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TITLE 505 — AGRICULTURAL LANDS PRESERVATION COMMISSION

CHAPTER 00 — N/A

SUBCHAPTER 00 — N/A

PART 1 — Rules and Regulations ~~Governing the Procedures for the Operation of the Agricultural Lands Preservation Commission and the Purchase of Farmland Development Rights~~

1.1 Purpose

The purpose of these Rules and Regulations is to establish the operating procedures of the Agricultural Lands Preservation Commission for ~~administering the administration of the purchase of development rights to, and criteria for the selection of, parcels for which the development rights may be purchased pursuant to~~ Farmland Preservation Act, R.I. Gen. Laws Chapter 42-82.

1.2 Authority

These ~~R~~rules and ~~R~~regulations are authorized pursuant to R.I. Gen. Laws Chapter 42-82, ~~and have been promulgated pursuant to the procedures set forth in the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.~~

1.3 Application Construction and Severability

- A. The terms and provisions of these Rules and Regulations shall be liberally construed to permit the Commission to effectuate the purposes of state law, goals, and policies.
- B. If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

1.4 Definitions

- A. For the purposes of these regulations, the following terms shall have the following meanings:
1. "Act" means ~~R.I. Gen. Laws Chapter 42-82, entitled~~ the "Farmland Preservation Act," R.I. Gen. Laws Chapter 42-82.—

2. "Appraisal" means a report by a certified Rhode Island appraiser that estimates the fair market value of property.
 3. "Chairperson" means the Chairperson of the Agricultural Lands Preservation Commission ~~elected pursuant to § 1.6 of this Part.~~
 4. "Commission" means the Agricultural Lands Preservation Commission as established by R.I. Gen. Laws § 42-82-1(b).
 5. "Department of Environmental Management" means a department of the state government as described in R.I. Gen. Laws Chapter 42-17.
 6. ~~"Development rights" means the rights to develop, construct on, divide, sell, lease or otherwise change the property in such a way as to render the land unsuitable for agriculture as defined in R.I. Gen. Laws § 42-82-2.~~ "Relative Agricultural Value" or "{RAV}" means a numerical value of a soil type that has been calculated using a methodology consistent with the United State Department of Agriculture and based on the following factors:
 - a. The average yield of a selected indicator crop that can be expected from the soil;
 - b. The amount of soil erosion control practices, irrigation, or other important soil management activities required to achieve acceptable yields from the soil; and
 - c. Placement of the soil in the USDA Important Farmland classification system.
- B. As used in these Rules and Regulations, all terms not defined herein shall have the meaning given them in R.I. Gen. Laws Chapter 42-82.

~~1.5~~ **Incorporated Materials**

~~These regulations hereby adopt and incorporate 7 C.F.R. § 611.11 (2016) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.~~

~~1.6~~ **Meetings**

~~A. Regular Meetings Regularly scheduled meetings of the Commission shall be established by the Commission at the beginning of each calendar year. Regularly scheduled meetings may be cancelled by the Chairperson upon two (2) hours notice.~~

- ~~B. Special Meetings—The Chairperson may call special meetings at any time upon forty eight (48) hours public notice.~~
- ~~C. Notice of Meetings—Notices of meetings and agendas will be posted at the administrative offices of the Department of Environmental Management and the State House Library.~~
- ~~D. Open Meetings—All Commission meetings and records shall be consistent with the Open Meetings Law, R.I. Gen. Laws Chapter 42-46, and the Access to Public Records Act, R.I. Gen. Laws Chapter 38-2.~~
- ~~E. Attendance—If a Commission member is not present at three consecutive meetings, the Chairperson may contact the Commissioner and the appointing authority to determine if the Commissioner is capable of fulfilling the duties of Commission membership and is willing to continue on the Commission.~~

1.7 Officers

~~—The Commission shall elect annually from its members a Chairperson and a Vice Chairperson.~~

1.85 Application Procedures

- ~~A. Application Form—The Commission shall develop and adopt make available a form designated as the Application for the Purchase of Development Rights.~~
- ~~B. Notice and Availability of Application Forms—Application forms shall be made available to individuals and organizations upon request. Copies shall also be made available to each conservation district office for distribution to the public and shall be available at the Department of Environmental Management, Division of Agriculture, and electronically on the Department of Environmental Management's website.~~
- ~~C. Filing of Applications—Applications shall be filed with the Agricultural Lands Preservation Commission c/o Department of Environmental Management, Division of Agriculture, 235 Promenade Street, Providence, RI 02908 or such address as is designated in the application instructions.~~
- ~~DB. Application Acceptability—To be considered valid accepted for consideration, the application form must be signed by the landowner or legal agent, be complete, and meet the any other requirements established by the Farmland Preservation Act, R.I. Gen. Laws Chapter 42-82 Commission.~~

1. Commission staff shall review each application as it is received. Applications found to be complete acceptable will be referred to the

Commission for evaluation and the applicant shall be notified in writing that the application has been accepted for review.-

2. Applications found to be ~~incomplete-deficient~~ will be returned to the applicant with a statement as to the deficiencies noted and a notice that the applicant can correct these and resubmit the application.

