

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
2		DOCUMENT ORGANIZATION			
3					
4		Selected KEY Issues			
5		Analysis of APR 3			
6		Analysis of APR 2			
7		Other General Comments			
8					
9					

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
10		Selected KEY ISSUES			
11		Statement of Purpose	<p>Do we believe that approval of this proposal would be consistent with the intent of the APR, including to preserve agricultural lands, maintain land in active agricultural use, and ensure affordable resale values of agricultural land.</p> <p>KH: Y under certain conditions (if scope is restricted to “farm to table restaurant” concept and doesn’t overwhelm the space)</p>	JRB: TBD KH: Y (conditional) JM: N	
12		Retained Right	<p>Do we believe that allowing a restaurant as a Retained Right, thus bypassing all of the restrictions on Uses with Prior Written Permission and Approval Processes, would be the right way to approve this proposal, as opposed to going through the approval processes in the APR? Separate legal question of whether adding a Retained Right retroactively is permissible.</p> <p>JRB: No. This circumvents the process and protections of the APR. Any approval should go through the APR process. KH: No. However, it could be part of the agreement. This section was tailored specifically for the Bohnes but it should not be continually updated to benefit the owner of the day.</p>	JRB: N KH:	
13		Full-time farmer	<p>If the restaurant were not added as a Retained Right, would the current proposal, if otherwise approved, qualify as given to a "full-time farmer"?</p> <p>JM: IRS qualifies a full-time farmer as someone who derives at least two-thirds of their income from the agriculture. This does not satisfy that requirement.</p>	JRB: TBD KH: Y JM: N	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
14		APR 3 Land	<p>If the restaurant were not added as a Retained Right, would the paving and other new construction proposed for APR 3 land consistent with approval requirements with respect to agricultural land preservation?</p> <p>KH: No. See my comment that Section D puts limitations no matter what might be proposed for APR 3, including traditional agriculture-related activities. Perhaps this section of the APR needs to be modified so it doesn't force keeping the existing building basically as is.</p> <p>JM:Details provided throughout.</p>	<p>JRB: TBD KH: N JM: N</p>	
15		Approval process	<p>If the restaurant were not added as a Retained Right, would the Selectmen have the right to approve this proposal without state approval? Legal opinion already received.)</p> <p>JRB: Defer to informed Legal opinion KH: Yes, as long as they followed the state guidelines JM: N See Section 32 of Chapter 184 of the General Laws, as amended and otherwise by Article 97 of the Amended Articles of the Massachusetts Constitution and otherwise by law.</p>	<p>JRB: TBD KH: Y (conditional) JM: N</p>	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
16		AGRICULTURAL PRESERVATION RESTRICTION 3			
17	I	I. STATEMENT OF PURPOSE			
18	I	By obtaining this Agricultural Preservation Restriction, it is the intent of the Town of Westford to perpetually protect and preserve agricultural lands, encourage sound soil management practices, preserve natural resources, maintain land in active agricultural use, and ensure affordable resale values of agricultural land. No activity detrimental to the actual or potential agricultural use of the Premises, or detrimental to water conservation, soil conservation, or to good agricultural and/or forestry management practices or which is otherwise wasteful of the natural resources of the Town of Westford and the Commonwealth of Massachusetts shall therefore be permitted.	<p>KH: The major takeaways from this section are “maintain land in active agricultural use” and “ensure affordable resale values of agricultural land.” “No activity detrimental to the actual or potential agricultural use of the Premises ... shall therefore be permitted.” To approve the proposed agreement, the Selectmen would need to determine that the restaurant was consistent the this Purpose.</p> <p>KH observation: not sure that “ensure affordable resale values of agricultural land” survived the first sale of the property.</p> <p>JM: This is an area that we all agreed is important to keep in mind throughout the entire process.</p> <p>Conversation points on this included a perspective that some thought that by allowing the restaurant, we might better protect APRs 1 & 2. Juliette expressed concerns expressed that:</p> <p>1. APRs are legal agreements, and cannot be altered. The intent of these restrictions is quite clear in protecting the soil for viable farmland. [added: The proposal would be detrimental to the soil in the form of removal or paving over it with approx. 50,000' ft. of toxic substances: Massachusetts Toxic Substances List: 008052424Asphalt (CAS number 52-42-4) 008052424Asphalt (cutback) 008052424Asphalt (liquid rapid-curing)]</p> <p>2. If we could/were to alter APR3 in any way, we are setting a precedent if we change APR 3. What will stop anyone from altering other/all of the APRs in the Town, and the state, putting all of our Commonwealth’s protected resources at risk?</p>	Debatable	
19	II	II. DEFINITIONS			

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
20	II	When used throughout this entire document, the following words or phrases shall have the following meaning:			
21	II.1	1. Abandoned: land that has not been actively utilized for agricultural uses for a period exceeding three years unless the non-activity is recommended in a current USDA/SCS plan.	JRB: Only reference is in II.F Juliette recommends that the Task Force recommend to the BOS that they review the terms of Section III.F, Affirmative Covenant, page 8, regarding abandoned property and cleanup. This is the only section that references 'abandoned.'	see individual references	
