

# THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



## Department of Agricultural Resources

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CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lt. Governor

MATTHEW A. BEATON  
Secretary

JOHN LEBEAUX  
Commissioner

### FINAL

### Meeting Minutes Board of Agriculture Fish and Game Offices, Westborough, MA

08/11/16

**Board Members in Attendance:** Judy C. Leab, Fred Dabney, Laura Abrams, Michael Smolak, Lucinda Williams, Lydia Sisson, Laura Sapienza-Grabski, Donald R. Chase and Michelle Harvey, Allison Carr and John Lebeaux.

- 1. Call to Order:** Chairwoman Leab called the meeting to order at 10:05AM.
- 2. Attendance:** Chairwoman Leab noted the Board has a quorum.
- 3. Minutes Summary:** The Board considered for approval the meeting minutes of 06/09/16.  
**Action Taken:** Two changes were proposed, a correction of an incomplete sentence to be deleted, and a request to add a comment made by Mr. Dabney regarding the APR presentation. Ms. Abrams made a motion to approve the meeting minutes as amended. The motion was seconded by Mr. Chase and the minutes were unanimously voted for approval with amended corrections as noted.
- 4. New Business:**  
**Commissioner's Report:** Commissioner Lebeaux provided the Board a copy of his report (attached) and reported on the following items: staffing updates, budget updates, drought conditions, NEASDA 2016 annual summer meeting and legislative updates. Throughout and following the Commissioner's report Board members discussed some of the various topics. The Chair requested that the names of new employees be provided at the next meeting.

**Discussion regarding the drought:** An extensive discussion ensued regarding each Board members experiences with drought conditions as well as information they received from the general agricultural community, such as dairy farms without corn or hay may need to sell cows; ornamental industry is in a holding pattern as plants cannot be installed without a water sources; cranberry industry worried about water for harvesting. Laura Sapienza-Grabski offered to engage agricultural commissions in discussions with towns. The Commissioner stated that he requested guidance from EEA on overall rules about water withdrawal and that a drought task force was already convened to discuss these matters. MDAR can provide longer term assistance by grants such as AEEP. The Commissioner stated that he would bring a map showing locations of grants at the next meeting. A longer discussion regarding town prioritization of water resources resulting in a Board Action:

**Action Taken:** A motion was made by Laura Sapienza-Grabski as follows: Motion to direct Commissioner of MDAR to petition the Executive Office for a declaration of a drought disaster for Massachusetts agriculture. The Motion was seconded by Lucinda Williams. The Motion was unanimously approved. See attached letter to Secretary Beaton.

**Discussion regarding legislative updates:** The Board discussed the fact that the Livestock Care Bill was not passed. The Commissioner reported on a related matter that recently occurred in Westport and informed the Board how local animal inspectors are appointed.

**Discussion regarding regulations update:** The Commissioner provided the status of the regulatory review, including the fact that the nutrient management regulations have not yet been approved for public hearing.

**Action Taken:** A motion was made by Laura Sapienza-Grabski as follows: Motion to recommend that the administration expedite review of the plant nutrient management regulations in order to make sure that agricultural planning can properly be achieved for 2017. The Motion was seconded by Lucinda Williams. The Motion was unanimously approved

5. **APR Questions:** Laura Sapienza-Grabski handed the Board her recommendations as to the APR program. Discussion ensued and several of the Board members noted that there are two sides to every issue. The Commissioner noted that MDAR will continue to review all programs internally and with the ALPC, that he has found that most farmers are happy with the APR Program and that any complaints may be directed to him for review. The Commissioner also provided a history of the changing terms of the APR over the past thirty years and specifically about the option at agricultural value. **Action Taken:** None. See attached APR recommendations from Laura Sapienza-Grabski.
6. **Insect Control:** The Commissioner provided an updated that no spraying was done by the state so far this year for mosquitos or gypsy moths. The Chairwoman noted that the maple industry is concerned about gypsy moth damage. **Action Taken:** None.

