

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

251 Causeway Street, Suite 500, Boston, MA 02114
617-626-1700 fax: 617-626-1850 www.mass.gov/agr



CHARLES D. BAKER
Governor

KARYN E. POLITO
Lt. Governor

MATTHEW A. BEATON
Secretary

JOHN LEBEAUX
Commissioner

FINAL

**Meeting Minutes, Board of Agriculture
Massachusetts Division of Fisheries and Wildlife Field Headquarters
1 Rabbit Hill Road (off North Drive)
Westborough, MA 01581
12/14/18**

Board Members in Attendance: Chair Abrams, Fred Dabney, Judy Leab, Crystal Card, Laura Sapienza-Grabski, Donald Chase, Skip Vadnais, Jr., Michael Smolak, Lucinda Williams, and Lydia Sisson. **Absent:** Noli Taylor, Michelle Harvey, Alison Carr.

- 1. Call to Order:** The joint meeting of the Board of Agriculture and Agricultural Lands Preservation Committee (ALPC) was called to order by Chair Abrams and ALPC Chair Commissioner Lebeaux at 10:04am. Chair Abrams acknowledge a quorum has been met.
- 2. Department Updates:** Commissioner Lebeaux reported there were no updates for today. Members of the Ag Board and the ALPC introduced themselves along with MDAR staff and those in attendance from the public.

Old Business:

- 3. APR Renewable Energy Policy:** Commissioner Lebeaux introduced the draft policy and turned the meeting over to Mr. Kennedy. Mr. Kennedy summarized that ALPC had reviewed the policy previously and the Ag Board reviewed in November. The policy currently only looks at electrical use. Including other energy uses was initially looked at but it is a complicated matter and the Department hasn't gotten to the point where they are ready to make recommendations for a proposal to account for non-electric uses.

Discussion: The ALPC/Board discussed roof top solar not being covered by the policy. Mr. Shaw commented as drafted, the policy may not be flexible and asked if there was a way to allow for an applicant to appeal it or provide language in the policy for someone to make another decision. Mr. Kennedy explained the intent of the policy was to move away from discretionary decision making. Following a brief discussion ensued about limits if the land was non-tillable. This lead into a discussion about the purpose of the APR to preserve the land and what is considered an agricultural purpose and use. Nathan L'Etoile from American Farmland Trust said he felt it is important to include language to clarify the policy is strictly to electricity - specifically #6. He gave credit to the Department for figuring out a way to allow solar on barn roofs. He felt there needs to be a way to make solar an agricultural structure to meet the law. Members discussed decommissioning and asked what guarantees there are that there is funding available for decommissioning. Mr. Kennedy clarified the

intent of the decommissioning and that there is not a bond in place/no guarantee that would funding would be available for it. The Commissioner stated the potential remedy would be through the judicial system. Furthermore, the Commissioner noted there are decommissioning requirements for digesters but there is bond for that. He feels there is plan in place, the Department feels it is enforceable. Ms. Bodian offered that land in violation would not be eligible for MDAR grants and pending the OPAV policy they may not be able to purchase additional APR land. After some additional comments from members; the Commissioner suggested a vote today would make things better and more flexible for farmers and that the Department will continue to work on the issue. Mr. Shaw reminded everyone that the proposed policy is currently the non-written policy of the Department and would support it but feels adding flexibility for appeals at some point would be good. Michelle Bodian clarified the policy is not appealable, but the denial of the approval is appealable through ALPC. There was discussion that many communities require a performance bond via the planning board condition of approval.

Action Taken: Mr. Shaw made a motion to approve the policy as it stands and ask staff to come back within 3 months/90 days to address the suggestions mentioned today. Bob O'Conner seconded the motion.

Discussion: Mr. Dabney preferred not to approve something that isn't satisfactory to what the ALPC wants. There was a question whether there was an issue before the Department. Mr. Kennedy said there are requests routinely and that currently the Department doesn't have a policy they can provide in writing to the farmer. Mr. Verril asked if there was no vote the policy would be in effect. Mr. Kennedy said there would be no written policy and reminded the ALPC that the policy did go through public comment already. The Commissioner pointed out that some of the public comment was that there could be misunderstanding of the policy without having it in writing. Ms. Sapienza-Grabski requested educational opportunities for farmers in the future because she feels there is a lot of confusion around solar. Mr. Dabney asked if the new legislation required such education. Mr. Kennedy said that staff will discuss the APR document and approval process with all new APR landowners.

Action Taken: The motion passed with 6 to 1.

4. **APR Legislation:** Mr. Kennedy provided an update on an APR project in Princeton before summarizing what the new APR legislation requires regarding OPAV and ROFRs. A presentation along with an outline of the process, and the required timeline with a target date of August 1st, 2019 to promulgate regulations was provided to members.

Discussion: Members discussed the source of the 20% above FMAV source being from the recently passed legislation. Following there was a discussion to clarify that all of the 5 conditions of automatic waiver are required. Members then discussed the ability for nonprofits to purchase and lease for farming. Separately, members discussed eliminating the less than two years experience from: the manual waiver #1 (non profit). Continuing through the slide deck members discussed what would be "Deemed Minor" followed by a discussion about "Farm Business Plans" before moving on to talk about "Assignment of OPAV/ROFR."

5. **Date, Time and Location of Next Meeting:** Members discussed the next meeting and process with the ALPC planning to meet the 3rd week of January with an Ag Board meeting to follow. **Action Taken;** None.
6. **Adjournment: Action Taken:** Mr. Smolak made a motion to adjourn the meeting at 1:04pm. Mr. Vadnais, Jr. seconded the motion. The motion to adjourn passed unanimously.

Meeting Document for 12/14/19:

#1 Ag Board Agenda

#2 ALPC Agenda

#3 Renewable Energy Draft Policy

A - APR Program FY2019 Changes to MGL Chp 20

B - APR Regulations Promulgation Calendar

C - 330 CMR 22.00

D - APR Document

E - APR Program Guidelines

F - APR OPAV

G - Farmer Resume/Farm Plan Example 1, 2, 3

H - Request for Statements of Interest

I - APR ROFR

J - APR Assist of OPAV

K - APR Slide Deck

L - ALM GL Ch. 20; Sect 23

M - Draft for ALPC Discussion 12/14/18; Criteria to be inserted into 330 CMR 22

THE COMMONWEALTH OF MASSACHUSETTS #1

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OPEN MEETING NOTICE **MASSACHUSETTS BOARD OF AGRICULTURE**

Friday, December 14th, 2018

Massachusetts Division of Fisheries and Wildlife Field Headquarters

1 Rabbit Hill Road (off North Drive)

Westborough, MA 01581

10:00 AM

MEETING AGENDA

1. Start: Call to Order.
 2. Attendance.
 3. Department Updates.
- Old Business:
4. APR Renewable Energy Policy.
 5. APR Legislation: Review and discuss the criteria for waiving a right of first refusal and option to purchase at agricultural value, discussion regarding farm business plan evaluation and criteria.
 6. APR Legislation: Review criteria for assignment of right of first refusal and option to purchase at agricultural value.
 7. Date, Time and Location of Next Meeting.
 8. Adjournment.

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**AGRICULTURAL LANDS PRESERVATION COMMITTEE
MEETING**

Friday, December 14, 2018 at 10:00 AM

Massachusetts Division of Fisheries and Wildlife Field Headquarters

1 Rabbit Hill Road (off North Drive)
Westborough, MA 01581

MEETING AGENDA

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- I. UPDATE:** Department Updates.
 - II. VOTE:** Approval of Minutes, November 2, 2018
 - III. VOTE:** APR Renewable Energy Policy
 - IV. APR LEGISLATION:** Review and discuss the criteria for waiving a right of first refusal and option to purchase at agricultural value, discussion regarding farm business plan evaluation and criteria
 - V. APR LEGISLATION:** Review criteria for assignment of right of first refusal and option to purchase at agricultural value
-

For information please contact Dorothy Du at: dorothy.du@mass.gov or call 617-626-1741

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AGRICULTURAL PRESERVATION RESTRICTION PROGRAM GUIDELINES
REQUESTS FOR A CERTIFICATE OF APPROVAL TO CONSTRUCT A GROUND MOUNTED RENEWABLE ENERGY SYSTEM

- 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; generally accepted agricultural practices; and activities or uses which may be wasteful of the natural resources of the Commonwealth.
- II. **AUTHORITY:** Per the terms of APRs and at the Department's discretion, the Department may grant a Certificate of Approval ("COA") to construct an agriculturally related structure, including an agriculturally related Ground Mounted Renewable Energy System ("RES") on the Premises.
- III. **DEPARTMENTAL PREREQUISITES TO ISSUING A COA FOR A GROUND MOUNTED RENEWABLE ENERGY SYSTEM:** In order to grant a COA for a Ground Mounted Renewable Energy System, the Department must find all of the following:
1. The APR contains language requiring the Owner to petition the Department for approval to construct an agricultural structure;
 2. The Premises is being utilized for commercial agriculture;
 3. Non-contiguous APR land or non-APR land owned by the same entity and to be served by the output of the Ground Mounted Renewable Energy System must also have a De-commissioning Plan. The Department reserves the right to require implementation of the plan upon the severing of ownership of the agricultural operations served by the Renewable Energy System;
 4. The Ground Mounted Renewable Energy System will be located so as to minimize negative impacts to the agricultural productivity of the Premises;
 5. The Applicant has submitted to the Department a detailed site plan showing where the proposed Ground Mounted Renewable Energy System will be located on the Premises and where any existing structures and improvements are currently located;
 6. The Ground Mounted Renewable Energy System must have either a rated annual output capacity (kWh or BTUs) not greater than 2.0 times the documented historical or projected annual agricultural energy (kWh or BTUs) use on the APR land or the Agricultural Operation.
 7. If approved:

- a. The location of the Ground Mounted Renewable Energy System will not interfere or lead to the likelihood of interference with the Agricultural Use; and,
 - b. The proposed Ground Mounted Renewable Energy System must be sited to minimize impacts on productive agricultural land.
8. If the Ground Mounted Renewable Energy System is to be installed on APR land with prime soils or soils of state significance to farming, the following conditions must apply:
- a. Site preparation and disturbance of the existing soil conditions of the land must be kept to a minimum; and,
 - b. No topsoil may be removed unless appropriately stockpiled and replaced on the site.

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

Agricultural Operation: a farming business encompassing a single economic unit under the same ownership and control, from which is derived a commercial agricultural product.

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"): a perpetual restriction to retain land or water areas predominately in their agricultural farming or forest use by forbidding or limiting certain property development rights.

APR Grantor: the party, parties, entity or entities that 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.

De-commissioning Plan: a clear plan with contingencies, developed at or before the time of installation, for the de-commissioning of the Renewable Energy System. The plan must account for removing the

components of the Renewable Energy System and any related infrastructure and returning the Premises to its original condition as closely as possible.

Owner: the record title owner of the Premises.

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

Ground Mounted Renewable Energy System: any ground mounted (physical structure installed, with or without footings, on the surface of the land) renewable or alternative renewable energy generating source and all its associated infrastructure, including but not limited to any energy storage, that meets the requirements of M.G.L. c. 25A, §§11F and 11F1/2 as recently amended by Chapter 251 of the Acts of 2014. Ground Mounted Renewable Energy System explicitly does not include: 1) systems which use agricultural resources such as biomass as inputs (anaerobic digestion), or 2) systems which are roof mounted to existing structures.

Adopted _____, 2018

John Lebeaux
Commissioner

Budget Section	Statute	Summary	Effective Date
Section 14	20:01 (Attachment A)	Requires the Commissioner to provide the Ag Board with an opportunity to consult, review and comment on proposed policies and regulations related to the acquisition of agricultural preservation restrictions.	Prior to promulgation of regulations (Aug. 1 2019); on going for policy review
Section 15	20:23 (Attachment B)	Requires the Commissioner to establish policies and promulgate regulations for the management and oversight of the APR program. The promulgation shall follow MGL C30A procedures. Specifies that the 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. Ag Board is to be consulted and the ALPC needs to approve the regulations.	August 1, 2019
Section 16	20:23 (Attachment B)	Requires landowners seeking agricultural preservation restrictions to meet with MDAR on the restriction terms and conditions; requires owners of land selling the land subject to such restrictions to meet with the purchaser and MDAR to discuss the restriction terms, conditions, and procedures related to right of first refusal or option to purchase; regulates the conditions of the meetings; after a notice of sale; allows MDAR to communicate with the landowner and purchaser regarding any submissions; requires MDAR to review existing policies, procedures and regulations relative to the management and oversight of the agricultural preservation restriction program.	July 2018 (conferences on newly acquired APRs)/ August 1, 2019 (regs)/ February 1, 2020 (begin review)
Section 17	20:23 (Attachment B)	Expands the type of appeals that may be heard by the ALPC to now include appeals from aggrieved APR landowners of decisions by MDAR to exercise or assign a right of first refusal or option to purchase.	August 1, 2019
Section 18	20:23 (Attachment B)	Requires MDAR to notify an aggrieved landowner in writing by certified mail of the determination to exercise or assign a right of first refusal, an option to purchase at fair market agricultural value or other similar right contained in the agricultural preservation restriction; regulates the notice requirements; includes timing requirements.	August 1, 2019
Section 19	20:23 (Attachment B)	Establishes an automatic waiver provision; MDAR must waive its right of first refusal or option to purchase on a piece of land covered by an APR if the landowner has received a good faith offer, including a certified copy of an executed purchase and sale agreement, from a farmer who has met certain enumerated conditions. Requires MDAR to consult with the ALPC and Ag Board to establish criteria to review business plans.	August 1, 2019
Section 19 (contd.)	20:23 (Attachment B)	Allows a landowner to withdraw from the process at any point.	August 1, 2019
Section 20	20:24 (Attachment C)	Increases the Governor's appointments to the Agricultural Lands Preservation Commission from 4 to 6; requires that 4 of those appointees be owners and operators of farms within the Commonwealth, 1 a representative of a farm advocacy organization and 1 a representative of a land trust organization.	January 1, 2019

APR Regulations Promulgation Calendar-2018-2019

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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
21d prior to Public Comment Period	Public Notice in Newspaper. Notify parties who have requested notice. Notice to Register. Electronic and Paper Copies to Regulations Division.
35d prior to Public Comment Period	Notify Government Advisory Committee and MMA.
Late Winter 2019	Ag Board meeting to consult on regulations after ALPC approval.
Winter 2019	ALPC Meeting to review second draft of regulations (if necessary)
January 1, 2019	Increases the Governor's appointments to the ALPC from 4 to 6
Early Winter 2018	ALPC Meeting to review first draft of regulations.
Fall 2018	MDAR to draft proposed changes to regulations per legislation
July 30, 2018	Require participation in meetings and conferences for new APRs acquired after this date.

330 CMR 22.00: AGRICULTURAL PRESERVATION RESTRICTION PROGRAM

Section

- 22.01: Scope and Purpose
- 22.02: Definitions
- 22.03: Composition and Meetings of the Agricultural Lands Preservation Committee (ALPC)
- 22.04: Eligibility of Agricultural Preservation Restriction (APR) Program
- 22.05: Application Procedures
- 22.06: Agricultural Preservation Restriction (APR) Program Application Processing and Closing Procedures
- 22.07: Criteria Applicable in Evaluation of Projects
- 22.08: Agricultural Preservation Restriction (APR)
- 22.09: Departmental Approvals
- 22.10: Notification
- 22.11: Agricultural Preservation Restriction (APR) Parcel Violations
- 22.12: Release of an Agricultural Preservation Restriction (APR)
- 22.13: Adjudicatory Hearings
- 22.14: Policies and Guidelines

22.01: Scope and Purpose

The scope of 330 CMR 22.00 is to implement the terms of M.G.L. c. 20, §§ 23 through 26, and c. 184, §§ 31 and 32. The purpose of 330 CMR 22.00 is to provide guidance and clarification for present and future APR Parcel Owners regarding their rights and responsibilities and the Department's responsibilities under St. 1977, c. 780, in conjunction with the direction and guidance provided in Department policy statements, guidelines, and other informational sources referenced in 330 CMR 22.14; to encourage sound soil management practices in accordance with generally accepted agricultural practices; and to regulate activities and uses that may be detrimental to the retention of the land for agricultural use in perpetuity.

22.02: Definitions

As used in 330 CMR 22.00 the following words shall have the following meanings, unless the applicable Agricultural Preservation Restriction provides a different definition, in which case the definition in the Agricultural Preservation Restriction controls:

Adjudicatory Hearing. An informal hearing under M.G.L. c. 30A where parties may present evidence on issues of fact, and argument on issues of law and fact prior to the ALPC issuing a written final decision.

Agricultural Lands Preservation Committee (ALPC). A committee in the Department of Agricultural Resources whose membership, powers, duties, and statutory grant of authority are set forth in M.G.L. c. 20, §§ 23 and 24.

Agricultural Preservation Restriction (APR). 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.

Agriculture. The uses of land enumerated in M.G.L. c. 61A, §§ 1 and 2.

Applicant. The record owner(s) of land who submit an Application for a Project.

Application. A written request submitted by a record owner of land seeking an APR or a Departmental Approval.

APR Parcel. The land and improvements encumbered by an APR.

APR Value. The difference between the Fair Market Value and the Fair Market Agricultural Land Value as determined by the appraisal obtained by the Department pursuant to 330 CMR 22.06(2)(e).

22.02: continued

Certificate of Approval (COA). A certificate, in recordable form, that allows a Structure, improvement, activity, or use for agricultural purposes on an APR Parcel with or without conditions, for all instances requiring Departmental Approval pursuant to the APR.

Certificate of Completion (COC). A certificate, in recordable form, that attests that the conditions of a COA were completed to the satisfaction of the Department.

Chair. The Commissioner as he or she presides over the Agricultural Lands Preservation Committee.

Commissioner. The Commissioner of the Massachusetts Department of Agricultural Resources.

Defeat or Derogate from the Intent of St. 1977, c. 780. To annul or to adversely affect the retention of land for commercial Agriculture in perpetuity and the preservation of the natural agricultural resources of the Commonwealth.

Department. The Massachusetts Department of Agricultural Resources.

Departmental Approval. Approval by the Department, with or without conditions, that allows a Structure, improvement, excavation, use or activity for Agriculture purposes on an APR Parcel.

Fair Market Agricultural Business Value. The value based upon the ongoing agricultural business including agricultural buildings, infrastructure, goodwill and other related agricultural business factors. Fair Market Agricultural Business Value is relevant only upon the subsequent sale of the APR Parcel and is not applicable at the time of original purchase of the APR. The Fair Market Agricultural Business Value appraisal includes agricultural business potential and is based upon activities and circumstances existing at the time of the sale of the APR Parcel.

Fair Market Agricultural Land Value. An APR value based upon the highest and best use of the land for agricultural purposes. The Fair Market Agricultural Land Value may rise and fall commensurate with market conditions, inflation, or other valuation factors.

Fair Market Agricultural Value. The combined total of the following components of an APR Parcel, as applicable: Fair Market Agricultural Land Value; Fair Market Agricultural Business Value; and Fair Market Dwelling Value.

Fair Market Dwelling Value. The appraised replacement value of a dwelling(s) on the restricted land.

Fair Market Value. The most probable price that a parcel 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.

Farm Stand. An agricultural Structure utilized for the sale of agricultural products not inconsistent with M.G.L. c. 40A, § 3.

Final Vote. A vote of the ALPC approving or rejecting a Project that had previously received a Vote of Interest.

Housing for Farm Labor. A Structure, whether new Structure or conversion of an existing Structure, for use only by seasonal agricultural employees of the Owner. Depending upon the agricultural use of the land, the season may be year-round, for example a dairy operation has a year-round season.

Impervious Surface. A material that does not allow water to percolate into the soil on the APR Parcel; this includes, but is not limited to, surfaces upon which are located Structures for Housing for Farm Labor, agricultural Structures (with and without flooring), and paved areas or roads. Impervious surfaces include permanent, non-seasonal rooflops, concrete and asphalt surfaces.

22.02: continued

Municipality. The city or town in which a Project is located.

Owner. APR Parcel record title owner(s).

Partner Agency. An agency which is partnering with the Department in purchasing, holding or enforcing the terms of the APR.

Program. The Department's Agricultural Preservation Restriction Program.

Project. An area of land for which an Application for an APR has been submitted.

Special Permit. A Departmental Approval in the form of a certificate in recordable form that permits a temporary non-agricultural activity or use on an APR Parcel, subject to all requirements and conditions in the applicable APR, to all provisions of M.G.L. c. 20, § 23, and to any conditions contained in the Special Permit.

Structure. A combination of materials assembled at a fixed location to give support or shelter, whether or not it requires a footing or foundation.

Vote of Interest. A vote by the ALPC indicating an interest in purchasing an APR on the identified Project, subject to available funding.

