

New Hampshire Department of Agriculture, Markets, and Food
Agricultural Land Preservation Program Guidelines
Acquisition of Agricultural Land Development Rights
Statutory Authority NH RSA 432, Sections 18-31-a

1. DEFINITIONS

For the purposes herein, the following definitions will apply:

- A. "Agricultural Use" means use of land for agriculture, farming, dairying, pasturage, horticulture, floriculture, or animal or poultry husbandry as defined by NH RSA chapter 432:18 III as may be amended or revised.
- B. "Agricultural Preservation Restriction" means use limitations, reserved rights, and other obligations stated in the form of an easement and placed on land with the intent of retaining land or water areas in or available for agricultural use.
- C. "Agricultural Land Preservation Easement" and "Easement" mean an easement conveying agricultural preservation restrictions and funded through the Agricultural Lands Preservation Program.
- D. "Agricultural Lands Preservation Program" and the "Program" mean a program providing financial assistance awards to eligible entities to support the acquisition of agricultural land preservation easements in accordance with the provisions herein.
- E. "Applicant" and "Grantee" means the entity proposing to acquire the Easement through the Program.
- F. "Application" means the completed application form and all required attachments as described herein.
- G. "Commissioner" means the commissioner of the department of agriculture, markets, and food of the state of New Hampshire or his designee.
- H. "DAMF" or the "Department" means the department of agriculture, markets, and food of the state of New Hampshire.
- I. "Funding Agreement" and "Agreement" mean the executed G-1 State Grant Form and associated exhibits.
- J. "Healthy soils practices" mean agricultural practices that improve the health of soils, including but not limited to consideration of depth of topsoil horizons, water infiltration rate, organic carbon content, nutrient content, bulk density, biological activity, biological and microbiological diversity, and minimization of bare ground.
- K. "Total Project Cost" means the sum of all eligible expenses as defined herein, whether due and payable as cash, or the value of donated property, goods, or services.

2. PROGRAM INTENT

The intent of the Agricultural Lands Preservation Program is to assist land trusts and other qualified entities in acquiring agricultural land preservation easements on privately held property, to protect and preserve the long-term viability of New Hampshire's working farmland by limiting non-agricultural uses of the land in perpetuity.

3. ELIGIBILITY

- A. Site - The property to be made subject to the Easement must be located in the State of New Hampshire and must be in, or suitable for, active agricultural use.
- B. Applicant - A municipality or other political subdivision of the state of New Hampshire, or a publicly supported non-profit corporation exempt from federal income taxation under section 501(c) of the Internal Revenue Code proposing to acquire and hold an agricultural land preservation easement through the Program and which has among its purposes the perpetual preservation of land and water resources, and the capacity, in the sole discretion of the Committee, to uphold the proposed Easement.

4. FUNDING

Applicants must complete a brief financial summary as part of the Application. The financial summary will describe all estimated expenses and anticipated funding sources in the form prescribed herein.

- A. Expenses - The following expenses will be eligible for reimbursement through the Program, subject to the provisions of section 4. B. below, and approval of the Committee.
 - 1) Acquisition Expenses up to, but not exceeding fair market value of the Easement, excluding any easement value donated (i.e. "Bargain Sale" value).
 - 2) Transaction Expenses directly related to the evaluation of the site and the development and acquisition of the Easement, include survey, appraisal, title work, environmental assessment, natural resource inventories or other studies, attorney's fees, recording fees, and other expenses as may be determined, in the sole discretion of the Committee, to be necessary to accomplish the perpetual preservation of the property through acquisition of the Easement.
 - 3) Monitoring and Enforcement Expenses include development of baseline documentation reports, initial installation of boundary markings/monuments, and other current expenses incurred by the Applicant as part of the Easement acquisition and determined, in the sole discretion of the Committee, to be necessary to the long term monitoring and enforcement of the Easement.
 - 4) Endowment Contribution means a contribution to an established easement stewardship fund maintained by Applicant for the purpose of defending, in perpetuity, the proposed Easement and other similar conservation restrictions held by the Applicant.
 - 5) Administrative Expenses include salaries and related overhead expenses incurred by the Applicant in completing the Easement acquisition, up to but not exceeding 10% of the sum of the acquisition and transaction expenses.

