

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
FARMLAND ACCESS PROGRAM RULES AND REGULATIONS
NOTICE OF WORKSHOP PRIOR TO RULEMAKING**

Pursuant to the provisions of Chapter 42-17.1 of the General Laws of Rhode Island, as amended, Public Laws 145, 2014, Chapter 31, Article 5, including but not limited to the 2014 “Clean Water, Open Space and Healthy Communities” which authorizes the Department of Environmental Management to administer “Farmland Access for Active Use” and in accordance with the Administrative Procedures Act, Chapter 42-35 of the General Laws, the Department of Environmental Management (the “Department”) hereby gives notice of its intention to conduct three workshops – the first to be held in Room 300 [at 235 Promenade Street](#), Providence, at 5:30 p.m. on August 17, 2016; the second to be held at Corless Auditorium at the URI Graduate School of Oceanography, 215 South Ferry Road, Narragansett on September 7 at 5:30 p.m.; the third to be held in Room 300 [at 235 Promenade Street](#), Providence, at 5:30 p.m. on December 14, 2016.; in order to afford interested parties the opportunity to offer oral and written comments and to engage in a discussion with the staff concerning the Department’s proposed adoption of the ***Farmland Access Program Rules and Regulations***. The room is accessible to the disabled. Interpreter services for the hearing impaired will be provided if such services are requested at least (3) business days prior to the hearing. Requests for such services may be made in writing or by calling TTY (711) or (401) 222-5300.

The Department has determined that small businesses will not be adversely impacted by the proposed regulations referenced above. However, a public hearing will be conducted subsequent to the workshop at another date in order to solicit comment on the proposals and to allow public input from small businesses or any cities or towns, which may believe that that may be adversely affected.

A copy of the proposed regulations will be available for examination from July 29, 2016, through December 14, 2016, by mail or at the offices of the Office of Planning and Development located at 235 Promenade Street, Providence, RI 02908. Electronic copies of the proposed regulations will also be available on the DEM website at the following web addresses:
www.dem.ri.gov/programs/bpoladm/plandev/pdf/pnfarmacq16.pdf.

Janet L. Coit,
Director



**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF PLANNING AND DEVELOPMENT**



**FARMLAND ACQUISITION ACCESS PROGRAM RULES and
REGULATIONS**

EFFECTIVE DATE: _____

ERLID No. _____

AUTHORITY: These rules and regulations are promulgated pursuant to Chapter 42-35 of the Rhode Island General Laws of 1956, as amended, in order to expend funds allocated pursuant to Public Laws 145, 2014, Chapter 31, Article 5, including but not limited to the 2014 "Clean Water, Open Space and Healthy Communities" which authorizes the Department of Environmental Management to administer "Farmland Acquisition Access for Active Use."

FARMLAND ~~ACQUISITION ACCESS PROGRAM~~ RULES and REGULATIONS

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RULE 1: PURPOSE

The purpose of these State Farmland ~~Acquisition Access~~ Program Rules and Regulations is to establish the procedure by which the Department of Environmental Management will purchase available farmland from willing sellers, and in danger of being converted to non-agricultural use, and to facilitate the affordable transfer of such land to qualified farmers with the funds from these sales/leases being returned to the program account for re-use to acquire additional properties. No eminent domain will be employed in this program.

RULE 2: AUTHORITY

These rules and regulations are promulgated pursuant to Chapter 42-35 of the Rhode Island General Laws of 1956, as amended, in order to expend funds allocated pursuant to Public Laws 145, 2014, Chapter 31, Article 5, including but not limited to the 2014 "Clean Water, Open Space and Healthy Communities" which authorizes the Department of Environmental Management to administer "Farmland ~~Acquisition Access~~ for Active Use."

RULE 3: APPLICABILITY

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, ~~goals~~ and policies. These Rules and Regulations are intended to establish the procedure by which the Department of Environmental Management will purchase farmland and to facilitate the affordable transfer of such land to qualified farmers with the funds from these sales/leases being returned to the program account for re-use to acquire additional properties.

RULE 4: SEVERABILITY

If any provision of these rules and regulations, or 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.