22.03: Composition and Meetings of the Agricultural Lands Preservation Committee (ALPC)

- (1) The composition and meetings of the ALPC shall be as defined by M.G.L. c. 20, §§ 23 and 24.
- (2) The ALPC shall meet at the call of the Chair.
- (3) The Chair shall call a meeting at the written request of any five owners of APR Parcels. If such a request is made, the ALPC shall hold such a meeting within 60 days after such request is received. The ALPC shall give notice of the meeting in the usual and prescribed manner and form, stating the date, time, and place of the meeting, and shall, not less than 14 days before the meeting, send a copy of the notice to owners making the request.
- (4) A quorum shall consist of a majority of voting members present at the meeting.

22.04: Eligibility of Agricultural Preservation Restriction (APR) Program

In order to be eligible for Application to the Program, the Project shall be actively devoted to Agriculture or horticulture as defined in M.G.L. c. 61A, §§ 1 through 5.

22.05: Application Procedures

(1) **Application to Department.** Application to the Department to enroll a Project in the Program shall be made on a form prescribed by the Department and approved by the ALPC. An Application shall be submitted by the Applicant to the Commissioner and a copy shall also be submitted to the chief executive officer of the Municipality in which the Project is located. If the Project is located in more than one Municipality, a single Application covering the entire Project shall suffice, copies of which shall be submitted by the Applicant to the chief executive officer of each Municipality. The chief executive officer shall distribute a copy of the Application to the agencies and officials identified in 330 CMR 22.05(4)(a).

(2) **Project Information and Description.** The Application shall contain, at a minimum, the following information:

- (a) Deed references, assessor's map, and any and all liens, encumbrances, and easements on the Project;

22.05: continued

- (b) A delineation of the Project boundaries as depicted on a United States Geological Survey (USGS) topographic map showing the Project as well as any excluded contiguous acreage under the same ownership;
 - (c) Copies of any existing surveys and aerial photography of the Project;
 - (d) A United States Department of Agriculture (USDA) Natural Resources Conservation Services (NRCS) soils map showing a breakdown of the Project's various soil types and acreage possessing soil capability Class I through VIII as well as prime farmland, soils of state or local significance, and unique soils;
 - (e) A full description of all commercial agricultural uses and activities occurring on the Project including, without limitation, type of crop, acreage devoted to each crop, type and quantity of livestock, and acreage of associated pasture.
 - (f) A written statement to the Department describing short and long term plans for keeping the land in active Agriculture; and
 - (g) Statement by Applicant consenting to allow the Department, an agent of the Department, or a Partner Agency to conduct an inspection of the Project, including soil testing limited to agricultural and septic suitability.
- (3) Disclosure. If a Municipality is to provide funds or other assistance as set forth in M.G.L. c. 20, § 23 toward the purchase of the APR, or if otherwise required by the Public Records Law, the Department may be required to disclose information provided to the Department.

(4) Municipality Participation. The chief executive officer of the Municipality may provide the following information to the Department with a copy to Applicant. Failure of a Municipality to supply such additional information shall not be construed as preventing the ALPC's consideration of such Project:

- (a) Comments or recommendations from, but not limited to, the following agencies and officials as may be appropriate: Agricultural Commission, Conservation Commission, Planning Board, the chief executive officer, and chief administrative officer. The comments may include the compatibility of the Project with zoning by-laws, open space plans, natural resource inventories, and other relevant considerations; and
- (b) A statement signed by the chief executive officer of the Municipality expressing the interest of the Municipality, or lack thereof, in providing funds or other assistance if the Project is approved by the Department.

22.06: Agricultural Preservation Restriction (APR) Program Application Processing and Closing Procedures

- (1) Upon receipt of a complete Application for a Project meeting the eligibility requirements, the Department shall review the Application and complete an evaluation.
- (2) The evaluation may include, but is not limited to, the following:
 - (a) A field inspection of the Project and an evaluation of its agricultural potential;
 - (b) Referral of the Project to the appropriate regional planning agency for an opinion of the Project's compatibility with regional planning objectives;
 - (c) Review of the Application and information contained therein as to the suitability for agricultural preservation;
 - (d) Compatibility with Partner Agency eligibility criteria;
 - (e) Obtaining and reviewing a full appraisal, obtained at the Department's own expense, carried out for both the Fair Market Value of the Project and the Fair Market Agricultural Land Value of the Project to determine the APR value in accordance with recognized professional appraisal standards and the applicable Executive Office of Energy and Environmental Affairs (EOEEA) and Partner Agency appraisal specifications, if applicable; and
 - (f) Review of title documents. The Department may, at its own expense, retain an attorney duly licensed and in good standing to practice law in the Commonwealth of Massachusetts with expertise in the practice of real estate conveyance and land use law who complies with all current EOEEA and Department standards, rules, and policies related to title specifications. The attorney shall perform a title search related to the Project, and provide to the Department a title abstract, certificate of title, or other documents as required by the Department.

22.06: continued

- (3) Upon the completion of the evaluation and a recommendation, the Department shall:
- Place the Project on the agenda of the next available ALPC meeting for consideration, if it determines that the Project continues to meet all Program eligibility requirements; or
 - Notify the Applicant in writing that the Project fails to meet Program eligibility requirements or funding availability.
- (4) The ALPC shall consider the Project at its next available meeting and may, after consideration:
- Cast a Vote of Interest;
 - Cast a vote of no interest; or
 - Take any other just and appropriate action consistent with the goals and purposes of the APR Program, together with an explanation of its reasons.
- (5) Following the ALPC action:
- The Department shall notify Applicant in writing within 30 days of the ALPC action; and
 - If the Applicant is dissatisfied with the action of the ALPC, the Applicant may, within 30 days of receipt of notice, request in writing a meeting in order to present supplementary information to the ALPC. After due notice to all parties concerned, the ALPC shall hold a meeting within 120 days of its receipt of request and shall reconsider the Project in the light of such relevant and supplementary information as may be presented to it.
- (6) The amount paid for the APR shall be the amount presented to the Applicant in a letter offering to purchase an APR on the Project. However, this sum shall not exceed the difference between the Fair Market Value and Fair Market Agricultural Land Value, as determined by the appraisal obtained by the Department pursuant to 330 CMR 22.06(2)(e).
- (7) Upon the Applicant accepting an offer to purchase an APR, the Project shall be placed on the agenda of the next available ALPC meeting for consideration of a Final Vote.
- (8) Upon a Final Vote of the ALPC, the Applicant shall be responsible for the following activities, unless otherwise agreed in writing by the Department and the Applicant:
- Clearing all title defects and encumbrances identified by the Department, at the Applicant's expense, and approving a metes and bounds description of the APR Parcel and any excluded parcels based upon a survey. The Applicant shall confirm in writing that the boundary description of the APR Parcel, the survey, and any excluded parcels, have been examined and have been found to be free of error;
 - Paying 50% of the cost of the survey. The Department shall retain a surveyor to perform the survey according to EOEEA and Partner Agency, if applicable, specifications; and
 - Cooperate in the preparation, review, and signing of a baseline report documenting the present conditions of the APR Parcel, and other documents as may be required by the Department or Partner Agency to acquire the APR.
- (9) Upon completion of all actions described in 330 CMR 22.06(7)(a) through (c), including preparation of all legal instruments and the securing of all necessary funding for the transaction, including all documents required for obtaining funding from Partner Agency, if applicable, the Department will schedule a closing on the Project at or prior to which all legal instruments and documents shall be executed and final arrangements for payment of funds, adjustments, and recording of documents shall be made by the Department.

22.07: Criteria Applicable in Evaluation of Projects

- (1) In evaluating a Project, the ALPC shall consider the following as priority criteria to best fulfill the purposes of the APR Program, as established by St. 1977, c. 780:
- The degree to which the Project would serve to preserve and enhance the agricultural resource base of the Commonwealth of Massachusetts;
 - The suitability of land as to soil classification and other criteria for agricultural use; and

22.07: continued

(c) The Fair Market Value of such land and the Fair Market Value of such land when used for agricultural purposes as determined by the independent appraisal obtained by the Department pursuant to 330 CMR 22.06(2)(e).

(2) In addition, the ALPC may consider additional criteria, including, but not limited to, the following:

- (a) Contribution of the Project in the development of a continuing program of acquiring multiple APRs within a defined geographical area or areas;
- (b) Degree to which a Municipality where a Project is located is prepared to provide assistance to the Commonwealth for purchase of an APR by providing funds, legal, and enforcement services or other assistance satisfactory to the ALPC, pursuant to M.G.L. c. 20, § 23;
- (c) Opportunities for individual and family farm ownership and for employment through farm related processing, storage, transportation, and marketing of farm products; and,
- (d) Degree of threat from any cause to the continuation of Agriculture on the Project.

22.08: Agricultural Preservation Restriction (APR)

An APR shall serve to memorialize the agreement of an Owner and the Commonwealth, and Partner Agency or co-holder, if any, as to the future use of an APR Parcel.

(1) **Form and Content.** The Commissioner shall be responsible for establishing the form and content of each APR, in conjunction with the Partner Agency, if applicable.

(2) **Terms and Conditions.** An APR shall include such terms and conditions as the Department deems necessary to implement the purposes of St. 1977, c. 780, Massachusetts law, and Partner Agency requirements, if applicable. Such terms and conditions may include, without limitation, statement of purpose, retained rights, prohibited uses and acts, uses and acts requiring Departmental Approval, processes and procedures, affirmative covenants to farm, inspection and enforcement rights, and option to purchase at agricultural value.

(3) **Nature of APR.** The APR is a binding agreement between an Owner of an APR Parcel and the Commonwealth, exists in perpetuity, runs with the land, binds all future owners of the APR Parcel, and shall be recorded at the appropriate Registry of Deeds. Any inconsistency between the language of an APR and the language of a policy or regulation shall be resolved in favor of the APR.

22.09: Departmental Approvals

In accordance with the terms of the APR, certain activities, uses, and improvements require Departmental Approval. Such approvals are issued in the form of a Certificate of Approval (COA) or Special Permit by the Department, with or without conditions, pursuant to the following:

(1) **Certificate of Approval (COA).** While generally accepted agricultural practices are generally allowed by right in the APR, the terms of an APR may require an approval for certain agricultural Structures, activities, practices, uses, and improvements. The Department may, by issuing a COA, authorize those Structures, activities, practices, uses, and improvements that the Department finds to be consistent with APR, Massachusetts law, and regulations of the Department.

(a) Unless otherwise provided, a COA shall be subject, at a minimum, to the following thresholds:

1. The activity will not result in the APR Parcel having Impervious Surfaces greater than five acres or five percent of the Parcel, whichever is less, or unless the APR provides a more stringent threshold;
2. The activity will minimize, to the fullest extent possible, the loss of quality agricultural soils; and
3. The activity will not interfere with or lead to the likelihood of future interference with agricultural operations and will preserve, maximize, and realize the agricultural potential of the parcel, and in addition will enhance or lead to the likelihood of enhancing future agricultural operations.

22.09: continued

- (b) Actions requiring a COA may include, but are not limited to:
1. Construction of a Farm Stand;
 2. Construction of Housing for Farm Labor;
 3. Construction of residential dwellings;
 4. Construction of an alternative energy system;
 5. Construction of other agriculturally related structures;
 6. Soil excavation; and
 7. Subdivision.
- (2) Procedures for Requesting a COA.
- (a) Application. An Owner shall submit to the Department an Application, signed by the Owner on a form prescribed by the Department describing the proposed use, act, or Structure requiring a COA.
- (b) Review and Recommendation. Within 90 days of receipt of a completed Application, the Department shall review the Application and may inspect the APR Parcel.
- (c) Certificate of Approval. If an Application is approved, the Department shall issue a COA in recordable form. A COA may require specific conditions, including but not limited to, requiring an Owner to post a bond or other security. A COA may be transferable to a subsequent owner of the APR Parcel only with approval of the Department.
- (d) Certificate of Approval Denial. If an Application for a COA is denied, the Department shall notify the Owner in writing of the denial. The notification of denial shall contain a notice of a right to request a hearing before the ALPC, and the Department may specify a time limit to request a hearing, not to exceed the timing provided for in M.G.L. c. 20, § 23(c).
- (3) APR Parcel Owner Responsibilities.
- (a) Performance of the COA Activities. Owner shall commence the approved COA activities within one year of receipt of the COA. As to a COA approving construction or excavation activities, the Owner must, in addition, complete those approved activities within two years of the date of receipt of the COA.
- (b) Interruption of the COA Activities. If unforeseen circumstances or other factors prevent the Owner from complying with the provisions of the COA, the Owner shall immediately notify the Department in writing and immediately cease all further work or activity.
- (c) Non-conforming Work. If the performance of the COA activities fails to conform to the COA, the Owner shall, take all action necessary to end the non-conformity, including but not limited to, restoring the APR Parcel to its prior condition, removing any Structure, or ceasing work immediately.
- (d) Notice of Completion of the COA Activities. The Owner shall, within 30 days of the completion of the COA activities, notify the Department in writing.
- (4) Department Responsibilities. Upon satisfactory completion of the COA activities, the Department may perform the following:
- (a) Inspection of the COA Activities. The Department may, within a reasonable period of time, inspect the completed COA activities to determine compliance with the terms of the COA.
- (b) Certificate of Completion (COC). The Department may within a reasonable period of time after its inspection, if the COA activities conform to the COA, issue a COC, if required, in recordable form and provide a copy to the Owner.
- (5) Special Permit. A Special Permit is a Departmental Approval that permits a certain non-agricultural activity or use that does not Defeat or Derogate from the Intent of St. 1977, c. 780. All applicable provisions of M.G.L. c. 20, § 23(b) and of other applicable statutes, unless otherwise provided by the applicable APR, shall govern the granting of a Special Permit. In connection with the Special Permit, the following specific provisions are applicable:
- (a) An Application for Special Permit shall be granted only after the Department applies the Agricultural Preservation Restriction Program Guidelines "Requests for a Special Permit to Conduct Non-agricultural Activities or Uses on APR Land" in effect at the time of the Application;

22.09: continued

- (b) However, at a minimum, the Department may grant a Special Permit if:
1. The APR Parcel is being actively utilized for full-time commercial Agriculture;
 2. The activity is minor, ancillary and subordinate to the Agricultural use of the APR Parcel;
 3. Such uses and activities are not inconsistent with the purpose of the APR and shall not defeat nor derogate from the purpose of this Restriction; and
 4. The request is limited to uses and activities requiring no new construction.
- (c) An Owner who is granted a Special Permit shall commence Special Permit activity within one year of issuance of a Special Permit; and
- (d) A Special Permit shall have a maximum term of five years and may be renewed only at the request of the Owner and with the approval of the Department.
- (6) **Procedures for a Special Permit.**
- (a) **Application.** For all activities or uses requiring a Special Permit, an Owner shall sign and submit to the Department an Application, on a form prescribed by the Department, describing all proposed non-agricultural activities or uses.
- (b) **Review and Recommendation.** Within 90 days of receipt of a completed Application, the Department shall review the Application, and may inspect the APR Parcel.
- (c) **Issuance of Special Permit.** If an Application is approved, the Department shall, within a reasonable amount of time, issue a Special Permit in recordable form. A Special Permit may require an APR Parcel Owner, among other conditions, to post a bond or other security satisfactory to the Department for completion of the activities required.
- (d) **Denial of Special Permit.** If an Application is denied, the Department shall notify the Owner in writing of the denial. The notification of denial shall contain a notice of a right to request a hearing before the AEP, and the Department may specify a time limit to request a hearing, not to exceed the timing provided for in M.G.L. c. 20, § 23(c).
- (7) **APR Parcel Owner Responsibilities.** The Special Permit shall set forth, at a minimum, the following specific obligations to be met by the Owner:
- (a) **Registry Recording.** The Owner may record it with the appropriate Registry of Deeds at Owners' own expense and provide the Department with a copy of the recorded document.
- (b) **Unforeseen Circumstances.** If unforeseen circumstances or other factors prevent the Owner from complying with the terms of the Special Permit, the Owner shall immediately notify the Department in writing.
- (c) **Non-conformity with Special Permit.** If the Owner fails to comply with the terms of the Special Permit, the Owner shall take such remedial action to end the non-conformity, including, but not limited to, bringing the activity into compliance with the Special Permit, and restoring the APR Parcel to its prior condition.
- (8) **Other Department Rights.** At any time during the initial or renewed term the Department may, in its discretion, conduct an inspection to ascertain compliance with the Special Permit.

22.10: Notification

Where the APR provides for a right of first refusal, an option to purchase at agricultural value, or a similar right at the time of sale held by the Department, unless otherwise provided by the specific terms of an APR, the following provisions shall apply, in addition to Department guidelines for waivers in effect at the time of the notification of sale:

- (1) **Proposed Sale or Conveyance of an APR Parcel.** If an APR Parcel is subject to a right of first refusal or option to purchase real estate at Fair Market Agricultural Value, and the Owner receives an offer to purchase, the Owner shall notify the Department in writing. The written notice shall, at a minimum, include copies of the following: the offer to purchase; purchase and sale agreement and amendments; any appraisal prepared for proposed sale, and any appraisal prepared for sale at which Owner acquired the APR Parcel; other relevant documents pertaining to the proposed sale. Notice shall also include a letter from Owner requesting a waiver, and in the case of an Option or right of first refusal, an offer to sell the APR Parcel to the Commonwealth pursuant to the terms of the Option or right of first refusal.

22.10: continued

(2) Proposed Sale or Conveyance of Excluded Land. In the event that the proposed sale or conveyance contains agricultural or other land not subject to the APR, Owner shall also provide a written apportionment of values in the purchase and sale agreement, if relevant, as between the APR Parcel and the land/Structures not subject to the APR.

(3) Form of Notice. Notice to the Department shall be in writing and sent by certified mail, return receipt requested, or hand delivered to the Department's main office at 251 Causeway Street, Suite 500, Boston, MA 02114, or the address listed on the Department's website.

22.11: Agricultural Preservation Restriction (APR) Parcel Violations

The Department or its authorized agents and any entities co-holding the APR may enter the APR Parcel, including buildings and Structures, with prior notice, to ascertain compliance with the APR. The Department shall work with the Owner for a resolution of any identified violations or potential violations of the APR, any statute, regulation, policy, COA, or Special Permit.

(1) Determination of Violation. If the Department has reason to believe a violation has occurred, it shall determine the extent of any violation. The Department may make contact with the Owner to discuss the Department's determination.

(2) Response. If the Department finds that a violation has occurred, written notice stating the particulars of the violation shall be given to the Owner:

(a) The Owner shall provide a written response including any relevant pictures or information within the time period set forth by the Department in the written notice of violation.

(b) Upon receiving a response from the Owner, the Department shall outline a proposed plan, or require the Owner to propose a plan to correct the violation. The creation of a plan may require assistance from a Partner Agency or other entity with technical expertise. Upon the creation of a plan approved by the Department, the Owner shall implement the plan within the timeframe approved by the Department and shall give progress reports as directed by the Department.

(c) A site inspection to confirm the satisfactory completion of the plan will be completed by Department staff.

(d) If the violation is corrected to the satisfaction of the Department, a written acknowledgement will be issued by the Department within 30 days to the Owner.

(3) Violation Resolution. If the Department and the Owner cannot reach a satisfactory resolution to the violation or the Owner fails to complete the agreed upon plan, the Department shall pursue resolution through all available legal means. If a court determines that the APR has been violated, the Department may seek reimbursement for any reasonable costs of enforcement, including court costs, reasonable attorney's fees, and other payments ordered by such court.

(4) Joint and Several Liability. The Owner and its successors in title, shall be jointly and severally liable for any violation of the terms of the APR, Certificate of Approval, Special Permit, or M.G.L. c. 184, §§ 31 through 33, and c. 20, §§ 23 through 26, and rules, regulations and policies thereunder.

(5) Partner Agency Right of Enforcement. A Partner Agency may have a right of enforcement as described in the applicable APR. Specifically, the United States has a right of enforcement for those APRs held with the United States Department of Agriculture in order to protect the public investment. The Secretary of the United States Department of Agriculture (Secretary), or his or her assigns, on behalf of the United States, may exercise those rights under any authority available under State or Federal law if the Department, or its successors or assigns, fails to enforce any of the terms of the APR, as determined in the discretion of the Secretary. As set forth in the APRs held with the United States, the United States is entitled to recover any and all administrative and legal costs from the Department and/or the Owner, including attorney's fees or expenses, associated with any enforcement or remedial action related to the enforcement of the APR.