**Old Business:**

7. **Status of Board Members:** The Commissioner noted that he contacted the office of Boards and Commissioners and is continues to review a candidate for the position. He requested that the candidate be approved or disqualified by the Board before the next meeting. Forestry, aquaculture, and apiary were noted as areas of agriculture not represented on the Board. **Action Taken:** None.
8. **Regulatory Review:** (see above Motion regarding plant nutrient regulations).
9. **Other Business:** Allison Card noted that the cranberry industry will have a display at the Big E this year on Mass. Day and requested that all Board members visit. Fred Dabney requested an update on the Food Action Plan at the next meeting. Laura Sapienza-Grabski inquired what the money for the AG License plate goes towards; the Commissioner stated that the Farmer's Market Association runs that program but he will reach out and request additional information for the next meeting. Lydia Sisson noted that a Food Justice event will take place on August 19<sup>th</sup> and invited Board members. Laura Sapienza-Grabski noted that the Mass Aqua Culture Association and the Ag Commissions will be doing tours in Duxbury on Aug. 17<sup>th</sup> and invited Board members.

**10. Date, Time and Location of Next Meeting:**

- September 22<sup>nd</sup> at 11:00 AM at the Big E in West Springfield.

11. **Adjournment: Action Taken:** Michael Smolak made a motion to adjourn the meeting. The motion was seconded by Laura Abrams. The Board voted unanimously to adjourn the meeting at 12:50pm.

## COMMISSIONER'S REPORT

### MASSACHUSETTS BOARD OF AGRICULTURE

Thursday, August 11th, 2016

Division of Fisheries and Wildlife

Westborough, MA

**1. Staffing Updates:** The Animal Health Division has backfilled two new Animal Health Inspectors that started on July 17<sup>th</sup>. In the Crop and Pest Division, a contracted seasonal to coordinate Forest Pest Outreach began with the Department on August 1<sup>st</sup>. Upcoming, the Fiscal Office will have a new Grants Manager beginning on August 21<sup>st</sup> and a new Operations Coordinator for the State Reclamation & Mosquito Control Board will start on September 21<sup>st</sup>. These positions were vacated by staff that moved on to new opportunities. Currently, MDAR has one vacant Pesticide Inspector position going through the hiring process.

#### **2. Budget Updates:**

**FY16:** MDAR is in the final month of FY16 Accounts Payable. When the agency closes the books at the end of the month it is anticipated the agency will have expended approximately \$37 million on budgetary, capital, federal and trust programs. Details on final FY16 spending will be available for the next Ag board meeting.

**FY17:** The Legislature overrode the Governor's vetoes and enacted the Conference Committee's recommended FY 17 budget for MDAR. The Governor had proposed the following vetoes:

- Administration Account (2511-0100): Reduction of the SRB mosquito control earmark to \$100K and elimination of the City of New Bedford Fruit Tree initiative earmark (\$50K).
- Supplemental Food Account (2511-0105): Elimination of all \$165K in earmarks and return the funding for the Supplemental Food Program to the FY16 GAA level of \$17 million.

#### **FY17 GAA**

##### **Administration Account (2511-0100)**

Total Administration Account funding is \$5,629,445. This funding includes the following earmarks:

- |                                     |        |
|-------------------------------------|--------|
| • Buy Local Program                 | \$300K |
| • SRB Mosquito Control              | \$200K |
| • Farm to School Program            | \$120K |
| • Apiary Program                    | \$ 90K |
| • New Bedford City Fruit Initiative | \$ 50K |

A comparison of the FY17 GAA to the FY16 GAA (all earmarks excluded) shows a decrease of \$330,353 in operating funds. This \$330,353 decrease is a result of the FY16 Early Retirement Incentive Program and HR consolidation. However, the FY17 GAA is \$289,698 greater than the Governor's H2 budget proposal.

**Supplemental Food Account (2511-0105):** Funding of \$17.5 million has been appropriated with an additional \$165K in earmarks. The earmarks are as follows: Cambridge Weekend Backpack Program \$110K, Spanish American Center \$30K and Food for the World \$25K. Total Supplemental Food Account funding is \$17,665,000. FY16 funding was \$17 million with an additional \$160K in earmarks.

