

**505-RICR-00-00-1**

## **TITLE 505 – AGRICULTURAL LANDS PRESERVATION COMMISSION**

### **CHAPTER 00 – N/A**

### **SUBCHAPTER 00 – N/A**

#### **PART 1 – Rules and Regulations of the Agricultural Lands Preservation Commission**

### **1.1 Purpose**

The purpose of these Rules and Regulations is to establish the operating procedures of the Agricultural Lands Preservation Commission for 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 Rules and Regulations are authorized pursuant to R.I. Gen. Laws Chapter 42-82.

### **1.3 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 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.

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. "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 Application Procedures**

- A. The Commission shall develop and make available a form designated as the Application for the Purchase of Development Rights.
- B. To be accepted for consideration, the application form must be signed by the landowner or legal agent, be complete, and meet any other requirements established by the Commission.
  1. Commission staff shall review each application as it is received. Applications found to be 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 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.
- C. Once an application has been accepted, the Commission shall evaluate the application within 90 days unless such time is extended by the Commission.

## **1.6 Evaluation Procedures**

- A. The Commission shall develop and adopt a scoring system using the criteria set forth in § 1.7 of this Part.

1. Scoring shall be conducted by a quorum of the Commission.
  2. The final application score shall be determined by averaging the scores of the Commission members.
  3. 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.
  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.
- 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.

## **1.7 Scoring Criteria**

- 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.
  2. **Soil Quality** - 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. Soil quality may be awarded up to twenty-five (25) points.
  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 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. In determining agricultural viability, the Commission shall consider the farm's geographical location including proximity to other agricultural operations, markets, and suppliers, 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. Agricultural operation and viability may be awarded up to ten (10) points.

4. Protection of Water Supplies and Quality - 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.
5. Open Space, Cultural, and Scenic Features - The Commission shall consider how the acquisition of Development Rights to the applicant farm may 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.
6. Flood Protection - The Commission shall consider the value of 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. Flood protection may be awarded up to three (3) points.
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.

## **1.8 Negotiation and Purchase of Development Rights**

- A. 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.
- C. 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.
- D. The Commission shall either authorize its staff to conduct the negotiation or appoint a Negotiating Committee consisting of at least one Commissioner and one staff member to negotiate with the owner(s) of the property or with the authorized representative of the owner(s) and any funding partners that wish to participate.
- E. The negotiation shall ensure that an agreement accomplishes the purposes of the Act and that it incorporates any provisions or considerations specified by the Commission. 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.
- F. 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.
- G. 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.

- H. 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.
- I. 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. The deed and covenant shall be recorded in the land evidence records of the city or town in which the property is located.

## **1.9 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.

## **1.10 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. The Commission may authorize a suitable entity 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.

## **1.11 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.

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