22.12: Release of an Agricultural Preservation Restriction (APR)

- (1) An APR is a Restriction in Perpetuity. An APR may only be released, in whole or in part, in accordance with M.G.L. c. 184, § 32, and Article 97 of the Articles of Amendment to the Constitution of the Commonwealth, and applicable policies of the Department.
- (2) Pursuant to M.G.L. c. 184, § 32, the Department may be requested to deem the APR Parcel or a portion thereof is no longer suitable for Agriculture. In making this determination the Department may consider the present use, nature, quality, and other attributes of the agricultural land proposed for release, including soil quality.
- (3) An Owner may file with the Department a written request that the Department deem the APR Parcel or a portion thereof no longer suitable for Agriculture. The request shall be on a form prescribed by the Department and shall include a detailed statement of the consideration that the Owner proposes in exchange for the release and an appraisal determining the value of the land proposed to be released.
- (4) Prior to a release, by the General Court in accordance with M.G.L. c. 184, § 32, and Article 97 of the Articles of Amendment to the Constitution, the Commissioner may be requested to determine:
 - (a) the current market value of the interest of the Commonwealth to be released, which shall take into account any increase in value of the enlarged unrestricted land, owned or controlled by the Owner resulting from the addition of the parcel released, whether or not contiguous to the parcel; and
 - (b) any diminution in the value of the remaining APR Parcel.
- (5) To determine compliance with any applicable Land Disposition Policy of the Executive Office of Energy and Environmental Affairs, the Commissioner may be asked to determine if other land of the Owner not restricted by an APR, and proposed to be placed under an APR is:
 - (a) of equal or greater area;
 - (b) of equal or greater agricultural quality, including soil and other agricultural attributes, meeting all APR Program requirements; and
 - (c) of equal or greater value to the total value of 330 CMR 22.12(4).
- (6) The Commissioner may require, at the sole expense of the Owner, work to be performed including, but not limited to, engineering, surveys, appraisals, title services, and document preparation related to any assessment requested under 330 CMR 22.12.
- (7) Prior to a release, a $\frac{2}{3}$ vote of both houses of the General Court shall be required in accordance with M.G.L. c. 184, § 32 and the approval of any co-holder of the APR.

22.13: Adjudicatory Hearings

Pursuant to M.G.L. c. 20, § 23(c), any applicant aggrieved by a decision of the Department denying a request for a Certificate of Approval for agricultural activities or Structures or for a Special Permit may request an Adjudicatory Hearing before the ALPC. Upon receipt of a request for an Adjudicatory Hearing, the ALPC shall:

- (1) hold an Adjudicatory Hearings;
- (2) designate a hearing officer who shall preside over the hearing, assemble an official record of the hearing, and submit a proposed written decision to the ALPC; and
- (3) render the final decision.

22.14: Policies and Guidelines

The Department and the Executive Office of Energy and Environmental Affairs have established guidelines, policies, and procedures in addition to the APR documents that are periodically updated and that provide further guidance for Owners. Any inconsistency between the language of an APR and the language of a policy or regulation shall be resolved in favor of the APR. The Department shall provide copies thereof to any Owner upon request and post on its website all APR Regulations and Department policy documents. The ALPC may advise and make a recommendation to the Department for policy development or changes. The ALPC meeting is open to the public and is a forum for the public to comment on proposed changes to policy; however, it shall be the sole discretion of the Commissioner to establish and implement policy.

REGULATORY AUTHORITY

330 CMR 22.00: M.G.L. c. 184, §§ 31 through 33; c. 20, §§ 23 through 26; c. 61A, §§ 1 through 5; c. 40A, § 3.

(PAGES 139 AND 140 ARE RESERVED FOR FUTURE USE.)

**COMMONWEALTH OF MASSACHUSETTS
AGRICULTURAL PRESERVATION RESTRICTION**

I, _____, of _____ County, Massachusetts (the "Grantor"), its successors in title and assigns in perpetuity, for consideration paid in full of Dollars (\$) _____, receipt of which is hereby acknowledged, do hereby grant to the Commonwealth of Massachusetts, acting through the Commissioner of the Department of Agricultural Resources, (the "Grantee" or the "Commissioner") with an address of 251 Causeway Street, Suite 500, Boston, Massachusetts 02114-2151, its successors and assigns, and with a right of enforcement to the United States of America ("the United States"), acting by and through the United States Department of Agriculture ("USDA") Natural Resources Conservation Service ("NRCS") on behalf of the Commodity Credit Corporation ("CCC"), an Agricultural Preservation Restriction in perpetuity (this "Restriction") on approximately _____ acres of land and buildings and structures thereon located at _____ in the Municipality of _____, in _____ County, Massachusetts as described in the attached Exhibit A hereof, (the "Premises") in accordance with the following terms and conditions:

This Restriction is acquired with funds provided, in part, by the Agricultural Conservation Easement Program ("ACEP"), 16 U.S.C. Section 3865 et. seq. and 7 CFR Part 1468 for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses of the Premises. Baseline conditions of the Premises are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Grantee. The parties further acknowledge that the Premises will be managed for long-term agricultural viability. Even if the Premises consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Restriction, and the restrictions and covenants of this Restriction will apply to the Premises as a whole.

The Grantor covenants that they are vested with good title to the Premises. Consideration mentioned above has been negotiated and agreed to be based upon the difference between full Fair Market Value and full Fair Market Agricultural Land Value of the Premises. By making such grant, the Grantor grants to the Grantee all non-agricultural rights in the Premises except as otherwise described in Section III (A) hereof. The Grantor retains all agricultural rights in the Premises except as otherwise limited by the terms and conditions of this Restriction and not

Premises:

inconsistent with the Purpose. The terms and conditions of the Restriction run with the land and are binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:

I. STATEMENT OF PURPOSE

The purpose of this Restriction is to: perpetually protect the agricultural use and future viability, and related conservation values, of the Premises by limiting nonagricultural uses of the Premises; encourage sound soil management practices in accordance with generally accepted agricultural practices; preserve natural resources; maintain land in active commercial agricultural use; ensure resale of the Premises at Fair Market Agricultural Value, in order to ensure the availability of farmland in Massachusetts and ensure those entering or currently engaged in commercial agricultural operations are able to acquire agricultural land at a price that is tied to the land's agricultural value; and regulate and control activities and/or uses which may be detrimental to the actual or potential agricultural viability of the Premises, water conservation, soil conservation, or to generally accepted agricultural and/or forestry management practices or which may be wasteful of the natural resources of the Premises. The foregoing purposes of this Restriction are hereinafter collectively referred to as the "Purpose".

II. DEFINITIONS

When used throughout this Restriction, the words or phrases listed below shall have the following meanings:

A. ABANDONED: land that has not been actively utilized for commercial agricultural activities or uses for a period exceeding two years unless the non-utilization is recommended in a current NRCS plan, as approved by the Grantee.

B. AGRICULTURAL CONSERVATION EASEMENT PROGRAM: a program of the United States Department of Agriculture ("USDA") authorized pursuant to 16 U.S.C. Section 3865 *et seq.*, as amended, which provides federal funds to state, tribal, local governments, and other organizations for the conservation of eligible land and natural resources through easements or other interests in land.

C. AGRICULTURAL LAND EASEMENT PLAN ("ALE PLAN"): the plan described in Section III (C) below and approved by NRCS to promote the long-term viability of the land.

D. AGRICULTURAL USE(S): 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, Section 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 certified forest management plan, approved by and subject to procedures established by a state forester, designed to improve the quantity and quality of a continuous crop for the purpose of selling these products in the regular course of business; or when primarily, directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising such products and preparing them for market, as defined in General Laws, Chapter 61A, Section 2, as amended.

Notwithstanding the forgoing, Agricultural Use does not include the harvest of sod and nursery stock (such as balled and burlapped or balled and bagged) which involves removal of soil with the roots, unless the average annual soil loss for the crop rotation is less than the soil loss tolerance for the soil in the field from which the sod or nursery stock is removed, as determined by the USDA-NRCS.

E. BUILDING ENVELOPE(S): area(s) designated on Exhibit B where any new agricultural Permanent Structures or improvements on the Premises may be located, subject to an approval granted by the procedures outlined in Section III (F).

F. CONDITION: including, but not limited to, an easement, restriction, covenant, right, option to purchase at agricultural value plus value of improvements, land exchange, or any other requirement or use prohibition.

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

H. 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.

I. FAIR MARKET AGRICULTURAL VALUE ("FMAV"): the combined total of the Fair Market Agricultural Land Value ("FMALV") and the Fair Market Agricultural Business Value ("FMABV") and the Fair Market Agricultural Dwelling Value ("FMADV").

J. 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.

K. FAIR MARKET AGRICULTURAL DWELLING VALUE ("FMADV"): the appraised replacement value of a dwelling(s) on the restricted land.

L. 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.

M. IMPERVIOUS SURFACE: a material that does not allow water to percolate into the soil on the Premises; this includes, but is not limited to, agricultural buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs.

N. PERMANENT STRUCTURE: any structure that requires the grading or excavation of soil for footings or foundations or which substantially alters or otherwise affects the soil profile.

O. TEMPORARY STRUCTURE: any structure having no footing or foundation, or does not substantially alter or otherwise affect the soil profile.

III. TERMS AND CONDITIONS

A. GRANTOR'S RESERVED RIGHTS AND OBLIGATIONS

Notwithstanding any provision of this Restriction to the contrary, the Grantor reserves all customary rights and privileges of ownership, including the right of privacy, as well as any other rights not inconsistent with the terms and conditions of this Restriction or with General Laws, Chapter 184, Sections 31 through 33, as amended; and Chapter 20, Sections 23 through 26, as amended; and the rules, regulations and policies thereunder.

The provisions of this Restriction and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Premises, so long as the agricultural operations are consistent with the long-term viability of the Premises, the ALE Plan and the Restriction Purpose, and do not violate Federal laws, including Federal drug laws. No uses will be allowed that decrease the Restriction's protection for the agricultural use and future viability, and related conservation values of the Premises.

The following activities and uses are hereby deemed by the Grantee to be consistent with the Purpose of this Restriction and the ACEP, and are expressly permitted to be carried out on the Premises in a manner that does not impair the agricultural value of the Premises:

1. to repair and replace existing fences; construct new fences as necessary for Agricultural Use on the Premises, and utilize fences to mark boundaries on the Premises;
2. to use snowmobiles on snow on the Premises by the Grantor or others for non-commercial recreational use;
3. to place signs to:
 - a. identify or advertise the Agricultural Use of the Premises,
 - b. advertise agricultural products or services at the Premises, or
 - c. identify the Premises as a participant in ACEP and the Grantee's Agricultural Preservation Restriction Program; and
4. to conduct and participate in non-commercial, undeveloped, and passive recreational and educational activities that do not require infrastructure (Impervious Surfaces), as long as such activities do not adversely impact the soils, future viability, related conservation values and/or Agricultural Use on the Premises.

The Grantor shall continue to be obligated to make payment of all taxes, upkeep and maintain the Premises, and continue to be responsible for all liability arising from personal injury or property damage occurring on the Premises. The Grantor acknowledges that Grantee, and the Co-Holder, if applicable, has neither possessory rights in the Premises, nor any responsibility nor right to

control, maintain, or keep up the Premises.

B. AFFIRMATIVE COVENANT

The Grantor covenants that the Premises shall be maintained in active commercial Agricultural Use, and the Premises shall not be Abandoned. Failure to maintain the Premises in active commercial Agricultural Use shall be a violation of this Restriction. This includes the production, processing, and marketing of agricultural crops and livestock provided it is conducted in a manner consistent with the terms of the ALE Plan described in Section III (C).

C. AGRICULTURAL LAND EASEMENT PLAN

As required by section 16 U.S.C. Section 3865a agricultural production and related uses of the Premises are subject to an ALE Plan, as approved by NRCS, to promote the long-term viability of the land to meet ALE purposes. The ALE Plan must also be approved by the Grantor and the Grantee. The Grantor agrees the use of the Premises will be subject to the ALE Plan on the Premises.

The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this Restriction. The Grantee and the Grantor agree to update the ALE Plan in the event the Agricultural Use(s) of the Premises change. A copy of the current ALE Plan is kept on file with the Grantee.

The Grantee must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NRCS may notify the Grantee. NRCS will give the Grantee and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Grantee fails to enforce the terms of the Restriction, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement pursuant to Section III (I).

Any required update to the ALE Plan shall follow the procedures in effect at time of the update.

D. PROHIBITED USES; ACTS; STRUCTURES

The Grantor further covenants that the Premises will at all times be held, used and conveyed subject to, and not in violation of, the following restrictions, subject to the exceptions enumerated in Section III (E):

1. No use shall be made of the Premises, and no activity thereon shall be permitted, which is inconsistent with the Purpose of this Restriction or with General Laws, Chapter 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended; and the rules, regulations and policies thereunder;
2. No residential dwelling, tennis court, in-ground swimming pool, commercial or recreational horse riding or boarding facility, golf course, golf range, nonagricultural airport landing strip, cell tower, or other such nonagriculturally related Temporary or Permanent Structure(s) shall be constructed or placed or permitted to remain on the Premises;
3. No refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, oil, radio-active or hazardous waste, or other such substance or material whatsoever shall be placed, stored, dumped, or permitted to remain on the Premises, except as required for the use of the Premises for generally accepted Agricultural Use;
4. No use shall be made of the Premises for:
 - a. Transferring property rights to any property, whether or not adjacent to the Premises;

- b. Calculating permissible lot yield of the Premises, or of any other property; or
c. Any calculations involving development of any other property, whether or not adjacent to the Premises, in any manner whatsoever;
5. Impervious Surfaces shall not exceed 2 percent of the total area of the Premises. An Impervious Surface amount greater than 2 percent must be determined by an impervious surface formula and a waiver granted by the Chief of NRCS, or his or her authorized designee, ("Chief of NRCS") in writing, and is capped at 5 acres or 5 percent, whichever is less. For the purpose of this Restriction, the Impervious Surface amount is _____ percent, as authorized by the Chief of NRCS excluding NRCS-approved conservation practices developed under the ALE Plan. This limitation does not include public roads or other roads owned and controlled by parties with superior rights to those rights conveyed to the Grantee by this Restriction. In the event the Premises is subdivided as provided for in Section III (E) (10) the total cumulative Impervious Surface of the subdivided parcels shall not exceed the impervious limitation referenced above. The Grantor, with the Grantee's approval, shall allocate the Impervious Surface limit among the subdivided parcels and ensure the impervious surface limitation is clearly defined in each subdivided parcel's recorded instrument;
 6. No mining or extraction of soil, sand, gravel, oil, natural gas, or other mineral except for limited mining activities if the materials mined are used for agricultural operations on the Premises performed in accordance with Section III (E) (2);
 7. No motorized vehicles may be used on the Premises except as necessary for Agricultural Use, forestry, habitat management, law enforcement and public safety, or other permitted uses of the Premises, provided that no use of motorized vehicles may create impacts that are detrimental to the productivity of the soils on the Premises and the Purpose of this Restriction;
 8. No signs may be placed on the Premises, except those explicitly allowed in Section III (A) (3);
 9. No water rights may be transferred, encumbered, leased, sold, or otherwise separated from title to the Premises;
 10. No grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Premises, except for Agricultural Activities conducted in accordance with the ALE Plan and as allowed in Section III (E) (7), (8) or (9);
 11. No establishment of any nonagricultural commercial or industrial uses or facilities, except as allowed by Special Permit under Section III (G);
 12. No granting of easements for utilities except as allowed in Section III (E) (4); and
 13. No granting of easements for roads.

E. USES; ACTS; STRUCTURES THAT REQUIRE GRANTEE'S PRIOR WRITTEN APPROVAL

The following uses, acts or structures (hereinafter "uses" or "activities") are allowed only with the prior written approval of the Grantee and subject to, but not limited to, the prerequisites described below. Requests for such approvals, and the granting thereof, shall be governed by the procedures set forth in Section III (F) of this Restriction as well any rules, regulations and policies:

1. The construction or placing of any agricultural Permanent Structures for housing seasonal agricultural employees, must be located within the Building Envelope(s),

containing approximately _____ acres and described in Exhibit B which is appended to and made a part of this Restriction.

The boundaries and location of the Building Envelope(s) may be adjusted if the Grantee and the Chief of NRCS provide prior written approval of the adjusted boundaries and location. The Building Envelope(s) may not increase in size and the adjusted Building Envelope(s) must provide equal or greater protection of the Agricultural Use and future viability, and related conservation values of the Premises.

Any other agricultural Permanent Structures and utilities to serve approved buildings or agricultural Permanent Structures, including on-farm renewable energy structures allowed under Section III (E) (11), that neither individually nor collectively have an adverse impact on the Agricultural Use and future viability and related conservation values of the Premises, may be built outside of the Building Envelope with prior written approval of the Grantee provided that the utilities or agricultural Permanent Structures are consistent with the ALE Plan described Section III (C);

2. The excavation, dredging, depositing on, or removal from the Premises of loam, peat, gravel, soil, sand, rock other mineral resources, or natural deposits if the materials mined are used for agricultural operations on the Premises. In the case of this limited mining for materials used for agricultural operations on the Premises, extraction must be limited to a small, defined area and acreage approved by Grantee and NRCS in an update to the ALE Plan identifying its location and may not harm the conservation values or the Agricultural Uses of the Premises;
3. The maintenance or improvement of a septic system, other underground sanitary system, or non-sanitary wastewater management system which exists on the Premises, or the construction of a septic system, other underground sanitary system, or non-sanitary wastewater management system, for the benefit of existing agriculturally related Permanent Structures on the Premises. However, if these systems are proposed with a simultaneous approval request for an agricultural Permanent Structure, the construction of a system may be allowed concurrently;
4. The granting or modification of easements for utilities when the utility will not adversely impact the Agricultural Use, future viability, and related conservation values of the Premises and when the easement benefits the Premises as determined by the Grantee in consultation with the Chief of NRCS;
5. The widening, improvement, construction or placement of an Impervious Surface driveway, road, parking lot, utility pole, conduit or line in support of a Temporary or Permanent Structure or improvement to the Premises, necessary to carry out agricultural operations or other permitted uses on the Premises. Said activities must be within the Impervious Surface limit, if it meets definition of an Impervious Surface;
6. Forest management and timber harvesting activities. These activities may be approved by the Grantee only if the activities are:
 - a. performed in accordance with a written forest management plan, by a licensed professional resource manager, having been prepared and executed in accordance with General Laws, Chapter 132, as amended, except that the forest management plan will not be required for the following allowed noncommercial activities (i) cutting of trees for the construction of allowed utilities, forest access roads, buildings, and structures on the Premises, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as

firewood or for other domestic uses by Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species;

b. consistent with the terms of this Restriction; and

c. carried out to the extent practicable in accordance with current generally accepted best management practices for the sites, soils, and terrain of the Premises;

7. Dam construction in accordance with an ALE Plan to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation;

8. Soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Restriction;

9. Erosion and sediment control pursuant to a plan approved by the Grantee;

10. The Premises shall not be divided or subdivided into, or separately conveyed as, more than ~~one~~ parcels (~~one~~ division(s) allowed). To protect the Agricultural Use and the future agricultural viability of the Premises, the boundaries of such subdivision(s) must be approved in writing by the Grantee and the Chief of NRCS before any such division, subdivision, or separate conveyance occurs. The subdivision in this Paragraph will not affect the right of the Grantor to make any additional subdivision(s) of the Premises and the Grantor expressly retains the right to make further approved subdivision(s) of the Premises. The Chief of NRCS may only approve the subdivision when:

a. The Grantee requests the Chief of NRCS' approval to subdivide the Premises into separate farm parcels, after receiving a request from the Grantor;

b. The Grantor certifies to the Chief of NRCS that the requested subdivision is required to keep all parcels in production and viable for Agriculture Use and that separate conveyance of the parcels will move the land from one agricultural operation to another;

c. The Chief of NRCS determines that:

i. Each proposed separate parcel that would result from the subdivision of the Premises will meet ACEP land eligibility requirements of 16 U.S.C. Section 3865 *et. seq.* in effect on the date of this Restriction;

ii. The resulting parcel will not be of an acreage below the median size of farms with that county, as determined by most recent United States Department of Agriculture's National Agricultural Statistical Survey ("NASS"); and

11. Renewable energy structures for the purpose of generating energy for the agricultural needs of the Premises. Renewable energy structures must be built and maintained within Impervious Surface limits, with minimal impact on the conservation values of the Premises and consistent with the Purpose of this Restriction.

F. PROCEDURES FOR OBTAINING THE GRANTEE'S PRIOR WRITTEN APPROVAL

1. The Grantor shall submit an application to the Grantee, on a form prescribed by the

Grantee, prior to undertaking any uses or acts, or undertaking construction of any Structures described in Section III (E). The Grantor shall not secure other applicable permits required by local or state law prior to obtaining approval from the Grantee.

2. After receipt of the completed application, the Grantee may approve the application, with or without Conditions, only upon finding that:
 - a. the proposed use, act, or Structure is authorized by this Restriction, General Laws, Chapter 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended; and the rules, regulations and policies thereunder; and
 - b. the proposed use, act, or Structure shall not defeat nor derogate from the Purpose of this Restriction, and General Laws, Chapter 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended, and the rules, regulations and policies thereunder.
3. If the Grantee approves in whole or in part, with or without Conditions, the Grantor's application, the Grantee shall issue a Certificate of Approval suitable for recording.