**IPM (2511-3002):** IPM account was level funded at the FY16 GAA amount of \$57,553.

**ANF 1% Set Aside:** Administration and Finance (ANF) has set aside 1% of all agency budgetary funding with the exception of earmarks to generate savings and balance the FY17 budget. The MDAR Admin Account and the Supplemental Food Account have seen 1% of their FY17 GAA appropriated amount set aside. Below please find the description of the set aside as issued by ANF:

"As part of the legislative mandate that the Administration find efficiency savings in the FY17 budget, A&F will be working with agencies during the spending plan process to set aside 1% of budgeted payroll and funding in other

discretionary object classes. The goal is to generate savings on the margin across a broad swath of state appropriations, and to manage to those savings numbers right from the beginning of the year.”

**Interim Hiring Controls:** To further attain savings ANF has implemented a hiring freeze for Executive agencies from **budgetary/state** and **capital** accounts.

**9C Cuts:** The possibility of 9C cuts is being raised at this time. Section 9C of Chapter 29 of the Massachusetts General Laws requires that when projected revenue is less than projected spending, the Governor must act to ensure that the budget is brought into balance.

		FY2016 GAA	FY2016 GAA Post ERIP/9C	FY2017 DAR Budget Request	FY2017 House 2	FY2017 House Budget	FY2017 Senate	FY2017 Conference Final	FY2017 GAA
<b>Budgetary Direct Appropriations</b>		<b>23,243</b>	<b>22,674</b>	<b>22,895</b>	<b>22,148</b>	<b>23,453</b>	<b>23,582</b>	<b>23,352</b>	<b>23,352</b>
2511-0100	Department of Agricultural Resources	6,025	5,456	5,675	5,090	5,730	5,379	5,629	5,629
2511-0105	Emergency Food Assistance Program	17,160	17,160	17,160	17,000	17,665	18,140	17,665	17,665
2511-3002	Integrated Pest Management Program	58	58	60	58	58	63	58	58

Color Code

Date: 080816

- Agency's FY16 Budget
  - Agency's FY16 Budget Post ERIP/9C
  - MDAR's FY17 Budget Request to ANF
  - Governor's FY17 Budget Proposal
  - House Budget
  - Senate WM Budget
  - Conference Committee Budget
  - General Appropriations Act (Final Budget)
- 3. Drought Conditions:**

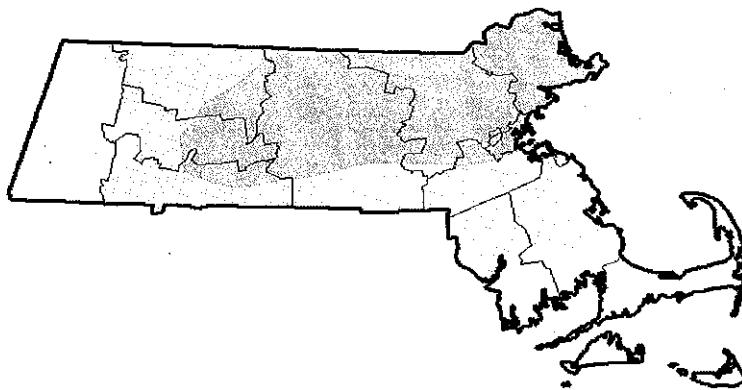
**4. Drought Conditions:** MDAR is continuing to collect information on the impacts of the drought to farmers and the agricultural community. The goal in assessing the environmental and economic impacts is to identify any short and long term solutions and resources to help ensure sustainability of farmers, nurseries and related businesses.

As of 8/4/16:  
**KEY FACTS:**

- **Nationally:** As of 7/28, the USDA's Farm Service Agency (FSA) designated parts of Alabama, California, Georgia, Montana, Nebraska, North Carolina, South Dakota, Tennessee and Wyoming as primary natural disaster areas due to agricultural damages and losses caused by drought conditions.
- **Northeast Region:** As of July 26<sup>th</sup>, with 23% of the Northeast in a drought (according to the U.S. Drought Monitor), impacts of the drought in the region are obvious in the agricultural sector. USDA, Soil Reports from early July showed topsoil moisture rated short or very short for 51% of New York and 60% of New England, while subsoil moisture rated short or very short for 47% of New York and 56% of New England. Many farms need irrigation to prevent the dry conditions from hindering growth, stressing crops, and reducing yield. For example, pastures were stunted and corn was curling in parts of central New York.
- **Massachusetts:** USDA, Soil Reports (early July) several farms in northeastern Massachusetts reported crop losses due to non-irrigated fields being too dry to plant or seeds not emerging after planting. On July 24<sup>th</sup> the USDA rating for topsoil moisture at least half short to very short in MA. To-date, impacts on MA agriculture from drought conditions vary by county.