B. **Awards** – Applicants may request, and the Committee may make a Provisional Award up to but not exceeding 100% of the Total Project Cost (the “TPC”) due and payable in cash, subject to the following:

- 1) Review and approval by Governor and Executive Council. A Provisional Award is not confirmed until such approval has been received.
- 2) Confirmation of cash expenses. Should the total of all actual cash expenses be lower than the amount established by the Provisional Award, the amount disbursed will be reduced so that in no case will total grant funds disbursed exceed documented cash expenses.

5. APPLICATION AND EVALUTION PROCESS

A. Submission

The Committee will announce the opening of a grant round, establishing an application submission date no less than 30 days following the date of announcement. On or before the established deadline, Applicants must submit a complete Application in the form and manner described in the announcement to ALP@agr.nh.gov or by other means agreed to by the Committee.

B. Acceptance

The Commissioner will promptly examine all Applications for completeness and will notify Applicants by email within 15 days that the Application has been accepted as complete. Any incomplete Application will be returned, and Applicant will be given up to five (5) days to correct the deficiency and resubmit the Application.

No new Applications will be accepted after the submission deadline.

C. Evaluation

Within 15 days of the application submission deadline the Commissioner will submit all accepted Applications to the Committee for evaluation, and will schedule site visits to all sites, said visits to be held no more than 60 days following the application submission deadline.

Within 30 days of completing the site visits the Committee will meet to consider all Applications and issue Provisional Awards. The Commissioner will promptly inform all Applicants of the Committee’s decisions in writing.

6. FUNDING AGREEMENT

Grantees will be required to enter into a Funding Agreement (the “Agreement”) with the State of New Hampshire acting through DAMF, which Agreement must be approved by the Governor and Executive Council (“G&C”).

The executed Agreement is submitted to ALP@agr.nh.gov (25 mg max file size) or via USPS to:

Agricultural Land Preservation Committee
ATTN Josh Marshall, Assistant Commissioner
NH Dept of Agriculture, Markets, and Food
1 Granite Place South, Suite 211 Concord, NH 03301

The Funding Agreement will consist of the standardized G-1 State Grant Form and associated exhibits, as follows:

Grant Form – A standardized G-1 State Grant Form prepared by DAMF and provided to Grantee for review and acceptance.

- A. Special Provisions – Any limited modifications of specific terms included in the Grant Form as recommended by the Committee
- B. Scope of Services – Describes the allowed use(s) of Program funds and required outcome(s).
- C. Payment Schedule – Establishes the maximum grant funds to be disbursed and the required due diligence documents that must be approved by DAMF prior to disbursement of grant funds.
- D. Certificate of Authority - Certifies that the Grantee’s governing body has voted to accept funds and enter into the Agreement with DAMF and designates an authorized representative to sign any legal documents related to the Easement acquisition. The certificate of authority must be signed and notarized within 30 days of the Grant Form.
- E. Certificate of Insurance – A certificate valid through the anticipated date of G&C action showing general liability insurance per occurrence of \$1,000,000 for bodily injury or death in any one incident. DAMF must be named as the certificate holder. Any subcontractor must also carry comprehensive general liability insurance of not less than \$250,000 per claim and \$2,000,000 per occurrence, however submission of insurance certificates for subcontractors is not required.
- F. Certificate of Good Standing (non-profit Grantees only) - a Certificate of Good Standing issued in the same calendar year as the anticipated G&C action. Obtain current Certificates from the [New Hampshire Department of State, Corporate Division](#)
- G. Vendor Code – All Grantees must register as a vendor with the State of New Hampshire through the [NH Vendor Registration](#) website. The method of grant fund disbursement (check or ACH) is determined by the vendor registration.

NOTE: The approval process may take an additional 10-12 weeks to complete following submission to DAMF.

7. DUE DILIGENCE REQUIREMENTS

No less than ten business days prior to the anticipated date of acquisition, Grantees must submit the following required due diligence documentation to DAMF:

- A. DAMF-approved Easement – the final Easement as approved by DAMF in a form and format suitable for execution. Any change to the Easement made after submission will require written approval of the Commissioner and may delay the release of grant funds.

To avoid unanticipated delays in closing, Grantees are encouraged to submit a draft Easement to DAMF no later than 12 weeks prior to the anticipated date of acquisition. All Easements must be reviewed and approved by DAMF and its attorney prior to the release of grant funds.