G. SPECIAL PERMIT PROCESS

Agricultural production and related uses may be conducted as described in the ALE Plan but no nonagricultural industrial or commercial activities may be conducted on the Premises. However, commercial non-Agricultural Uses and activities for which the Grantor receives payment, compensation, or any other type of monetary or non-monetary remuneration, such as temporary or seasonal outdoor activities or events that do not harm the agricultural use, future viability, and related conservation values of the Premises, may be permitted if the Grantor receives a special permit from the Grantee ("Special Permit"). The Grantee, with the approval of the Co-Holder, if any, may grant a Special Permit only if:

1. The Grantor requests a Special Permit by submitting an application on a form prescribed by the Grantee;
2. The Premises is being actively utilized for full-time commercial agriculture;
3. The activity is minor, ancillary and subordinate to the Agricultural Use of the Premises;
4. Such uses and activities are not inconsistent with the Purpose of this Restriction and shall not defeat nor derogate from the Purpose of this Restriction; and
5. The Special Permit is:
 - a. limited to the current Premises owner(s) who applied for and obtained the Special Permit;
 - b. limited to a period no longer than five (5) years, renewable at the discretion of the Grantee for an additional term(s) of no longer than five (5) years, upon reapplication;
 - c. terminated upon transfer of ownership;
 - d. limited to uses and activities that will not impair the agricultural viability of the soil;
 - e. limited to existing structures requiring only minor renovations, such renovations will not prevent the use of the structure for Agricultural Use; and
 - f. limited to uses and activities requiring no new construction.

H. OPTION TO PURCHASE PREMISES AT AGRICULTURAL VALUE

1. The Grantee shall have an option to purchase the Premises at Fair Market Agricultural Value ("FMAV") in accordance with the provisions of this section ("Option"). 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.

a. The intent of this Option is to ensure resale of the Premises at FMAV. Accordingly, the parties hereto agree to a process as follows:

i. In the event that the Grantor proposes to sell the Premises and enter into a bona fide Purchase and Sale Agreement with a third party for the sale of the Premises; the Grantee, at its election, shall have the right to purchase or assign the right to purchase (see subsection 7, below) the Premises from the Grantor at FMAV. Said FMAV shall be determined by:

a) an appraisal paid for and obtained by the Grantor conducted and in accordance with the "Guidelines for Agricultural Appraisals" prepared by the Grantee and as in effect at such time, and the terms pertaining to appraisal set forth therein. The Grantee shall have the right to disagree with the appraisal and, at its own expense, obtain its own appraisal. If the two appraisals differ, there shall be a third appraisal, the expense of which shall be equally shared between the Grantee and the Grantor, to determine the FMAV in accordance with the said "Guidelines for Agricultural Appraisers"; or, at the election of the Grantor,

b) an amount equal to the FMALV of the Premises as determined by the appraisal relied upon for the acquisition of this Restriction ("Governing Appraisal") which sum shall then be multiplied by the Inflation Rate. The Inflation Rate shall be equal to 1 plus the fractional increase in the Consumer Price Index for all Urban Consumers, Boston, All Items (1982-1984 equals 100) published by the Bureau of Labor Statistics, United States Department of Labor, or successor index published by the United States government appropriately correlated to the prior index by a published conversion factor, where indicated, from date of Governing Appraisal for this Restriction to the date of execution of the bona fide Purchase and Sale Agreement.

b. In the event that the sale price as set forth in the bona fide Purchase and Sale Agreement is less than the FMAV determined by the procedures set forth in either i.a) or i.b) above, the Grantee shall have the right to purchase the Premises from the Grantor, or assign its right to purchase the Premises from the Grantor, for this lesser amount.

c. In the event of a subdivision, recording of a subdivision plan, partition, or any other division of the Premises, or any portion thereof, into two or more parcels, as approved by the Grantee and the Chief of NRCS in accordance with Section III (E) (10) above, the FMAV shall be determined pursuant to paragraph i.a) above.

2. Upon executing a bona fide Purchase and Sale Agreement for the sale of the Premises with a third party purchaser the following procedures shall be followed:

a. The Grantor shall provide, at a minimum, to the Grantee:

i. written notice stating the Grantor's intent to sell the Premises ("Notice");

- ii. a true, correct, complete and fully executed copy of a bona fide Purchase and Sale Agreement from a third party to purchase the Premises. Said document must only relate to Premises, any other land transferring simultaneously but not restricted by this Restriction shall be subject to a separate Purchase and Sale Agreement;
 - iii. a copy of the current deed; and
 - iv. the FMAV and any appraisals related thereto; or
 - v. FMALV as determined pursuant to 1.a.i.b) above.
- b. Upon receipt of this Notice, the Grantee shall have sixty days (60) days to notify the Grantor of its election to purchase the Premises at FMAV (or any lesser sale price set forth in the Purchase and Sale Agreement) or waive its rights under the Option. The Grantor shall be notified of the Grantee's election by written notice ("Notice of Election").
3. In the event that the Grantee elects to exercise this Option to purchase the Premises, the deed shall be delivered and the consideration paid at the _____ County Registry of Deeds before 4 o'clock p.m. on or before the one-hundred-eighty (180) day after the date of mailing by the Grantee of the Notice of Election or, if a Saturday, Sunday or holiday, on the next business day thereafter, and the deed shall convey a good and clear record and merchantable title to the Premises free of all encumbrances, and the Premises shall be in the same condition as at the time of the Notice of Election, reasonable wear and tear and use thereof excepted. The date and time of the transfer may be amended by written mutual agreement of the Grantor, Grantee, and any assignee, if applicable.
4. The Grantor may sell the Premises, to the third party purchaser who entered into the bona fide Purchase and Sale Agreement referred to in Paragraph 1.a.i above, only in the event that the Grantee:
- a. declines in writing to exercise its rights under this Option within the specified time period; or
 - b. fails to waive its rights under this Option in writing within the specified time period; or
 - c. having elected to exercise its rights under this Option, fails to complete the purchase within the specified time period, only if however, the failure to complete the purchase is not based upon a failure or delay by the Grantor.
- Said sale of the Premises must take place within one (1) year of the date of the Grantee's receipt of the Notice, and be only upon the same terms and conditions as contained in said bona fide Purchase and Sale Agreement.
5. The obligations of the Grantor under this Option shall not apply where the transfer of ownership of the Premises will be a result of:
- a. a conveyance by deed to the Grantor's spouse, parent, child(ren) or grandchild(ren) (whether by blood, marriage or adoption), siblings and/or their child(ren) or grandchild(ren) (whether by blood, marriage or adoption); or
 - b. a devise of said Premises by will or intestacy of the Grantor; or
 - c. a conveyance of an interest in the Premises to a co-owner.
6. Any notices required by this Option shall be in writing and shall be deemed delivered if delivered in hand or mailed, postage prepaid by certified mail return receipt requested, addressed in the case of the Grantor to such address as may be specified in the Notice or if none, then to the Premises, and in the case of the Grantee, to the Commissioner of the Department of Agricultural Resources, 251 Causeway Street, Suite 500, Boston, MA

7. The Grantee may assign its right to purchase under this Option after providing the Grantor with a Notice of Election exercising its right to purchase, provided that the right to purchase may only be assigned to a party that, in the Grantee's opinion, will use or facilitate the use of the Premises for commercial agriculture. Any assignment shall only be effective when made in writing, signed by the Commissioner, and duly recorded with the appropriate registry of deeds.
8. Any waiver of the Grantee's rights under this Option shall be in writing, signed by the Commissioner, and in a form and format suitable for recording in the appropriate registry of deeds. This waiver shall serve to satisfy the Grantor's obligations to the Grantee under this Option with regard to the third-party purchaser who entered into the bona fide Purchase and Sale Agreement referred to in Paragraph 1.a.i. above.
9. The rights and obligations of the Grantor hereunder shall inure to and be binding upon the Grantor and all successors in title.

I. ENFORCEMENT OF THIS RESTRICTION

1. The Grantor grants to the Grantee and the United States, and to the Co-Holder as applicable, and their successors in title, the right to enter upon the Premises, including the buildings and structures on the Premises, in a reasonable manner and at reasonable times, for the purposes of inspecting the Premises to determine compliance with this Restriction, any Certificate of Approval, Special Permit, or General Laws, Chapter 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended, and rules, regulations and policies thereunder; the right to enforce this Restriction, any Certificate of Approval, Special Permit, or General Laws, Chapter 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended, and rules, regulations and policies thereunder; and the right to take any other action which may be necessary or appropriate in the determination of the Grantee, with or without order of court, to remedy or abate any violation of this Restriction, or of any Certificate of Approval, Special Permit, or of General Laws, Chapter 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended, and rules, regulations and policies thereunder.

Additionally, the Grantor and the Grantee agree that the natural characteristics, ecological features, and physical and man-made conditions of the Premises on the date of this Restriction are documented in a Baseline Documentation Report prepared by the Grantee and signed and acknowledged by the Grantor establishing the condition of the Premises on the date of this Restriction and including reports, maps, photographs, and other documentation. The Baseline Documentation Report is incorporated into this Restriction by reference. The Grantee will maintain the Baseline Documentation Report and annually monitor the Premises ensuring that active agricultural operations are in compliance with the NRCS ALE Plan and in compliance with this Restriction.

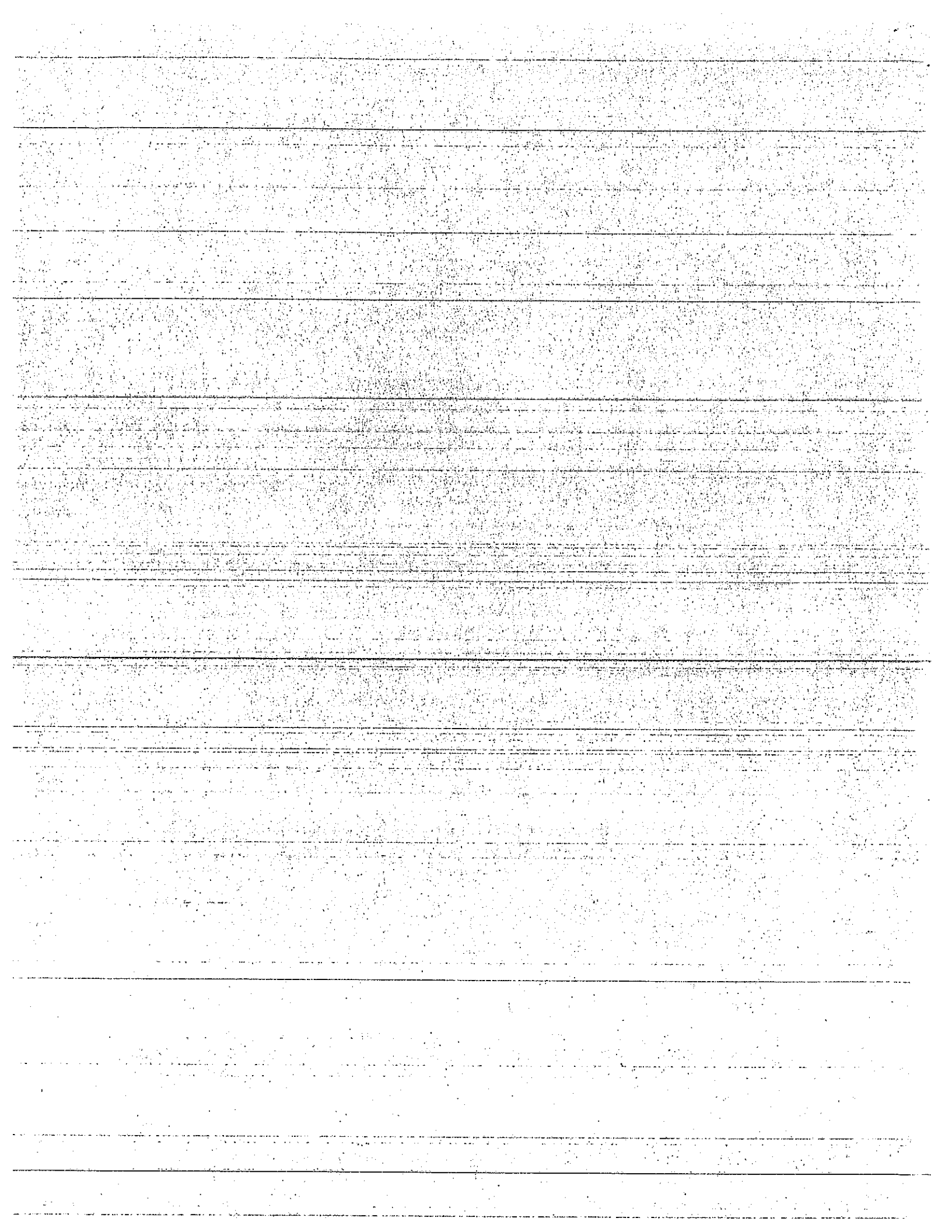
2. In the event of a violation of the terms of this Restriction, Certificate of Approval, Special Permit, or General Laws, Chapter 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended, or rules, regulations and policies thereunder, the Grantee reserves the right to pursue any remedy available at law and equity, including injunctive relief, without prior notice to the Grantor. If a court determines that this Restriction has been violated, the Grantor will reimburse the Grantee for any reasonable costs of enforcement, including court costs, reasonable

attorney's fees, and other payments ordered by such court.

3. Any forbearance by the Grantee to exercise its rights under this Restriction or its right arising from a breach of any term hereof shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same by any other term of this Restriction or of any of the Grantee's rights hereunder. No failure, delay, or omission by the Grantee in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver, and the Grantor hereby waives any defense of laches, prescription or estoppel.
4. The enforcement rights hereby granted shall be in addition to, and not in limitation of any other rights and remedies available to the Grantee for enforcement of this Restriction, Certificate of Approval, Special Permit, or General Laws, Chapters 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended, and rules, regulations and policies thereunder.
5. The Grantor and its successors in title, shall be jointly and severally liable for any violation of the terms of this Restriction, Certificate of Approval, Special Permit, or General Laws, Chapters 184, Sections 31 through 33 and Chapter 20, Sections 23 through 26, and rules, regulations and policies thereunder.
6. Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the Restriction are not enforced by the Grantee of the Restriction. The Secretary of the United States Department of Agriculture (the "Secretary"), or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this Restriction, as determined in the sole discretion of the Secretary. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs from the Grantor, including, but not limited to, attorney's fees or expenses, related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Restriction from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor up to the amount of the United States contribution to the purchase of the Restriction.
7. The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with this Restriction and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the terms of this Restriction, the ALE Plan, and the United States Cooperative Agreement with the Grantee, the United States will have reasonable access to the Premises with advanced notice to the Grantee and the Grantor or the Grantor's representative. In the event of an emergency, the United States may enter the Premises to prevent, terminate, or mitigate a potential violation of these restrictions and will give notice to the Grantee and the Grantor or the Grantor's representative will be given at the earliest practicable time.

J. GENERAL INDEMNIFICATION AND DISCLAIMER

The United States, its employees, agents, and assigns disclaim and will not be held responsible



AGRICULTURAL PRESERVATION RESTRICTION PROGRAM GUIDELINES
REQUESTS FOR WAIVER OF A RIGHT OF FIRST REFUSAL

Internal Evaluation

APR Name	
APR Address and Town	
Seller	
Buyer	
Date Waiver Request was Received	
Purchase Price	

In order to issue a waiver of a Right of First Refusal ("ROFR"), the Department must find **all** of the following (See APR Program Guidelines: Requests for Waiver of the Department's Right of First Refusal for Purchase of Real Estate dated 2/10/16 for definitions of bolded terms below):

	Criteria	Yes	No	N/A	Comments
1	The APR Owner has complied with the terms of the ROFR				
2	If the Potential Purchaser owns other land subject to an APR, the Potential Purchaser while in possession of the land, has not violated the terms of the applicable APR to such an extent as the violation is detrimental to the actual or potential agricultural use of the Premises				Name(s) of other APR(s):
3	The Potential Purchaser is a Farmer and has provided a Farmer Resume				
4	The Potential Purchaser is a Farmer has provided a Farm Plan sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture and if the Potential Purchaser <i>Farm Plan must include:</i> -five (5) year period <input type="checkbox"/> -identification of all land uses on the Farm <input type="checkbox"/> -crops to be grown <input type="checkbox"/> -acreage for each crop <input type="checkbox"/> -livestock to be raised <input type="checkbox"/>				

	<p>-pasture acreage <input type="checkbox"/></p> <p>-use of existing structures on Premises (if applicable) <input type="checkbox"/></p> <p>-need for additional structures (if applicable) <input type="checkbox"/></p> <p>-timeline for implementation of the plan <input type="checkbox"/></p> <p>-a map or diagram identifying each land use proposed for the Farm <input type="checkbox"/></p>				
4	<p>The APR Owner or Potential Purchase has provided a draft deed related to the transfer that references the land is subject to the APR and the property description is identical to the APR Exhibit A, or any APR amendments</p>				

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

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Governor

KARYN E. POLITO
Lt. Governor

MATTHEW A. BEATON
Secretary

JOHN LEBEAUX
Commissioner

AGRICULTURAL PRESERVATION RESTRICTION PROGRAM GUIDELINES

REQUESTS FOR A WAIVER OF THE DEPARTMENT'S RIGHT OF FIRST REFUSAL FOR PURCHASE OF REAL ESTATE

- 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 a land restricted by an APR at an affordable price for future agricultural use. From the outset in 1976 a primary goal of the APR Program is to ensure the availability of farmland and that Premises would be sold for its value as a farm, thereby permitting those entering or currently engaged in commercial agriculture to acquire farmland.

A Right of First Refusal ("ROFR") is a right purchased by the Commonwealth as part of the APR that may, in the Department of Agricultural Resources' ("Department") sole discretion, be exercised or assigned in a way best suited to achieve the goals of the program. Recognizing that the ROFR was purchased by the Commonwealth for these very purposes, the Department has a duty, upon the proposed sale of an APR parcel with a ROFR, to weigh its option of exercising or assigning the ROFR in a diligent and effective manner.

- II. **DEPARTMENTAL PREREQUISITES TO ISSUING A WAIVER OF A RIGHT OF FIRST REFUSAL:** In order to issue a waiver of a ROFR, the Department must find all of the following:

1. The APR Owner has complied with the terms of the Right of First Refusal;
2. If the Potential Purchaser owns other land subject to an APR, that the Potential Purchaser has not violated the terms of the applicable APR to such an extent that the violation is detrimental to the actual or potential agricultural use of the Premises; while in possession of the land;
3. The Potential Purchaser is a Farmer and has provided a Farmer Resume;
4. The Potential Purchaser has provided a Farm Plan sufficient to demonstrate that the Premises will be utilized to the fullest extent possible for commercial agriculture; and
5. The APR Owner or Potential Purchase has provided a draft deed related to the transfer that references the land is subject to the APR and the property description is identical to the APR Exhibit A, or any APR amendments.

III. DEFINITIONS:

Agricultural Preservation Restriction ("APR"): 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 Owner: the record title owner of the APR.

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

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.

Farmer: (i) an individual who is engaged in an active agricultural use of land for commercial purposes; and (ii) an entity if the Articles of Incorporation or other corporate documents demonstrate that the purpose of the entity allows for commercial agriculture and the entity has the ability to hold real property; and (iii) an entity whose connected entity (connected by virtue of overlapping corporate officers, partners, or trustees) is organized for the purpose of commercial agriculture.

Farmer Resume: a brief account of the Potential Purchaser's professional farm experience and qualifications. The resume must include details on the acreage of their existing and any prior farming operation, number of employees (if applicable) and the number of years in business.

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

Potential Purchaser: the person or entity who has entered into a bona fide purchase and sale agreement with the APR Owner.

Statement of Interest: Potential Assignee's written response that it desires to receive the Department's assignment and providing proof the Potential Assignee is qualified to receive the assignment.

Waiver: a document in recordable form issued by the Department that waives the Department's right to purchase or assign the right to purchase the Premises.

IV. AUTHORITY: Many APRs prior to June 23, 1994 include a Right of First Refusal which grants, at the Department's discretion, the right to purchase or assign the right to purchase the Premises.