RULE 5: DEFINITIONS

For the purposes of these regulations, the following terms shall have the following meanings:

- a) "Affordable transfer" means a sale or lease of farmland that would be possible by a reasonable number of small and beginning farmers operating a profitable agricultural business in Rhode Island and seeking to ~~acquire purchase or lease~~ said farmland.
- b) "Agricultural Value" means the fair market appraised value of farmland on which the Development Rights have been sold or donated ~~the restricted farmland~~ plus the fair market appraised replacement value of any dwellings.
- c) "Beginning Farmer" is defined by the USDA as one who has ~~not~~ operated or managed a any farm for ~~more than~~ 10 years or less.
- d) "~~Council~~Committee" shall mean the State Farmland ~~Acquisition Access~~ Advisory ~~Council~~Committee.

e) "Department" or "DEM" shall mean the Department of Environmental Management.

f) "Director" shall mean the Director of the Department of Environmental Management.

g) Land Acquisition Committee – an internal committee of the Department of Environmental Management chaired by the Director and made up of the division chiefs in the Bureau of Natural Resources.

~~g) "Farmland in danger of converting out of agriculture" means farmland whose owner has evidenced a reasonable probability of converting a property which currently has a use principally focused on agriculture to some non-agricultural use.~~

h) "Profitable Agricultural Business" means a self-sustaining business that is based on the production and sale of one or more agricultural ~~commodities~~ products.

i) "Replacement Cost" means the cost to re-build a building, using all of materials and construction techniques similar to those originally used to build the structure.

j) "Small income farmer" shall mean the meaning of that term as it is defined by the USDA, i.e., a farmer with annual gross farm revenues not exceeding \$350,000.

RULE 6: PROSPECTIVE FARMER APPLICATION PROCEDURE

a) The Council shall develop a form designated as the Application for Prospective Farmers

b) Availability of Application Forms

Application forms shall be made available to individuals and organizations upon request and electronically on the Department of Environmental Management's website.

c) Filing of Prospective Farmer Applications

1) Applications for consideration should be submitted to the following address:

State Farmland ~~Acquisition Access~~ Program
c/o Division of Planning and Development
Department of Environmental Management
235 Promenade Street
Providence, R.I. 02908

Alternatively, an application may be submitted electronically to:

Chief.Planning.Development@DEM.RI.GOV
Farmland.Acquisition.Program@DEM.RI.GOV

RULE 7: ELIGIBLE PROJECTS

a) Farms for purchase will be ~~selected-recommended~~ by DEM staff to DEM's Land Acquisition Committee, and shall meet all of the following criteria:

1) available farmland from willing sellers ~~in danger of converting out of agriculture~~

- 2) land capable of supporting a profitable agricultural ~~operation-business~~ based on its size, soil quality, agricultural infrastructure, and farm history
- 3) ~~land capable of being affordably sold to farmer buyers~~land that due to its location, site characteristics, or other market factors, would lend itself to an affordable transfer.
- 4) ~~land consistent with local comprehensive plans and state guide plans~~
- b) ~~All Farmland Acquisition projects selected by DEM staff shall be approved by DEM's Land Acquisition Committee~~

