(b) A copy of the application shall be simultaneously mailed to the governing body of the municipality in which the site is located.

Agr 702.03 Agreement Not to Sell.

(a) The applicant shall agree not to sell or commit to sell the land covered by the application within a period of 120 days from the date of receipt of a copy of the application by the commissioner.

PART Agr 703 NEW SITE APPLICATIONS

Agr 703.01 Content of Application. The applicant shall submit the following in the order listed as part of an application for an agricultural preservation restriction:

(a) Name of applicant's business or farm;

(b) Name, address, telephone number, fax number, and email address, if available, of the applicant;

(c) Owner(s) of record of the proposed site;

(d) Location or address of the proposed site;

(e) Size of the proposed site in acres;

(f) Deed reference of the proposed site, including book and page;

(g) Assessor's valuation records of the proposed site, including number and lot;

(h) Identification of the site by deed reference or assessor's records and by a map showing all acreage to be included within the site as well as contiguous acreage, if any, under the same ownership to be excluded from consideration;

(i) A description of the agricultural uses of the proposed site including:

(1) Acreage or quantities of crops grown;

(2) Numbers and kinds of livestock;

(3) Forest products;

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- (4) Greenhouses; and
- (5) Specialty crops;
- (j) If acreage is leased to others for agriculture, the following:
  - (1) The number of acres; and
  - (2) The remainder of time the lease will be in force;
- (k) The following maps:
  - (1) A United States Department of Agriculture Natural Resources Conservation Service soil map or equivalent of the entire site; and
  - (2) A map of the site, to scale, that shall include all areas under the same ownership, as detailed below:
    - a. The map shall contain a north arrow and a scale not larger than 1" =50' or smaller than 1" =200';
    - b. The map shall show areas for which the sale of development rights are proposed, residences and their lots, and other areas to be excluded from the sale of the development right; and
    - c. A survey as required by Agr 706.01;
- (l) A list of the following buildings or structures if they exist on the site and a brief description of their uses:
  - (1) Barns;
  - (2) Equipment storage;
  - (3) Livestock housing;
  - (4) Milking parlors;
  - (5) Crop storage;
  - (6) Processing areas;
  - (7) Greenhouses;
  - (8) Roadside stands;
  - (9) Residence;
  - (10) Housing for seasonal workers; and
  - (11) Any other buildings not listed in (1)-(10) above;
- (m) A description of the land of the entire farm under the ownership of the applicant and the total acreage to be placed under development restriction, for the following:

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- (1) Tillable cropland;
- (2) Nursery or orchard;
- (3) Pasture;
- (4) Woodlands;
- (5) Other, which shall be specified;
- (6) Land occupied by farm buildings;
- (7) Land occupied by commercial buildings or residences; and
- (8) A description of whether the proposed site will be economically viable for agricultural preservation or preservation for future production if severed from some or all contiguous land currently operated as part of an economically integrated unit;

(n) The following information, as applicable:

- (1) Current assessed ad valorem, not current use valuation, obtained from the municipal assessor's records, of land covered by the submitted proposal and any other contiguous land owned by the applicant;
- (2) The property shall be broken down to indicate the number of acres, the value, or both, of each of the following:
  - a. Farmland;
  - b. Woodland;
  - c. Farm buildings;
  - d. Other buildings;
  - e. Commercial lots;
  - f. Residences;
  - g. Residential lots; and
  - h. Other, as specified by the applicant;
- (3) The property tax rate and tax year; and
- (4) Identification and explanation of contingencies, conditions, encumbrances, and liens relative to the proposed site, including:
  - a. Anything which might affect the retention of land in agriculture, such as death or retirement of the owner, foreclosure, financial stress, or estate settlement;

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- b. A declaration of fair market value or ad valorem price for the parcel and a value for the development rights to such parcel, such prices to be those at which the applicant is willing to sell; and
- c. Any and all liens and encumbrances on such land.

(o) The signature of the applicant.