~~EC.~~ ~~Application Review~~—Once an application has been ~~deemed complete~~ accepted, the Commission shall ~~review-evaluate~~ the application within 90 days unless such time is extended by the Commission. ~~Those landowners whose applications have been disqualified shall receive a letter advising them of this action.~~

1.96 Evaluation Procedures

~~A.~~ ~~Basis of Evaluation~~—The completed application, a soils report consistent with the requirements of § 1.10(B) of this Part, information needed for assessing other Scoring Criteria found in § 1.10 of this Part, and any other relevant information provided to the Commission or its staff, shall form the basis of the Commission's evaluation.

~~BA.~~ ~~Commission Scoring~~—The Commission shall develop and adopt a scoring ~~sheet~~ system using the criteria set forth in §Part 1.7 of this Part.

1. Scoring shall be conducted by Aa quorum of the Commission. ~~will score each qualified application according to the criteria set forth in § 1.10 of this Part.~~

2. The final application score shall be determined by averaging the scores of the Commission members.

~~C~~ 3. ~~Priority Rating~~—The application score is intended to assist the Commission in prioritizing negotiations and purchases; it is not intended to be binding in terms of setting the negotiation and closing order of the ~~scored farms~~. The Commission may set a minimum score such that only those applications that meet or exceed the minimum score shall be eligible for further consideration by the Commission. ~~All applications not meeting the minimum score shall be returned to the applicant without prejudice. Such rejected applications may be resubmitted one year from the date of rejection. An application may be resubmitted at any time in cases of a significant material change.~~

4. The application score is intended to assist the Commission in prioritizing negotiations and purchases; it is not intended to be binding in terms of setting the negotiation and closing order of the scored farms.

~~D. Periodic Updates — The Commission shall establish a list of scored farms that meet the minimum score but for which funds may not be available for immediate purchase. The Commission may periodically review these applications to determine if there is any change of conditions that might warrant a change in the application score and if funds have become available to warrant the opening of negotiations.~~

B. The Commission shall notify the applicant the outcome of the scoring in a timely fashion. Any rejected applications may be resubmitted one year from the date of rejection; however, an application may be resubmitted at any time in cases of a significant material change.

1.107 Scoring Criteria

A. A. — The Commission shall adopt scoring criteria consistent with the Act and shall include:

1. Parcel Size - The minimum parcel size for consideration by the Commission is set by the Act at five (5) contiguous acres. The Commission defines this to mean five acres dedicated to or available for agricultural production. Commissioners shall consider the overall acreage in determining the extent to which the land furthers the goals of the Act. Parcel size may be awarded up to five (5) points.

B. 2. Soil Quality - The soil quality on applicant farms shall be scored by using an approved soil evaluation system developed by the United States Department of Agriculture pursuant to 7 C.F.R. § 611.11 (2016), incorporated above at § 1.5 of this Part. Under this system, all land on a farm shall be assigned a “Relative Agricultural Value.” The Relative Agricultural Value of each soil type shall be calculated based on the USDA Web Soil Survey, available at the following url: <https://websoilsurvey.sc.egov.usda.gov> assigning a “Relative Agricultural Value” to the soils offered for the purchase of development rights. Soil quality may be awarded up to twenty-five (25) points.

~~1. The total acres of soil in each relative value category to be protected on the farm shall form the basis of the soil quality score. The Commission may adjust the Relative Agricultural Values on an applicant's property based on the proximity of soil types to one another, the specific type of agricultural operation (e.g. dairy or livestock), or the cultivation of certain crops such as apples, grapes, cranberries, etc., that require special consideration. Soils best suited for these crops can differ markedly from the ideal soils for row crops. Each Commissioner shall then assign points~~

~~based on overall soil quality of the land by tabulating the acreage of each soil type and its Relative Agricultural Value.~~

~~C~~ 3. Agricultural Operation and Viability - 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 or have potential 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 overall management including; agricultural infrastructure, diversified production, soil management, conservation plans, economic significance, future business plans, proximity to other agricultural operations, and geographical location. Agricultural operation and viability may be awarded up to ten (10) points.

