

## AGRICULTURAL LANDS PRESERVATION REGULATIONS

Section 1. The Regulations of Connecticut State Agencies are amended by adding sections 22-26gg-20 to 22-26gg-40, inclusive, as follows:

### **(NEW) Sec. 22-26gg-20. Definitions.**

Any words, terms or phrases used in these regulations shall have the meanings assigned to them in this section and Chapter 422a of the Connecticut General Statutes.

- (1) “Applicant” means the fee simple owner of agricultural land, or a person or entity lawfully empowered to exercise the rights of the fee simple owner that chooses to voluntarily offer to sell the development rights of such agricultural land;
- (2) “Community farms preservation program” means the program established pursuant to section 22-26nn of the Connecticut General Statutes for the preservation of farmland;
- (3) “Farmland preservation program” means the program established pursuant to section 22-26cc of the Connecticut General Statutes for the acquisition of development rights to agricultural land;
- (4) “Farm roads” means unpaved lanes used for access to interior portions of restricted lands by farm machinery for agricultural planting, maintenance, and harvesting operations;
- (5) “Locally important farmland soils” means soils defined and classified by the United States Department of Agriculture Natural Resources Conservation Service as being of local importance for the production of food, feed, fiber, and forage crops;
- (6) “NRCS” means the Natural Resources Conservation Service of the United States Department of Agriculture;
- (7) “Project” means an application by an applicant who voluntarily offers the development rights to certain agricultural land for purchase by the Commissioner of agriculture and project partners, if any, through the farmland preservation program or the community farms preservation program ;
- (8) “Project partner” means a municipality jointly purchasing development rights to agricultural land, in accordance with section 22-26cc(d) or section 22-26nn(f) of the General Statutes, or a nonprofit organization jointly acquiring development rights to agricultural land, in accordance with section 22-26cc(g) or section 22-26nn(h) of the General Statutes;
- (9) “Residential driveway” means unpaved or paved access from a public road to a residence located on restricted agricultural lands;

(10) “Statewide important farmland soils” means soils defined and classified by the United States Department of Agriculture Natural Resources Conservation Service as being of statewide importance for the production of food, feed, fiber, and forage crops; and

(11) “USDA” means United States Department of Agriculture.

**(NEW) Sec. 22-26gg-21. Application.**

Any applicant who wishes to apply under the farmland preservation program, or apply under the community farms preservation program upon determination of ineligibility under the farmland preservation program, to enter into an agreement with the Commissioner and project partners, if applicable, for the purchase of the development rights of the applicant’s agricultural land, shall do so on a form provided by the Department.

**(NEW) Sec. 22-26gg-22. Procedure for Applicants to voluntarily apply to convey the development rights of their agricultural land to the Department through the Farmland Preservation Program.**

(a) An applicant to the farmland preservation program shall apply on a form provided by the Department, and provide the following information:

- (1) full legal name(s) of the applicant(s);
- (2) property title deed references in municipal land records;
- (3) copies of municipal tax assessor maps and field cards of the property;
- (4) the location, the total acreage, and acreage in active cropland of the property;
- (5) prime farmland, statewide and locally important farmland soils map of the property;
- (6) description of agricultural infrastructure buildings, other structures, water and other utilities;
- (7) any marketing information for selling agricultural products produced on the property;
- (8) copy of conservation plan, current farm business plan, leases, and recent grant awards from the Department, the USDA or other source; and
- (9) such other information as may be requested by the Commissioner.

(b) Upon receipt by the Department of a complete, signed application, the Commissioner shall initiate an evaluation of whether to purchase the development rights, and whether to do so with one or more eligible project partners, if applicable.

**(NEW) Sec. 22-26gg-23. Procedure for Applicants to voluntarily apply to convey the development rights of their agricultural land to the Department through the Community Farms Preservation Program.**

(a) An applicant shall apply community farms preservation program on a form provided by the Department, and provide the following information:

- (1) full legal name(s) of the applicant(s);
- (2) property title deed references in municipal land records;
- (3) copies of municipal tax assessor maps and field cards of the property;
- (4) the location, the total acreage, and acreage in active cropland of the property;
- (5) the amount of cropland of the property available for food and/or fiber production;
- (6) prime farmland, statewide and locally important farmland soils map of the property;
- (7) description of agricultural infrastructure including buildings, other structures, water and other utilities;
- (8) copy of conservation plan, current farm business plan, leases, and recent grant awards; and
- (9) such other information as may be requested by the Commissioner.