Adopted February 10, 2016



John Lecheaux
Commissioner

**AGRICULTURAL PRESERVATION RESTRICTION PROGRAM GUIDELINES
REQUESTS FOR WAIVER OF AN OPTION TO PURCHASE AT AGRICULTURAL VALUE**

Internal Evaluation

APR Name	
APR Address and Town	
Seller	
Buyer	
Date Waiver Request was Received	
Purchase Price	
FMAV	Appraisal \$ CPI \$

In order to issue a waiver of an Option, the Department must find **all** of the following:
(See APR Program Guidelines: Requests for Waiver of an option to Purchase at Agricultural Value dated 2/29/16 for definitions of bolded terms below)

	Criteria	Yes	No	N/A	Comments
1	The APR Owner has complied with the terms of the Option .				
2	If the Potential Purchaser owns other land subject to an APR, the Potential Purchaser while in possession of the land, has not violated the terms of the applicable APR to such an extent as the violation is detrimental to the actual or potential agricultural use of the Premises .				Name(s) of other APR(s):
3	The Potential Purchaser is a Farmer or New Entry Farmer <i>and</i> has provided a Farm Plan and Farmer Resume sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture and if the Potential Purchaser <i>Farm Plan must include:</i> -five (5) year period <input type="checkbox"/> -identification of all land uses on the Farm <input type="checkbox"/> -crops to be grown <input type="checkbox"/> -acreage for each crop <input type="checkbox"/> -livestock to be raised <input type="checkbox"/> -pasture acreage <input type="checkbox"/>				

	<ul style="list-style-type: none"> - use of existing structures on Premises (if applicable) <input type="checkbox"/> - need for additional structures (if applicable) <input type="checkbox"/> - timeline for implementation of the plan <input type="checkbox"/> - a map or diagram identifying each land use proposed for the Farm <input type="checkbox"/> 				
A	<p>owned or operated a Farm previously, the Farm Plan must additionally include the size of the farming operation (acreage and estimated gross income); and number of years in business; or</p> <p>B= is a New Entry Farmer:</p> <ul style="list-style-type: none"> i) the Farm Plan must list relevant degrees, courses, workshops, education and training, and ii) a Financial Plan must be provided, or <p><i>Financial Plan must include:</i></p> <ul style="list-style-type: none"> - a net worth statement <input type="checkbox"/> - an estimate of start-up costs <input type="checkbox"/> - identification of costs of production <input type="checkbox"/> - gross sales and net farm income <input type="checkbox"/> - income & expense projections for at least three years <input type="checkbox"/> 				
4	<p>The Purchase Price is at its agricultural value. In order to determine if this criterion is met, the Department must find either of the below:</p>				
A	<p>The Purchase Price is less than 25% above FMAV, as determined by the CPI Amount or Appraisal; or</p>				
B	<p>If Purchase Price is 25% or greater than FMAV, as determined by the CPI Amount or Appraisal, the premium must be justified by a Business Plan and Financial Plan.</p>				

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

251 Causeway Street, Suite 500, Boston, MA 02114
617-626-1700 fax: 617-626-1850 www.mass.gov/agr



CHARLES D. BAKER
Governor

KARYN E. POLITO
Lt. Governor

MATTHEW A. BEATON
Secretary

JOHN LEBEAUX
Commissioner

AGRICULTURAL PRESERVATION RESTRICTION PROGRAM GUIDELINES

REQUESTS FOR WAIVER OF AN OPTION TO PURCHASE AT AGRICULTURAL VALUE

I. PURPOSE:

By purchasing Agricultural Preservation Restrictions ("APR(s)"), it is the intent of the Commonwealth to perpetually protect and preserve agricultural lands; encourage sound soil management practices; preserve natural resources; maintain land in active commercial agricultural use; and ensure resale of a land restricted by an APR at an agriculturally affordable price for continuing agricultural use. Since its establishment in 1976, a primary goal of the APR Program, has been to ensure the availability of farmland that would be sold at its agricultural value, providing an opportunity for those entering or currently engaged in commercial agriculture to acquire farmland at a price that is supported by the farming operation.

In order to ensure that the Premises remains affordable for commercial agricultural production and that its market value for other uses does not preclude its profitable use for agriculture, in 1994, the Department began purchasing as part of the APR, an option to purchase the land subject to the APR at its agricultural value ("Option"). The Option requires the Department to decide if it will waive, exercise its right to purchase, or assign its right to purchase.

II. PREREQUISITES TO ISSUING A WAIVER OF AN OPTION:

In order to issue a waiver of an Option, the Department must find all of the following:

1. The APR Owner has complied with the terms of the Option;
2. If the Potential Purchaser owns other land subject to an APR, the Potential Purchaser while in possession of the land, has not violated the terms of the applicable APR to such an extent as the violation is detrimental to the actual or potential agricultural use of the Premises;
3. The Potential Purchaser is a Farmer or New Entry Farmer and has provided a Farm Plan and Farmer Resume sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture and if the Potential Purchaser:
 - a. owned or operated a Farm previously, the Farm 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: i) the Farm Plan must list relevant degrees, courses, workshops, education and training; and ii) a Financial Plan must be provided.

4. The Purchase Price is at its agricultural value. In order to determine if this criterion is met, the Department must find either of the below:

a. The Purchase Price is less than 25% above FMAV, as determined by the CPI Amount or Appraisal; or

b. If Purchase Price is 25% or greater than FMAV, as determined by the CPI Amount or Appraisal, the premium must be justified by a Business Plan and Financial Plan.

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

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.

Appraisal: a current (not more than 1 year old) valuation of property by the estimate of an authorized person conducted in accordance with the "Guidelines for Agricultural Appraisals" prepared by the Department and in effect at the time of the Waiver request.

APR Owner: the record title owner of the APR.

Business Plan: a comprehensive narrative that sets forth the goals and objectives for the Farm business and strategies to achieve them including at a minimum: a description of Farm resources and buildings and how they are to be used; personnel qualifications and responsibilities; production information and products to be sold; a description of markets and marketing strategies; identification of any needed capital improvements; and details on how proposed agricultural operation on the Premises will contribute to the agricultural industry and food production in Massachusetts; 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); and details on business partner(s) (if applicable).

CPI Amount: an amount equal to the FMAV of the Premises as determined by the appraisal relied upon for the acquisition of the APR which sum shall then be multiplied by the Inflation Rate. The Inflation Rate shall be equal to 1 plus the fractional increase in the Consumer Price Index for all Urban Consumers, Boston, All Items (1982-1984 equals 100) published by the Bureau of Labor Statistics, United States Department of Labor, or successor index published by the United States government appropriately correlated to the prior index by a published conversion factor, where indicated, from date of the appraisal relied upon for the acquisition of the APR to the date of execution of the bona fide Purchase and Sale Agreement.

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

Farm: the Premises on which an agricultural use occurs. The Premises shall be deemed to be in agricultural use when primarily and directly used in raising 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. Also agricultural use shall include horticultural use when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flower, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling these products in the regular course of business, or when primarily and directly used in raising forest products under a certified forest management plan approved by and subject to procedures established by the state forester, designed to improve the quantity and quality of a continuous crop for the purpose of selling these products in the regular course of business, or when primarily and directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising these products and preparing them for market.

Farmer: (1) an individual who is engaged in an active agriculture use of land for commercial purposes; and (2) an entity which is a corporation or limited liability company, and whose articles of incorporation or other corporate documents demonstrate the corporation was formed for the purpose of owning and operating a commercial farm and the entity has the ability to hold real property; (3) an entity which is a partnership and whose partnership agreement evidences the partnership was formed for the purpose of owning and operating a commercial farm and the entity has the ability to hold real property; and (4) an entity whose connected entity (connected by virtue of overlapping corporate officers, partners, etc.) is organized for the purpose of owning and operating a commercial farm and the entity has the ability to hold real property.

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.

Farmer Resume: a brief account of the Potential Purchaser's professional farm experience and qualifications.

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 the APR by the Department. 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 APR Owner, but excluded from the APR (non-APR land), when such business on non-APR 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 the APR to the Department. FMALV is applicable at both the time of the Department's purchase of the APR 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.~~

~~Financial Plan: a plan, whether narrative or otherwise, that demonstrates the Potential Purchaser can support the operation of the Premises without adversely affecting long term viability of the Premises. Such a plan should, at a minimum, include an estimate of start-up costs, income statement with budget estimates, and expense projections.~~

~~New Entry Farmer: a Farmer who has less than two years experience managing or owning a Farm.~~

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

~~Potential Purchaser: the person or entity who has entered into a bona fide purchase and sale agreement with the APR Owner.~~

~~Purchase Price: the price listed for the Premises in the purchase and sale agreement by and between the APR Owner and the Potential Purchaser.~~

~~Waiver: a document in recordable form issued by the Department that waives the Department's right to purchase or assign the right to purchase the Premises.~~

~~IV. AUTHORITY: Most APRs since June 23, 1994 include an Option which grants the Department's a right to purchase or assign the right to purchase the Premises at its agricultural value.~~

Adopted *July 27* 2016

John Lebeaux
John Lebeaux, Commissioner

[REDACTED] FARMS, INC.

[REDACTED] TEL: [REDACTED] FAX: [REDACTED]

[REDACTED].com

[REDACTED] Inc.

Farm Plan

[REDACTED] has been in operation by the [REDACTED] family for over 100 years. The farm currently owns 316 acres, 339 including the [REDACTED] property under discussion, through the [REDACTED] company. Further, [REDACTED] rents an additional 398 acres for use in production. The land is used for row crops; additional land enables us to rotate the crop land as needed. Gross income stays above [REDACTED] annually.

The plan for the purchase of this APR land is to enable [REDACTED] to have continued use of the land, which the farm has rented for over 30 years for crop production.

Farmer Resume

[REDACTED] President of [REDACTED] and [REDACTED]

- Born and raised on [REDACTED]
- Graduate of [REDACTED] Academy and Vermont Technical College agricultural program
- Owner/Operator of [REDACTED] and [REDACTED] Inc since 1995
- Co-Owner of [REDACTED] and [REDACTED]
- Past member of the National Potato Council
- Current ad hoc advisor on the National Potato Council breeding program

Current APR Holdings - all are in use for agricultural production

- [REDACTED] 20 acres
- [REDACTED]
- [REDACTED] 150 acres

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXAMPLE 2
FARMER RESUME / FARM PLAN

[REDACTED]
Associate Degree in Horticulture from [REDACTED]

1968-1978- Worked on family farm, picking apples, sorting apples, making cider, planting trees, thinning apples

1968-1978- Had side business growing and selling ornamental gourds, squash and pumpkins

[REDACTED]
1979- Internship at [REDACTED] WA

1981-1988- Worked and managed (assistant) of [REDACTED] MA

1989- [REDACTED] Owner and Manager of [REDACTED] MA

[REDACTED], is a 180-acre family owned and operated farm since 1926. Originally a dairy farm when [REDACTED] purchased the farm and transformed the fields by planting apple, pear, and cherry trees. Selling the fruits both wholesale and retail in the [REDACTED]. [REDACTED] continued the farm into the second generation. [REDACTED] was one of the first in the country to offer pick-your-own apples to the public, considered to be one of the best for family fun and pick-your-own today.

Two of [REDACTED] and [REDACTED] children and grandchildren are now operating the farm with them [REDACTED] and [REDACTED]. You will find [REDACTED] managing the 100 acres of production and [REDACTED] managing the store.

The farm produces about [REDACTED] bushels of apples annually.

The use of the subject land will continue as the land has been used in the past:

[REDACTED] is currently in 61-A and classified as Agricultural Land by making more than \$500 per year.

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EXAMPLE 3
FARMER RESUME / FARM PLAN

Department of Agricultural Resources
251 Causeway Street-Suite 500
Boston,
Massachusetts 02119-2151

Re: [REDACTED] Massachusetts

Ladies and Gentlemen:

My name is [REDACTED] and I, along with my family, would like to purchase the [REDACTED] farm property located in [REDACTED] Massachusetts in order to expand our present farming operation. We have been farming in Massachusetts for over thirty years, twenty of which involved having a dairy. Presently we have nearly 120 head of beef cattle on our properties in [REDACTED]. We also have a small vineyard of table grapes on property we purchased off [REDACTED]. We presently farm about 400 acres of which [REDACTED] is about [REDACTED].

The farm property [REDACTED] where the vineyard is located we purchased subject to an APR granted by the [REDACTED]. We continue to improve this land by removing stones and keeping the fields in top production and the buildings in good repair. It is on this property we decided to put the vineyard after my sons introduction to grape production at Cornell University on a piece of land not really suited for modern haying equipment. We sell the grapes locally and also wholesale to a well known northeast distributor. We feel we have been an asset to this property and many others nearby we have either purchased or rent.

The [REDACTED] property [REDACTED] consists about 175 plus or minus acres of former potato land. There is also another 200 plus acres of woodland that is subject to a [REDACTED] and will not be considered in the narrative as it is required to be maintained in its natural state for a period of fifty years which expires on April 21, 2053.

At this time the land is in very poor condition from a nutrient/health standpoint but is of the right soil type to fulfill my intentions for its use. The pH and soil organic matter are both very low [REDACTED] input to bring it [REDACTED] land and most crops. The heavy weed seed bank will be one of the most difficult obstacles to overcome as we intend to attempt the process without the use of chemical herbicides. It has been fallow for a number of years fulfilling at least one of the requirements for Organic Certification for which [REDACTED] research has revealed a high demand for organic feed throughout New England. In anticipation of future ownership and with the owner's permission most of the property was mowed last fall and cereal rye was planted to

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

start the breakdown of plant matter to increase the organic matter and carbon levels. My intentions will be to apply ground limestone and wood ash to increase the pH and potash levels needed for our intended crops.

Initially the part of the farm on the [REDACTED] part [REDACTED] There is approximate [REDACTED] acres in these parcels.

According to soil samples some of the acreage on the north side [REDACTED] [REDACTED] in much better condition and we intend to seed that into hay land in the first year. That would total approximately 40 acres. Much of the other land to the north and east (I and J) will initially put into grazing land for our beef cattle herd once fences are built for two reasons, the first of which is that the grazing of the intended planting of cover crops will greatly improve the soil health and secondly its close proximity to a water supply for the cattle. We intend on developing a cattle watering system over most of the farm so that most acreage can be grazed at some point. Any land not initially put into production will be planted into a cover crop to enhance soil health both in nutrient and organic matter prospective. That acreage will then be brought into production as they improve to meet requirements for the intended crops.

We [REDACTED] the land except for the two parcels to the north (K and L) will be minimally tilled and planted to either hay, corn or soybeans. Those two remaining parcels are quite grown up and will need considerable clearing and amendments before anything can be planted.

I primarily use cereal rye as a heavy residue crop in [REDACTED]. Some of the rye that is grown could be brought to maturity and harvested for seed.

[REDACTED] very shed/shop on the property that will be used for just that and also for hay storage in the first years until a larger storage facility can be built. The former potato storage has fallen in and will need to be cleaned up. In the near future a beef handling facility and a feed storage facility will need to be built as we expand our present herd. We estimate the farm to be [REDACTED]. The equipment we have on our present farm will be needed to take on this endeavor and we will need to purchase a couple more minimal tillage machines.

[REDACTED] this property and bringing it back into agricultural production. Thank you for your consideration and support of our purchase.

[REDACTED] and [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

251 Causeway Street, Suite 500, Boston, MA 02114
617-626-1700 fax: 617-626-1850 www.mass.gov/agr



CHARLES D. BAKER
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Lt. Governor

MATTHEW A. BEATON
Secretary

JOHN LEBEAUX
Commissioner

Request for Statements of Interest

Submission due date: **Jan 11, 2017**

Contact: Gerard Kennedy
Agricultural Preservation Restriction Program
251 Causeway Street, Suite 500
Boston, MA 02114
Tel: 617-626-1773
Fax: 617-626-1850
Email: gerard.kennedy@state.ma.us

PURPOSE

The Massachusetts Department of Agricultural Resources ("MDAR") is the Grantee and holder of an Agricultural Preservation Restriction ("APR") on approximately 7.82 acres of land of farmland (no structures) at the corner of [redacted] and [redacted] in [redacted], MA that is currently being offered for sale to MDAR for \$15,000.00. The APR was recorded on [redacted] at the Franklin County Registry of Deeds in Book [redacted]. As part of the APR, MDAR retains an Option to Purchase Real Estate at Agricultural Value a/k/a Option to Purchase at Agricultural Value (the "Option") when the land is transferred. As a result of a recently executed Purchase and Sale Agreement between the current owner, [redacted], and a prospective purchaser, the APR land has been offered for sale to MDAR at a price of \$15,000.00.

MDAR is seeking a "Statement of Interest" from individuals or entities who are qualified and capable of accepting an assignment and purchasing the land for its agricultural value of \$15,000.00 and closing by April 6, 2017.

PROPERTY DESCRIPTION

Approximately [redacted] acres prime farmland soils (no structures) in [redacted], Massachusetts situated at the corner of [redacted] and [redacted] Street. Approximately [redacted] acres are tillable, [redacted] acres are unmanaged woodland.

SUBMISSION STANDARDS AND REQUIREMENTS

As part of the assessment process in identifying an acceptable Farmer or New Entry Farmer, a/k/a potential assignee ("Potential Assignee") to receive an assignment of the Department's right to purchase, MDAR is seeking a formal "Statements of Interest" from Potential Assignees. Potential Assignees are encouraged to review MDAR Guidelines - Assignment of the Department's Option to Purchase at Agricultural Value prior to preparing a submission as these are the guidelines the Department will utilizing when selecting a Potential Assignee. The Statement of Interest must contain, at a minimum, all of the following documents:

- I. General Information:
(Must include the below information in narrative form)

- Potential Assignee's legal name and address
 - If the entity is a corporation or limited liability company, MDAR must be provided the articles of incorporation demonstrating the corporation was formed for the purpose of owning and operating a commercial Farm and the entity has the ability to hold real property; or
 - If the entity is a partnership, MDAR must be provided partnership agreement which evidences partnership was formed for the purpose of owning and operating a commercial Farm and the entity has the ability to hold real property.

NOTE: If the corporation or partnership was formed within two years of the submission due date, the entity will be considered a "New Entry Farmer".

All the below information must be provided, if applicable:

- Whether Potential Assignee has historically leased, but not owned, agricultural land (I.E. whether this would be a first time purchase of agricultural land).
- Whether the Potential Assignee leases or owns other agricultural land and the distance from the Premises that land is located. Must specify the address of other agricultural land.
- All other lands the Potential Assignee currently owns that are subject to an APR.
- The Potential Assignee's number of Farm acres currently under production.

If the Potential Assignee intends to lease the Premises to a Farmer or a New Entry Farmer, a proposed lease agreement or letter of intent with a Farmer or New Entry Farmer must be provided.

II. Financial Statement

- Financial Statement must demonstrate the Potential Assignee's ability to pay \$15,000.00 and close by April 6, 2017 days from MDAR's notice of intent to exercise. Specifically,
 - If purchasing with 100% cash funds, proof of satisfactory availability of funds; or
 - If obtaining financing, must provide letter of commitment for financing and satisfactory proof of ability to additional funds required for purchase price.

III. Farmer Resume

- Farmer Resume is a brief account of the Potential Assignee's professional farm experience and qualifications.

NOTE: If the Potential Assignee intends to lease the Premises to a Farmer or New Entry Farmer, the Farmer Resume must be prepared by the Farmer or New Entry Farmer.

IV. Farm Plan

- Farm Plan must be sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture. The Farm Plan is 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.**

- if the Potential Assignee owned or operated a Farm previously, the Farm Plan must additionally include the size of the farming operation (acreage and gross income), and number of years in business; or
- if the Potential Assignee is a New Entry Farmer (a Farmer who has less than two years experience managing or owning a Farm):
 - the Farm Plan must list relevant degrees, courses, workshops, education and training, and a Financial Plan must be provided. The Financial Plan whether narrative or otherwise, must demonstrate the Potential Purchaser can support the operation of the Premises without adversely affecting long term viability of the Premises. Such a plan should, at a minimum, include: a net worth statement, an estimate of start-up costs, identification of costs of production, gross sales and net farm income, and income & expense projections for at least three years; or
- if the Potential Assignee intends to lease the Premises to a Farmer or New Entry Farmer, the Farm Plan must be prepared by the Farmer or New Entry Farmer.

MDAR may request additional information from any Potential Assignee.

