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LOCATIONS:

- | | |
|---|---|
|  Coastal Communities |  Groundwater Resources |
|  Freshwater |  Projected Sea-Level Rise Impacted Areas |
|  Shorelands |  Entire Community |
|  Tidal Waters |  Coastal Zone Designated Communities |
|  Surface Waters |  Locally Designated Areas and Districts |
|  Flood Zones | |
|  Inland Communities | |

COMMUNITY GOAL REGULATIONS:

- | | |
|---|--|
|  Open Space Protection |  Recreation Options |
|  Flood Protection |  Transportation Enhancement |
|  Drinking Water Protection |  Historic and Cultural Preservation |
|  Environmental Protection |  Community Design & Aesthetics |
|  Stormwater Management |  Community Equity |
|  Water Quality Protection | |
|  Infrastructure Protection | |
|  Economic Development | |

REGULATION OPTIONS:

1. Conservation District Subdivision*
2. General Provisions

* Denotes current section

WHY ADOPT THESE REGULATIONS?

- Increase protection of agricultural resources.
- Preserve open space.
- Improve community resiliency and food security.

BACKGROUND & PURPOSE

Agriculture has a strong history in Southern New Hampshire and along the Seacoast. Preparing for future pressures on land use patterns and constraints on natural resources is necessary to preserve this portion of New Hampshire's working landscape. Building flexibility into municipal regulations for agricultural endeavors will promote viable local economies, food sovereignty, and ecological resilience.

Agricultural land use conversion has accelerated over the years, at a rate where 38% of prime farmland soils have been converted to non-agricultural uses. Ensuring prime farmlands are set aside for agricultural uses based on soils data uses the best available science to protect our agricultural resources. Current and future impacts of climate change, especially the increasing frequency of extreme weather events, pose a threat to our food system. Longer food chains are more vulnerable to supply chain shocks; by preserving local food production options we can create more resilient and adaptable local food systems. As municipalities in southern New Hampshire and the seacoast continue to experience development pressures, it will be important for communities to take necessary steps, which may include regulating certain land uses which could contribute pollutants to designated wells or local aquifers, to ensure long-term access to safe and clean drinking water for existing and future citizens. Drinking water quality buffer standards are adopted for the purpose of protecting municipal and public drinking water sources and surface waters resources.

REGULATION LANGUAGE

Purpose and Intent:

This option is intended to promote agricultural preservation through the conservation of prime farmland soils, soils of statewide importance, and soils of local importance. The community understands the importance of agriculture to the Town and recognizes that agriculture practices may be threatened by extreme weather events and other climate change impacts. It is understood that reasonable agricultural practices, which are defined by State policy and rule, benefit farming operations and contribute to a working landscape, in harmony with neighbors and community pride while ensuring coastal food systems resilience.¹

1. To protect soils suited for agricultural use from future development/other land uses is critical to maintaining local and regional food systems.
2. To maintain desired water quality levels through soil conservation methods and regenerative practices. When a community's healthiest soils are reserved for agricultural practices, it reduces the need for harmful chemical additives and decreases the likelihood of runoff into local waterways, as healthy soils are structured to retain moisture more efficiently. (RSA 21:34-a, 12-A:68)
3. Encourage the adoption of regenerative agricultural practices which build soils rather than degrade them.
4. To maintain and protect prime farmlands from soil erosion due to the impacts of climate change.
5. Support local food production.
6. Preserve the working agricultural landscape and rural character, while contributing to the ecological health of the area.

MODEL LANGUAGE

NOTES AND EXPLANATIONS

1. Density bonuses can be offered to developers as an incentive to implement the agricultural conservation subdivision option.⁸
2. Requiring a deed restriction, easement, or similar mechanism is important to ensuring the land remains preserved for agricultural land use.⁵
3. Preserving open space large enough for commercial agricultural uses is ideal,⁹ as it ensures the land will be used to its fullest potential and prime farmlands are not split up into smaller, inefficiently sized lots.
4. While ensuring prime soils are protected from future development is important, local officials should also consider current and future flood zone projections and restrict development from occurring in those zones.