(b) Upon receipt by the Department of a complete, signed application, the Commissioner shall initiate an evaluation of whether to purchase the development rights, and whether to do so with one or more eligible project partners, if applicable.

**(NEW) Sec. 22-26gg-24. Scoring Values for Farmland Preservation Program Projects.**

The Commissioner shall use the following scoring values when considering applications for inclusion in the farmland preservation program established pursuant to section 22-26cc of the Connecticut General Statutes. A minimum total score of 65 points from subsections (a) through (j) of this section, is required for any further consideration by the Commissioner.

**PROBABILITY OF LAND BEING SOLD FOR NON-AGRICULTURAL PURPOSES**

(The combined point totals of subsections (a), (b), (c) and (d) shall not exceed twenty points)

(a) Municipal population change occurring over the previous ten years (maximum of 5 points allowed in subsection (a)):

none or decrease	0 points
0 – 1% increase	1 point
1 – 2% increase	2 points
2 – 3% increase	3 points
3 – 4% increase	4 points
5% or greater	5 points

(b) Amount of farmland or open space converted to non-agricultural uses within the municipality over the previous five years (per property sales and changes to land designation under sections 12-107a to 107-f, inclusive, of Connecticut General Statutes, from municipal tax assessor (maximum of 5 points allowed in subsection (b)):

none	0 points
0 – 50 acres	1 point
50 – 100 acres	2 points
100 – 150 acres	3 points
150 – 200 acres	4 points

more than 200 acres                      5 points

- (c) Amount of cumulative road frontage, according to municipal tax assessment, or municipal and/or regional council of government assessment of potential interior road frontage, based on current zoning (maximum of 5 points allowed in subsection (c)):

0 – 150 feet	0 points
150 – 300 feet	1 point
300 – 450 feet	2 points
450 – 600 feet	3 points
600 – 750 feet	4 points
more than 750 feet	5 points

- (d) Estate planning, farm business planning, existing leases (only one selection possible, maximum of 10 points allowed in subsection (d)):

Offered farmland is being farmed by the owner with an existing farm business plan (10 points)

Existing estate planning or settlement directing assets to next generation of farmers (10 points)

Owner actively seeking a farmer as a buyer through Connecticut Farmlink, or will be selling to current farm lessee (10 points)

Offered farmland is subject to a written lease held by an agricultural producer for at least five years (7 points)

Offered farmland is subject to a written lease held by an agricultural producer for a duration of one to four years (4 points)

**CURRENT PRODUCTIVITY AND LIKELIHOOD OF CONTINUED PRODUCTIVITY FOR AGRICULTURE, MITIGATION OF FLOOD HAZARDS** (subsections (e) and (f) shall not exceed twenty points)

- (e) Method of marketing the agricultural products produced on the farmland (maximum of 10 points allowed in subsection (e)):

Regular agricultural cooperative, farm-to-school, and/or farm-to institution contract	10 points
Offered farmland acreage part of community-supported-agriculture (CSA) operation	10 points
On-farm store or farm stand sales	10 points
Consumer “pick-your-own” operation on the offered farmland	10 points
Agricultural producers sell agricultural products at off-site farmers market(s)	8 points
Delivery and/or distribution of agricultural products	

produced on the offered farmland 8 points

(f) Active farmland within a five-mile radius and the existence of flood hazard mitigation (maximum of 10 points allowed in subsection (f)):

200 acres or less	0 points
201 - 300 acres	2 points
301 - 500 acres	4 points
501 - 800 acres	6 points
801 - 1000 acres	8 points
more than 1000 acres	10 points
the land consists of floodplain with significant flood storage capacity	5 points

