



Agricultural Preservation Restriction Program Department of Agricultural Resources

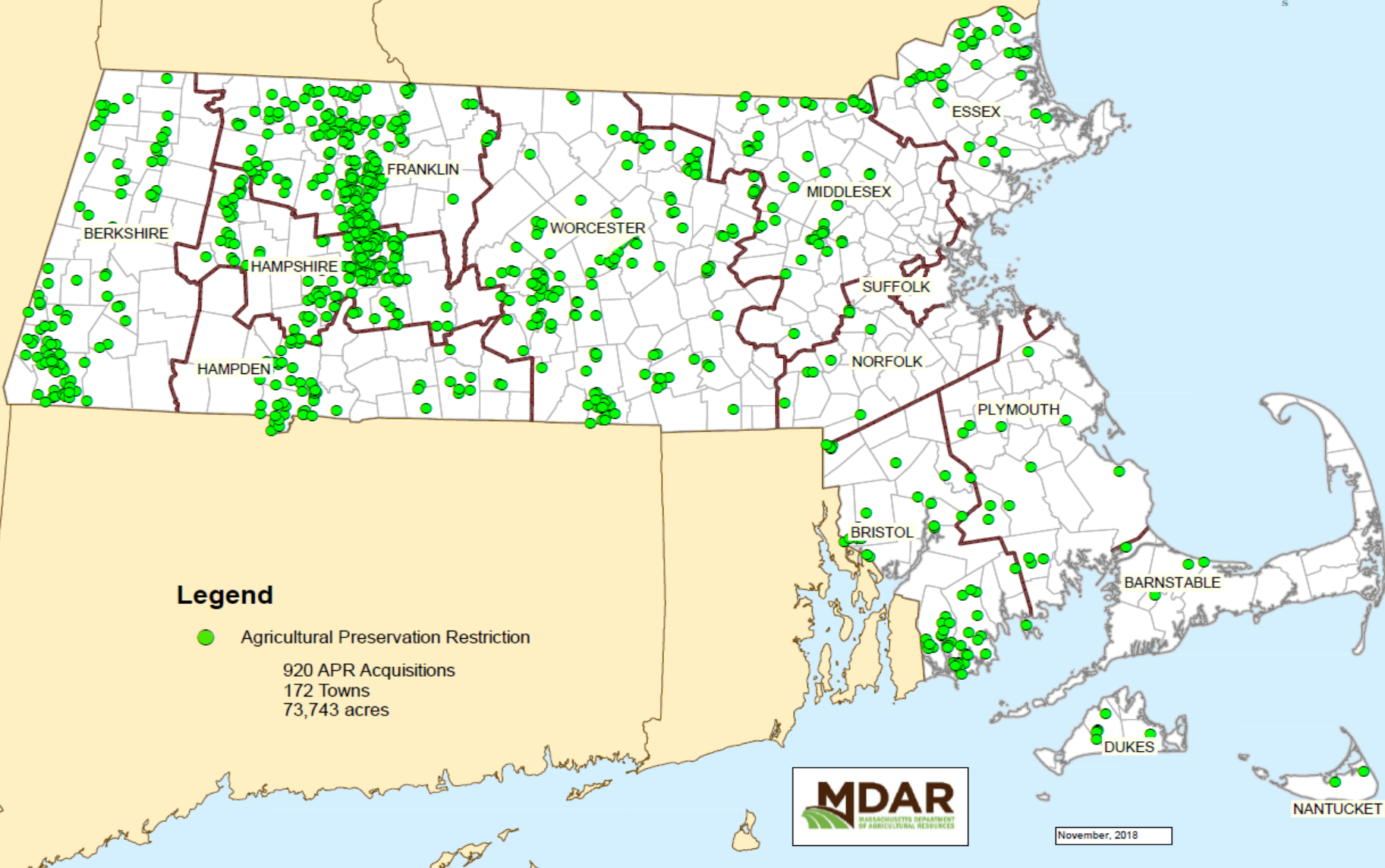
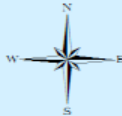
Division of Agricultural Conservation and Technical Assistance

ALPC Dec 14, 2018

ROFR/ OPAV



Agricultural Preservation Restrictions in Massachusetts



- **Requires** the Commissioner to establish policies and promulgate regulations for the **management and oversight** of the APR program.
- Regulations need to include, at a minimum,
 - when the department can **exercise** a right of first refusal or option to purchase,
 - **waiver** procedures, and
 - guidelines for conferences (before acquisition of new APRs and before selling APR land).
- MDAR, in consultation with the ALPC and the Board of Agriculture, shall establish benchmarks and criteria to be used to evaluate and measure a farm business plan submitted by a farmer as part of any waiver request.
- Ag Board is to be **consulted** and the ALPC needs to approve the regulations.

Goals for today

- Finalize the OPAV/ ROFR criteria for Exercising/ Waiving/ Assigning to be put in the regulations.
- Definition of a Farm Business Plan, and
- Establish the benchmarks and criteria to evaluate a Farm Business Plan (with Ag Board).
- Next Steps:
 - Add above and the other legislative changes (withdrawal and conferences) to draft regulations.
 - Present draft to ALPC in January.
 - Present to Ag Board for Consultation.
 - Start the public hearing and comment process.