¹ <http://www.nvda.net/files/VT-Ag-Guide.pdf>

⁸ <https://sustainablecitycode.org/brief/subdivision-set-asides-for-agricultural-farmland-3/>

⁹ <https://www.agriculture.nh.gov/publications-forms/documents/agriculture-regulation-toolkit.pdf>

Authority.

The Agriculture Conservation District is intended to protect areas of the community that are well suited for agriculture. The Agriculture Overlay District is authorized and enacted in accordance with RSA 21:34-a Farm, Agriculture, Farming, RSA 672:1(III-b) & (III-d) Declaration and Purpose, RSA 674:21 Innovative Land use Controls, RSA 674-32- c Agricultural Uses of Land.

Applicability.

As soils are ever-changing, areas this section pertains to are subject to change based upon updated soils inventories by the Natural Resources Conservation Service (NRCS), the Town of *(insert municipality here)*, NHDES, or other trusted body as identified by the Town of *(insert municipality here)*.

Definitions.

AGRICULTURE: As defined and outlined by *RSA 21:34-a*.

BUILDABLE AREA: Land area of a parcel excluding non-buildable area. ²

CONSERVATION EASEMENT: A permanent legal restriction against future development and other activities as specified in the conservation easement deed. An easement may be worded to permit or restrict public access, allow or disallow recreational uses, allow or disallow other uses, such as limited development, agriculture, or forestry. Easements are tied to the title of the land, regardless of subsequent ownership.³

CONSERVATION SUBDIVISION: An alternative form of residential development where, instead of subdividing an entire tract into lots of conventional size, a similar number of housing units are arranged on lots of reduced dimensions, with the remaining area of the parcel permanently protected as designated open space. Also referred to as “open space subdivision.”²

² <https://www.nh.gov/osi/planning/resources/documents/ilupt-complete-handbook.pdf>

³ <https://www.nh.gov/osi/planning/resources/documents/ilupt-chpt-1.4.pdf>

DEED RESTRICTION: A restriction on the use of land usually set forth in the deed for the property. Also known as a “restrictive covenant.”²

DESIGNATED OPEN SPACE: Reserved land that is permanently protected from further development and remains in a natural condition or is managed according to an approved management plan for natural resource functions, e.g., forestry, agriculture, habitat protection, passive recreation, or limited uses as approved by the planning board under this ordinance as part of a conservation subdivision.²

HOME GARDEN: A home garden shall mean the property of a single-family or multifamily residence used for the cultivation of fruits, vegetables, plants, flowers, or herbs by the residents of the property, guests of the property owner, or a gardening business hired by the property owner.⁴

NON-BUILDABLE AREA: Land area that cannot be counted toward the minimum lot size under a conventional subdivision, including areas with the following characteristics: wetlands or wetland soils as defined by RSA 482-A: 2, X; slopes greater than 25 percent; submerged areas; utility rights-of way; land area within the 100-year floodplain; or land that is restricted from development by covenant, easement or other restriction.¹

PRIME FARMLAND: Land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these uses. It has the soil quality, growing season, and moisture supply needed to produce economically sustained high yields of crops when treated and managed according to acceptable farming methods, including water management. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and

⁴ [https://assets.jhsph.edu/clf/mod_clfResource/doc/Urban_Ag_SeedingTheCity_FINAL_\(CLS_20120530\)_20111021_0.pdf](https://assets.jhsph.edu/clf/mod_clfResource/doc/Urban_Ag_SeedingTheCity_FINAL_(CLS_20120530)_20111021_0.pdf)

few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding.

REGENERATIVE AGRICULTURE: Farming and grazing practices that rebuild soil matter and restore soil biodiversity to improve carbon sequestration and water and nutrient cycling.⁵

Requirements

1. Residential subdivision developments in the Agricultural 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 on NRCS classifications for prime farmland soils and soils of state and local importance) to the maximum practical extent.
2. The development is situated on the portion of the site with soils least suitable for the production of crops or livestock.
3. 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.
4. At least 50% of the buildable area and 80% of the non-buildable area shall be retained as open agricultural land.
5. Regenerative agricultural practices and other sustainable methods are encouraged to maintain the viability of prime soils.
6. Agricultural land set aside for the purposes of this subdivision shall be permanently protected by either:
 - a. A permanent conservation easement or deed restriction conveyed to the municipality with municipal approval.
 - b. Ownership in fee simple conveyed to the municipality with municipal approval.