## U.S. Drought Monitor Massachusetts

**July 26, 2016**  
(Released Thursday, Jul. 28, 2016)  
Valid 8 a.m. EDT



Drought Conditions (Percent Area)

	None	D0-D4	D1-D4	D2-D4	D3-D4	D4
<b>Current</b>	0.70	99.30	74.08	39.77	0.00	0.00
<b>Last Week</b> 7/19/2016	0.70	99.30	74.08	33.69	0.00	0.00
<b>3 Months Ago</b> 4/26/2016	60.30	19.70	0.00	0.00	0.00	0.00
<b>Start of Calendar Year</b> 12/22/2015	22.85	77.15	26.34	0.00	0.00	0.00
<b>Start of Water Year</b> 9/26/2015	12.90	87.10	30.43	0.00	0.00	0.00
<b>One Year Ago</b> 7/28/2015	87.33	12.67	0.00	0.00	0.00	0.00

**Intensity:**

- D0 Abnormally Dry
- D1 Moderate Drought
- D2 Severe Drought
- D3 Extreme Drought
- D4 Exceptional Drought

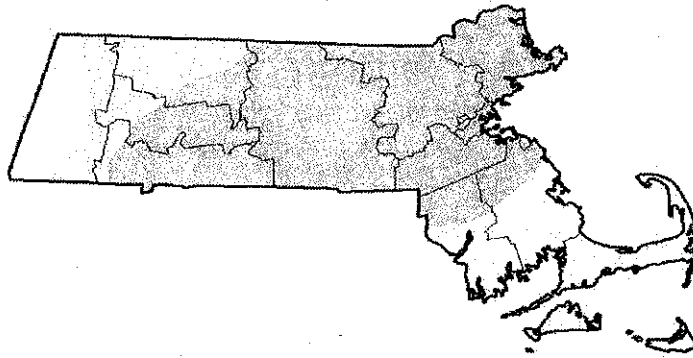
*The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. See accompanying text summary for forecast statements.*

**Author:**  
Brad Puppey  
U.S. Department of Agriculture



<http://droughtmonitor.unl.edu/>

**As of August 4<sup>th</sup>:** Per the U.S. Monitor, there was a signification (22%) increase in the area in defined as 'severe drought' status (see map below). The area under 'severe drought' has now expanded into southern Worcester, all of Norfolk, most of Hampden, northern Bristol and Plymouth Counties.



**OBSERVATIONS:**

Dairy farmers are growing concerned of their absolute need to clean all milking equipment after every milking. Amount of water varies depending on type of equipment and number of milking a day (either 2x or 3x). One sizeable operational needs a minimum of 200 gallons per cleaning, 3x a day, 7x a week.

Farmers are finding uncertainty when seeking guidance from municipal and state agencies relative to surface water withdrawal from nearby water sources.