22	II.2	2. Actively Engaged: deriving substantial annual farm income from agricultural uses of all available areas and the two contiguous parcels as referenced in Section VI of the Premises.	Referenced in II.D.3.a and .g., governing to whom an application for an approved use may be granted. NOTE: this is defined differently in APR 1/2, as deriving >=51% of gross income from agricultural use. Town Council has opined that the 51% clause does not restrict allowable income from a restaurant.	see individual references	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
23	II.3	3. Agricultural Use: the raising of animals, including but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and furbearing 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 M.G.L. c. 61A, §1, as amended, and also horticultural uses, including but not limited to, 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	Numerous references throughout APR	see individual references	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
24	II.4	4. Condition: including, but not limited to; an easement, restriction, covenant, right, option to purchase at agricultural value, improvement, land exchange, or any other requirement or use prohibition.	No specific references.	N/A	
25	II.5	5. Permanent Structure: any structure that requires the grading of soil, or the excavation for footings or foundations.	Referenced in II.B.2, II.C.1, II.C.6. KH: Permanent Structure versus Temporary Structure: These definitions are not mutually exclusive. It is possible for a structure to fall under both definitions. For example, if the proposed greenhouse has footings, then it could be considered a permanent structure. However, "temporary structure" only requires that it does not have a permanent foundation, with no mention of footings. So if the proposed greenhouse has footings but no permanent foundation, then it could also be considered a temporary structure.	see individual references	
26	II.6	6. Premises: approximately 3 acres of land located on Boston Road in the Municipality of Westford, in Middlesex County, Massachusetts as more fully described in Exhibit A, attached hereto and incorporated by reference into this document.	Multiple references	N/A	
27	II.7	7. Temporary Structure: a structure that does not have a permanent foundation, or does not substantially alter or otherwise affect the soil profile.	Referenced in II.A.4, II.B.2, II.C.6. See KH note under II.5.	see individual references	
28	III	III. TERMS AND CONDITIONS			

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
29	III	We, KEITH A. AND NANCI BOHNE, of Westford, Middlesex County, Massachusetts (the "Grantors"), for consideration of One Hundred Seventy-Five Thousand Dollars (\$175,000.00) paid, grant to the Town of Westford, acting by and through its Board of Selectmen (the "Grantees", with an address at 55 Main Street, Westford, Massachusetts, its successors and assigns, an Agricultural Preservation Restriction (the "Restriction") together with a "Right of First Refusal" as set forth in Exhibit B, attached hereto and incorporated by reference into this Restriction, in perpetuity on the Premises, in accordance with the following terms and conditions listed below.		N/A	
30	III	By so doing, the Grantors grant all development rights (except as specifically reserved herein) that are now or hereafter allocated to, implied, reserved or inherent in the Premises to the Grantees, and the parties agree that these development rights are terminated and extinguished, except for such development rights as may be specifically approved pursuant to paragraph D hereof.	KH: As a reminder to the Task Force, this Article, in all three APRs, states that all development rights are terminated, except as may be specifically approved in Section D, Approval Process for Permitted Activities. JM: All development rights are terminated and extinguished. The proposal is for development of a commercial building, so the proposal is absolutely inconsistent with this APR.	JM: N	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
31	III.A	A. RETAINED RIGHTS			
32	III.A	Notwithstanding any provision of this instrument to the contrary, the Grantor(s) hereby reserves to and for themselves and their heirs, devisees, legal representatives, successors and assigns, the customary rights and privileges of ownership not inconsistent with the statement of purpose herein, including but not limited to, the right to:	JM observation: it is inappropriate to add a "retained right" since any addition is really a "new right" not in existence at the time the APR was signed.	JM: N	
33	III.A.1	(1) Privacy and to carry out regular agricultural practices.		Y	
34	III.A.2	(2) The maintenance and use of existing trails and farm and wood roads on the Premises substantially in their present condition or as reasonably necessary for their continued use for agricultural uses.		Y	
35	III.A.3	The installation, maintenance, repair, replacement, removal and relocation of electric or gas facilities and services over or under the Premises for the purpose of providing electrical or gas utilities to the Premises for agricultural uses or for other approved uses, and the right to grant easements over or under the Premises for these utility purposes.	KH observation: This mentions the right to provide electrical and gas utilities "for agricultural uses or for other approved uses." "Approved non-agricultural use" shows up in other places in the APR.	Y	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
36	III.A.4	(4) The construction or placement of temporary structures for agricultural uses.	KH observation (APR 2): If the proposed greenhouse on APR 2 is temporary then it can be installed by right. If it is permanent, then it requires BOS approval. However, since it is agricultural use, it would not require going back to the BOS every 5 years.	Y	