Calendar for Regulation Development

Effective Date	Summary
February 1, 2020	Commence review of existing policies, procedures and regulations.
Fall 2019	Roll out of regulations/ outreach
August 1, 2019	Promulgate regulations.
July, 2019	ALPC meeting to approve the regulations.
June, 2019	Final Draft of Regulations
May, 2019	Review of Public Comments
April, 2019	Public Hearing
★ Spring 2019	Consult with ALPC and Ag Board to establish criteria for evaluating farm business plan
March/ April 2019	Public Comment Period Opens
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35d prior to Public Comment Period	Notify Government Advisory Committee and MMA.
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- “This Option has been granted as an integral part of this Restriction, the full consideration for which is set forth above. This Option constitutes a restriction that runs with the land and is binding in the event of a foreclosure of said Premises.”
- OPAV and ROFRs are purchased with the APR, recorded at the registry of deeds and apply to all future owners
- Department’s Required Actions (per the APR document itself):
 - Exercise its Option to Purchase/Right of First Refusal: Purchase the Land Subject to the APR.
 - See if a Farmer wants to buy the Land because MDAR will not own the land.
 - Request Statements of Interest and Assign the Right to Purchase.
 - If no Farmer wants to buy, the original transfer proceeds.
 - Waive: Allow Transfer to Proceed.
 - No Action
 - Run out the Clock (60 or 120s) and the transfer proceeds.

ROFR Policies

A. Request for **WAIVER** of the Department's Right of First Refusal for Purchase of Real Estate (Attachment E)

B. Request for **ASSIGNMENT** of Right of First Refusal (Attachment I)

OPAV Policies

A. Request for **WAIVER** of the Department's Option to Purchase Purchase of Real Estate (Attachment E)

B. Request for **ASSIGNMENT** of Right of First Refusal (Attachment I)

Reference: To Exercise and Assign (Currently)

ROFR

- Demonstrated ability to pay and close within timeframe
- Details of farm owned or operated previously, or
- If New Entry Farmer list relevant education and provide Financial Plan
- If more than one respondent:
 - Ownership of other APR land
 - Demonstrated Farming History
 - Ownership of Agricultural Land
 - Proximity of other Agricultural Land Leased

OPAV

- Demonstrated ability to pay and close within timeframe
- Details of farm owned or operated previously, or
- If New Entry Farmer list relevant education and provide Financial Plan, or
- Proposed lease agreement if leasing Premises to a Farmer or New Entry Farmer.
- If more than one respondent:
 - Ownership of other APR land
 - Demonstrated Farming History
 - Ownership of Agricultural Land
 - Proximity of other Agricultural Land Leased

Reference: Exercising and Assigning the Option (Currently)

A. Internal Evaluation of Statements of Interest for OPAV

Criteria to Assign OPAV

Potential Assignee has:

- 1 Complied with the terms of the Request for Information.
- 2 Not violated terms of any APR.
- 3 Demonstrated ability to pay the FMAV and close within timeframe described in APR.
- 4 Provided a Farm Plan and Farmer Resume.
- 5 if they owned or operated a farm previously details on acreage, years in business.
- 6 If New Entry Farmer, list degrees and provide a Financial Plan.
- 7 If intending to lease to a Farmer or New Entry Farmer provide copy of proposed lease agreement or letter of intent; Farm Plan and Farmer Resume.

B. If there is more then one Potential Assignee

Additional Criteria to Assign OPAV

1 Potential Assignee's Ownership of Land Subject to an APR

- | | |
|-----------------------|----------|
| a. Current Ownership. | 3 points |
| b. No Ownership | 0 points |

2 Potential Assignee's Farming History

- | | |
|---|----------|
| a. Farmer. | 6 points |
| b. New Entry Farmer. | 3 points |
| c. Intend to Lease to a Farmer or New Entry Farmer. | 0 points |

3 Potential Assignee's Ownership of Agricultural Land

- | | |
|---|----------|
| a. Farmer has historically leased, and not owned, ag. land. | 2 points |
| b. New Entry Farmer who has historically leased, and not owned ag. land. | 1 Point |
| c. If not Farmer or New Entry Farmer, currently owns agricultural land not subject to APR | 0 points |

4 Proximity of Other Agricultural Land Leased or Owned

- | | |
|--------------------------|----------|
| a. Adjacent | 3 points |
| b. Within 10 miles | 2 points |
| c. Within 25 miles | 1 point |
| d. Greater than 25 miles | 0 points |

C. Tiebreakers

1. Potential Assignee that was the Potential Purchaser
2. Potential Assignee with the most number of acres under production

The Department shall issue a Waiver upon finding:

- The landowner has: (i) received a good faith offer, (ii) a certified copy of an executed purchase and sale agreement; and
- The Potential Purchaser is a **Farmer**;
- The Potential Purchaser submits a **Farm Business Plan**; and
- If the Purchase Price is 20 per cent or more than the Fair Market Agricultural Value of the land, the Farm Business Plan must additionally include **a written justification**; and
- The Potential Purchaser has no prior record of a violation of the written agreement or terms of any agricultural preservation restriction held by the commonwealth. The Department may waive this requirement if the violation **is deemed minor**;

- The Potential Purchaser is a **Farmer** or a **New Entry Farmer** (less than 2 years experience).
- The Potential Purchaser is a non-profit organized for the purposes of leasing land to one or multiple farmers with less than 2 years experience farming. The Farmer(s) must submit the **Farm Business Plan**.
 - The purpose of the organization is demonstrated by providing the Articles of Incorporation.
- The Potential Purchaser provides a **Farm Business Plan** which demonstrates the Premises can support the proposed use, and if the Potential Purchaser:
 - (a) owned or operated a Farm previously, the **Farm Business Plan** must additionally include the size of the farming operation (acreage and estimated gross income), and number of years in business;
 - or
 - (b) is a **New Entry Farmer**, the **Farm Business Plan** must list relevant degrees, courses, workshops, education and training.

- If the APR requires a determination of FMAV and the Purchase Price is 20 per cent or more than the Fair Market Agricultural Value of the land, the **Farm Business Plan** must additionally include **a written justification** that the Department finds acceptable. *Such justification may include proximity to other land owned or leased; unique characteristics of Premises; sentimental attachment due to family connections; purchasing a non-restricted property as part of the transfer; infrastructure such as labor housing, residential dwelling.*
- The APR Owner has complied with the terms of the Option;
- The Potential Purchaser has no prior record of a violation of the written agreement or terms of any agricultural preservation restriction held by the commonwealth. The department may waive this requirement if the violation is **deemed minor**.

- If the Potential Purchaser does not qualify for an Automatic or Manual Waiver, the Department may seek to assign the right to purchase the Premises. The Department will solicit from the public Statements of Interest from those individuals seeking to be assigned the right to purchase the Premises.

- **Farmer:** an individual, corporation, limited liability company, or partnership who provides documents to demonstrate it:
 - 1) owns and operates a farm business, or
 - 2) is employed full time on a Farm for a minimum of two years.
- (The types of documents the Department will accept are: property deed, written lease, employment contract, articles of incorporation, partnership agreement, etc.)
- **New Entry Farmer:**
 - a Farmer who has less than two years experience managing or owning a Farm.

- What violations will the Department deem minor?
- “The Potential Purchaser has no prior record of a violation of the written agreement or terms of any agricultural preservation restriction held by the commonwealth. The department may waive this requirement if the violation is **deemed minor**”
- Past violations that have been resolved. Paper violations. Violations easily resolved.
- Aka forgetting to record a certificate of approval
- Non-resource based violations

- **Farm Business Plan:**

- Potential Purchaser's commercial Farm experience and qualifications,
- Identification of all land uses on the Farm,
- Production information and products to be sold for example crops to be grown, acreage for each crop, livestock to be raised, pasture acreage,
- Use of existing structures on Premises (if applicable),
- Need for additional structures or capital improvements (if applicable),
- Personnel qualifications and responsibilities,
- A description of markets and marketing strategies, employment considerations (number of employees in existence vs. need to be hired),
- How the Premises will operate in conjunction with other farm land owned or leased by the Prospective Purchaser (if applicable),
- Details on business partner(s) (if applicable).
- Plan should at a minimum include: an estimate of start-up costs, income statement with budget estimates and expenses projections.

- Completeness

Assignment of OPAV/ROFR

1. Current ownership or leasing of other land subject to an APR;		
a.	If Farmer has historically leased, not owned agricultural land	6 points
b.	If New Entry Farmer has historically leased, not owned, agricultural land	3 points
c.	If not a Farmer or New Entry Farmer, or currently owns agricultural land not subject to an APR	0 points
2. Demonstrated Farming History;		
a.	Farmer	6 points
b.	New Entry Farmer	3 points
c.	Intends to lease to Farmer or New Entry Farmer	0 points
3. Ownership of Agricultural Land;		
a.	Ownership or leasing	3 points
b.	No ownership or leasing	0 points
4. Proximity of Other Agricultural Land Leased or Owned;		
a.	Adjacent	3 points
b.	Within 10 miles	2 points
c.	Within 25 miles	1 point
d.	Greater than 25 miles	0 points

Total points of Potential Assignee: _____/21 points

If two or more Potential Assignee's remain equally qualified, the following additional criteria will be considered by the Department: The Potential Assignee's number of Farm acres currently under production.

Number of acres currently under production: _____

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An aerial photograph of a rural landscape. A wide river flows through the center, bordered by lush green trees. On either side of the river are large, flat agricultural fields, some of which appear to be planted with crops like corn. A paved road runs parallel to the river on the right side. In the background, there are rolling hills under a clear blue sky with a bright sun flare at the top center.

Agricultural Preservation Restriction Program

Division of Agricultural Conservation and Technical Assistance

Massachusetts Department of Agricultural Resources

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