⁵ <https://regenerationinternational.org/why-regenerative-agriculture/>

Any development located within FEMA Special Flood Hazard Areas shall follow the most recent floodplain management requirements for Agricultural and Accessory Structures set forth by FEMA. ⁶⁷



WHERE DO THESE REGULATIONS GO?

The regulation language offered in this model is intended to be incorporated into a town or city’s zoning ordinance and can be combined with existing Open Space or Conservation Subdivision Requirements.

Alternatively, a municipality can use an existing or establish a Soil Conservation District which aims to protect soils suited for agricultural use from future development/other land uses is critical to maintaining local and regional food systems. When a community’s healthiest soils are reserved for agricultural practices, it reduces the need for harmful chemical additives and decreases the likelihood of runoff into local waterways, as heathy soils are structured to retain moisture more efficiently. (RSA 21:34-a, 12-A:68)

HOW TO ADOPT THESE REGULATIONS:

The planning board is responsible for preparing and, in towns, holding public hearings on proposals to adopt or revise the zoning ordinance. RSA 674:1 outlines the duties of the planning board. RSA 674:1, V states that the Planning Board “may, from time to time, recommend to the local legislative body amendments of the zoning ordinance....”

In towns, a zoning ordinance or revision of the ordinance must then be adopted by ballot vote at Town Meeting

⁶ https://www.fema.gov/sites/default/files/2020-09/fema_agricultural-structures-policy_02-2020.pdf

⁷ https://www.fema.gov/sites/default/files/documents/fema_agricultural-and-accessory-structures_8132021.pdf

In cities and town council towns where the municipal charter determines how a zoning ordinance is to be adopted or revised, a public hearing is still required for all zoning ordinances and amendments

More information about the process of adopting regulations is available in the Adopting Regulations section of this guide.

SUGGESTED SUPPLEMENTARY INFORMATION AND RESOURCES TO COMPLEMENT THESE REGULATIONS:

Recommendation	Type	Details
Zoning Map with base zoning districts	Maps/GIS Data	Find in local Zoning Ordinance.
Parcel Map	Maps/GIS Data	Find via Municipal Tax Maps.
Farmland Soils Map of local and statewide importance	Maps/GIS Data	Access via GRANIT , Natural Resource Conservation Service or Regional Planning Commissions.
Wetlands	Maps/GIS Data	Access via GRANIT or Regional Planning Commissions.
Soils Data	Maps/GIS Data	Access via GRANIT or Regional Planning Commissions.
Local or regional agricultural land evaluation	Studies	Variable; seek out land use data available via local studies, NRCS, or Regional Planning Commissions
Zoning Administrator	Personnel	Interprets and administers the regulation.
Agriculture Commission	Volunteers	Advise and inform decision making
Conservation Commission	Volunteers	Advise and inform decision making .
Planning Board	Volunteers	Approves/denies applications or conditional use permits within protection areas.

HOW DOES THIS RELATE TO OTHER TOPICS?

- References to the Master Plan: The need/desire to preserve soil health and productivity, as well as strength and adaptability of the local food system
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WHO HAS ADOPTED THESE REGULATIONS?

The following represent municipalities within New Hampshire and the Northeastern US that have adopted similar provisions to promote agricultural protection efforts through ordinances and Master Plan work. Additionally, 177 communities in New Hampshire have provisions for an open space/conservation cluster development.¹⁰

- [*Durham, New Hampshire's Master Plan Agriculture Chapter. Updates expected in 2022.*](#)
- [Tewksbury Township, NJ Cluster Development Agricultural Option](#)
- [Concord, MA Zoning Bylaw, Residential Compound](#)
- [Wakefield, NH Open Space Conservation/Cluster Development Ordinance](#)

ADDITIONAL RESOURCES AND REFERENCES

- [Cluster/Conservation Subdivision in Rural/Urban Area](#)
- [USDA Soil of Local Importance](#)
- NH [Local Regulation of Agriculture Toolkit](#)
- [Agricultural Incentive Zoning](#)
- [Preserving Rural Character Through Agriculture: A Resource Kit for Planners](#)

¹⁰ <https://www.nh.gov/osi/planning/services/mrpa/documents/2019-mlur-summary-article.pdf>