Agr 703.02 Language of the Proposed Agricultural Preservation Restriction. The applicant shall include a draft of the actual deed restriction proposed by the applicant which conforms to the following:

(a) Construction or placing of buildings, except those used for agricultural purposes or for dwellings used for family living by the landowner, shall be permitted when the area is expressly designated in the deed restriction;

(b) Excavation, dredging or removal of loam, sod, peat, gravel, soil, rock, or other mineral substance in such a manner as to adversely affect the site's future agricultural potential shall be prohibited, and the area within the site where any such activities are permitted shall be expressly designated in the deed restriction;

(c) Other acts or uses detrimental to such retention of the land for agricultural use, including but not limited to allowing soil erosion or growth of brush and woody species onto the land, shall be prohibited, and the grantee shall be expressly authorized after issuing written notice to the grantor to enter the property and correct any nonconforming condition and to assess the expense against the grantor;

(d) Subdivision of the site shall be prohibited;

(e) All other customary rights and privileges of ownership shall be retained by the owner including the right to privacy and to carry out those practices consistent with RSA 21:34-a;

(f) The restriction shall be enforced by an action at law or by injunction or other proceedings in equity and shall entitle representatives of the grantee to enter the land in daylight hours to assure compliance;

(g) The restriction shall be in perpetuity except as released, in whole or part, by the grantee only under the stipulations expressed in RSA 432:24; and

(h) Any additional restrictions proposed by the applicant for the intended purpose of preserving the economic viability of the proposed site for agricultural use.

Agr 703.03 Options for Comment by the Municipality to the Committee.

(a) Within 60 days of the receipt of an application in accordance with Agr 703.01, the governing body of the municipality shall be notified by the committee and invited to submit comments, including the following:

- (1) Whether or not the application is recommended by the municipality and the extent to which the municipality desires to participate financially in the purchase of the agricultural land development rights;

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(2) Whether the municipality believes that the application is compatible with the following:

- a. The master plan;
- b. The zoning bylaws;
- c. Planned public works; and
- d. Applicable local ordinances; and

(b) A recommendation by a governing body that the committee not purchase the development rights or the failure of a governing body to supply the information as outlined in this section shall not prohibit the committee's consideration of said application.

#### PART Agr 704 DUTIES OF THE COMMISSIONER-NEW SITE APPLICATIONS

##### Agr 704.01 Acceptance for Filing.

(a) The commissioner shall examine the application for completeness and notify the applicant in writing within 30 days of receipt of the application.

(b) If the commissioner determines that the application is not facially complete, the applicant shall be notified of any apparent errors or omissions and afforded the opportunity to provide the information. If the applicant fails to provide the information required in Agr 703 within 30 days and after being notified of the missing information, the application shall be denied.

(c) If the application is complete, the commissioner shall notify the that it has been accepted for filing within 30 days.

Agr 704.02 Completed Application. After the commissioner has notified the applicant that the application is complete, the commissioner shall:

(a) Authorize a field inspection of the land and agricultural area covered by the application including preparation of a preliminary estimate of the probable value of the related agricultural land development rights;

(b) Submit the application to the committee for examination and evaluation according to Agr 705, Criteria for Evaluating New Site Applications; and

(c) Negotiate with the applicant concerning an extension of the agreement not to sell and any other matters germane to the completion of a provisionally approved application;

(d) When appropriate, negotiate with the municipality and execute an agreement between the committee and the municipality as to the financial assistance to be provided by the municipality in the purchase of the development rights; and

(e) Complete the actions in Agr 704.02 (a)-(d) within 60 days, unless the commissioner and the applicant come to a mutually agreeable extension.

##### Agr 704.02 Appraisal.

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(a) If an application is provisionally approved by the committee, an appraisal shall be conducted according to the following:

- (1) The appraisal shall be conducted to determine fair market value by an appraiser certified by the NH real estate appraiser board;
- (2) Fair market value shall be determined in accordance with RSA 75:1 and Rev 600;
- (3) The committee shall select the appraiser, subject to the approval of the applicant; and
- (4) The expense of the appraisal shall be borne by the landowner as required by RSA 432:20,I(c).

(b) The applicant shall file the appraisal report with the committee within 90 days from the date that the provisional approval was granted, or the application shall be denied.

Agr 704.03 Final Approval or Disapproval.

(a) Following completion of the actions described in Agr 704.01 and Agr 704.02, the commissioner shall within 30 days resubmit the application, with a report of such actions, to the committee for final action pursuant to Agr 705 as to whether the funds shall be reserved to purchase the development rights to the site.

