

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 CERTIFICATE OF APPROVAL TO CONSTRUCT OR PLACE A DWELLING

- 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 an APR at an agriculturally affordable price for future agricultural use. An APR prohibits activities or uses which may be detrimental to: the actual or potential agricultural viability of an APR; water or soil conservation; good agricultural practices; and activities or uses which may be wasteful of the natural resources of the Commonwealth.
- II. **AUTHORITY:** Pursuant to the terms of certain APRs, at the Department's discretion, it may grant a Certificate of Approval to construct a Dwelling on the Premises.
- III. **DEFINITIONS:** As used throughout this Guideline, the words or phrases listed below shall have the following meanings:

Agricultural Use: the raising of 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, as defined in General Laws, Chapter 61A, Chapter 1, as amended. Also horticultural uses, the raising of fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling such products in the regular course of business; or when primarily and directly used in raising forest products under a program certified by the state forester to be a planned program to improve the quantity and quality of a continuous crop for the purpose of selling such products in the regular course of business; or when primarily, directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products and preparing them for market, as defined in General Laws, Chapter 61A, Chapter 2, as amended.

Agricultural Land Preservation Committee ("ALPC"): a committee whose membership, powers, duties and statutory grant of authority are set forth in General Law Chapter 20, Section 24, as amended.

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.

APR Grantor: the party, or parties, or entity who executed the APR.

Applicant: the record title owner of the APR who applies for a COA.

Certificate of Approval ("COA"): a certificate in recordable form issued by the Department that allows certain limited activities and uses for agricultural purposes on the APR with or without conditions.

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

Dwelling: a residence and all related infrastructure which may include driveway, septic system, all utilities, and well. Dwelling explicitly does not include improvements that are prohibited by the APR.

Dwelling Occupant(s): the person(s) proposed to occupy the Dwelling.

Fair Market Value ("FMV"): the most probable price that the Premises would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title to a buyer under conditions whereby: 1) buyer and seller are typically motivated; 2) both parties are well informed or well advised, and acting in what they consider their own best interests; 3) a reasonable time is allowed for exposure in the open market; 4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and 5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

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.

Fair Market Agricultural Business Value ("FMABV"): the value based upon the ongoing agricultural business including agricultural buildings, infrastructure, goodwill and other related agricultural business factors. FMABV is relevant only upon the subsequent sale of the Premises and is not applicable at the time of original purchase of this Restriction by the Grantee. The FMABV appraisal includes agricultural business potential and is based upon activities and circumstances existing at the time of the sale of the Premises. The appraisal is not intended to contemplate speculative business potential that is dependent on management, investment or other prospective activities. FMABV may, when applicable, consider the value of ongoing agricultural business including agricultural buildings, infrastructure, goodwill and other related agricultural business factors on land owned by Grantor, but excluded from this Restriction ("non-Restricted land"), when such business on non-Restricted land is integral to the agricultural business on the Premises.

Fair Market Agricultural Dwelling Value ("FMADV"): the appraised replacement value of a dwelling(s) on the Premises.

Fair Market Agricultural Land Value ("FMALV"): the value based upon the highest and best use of the land for agricultural purposes, including such considerations as location, types of soil, and climate, but excluding buildings or uses thereof. Permanently installed agricultural improvements, such as in-ground irrigation or drainage systems, are considered part of the land. Agricultural land value is solely the value

of the land, which value the landowner retains following the sale of this Restriction to the Grantee. FMALV is applicable at both the time of the Grantee's purchase of this Restriction and at the time of subsequent sale. The FMALV may rise and fall commensurate with market conditions and/or inflation or other valuation factors such as upkeep of the land, and/or improvements in the condition of the soil or its productivity. It is understood that land improvements may increase the FMALV.

Owner: the record title owner of the Premises.