37	III.A.5	(5) The maintenance of the existing farmstand-country store building and the continuation of the present use thereof.	JM: He would be tearing this structure down and replacing it in entirety with a new structure. The only risk here I see is if he tears it down and stops, please confirm that rebuilding of a similar structure could be maintained in the spirit of the Retained Rights. This clause is a retained right. It is not logically possible for a proposal to be inconsistent with an existing retained right. Juliette's comment appears to be an effort to populate the matrix with as many "N"s as possible, regardless of relevance.	HJRB, KH: Y JM: N	
38	III.A.6	(6) The maintenance of three existing hoop-greenhouses and the use thereof as greenhouses.		N/A	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
39	III.B	B. PROHIBITED USES	<p>Juliette read aloud the following, with emphasis on the bolded text: The Grantors (owners) covenant for themselves, their heirs, successors, and assigns... the Premises will at all times be held, used and conveyed subject to, and not in violation of the following restrictions: Other than the retained rights,...no activity thereon shall be permitted which is inconsistent with the intent of this grant. (1) No non-agriculturally related temporary or permanent structure, ...shall be constructed, placed or permitted to remain on the Premises, except structures existing on the Premises at the time of the execution of this Restriction and expansions thereto which may receive approvals pursuant to paragraphs C and D below.</p> <p>Juliette stated that this section really cuts to the heart of the entire proposal. There is no allowance for any non-agriculturally related temporary or permanent structures on this land. As such, if the greenhouse(s) can be constructed without removing the soil, and are dedicated to agricultural use, they could be allowed. A restaurant of this size far exceeds the footprint of the original structure, and is not in any way in compliance with this APR, nor the goal of protecting the soil by building and paving over it. Any allowance for consumption of the foods produced on this Premises (as in what might be considered a farm-to-table restaurant) must fit the allowable percentages of goods sold, and must maintain the original scale as describe in Retained Rights, (5). If this footprint is maintained, and the building restored, it might be considered in alignment with the Retained Rights as written.</p>	JM: N	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
40	III.B	The Grantors covenant for themselves, their heirs, devisees, legal representatives, successors and assigns, that the Premises will at all times be held, used and conveyed subject to, and not in violation of, the following restrictions:		N/A	
41	III.B.1	(1) Other than the retained rights set forth in paragraph A above, no use shall be made of the Premises, and no activity thereon shall be permitted, which is inconsistent with the intent of this grant.	JRB: If the restaurant were to be approved under III.C as opposed to III.B, the approval of the restaurant would not require a determination that it is consistent with the intent of the grant. The second-round TF opinion was that, given the appraisal value and the interest expressed in the property, this use was the best way to maintain the land in active agricultural use. KH: Although this section does not explicitly reference the Statement of Purpose, does the proposal meet the Purposes set forth therein, or could it meet the Purposes if modified? KH observation: Instead of modifying the retained rights, could this be part of the agreement so it is tied to the proposal and not to the property?	JRB, KH: Debatable JM: N	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
42	III.B.2	(2) No non-agriculturally related temporary or permanent structure, residential dwelling, tennis court, inground swimming pool, recreational horse riding facility, golf course, golf range or airport landing strip shall be constructed, placed or permitted to remain on the Premises, except structures existing on the Premises at the time of the execution of this Restriction and expansions thereto which may receive approvals pursuant to paragraphs C and D below.	JRB: same as III.B.1	All, Same as III.B.1	
43	III.B.3	(3) No refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, radio-active or hazardous waste or other 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 normal agricultural activities.	JRB: completion of waste removal required	JRB: Y	
44	III.B.4	(4) The Premises may not be used for:		N/A	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
45	III.B.4.a	(a) Transferring development rights to any property, whether or not adjacent to the Premises;	<p>KH observation: Not germane to the proposal.</p> <p>Juliette was concerned that the proposal could somehow violate the protection of APRs 1 and 2. Bob and Kate, as well as audience member Marian Harman, tried to explain that "transfer of development rights" is a planning concept for protecting an open space parcel in one area of town by allowing "bonuses" on another parcel and that it did not affect the other two APRs.</p> <p>JM: In contrast, Juliette stated that this speaks to the belief some have that by allowing development on APR3, it will help protect APRs 1 & 2. The point was made at this time that we do not need to take any action to protect APRs 1, 2 or 3 other than enforce what has already been agreed to in these instruments.</p>	JRB,KH: Y JM: N	
46	III.B.4.b	(b) Calculating permissible lot yield of the Premises, or of any other property;		Y	
47	III.B.4.c	(c) Use in any calculations involving development of any other property, whether or not adjacent to the Premises, in any manner whatsoever.	JM: See comment III.B.4.a	JRB, KH: Y JM: N	
48	III.C	C. ACTIVITIES WHICH REQUIRE PRIOR WRITTEN APPROVAL		N/A	
49	III.C	The following activities shall not be conducted without the prior written approval of the Grantees in accordance with the procedures set forth in section D of this Restriction:	This section lists activities that require prior written approval of the BOS following the procedures in the APR.	N/A	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