**CONTRIBUTION TO STATE’S AGRICULTURAL PRESERVATION POTENTIAL, AND SOIL CLASSIFICATION** (subsections g – i)

(g) Total cropland offered (maximum of 20 points allowed in subsection (g)):

0 - 4 acres	0 points
5 - 9 acres	4 points
10 - 19 acres	8 points
20 - 29 acres	12 points
30 - 39 acres	16 points
40 acres or more	20 points

(h) Quantity of farmland offered that is classified as prime farmland, statewide important and locally important farmland soils (maximum of 20 points allowed in subsection (h)):

less than 10 acres	0 points
10 - 19 acres	4 points
20 - 29 acres	8 points
30 - 39 acres	12 points
40 - 49 acres	16 points
50 acres or more	20 points

(i) Percentage of cropland in application that contains prime farmland, statewide important and locally important farmland soils (maximum of 10 points allowed in subsection (i)):

20% or less	0 points
20 - 34%	2 points
35 - 49%	4 points
50 - 64%	6 points
65 - 79%	8 points
80% or more	10 points

**COST OF ACQUIRING SUCH RIGHTS** (subsection (j))

(j) Cost-share contributions towards the purchase of development rights (maximum of 15 points allowed in subsection (j)):

The offered farmland meets the criteria for the USDA farmland preservation funding program, or other equivalent federal cost-share program (10 points)

The offered farmland will have a Project partner provide a cost-share contribution to the Project (5 points)

**(NEW) Sec. 22-26gg-25. Scoring Values for Community Farms Preservation Program Projects**

The Commissioner shall use the following scoring values when considering applications for inclusion in the community farms preservation program established pursuant to section 22-26nn of the Connecticut General Statutes. A minimum total score of 70 points from subsections (a) to (j), inclusive, of this section, is required for further consideration by the Commissioner.

**SUITABILITY OF THE LAND FOR AGRICULTURAL USE** (Combined point totals of subsections (a) and (b) shall not exceed twenty-five points))

(a) One point for each acre of land offered that is classified as having prime farmland, or statewide or locally important farmland soils (maximum of 15 points allowed in subsection (a)).

(b) The offered farmland meets the criteria for USDA farmland preservation funding program, or other equivalent federal cost-share program (10 points).

**PROBABILITY THAT THE LAND WILL BE SOLD FOR NON-AGRICULTURAL PURPOSES** (Combined point totals of subsections (c), (d), and (e), shall not exceed twenty-five points):

(c) Municipal population change occurring over the previous ten years (maximum of 5 points allowed in subsection (c)):

none or decrease	0 points
0 – 1% increase	1 point
1 – 2% increase	2 points
2 – 3% increase	3 points
3 – 4% increase	4 points
5% or greater	5 points

(d) Amount of farmland, forest land, or open space converted to non-agricultural uses within the municipality over the previous five years (per property sales and changes to land

designation under sections 12-107a to 107-f, inclusive, of the Connecticut General Statutes, from municipal tax assessor, maximum of 10 points allowed in subsection (d):

none	0 points
0 – 50 acres	2 point
50 – 100 acres	4 points
100 – 150 acres	6 points
150 – 200 acres	8 points
more than 200 acres	10 points

- (e) Estate planning, farm business planning, existing leases (only one selection possible, maximum of 10 points allowed in subsection(e):

Offered farmland is being farmed by the owner with an existing farm business plan (10 points)

Existing estate planning or settlement directing assets to next generation of farmers (10 points)

Owner actively seeking a farmer as a buyer through Connecticut Farmlink, or will be selling to current farm lessee (10 points)

Offered farmland is subject to a written lease held by an agricultural producer for at least five years (7 points)

Offered farmland is subject to a written lease held by an agricultural producer for a duration of one to four years (4 points)

**THE CURRENT PRODUCTIVITY AND THE LIKELIHOOD OF CONTINUED PRODUCTIVITY OF THE FARMLAND** (Combined point totals of subsections (f), (g) and (h) shall not exceed twenty-five points)

- (f) Existing farm infrastructure (only one selection possible, maximum of 7 points allowed in subsection (f):