~~D~~ 4. Protection of Water Supplies and Quality - ~~Applicant farms will be evaluated in terms of its location in relation to surface water, ground water, and wetland areas. Priority shall be given to land located in watersheds of an existing or planned source of public drinking water. Highest priority will be given to land that directly buffers water sources currently used by public water systems or is located directly over a groundwater aquifer. The Commission shall consider how the acquisition of development rights to the applicant farm could further the protection of water supplies and water quality. Protection of water supplies and quality may be awarded up to ten (10) points.~~

~~E~~ 5. Open Space, Cultural, and Scenic Features - ~~The purchase Commission shall consider how the acquisition of Development Rights to farmland the applicant farm may also provide opportunities for contribute to the preservation of important open spaces, the conservation of cultural features, and the preservation of scenic landscapes. Open space, cultural, and scenic features may be awarded up to fifteen (15) points. These attributes of a parcel or area may support its selection for inclusion in the program and Commissioners shall award points to applicant farms supporting these values. Applicant farms will be evaluated in terms of physical characteristics, cultural characteristics, and environmental characteristics. These characteristics may include, but are not limited to:~~

- ~~1. Historical or archaeological districts, buildings, or sites, and associated lands~~
- ~~2. Scenic views, location on a designated Scenic Roadway, and particularly well kept grounds and structures~~

3. ~~Important wildlife and marine life habitat, especially for rare or endangered species~~

4. ~~Forest lands~~

5. ~~Vegetation type and diversity~~

6. ~~Notable geological features~~

F. ~~Large areas of permanently protected open space are valuable state resources. Therefore, opportunities to both protect agricultural land and to enhance protected open space areas shall be considered. Commissioners shall assign points for parcels adjoining or nearby to recreation, conservation, or management lands owned by a public or private agency and dedicated to these purposes.~~

G 6. ~~Flood Protection - The Commission recognizes~~ shall consider the value of protecting-acquiring the development rights to farmland in floodplains and flood prone areas in order to prevent development and thus protect against loss of structural improvements and threats to residents who could otherwise occupy these areas. ~~Therefore, Commissioners shall assign points if the applicant's land is located in an area prone to flooding. Flood protection may be awarded up to three (3) points.~~

H. ~~Relative Development Pressure - In ranking land that is most endangered by development, the Commission shall consider the characteristics of the surrounding community, the characteristics of the land, and the characteristics of the farm owner and farm operation.~~

I. ~~State and Local Plans - Commissioners shall consider how acquisition of Development Rights to an applicant farm is consistent with, or may further the goals of, the State Guide Plan and the local Community Comprehensive Plan, consistent with the purpose and intent of the Farmland Preservation Act, R.I. Gen. Laws Chapter 42-82.~~

7. ~~Demonstrated Local and/or Conservation Organization Support - Demonstrated local and/or conservation organization support, which may be in the form of letters of support or financial commitment, may be awarded up to two (2) points.~~

1.118 ~~Negotiation and Purchase of Development Rights~~

A. ~~Selection of Applicants for Negotiation - In selecting the applicants for negotiation, the Commission shall consider the application score as well as~~

~~geographic diversity, mix of farm types, cost of Development Rights, creation of open space or agricultural corridors, development pressure, and funding partnership opportunities. All applicants selected for negotiation shall be notified by mail. At this time of such negotiation, the Commission must determine if there have been any significant changes to the agricultural operation, land, or information provided in the application since its original acceptance. If substantial changes have occurred, the Commission must decide whether to proceed with negotiations or rescore the application. The Commission shall maintain a list of farms that satisfactorily meet the scoring criteria, pending the negotiation for the sale of development rights. The Commission shall, not less than annually, review the list of farms eligible for the purchase of development rights and evaluate the following factors for each farm. The Commission shall rank each of the following factors as being low, medium, or high.~~

~~1. The application score~~

~~2. Development pressure~~

~~3. How the purchase of development rights would contribute to maintaining geographic diversity in the protection of farmland~~

~~4. How the purchase of development rights would contribute to the creation of open space or agricultural corridors~~

~~5. How the purchase of development rights would contribute to maintaining a mix of farm types~~

~~6. The potential cost of development rights~~

~~7. Funding partnership opportunities~~

B. As additional farms are scored and qualified for the purchase of development rights, the Commission shall add them to the list within sixty (60) days of their scoring.

CB. Negotiations may be initiated at any time, either at the request of an applicant or by the Commission. Prior to the start of negotiations, the Commission shall consider the factors listed in § 1.8-(A) of this Part and must determine if there have been any significant changes to the agricultural operation, land, or information provided in the application since its original acceptance. - If substantial changes have occurred, the Commission must decide whether to proceed with negotiations or rescore the application. All applicants selected for negotiation shall be in writing.