50	III.C.1	(1) The construction or placing of permanent structures for housing seasonal agricultural employees or other agricultural uses and non-agricultural uses, including related retail sales.	KH noted the ambiguity of the language since it does not explicitly exclude non-agricultural uses that are not related retail sales. The others pointed out that any use still needs to satisfy the purpose of the APR. Bob wondered if using the produce from the parcels in the restaurant could be construed as "related retail sales." JRB: If the restaurant were not added to III.B, the restaurant would require BoS approval under this clause.	JRB, KH: Y (if approved) JM: N	
51	III.C.2	(2) The excavation, dredging, depositing or removal from the Premises of loam, peat, gravel, soil, sand, rock or other mineral resources, or natural deposits in accordance with a USDA Soil Conservation Service Plan.	JM: Juliette highlighted three sections here of most importance: "... in accordance with the USDA Soil Conservation Service Plan" Juliette noted that the expanded footprint of this building would destroy the soil buried underneath it, and that removal or dredging, excavating, etc. is not allowed (all of which would be required for construction of the proposed building and parking lot, etc.). The only allowance for excavation, removal, etc. would be in accordance with the USDA Soil Conservation Service Plan. (See Julia's separate note for references.)	JRB, KH: Y JM: N	
52	III.C.3	(3) The maintenance or improvement of a septic or other underground sanitary system which exists on the Premises, or the construction of a septic or other underground sanitary system, for the benefit of an existing dwelling on the Premises.	JRB: If the restaurant is not currently an "existing dwelling"; if not added to III.B, the restaurant would become an "existing dwelling" if approved under III.C.1 JM: The new septic is not for the benefit of the existing dwelling. It is for new construction, and much larger.	JRB, KH: Y JM: N	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
53	III.C.4	(4) The subdivision, recording of a subdivision plan, partition, or any other division of the Premises, or any portion thereof, into two or more parcels, even in the event that the Premises is comprised of one or more deeded parcels at the date of this Restriction. No subdivision shall be approved without the condition that new Agricultural Preservation Restrictions be recorded on the subdivided, partitioned, or otherwise divided parcels.		Y (if approved)	
54	III.C.5	(5) The use of the Premises for non-agricultural uses except as provided in paragraph A above.	<p>KH: "The use of the Premises for non-agricultural uses [requires BOS approval] except as provided in paragraph A above" [Retained Rights]. The BOS could approve any non-agricultural use that they felt helped to maintain land in active agricultural use plus the other intents of the APR.</p> <p>JM: A restaurant and banquet hall is Commercial, non-agricultural, and as such disallowed. (also JM: A restaurant is a non-agricultural use. It is not generating at least two thirds of its income from the agricultural use of the farm.</p>	JRB,KH: Y, if approved JM: N	
55	III.C.6	(6) The construction or placement of an asphalt driveway, road, parking lot, utility pole, tower, conduit or line in support of a temporary or permanent structure or improvement, for the benefit of the Premises only.	<p>JM: Juliette again reinforced concerns about both the footprint of the building, as well as the parking lot, in terms of destruction of the soil. The proposed restaurant far exceeds the footprint of the original farmstand (by 4x at last discussion) plus an estimated paved parking area to be 50,000 sq.ft.</p>	JRB, KH: Y JM: N	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
56	III.D	D. APPROVAL PROCESS FOR PERMITTED ACTIVITIES		N/A	
57	III.D.1	(1) The Grantors covenant for themselves, their heirs, devisees, legal representatives, successors and assigns, that, prior to undertaking any activity described in section C, the following procedure shall be followed:		N/A	
58	III.D.1.a	(a) The Grantors shall file a completed written application for approval with each Grantees.		Pending	
59	III.D.1.b	(b) The application shall include:		N/A	
60	III.D.1.b.i	i) a copy of a current Farm Conservation Plan, prepared by the U.S.D.A. Soil Conservation Service, when requested by the Grantees; and		Pending	
61	III.D.1.b.ii	ii) any other information and plans as the Grantees of this Restriction require to reasonably determine that the intended use, activity, structure or building is consistent with the purpose of this Restriction, as stated in the Statement of Purpose.		Pending	
62	III.D.1.c	(c) Prior to making an application for approval under this section, the owner shall not secure other applicable permits required by local or state law.	KH: It seems that the public hearings that were opened before ATM are now null and void, and the public hearings would need to be re-opened.	N	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
63	III.D.2	(2) Within 90 days of receipt of the completed application, the Grantees may approve the application, with or without conditions, only upon findings by Grantees that:		Pending	
64	III.D.2.a	(a) the proposed use, activity, structure or building is authorized by this Restriction and General Laws, Chapter 184 and 132A;	KH: the BOS may approve the application only upon finding that “the proposed use, activity, structure or building is authorized by this Restriction and General Laws, Chapter 184 and 132A.” Marian Harman claimed that because MGL Chapters 184 and 132A are referenced here this means that the State would have to approve Westford Gateway’s proposal. JM: The proposed use violates virtually every guideline stated in Chapter 184 and 132A as related to APRs.	JRB: Legal opinion JM: N	
