

330 CMR: DEPARTMENT OF AGRICULTURAL RESOURCES

330 CMR 18.00: LAND USE

Section

18.01: Definitions

18.02: Vacant Public Land Licensing

18.01: Definitions

As used in 330 CMR 18.00:

Agriculture and Farming means the same as defined in M.G.L. c. 128, § 1A.

Arbor means an area of land devoted to the propagation and cultivation of fruitbearing trees and shrubs, and nut trees.

Department means the Department of Agricultural Resources.

Elderly Persons of Low Income means persons who are 65 years of age or older and whose annual income is less than the amount necessary to enable them to maintain a decent standard of living, except where there exists a surplus of land appropriate for garden use, the age requirement may be reduced by the director to 62 years of age; but the oldest of the applicants between 62 and 65 years of age shall be given preference. The elderly persons annual income may not exceed 125% of the Federal Office of Management and Budget poverty guidelines.

Families of Low Income means families and persons whose net annual income is less than the amount necessary to enable them to maintain a decent standard of living. The family annual income may not exceed 125% of the Federal Office of Management and Budget poverty guidelines.

Farm means a body of land devoted to agriculture.

Farmer means any person or group of persons granted a permit for the use of vacant farmland in accordance with M.G.L. c. 128, §§ 7 A through 7F, for the commercial production of agricultural or horticultural products.

Garden means a piece of land appropriate for the cultivation of herbs, fruits, flowers, or vegetables.

Group means individuals organized for one or more garden projects.

Person means any individual, partnership, corporation, association, or any other business unit.

Use means, when applied to gardening, to make use of, without conveyance of title or any other ownership.

Vacant Public Land means any land owned by the Commonwealth, or any county or municipality therein, not used for public purpose.

18.02: Vacant Public Land Licensing

(1) Agreements with Public Agencies and Property Owners.

(a) The Department shall, with the cooperation of other state agencies, cities and towns, compile a list of all vacant land, which in the opinion of the agencies, cities and towns, can be feasibly used for gardening, arbor culture or farming.

(b) The Department shall, by letters of agreement, contract with such agencies, cities or towns for the use of said vacant land. Contracts may contain a termination date. If no date is determined, either party may terminate the contract by providing 60 days written notice; but no contract shall be terminated until the end of the harvest season. The Department shall notify the gardeners or farmers of the notice of termination.

18.02: continued

(c) Owners of land may make available to the Department parcels of land for the purposes set forth in M.G.L. c. 128, § 7B under terms and conditions agreed upon between the owners and the Department, and the Commonwealth, the department and all of its officers, agents and employees shall be saved harmless as provided in M.G.L. c. 128, § 7B.

(2) Permits and Licenses Issued to Farmers.

(a) Unless terms have been dictated by special legislation, licensing procedure shall follow the Division of Capital Asset Management and Maintenance's procedures for licensing state-owned real property.

(b) Licensing shall be for an initial period not to exceed five years and may be extended for an additional five year term.

(c) One-year permits may be issued by the Department where circumstances preclude a longer license.

(d) Application Procedures:

1. Public Requests for Proposals (RFP's) for use of parcels of state-owned Vacant Public Land shall be advertised, at a minimum, in the Central Register, and the Administration and Finance Operational Services Division.

2. Persons wishing to respond to the RFP shall do so in the manner prescribed by the RFP.

3. At a minimum, the RFP's shall require a detailed land use plan for the use of the Vacant Public Land.

(e) The land use plan submitted with the application shall be incorporated into the license and the applicants must agree to maintain the land in a condition consistent with said land use plan. If the applicants fail to maintain the land according to the plan, the Department may terminate the license according to the terms.

(f) The RFP may specify the Vacant Public Land may be used for other public purposes including public access and/or use for recreation in the off season, rights of way, easements, and restrictions of record.

(g) Priority in the allotment of Vacant Public Land for Garden and Arbor purposes shall be given to Elderly persons of low income, Families of low income and children between seven and 16 years of age.

(3) Good Soil and Resource Management Practices must Be Employed.

(a) All licensees shall use good agricultural/horticultural and soil conservation practices.

(b) The Department or controlling agency may require such practices as the use of cover crops, vegetative strips along waterways, wildlife cover and food strips, contouring, strip planting, and may restrict the use of fertilizers, herbicides, insecticides, or other chemicals.

(c) At the end of the permit or license period, the land shall be in at least as good condition as it was at the beginning of such period.

(4) General Conditions.

(a) Retail sales of farm products on the Vacant Public Land shall not be permitted except when specific permission in writing is granted by all agencies having a controlling interest in the land, and an adequate amount of liability insurance is maintained by the permit holder or lessee.

(b) Products grown in Gardens and Arbors shall not be sold.

(c) Permanent structures may be erected with prior approval of the Department and shall remain with the land.

(d) Temporary structures, including fencing, necessary to the farm operation may be erected subject to removal at the termination of the permit or license, unless otherwise agreed upon.

(e) All licensees shall indemnify and save harmless the Commonwealth, the Department of Agricultural Resources and all of its officers, agents and employees against suits and claims of liability of each name and nature arising out of, or in consequence of the use of Vacant Public Land.

REGULATORY AUTHORITY

330 CMR 18.00: M.G.L. c. 128, § 7F.

(PAGES 111 THROUGH 116 ARE RESERVED FOR FUTURE USE.)