County	Farm Type	Name	Environmental Impacts	Economic Impacts	Loss Revenue/ Costs \$	Options/Solutions
Various	Dairy	Various	Lack of water impacts dairy farms ability to maintain clean milking equipment, as required. Cow Corn losses and dry pastures; probably won't get a good 2nd cut of hay and most likely no 3rd cut.	Farms would be unable to supply the milk to the market; this is on top of already low milk prices. Trying to buy feed to compensate for crop loss of cow corn & hay will be very difficult.	TBD	Farmers need to dig wells to provide relief to livestock and to crops...to fill ponds. Cost for a well approx.. \$8 - \$10,000. A new well can be put in a few days. Farmers would need to get a permit from their town.
Worcester	Various	Worcester County Farm Services	Things are pretty bad throughout the county; desperately in need of water. Pumpkin farmers realize they won't have a crop; only 30% of seeds have germinated. Farmers are watering just to keep plants alive in hope of some production/harvest.	Financial losses due to partial &/or total loss of products.	TBD	Irrigation for the future.
Franklin, Hampshire, Hampden	Vegetables, Berries	Pioneer Valley Growers Assoc	Cow corn and potato crop suffering for lack of irrigation/water. Farmers having to make choices between which crops they will water. Yields for winter crops such as pumpkins/winter squashes will be down. Crop Loss: For some crops it's too soon to analyze the damage; more loss reports will become apparent over the next couple of weeks/mid-August.	Farms will be limited in how much/if any produce/fruit they can sell. Buyers will be calling in about 2wks for fall crops as they prepare store ads.	TBD	
Essex	Fruit, Diverse	Smolak	80% of XMAS trees dried up w/ no way to water; apples not growing, row crops limited watering but struggling; agritourism corn maze curling up.	Direct costs for water and energy to run the system is piling up.	TBD	Farmer started planning earlier to drill more wells on both farms to extend the reach to make them more drought proof.
Middlesex	Wholesale grower, greenhouse	JP Bartlett/Abrams	Out of a 5 acre field, had to stop watering 1/2 of it to ensure enough water for peppers contracted to grown.	Grower had to buy buy vegetables to support their farm stand. Water, uses private well. Town water would cost \$10k to put in. Loss revenue to-date \$7k; plus CSA share refund to-date for having to buy produce \$4k. Will have to buy winter squash & pumpkins also.	\$11,000 to-date, Individual farm business	
Plymouth/Bristol	Cranberry Growers	CCCG's Assoc	Extreme concerned w/current water levels in irrigation systems, whether in swamps, recharge, spring feed pond and surface waters. They are also having their irrigations limited to very short irrigations cycles or risk having their suction boxes in the mud.	Ultimately fruit size is a dire concern as we are paid by the weight of our fruit.	TBD	Growers seeking assistance from USDA, FSA loans for crop losses. Growers looking to expand the water capacity, but don't necessarily have the money to do that. Emergency funds could help. Survey how many growers are in this critical juncture. Funding for: the installation of lift pumps to move water up hill, assist with impacts from excessive pumping to recirculate waters from lower levels to high levels, emergency excavation of irrigation canals to allow water to efficiently flow, rental of excavation equipment

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**MA Farmers Drought Survey**, on August 1<sup>st</sup>, 2016 UMASS Extension, on behalf of USDA Farm Services Agency (FSA) , released a survey to MA farmers to assess the extent of crop damage statewide. The survey asks farmers about any crops for which a loss 30% or more within a specific county are due to current drought conditions. Farmers may list up to 5 crops starting with the crop(s) for which the farmer experienced the greatest loss. Survey responses are due by August 19<sup>th</sup>.

**USDA Farm Service Agency (FSA) Low-Interest Loans, Drought Disaster Declaration and Disaster Relief:** Pending its results, the above UMASS Extension survey may qualify farmers for low-interest loans to

recover economic losses due to the drought. The FSA requires documentation of the extent of crop loss for each county in MA in order to seek a disaster declaration and disaster relief for MA farmers. Designated areas are eligible for low interest emergency loans from the FSA, provided eligibility requirements are met. Farmers have eight months from the date of the declaration to apply for loans to help cover part of their actual losses. Farmers in neighboring states/specific counties may also qualify for assistance.

#### **Next Steps:**

As drought impact information continues to come in MDAR is in communication with EEA, other state agencies, UMASS Extension, the USDA and other partners to strengthen and expand ways to support farmers and the agricultural industry.

