

Report on Comments Received on the Proposed Rules and Regulations of the Agricultural Lands Preservation Commission
(approved April 18, 2019)

On March 5, 2019, a Notice of Rulemaking was posted to the Secretary of State's website announcing that the Commission would be accepting comments on its proposed Rules and Regulations through April 4, 2019. Comments were submitted by three entities: the American Farmland Trust, Land for Good, and the Rhode Island Land Trust Council. Their comments and the Commission's response to those comments are summarized below. Responses appearing in **bold** indicate a proposed change to the Rules.

Comment 1: Rule 1.7(A)(1) Parcel Size – Points should be awarded based on the amount of land in active agricultural use as opposed total area.

Response: The Farmland Preservation Act specifies that land "*suitable* for agriculture" is also included in the definition of agricultural land. The Commission understands this to include land that could be put into production at some future time and supporting land such as farm ponds.

Comment 2: Rule 1.7(A)(2) Soils – The commenter states, "We would caution the Commission from implementing a scoring metric that has 25 of the 40 points based on soils. While soils should play a very strong role, and they should outweigh other metrics, the proposed rule should provide a more equal balance between soils and the other factors."

Response: The commenter is in error on the total points available. Soils count for 25 out of 70 (not 40) available points. The Commission believes that 25 out of 70 points does provide an equitable balance.

Comment 3: Rule 1.7(A)(2) Soils – Scoring for soil value should include non-prime soils for orchard farms and pasture land.

Response: The guidance manual used by the Commission, *Handbook for Commissioners*, does contain a section (Assigning a Score to Soil Quality for Specialty Crops) that addresses this issue. However, so as to alert this fact to potential applicants, the Commission will add the following language:

The soil quality on applicant farms shall be scored by assigning a "Relative Agricultural Value" to the soils offered for the purchase of development rights. The Commission may adjust the Relative Agricultural Value scoring to account for orchards and other specialty crops.

Comment 4: Rule 1.7(A)(3) Agricultural Operation and Viability – Several comments and suggestions were offered to clarify this criterion, including defining the term "agricultural infrastructure" to comprise the physical investments that farms make in their operation, including such things as fencing, irrigation, roads, orchard trees and other crops with a long life. Also specifically suggested was adding "plans for farm succession" as one of the factors for consideration.

Response: The Commission found several of the suggestions worthwhile. Rule 1.7(A)(3) will be modified as follows:

The Commission shall consider the actual and potential contribution of the applicant farm to the state's agricultural community and agricultural sector of the state's economy. Priority shall be given to farms that are important to the overall and/or long-term viability of agriculture in general in Rhode Island. Priority shall also be given to farms that are, or have potential to be, financially viable as based on individual operational and site characteristics, and/or farms which are important to the viability of agriculture in general in Rhode Island. In determining agricultural viability, the Commission shall consider the farm's geographical location including proximity to other agricultural operations, markets, and suppliers, and the farm's overall management including, agricultural infrastructure, diversified production, soil management, current conservation practices and future conservation plans, economic significance, the current business model, and future business plans including a farm transfer or farm succession plan, proximity to other agricultural operations, and geographical location.

The Commission's guidance manual, *Handbook for Commissioners*, does contain a section on agricultural infrastructure. The Handbook will be reviewed and updated to ensure all the above features are included.

Comment 5: Rule 1.7(A)(5) Open Space, Cultural, and Scenic Features – We suggest a reduction of the points allocated Open Space, Cultural, and Scenic Features from 15 to 7 points.

Response: Preservation of open space and quality of life are part of the legislative purposes cited in the Farmland Preservation Act. Open space, cultural, and scenic features are relatively permanent and would remain a public benefit even if agricultural operations were suspended on a farm. The Commission believes 15 points to be an appropriate weight in relation to other criteria.

Comment 6: Add "Farm Succession Planning" as a criterion with additional 2-5 points allocated.

Response: Farm succession planning has been added as a feature of Agricultural Operation and Viability. See response to Comment 4.

Comment 7: Develop a scoring guidance document.

Response: Such a document already exists; namely, the *Handbook for Commissioners*. The *Handbook* will be updated upon the final approval of the proposed rules to reflect all changes therein.

Comment 8: More detail should be provided about how specific factors should be evaluated and weighted within scoring criteria.

Response: Additional detail is provided in the *Handbook for Commissioners*.

Comment 9: The rules should authorize the Commission to include an “option to purchase at agriculture value” in the deed to development rights purchased by the program.

Response: The Commission believes this to be unnecessary. Rule 1.8 states, “The terms of the negotiation shall ensure that such an agreement accomplishes the purposes of the Act and that it incorporates any provisions or considerations specified by the Commission.”

Comment 10: Rule 1.10 Compliance Review – The rules should include language to authorize the Commission to enter into agreements with entities other than project funding partners to perform compliance reviews on behalf of the Commission.

Response: The Commission agrees. Rule 1.10 will be modified as follows:

~~In instances whereby the Commission has jointly purchased development rights with a funding partner, t~~ The Commission may authorize ~~the funding partner~~ a suitable entity to conduct compliance reviews on its behalf and issue a report to the Commission.