- B. Survey – A recorded or recordable survey showing the boundary line of the property to be made subject to the Easement with all turning points as set or found.
- C. Title Insurance Commitment w/ Schedule B attached, updated prior to the anticipated date of acquisition.
- D. Baseline Documentation Report - A detailed description of existing Property conditions prepared no more than 120 days prior to submission.
- E. Financial Summary – an accounting of all expenses incurred, and funding sources applied to the Easement acquisition.

Following DAMF review and approval of the above documentation, the Commissioner will execute the Easement deed and authorize release of the first grant installment, which will be the lesser of Provisional Award less \$5,000 or the sum of all cash expenses less \$5,000.

8. POST-GRANT OBLIGATIONS

- A. Post-acquisition Documentation - Within thirty (30) days following closing, unless extended by the Commissioner, Grantee must submit post-acquisition documentation demonstrating the approved use of Program funds. Following DAMF review and approval of the following documentation, the Commissioner will authorize release of the second grant installment (see Section 9 below).
 - 1) Recorded easement deed
 - 2) Recorded Funding Agreement
 - 3) Recorded survey
 - 4) Executed title insurance commitment
 - 5) Final settlement statement
 - 6) Executed Baseline Documentation Report
 - 7) Final Financial Summary

Following DAMF review and approval of the above documentation, the Commissioner will authorize release of the second and final \$5,000 grant installment.

- B. Long-term Stewardship - Grantees will ensure at least one inspection sufficient to reasonably determine that no activities or uses inconsistent with the Easement is conducted annually and will submit an annual report describing that inspection to DAMF no later than January 31 of the following year. Said report will describe the current conditions and uses of the property, and any actions taken to defend and uphold the requirements of the Easement.

9. GRANT FUND DRAWDOWN

Following approval of the associated requirements, grant funds will be disbursed through the NH State Vendor System in the manner described therein. If final expenses are less than the amount awarded under the Funding Agreement, the total amount disbursed will be reduced so that in no case will grant funds disbursed exceed documented cash expenses.

APPENDIX A
EVALUATION CRITERIA

Soil Quality

Soil type and designation
Historic land use; including demonstrated use of healthy soil practices

Irrigation

Water source
Quantity/Reliability

Topography, Land Cover

Slope
Aspect
Cover

Property Location

Access to wholesale and retail markets for product distribution
Access to agricultural expertise, services, and supplies
Available labor / housing
Abutting land uses
Threat of conversion to non-agricultural uses

Farm Infrastructure

Storage and/or processing facilities
High-tunnels, hoop-houses
Housing (Farmer and farmworker)
Fencing
Energy

Farmer Capacity

Current ownership, tenure
Current ownership, financial capacity
Existing agricultural business plan
Demonstrated use of EQUIP and similar programs

Other

Degree of long-term protection offered by the proposed deed, e.g., inclusion of an Option to Purchase at Agricultural Value or similar transition planning, specific terms that ensure land remains as open field/pasture, actively farmed, or other.
Bargain Sale

APPENDIX B

ALP PROGRAM MINIMUM DEED TERMS

The Applicant is charged with drafting and submitting the Agricultural Land Preservation Easement to the Commissioner for review and approval by the State of New Hampshire, and the Agricultural Land Preservation Committee. Said approval will not be unreasonably withheld or delayed. The easement deed must, in the sole discretion of the DAMF, include at minimum the intent of the following.

1. State of New Hampshire's Rights

The State of New Hampshire, acting through the Department of Agriculture, Markets, and Food will be granted the right:

- to access the property with reasonable notice,
- to enforce the terms of the Easement if the Easement Holder ceases or fails to do so,
- to recover all costs associated with such enforcement from the Easement Holder or Landowner, as applicable by law,
- to assign its interest in the Easement,
- to approve any amendment to the Easement, and
- to approve any assignment of the Easement Holder's rights in the Easement.

2. Purpose

The Easement will state that the purpose of the Easement is to preserve the future viability of the property for productive agricultural use.

3. Baseline Documentation

Easement will acknowledge the existence of the Baseline Documentation Report, to be accepted by Landowner and DAMF and maintained by the Easement Holder, with copies provided to DAMF.

4. Commercial Activities

The Easement will prohibit commercial or industrial activities on the property that are inconsistent with the purposes of the Easement.