Agricultural buildings and structures are functional and need only minor renovations (2 points)

Agricultural buildings and structures are functional and do not need renovations (3 points)

Offered farmland currently supports a core farm which is owned by the applicant and the core farm contains a functional farmhouse, agricultural building and structure (5 points)

Offered farmland currently supports a core farm that is owned by the applicant, the core farm contains functional agricultural buildings and structures, and the core farm is preserved agricultural land with an existing conservation restriction. (7 points)

(g) Amount of cropland in food or fiber production, whether by owner or lessee, as a percentage of the total farmland being preserved (maximum of 8 points allowed in subsection (g)):

less than 20%	0 points
20-40%	2 points
40-60%	4 points
60-80%	6 points
80-100%	8 points

(h) Likelihood of continued productivity of the farmland (must consider all items and calculate total points, maximum of 10 points allowed in subsection (h)):

Owner abides by a current NRCS soil conservation plan or restoration plan (3 points)

Offered farmland has been in/or is currently part of the Farmland Restoration Program operated by the Department (4 points)

Offered farmland has been in active agricultural production for at least the prior five years (5 points)

Irrigation water is or will be available on the offered farmland by the time the offered farmland is preserved (5 points)

(i) **DEMONSTRATED LEVEL OF COMMUNITY SUPPORT** (Combined point totals shall not exceed twenty-five points allowed in subsection (i))

At least one municipality, land conservation organization or community nonprofit organization agrees to become a project partner and assists with the due diligence process or with acquiring farmland preservation funding contribution toward the acquisition of development rights	16 points
Regular farm-to-school contract	2 points
Offered farmland acreage part of Community-supported-agriculture (CSA) operation	4 points
On-farm store or farm stand sales	2 points
Consumer “pick-your-own” operation on the offered farmland	2 points
Sale of agricultural products at Connecticut farmers market(s)	2 points

**(NEW) Sec. 22-26gg-26. Evaluations of applications by the Commissioner. Notification of Project Status. Configuration Agreement.**

- (a) The Commissioner shall evaluate an application using statutory requirements and the applicable regulatory scoring values for both the farmland preservation program and the community farms preservation program proposed project acquisition.
- (b) If the Commissioner rejects an application, the Department shall notify the applicant in writing. Such notification shall include the reason for rejection. The Commissioner shall notify any applicable project partner of any project which has been rejected.
- (c) Based on the application, the scoring value evaluation provided for by these regulations, and in accordance with sections 22-26cc and 22-26nn of the Connecticut General Statutes, the amount of agricultural land designated for further consideration as a proposed project acquisition for the farmland preservation program or the community farms preservation program, shall be negotiated and mutually agreed upon between the Commissioner or designee, and the applicant through a signed configuration agreement.

**(NEW) Sec. 22-26gg-27. Evaluations of Projects by the Commissioner.**

- (a) Once a proposed project has a signed configuration agreement, the Commissioner may request the Office of Attorney General to assign an outside attorney to prepare and provide to the Commissioner a title report including chain of title, preliminary certificate of title, and list of any existing easements or encumbrances.
- (b) Upon receipt and review of a preliminary title report, the Commissioner may acquire one or more appraisals to assess the value of the development rights, or reject the proposed project based on title encumbrances, defects, or other legal or financial considerations.

**(NEW) Sec. 22-26gg-28. Appraisals of Value of Development Rights. Qualified Appraisers. Determination by Commissioner. Notification.**

- (a) The value of development rights for proposed project acreage shall be determined by one or more appraisers, which appraisers shall be licensed by the State of Connecticut Department of Consumer Protection and selected by the Commissioner. No appraisal shall be performed at the Commissioner's expense unless the appraisal is previously approved in writing by the Commissioner.
- (b) Project partners, at their own expense, may have proposed projects appraised by one or more appraisers. Such appraisals may be submitted to the Commissioner for review and consideration, provided the appraisals are performed consistent with the requirements of subsection (a) of this section.
- (c) Applicants, at their own expense, may have their proposed project appraised by one or more appraisers. Such appraisals shall be considered by the Commissioner, provided that the appraisals are performed consistent with the requirements of subsection (a) of this section.