(b) Approval shall include reservation of funds for purchase of the agricultural land development rights.

(c) Disapproval shall not preclude the applicant from resubmitting an application in the future.

(d) The commissioner shall inform the applicant of the committee's decision.

Agr 704.04 Application Returned to Municipality. If a municipality has entered into an agreement with the committee to provide assistance in purchasing agricultural land development rights, the municipality's share of the cost shall be forwarded to the commissioner for payment at the time of closing.

Agr 704.05 Preparation, Execution, and Recording Before Payment. Preparation, execution, and recording of the necessary instruments shall be approved by the commissioner before payment for the land agricultural land development rights shall be made.

**PART Agr 705 CRITERIA FOR EVALUATING NEW SITE APPLICATIONS-POINTS AWARDED**

Agr 705.01 Evaluation of Applications. All applications submitted to the committee shall be evaluated and points awarded according to the criteria listed in subsequent sections of this part.

Agr 705.02 Land Evaluation.

(a) Each application filed pursuant to Agr 702.01, shall be evaluated to determine the potential suitability of the soils for agricultural production.

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(b) The New Hampshire Soil Potential Index (SPI) developed by the U.S. Department of Agriculture Natural Resources Conservation Service shall be used. The commissioner hereby adopts as a rule the Soil Potential Index for Current Use Assessment of Farmland in New Hampshire, published by the U.S. Department of Agriculture, New Hampshire Natural Resources Conservation Service, Dover, NH, dated 2000, available as indicated in Appendix II.

(c) The extent of each soil map unit on the subject property shall be measured and the acreage multiplied by the SPI for that soil.

(d) The resultant values shall be totaled and divided by the total acreage of the application.

(e) The value calculated in (d) above shall be the average SPI for the entire parcel. The average SPI for the parcel shall be multiplied by 0.3 and the product rounded to the nearest whole number, which shall be the number of points assigned to the application under this section.

(f) The maximum possible score for this section shall be 30.

Agr 705.03 Threat of Conversion to a Nonagricultural Use.

(a) "Conversion" means changing use of the land from agricultural production to such uses as commercial, residential, or industrial development.

(b) "General vicinity" means a distance of more than one and less than 5 miles from the perimeter of the property.

(c) "Immediate vicinity" means within a distance of one mile from the perimeter of the property.

(d) Points for threat of conversion to a nonagricultural use shall be awarded as follows:

(1) Evidence of conversion of agricultural land in the immediate vicinity within the previous 5 years shall qualify the application for 5 points;

(2) Evidence of conversion of agricultural land in the general vicinity within the previous 5 years shall qualify the application for 5 points; and

(3) Active negotiation or existing discussion for sale of property in order to use the land for nonagricultural purpose shall qualify the application for 5 points.

(e) Evidence or documentation shall be submitted in order to qualify for points under (d)(3) above, such as a copy of a written offer or names of the prospective buyers.

(f) The maximum points awarded for this section shall be 15.

Agr 705.04 Cost of Development Rights.

(a) The cost of development rights shall be measured as a ratio between the applicant's declared fair market or ad valorem value for the land and the applicant's declared value for the development rights to the parcel, as expressed in the formula below:

Declared development rights value = ratio %



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Declared fair market value

(b) Points shall be awarded according to Table 700-1, Points Awarded for Cost of Development Rights below:

TABLE 700-1 Points Awarded for Cost of Development Rights

Ratio %	Points Awarded
1%-62%	15
62%-64%	14
64%-66%	13
66%-68%	12
68%-70%	11
70%-72%	10
72%-74%	9
74%-76%	8
76%-78%	7
78%-80%	6
80%-82%	5
82%-84%	4
84%-86%	3
86%-88%	2
88%-90%	1
90%-99%	0

(c) If the ratio falls exactly on an even percentage, the points awarded shall be the higher of the 2 numbers.

(d) The maximum points awarded for this section shall be 15.

Agr 705.05 Economic Viability.

(a) The committee shall evaluate the economic viability and supporting services to maintain agricultural production.

(b) Availability of wholesale and retail markets for commercial products and supplies and services required for agricultural production shall qualify the application for 5 points.