5. Structures or Improvements

The Easement will require the Easement Holder approve any construction, expansion, installation, or addition of non-agricultural buildings or structures, which will be allowed only where such activity would not result in any incidental or cumulative degradation of the long-term agricultural viability of the property.

6. Surface Alteration

The Easement will limit excavation, dredging, or removal, of loam, sod, peat, gravel, soil, rock, or other mineral substances as may adversely affect the long-term agricultural viability of the property and in no case may any earth products, minerals, or similar materials from the property be removed from the

property if said removal would be detrimental to long term agricultural viability of the property or the Purposes of the Easement.

7. Subdivision

The Easement will prohibit subdivision unless approved in advance by the Easement Holder.

8. Future Encumbrances

No rights-of-way, easements, or encumbrances of any kind in favor of any third party shall be created or developed into, under, over, or across the Easement Area without Easement Holder's prior written approval, except those specifically permitted in the provisions of this Easement.

Notwithstanding the above, should Landowner determine that the expressed Purposes of this Easement would better be effectuated by the conveyance of an additional easement, Landowner may, with prior approval of the Easement Holder, execute an additional instrument to that effect, provided the additional provisions do not conflict with this Easement's provisions, that the Purposes of this Easement are not diminished thereby, and that any future conservation easement shall be conveyed to and accepted and recorded by either the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas, and agrees to and is capable of enforcing the Purposes of the Easement. Any easement arising after the date of execution of this Easement will be subordinated, by operation of law or otherwise to this Easement.

9. Defense of Laches

Easement holder and Landowner must waive the right to any defense of laches with respect to the rights of the State of New Hampshire to take action in accordance with the terms of the Easement.

10. No requirement to maintain or pay taxes

The State of New Hampshire will not be obligated to maintain the property, or to pay taxes or assessments thereon.

11. Management Activities

The Easement will state that the intent of the Easement is to prohibit those activities that are inconsistent with the purposes of the Easement, and to allow all activities that are not inconsistent with the purposes of the Easement.

12. Benefits and Burdens

The burden of the conditions conveyed hereby shall run with the Easement Area and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its

purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the terms contained herein.

13. General Disclaimer

The State of New Hampshire, and its employees, agents, and assigns disclaim and will not be held responsible for Easement Holder's or Landowner's negligent acts or omissions or Easement Holder's or Landowner's breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the State of New Hampshire may be subject or incur relating to the Easement Area.

14. Environmental Warranty

Landowner warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Landowner warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Easement Area. Landowner further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law. Moreover, Landowner hereby promises to hold harmless and indemnify the State of New Hampshire against all litigation, claims, demands, penalties, and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Easement Area, or arising from or connected with a violation of any Environmental Laws by Landowner or any other prior owner of the Easement Area. Landowner's indemnification obligation will not be affected by any authorizations or approvals provided by the State of New Hampshire to Landowner with respect to the Easement Area.

"Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

15. Amendment

The Easement may be amended only with consent and approval of the State of New Hampshire.

16. Release of State's Right of Enforcement

The State's right of enforcement may be released or terminated only in accordance with NH RSA 432:24, however, and notwithstanding the foregoing, no release or termination of the State's right of enforcement in the Easement Area shall be deemed to eliminate these Easement terms, or any portion thereof, and the Easement Area secured thereby shall continue to be subject to all of the restrictions and other terms and conditions set forth in this Easement.

17. No Merger

Landowner and Easement Holder explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Easement set forth herein are to last in perpetuity and that, to that end, no purchase or transfer of the underlying fee interest in the Easement Area by or to the Easement Holder shall be deemed to eliminate these Easement terms, or any portion thereof, pursuant to the doctrine of "merger" or any other legal doctrine. In the event of any release or termination of the State's rights included herein the Easement Area secured thereby shall continue to be subject to all of the restrictions and other terms and conditions set forth in this Easement.

18. Attachments

- a. Funding Agreement - Applicant and the Department will enter into a Funding Agreement which must be recorded in the chain of title at the applicable county Registry of Deeds. The Agreement may be recorded as an attachment to the Easement or may be recorded separately. Where recorded separately, the Easement must describe the Agreement, and include the date recorded.
- b. Legal Description - *if applicable*

Notwithstanding the foregoing, the Commissioner shall have the right to waive or revise specific deed language requirements contained herein that are in conflict with or jeopardize the participation of other funding sources, including but not limited to National Resources Conservation Services and United States Department of Agriculture, subject to approval by the State of NH, Department of Justice.