(d) Final determination of the value of development rights for proposed project acreage shall be determined by the Commissioner in accordance with sections 22-26cc and 22-26nn of the Connecticut General Statutes, as applicable.

**(NEW) Sec. 22-26gg-29. Share of State of Connecticut Contributions for Joint Purchase with a Project Partner of Development Rights.**

(a) The State of Connecticut may require a contribution for any proposed project with any project partner proposed project. The contribution may include any federal funding, municipally sourced funding, and private contributions.

(b) The Commissioner shall set aside available funds as proposed projects are approved after the value of development rights for such projects have been determined by appraisals acceptable to the Commissioner.

(c) The combined total of all cost-share contributions to a purchase of development rights cannot exceed the value of development rights as determined by the property appraisal reviewed by the Commissioner.

(d) In no event shall the State of Connecticut pay more per acre of land subject to deeded development rights restrictions than permitted by section 22-26gg of the Connecticut general statutes.

**(NEW) Sec. 22-26gg-30. Agreement for the Joint Acquisition of Development Rights with Project Partner.**

(a) After the Commissioner's determination of the value of development rights for the proposed project acreage, but prior to offering to purchase the development rights from an applicant owner, the Commissioner and each project partner, if any, shall enter into a written agreement. Such agreement shall specifically include, at a minimum, the following:

- (1) Available USDA or other federal funding contribution for the proposed project, if applicable;
- (2) Maximum contribution for joint purchase of development rights to be provided by the State of Connecticut;
- (3) Minimum contribution for joint purchase of development rights to be provided by each project partner through municipally sourced funding, and private contribution, as applicable;
- (4) The proposed development rights ownership interest of each project partner, if any, and as applicable;

- (5) The representative of each project partner authorized to negotiate with the Department and the applicant for purchase of development rights;
- (6) A procedure for the adjustment of price based on an A-2 survey acreage adjustment; and
- (7) The monitoring of the development rights deed restrictions by the Department and each project partner, if any, and as applicable.

(b) The Agreement is to be signed by the Commissioner and each project partner's authorized signatory.

**(NEW) Sec. 22-26gg-31. Agreement for the Purchase of Development Rights with the Applicant.**

(a) If the Commissioner decides to acquire the development rights to certain agricultural lands, the Commissioner and the applicant shall enter into a Purchase of Development Rights Agreement. The Commissioner shall be the chief negotiator for the purchase of development rights for the project.

(b) Only one project partner designated negotiator may be involved in negotiations with the applicant and the Commissioner.

(c) The Purchase of Development Rights Agreement shall be on a form provided by the Commissioner. Such agreement shall include at a minimum:

- (1) identification of all parties;
- (2) description of the agricultural land acreage for which the development rights will be sold;
- (3) any requirements that must be met before conveyance of development rights may take place;
- (4) the development rights purchase price per acre, with the final sum to be determined upon completion of a class A-2 survey;
- (5) a condition that the Commissioner may unilaterally reduce the acreage of the agricultural land that is subject to the development rights to exclude any areas of encroachment or contested title;
- (6) a condition that the conveyance of a development rights deed shall contain provisions as the Commissioner deems necessary to fulfill the purposes of Chapter 422a of the Connecticut General Statutes;
- (7) a condition that the conveyance of a development rights deed shall contain provisions as the Commissioner deems necessary to fulfill the purposes of the USDA,

or any successor federal funding program for farmland preservation, in accordance with sections 22-26cc(j) and 22-26nn(k) of the Connecticut General Statutes, and

(8) a condition that the conveyance of a development rights deed is subject to any applicable statutory approvals by the State Properties Review Board, and the Office of the Attorney General.

(d) The Purchase of Development Rights Agreement may be withdrawn by the Commissioner any time prior to acceptance by the applicant for any reason without cause.

(e) Notice of the Purchase of Development Rights shall be filed in the land records where the agricultural land is situated in accordance with sections 22-26-cc and 22-26nn of the Connecticut General Statutes.