(c) Information relevant to demonstrating availability of these markets shall be furnished in the following for:

(1) A list of where and how the agricultural products produced on the land are marketed; and

(2) A list of the major sources of supplies, such as seeds, fertilizers, feed, and equipment, such as purchase and repair, necessary to maintain the agricultural production.

(d) Concentration of farm and agricultural activity shall qualify the application for 5 points.

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(e) The maximum points awarded for this section shall be 10.

Agr 705.06 Agricultural Activity.

(a) The committee shall evaluate current and recent usage of the land for agricultural production.

(b) A maximum of 5 points shall be awarded, according to the following criteria:

(1) Land presently in production with crops harvested or to be harvested in the current calendar year shall qualify the application for 5 points;

(2) Land from which crops were harvested in the previous calendar year but which is not planted or to be planted in the current calendar year shall qualify the application for 4 points;

(3) Land which has not been tilled, fertilized, or maintained in crop production for the past 3 calendar years but for which there are no impediments to an immediate return to normal agricultural production shall qualify the application for 3 points;

(4) Land which has not been tilled, fertilized, or maintained in the last 5 years and which will require minimal improvements to restore suitability for normal agricultural production shall qualify the application for 2 points; and

(5) Land idle for more than 5 years and requiring substantial improvements to restore suitability for normal agricultural production shall qualify the application for one point.

Agr 705.07 Additional Financial Participation. Financial participation by counties, cities, towns, charitable organizations, or trusts shall qualify the application for up to 15 points, and shall receive one point for each 4 percent of the total cost assumed by the participating entity.

Agr 705.08 Gift of Easement or Other Deed Restrictions. Applicants offering to make gifts of preservation or conservation easements or other deed restrictions to additional land shall receive up to 10 additional points according to the following schedule:

(a) Gifts of up to 20 percent of value of agricultural land development rights proposed to be sold shall qualify the application for 5 points; and

(b) Each additional 10 percent shall qualify the application for one point.

PART Agr 706 CLOSING REQUIREMENTS-NEW APPLICATIONS

Agr 706.01 Obligations of Grantor.

(a) Before the committee shall relinquish the consideration to be paid for an agricultural preservation restriction, the grantor shall produce a current survey of the site.

(b) All costs for this survey shall be borne by the landowner.

(c) The survey shall be made by a New Hampshire licensed surveyor and shall be in a form which will allow it to be recorded in the registry of deeds with the grantor's deed.

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(d) Development rights shall be recorded in the appropriate registry of deeds by an official of the municipality administering the site.

PART Agr 707 RELEASE OF AGRICULTURAL PRESERVATION RESTRICTION

Agr 707.01 Restriction Released by Committee.

(a) The agricultural preservation restriction placed on a particular site shall be released by the committee only if the site is no longer suitable for agricultural production.

(b) In making the determination to release under (a) above, the committee shall require the following:

(1) The owner of the site shall submit a request for the release of the agricultural preservation restriction to the commissioner and a copy of such request to the governing body of the municipality in which the site is located;

(2) The request shall state why the site is no longer suitable for agricultural purposes;

(3) The governing body shall, within 60 days of receipt of its copy of the request for release, inform the commissioner whether it recommends the request for release;

(4) In considering the request, the governing body shall take into consideration any comments offered by the:

- a. Conservation commission;
- b. Conservation district;
- c. Planning board; and
- d. Town or city manager or mayor;

(5) Failure of the governing body to make a recommendation shall not prohibit committee's consideration of the request;

(6) The committee shall hold a public hearing conducted as follows:

a. The committee shall conduct a public hearing on the request in accordance with RSA 432:24;

b. The public hearing shall be held in the municipality where the site is located;

c. A notice of the hearing shall specify the grounds for the hearing as well as the date, time, and place.

d. At least 14 days in advance of the hearing a notice of the time and place of such hearing shall be published in a paper of general circulation in the municipality and a legal notice thereof posted in at least 3 public places in such city or town;

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e. The 14 days shall not include Saturdays, Sundays, and legal holidays within the period; and

f. At least 2 committee members shall sit on the hearing panel;

(7) Within 7 days of the date of the conclusion of the hearing, the committee shall vote to determine whether the site is no longer suitable for agricultural use;