RULE 8: SELECTING FARMER-BUYERS: EVALUATION PROCEDURE AND SCORING CRITERIA

- a) At such time as ~~the Department selects~~ a farm ~~for purchase becomes final,~~ the Department shall solicit applications ~~for the resale of the purchased farmland~~ from interested farmers. ~~Solicitations shall include detailed information about the available farmland, including maps and soil data. Solicitations shall be published widely to farmer advocacy groups and farmer-based organizations, and shall be posted on the DEM website. Farmers shall have no less than 90 days from the solicitation date to submit applications.~~
- ~~a)b)~~ ~~The Department shall maintain a list of persons interested in the program who by affidavit meet the minimum qualifications to apply to purchase farmland through this program.~~
- ~~b)c)~~ The Director shall establish a ~~State Farmland Access~~ Advisory Committee of not less than five (5) nor more than nine (9) ~~members~~ to recommend farmer-buyers from the solicited pool of applicants for each purchased farm. ~~The Committee shall have a period of 60 days following the solicitation deadline to meet and score the applications.~~
- ~~e)d)~~ Committee members shall be appointed by the Director to achieve a reasonable representation of entities concerned with Agriculture in Rhode Island. The Director shall give consideration to appointments from ~~the RI Agricultural Council, the RI Farm Bureau, Commerce RI, the RI Conservation Districts, the Farm Service Agency,~~ a farmer ~~at-large~~ who is a resident of the State of Rhode Island, ~~a farmer selected by the RI Agricultural Council, a member at-large from the food and agricultural advocacy community,~~ the chief of the Division of Planning and Development or his or her designee ~~(non-voting member), and the chief of the Division of Agriculture or his or her designee (non-voting member)and Farm Credit East.~~ Eligible organizations or individuals may register their interest in membership, in writing, with the Director; organizations may nominate individuals for appointment. The Director may appoint those nominated provided there are vacancies on the Committee.
- ~~e)e)~~ Appointment terms shall not exceed five (5) years although members may succeed themselves and serve consecutive terms. The Director, at his/her discretion, may replace Committee members due to unexcused absences, provided the organization that the member represents is notified in writing.
- ~~e)f)~~ The Chairperson shall be designated by the Director of DEM. The Chairperson may select a designee to appear and vote at Committee meetings on his or her behalf. There shall be a Vice-Chairperson appointed by the Chair at the first regular meeting of each calendar year.
- g) ~~At its first meeting,~~ the Committee shall develop a scoring system for selecting farmer-buyers ~~to include criteria as outlined below. Criteria shall include agricultural experience, farm business experience, sufficient financial resources for start up expenses, strength of proposed farm plan, and~~

~~suitability of the proposed farm plan to the subject land.~~ Price will be set as outlined in Rule 10a and will not be a factor in scoring.

~~f)h)~~ Based on the resulting scores, the Committee will make a recommendation to the Director for either selecting a farmer-buyer, subject to confirmation of necessary financing, or if no candidates are selected, the recommendation that DEM lease the farmland in accordance with Rule 13. The Director shall accept the Committee's selection unless there is a reasonable justification. If the Director does not accept the Committee's recommendation, then notice will be provided in writing to the Committee stating the Director's reason(s) for rejecting the recommended candidate.

~~i)~~ Eligibility:

~~a.~~ Only small income farmers, as defined herein, shall be considered for selection.

~~b.)~~ All applicants must demonstrate annual gross farm revenues of at least \$5,000.

~~h)j)~~ Scoring Criteria to be established by the Committee shall include:

- 1) *Agricultural Experience.* The Committee shall consider the duration and quality of reported agricultural experience with a type of agriculture similar to the type proposed in the farm plan. Priority shall be given to farmers who are farming full-time or working towards becoming a full-time farmer in Rhode Island and to any farmers who have direct experience with the subject farmland
- 2) *Farm Business Experience.* The Committee shall consider the duration and quality of reported experience managing a farm business, including the ability to bring products to market and sustain positive cash flow. Priority shall be given to beginning farmers that have demonstrated their ability to run a successful farm business.
- 3) *Farm Plan.* The Committee shall consider the suitability of applicant's plan for the purchased farmland. In determining suitability the Committee shall consider the soil type, topography, and size of the farmland in relation to the proposed agricultural operation. The Committee shall also consider the viability of the proposed farm business on the subject farmland using the following criteria: market potential for the proposed product to be raised on the farm, identified/secured market outlets, and projected earnings.
- 4) *Ability to Finance Farm Purchase and Farm Business.* ~~Committee shall consider~~The candidate must demonstrate the presence of if the candidate has sufficient start-up capital, or the ability to get financed, to purchase the farm, and to start and sustain a business on the property. DEM will not provide financing.
- 5) *Demonstrated need for farmland.* Priority shall be given to in-state farmers who do not currently own sufficient land to sustain a profitable farming operation.