5. **NEASDA 2016 Annual Summer Meeting, Rockport, Maine:** At the Northeastern Association of State Departments of Agriculture held in Rockport, Maine from June 12<sup>th</sup> to June 15<sup>th</sup> participating states included: Rhode Island, New Hampshire, Maine, New Jersey, Vermont, Connecticut, Pennsylvania and New York. Delaware was not present. The NEASDA Board voted Commissioner Lebeaux as the incoming Secretary/Treasurer effective September 2016. Common themes from state reports across the region included: the food safety modernization act (FSMA), food systems plans, pollinator health and attempts to ban neonics, challenges to dairy farms and their declining numbers, marijuana legislation and lack of a national, uniform framework on GMO labeling. A presentation by Farm Credit East on the Northeast Agricultural economic outlook indicates multiple Ag sectors are in long-term down cycles at once with the exception of fresh-market vegetables and horticulture. Input costs have moderated particularly in energy expenditures. Farm labor costs (and availability) remains a top concern. Additional discussions and presentations included international trade and the Trans-Pacific Partnership (TPP), planning for the 2018 farm bill, farmland protection, aging farmers and succession planning and the USDA's organic livestock rule. Tours included: a wild blueberry farm, forestry lumber operation, seaweed processing facility, aquaculture/seaweed farm and a hatchery at the marine research center at University of Maine's Darling Marine Center.
6. **Legislative Updates:** The formal session ended Sunday, July 31 (technically around 12:10am on Monday, 8/1). Of the close to four thousand bills filed at the beginning of session in January 2015, thousands remained un-passed, without disposition, and still in the process after formal session. Generally, only "minor" bills are passed through informal sessions (Sick leave banks for state employees, home rule petitions, local bills, etc), meaning those major remaining must be re-filed in the next session (January 2017). Many of the bills relating to agriculture, including the "ag omnibus" and its various components and iterations, did not pass.

Positives: Some bills or amendments that would've added to the Department's regulatory mandate or increased MDAR responsibility without identified commensurate funding did not make the cut (i.e., raw milk, herd share, plastic bags/monitoring place of origin at farmers markets, farmland advisory commission, slaughtering oversight transfer). Pollinator legislation that did not satisfactorily include MDAR and the Chief Apiary Inspector also were not adopted.

Of the language significant to MDAR and its regulated community in the "municipal modernization" bill, provisions dealing with Chapter 61a status that were part of the Cranberry Task Force's template for draft legislation allowed for renewable energy generation without triggering change of use and allowance for an extension of 61a status for cranberry growers who remain temporarily out of production.



Changes to the Conference Committee draft of Economic Development bill allowed for continued participation of out-of-state wineries in the "special agricultural event" permit (i.e., Big E, farmers markets).

Negatives: Language that would've allowed the Department to retain \$400k and use it without the need for legislative appropriation to support programming (i.e., Ag resolve trust fund) was not adopted. The Veterans in Agriculture program (and its funding) did not pass through the budget process this year. Significant components of the ag omnibus such as the "agricultural estate tax" bill were not adopted. The Livestock Care and Standards Board bill failed to pass.

Legislative Priorities at a glance for 190th session (2017-2018): Statutory authority for MDAR's FSMA program and Trust Fund access not subject to appropriation.

- 7. Regulatory Review and Plant Nutrient Regulations Update:** As previously mentioned proposed regulatory changes going through the Chapter 30A process. After regulations are filed and posted by the Secretary of State's Office proposed changes will be posted online at MDAR's website with the red-lined version of the regulations along with the public notices. Below is an update of regulations that are moving to public hearing.

**Amendments:**

- a. 330 CMR 10.00: Rabies, Adopted as Emergency Regulations; public hearing scheduled for August 15<sup>th</sup>.
- b. 333 CMR 13: Standard for Application; public hearing scheduled for September 12<sup>th</sup>.
- c. 330 CMR 10: Plant Quarantine; public hearing scheduled for September 12<sup>th</sup>.

Technical Corrections: The Department is holding public hearing on several regulations for technical correction of the Department name, and for recession of old dairy pricing regulations.

Still Under Review Internally: Plant Nutrient Management Regulations.

