

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 SUBDIVIDE LAND

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 land subject to 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 the land subject to an APR; water or soil conservation; good agricultural practices; and activities or uses which may be wasteful of the natural resources of the Commonwealth.

In order to determine if a Subdivision is necessary to the actual or potential agricultural viability of the land subject to an APR, the Department must consider the intent and purpose of the APR, as well as the proposed uses of the subdivided parcels. An Applicant for Subdivision must demonstrate to the Department that it is in the best long-term interest of the land subject to the APR, from both an agricultural and economic standpoint, to subdivide the APR into two or more parcels.

II. DEPARTMENTAL PREREQUISITES TO ISSUING A CERTIFICATE OF APPROVAL:

A. PRELIMINARY APPROVAL: In order to preliminarily approve a request for a Subdivision, the Department must find all of the following:

1. The Subdivision is consistent with the stated purposed of the applicable APR;
2. The Applicant has complied with the terms of the Original APR, including obtaining all required Federal approvals;
3. The Application includes a Farm Plan sufficient to demonstrate the subdivided parcels will be utilized to the fullest extent possible for commercial Agricultural Use;
4. The Subdivision creates either:
 - a. two or more parcels that are economically viable for commercial Agricultural Use in and of themselves. Economic viability will be determined by the parcels':
 - i. quality of soils and ability to support existing and potential commercial Agricultural Uses;
 - ii. sufficiency of current infrastructure, including residences and farm buildings; and
 - iii. road frontage and available markets for agricultural products; or
 - b. one parcel that is economically viable for commercial Agricultural Use (see II.4.a. i-iii above) and an Add-on parcel that will be conveyed to an adjacent APR Owner. **An Add-on must be allowed by the terms of the Original APR. If Add-on is requested, the right to request a COA for a dwelling remains with the Original APR;**

5. The Subdivision results in each parcel of a sufficient size, quality and configuration to support commercial Agricultural Use of the parcel now and in the future;
6. The Subdivision results in parcels of minimum acreage acceptable to the Department, as follows:
 - a. If the proposed subdivision includes land with an existing residential dwelling or labor housing and related infrastructure, acres of land actually in commercial Agricultural Use must be a minimum of 10 acres; or
 - b. If neither parcel is an Add-on and there is no existing residential dwelling or labor housing, each proposed subdivided parcel must not be less than five acres; or
 - c. If an Add-on with no existing residential dwelling or labor housing, the parcel may be less than 5 acres;
7. The parcels resulting from the Subdivision have functionally separate Essential Structures. For example a septic system and related infrastructure must remain on the same parcel as the dwelling it supports;
8. The Subdivision will result in practical and legal access for each subdivided parcel, unless subdivided parcel is an Add-on that will be combined with an adjacent APR. No new rights of way or access easements on land subject to the APR may be created; and
9. The Application, if it includes an Add-on, must additionally include proof satisfactory to the Department that the APR Owner which will incorporate the Add-on has agreed to the addition.

B. CONDITIONAL APPROVAL: Upon the Department finding the above criteria have been met the Department will issue a preliminary Subdivision approval letter stating the conditions that must be met. The Department may only issue the final COA when the following minimum conditions have been met:

1. If required by the Department, or the terms of the Original APR, in order to ensure the intent and purpose of the APR is protected, APR Owner executes a New APR, or amends the Original APR to include an Option to Purchase Real Estate at Agricultural Value, for the newly created subdivided parcel(s) and provides it to the Department for recording;
2. If not already separate legal lots, a full or partial survey separating the parcels must be prepared and approved by the Department;
3. If applicable, co-holder approval is obtained and provided to the Department;
4. If Subdivision results in an Add-on the following documents after Departmental review and approval must be recorded: executed amended Original APR, deed transferring the property, and executed amended APR incorporating Add-on parcel.
5. All expenses related to the survey and recording of any documents at the appropriate Registry of Deeds is responsibility of the APR Owner;
6. At the discretion of the Department, if subdivided parcel contains a dwelling at the time of Subdivision, a New APR with Option to Purchase at Real Estate Agricultural Value may be required; and
7. If required by the terms of the Original APR, the Department has obtained Federal approval.

C. FINAL APPROVAL: In order to issue a Certificate of Approval for Subdivision, the Department must find all of the following:

1. All conditions of II B. have been met;
2. The Department has received all executed documents; and
3. The Department has received all fees for the payment of recording costs.

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

Add-on: land that, because of size, soil quality, or other factors, would not qualify for a New APR, but which, when combined with other land already subject to an existing APR, has the ability to enhance the economic viability (because of infrastructure, utilities, access, etc.) of the existing APR when the parcels are combined.

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 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.

APR Owner(s): at the time of Application, the record title owner(s) of the land subject to the Original APR.

Applicant(s): the record title owner(s) of the land subject to the Original APR who applies for a COA.

Application: a form to be filled out by an Applicant that contains the relevant information related to the request for the issuance of a COA.

Certificate of Approval ("COA"): a written 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.

Essential Structures: permanent and temporary structures related to the commercial Agricultural Use of the Premises. Including but not limited to waste disposal systems, alternative energy facilities, and irrigation access points.

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.

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

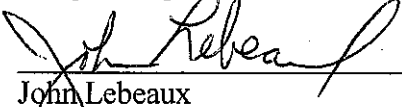
Original APR: the initial APR, as amended.

New APR: an updated APR in the format current at the time of the issuance of the COA.

Subdivision: the division of a lot, tract, or parcel of land subject to an APR into two or more parcels.

- IV. **AUTHORITY**: Pursuant to the terms of the APR, the Department may in its discretion approve a subdivision of land as it deems necessary to further the purposes of the APR.

Adopted September 10, 2015



John Lebeaux
Commissioner