

330 CMR: DEPARTMENT OF AGRICULTURAL RESOURCES

330 CMR 22.00 AGRICULTURAL PRESERVATION RESTRICTION PROGRAM

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22.01: Scope and Purpose

The scope of 330 CMR 22.00 is to implement the terms of M.G.L. c. 20, §§ 23 through 26, and M.G.L. c. 184, §§ 31 and 32. The purpose of 330 CMR 22.00 is to provide guidance and clarification for present and future APR Parcel Owners regarding their responsibilities and the Department's responsibilities under St. 1977, c. 780, in conjunction with the direction and guidance provided in Department policy statements, guidelines, and other informational sources referenced in 330 CMR 22.13; to encourage sound soil management practices in accordance with normally accepted agricultural practices; and to regulate activities and uses that may be detrimental to the retention of the land for agricultural use in perpetuity .

22.02: Definitions

As used in 330 CMR 22.00:

Agricultural Lands Preservation Committee (Committee or ALPC) means a committee in the Department of Agricultural Resources whose membership, powers, duties, and statutory grant of authority are set forth in M.G.L. c. 20, § 24.

Agricultural Preservation Restriction (APR or APR Restriction) means a restriction and agreement in perpetuity on the use of land as defined in M.G.L. c. 184, § 31.

Agriculture means the uses of land enumerated in M.G.L. c. 61A, §§ 1 and 2.

Agri-entertainment means entertainment, such as a seasonal event, festival, contest, party, or other time-specific event designed specifically to bring the public to a Farm Enterprise for a farm-related educational experience by displaying a combination of the farm setting and products of agricultural operations with the ultimate goal to encourage the purchase of agricultural products. Agri-entertainment is designed to enhance the agricultural viability of the farm operations.

Agri-tourism means tourism designed specifically to bring the public to a Farm Enterprise for a farm-related educational experience by displaying a combination of the farm setting and products of agricultural operations with the ultimate goal to encourage the purchase of agricultural products. Agri-tourism is designed to enhance the agricultural viability of the farm operations .

Applicant means the record owner of land who submits an application for a Project.

Application means a written request submitted by a record owner of land seeking an APR or a Departmental Approval.

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APR Parcel means the land and improvements encumbered by an APR.

APR Value means the value of the APR Restriction, being the difference between the Fair Market Value and the Fair Market Agricultural Land Value as determined by competent appraisers when evaluating a Project. In a resale of an APR Parcel, it is the difference between the Fair Market Value and the Fair Market Agricultural Value as determined by competent appraisers of an APR Parcel at the time of the resale unless otherwise provided.

Certificate of Approval (COA) means a certificate in recordable form that allows a structure, improvement, activity, or use for agricultural purposes on an APR Parcel with or without conditions, for all instances requiring Departmental approval pursuant to the APR Restriction.

Certificate of Completion (COC) means a Departmental approval in the form of a certificate in recordable form that attests that a structure, improvement, activity, or use for agricultural purposes was completed as approved to the satisfaction of the Department.

Commissioner means the Commissioner of Agricultural Resources.

Defeat or Derogate from the Intent of St. 1977. c. 780 means to annul or to adversely affect the retention of land for agricultural use in perpetuity and the preservation of the natural agricultural resources of the Commonwealth as set forth in M.G.L. c. 20, § 23, subject, however, to the provisions of 330 CMR 22.12.

Department means Massachusetts department of Agricultural Resources.

Equine Operation means an agricultural activity designed for and limited to the specific purpose of breeding or raising horses, or for the purpose of selling horses or a product derived from them in the regular course of business as defined in M. G.L. c. 61 A, § 1.

Fair Market Agricultural Business Value (FMABV) means, except as otherwise provided in an APR Restriction, a COA, or a Special Permit, value based upon the current potential agricultural operation, including, but not limited to, the following factors: agricultural buildings, infrastructure, goodwill, marketing capacity, management, income generation, and liabilities. Assets and land not under an APR Restriction that are integral to the Farm Enterprise shall be included in the value. Note: such value is not applicable at the time of the original acquisition of the APR Restriction.