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

IV. **DEPARTMENTAL PREREQUISITES TO ISSUING A COA FOR A DWELLING:** In order to grant a COA for a Dwelling, the Department must find all of the following:

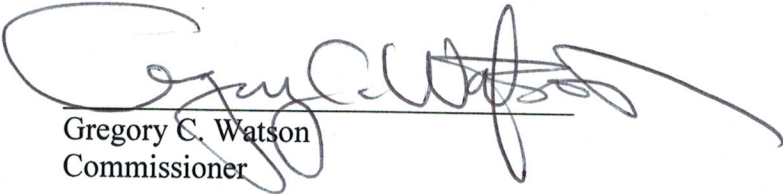
1. The APR contains language allowing the Owner to petition the Department for approval to construct a Dwelling; and
2. The Premises is being utilized for commercial agriculture to the fullest extent possible. A majority of open productive agricultural land must be in commercial Agricultural Use; and
3. The proposed Dwelling will be occupied by the Owner and/or his or her immediate family members (spouse, parents, children and grandchildren [the Dwelling Occupant]); and
4. At the time of the application, at least one Dwelling Occupant has been regularly and actively engaged in the daily operation of agricultural activities on the Premises for at least two growing seasons immediately prior to the application; and
5. Based upon a monitoring report and other due diligence conducted by the Department after receipt of the request for a Dwelling, there are no existing violations on the applicable APR or any APR owned by the Dwelling Occupant or Applicant at the time of filing of the application; and
6. The Dwelling will not defeat or derogate from the intent and purposes of retaining the land for Agricultural Use and preserving the natural resources of the Commonwealth. In order to determine if this criteria is met, the Department must find all of the below:
 - a. The need for the Dwelling is directly related to, and being driven by, the current Agricultural Use of the Premises at the time of the Application. A proposed Agricultural Use of the Premises will not be considered. Applicant must demonstrate to the Department that the Agricultural Use of the Premises necessitates an on-site Dwelling. An Agricultural Use of the Premises for predominately hay or Christmas tree production does not necessitate a Dwelling; and
 - b. The Dwelling will not negatively impact the actual or potential agricultural viability of the Premises; and
 - c. If approved, the Dwelling will not negatively impact the future affordability of the Premises for Agricultural Use. If approved, the existence of the Dwelling will not increase the FMAV beyond the sum of the FMALV plus the FMABV plus the FMADV. In such a circumstance, a COA may be considered conditioned upon the granting of an updated APR with an Option to Purchase at Agricultural Value; and

- d. The Premises is of a size and is comprised of a soil resource that makes it economically viable in and of itself. Viability will be determined at the time of the Application; and
- e. If the Applicant was the APR Grantor, there was no land excluded from the APR for the possibility of the construction of a Dwelling; and
- f. No reasonable alternative Dwelling site exists on non-APR land owned by the Applicant or the Dwelling Occupant. Reasonable alternatives include, but are not limited to, dwellings or buildable lots owned by the Applicant or Dwelling Occupant, in reasonable proximity to the Premises.

V. **DEPARTMENTAL CONSIDERATIONS WHEN ISSUING A COA FOR A DWELLING:** Upon the Department finding the above criteria have been met and a Dwelling is approved on the Premises, the Department must consider all the following standards to minimize the impact to the soil resource and ensure that the Premises will remain affordable for future owners:

1. The size and value of the approved Dwelling must be supported by the ongoing agricultural activity on the Premises and proportionate to the income produced by the agricultural activities on the Premises and not off-Premises income, as determined by a qualified person appointed by the Department.
2. The Dwelling location minimizes impact to prime or state important soils on the Premises. An incremental cost of construction to locate the Dwelling in a location of minimal impact will not be considered.
3. The Dwelling location, if possible, is near the perimeter of the Premises, close to street frontage, near other structures, along a pre-existing driveway, or other access road.
4. A maximum of 15,000 square feet will be impacted by the Dwelling. Recreational improvements including, but not limited to, swimming pools, athletic courts and fields (tennis, basketball, etc.) will not be allowed.

Adopted January 5, 2015


Gregory C. Watson
Commissioner