65	III.D.2.b	(b) the use, activity, or structure shall not defeat nor derogate from the intent of this Restriction.	KH: “the use, activity, or structure shall not defeat nor derogate from the intent of this Restriction.” [derogate means to take away or detract from; to become inferior in character or status] JM: Juliette stated that all three documents state, “If any section or provision of this deed restriction is ambiguous, it shall be interpreted in accordance with General Laws, Chapter 184, Sections 31 through 33, and Chapter 132A, Section 3 and Sections 11A through 11D, as of the date of this instrument.” And noted that in this document it states: “ preservation restrictions must be approved by the Massachusetts Historical Commission, watershed preservation restrictions by the Commissioner of the Metropolitan District Commission and agricultural preservation restrictions by the Commissioner of Food and Agriculture.	JRB:Debatable KH: ?? JM: N	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
66	III.D.2.b	<continued>	<p>JM continued...: ...also, regarding Amendments “The Secretary’s policy shall be to approve amendments to conservation restrictions only if they serve to strengthen the original conservation restriction or will have a neutral effect upon the provisions of the conservation restriction. No amendment will be approved which will affect the qualification of the conservation restriction or status of the grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code, as amended, Article 97 of the Massachusetts Constitution, including EOEEA’s</p> <p>Juliette stated that given these guidelines, it seems quite clear that the Town does not have the right or power to alter these instruments without such approvals.</p>	<continued>	
67	III.D.3	(3) No application for the use of the Premises or the buildings thereon for non-agricultural uses, as provided for in section C(I) and C(S), shall be approved unless the conditions of paragraph D(2) above are met, and the approval is:	KH: All three members felt that the terms in III.D(3) need to be called out to the BOS. They define the conditions under which the BOS may approve an application. Some clauses would need to be modified:	N/A	
68	III.D.3.a	a) to a farmer(s) actively engaged in full-time commercial farming;	<p>KH: ...a) [approval is] to a farmer(s) actively engaged in full-time commercial farming. Does contracting with Springdell Farm satisfy this clause?</p> <p>JRB: If the restaurant were to be approved under III.D as opposed to III.B, Ebi would not qualify. Jamie would, but she is not the applicant.</p> <p>JM: 1. The owner does not qualify as a farmer, based on IRS guidelines. 2. The much more substantial income would be derived from the facilities, and not the agriculture itself.</p> <p>If that was not the case, he would not propose a building like this.</p>	JRB: N KH: ? JM: N	
69	III.D.3.b	b) for an activity incidental to the agricultural use of the farm;		Debatable	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
70	III.D.3.c	c) given when the activity will not impair the agricultural viability of the soil;		Debatable	
71	III.D.3.d	d) given when the activity occurs in existing structures or expansions thereof which may be approved hereunder;		Pending	
72	III.D.3.e	e) given when no major renovations of existing structures are required; and		N	
73	III.D.3.f	f) given when no major new construction is required;	KH: this would need to be modified to give approval to a restaurant KH observation: Clause (f) restricts any improvement of APR 3, even if it were to be used for a farm stand, a nursery, or other 100% agricultural use. It seems that the original negotiating team was intent on keeping the existing structure as is. Given its condition, this could be prohibitive.	KH, JRB: N	
74	III.D.3.g	g) not to survive transfer of ownership of the premises to any person not actively engaged in full-time commercial farming of the premises and the two contiguous sections of property as described in deeds recorded at the Middlesex North Registry of Deeds at Book 2201, Page 621 and Book 2421, Page 433.	JRB: If the restaurant were to be approved under III.D as opposed to III.B, the approval of the restaurant would not survive transfer of the property to a non-full-time farmer. KH: Does contracting with Springdell Farm satisfy this clause? Note: This would place restrictions on the resale of the property. JM: Juliette restated that the APR is a contract, and the purpose of this exercise is not to understand how the APR should be altered, but rather how the proposal is in conflict with the APR and therefore how the proposal must change in order to meet the requirements of the APR. JRB: Disagree entirely with JM. The purpose is to point out where there are inconsistencies, but an inconsistency can be resolved in multiple ways. IF the APR were not potentially changeable, we wouldn't be talking about whether to take a change to Town Meeting.	N/A	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
75	III.D.4	(4) If, based on its findings. the Grantees approve or approve with conditions the application, they shall jointly issue a "Certificate of Approval" suitable for recording.		N/A	
76	III.D.5	(5) If the Grantees are unable to make the findings necessary for approval, they shall state in writing their reasons for denial of the application and shall mail a copy of the denial to the applicant within 90 days of receipt of the completed application.		N/A	
77	III.E	E. ENFORCEMENT OF THE TERMS AND CONDITIONS		N/A	
78	III.E.1	(1) The Grantors grant to the Grantees, and their successors at law, the right to enter the Premises in a reasonable manner and. at reasonable times, for the purposes of:		Y	
79	III.E.1.a	(a) inspecting the Premises to determine compliance with this Restriction or a Certificate of Approval;		Y	
80	III.E.1.b	(b) enforcing this Restriction; and		Y	
81	III.E.1.c	(c) any other action which may be necessary or appropriate, with or without order of court, to remedy or abate any violation of this Restriction.		Y	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
