

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

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AGRICULTURAL PRESERVATION RESTRICTION PROGRAM GUIDELINES
REQUESTS FOR A WAIVER OF THE DEPARTMENT'S
RIGHT OF FIRST REFUSAL FOR PURCHASE OF REAL ESTATE

- 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. **DEPARTMENTAL PREREQUISITES TO ISSUING A WAIVER OF A RIGHT OF FIRST REFUSAL:** In order to issue a waiver of a ROFR, the Department must find all of the following:

1. The APR Owner has complied with the terms of the Right of First Refusal;
2. If the Potential Purchaser owns other land subject to an APR, that the Potential Purchaser has not violated the terms of the applicable APR to such an extent that the violation is detrimental to the actual or potential agricultural use of the Premises; while in possession of the land;
3. The Potential Purchaser is a Farmer and has provided a Farmer Resume;
4. The Potential Purchaser has provided a Farm Plan sufficient to demonstrate that the Premises will be utilized to the fullest extent possible for commercial agriculture; and
5. The APR Owner or Potential Purchase has provided a draft deed related to the transfer that references the land is subject to the APR and the property description is identical to the APR Exhibit A, or any APR amendments.

III. **DEFINITIONS:**

Agricultural Preservation Restriction ("APR"): 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.

APR Owner: the record title owner of the APR.

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

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: (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.

Farmer Resume: a brief account of the Potential Purchaser's professional farm experience and qualifications. The resume must include details on the acreage of their existing and any prior farming operation, number of employees (if applicable) and the number of years in business.

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

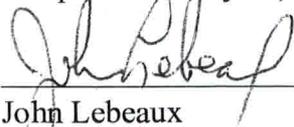
Potential Purchaser: the person or entity who has entered into a bona fide purchase and sale agreement with the APR Owner.

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.

- IV. **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