PROPOSAL SUBMISSION INFORMATION AND DEADLINE

Statements of Interest must be **received** by the Massachusetts Department of Agricultural Resources no later than January 11, 2017. **Please submit all materials via mail, email or hand delivery to:**

Dorothy Du
Department of Agricultural Resources
Suite 500
251 Causeway Street
Boston, MA 02114
dorothy.du@state.ma.us

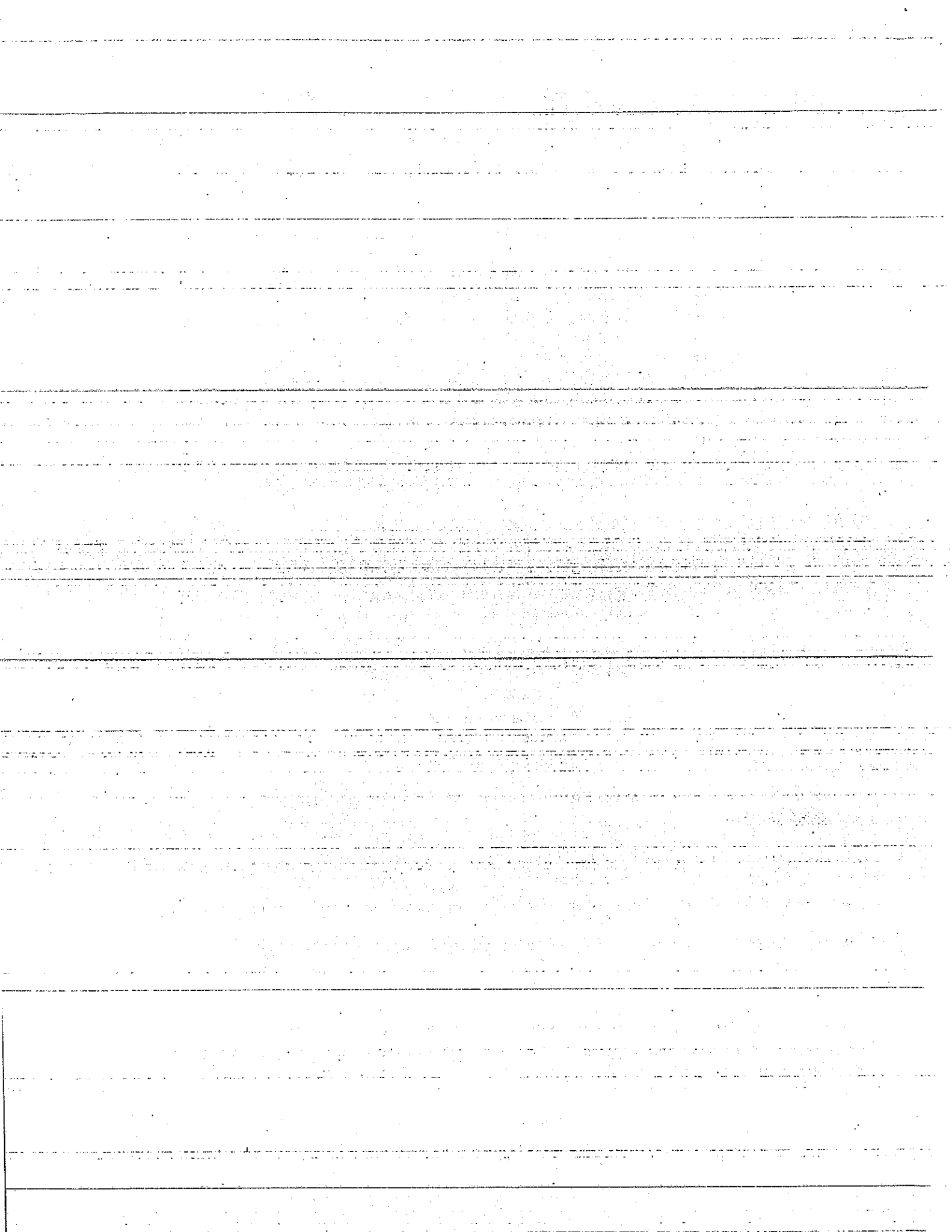
Envelopes shall be marked in the lower left-hand corner with the following: Statement of Interest for APR Land in [REDACTED], MA

Potential Assignee's are cautioned to allow sufficient time for their Statement of Interest to be received by MDAR. An electronic or facsimile Statement of Interest is acceptable provided that the complete packet together with any attachments is successfully received by MDAR prior to **5 PM on January 11, 2017.**

Note, any documents submitted will be subject to disclosure under the Public Records Law.

SELECTION CRITERIA

MDAR will evaluate each Potential Assignee's Statement of Interest to accept an assignment of the Commonwealth's offer to purchase the APR property for \$15,000 based on MDAR's Agricultural Preservation Restriction Program Guidelines, Assignment of the Department's Option to Purchase at Agricultural Value.



AGRICULTURAL PRESERVATION RESTRICTION PROGRAM GUIDELINES
REQUESTS FOR ASSIGNMENT OF A RIGHT OF FIRST REFUSAL

Internal Evaluation

APR Name	
APR Address and Town	
Potential Assignee Name	
Potential Assignee is Potential Purchaser	
Date Statement of Interest received	

A. In order to assign a right of first refusal, the Department must find that the Potential Assignee has: (See APR Program Guidelines: Assignment of First of First Refusal dated February 10, 2016 for definitions of bolded terms below):

	Criteria	Yes	No	N/A	Comments
1	Complied with the terms of the Department's Request for Statements of Interest				
2	Not violated the terms of any other APR the Potential Assignee's land is subject to such an extent as the violation is detrimental to the actual or potential agricultural use of the premises				Name(s) of other APR(s):
3	Demonstrated the ability to pay the purchase price and close within the timeframe established in the APRs . This criterion is satisfied by providing satisfactory evidence to the Department of available funds, as follows:				
	a. If purchasing with 100% cash funds, proof of satisfactory availability of funds; or				
	b. If obtaining financing, must provide letter of commitment for financing and satisfactory proof of additional funds required for purchase price;				

4	<p>If an individual, provided a Farm Plan¹ and Farmer Resume sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture for the furtherance of the purpose of the APR and if the Potential Assignee:</p>			
	<p><i>Farm Plan must include:</i></p> <ul style="list-style-type: none"> -five (5) year period <input type="checkbox"/> -identification of all land uses on the Farm <input type="checkbox"/> -crops to be grown <input type="checkbox"/> -acreage for each crop <input type="checkbox"/> -livestock to be raised <input type="checkbox"/> -pasture acreage <input type="checkbox"/> -use of existing structures on Premises (if applicable) <input type="checkbox"/> -need for additional structures (if applicable) <input type="checkbox"/> -timeline for implementation of the plan <input type="checkbox"/> -a map or diagram identifying each land use proposed for the Farm <input type="checkbox"/> 			
	<p>a. owned or operated a Farm previously, the Farm Plan must additionally include the size of the farming operation (acreage and gross income), and number of years in business; or</p>			
	<p>b. is a New Entry Farmer: i) the Farm Plan must list relevant degrees, courses, workshops, education and training; and ii) a Financial Plan must be provided; or</p> <p><i>Financial Plan must include:</i></p> <ul style="list-style-type: none"> -a net worth statement <input type="checkbox"/> -an estimate of start-up costs <input type="checkbox"/> -identification of costs of production <input type="checkbox"/> 			

¹ If the Potential Assignee is the Potential Purchaser, the Farm Plan submitted to the Department with the request for Waiver will be considered the Farm Plan for purposes of this policy. The Potential Purchaser may provide the Department with additional information that supplements the Farm Plan, however any additional information proposing new agricultural uses will not be considered.

	<p>-gross sales and net farm income <input type="checkbox"/> -income & expense projections for at least three years <input type="checkbox"/></p> <p>c. intends to lease the Premises to a Farmer or New Entry Farmer: i) a proposed lease agreement or letter of intent with a Farmer or New Entry Farmer must be provided and, ii) the above referenced Farm Plan and Farmer Resume must be prepared by the Farmer or New Entry Farmer.</p>			
5	<p>If a governmental entity, provided a Farm Plan¹ and Farmer Resume sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture for the furtherance of the purpose of the APR and if the Potential Assignee:</p> <p>a. owned a Farm previously, the Farm Plan must additionally include number of years of ownership, the acreage of the farming operation, and number of years in business, name of farmer and Farm business; or</p> <p>b. intends to lease the Premises to a Farmer or New Entry Farmer: i) a proposed lease agreement or letter of intent with a Farmer or New Entry Farmer must be provided and, ii) the above referenced Farm Plan and Farmer Resume must be prepared by the Farmer or New Entry Farmer.</p>			
	<p>a. owned a Farm previously, the Farm Plan must additionally include number of years of ownership, the acreage of the farming operation, and number of years in business, name of farmer and Farm business; or</p>			
	<p>b. intends to lease the Premises to a Farmer or New Entry Farmer: i) a proposed lease agreement or letter of intent with a Farmer or New Entry Farmer must be provided and, ii) the above referenced Farm Plan and Farmer Resume must be prepared by the Farmer or New Entry Farmer.</p>			

6	<p>If a non-governmental or non-profit organization or for-profit entity:</p> <p>a. provided Articles of Incorporation or other comparable documents evidencing the purpose of the Potential Assignee allows for owning and operating a Farm and that the mission statement is compatible with the goals of the APR; and</p>				
	<p>b. provided a Farm Plan and Farmer Resume sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture for the furtherance of the purpose of the APR and if the Potential Assignee:</p>				
	<p>i. owned or operated a Farm previously, the Farm Plan must additionally include the size of the farming operation (acreage and gross income), and number of years in business; or</p>				
	<p>ii. is a New Entry Farmer: A) the Farm Plan must list relevant degrees, courses, workshops, education and training, and B) a Financial Plan must be provided; or</p>				
	<p>iii. intends to lease the Premises to a Farmer or New Entry Farmer: A) a proposed lease agreement or letter of intent with a Farmer or New Entry Farmer must be provided and, B) the above referenced Farm Plan and Farmer</p>				

	Resume must be prepared by the Farmer or New Entry Farmer .				
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**SELECTION CRITERIA FOR ASSIGNMENT TO AN INDIVIDUAL, GOVERNMENTAL OR
NON-GOVERNMENTAL NON-PROFIT ORGANIZATION**

A. If more than one Potential Assignee satisfies the above criteria, the following additional criteria will be utilized by the Department:

1. Current ownership or leasing of other land subject to an APR;

a.	Ownership or leasing	3 points
b.	No ownership or leasing	0 points

Potential Assignee's: ___ point(s)

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

Potential Assignee's: ___ point(s)

3. Ownership of agricultural land; and

a.	If Farmer has historically leased, not owned agricultural land	2 points
b.	If New Entry Farmer has historically leased, not owned, agricultural land	1 point
c.	If not a Farmer or New Entry Farmer, or currently owns agricultural land not subject to an APR	0 points

Potential Assignee's: ___ point(s)

4. Proximity of other agricultural land leased or owned.

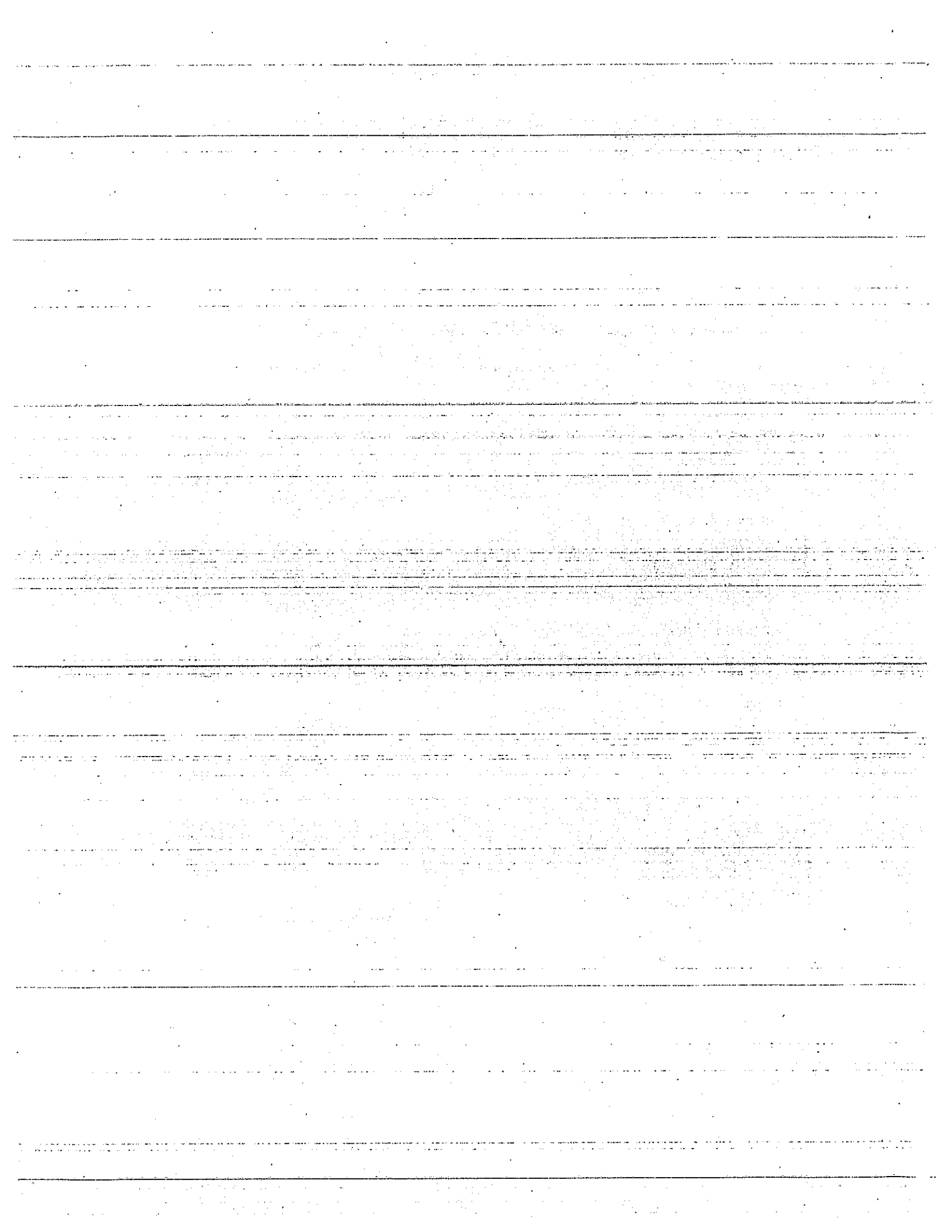
a.	Adjacent	3 points
b.	Within 10 miles	2 points
c.	Within 25 miles	1 point
d.	Greater than 25 miles	0 points

Potential Assignee's: ___ point(s)

Total points of Potential Assignee: _____/14 points

B. 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: _____



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



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CHARLES D. BAKER
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MATTHEW A. BEATON
Secretary

JOHN LEBEAUX
Commissioner

AGRICULTURAL PRESERVATION RESTRICTION PROGRAM GUIDELINES

ASSIGNMENT OF RIGHT OF FIRST REFUSAL

- 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 a land restricted by an APR at an affordable price for future agricultural use. From the outset in 1976 a primary goal of the APR Program is to ensure the availability of farmland and that Premises would be sold for its value as a farm, thereby permitting those entering or currently engaged in commercial agriculture to acquire farmland.

A Right of First Refusal ("ROFR") is a right purchased by the Commonwealth as part of the APR that may, in the Department of Agricultural Resources' ("Department") sole discretion, be exercised or assigned in a way best suited to achieve the goals of the program. Recognizing that the ROFR was purchased by the Commonwealth for these very purposes, the Department has a duty, upon the proposed sale of an APR parcel with a ROFR, to weigh its option of exercising or assigning the ROFR in a diligent and effective manner.

II. **PRE-REQUISITES TO QUALIFY FOR AN ASSIGNMENT OF A ROFR:**

- A. In order to assign its Right of First Refusal, the Department must find that the Potential Assignee has:
1. Complied with the terms of the Department's Request for Statement of Interest;
 2. Not violated the terms of any other APR the Potential Assignee's land is subject to such an extent as the violation is detrimental to the actual or potential agricultural use of the premises;
 3. Demonstrated the ability to pay the purchase price and close within the timeframe established in the APRs. This criterion is satisfied by providing satisfactory evidence to the Department of available funds, as follows:
 - a. If purchasing with 100% cash funds, proof of satisfactory availability of funds; or
 - b. If obtaining financing, must provide letter of commitment for financing and satisfactory proof of additional funds required for purchase price; and

4. If an individual, provided a Farm Plan¹ and Farmer Resume sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture for the furtherance of the purpose of the APR and if the Potential Assignee:

- a. owned or operated a Farm previously, the Farm Plan must additionally include the size of the farming operation (acreage and gross income), and number of years in business; or
- b. is a New Entry Farmer: i) the Farm Plan must list relevant degrees, courses, workshops, education and training, and ii) a Financial Plan must be provided; or
- c. intends to lease the Premises to a Farmer or New Entry Farmer: i) a proposed lease agreement or letter of intent with a Farmer or New Entry Farmer must be provided and, ii) the above referenced Farm Plan and Farmer Resume must be prepared by the Farmer or New Entry Farmer.

5. If a governmental entity, provided a Farm Plan¹ and Farmer Resume sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture for the furtherance of the purpose of the APR and if the Potential Assignee:

- a. owned a Farm previously, the Farm Plan must additionally include number of years of ownership, the acreage of the farming operation, and number of years in business, name of farmer and Farm business; or
- b. intends to lease the Premises to a Farmer or New Entry Farmer: i) a proposed lease agreement or letter of intent with a Farmer or New Entry Farmer must be provided and, ii) the above referenced Farm Plan and Farmer Resume must be prepared by the Farmer or New Entry Farmer.

6. If a non-governmental or non-profit organization or for-profit entity:

- a. provided Articles of Incorporation or other comparable documents evidencing the purpose of the Potential Assignee allows for owning and operating a Farm and that the mission statement is compatible with the goals of the APR; and
- b. provided a Farm Plan¹ and Farmer Resume sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture for the furtherance of the purpose of the APR and if the Potential Assignee:
 - i. owned or operated a Farm previously, the Farm Plan must additionally include the size of the farming operation (acreage and gross income), and number of years in business; or
 - ii. is a New Entry Farmer: A) the Farm Plan must list relevant degrees, courses, workshops, education and training, and B) a Financial Plan must be provided; or

¹ If the Potential Assignee is the Potential Purchaser, the Farm Plan submitted to the Department with the request for Waiver will be considered the Farm Plan for purposes of this policy. The Potential Purchaser may provide the Department with additional information that supplements the Farm Plan; however any additional information proposing new agricultural uses will not be considered.

- iii. intends to lease the Premises to a Farmer or New Entry Farmer: A) a proposed lease agreement or letter of intent with a Farmer or New Entry Farmer must be provided and, B) the above referenced Farm Plan and Farmer Resume must be prepared by the Farmer or New Entry Farmer;

III. SELECTION CRITERIA FOR ASSIGNMENT TO AN INDIVIDUAL, GOVERNMENTAL OR NON-GOVERNMENTAL NON-PROFIT ORGANIZATION

- A. If more than one Potential Assignee satisfies the above criteria, the following additional criteria will be utilized by the Department:
 1. Current ownership or leasing of other land subject to an APR;
 2. Demonstrated farming history;
 3. Ownership of agricultural land; and
 4. Proximity of other agricultural land leased or owned.
- B. 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.

IV. SELECTION CRITERIA FOR ASSIGNMENT TO A GOVERNMENTAL OR NON-GOVERNMENTAL NON-PROFIT ORGANIZATION

- A. If more than one Potential Assignee satisfies the above criteria, the following additional criteria will be utilized by the Department:
 1. Current ownership or leasing of other land subject to an APR;
 2. Demonstrated farming history;
 3. Ownership of agricultural land;
 4. Proximity of other agricultural land leased or owned;
 5. If a non-profit, number of years of incorporation;
 6. If a non-profit, operating budget;
 7. Number of qualified staff whose job responsibilities will include overseeing the ownership of the land and compliance with the terms of the APR; and
 8. If the town is a co-holder.
- B. If two or more Potential Assignee's remain equally qualified, the following additional criteria will be considered by the Department: Since Potential Assignees establishment, current and historic number of farm acres under production.

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

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.

Appraisal: a current (not more than 1 year old) valuation of property by the estimate of an authorized person conducted in accordance with the "Guidelines for Agricultural Appraisals" prepared by the Department and in effect at the time of the Waiver request.

APR Owner: the record title owner of the APR.

Business Plan: a comprehensive narrative that sets forth the goals and objectives for the Farm business and strategies to achieve them including at a minimum: a description of Farm resources and buildings and how they are to be used, personnel qualifications and responsibilities, production information and products to be sold, a description of markets and marketing strategies, identification of any needed capital improvements, and details on how proposed agricultural operation on the Premises will contribute to the agricultural industry and food production in Massachusetts, 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), and details on business partner(s) (if applicable).

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

Farm: the Premises on which an agricultural use occurs. The Premises shall be deemed to be in agricultural use when primarily and directly used in raising 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. Also agricultural use shall include horticultural use when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flower, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling these products in the regular course of business; or when primarily and directly used in raising forest products under a certified forest management plan, approved by and subject to procedures established by the state forester, designed to improve the quantity and quality of a continuous crop for the purpose of selling these products in the regular course of business; or when primarily and directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising these products and preparing them for market.

Farmer: (i) an individual who is engaged in an active agricultural use of land for commercial purposes; and (ii) an entity if the Articles of Incorporation or other corporate documents demonstrate that the purpose of the entity allows for commercial agriculture and the entity has the ability to hold real property; and (iii) an entity whose connected entity (connected by virtue of overlapping corporate officers, partners, or trustees) is organized for the purpose of commercial agriculture.

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.

Farmer Resume: a brief account of the Potential Purchaser's professional farm experience and qualifications.

