

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

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AGRICULTURAL PRESERVATION RESTRICTION PROGRAM GUIDELINES

ASSIGNMENT OF RIGHT OF FIRST REFUSAL

- I. **PURPOSE:** By obtaining an Agricultural Preservation Restriction ("APR"), it has been and remains the intent of the Commonwealth of Massachusetts to perpetually protect and preserve agricultural lands, to encourage sound soil management practices in accordance with generally accepted agricultural practices, to preserve natural resources, to maintain land in active commercial agricultural use, and to ensure resale of a land restricted by an APR at an affordable price for future agricultural use. From the outset in 1976 a primary goal of the APR Program is to ensure the availability of farmland and that Premises would be sold for its value as a farm, thereby permitting those entering or currently engaged in commercial agriculture to acquire farmland.

A Right of First Refusal ("ROFR") is a right purchased by the Commonwealth as part of the APR that may, in the Department of Agricultural Resources' ("Department") sole discretion, be exercised or assigned in a way best suited to achieve the goals of the program. Recognizing that the ROFR was purchased by the Commonwealth for these very purposes, the Department has a duty, upon the proposed sale of an APR parcel with a ROFR, to weigh its option of exercising or assigning the ROFR in a diligent and effective manner.

II. PRE-REQUISITES TO QUALIFY FOR AN ASSIGNMENT OF A ROFR:

- A. In order to assign its Right of First Refusal, the Department must find that the Potential Assignee has:
1. Complied with the terms of the Department's Request for Statement of Interest;
 2. Not violated the terms of any other APR the Potential Assignee's land is subject to such an extent as the violation is detrimental to the actual or potential agricultural use of the premises;
 3. Demonstrated the ability to pay the purchase price and close within the timeframe established in the APRs. This criterion is satisfied by providing satisfactory evidence to the Department of available funds, as follows:
 - a. If purchasing with 100% cash funds, proof of satisfactory availability of funds; or
 - b. If obtaining financing, must provide letter of commitment for financing and satisfactory proof of additional funds required for purchase price; and

4. If an individual, provided a Farm Plan¹ and Farmer Resume sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture for the furtherance of the purpose of the APR and if the Potential Assignee:
 - a. owned or operated a Farm previously, the Farm Plan must additionally include the size of the farming operation (acreage and gross income), and number of years in business; or
 - b. is a New Entry Farmer: i) the Farm Plan must list relevant degrees, courses, workshops, education and training, and ii) a Financial Plan must be provided; or
 - c. intends to lease the Premises to a Farmer or New Entry Farmer: i) a proposed lease agreement or letter of intent with a Farmer or New Entry Farmer must be provided and, ii) the above referenced Farm Plan and Farmer Resume must be prepared by the Farmer or New Entry Farmer.
5. If a governmental entity, provided a Farm Plan¹ and Farmer Resume sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture for the furtherance of the purpose of the APR and if the Potential Assignee:
 - a. owned a Farm previously, the Farm Plan must additionally include number of years of ownership, the acreage of the farming operation, and number of years in business, name of farmer and Farm business; or
 - b. intends to lease the Premises to a Farmer or New Entry Farmer: i) a proposed lease agreement or letter of intent with a Farmer or New Entry Farmer must be provided and, ii) the above referenced Farm Plan and Farmer Resume must be prepared by the Farmer or New Entry Farmer.
6. If a non-governmental or non-profit organization or for-profit entity:
 - a. provided Articles of Incorporation or other comparable documents evidencing the purpose of the Potential Assignee allows for owning and operating a Farm and that the mission statement is compatible with the goals of the APR; and
 - b. provided a Farm Plan¹ and Farmer Resume sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture for the furtherance of the purpose of the APR and if the Potential Assignee:
 - i. owned or operated a Farm previously, the Farm Plan must additionally include the size of the farming operation (acreage and gross income), and number of years in business; or
 - ii. is a New Entry Farmer: A) the Farm Plan must list relevant degrees, courses, workshops, education and training, and B) a Financial Plan must be provided; or

¹ If the Potential Assignee is the Potential Purchaser, the Farm Plan submitted to the Department with the request for Waiver will be considered the Farm Plan for purposes of this policy. The Potential Purchaser may provide the Department with additional information that supplements the Farm Plan, however any additional information proposing new agricultural uses will not be considered.

- iii. intends to lease the Premises to a Farmer or New Entry Farmer: A) a proposed lease agreement or letter of intent with a Farmer or New Entry Farmer must be provided and, B) the above referenced Farm Plan and Farmer Resume must be prepared by the Farmer or New Entry Farmer;

III. SELECTION CRITERIA FOR ASSIGNMENT TO AN INDIVIDUAL, GOVERNMENTAL OR NON-GOVERNMENTAL NON-PROFIT ORGANIZATION

- A. If more than one Potential Assignee satisfies the above criteria, the following additional criteria will be utilized by the Department:
 1. Current ownership or leasing of other land subject to an APR;
 2. Demonstrated farming history;
 3. Ownership of agricultural land; and
 4. Proximity of other agricultural land leased or owned.
- B. If two or more Potential Assignee's remain equally qualified, the following additional criteria will be considered by the Department: The Potential Assignee's number of Farm acres currently under production.

