

# 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 SPECIAL PERMIT TO CONDUCT NON-AGRICULTURAL ACTIVITIES OR USES ON APR LAND

The APR Program is committed to preserving and protecting important agricultural soils, as well as helping to ensure that agricultural land remains available for active income producing agriculture, and the farm enterprise remains sustainable. At the Department's discretion, it may grant a Special Permit to allow a non-agricultural use or activity on the APR. In order to make a positive determination under M.G.L. C.20 S. 23(b), the Department must find each of the following:

- A. The APR land is being actively used for full time commercial agriculture<sup>1</sup>; and
- B. The application does not request any new structures or construction activities; and
- C. In the event that the APR is co-held by another organization or governmental entity, co-holder approval has been obtained; and
- D. The activity is being conducted in accordance with the terms of the APR utilized by the Commonwealth at the time of the application for the Special Permit; and
- E. The activities will not defeat or derogate from the intent and purposes of retaining the land for agricultural use and preserving the natural agricultural resources of the Commonwealth.

In order to determine E. above, the Department will use the following criteria:

1. The activity is ancillary, minor, and subordinate to the agricultural activities occurring on the APR Premises (Consideration shall be given to the frequency and duration of the activity; the scale of the activity relative to the size of the farm operation; the gross income of the farm operation; and the extent of existing agricultural activity on the farm.).
2. The activity directly or indirectly benefits the agricultural operation and will not lead to the decrease or downsizing of agricultural activities occurring on the protected land.

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<sup>1</sup> Many farmers hold off-farm jobs and farm on a part time basis. For the purposes of these guidelines "full time commercial agriculture" means that the agricultural use of the land is maximized to the fullest extent possible.

3. The activity is under the direct control of the farmer. Any contract with a third party to manage the commercial non-agricultural activity subject to the special permit will be provided to the Department with the application, and the Department may make the permit conditional on changes to the contract in order to ensure that the activity or activities are under the farmer's control and do not defeat or derogate from the intent and purposes of retaining the land for agricultural use and preserving the natural resources of the Commonwealth. All contracts must contain a clause allowing the farmer to discontinue the activity in the event of, or potential for, any damage to the APR land. No Special Permit applications will be reviewed if a signed contract transferring control of that activity to a third party is already in place at the time of application. A draft of any potential contract must be submitted.
4. The activity may occur if limited to: a) existing farm roads and wooded areas which do not interfere with the actual use of the land for agricultural production; or b) time periods that do not interfere with the current agricultural use of the parcel. Activities that occur on prime or state important agricultural soils will receive special scrutiny. Motorized activities, including parking activities, proposed on prime or state important agricultural soils will receive special scrutiny, and may be forbidden or limited.
5. No excavation to specifically support the activity will occur. In limited circumstances the action of pushing soil, for example to re-smooth an area, will not be considered excavation.
6. No new structures as defined in the regulations at 330 CMR 22.00 are allowed. All temporary structures must be removed within a reasonable time frame following the conclusion of the approved use or activity.
7. The activity will not have an adverse impact on the soils, water resources or other natural resources of the protected land.
8. Any non-productive land impacted by the use or activity must not have been converted from active agricultural use to a non-agricultural use within the 5 preceding years, except conversions undertaken in the course of normal agricultural production.
9. In the event that a non-agricultural activity is proposed to occur in an existing structure, any modifications to that structure will be minor and will not prevent the use of the structure for agricultural purposes in the future.
10. Recreational uses, including winter snowmobiling, for which the APR owner may charge a fee, such as fishing or cross country skiing, may be approved if the activities do not interfere with the use of the land for agricultural production and the activities utilize the premises in their existing condition<sup>2</sup>.

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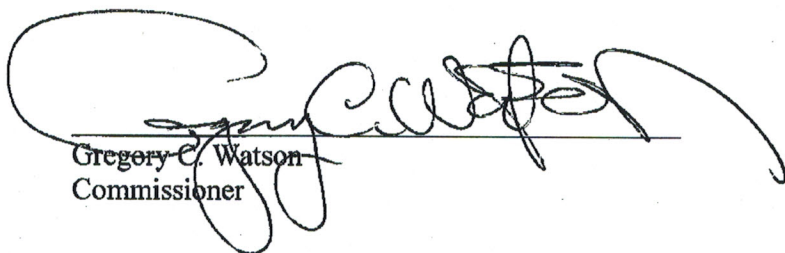
<sup>2</sup> Recreational uses, including winter snowmobiling, for which the APR owner does not charge a fee, such as fishing or cross country skiing, are allowed if they are not prohibited by the APR and if the activities do not interfere with the use of the land for agricultural production and the activities utilize the premises in their existing condition.



The Department may also require the following in making its decision:

1. A surety bond, letter of credit or other form of performance guarantee of sufficient value to fully cover potential damages and need for restoration.
2. Paper and/or electronic plans for the proposed use of the land.
3. A pre and/or post activity assessment of the impact on the APR land, to be conducted by a Department approved technical/ soil expert hired by the applicant.
4. A management plan outlining how any damage to the land will be restored.
5. Comments submitted by the USDA Natural Resource Conservation Service.

Adopted December 1, 2014



Gregory C. Watson  
Commissioner