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.

Financial Plan: a plan, whether narrative or otherwise, that demonstrates the Potential Purchaser can support the operation of the Premises without adversely affecting long term viability of the Premises. Such a plan should, at a minimum, include: a net worth statement, an estimate of start-up costs, identification of costs of production, gross sales and net farm income, and income & expense projections for at least three years.

New Entry Farmer: a Farmer who has less than two years experience managing or owning a Farm.

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

Potential Assignee: the person or entity who responded to the Department's Request for Statement of Interest and has expressed interest in being assigned the Department's Right of First Refusal. If the entity is a corporation or limited liability company, the Department must be provided the articles of incorporation demonstrating the corporation was formed and the nature of the business to be transacted is owning and operating a Farm. If the entity is a partnership, the Department must be provided partnership agreement which evidences partnership was formed for the purpose of owning and operating a Farm.

Potential Purchaser: the person or entity who has entered into a bona fide purchase and sale agreement with the APR Owner.

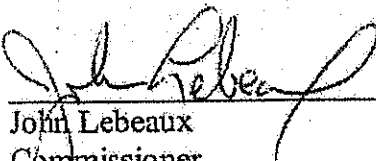
Purchase Price: the price listed for the Premises in the purchase and sale agreement by and between the APR Owner and the Potential Purchaser.

Statement of Interest: Potential Assignee's written response that it desires to receive the Department's assignment and providing proof the Potential Assignee is qualified to receive the assignment.

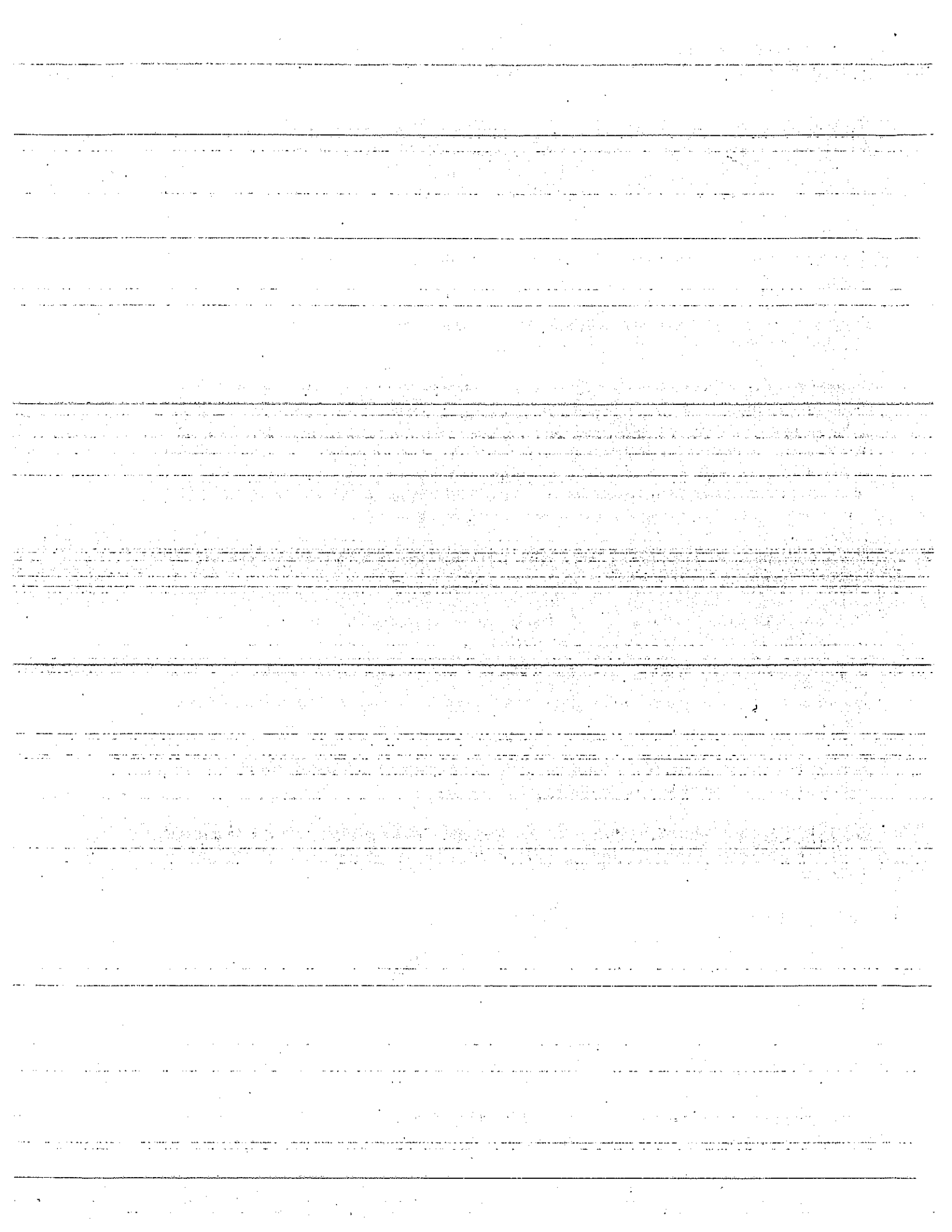
Waiver: a document in recordable form issued by the Department that waives the Department's right to purchase or assign the right to purchase the Premises.

- VI. AUTHORITY: Many APRs prior to June 23, 1994 include a Right of First Refusal which grants, at the Department's discretion, the right to purchase or assign the right to purchase the Premises.

Adopted February 10, 2016



John Lebeaux
Commissioner



AGRICULTURAL PRESERVATION RESTRICTION PROGRAM GUIDELINES

ASSIGNMENT OF THE DEPARTMENT'S OPTION TO PURCHASE AT AGRICULTURAL VALUE

Internal Evaluation - Statement of Interest

APR Name	
APR Address and Town	
Potential Assignee Name	
Potential Assignee is Potential Purchaser	Yes: <input type="checkbox"/> No: <input type="checkbox"/>
Staff Reviewer Name	
Date State of Interest was received	

A. In order to assign an Option to Purchase at Agricultural Value, the Department must find that the Potential Assignee has:

	Criteria	Yes	No	N/A	Comments
1.	Complied with the terms of the Department's Request for Information If entity, provided relevant documents evidencing formation and purpose for agricultural use				
2.	If applicable based upon ownership of land subject to an APR, not violated the terms of the APR to such an extent as the violation is detrimental to the actual or potential agricultural use of the premises				
3.	Demonstrated ability to pay the FMAV and close within 120 days from the Department's notice of intent to exercise. This criterion is satisfied by providing the Department evidence of available funds.				
a.	If purchasing with 100% cash funds, proof of satisfactory availability of funds				
b.	If obtaining financing, must provide letter of commitment for financing and satisfactory proof of ability to additional funds required for purchase price				
4.	Provided a Farm Plan ¹ and Farmer Resume sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture and if the				

¹ If the Potential Assignee is the Potential Purchaser, the Farm Plan submitted to the Department with the request for Waiver will be considered the Farm Plan for purposes of this policy. The Potential Purchaser may provide the Department with additional information that supplements the Farm Plan, however any additional information proposing new agricultural uses will not be considered.

<p>Potential Assignee:</p> <p><i>Farm Plan must include:</i></p> <ul style="list-style-type: none"> -five (5) year period <input type="checkbox"/> -identification of all land uses on the Farm <input type="checkbox"/> -crops to be grown <input type="checkbox"/> -acreage for each crop <input type="checkbox"/> -livestock to be raised <input type="checkbox"/> -pasture acreage <input type="checkbox"/> -use of existing structures on Premises (if applicable) <input type="checkbox"/> -need for additional structures (if applicable) <input type="checkbox"/> -timeline for implementation of the plan <input type="checkbox"/> -a map or diagram identifying each land use proposed for the Farm <input type="checkbox"/> 			
<p>a. <u>owned or operated a Farm previously</u>, the Farm Plan must additionally include the size of the farming operation (acreage and gross income), and number of years in business; or</p>			
<p>b. <u>a New Entry Farmer:</u></p> <p>i) the Farm Plan must list relevant degrees, courses, workshops, education and training, and</p> <p>ii) a Financial Plan must be provided; or</p>			
<p><i>Financial Plan must include:</i></p> <ul style="list-style-type: none"> -a net worth statement <input type="checkbox"/> -an estimate of start-up costs <input type="checkbox"/> -identification of costs of production <input type="checkbox"/> -gross sales and net farm income <input type="checkbox"/> -income & expense projections for at least three years <input type="checkbox"/> 			
<p>c. <u>intends to lease the Premises to a Farmer or New Entry Farmer:</u></p> <p>i) a proposed lease agreement or letter of intent with a Farmer or New Entry Farmer must be provided</p> <p>ii) the above referenced Farm Plan and Farmer Resume must be prepared by the Farmer or New Entry Farmer</p>			

If all the above criteria are met, the Potential Assignee is eligible to receive the assignment of an Option to Purchase at Agricultural Value from the Department.

B. If more than one Potential Assignee satisfies the above criteria, the following additional criteria will be utilized by the Department:

1. Potential Assignee's ownership of other land subject to an APR:

a.	Current ownership	3 points
b.	No ownership	0 points

Potential Assignee's: ____ points

2. Potential Assignee's demonstrated farming history:

a.	Farmer	6 points
b.	New Entry Farmer	3 point
c.	Intends to lease to Farmer or New Entry Farmer	0 points

Potential Assignee's: ____ points

3. Potential Assignee's ownership of agricultural land:

a.	If Farmer has historically leased, not owned, agricultural land	2 points
b.	If New Entry Farmer has historically leased, not owned, agricultural land	1 point
c.	If not a Farmer or New Entry Farmer, or currently owns agricultural land not subject to an APR	0 points

Potential Assignee's: ____ points

4. Proximity of other agricultural land leased or owned:

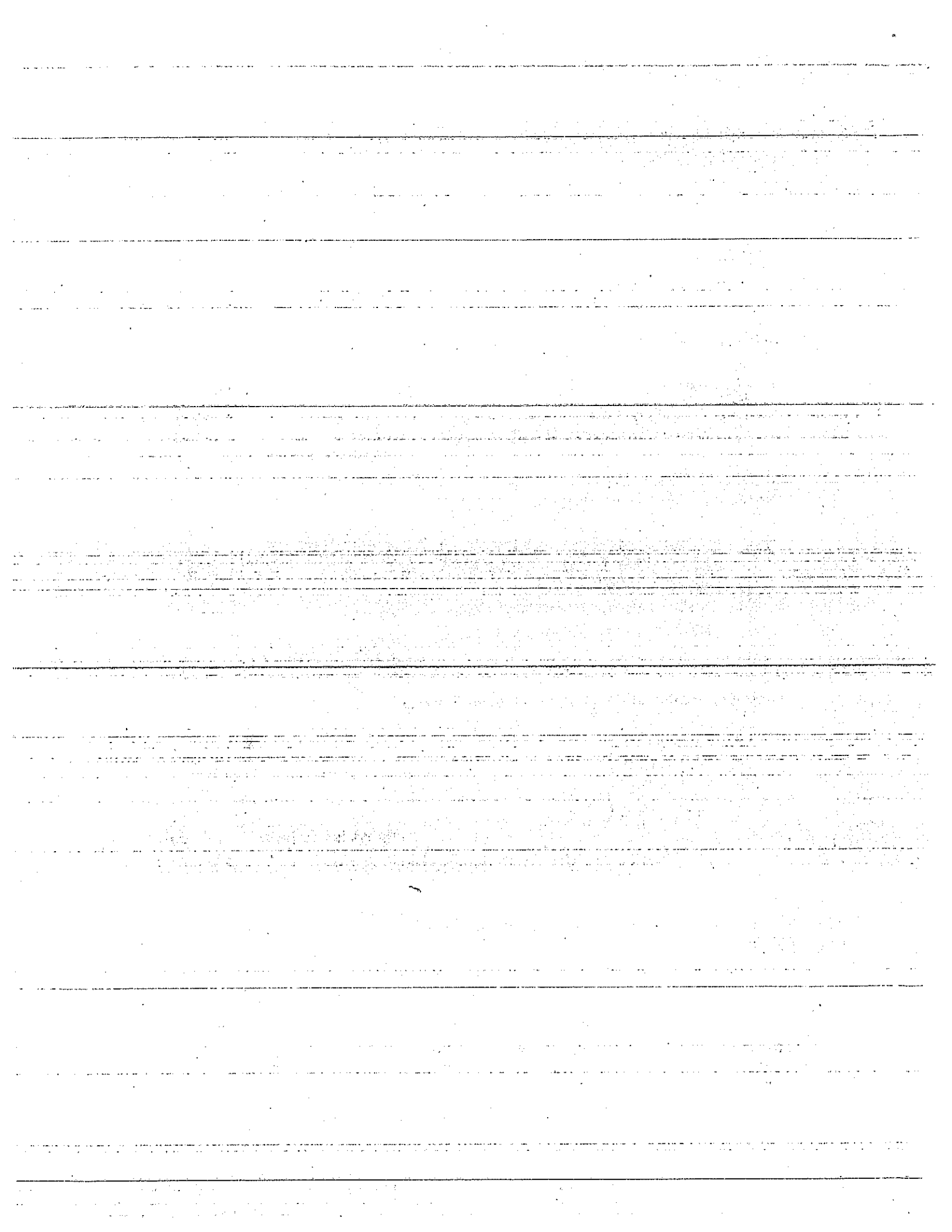
a.	Adjacent	3 points
c.	Within 10 miles	2 points
d.	Within 25 miles	1 point
e.	Greater than 25 miles	0 points

Potential Assignee's: ____ points

Total Points of Potential Assignee's: ____/14 Points

C. If two or more Potential Assignee's are equally qualified, the following additional criteria shall be considered:

1. The Potential Assignee that was the Potential Purchaser is awarded the assignment.
2. If still a tie, the Potential Assignee that has the most number of acres under production is awarded the assignment. Under production shall mean the production of an agricultural product for use on the Potential Assignee's Farm or for sale.



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Commissioner

**AGRICULTURAL PRESERVATION RESTRICTION
PROGRAM GUIDELINES**

ASSIGNMENT OF OPTION TO PURCHASE AT AGRICULTURAL VALUE

I. PURPOSE:

By purchasing Agricultural Preservation Restrictions ("APR(s)"), it is the intent of the Commonwealth to perpetually protect and preserve agricultural lands, encourage sound soil management practices, preserve natural resources, maintain land in active commercial agricultural use, and ensure resale of a land restricted by an APR at an agriculturally affordable price for continuing agricultural use. Since its establishment in 1976, a primary goal of the APR Program, has been to ensure the availability of farmland that would be sold at its agricultural value, providing an opportunity for those entering or currently engaged in commercial agriculture to acquire farmland at a price that is supported by the farming operation.

In order to ensure that the Premises remains affordable for commercial agricultural production and that its market value for other uses does not preclude its profitable use for agriculture, in 1994, the Department began purchasing as part of the APR, an option to purchase the land subject to the APR at its agricultural value ("Option"). The Department has the right to assign its Option to a person or entity that will use or facilitate the use of the Premises for commercial agricultural production.

II. CONSIDERATIONS WHEN SELECTING A PERSON OR ENTITY TO ASSIGN ITS OPTION:

- A. In order to assign its Option to Purchase at Agricultural Value, the Department must find that the Potential Assignee has:
1. Complied with the terms of the Department's Request for Statement of Interest;
 2. If applicable based upon ownership of land subject to an APR, not violated the terms of the APR to such an extent as the violation is detrimental to the actual or potential agricultural use of the premises;
 3. Demonstrated ability to pay the FMAV and close within 120 days from the Department's notice of intent to exercise. This criterion is satisfied by providing satisfactory evidence to the Department of available funds:
 - a. If purchasing with 100% cash funds, proof of satisfactory availability of funds; or

b. If obtaining financing, must provide letter of commitment for financing and satisfactory proof of ability to additional funds required for purchase price; and

4. Provided a Farm Plan¹ and Farmer Resume sufficient to demonstrate the Premises will be utilized to the fullest extent possible for commercial agriculture and if the Potential Assignee:

- a. owned or operated a Farm previously, the Farm Plan must additionally include the size of the farming operation (acreage and gross income), and number of years in business; or
- b. is a New Entry Farmer: i) the Farm Plan must list relevant degrees, courses, workshops, education and training, and ii) a Financial Plan must be provided; or
- c. intends to lease the Premises to a Farmer or New Entry Farmer: i) a proposed lease agreement or letter of intent with a Farmer or New Entry Farmer must be provided and, ii) the above referenced Farm Plan and Farmer Resume must be prepared by the Farmer or New Entry Farmer.

B. If more than one Potential Assignee satisfies the above criteria, the following additional criteria will be utilized by the Department, Potential Assignee's:

1. Ownership of other land subject to an APR;
2. Demonstrated farming history;
3. Ownership of agricultural land; and
4. Proximity of other agricultural land leased or owned.

C. If two or more Potential Assignee's remain equally qualified, the following additional criteria will be considered by the Department:

1. Whether the Potential Assignee is the Potential Purchaser; or
2. The Potential Assignee's number of Farm acres currently under production.

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

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.

Appraisal: a current (not more than 1 year old) valuation of property by the estimate of an authorized person conducted in accordance with the "Guidelines for Agricultural Appraisals" prepared by the Department and in effect at the time of the Waiver request.

¹ If the Potential Assignee is the Potential Purchaser, the Farm Plan submitted to the Department with the request for Waiver will be considered the Farm Plan for purposes of this policy. The Potential Purchaser may provide the Department with additional information that supplements the Farm Plan; however any additional information proposing new agricultural uses will not be considered.

APR Owner: the record title owner of the APR.

CPI Amount: an amount equal to the FMALV of the Premises as determined by the appraisal relied upon for the acquisition of the APR which sum shall then be multiplied by the Inflation Rate. The Inflation Rate shall be equal to 1 plus the fractional increase in the Consumer Price Index for all Urban Consumers, Boston, All Items (1982-1984 equals 100) published by the Bureau of Labor Statistics, United States Department of Labor, or successor index published by the United States government appropriately correlated to the prior index by a published conversion factor, where indicated, from date of the appraisal relied upon for the acquisition of the APR to the date of execution of the bona fide Purchase and Sale Agreement.

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

Farm: the Premises on which an agricultural use occurs. The Premises shall be deemed to be in agricultural use when primarily and directly used in raising 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. Also agricultural use shall include horticultural use when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flower, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling these products in the regular course of business; or when primarily and directly used in raising forest products under a certified forest management plan, approved by and subject to procedures established by the state forester, designed to improve the quantity and quality of a continuous crop for the purpose of selling these products in the regular course of business; or when primarily and directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising these products and preparing them for market.

Farmer: (1) an individual who is engaged in an active agriculture use of land for commercial purposes; and (2) an entity which is a corporation or limited liability company, and whose articles of incorporation or other corporate documents demonstrate the corporation was formed for the purpose of owning and operating a commercial Farm and the entity has the ability to hold real property; (3) an entity which is a partnership and whose partnership agreement evidences the partnership was formed for the purpose of owning and operating a commercial Farm and the entity has the ability to hold real property; and (4) an entity whose connected entity (connected by virtue of overlapping corporate officers, partners, etc.) is organized for the purpose of owning and operating a commercial Farm and the entity has the ability to hold real property.

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.

Farmer Resume: a brief account of the Potential Purchaser's professional farm experience and qualifications.

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 the APR by the Department. 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 APR Owner, but excluded from the APR ("non-APR land"), when such business on non-APR 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 the APR to the Department. FMALV is applicable at both the time of the Department's purchase of the APR 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.

Financial Plan: a plan, whether narrative or otherwise, that demonstrates the Potential Purchaser can support the operation of the Premises without adversely affecting long term viability of the Premises. Such a plan should, at a minimum, include: a net worth statement, an estimate of start-up costs, identification of costs of production, gross sales and net farm income, and income & expense projections for at least three years.

New Entry Farmer: a Farmer who has less than two years experience managing or owning a Farm.

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

Potential Assignee: the person or entity who responded to the Department's Request for Statement of Interest and has expressed interest in being assigned the Department's Option to Purchase at Agricultural Value. If the entity is a corporation or limited liability company, the Department must be provided the articles of incorporation demonstrating the corporation was formed and the nature of the business to be transacted is owning and operating a Farm. If the entity is a partnership, the Department must be provided partnership agreement which evidences partnership was formed for the purpose of owning and operating a Farm.

Potential Purchaser: the person or entity who has entered into a bona fide purchase and sale agreement with the APR Owner.

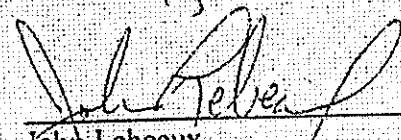
Purchase Price: the price listed for the Premises in the purchase and sale agreement by and between the APR Owner and the Potential Purchaser.