~~h)k)~~ Applicants must submit as part of their application the following, all of which will be kept confidential:

- 1) Cover letter;
- 2) Evidence of two years' experience managing a farm, including production records and 2 references;
- ~~3) A two page description of the applicant's plan for the farm including an estimated cost for first year production and market outlets along with a 3-year projected earnings with a narrative;~~
- ~~4)3)~~ 3 years income tax returns;
- ~~5)4)~~ Credit report;

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- ~~6) 5) Current Cash flow statement, current balance sheet, and list of assets;~~
- ~~7) 1) Evidence of two years' experience managing a farm, including production records and 2 references; and~~
- ~~8) 1) A two page description of the applicant's plan for the farm including an estimated cost for first year production and market outlets along with a 3 year projected earnings with a.~~

RULE 9: RESTRICTIONS ON PURCHASED FARMLAND

- a) All farmland purchased by the DEM that is selected for resale to a farmer under this program shall be conveyed or donated to the Rhode Island Agricultural Lands Preservation Commission (ALPC).
- b) Any farmland that the ALPC sells to a selected farmer-buyer shall be sold subject to Agricultural Deed Restrictions including at a minimum:-
 - a. The prohibition against building houses and associated appurtenances
 - b. The prohibition against removing soil or other mineral resources
 - c. The prohibition against using the Premises other than for agricultural purposes
 - ~~d. The Deed Restrictions shall include an "affirmative covenant" prohibiting the protected farmland from being abandoned and~~ requiring that ~~the restricted farmland~~ be kept in active agricultural use.
 - ~~e. The Deed Restrictions shall include a~~ An Option to Purchase at Agricultural Value running to the DEM. Agricultural Value shall be defined as ~~the appraised value of the restricted farmland plus the replacement value of any dwellings~~ the fair market appraised value of farmland, including any agricultural improvements, on which the Development Rights have been sold or donated plus the fair market appraised replacement value of any dwellings.
 - ~~e) The Deed Restrictions shall include language requiring the farmer-buyer to engage in Best Management Practices.~~
- ~~f) c) If no farmer-buyer is selected, DEM shall not convey or donate the subject property to the ALPC but shall retain ownership of the farmland, and then lease the property to a qualified farmer in accordance with Rule 13.~~

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RULE 10: RESALE OF PURCHASED LAND TO THE FARMER-BUYER

- a) The resale value of farms purchased under these rules will be set at no less than 10% below and no more than 10% above the current appraised agricultural value of the ~~restricted~~ farmland.
- b) Proceeds of the sale of ~~the any restricted farmland farm sold under these rules~~ shall be deposited into the original bond account that was used the purchase the farm farmland.

RULE 11: SUBDIVIDING FARMLAND INTO SMALLER FARM PARCELS

DEM ~~or ALPC~~ may, at their discretion, subdivide purchased farmland ~~into two or more, smaller farm parcels~~ prior to resale provided each subdivided parcel remains ~~agriculturally viable~~ capable of supporting a profitable agricultural business on its own. No single farm shall be subdivided into more than three individual farm parcels, nor shall result in parcels less than 10 acres in size. Any subdivision under this rule shall comply with all local zoning and subdivision regulations.

RULE 12: DWELLINGS

- a) Any improvements to existing dwelling units shall not result in a heated living space exceeding 2,000 square feet.
- b) If there are no dwellings on a ~~parcel-farm selected for resale~~ (subdivided or not), a farmer-buyer ~~shall~~ may identify a dwelling unit area for the purpose of building a single family house that is limited in size to no greater than 2,000 square feet of heated living space. The dwelling unit shall remain within the restricted area and cannot be subdivided. The parcel as a whole, including the dwelling unit, shall be subject to an Option to Purchase at the Agricultural Value as defined in Rule 9(d).

RULE 13: OPTION TO LEASE

If an eligible farmer-buyer is not identified, DEM may, at its discretion, offer said farmland for lease ~~to~~ qualified farmer(s) via an RFP process ~~as outlined in RIGL 37-7-5.~~

RULE 14: EFFECTIVE DATE

The foregoing " FARMLAND ~~ACQUISITION-ACCESS PROGRAM~~ RULES and REGULATIONS", after due notice, are hereby adopted and filed with the Secretary of State this ____ day of _____ 2016 to become effective twenty (20) days thereafter, in accordance with the provisions of Chapters 42-35 of the General Laws of Rhode Island of 1956, as amended.

Janet L. Coit, Director
Department of Environmental Management

Notice Date:

Public Hearing Date:

Filing Date:

Effective Date:

ERLID No.