82	III.E.3	(2) In the event of a violation of the terms of this Restriction, the Grantees reserve the right to pursue any remedy available at law and equity, including injunctive relief.		Y	
83	III.E.2	(3) The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantees for enforcement of this Restriction.		Y	
84	III.F	F. AFFIRMATIVE COVENANT		N/A	
85	III.F	The Grantors agree for themselves, their heirs, devisees, legal representatives, successors and assigns, that the Premises shall remain in active agricultural use, and the land shall not be abandoned, except in accordance with a USDA Soil Conservation Service Farm Management Plan, approved by the conservation district for the locality in which the Premises is located. The Grantors and any successors in title shall be liable for any noncompliance with the terms of this Restriction which occurs during their ownership of the Premises.	KH observation: (the abandonment clause has not been triggered unless) the BOS determines that the clock (in the definition) continued to run when Ebi bought the property.	? JRB: Y KH: ? JM: N	
86	IV	IV. AUTHORIZATION	KH: the BOS has the option to request a copy of a current Farm Conservation Plan prepared by the U.S.D.A.	N/A	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
87	IV	The foregoing Restriction is authorized by Massachusetts General Laws, Chapter 184, Sections 31 through 33, and otherwise by law, and is intended to ensure the protection and preservation of agricultural lands.	JRB: Note reference to MGL "to ensure the protection and preservation". KH: KH: The subcommittee members call out the following sentences on page 9. 1st paragraph: "The foregoing Restriction is authorized by Masachusetts GeneralLaws, Chapter 184, Sections 31 through 33, and otherwise by law, ..."	Legal	
88	IV	This Agricultural Preservation Restriction shall be administered on behalf of the Grantees by the Town of Westford Board of Selectmen. This Restriction shall be enforced by the Grantees as they in their sole discretion may decide. Nothing herein shall impose upon the Grantees any duty to maintain or require that the Premises be maintained in any particular state or condition, notwithstanding the Grantees' acceptance hereof.	KH: The subcommittee members call out the following sentences on page 9. (continued) 2nd paragraph: "This Agricultural Preservation Restriction shall be administered on behalf of the Grantees by the Town of Westford Board of Selectmen. This Restriction shall be enforced by the Grantees as they in their sole discretion may decide." Kate noted that the next sentence is also informative, "Nothing herein shall impose upon the Grantees any duty to maintain or require that the Premises shall be maintained in any particular state or condition, notwithstanding the Grantees' acceptance hereof." JM: Juliette stated that this means that the BoS have the right and responsibility to reinforce these without the need for state to do so, and that at the same time, the town is not obligated to actually performing maintenance of the land. As this speaks to continual farming of the land, and the expiration of the three years of non-farm use, the town (BoS) are empowered to take action.	Legal	
89	IV	Except as otherwise provided .herein, this Restriction does not grant to the Grantees, the public, or any other person any right to enter upon the Premises.		Y	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
90	IV	This Restriction is in gross, exists in perpetuity, and is not for the benefit of or appurtenant to any particular land and shall not be assignable except to another governmental or ' charitable corporation or trust which has power to acquire interests in land and whose purposes include conservation of agricultural land and natural areas. The burden of this Restriction shall run with the Premises and shall be binding upon all future owners of any interest therein. This Restriction may only be released, in whole or in part, by the Grantees by the procedures established by Section 32 of Chapter 184 of the General Laws, as amended and otherwise by Article 97 of the Amended Articles of the Massachusetts Constitution and otherwise by law.	<p>KH observation: "This Restriction may only be released, in whole or in part, by the Grantees by the procedures established by Section 32 of Chapter 184 of the General Laws, as amended and otherwise. Comment: the last part implies that only the Grantees need to release any part of the Restriction, as long as they follow the established procedures.</p> <p>JM: Juliette restated the need to adhere to the Mass General Laws section as previously noted, which does require approval by the state (**) and that any alteration would be to strengthen the Restrictions, in strong contrast to this proposal</p> <p>JM: (also) The proposal meets virtually none of the guidelines of the APR.</p>	JRB, KH: Legal JM: N	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
91	IV	<continued>	<p>JM continued: (snippet from the state General Law: “ preservation restrictions must be approved by the Massachusetts Historical Commission, watershed preservation restrictions by the Commissioner of the Metropolitan District Commission and agricultural preservation restrictions by the Commissioner of Food and Agriculture. ...also, regarding Amendments “The Secretary’s policy shall be to approve amendments to conservation restrictions only if they serve to strengthen the original conservation restriction or will have a neutral effect upon the provisions of the conservation restriction. No amendment will be approved which will affect the qualification of the conservation restriction or status of the grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code, as amended, Article 97 of the Massachusetts Constitution, including EOEEA’s)</p>	<continued>	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