Statement of Interest: Potential Assignee's written response that it desires to receive the Department's assignment and providing proof the Potential Assignee is qualified to receive the assignment.

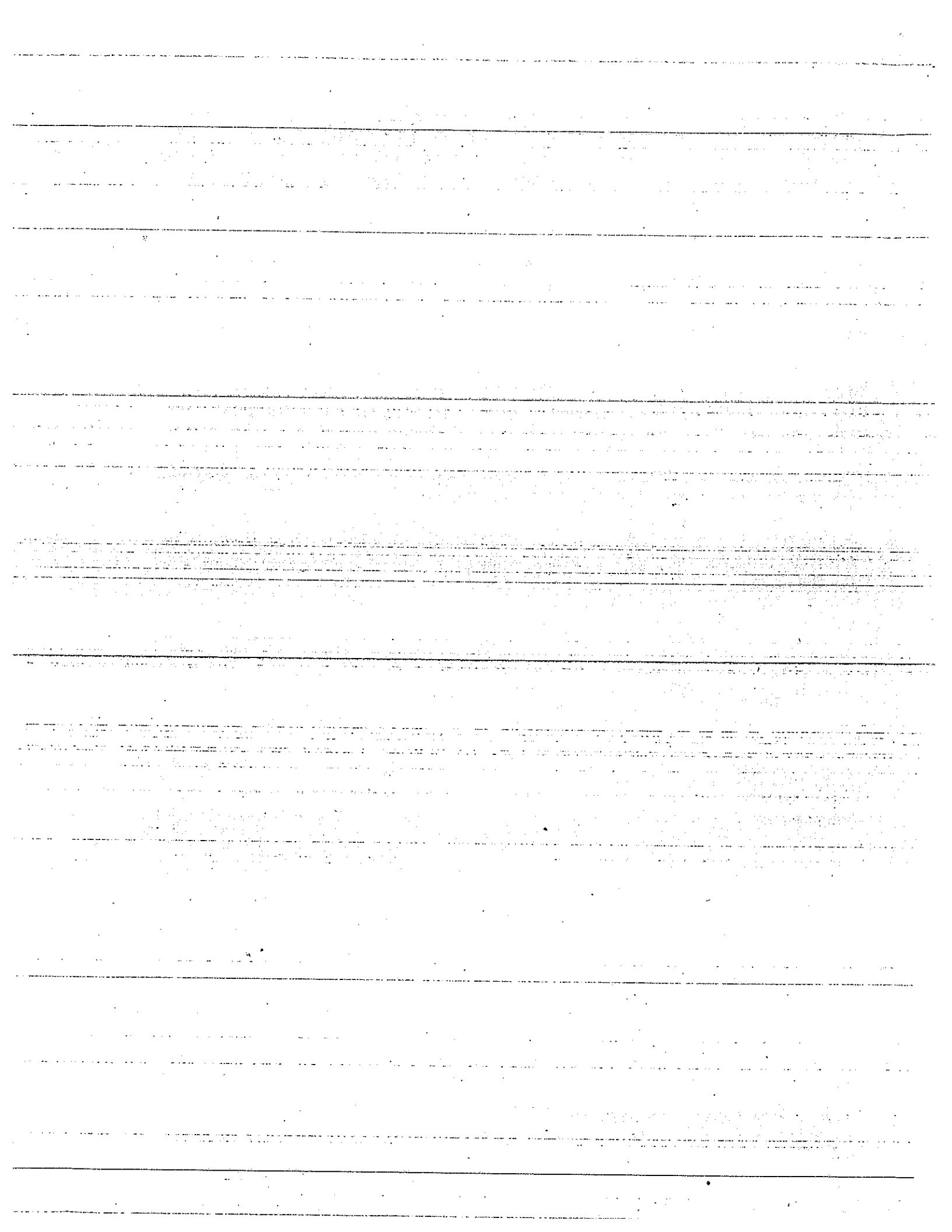
Waiver: a document in recordable form issued by the Department that waives the Department's right to purchase or assign the right to purchase the Premises.

- IV. AUTHORITY: Most APRs since June 23, 1994 include an Option which grants at the Department's discretion the right to purchase or assign the right to purchase the Premises at its agricultural value.

Adopted May 31, 2016



John Lebeaux
Commissioner





Agricultural Preservation Restriction Program Department of Agricultural Resources

Division of Agricultural Conservation and Technical Assistance

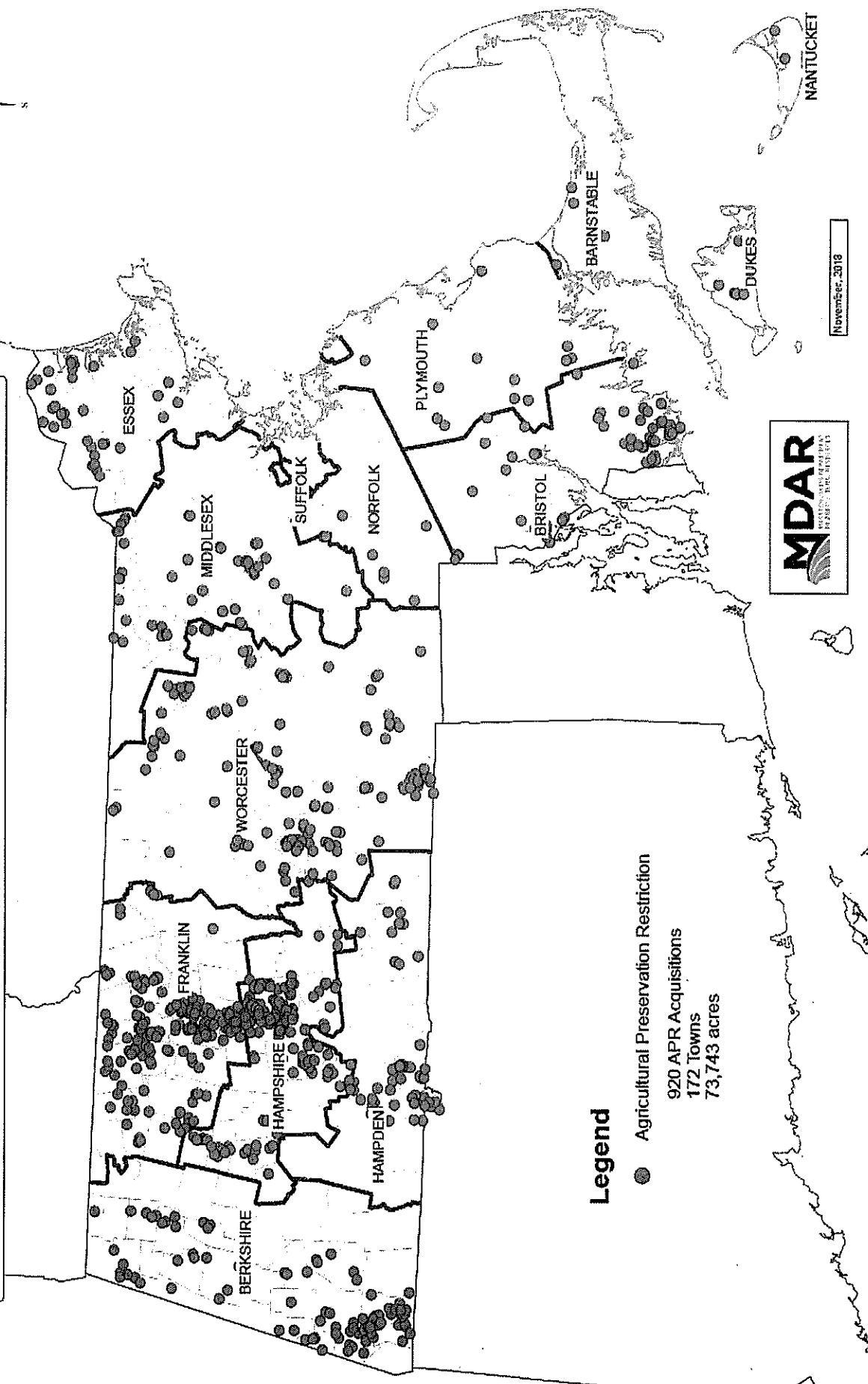
ALPC Dec 14, 2018

ROFR/ OPAV



TK

Agricultural Preservation Restrictions in Massachusetts



Legend

- Agricultural Preservation Restriction
- 920 APR Acquisitions
- 172 Towns
- 73,743 acres



November, 2018



APR Legislative Changes

- 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
★ 21d prior to Public Comment Period	Public Notice in Newspaper. Notify parties who have requested notice. Notice to Register. Electronic and Paper Copies to Regulations Division.
★ 35d prior to Public Comment Period	Notify Government Advisory Committee and MMA.
Late Winter 2019	Ag Board meeting to consult on regulations after ALPC approval.
Winter 2019	ALPC Meeting to review second draft of regulations (if necessary).
January 1, 2019	Increases the Governor's appointments to the ALPC from 4 to 6.
Early Winter 2018	ALPC Meeting to review first draft of regulations (January 2019).
★ Fall 2018	★ MDAR to draft proposed changes to regulations per legislation.
★ July 30, 2018	★ Require participation in meetings and conferences for new APRs acquired after this date



Reference: OPAV / ROFR

- “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.



Reference: APR ROFR and OPAV Policies (Currently)

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 than 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

Automatic Waiver

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;

Manual Waiver

- 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;
 - (b) is a New Entry Farmer, the Farm Business Plan must list relevant degrees, courses, workshops, education and training.

OR

Manual Waiver

- 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.

Exercise

- 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.

Definitions

- 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.



Violation Waiver

- 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"? Aka forgetting to record a certificate of approval
- Non-resource based violations
- Violations easily resolved

• **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.

Benchmarks and Criteria to Evaluate Business Plan

- 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 Assignees 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: _____



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.
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Agricultural Preservation Restriction Program

Division of Agricultural Conservation and Technical Assistance

Massachusetts Department of Agricultural Resources

251 Causeway Street, Boston, MA 02114

www.mass.gov/agr



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ATM GL ch. 20, § 23

Current through Act 268 of the 2018 Legislative Session.

Annotations of Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182) > TITLE II EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH (Chs. 6 - 284) > TITLE II EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH (Chs. 6 - 284) > Chapter 20 Department of Food and Agriculture (§§ 1 - 32)

Notice

This section has more than one version with varying effective dates.

§ 23. *Agricultural Preservation Restrictions. [Effective August 1, 2019]

(a) The secretary of environmental affairs shall establish a program to assist the commonwealth in the acquisition of agricultural preservation restrictions as defined in section 31 of chapter 184, for land actively devoted to agricultural or horticultural uses pursuant to sections 1 to 5, inclusive, of chapter 61A. The commissioner of agricultural resources may, from funds appropriated to carry out this section or from funds received from other sources, pay an agricultural land owner for a project submitted by a city or town and approved by the agricultural lands preservation committee established in section 24 such amount as is determined by the committee to be equitable in consideration of anticipated benefits from such project but not to exceed the difference between the fair market value of the land and the fair market value of the land restricted for agricultural purposes pursuant to this section. Title to agricultural preservation restrictions shall be held in the name of the commonwealth; provided, however, that a city or town in which such land is located which provides assistance satisfactory to the committee including, but not limited to, providing funds or portions thereof toward the purchase of such restriction, providing legal services and the enforcement of the preservation restriction shall hold title to such land jointly with the commonwealth. Projects shall be administered by agricultural commissions or conservation commissions in cities and towns in which such commissions have been established or, in a city, by the city council or its delegated agency subject to the city charter or, in a town, by the board of selectmen or its delegated agency. The commissioner, subject to the approval of the secretary, shall establish procedures for management of the program.

(b) Notwithstanding any general or special law to the contrary, the department of agricultural resources, with the approval of the co-holder, if any, in its sole discretion, may grant to any owner of land subject to an agricultural preservation restriction held by the commonwealth a nonassignable special permit allowing nonagricultural activities to occur on the agricultural preservation restriction land if: (i) the land is being actively utilized for full-time commercial agriculture; (ii) the permit is for a maximum of 5 years duration which may, at the discretion of the department, be renewed; and (iii) the grant of a special permit 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 and that the agricultural preservation restriction owner meets all requirements pertaining to special permits contained in the agricultural preservation restriction agreement form utilized by the commonwealth at the time of application for the special permit. In making the determination, the department shall consider the long-term productivity of the agricultural resource and the sustainability of the farm

[Handwritten mark]

(e) Where an agricultural preservation restriction acquired and held by the commonwealth gives the department the authority to exercise or assign a right to acquire an interest in land through a right of first refusal, an option to purchase at agricultural value or other similar right, the landowner shall have the right to withdraw the landowner's notice of intent to sell at any point prior to the department's exercise or assignment of the option to purchase at agricultural value or right of

The department, in consultation with the agricultural lands preservation committee 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 in accordance with this section.

(d) The department shall waive its rights under this section to exercise or assign a right to acquire an interest in land through a right of first refusal, an option to purchase at fair market agricultural value or other similar right contained in a landowner's deed for land subject to an agricultural preservation restriction held by the commonwealth has received a good faith offer, including a certified copy of an executed purchase and sale agreement, for a fixed consideration payable upon delivery of the deed for land subject to an agricultural preservation restriction from a farmer who, at a minimum (i) has engaged in active commercial agriculture for not less than 2 years immediately prior to the date of the request for a waiver under this section; (ii) submits a proposed farm business plan to the department that includes the proposed purchase price and demonstrates how the buyer will continue to engage in commercial agriculture to retain and use the land primarily and directly for agricultural purposes pursuant to sections 1 and 2 of chapter 61A and preserve the natural agricultural resources for a period of not less than 5 years after the date of sale; and (iii) has no prior record of a violation of the written agreement or terms of any agricultural preservation restriction held by the commonwealth; provided, however, that the department shall require any proposed farm business plan submitted pursuant to clause (ii) to include a written justification for the proposed purchase price if the price proposed for the purchase of the subject land is 20 per cent or more than the fair market agricultural value of the land; provided further, that the department may waive the requirements of clause (iii) if the violation is deemed minor by the department; and provided further, that any person, party or entity who is subject to and aggrieved by a decision of the department not to waive its rights under this section may appeal to the agricultural lands preservation committee pursuant to the process set forth in subsection (c).

(c) Any applicant aggrieved by a decision of the department denying a request for a certificate of approval for agricultural activities or structures or for a special permit authorized in subsection (b) or any landowner of land subject to an agricultural preservation restriction who is subject to and aggrieved by a decision of the department to exercise or assign a right to acquire an interest in land through an option to purchase at fair market agricultural value, a right of first refusal or other similar right for land subject to an agricultural preservation restriction as held by the commonwealth on their land may request an adjudicatory hearing under chapter 30A before the agricultural lands preservation committee. The determination of the department shall contain a notice of a right to request a hearing and may specify a time limit, not to exceed 21 days, within which the applicant may request a hearing before the committee under said chapter 30A. If a timely request is received, the committee shall, within a reasonable time, hold a hearing in compliance with said chapter 30A. The committee shall designate a hearing officer to preside over the hearing, to assemble an official record of the hearing and to render a written decision that shall be submitted to the committee. The committee shall make the final decision not more than 15 business days after holding a hearing. If the time period established in the agricultural preservation restriction for the department to exercise its right of first refusal, option to purchase at fair market agricultural value or other similar right, together with the time period established for the department to complete the underlying land sale if the above rights are assigned, is less than 90 days in total, the landowner's right to a hearing is conditioned upon written consent by the landowner to extend the time period to allow for completion of the hearing and for the department to finalize a sale should the department prevail in the hearing. Such consent shall have the effect of modifying the time periods set forth in the recorded agricultural preservation restriction but shall not affect the parties' rights in any other manner.

first refusal. A landowner's decision to withdraw a notice of intent to sell shall not affect a landowner's right or obligation to submit to the department any future offer to purchase said land.

(D) Nothing in this section shall be construed as requiring the department to include a right of first refusal, an option to purchase at agricultural value or other similar right when acquiring an agricultural preservation restriction.

HISTORY

2003, 26, § 62; 2014, 165, § 40; 2016, 218, § 1; 2018, 154, §§ 15, 16; 2018, 154, §§ 17-19.

Annotated Laws of Massachusetts
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End of Document

(M)

AUTOMATIC WAIVER

- The Department shall issue a Waiver upon finding:
1. The landowner has: (i) received a good faith offer; (ii) a certified copy of an executed purchase and sale agreement for fixed consideration payable upon delivery of the deed for land subject to an agricultural preservation restriction; and
 2. The Potential Purchaser is a Farmer; and
 3. The Potential Purchaser submits a Farm Business Plan; and
 4. 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
 5. 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;

MANUAL WAIVER

The Department may issue a waiver upon finding:

1. 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.
- (a) The purpose of the organization is demonstrated by providing the Articles of Incorporation. The Potential Purchaser is a Farmer or a New Entry Farmer (less than 2 years experience).
2. 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 must be provided.
3. 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.
4. The APR Owner has complied with the terms of the Option;
5. 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.

EXERCISE

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.

ASSIGNMENT

SELECTION CRITERIA FOR ASSIGNMENT

A. If the APR owner has not withdrawn their offer to sell and there is more than one Potential Assignee, that satisfies the Manual Waiver criteria, the following additional criteria will be utilized by the Department:

1. Current ownership or leasing of other land subject to an APR:

a. Ownership or leasing	3 points
b. No ownership or leasing	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, and

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

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

B. If two or more Potential Assignees 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: _____

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

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.

Appraisal: a current (not more than 1 year old) valuation of property by the estimate of an authorized person conducted in accordance with the "Guidelines for Agricultural Appraisals" prepared by the Department and in effect at the time of the Waiver request.

APR Owner: the record title owner of the APR.

CPI Amount: an amount equal to the FMALV of the Premises as determined by the appraisal relied upon for the acquisition of the APR which sum shall then be multiplied by the Inflation Rate. The Inflation Rate shall be equal to 1 plus the fractional increase in the Consumer Price Index for all Urban Consumers, Boston, All Items (1982-1984 equals 100) published by the Bureau of Labor Statistics, United States Department of Labor, or successor index published by the United States government appropriately correlated to the prior index by a published conversion factor, where indicated, from date of the appraisal relied upon for the acquisition of the APR to the date of execution of the bona fide Purchase and Sale Agreement.

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

Farm: the Premises on which an agricultural use occurs. The Premises shall be deemed to be in agricultural use when primarily and directly used in raising 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. Also agricultural use shall include horticultural use when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flower, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling these products in the regular course of business, or when primarily and directly used in raising forest products under a certified forest management plan, approved by and subject to procedures established by the state forester, designed to improve the quantity and quality of a continuous crop for the purpose of selling these products in the regular course of business, or when primarily and directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising these products and preparing them for market.

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 to demonstrate this definition is met are: property deed, written lease, employment contract, articles of incorporation, partnership agreement, etc.

Farm Business Plan: demonstrates how the Potential Purchaser will continue to engage in commercial agriculture to retain and use the land primarily and directly for agricultural purposes pursuant to sections 1 and 2 of chapter 61A and preserve the natural agricultural resources for a period of not less than 5 years after the date of sale and including at a minimum: 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); and 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); and details on business partner(s) (if applicable). Such a plan should at a minimum include: an estimate of start-up costs, income statement with budget estimates and expenses projections.

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 ("FABV"): the value based upon the ongoing agricultural business including agricultural buildings, infrastructure, goodwill and other related agricultural business factors. FABV is relevant only upon the subsequent sale of the Premises and is not applicable at the time of original purchase of the APR by the Department. The FABV 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. FABV 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 APR Owner, but excluded from the APR ("non-APR land"), when such business on non-APR 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 ("FALV"): the value based upon the highest and best use of the land for agricultural purposes, including such considerations as location, types of 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 the APR to the Department. FALV is applicable at both the time of the Department's purchase of the APR and at the time of subsequent sale. The FALV 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 FALV.

New Entry Farmer: a Farmer who has less than two years experience managing or owning a Farm.

Potential Assignee: the person or entity who responded to the Department's Request for Statement of Interest and has expressed interest in being assigned the Department's Option to Purchase at Agricultural Value or Right of First Refusal. If the entity is a corporation or limited liability company, the Department must be provided the articles of incorporation demonstrating the corporation was formed and the nature of the business to be transacted is owning and operating a Farm. If the entity is a partnership, the Department must be provided a partnership agreement which evidences the partnership was formed for the purpose of owning and operating a Farm.

Potential Purchaser: the person or entity who has entered into a bona fide purchase and sale agreement with the APR Owner.

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

Purchase Price: the price listed for the Premises in the purchase and sale agreement by and between the APR Owner and the Potential Purchaser.

Statement of Interest: Potential Assignee's written response that it desires to receive the Department's assignment and providing proof the Potential Assignee is qualified to receive the assignment.

Waiver: a document in recordable form issued by the Department that waives the Department's right to purchase or assign the right to purchase the Premises.