**(NEW) Sec. 22-26gg-32. Conveyance of development rights.**

(a) The Commissioner shall determine the acreage or arable lands and prime farmland, and statewide and locally important farmland soils present at the time of purchase of development rights by the state. Aerial photographs, property surveys, soil surveys, and on-site inspections may be used to determine acreage.

(b) At time of the conveyance, the applicant shall deliver on a form provided by the State, a warranty deed conveying marketable title in and to the development rights of the property, naming the State, and if any and if applicable, any project partner, as grantees.

(c) Deeds of the purchased development rights on affected land shall be filed in the land records of each municipality where the land is located and in the Office of the Secretary of State.

**(NEW) Sec. 22-26gg-33. Enforcement of restrictions.**

(a) The Commissioner and each project partner shall cooperate in the monitoring of the development rights deed restrictions placed on a project. Development rights restrictions shall be enforced by the Commissioner.

(b) Inspections of development rights deed restrictions placed on a project property for compliance of restrictions shall be performed by the Commissioner in accordance with the associated deed and with statutory requirements. The designated agent of an applicable project partner shall be notified prior to onsite inspections and may accompany the Commissioner during such inspection.

**(NEW) Sec. 22-26gg-34. Owner's responsibility to obtain permission from the Commissioner for activities affecting restricted land.**

(a) An owner of land subject to development rights acquired by the State of Connecticut pursuant to Chapter 422a of the Connecticut General Statutes shall notify the Commissioner in writing, on a form provided by the Commissioner, of any of the following proposed activities:

- (1) Special events or re-occurring events;
- (2) Construction of a building, addition to an existing buildings, structure, road, or other improvement to the land, including a non-commercial on-site energy generation and use system;
- (3) Construction of a residence, residential driveway, or addition to an existing residence for any person directly incidental to the farm operation;
- (4) Land clearing and any other land disturbance, and the temporary stockpiling of prime farmland, or statewide or locally important farmland soils;
- (5) Gravel excavation;
- (6) Lease of the entirety or any portion of the land subject to development rights. The owner shall provide the Commissioner with the terms and duration of the lease, and the contact information of the lessee.

(b) The Commissioner or designee shall evaluate any proposed activity for conformance with any restriction in the deed of conveyance of the development rights, and notify the owner, in writing, if the proposed activity is approved or denied.

**(NEW) Sec 22-26gg-35. Sale of Land Subject to Development Rights. Notification by Owner.**

If land subject to development rights acquired by the State of Connecticut pursuant to Chapter 422a of the Connecticut General Statutes is to be sold, the owner shall notify the Commissioner in writing of such impending sale not more than ninety days before transfer of title to the land and shall include the name and address of the prospective buyer.

**(NEW) Sec. 22-26gg-36. --- 22-26gg-40. Reserved.**

Section 2. Sec. 22-26gg-1a, 2, 3, 4c, 5 through 19 are repealed.

**Detailed description of the proposed regulation**

Section 22-26gg of the general statutes provides that the Department of Agriculture adopt regulations as the commissioner deems necessary to carry out the purposes of the Farmland Preservation Program and the Community Farms Program, sections 22-26aa to 22-26nn, inclusive.

These regulations have not been updated since 1991. The proposed updated regulations will acknowledge the United States Department of Agriculture (USDA) Agricultural Lands Easement Program, established in 1996, the USDA locally-important farmland soils classification established for the State of Connecticut in 2010, and the decreasing size of farmland properties over the past thirty years.

The proposed regulations will outline the specific procedure for applying to the farmland preservation program and the community farms program, the scoring values of said programs, application evaluation procedure, project partnership considerations, agreements for the purchase of the development rights, enforcement of deed restrictions, and notification and approval for activities on restricted land.

**Statement of Purpose for which the regulation is proposed**

To update existing regulations for the Farmland Preservation Program and establish regulations for the Community Farms Preservation Program. The regulations are required by C.G.S. § 22-26gg and C.G.S. § 22-26nn and will provide standards and scoring criteria for application evaluation and program eligibility.