92	IV	<continued>	<p>Finally, Juliette referred to APR3 page 9, last sentence: “This Restriction may only be released, in whole or in part, by the Grantees by the procedures established by Section 32 of Chapter 184 of the General Laws, ...</p> <p>And inserted that any proposed changes must follow specific procedures, and prior to any permits, a formal application must be submitted, and the application must include, among other details:</p> <ol style="list-style-type: none"> 1. application for non-agricultural use is given to a specific, individual owner (not an LLC) 2. for no longer than 5 years, 3. to a farmer actively engaged in full-time commercial farming. <p>(an LLC is not an individual, and Mr. Masalhadan is not a full-time farmer)</p> <ol style="list-style-type: none"> 4. it must be in alignment with Section 32 of Chapter 184 of the General Laws, as amended and otherwise by Article 97 of the Amended Articles of the Massachusetts Constitution and otherwise by law.” 5. in alignment with the intent of this APR 6. Must include a copy of a current Farm Conservation Plan, prepared by the USDA Soil Conservation Service <p>JRB: WRT the LLC issue, Legal opinion required, but corporations have long-established treatment as individuals under the law. Any full-time farmer would likely be incorporated for legal protection.</p>	<continued>	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
93	IV	If any section or provision of the Restriction shall be held to be unenforceable by any court of competent jurisdiction, this Restriction shall be construed as though such section had not been included in it. If any section or provision of the Restriction shall be subject to two constructions, one of which would render such section or provision invalid, then such section or provision shall be given the construction that would render it valid.		Legal	
94	IV	If any section or provision of this deed Restriction is ambiguous, it shall be interpreted in accordance with the policy and provisions expressed in the General Laws, Chapter 184, Sections 31 through 33, and Chapter 132A, Sections 3 and Sections 11A through 11D, and the regulations duly promulgated in accordance with said Chapters as exist and are in effect as the date of this instrument.	JM: These Laws are the overarching rules regarding APRs and available here: http://atfiles.org/files/pdf/MAconsrestrict08.pdf JRB: Juliette's reference is to Conservation Restrictions, which are not what we are talking about here.	Legal	
95	V	V . TRANSFER OF PREMISES		N/A	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
96	V	No interest in the premises shall be transferred or alienated unless said transfer or alienation is in conjunction with a transfer Or alienation of the two contiguous orchard parcels which along with the Premises are described in deeds recorded at the Middlesex North Registry of Deeds at Book 2201, Page 621 and Book 2421, Page 433.		Debatable	
97	V	This instrument is not a deed. It does not purport to transfer a fee interest to the Grantees. No Massachusetts deed excise stamps are affixed hereto as none are required by General Laws 64D, Section 1, as amended.		N/A	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
98		AGRICULTURAL PRESERVATION RESTRICTION 2 (that differ from APR 3)		N/A	
99	APR2 I.	By obtaining this Agricultural Preservation Restriction, it is the intent of the Town of Westford to perpetually protect and preserve agricultural lands, encourage sound soil management practices, preserve natural resources, maintain land in active agricultural use, and ensure affordable resale values of agricultural land. No activity detrimental to the actual or potential agricultural use of the Premises, or detrimental to water conservation, soil conservation or to good agricultural and/or forestry management practices or which is otherwise wasteful of the natural resources of the Town of Westford or Commonwealth of Massachusetts shall therefore be permitted.	DIFFERENCE: is "and" the Commonwealth in APR 3 JM: The proposal is inconsistent with preserving this land and the intent of the APR.	JRB, KH: See APR 3 JM: N	
100	APR2 II.2	2. Actively Engaged: deriving at least fifty-one percent (51%) of annual gross farm income from agricultural uses on the Premises.	DIFFERENCE: defined as "deriving substantial annual farm income" in APR 3, without the 51% JM: The much more substantial income would be derived from the facilities, and not the agriculture itself. If that was not the case, he would not propose a building like this. JRB: Town Council opined that this clause did not restrict the revenue that could be generated from an approved restaurant.	JRB: Y JM: N	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
101	APR2 III.	We, KEITH A. AND NANCI BOHNE, of Westford, Middlesex County, Massachusetts (the "Grantors"), for consideration of One Hundred Seventy-Five Thousand Dollars (\$175,000.00) paid, grant to the Town of Westford, acting by and through its Board of Selectmen (the "Grantee"),	DIFFERENCE: APR 3 refers to the Grantee, in the singular. Ripples throughout the document. Not highlighted going forward.	N/A	
102	APR2 III.A.3	(3) The installation, maintenance, repair, replacement, removal and relocation of electric or gas facilities and services over or under the Premises for the purpose of providing electrical or gas utilities to the Premises for agricultural uses or for other approved uses, and the right to grant easements over or under the Premises for these utility purposes.	DIFFERENCE: Text is the same, APR 3 lost the subparagraph number	Y	
103	APR2 III.A.5	<farmstand>	DIFFERENCE: not present in APR 2	N/A	
104	APR2 III.A.6	<existing greenhouses>	DIFFERENCE: not present in APR 2	N/A	
105	APR2 III.B.1	(1) No use shall be made of the Premises, and no activity thereon shall be permitted, which is inconsistent with the intent of this grant, as stated in the Statement of Purpose.	DIFFERENCE: APR 3 starts with "Other than the retained rights set forth in paragraph A above, "	Debatable	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