~~BDG.~~ Negotiations—The ~~Chairperson of the~~ Commission shall either authorize its staff to conduct the negotiation or appoint a Negotiating Committee consisting of at least one Commissioner and one ~~Department of Environmental Management~~ staff member to negotiate with ~~each applicant selected in accordance with § 1.9 of this Part. The Negotiation Committee shall meet with~~ the owner(s) of the property or with the authorized representative of the owner(s) and any funding partners that wish to participate ~~and shall attempt to formulate an agreement to acquire the Development Rights to the land described in the application.~~

~~ED.~~ The ~~terms of the~~ negotiation shall ~~insure~~ ensure that ~~such~~ an agreement accomplishes the purposes of the Act and that it incorporates any provisions or considerations specified by the Commission ~~as part of these negotiations. To assure the sustainable use of the land for agricultural production,~~ ~~†~~ The Commission may require, where appropriate, that a written conservation plan or water quality plan be developed and implemented for the land as a condition of purchase.

~~GFE.~~ Cost of Acquisition of Development Rights—~~The Negotiation Committee shall attempt to negotiate a mutually agreeable~~ The price and/or other consideration to be exchanged for the development rights shall be based upon an approved Appraisal of the fair market value of the development rights. This consideration shall be made a part of the purchase and sales agreement. No purchase and sale agreement shall be concluded or adopted by the Commission until the value of the Development Rights has been determined by Appraisal and the Appraisal has been reviewed and approved by Department of Environmental Management staff. The Commission is authorized to accept donations and offers for the purchase of the development rights at less than the appraised value. The Commission recognizes that potential funding partners may wish to consider and negotiate for other factors in addition to development rights.

~~DGF.~~ Conclusion of Negotiations—~~If the Negotiation Committee and the applicant reach~~ Upon reaching a tentative agreement, a proposed purchase and sales agreement, baseline documentation following standards set by the Commission, including an enumeration of easements, rights-of-way, or other legally defined limits on the property, and photographic documentation shall be prepared and submitted to the Commission for approval. If an agreement cannot be concluded, the Negotiation Committee or staff shall so report to the Commission.

~~EHG.~~ Approval of the Purchase and Sales Agreement—The Commission shall review each proposed purchase and sales agreement and each proposed deed to development rights containing a standard covenant and such additions or amendments as are appropriate to the property in question, and shall approve or disapprove the execution of the Contract by majority vote of the members present at a properly convened meeting. ~~Those purchase and sales agreements~~

~~that are approved by the Commission shall be transmitted to the State Properties Committee by the Department of Environmental Management for approval as required by R.I. Gen. Laws Chapter 37-6. Following approval by the State Properties Committee, a title search and survey of the property shall be conducted.~~

~~F.H. Completion of Purchase—The Commission shall review each proposed deed to development rights containing a standard covenant and such additions or amendments as are appropriate to the property in question, and shall be approved or disapproved by the Commission by majority vote of the members present at a properly convened meeting. Upon approval by the Commission and the State Properties Committee, the deed and covenant shall be executed by the Chairperson of the Commission, or by another member of the Commission as designated by the Chairperson, and by the owner. Those deeds to development rights that are executed by the owner and the Commission shall be transmitted to the State Properties Committee by the Department of Environmental Management for approval as required by R.I. Gen. Laws Chapter 37-6.~~ The deed and covenant shall be recorded in the land evidence records of the city or town in which the property is located.

1.129 ~~Waiver of Retroactivity~~

The Commission may reimburse a third-party, in part or in full, for the purchase of development rights of agricultural lands meeting the Commission's minimum criteria. To be eligible for reimbursement, the acquiring party must submit a written request for funding prior to the applicant taking title (fee or development rights) to the property. Funding of such acquisitions are subject to Commission approval. The granting of a Waiver of Retroactivity only assures that the applicant may apply for reimbursement and does not constitute an assurance that the Commission will approve the request.

1.130 ~~Compliance Review~~

The Commission shall review the properties protected by the program at least once every three (3) years or as required by agreements with funding partners to verify compliance with requirements of the covenant provisions contained within the deed to development rights. In instances whereby the Commission has jointly purchased development rights with a funding partner, the Commission may authorize the funding partner to conduct compliance reviews on its behalf and issue a report to the Commission. Nothing stated herein shall be construed to limit a funding partner from conducting independent reviews with regard to any and all compliance issues.

1.141 Agricultural Land Inventory

The Commission shall produce, or cause to be produced, an inventory of all land in the state that meets the definition of agricultural land as required by R.I. Gen. Laws § 42-82-5(2). Accuracy of the inventory shall be evaluated not less than every five (5) years.

~~1.15 Severability~~

~~—— If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.~~

~~1.16 Superseded Rules and Regulations~~

~~—— On the effective date of these Rules and Regulations, all previous Rules and Regulations, and any policies regarding the administration of the R.I. Gen. Laws Chapter 42-82 shall be superseded.~~