(8) If the committee votes to approve the request to release the development rights, the owner shall pay the state of New Hampshire a sum of money which is not less than the difference between the fair market value of such land at the time of release and the fair market value of such land restricted for agricultural purposes at the time the development rights were acquired by the state;

(9) The appraisal to determine the values in (8) above shall be:

a. Determined by an appraiser chosen and compensated as set forth in Agr 704.02; and

b. Completed within 120 days of the date of the committee vote to approve the request for release of the development rights; and

(10) Once all of the foregoing provisions of this section have been completed, the request shall be submitted to the governor and council by the commissioner in accordance with RSA 432:31-a.

#### PART Agr 708 PERMISSION FOR CONSTRUCTION ON OR ALTERATION OF SITE

##### Agr 708.01 Permission for Construction on or Alteration of Site.

(a) Construction of agricultural buildings or dwelling houses for the owner, operator, or employees of a farm situated on a site or alteration of a site shall require approval of the committee.

(b) The owner of the site shall submit a request for approval for construction or alteration to the commissioner and a copy of such request to the governing body of the municipality in which the site is located which includes:

(1) The name of the owner and the location of the site;

(2) A description of the construction or alteration being proposed; and

(3) A map of the site showing the location of the proposed construction or alteration.

(c) Within 30 days of the receipt of a request for permission for construction on or alteration of the site the committee shall conduct a public hearing in accordance with RSA 541-A.

(d) The committee shall decide, upon the evidence presented at the hearing, whether the request conforms to the provisions of the restriction and whether construction on or alteration of the site shall be approved.

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(e) Within 7 days of the hearing, the committee shall inform the owner and the governing body of the municipality in writing of its decision whether to grant the request.

**PART Agr 709 REQUEST FOR RECONSIDERATION**

**Agr 709.01 Dissatisfaction with Action of Committee.**

(a) If the applicant or the municipality is dissatisfied with the action of the committee in approving or disapproving an application, either party may request that the committee reconsider its action. The request for reconsideration shall be made to the committee within 30 days after receipt of the committee’s initial decision.

(b) The committee, within 60 days after receipt of such a request, shall reconsider the application in the light of such relevant and supplementary information presented to it.

(c) All parties shall be notified of the committee’s decision on reconsideration within 30 days.

**PART Agr 710 MONITORING AGRICULTURAL PRESERVATION RESTRICTIONS**

**Agr 710.01 Monitoring.**

(a) The committee or its delegate shall view each parcel subject to agricultural preservation restrictions not less than once every 2 years to assure that its use complies with the deed restrictions, the rules of the committee, and applicable law.

(b) The committee or its delegate shall prepare a written inspection report to be placed on file within 60 days from the date of inspection.

(c) The committee, pursuant to RSA 432:22, V, shall delegate responsibility for monitoring under this section to the conservation commission in the municipality, or the conservation district, in which the parcel is situated, or to the commissioner, if the committee determines that delegating monitoring responsibility will more efficiently provide this function.

**Appendix I**

<b>Rule</b>	<b>Specific State Statute the Rule Implements</b>
Agr 701	RSA 432:21, II
Agr 702	RSA 432:21, III & IV
Agr 703	RSA 432:21, III
Agr 704	RSA 432:21, III
Agr 705	RSA 432:21, II & IV
Agr 706	RSA 432:21, III
Agr 707	RSA 432:21, IV
Agr 708	RSA 432:21, IV
Agr 709	RSA 432:21, III & IV
Agr 710	RSA 432:22, V

**Appendix II: Incorporation by Reference Information**

<b>Rule</b>	<b>Material Incorporated</b>	<b>How Material May be Obtained and Costs</b>
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Agr 705.02	Soil Potential Index for Current Use Assessment of Farmland in New Hampshire	U.S. Department of Agriculture, New Hampshire Natural Resources Conservation Service, 273 Locust Street, 2D Dover, NH 03820 Phone 603-868-7581 <a href="http://www.nrcs.usda.gov/resources/data-and-reports/statewide-soil-information-new-hampshire">www.nrcs.usda.gov/resources/data-and-reports/statewide-soil-information-new-hampshire</a> Cost: The document is available on the website to the public at no cost.
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