All other regulations will be posted on MDAR's website at:

<http://www.mass.gov/eea/agencies/agr/proposed-amendments-to-regulations.html>

# THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



## Department of Agricultural Resources

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JOHN LEBEAUX  
Commissioner

August 24, 2016

Matthew A. Beaton  
Secretary, Executive Office of Energy and Environmental Affairs  
100 Cambridge St., Ninth Floor  
Boston, MA 02114

Re: Action of the Board of Agriculture-Expedited Review of Nutrient Management Regulations Request

Dear Secretary Beaton:

At its August 11, 2016 properly posted public meeting, with a quorum in attendance, the Board of Agriculture took the following action:

MOTION: A motion was made by Laura Sapienza-Grabski as follows: Motion to recommend that the administration expedite review of the plant nutrient management regulations in order to make sure that agricultural planning can properly be achieved for 2017. The Motion was seconded by Lucinda Williams. The Motion was unanimously approved.

I am available to put you in contact with Board Chair Judy Leab to further discuss the matter with you upon request.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "John Lebeaux".

John Lebeaux  
Commissioner

Cc: Board of Agriculture

To: Massachusetts Board of Agriculture  
From: Board Member Laura Sapienza-Grabski  
Subject: Agricultural Preservation Restrictions Program (APR)  
Date: August 11, 2016

Per a request for comment in the Board's agenda for today, on a topic discussed at the last meeting of the Board of Agriculture on June 6<sup>th</sup>, 2016, regarding a presentation on the Agricultural Preservation Restriction Program, I wish to provide my comments.

The presentation was very well done and anyone not deeply familiar with this program would have thought it was a flawless program. However, there are several problems with the program, as it was presented that I wish to list.

1. **The current interpretation of the APR program exceeds the intention of the enabling legislation.**

**The original intention of the program was to preserve prime agricultural soils from development in accordance with M.G.L. c. 184 §§ 31-32.** Section 31 defines the restriction and Section 32 has the effects, enforcement, acquisition and release of restrictions.

To preserve the prime soils, the Agricultural Lands Preservation Committee was created via Chapter 20, to review projects submitted to the department and in accordance to Section 24 of this chapter with (i) the suitability of land as to the soil classifications and other criteria for agricultural use;(ii) the fair market value of the land and the fair market value of the land when used for agricultural purposes as determined by independent appraisals; and (iii) the degree to which the acquisition would serve to preserve the agricultural potential of the Commonwealth.

2. **The current interpretation has been modified by internal MDAR Regulations, Policies and Procedures that are not transparent.** The Policies and Procedures for the APR program have changed internally in MDAR while the enabling legislation has not changed and have become more onerous to the farmers ability for the overall "agricultural potential" of the farm business and less friendly to agribusiness.

**Recommendation:** All changes in APR Regulations, Policy and Procedures need to be documented with the relevance to the enabling legislation, include a revision number, effective change date and submitted to the Chair of the Board of Agriculture to be present at the next scheduled board meeting for public discussion.

3. **The APR program originally used a very simple restriction, separating out the build lot and paying for the restriction on the portion with soils to be preserved. It did not buy the control of the building lot other than to link it to the farm and the farmer was paid for that relationship.** The restrictions were very simple in nature at the early inception with less than 10

pages and did not incur the legal costs for farmer or the department associated with the present processing of the restrictions that can be at a minimum of 30 pages and some are 80 plus pages, while the MDAR legal department has expanded staff from 1 to 6 and the processing time for a new restriction has exceeded two years.

**Recommendation:** Return to the original restriction format that is in keeping with the enabling legislation.

4. **Early restrictions did not include a "Right of First Refusal" and this "right" is not included in the enabling legislation.** It was created by an internal MDAR Regulations, Policy and Procedural changes. There is a value for this "right" to the original land owner that exceeds the value to the agricultural land portion.

Several farmers who have APR farms that did not have a "Right of First Refusal" included in their restrictions have complained that when they sought improvement funds offered via MDAR for their farms, they have been told that they needed to "update" their APR, which included adding in this "right" to MDAR without compensation.

**This issue was discussed at the Ag Board meeting but the practice was denied during the MDAR presentation.** Farmers have complained that they are intimidated and often in fear of retaliation if they do not sign over the "Right of First Refusal". Farmers have been confused over this practice and often they are very vulnerable when they sign over this "right" and often they are without their own legal counsel. The complaints on this issue have escalated in the last 10 years.