106	APR2 III.B.2	(2) No non-agriculturally related temporary or permanent structure, residential dwelling, tennis court, inground swimming pool, recreational horse riding facility, golf course, golf range or airport landing strip shall be constructed, placed or permitted to remain on the Premises, except structures existing on the Premises at the time of the execution of this Restriction.	DIFFERENCE: APR 3 adds "and expansions thereto which may receive approvals pursuant to paragraphs C and D below." JM: The greenhouse footing would require soil removal, and likely some leveling or fill. All of those would violate the APR. JRB: JM's observation is not consistent with the presentations we have been given on the proposal.	JRB, KH: Debatable JM: likely N	
107	APR2 III.C.1	(1) The construction or placing of permanent structures for housing seasonal agricultural employees or other agriculturally related uses, including related retail sales, where the need for the structures is not a result of the use of existing structures for approved nonagricultural uses.		Y	
108	APR2 III.C.2	(2) The excavation, dredging, depositing or removal from the Premises of loam, peat, gravel, soil, sand, rock or other mineral resources, or natural deposits in accordance with a USDA Natural Resource Conservation Service Plan.	DIFFERENCE: APR 3 refers to the Soil Conservation Plan. Ditto elsewhere, not highlighted here. JM: The greenhouse footing would require soil removal, and likely some leveling or fill. All of those would violate the APR. JRB: JM's observation is not consistent with the presentations we have been given on the proposal.	JRB, KH: Y JM: N	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
109	APR2 III.D.3	(3) No application for the use of the Premises for nonagricultural uses, as provided for in section C{S}, shall be approved unless the conditions of paragraph D(2) above are met, and the approval is:	DIFFERENCE: APR 3 has slightly different wording, refers to buildings.	N/A	
110	APR2 III.D.3.a	a) given to specific, individual owner(s);	DIFFERENCE: not present in APR 3 JM: The transfer went to an LLC, in violation of this clause. It must be transferred out and back to an individual. JRB: Legal opinion needed, but corporations have long-established treatment as individuals under the law. Any full-time farmer would likely be incorporated for legal protection.	JRB: Y JM: N	
111	APR2 III.D.3.b	b) for no longer than a period of five (5) years, renewable upon re-app1ication;	DIFFERENCE: not present in APR 3	Y	
112	APR2 III.D.3.c	c) to a farmer{s} actively engaged in full-time commercial farming;	DIFFERENCE: numbered .a in APR 3	N	
113	APR2 III.D.3.d	d) not to survive transfer of ownership of the Restriction;	DIFFERENCE: not present in APR 3	Y	
114	APR2 III.D.3.e	e) for an activity incidental to the agricultural use of the farm;	numbered .b in APR 3	Y	
115	APR2 III.D.3.f	f) given when the activity will not impair the agricultural viability of the soil;	DIFFERENCE: numbered .c in APR 3	Y	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
116	APR2 III.D.3.g	g) given when the activity occurs in existing structures;	<p>DIFFERENCE: numbered .d in APR 3, APR 3 adds "or expansions thereof which may be approved hereunder;"</p> <p>JM: The current plan would impact APR 2 in construction of the new building. It is not an expansion of the existing structure. It is a replacement in entirety.</p> <p>JRB: This may be an issue for APR 3, but the proposal we have been given has only the agricultural greenhouse on APR 2.</p>	JRB, KH: Y JM: N	
117	APR2 III.D.3.h	h) given when no major renovations of existing structures are required; and	<p>DIFFERENCE: numbered .e in APR 3</p> <p>JM: The current plan requires major renovations/replacement of the existing structures, and referenced here as the existing structures noted only exist on APR 3.</p> <p>JRB: This may be an issue for APR 3, but the proposal we have been given has only the agricultural greenhouse on APR 2.</p>	JRB, KH: Y JM: N	
118	APR2 III.D.3.i	i) given when no new construction is required;	<p>DIFFERENCE: numbered .f in APR 3</p> <p>JM: This entire plan is new construction</p> <p>JRB: This may be an issue for APR 3, but the proposal we have been given has only the agricultural greenhouse on APR 2. JM's comment appears to be an effort to get as many "N"s in the matrix as possible, regardless of actual relevance to the specific language and context.</p>	JRB, KH: Y JM: N	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
119	APR2 IV	The foregoing Restriction is authorized by Massachusetts General Laws, Chapter 184, Sections 31 through 33, and Chapter 132A, section 3 and Sections IIA through 11D, and otherwise by law, and is intended to ensure the protection and preservation of agricultural lands.	DIFFERENCE: APR 3 does not contain "and Chapter 132A, section 3 and Sections IIA through 11D"	Legal	
120	APR2 V	<Transfer of premises>	DIFFERENCE: not present in APR 2	N/A	

	A	B	C	D	E
1	Para	Text	Subgroup Observation	Consistent? (SubGroup)	Consistent (DGTF)
121		GENERAL COMMENTS			
122		The agreement with Westford Gateway LLC should include a maximum occupancy clause.			
123		All members agreed that if the owner wants to buy back APR #3, then the offered price should be based on the current value of the APR, not on what it was worth in 1997. All felt that it is not in the Town's interest to lose the APR.	Text		
124		Bob Jefferies, audience member, felt the proposed sidewalk could affect the agricultural value of APRs #1 and #2. If so, including it might require modification of those APRs to allow it. Bob and Maureen George also disagreed with Kate about how strictly one should require that no grading from APR #3 be allowed to encroach on APR #2.			
125		If the Zoning Board of Appeals approves the proposed restaurant, could it then be sold and turned into a different type of restaurant, such as a McDonalds? Should there be a clause in the agreement limiting it to a certain quality of restaurant?			