APPENDIX C
CONTENTS OF APPLICATION

1. **Applicant Organization** (name, address, phone, website)
2. **Project Representative** (name, title, address, phone, email)
3. **Applicant Org. Type** (Muni, State, Nonprofit, Other)
4. **Property Owner** (name, address, type)
5. **Property Location** (*see also Attachment A, Locus Map*)
6. **Total property size** (*See also Attachment B Site Plan*)
 - A. ___ acres to be conserved including building envelopes
 ___ acres within building envelopes
 - B. ___ acres excluded from easement (area to which the easement will not apply)
 - C. ___ Total property size (A + B = C)
7. **Current Land Use** (*see also Attachment C. Aerial / Land Cover Map*)
 - A. Agricultural Production – Using the current year, or if inactive, most recent productive year:
 ___ acres annual row crops
 ___ acres hay
 ___ acres pasture / grazing
 ___ acres orchard
 ___ acres perennial crops (berries, herbs, grains, grapes, etc. Do not include cover crops)
 ___ acres other agricultural production
 ___ Total number of acres in active agricultural production

 Narrative: Describe types of crops, orchard, livestock, etc.
 - B. Working Forest (include sugar maple or other agroforestry crops)
 ___ acres unmanaged forest
 ___ acres managed forest
 ___ year of most recent forest management plan

 Narrative: Describe the most recent harvests, include acres, species, and amount harvested
 - C. Other Land Use

 Indicate acreage for the other land cover types below.
 ___ acres wetland
 ___ acres surface water
 ___ acres grassland
 ___ acres other 1
 ___ acres other 2

 Narrative: Describe other land use / cover (not described in 7. A or 7. B. above)

8. Topography, Soils (See also, Attachment D, Topography & Soils Map)

Narrative: Describe the property’s soils and topography. Discuss how the soils and/or topography impact agricultural productivity. Discuss any erosion concerns, and how those have been or will be addressed. Describe healthy soils practices and how past land use has impacted soil health.

9. Irrigation (See also Attachment E Water Resources Map)

Narrative: Describe current irrigation sources, discussing quantity of water available, and reliability. Describe how available irrigation sources and/or infrastructure impact agricultural productivity.

10. Current Farm Business Model ___ farmer-owned and operated ___ leased ___ other

Narrative: Describe the current business operation of the farm: discuss ownership, tenure, and current business plan. If leased, describe the number of acres leased, for what use, and remaining term of lease.

11. Access to agricultural markets, services, labor, housing (See also Attachment A Locus Map)

Narrative: Describe the agricultural markets and services available in the general region.

12. Abutting Land Use, Agricultural Land Conversion

Narrative: Describe abutting and local land use patterns. Discuss specifically the compatibility of abutting land uses with agricultural production. Describe recent history of land conversion to nonagricultural uses

13. Farm Infrastructure

Narrative: Provide a brief description of existing farm infrastructure (barns, processing facilities, etc.) shown on Attachment B – Site Plan. Briefly describe their general condition and use.

14. Additional Information

Narrative: Provide other information that would be helpful in evaluating the proposed easement acquisition.

ATTACHMENTS:

- A. Locus Map – Showing regional conserved lands / farmland and agricultural markets and services in the region.
- B. Topography & Soils Map - A United States Department of Agriculture Natural Resources Conservation Service soil map or equivalent of the entire site with topographic lines
- C. Site Plan - A map of the site produced at an appropriate scale for the property showing all areas under the same ownership and identifying all permanent buildings on the property (including any excluded areas).
- D. Aerial / Land Cover Map – clearly showing property boundaries and current land cover types
- E. Water Resources Map – illustrating existence of surface and subsurface water resources. Label current or future irrigation sources.

- F. Landowner Acknowledgement – Landowner’s signed consent to the submission of the Application and acceptance of the ALP Program terms and conditions.
- G. Certificate of Authority– Indicating the individual(s) authorized to submit Applications for funding to, and enter into contracts with the State of New Hampshire.
- H. Other– Attach up to three (3) additional documents supporting the Application. Documents may include letters of support from the municipality in which the property is located or community groups; existing agricultural plans, natural resource inventories or other documents that may be helpful in evaluating the proposed easement acquisition. (Optional)