**Recommendation:** Post a disclosure statement on the MDAR site that states options for how to file complaints on the APR Program to the Chair of the Board of Agriculture. Review all APR's for compensation value of the "Right of First Refusal".

5. **The current interpretation of the APR program would value two APR farms side by side with the same soils and acreage as "equal in value" even though one farmer (A) may choose to invest in agribusiness improvements in the building envelope with a farm stand, saw mill, dairy processing facility, cheese processing, fish farming, green houses, produce processing, maple processing, aquiculture processing, farm restaurant, farm winery, farm brewery and other improvements to their agricultural business.**

Should Farmer (A) wish to sell his APR farm with "Right of First Refusal" language in their restriction, the department would intercede if they do not like the buyer or the sale price; force a reduction in price to equal the value of the agricultural soils; or "assign" the sale to another party.

**The claim is that the department wants to make the purchase of the farm more accessible to the next farmer, but they have forgotten how they reduce the business value for a farmer**

looking for loans and that the value of the land with the "prime" soils have already been reduced.

This practice was created by MDAR Regulations, Policy and Procedure changes and not by the enabling legislation.

**Recommendation:** Remove this practice and enable farmers to invest in their farm business which will increase the "agricultural potential of the Commonwealth".

6. If APR farmers invest in "agribusiness improvements" in their building envelope, many are blocked from working with other farmers which is counter to the enabling legislative goal of supporting "agricultural potential of the Commonwealth".

This practice puts non APR farmers and non-profit land trust farmers at an advantage over APR farmers in their agribusiness.

**Recommendation:** Remove this practice and enable farmers to invest in their farm business which will increase the "agricultural potential of the Commonwealth".

7. The "building envelope" and the restrictions that have arrived via the MDAR Policy and Procedure have changed dramatically since the inception of the program. Farmers with building envelopes for their residence have been in legal battles with the department over issues like putting in a swimming pool; building farm breweries; building farm housing, saw mill, farm restaurant and other improvements that a farmer may wish to do in their building envelope. Some of these legal battles have exceeded 10 years with a number having had legislative decisions that the department has not enacted upon.

**Recommendation:** The Board of Agriculture to review the legal and legislative decisions in open or in Executive Session in accordance with M.G.L Chapter 39, §23B.

8. Older APR's were created without land surveys and inventories for farm structures. The Department and ALPC authorized the APR purchase, as is for these farms. The MDAR Policy at that time was to "preserve as much prime agricultural soils and farms as possible".

In recent years, many older APR farms have allowed MDAR land surveys and inventories for farm structures. Several APR's have had discrepancies that have resulted in MDAR legal battles against the farmers to move lot lines and remove structures and these battles have also included legislators. The Department has ordered structures to be torn down and has forced farmers to rewrite their APR's taking more land to fix the Department's documentation error.

**Farmers that decide to fight the Department's actions are also faced with legal fees, long waits in the legal or legislative process and intimidation from the Department.**

This issue was discussed during the APR presentation and the Board was assured that this issue when discovered by the Department worked to be the least disruptive to the farmer. This reply is false.

**Recommendation:** The Board of Agriculture to review the legal and legislative concerns in open or in Executive Session in accordance with M.G.L Chapter 39, §23B for APR Deed Discrepancies. **In other land transfers, the burden is on the purchaser to correct the deed and not the current land owner.**

9. **USDA and other programs are offering funding opportunities to increase the "agricultural potential" that the MA APR farmers cannot access, while non APR farmers and Non-profit farmers can.**

**The present MDAR Regulations, Policies and Practices hinder APR farms from accessing funding opportunities.**

**Recommendation:** The Board of Agriculture to review the MDAR Regulations, Policies and Procedures of the APR Program.

**Conclusion:** The APR program needs to be reviewed; farmers need to be treated with more respect and MDAR needs to correct its errors. This process may need to have legislative involvement to correct the errors and to move forward.

The APR Programs warrants further discussion with the Board of Agriculture and members of the agricultural community to return to the original legislative goals of "preserving prime agricultural soils" and "preserve the agricultural potential of the Commonwealth".

Respectfully Submitted,

Laura Sapienza-Grabski

Board of Agriculture Member