IV. SELECTION CRITERIA FOR ASSIGNMENT TO A GOVERNMENTAL OR NON-GOVERNMENTAL NON-PROFIT ORGANIZATION

- A. If more than one Potential Assignee satisfies the above criteria, the following additional criteria will be utilized by the Department:
 1. Current ownership or leasing of other land subject to an APR;
 2. Demonstrated farming history;
 3. Ownership of agricultural land;
 4. Proximity of other agricultural land leased or owned;
 5. If a non-profit, number of years of incorporation;
 6. If a non-profit, operating budget;
 7. Number of qualified staff whose job responsibilities will include overseeing the ownership of the land and compliance with the terms of the APR; and
 8. If the town is a co-holder.
- B. If two or more Potential Assignee's remain equally qualified, the following additional criteria will be considered by the Department: Since Potential Assignees establishment, current and historic number of farm acres under production.

- V. **DEFINITIONS:** As used throughout this Guideline, the words or phrases listed below shall have the following meanings:

Agricultural Preservation Restriction ("APR"): is a perpetual restriction to retain land or water areas predominately in their agricultural farming or forest use, and forbids or limits certain property development rights and uses.

Appraisal: a current (not more than 1 year old) valuation of property by the estimate of an authorized person conducted in accordance with the "Guidelines for Agricultural Appraisals" prepared by the Department and in effect at the time of the Waiver request.

APR Owner: the record title owner of the APR.

Business Plan: a comprehensive narrative that sets forth the goals and objectives for the Farm business and strategies to achieve them including at a minimum: a description of Farm resources and buildings and how they are to be used, personnel qualifications and responsibilities, production information and products to be sold, a description of markets and marketing strategies, identification of any needed capital improvements, and details on how proposed agricultural operation on the Premises will contribute to the agricultural industry and food production in Massachusetts, employment considerations (number of employees in existence vs. need to be hired), how the Premises will operate in conjunction with other farm land owned or leased by the Prospective Purchaser (if applicable), and details on business partner(s) (if applicable).

Department: the Department of Agricultural Resources of the Commonwealth of Massachusetts, 251 Causeway Street, Suite 500, Boston, MA 02114-2151.

Farm: the Premises on which an agricultural use occurs. The Premises shall be deemed to be in agricultural use when primarily and directly used in raising animals, including, but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals, for the purpose of selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for market. Also agricultural use shall include horticultural use when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flower, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling these products in the regular course of business; or when primarily and directly used in raising forest products under a certified forest management plan, approved by and subject to procedures established by the state forester, designed to improve the quantity and quality of a continuous crop for the purpose of selling these products in the regular course of business; or when primarily and directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising these products and preparing them for market.

Farmer: (i) an individual who is engaged in an active agricultural use of land for commercial purposes; and (ii) an entity if the Articles of Incorporation or other corporate documents demonstrate that the purpose of the entity allows for commercial agriculture and the entity has the ability to hold real property; and (iii) an entity whose connected entity (connected by virtue of overlapping corporate officers, partners, or trustees) is organized for the purpose of commercial agriculture.

Farm Plan: a narrative that includes, at a minimum, how the Premises will be utilized to the fullest extent possible for commercial agriculture for a five (5) year period including but is not limited to, the following: identification of all land uses on the Farm, crops to be grown, acreage for each crop, livestock to be raised, pasture acreage, use of existing structures on Premises (if applicable), and need for additional structures (if applicable) and timeline for implementation of the plan. The narrative shall include a map or diagram identifying each land use proposed for the Farm.

Farmer Resume: a brief account of the Potential Purchaser's professional farm experience and qualifications.

Fair Market Agricultural Value ("FMAV"): the combined total of the Fair Market Agricultural Land Value and the Fair Market Agricultural Business Value and the Fair Market Agricultural Dwelling Value.

Financial Plan: a plan, whether narrative or otherwise, that demonstrates the Potential Purchaser can support the operation of the Premises without adversely affecting long term viability of the Premises. Such a plan should, at a minimum, include: a net worth statement, an estimate of start-up costs, identification of costs of production, gross sales and net farm income, and income & expense projections for at least three years.

New Entry Farmer: a Farmer who has less than two years experience managing or owning a Farm.

Premises: the acres of land and buildings and structures thereon that was described in the Exhibit A attached to and incorporated into the APR.

Potential Assignee: the person or entity who responded to the Department's Request for Statement of Interest and has expressed interest in being assigned the Department's Right of First Refusal. If the entity is a corporation or limited liability company, the Department must be provided the articles of incorporation demonstrating the corporation was formed and the nature of the business to be transacted is owning and operating a Farm. If the entity is a partnership, the Department must be provided partnership agreement which evidences partnership was formed for the purpose of owning and operating a Farm.

Potential Purchaser: the person or entity who has entered into a bona fide purchase and sale agreement with the APR Owner.

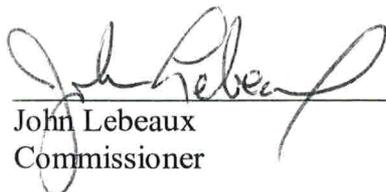
Purchase Price: the price listed for the Premises in the purchase and sale agreement by and between the APR Owner and the Potential Purchaser.

Statement of Interest: Potential Assignee's written response that it desires to receive the Department's assignment and providing proof the Potential Assignee is qualified to receive the assignment.

Waiver: a document in recordable form issued by the Department that waives the Department's right to purchase or assign the right to purchase the Premises.

VI. AUTHORITY: Many APRs prior to June 23, 1994 include a Right of First Refusal which grants, at the Department's discretion, the right to purchase or assign the right to purchase the Premises.

Adopted February 10, 2016



John Lebeaux
Commissioner