Fair Market Agricultural Land Value (FMALY) means, except as otherwise provided in an APR Restriction, a COA, or a Special Permit, value based upon the highest and best use of the land for agricultural purposes. The FMAL V may rise and fall commensurate with market conditions, inflation, or other valuation factors.

Fair Market Agricultural Value (FMAV) means, except as otherwise provided in an APR Restriction, a COA, or a Special Permit, the combined total of the following components of an APR Parcel, as applicable: Fair Market Agricultural Land Value; Fair Market Agricultural Business Value; and fair market agricultural dwelling value.

Fair Market Value (FMV) means the most probable price that a parcel would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus.

Farm Enterprise means a combined farming operation conducted on an APR Parcel and associated un-restricted parcel(s) under the same ownership and control.

Farm Stand means an agricultural facility for the sale of agricultural products not inconsistent with M.G.L c. 40A, § 3.

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Final Vote means a vote of the ALPC approving or rejecting a Project that prior thereto had received a Vote of Interest.

Housing for Farm Enterprise Employees means a structure, whether new construction or conversion of an existing structure, for use only by agricultural employees of the APR Parcel Owner and the Owner's immediate family or other legal dependants which may be occupied for a period of time, the length of which is in part dependent upon the agricultural operation. Employee status shall be irrespective of ownership interest in the APR Parcel.

Impervious Surface means any surface that restricts or prevents water penetration into the ground.

Municipality means the city or town in which a Project is located.

On-farm Energy Generation means energy generation intended and actually used for consumption by the agricultural operation. Energy generation shall be designed to meet the total actual yearly energy needs of the agricultural operation. Excess energy may be delivered to the energy market for sale or credit to be utilized at another time or location for the purposes of the agricultural operation or for such other purposes as may be authorized by law or regulation and consistent with the goals of the APR Program.

Owner means APR Parcel owner.

Program means the Agricultural Preservation Restriction Program.

Project means an area of land for which an Application for an APR has been submitted.

Special Permit (SP) means a Departmental approval in the form of a certificate in recordable form that allows a non-agricultural activity or use on an APR Parcel, subject to all requirements and conditions in the applicable APR Restriction, to all provisions of M.G.L. c. 20, § 23, and to any special conditions contained in the Special Permit.

Structure means a combination of materials assembled at a fixed location to give support or shelter, except as to such combinations that have little or no impact on the soil. Structure may be understood in the following contexts:

Excluded Structure means a structure located on land of an Applicant that is excluded from a Project at the time of closing an APR

Existing Structure means a structure located on an APR Parcel at time of closing an APR that is not excluded from an APR Parcel.

New Structure means a structure proposed to be located on an APR Parcel, construction of which may be allowed by the Agricultural Lands Preservation Committee by grant of a COA.

Permanent Structure means a structure requiring grading or excavation of soil for a footing or foundation.

Temporary Structure means a structure having no footing or foundation.

Vote of Interest means a vote by the Committee indicating an interest in obtaining an APR on a parcel of land and recommending an appraisal for the value of a Project, subject to available funding.

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22.03: Composition and Meetings of the Committee

(1) The composition and meetings of the Committee shall be as defined by M.G.L. c. 20, § 24. As of December 25, 2009, the members of the Committee shall consist of the Commissioner of Agricultural Resources, who shall be Chairman, the Secretary of Environmental Affairs, the Director of Housing and Community Development, the Director of the Office of State Planning, the Chairman of the Board of Agricultural Resources, or their respective designees, and four members appointed by the Governor, who shall be owners or operators of farms within the Commonwealth, the Dean of the College of Food and Natural Resources of the University of Massachusetts, and the State Conservationist of the United States Department of Agriculture Soil Conservation Service, or their respective designees. The Dean and the State Conservationist shall serve as non-voting members.

(2) The Committee shall meet at the call of the Chairman, but not less frequently than quarterly.

(3) The Chairman shall call a meeting at the written request of any five owners of APR Parcels. If such a request is made, the Committee shall hold such a meeting within 60 days after such request is received. The Committee shall give notice of the meeting in the usual and prescribed manner and form, stating the date, time, and place of the meeting, and shall, not less than 14 days before the meeting, send a copy of the notice to owners making the request.

(4) A Quorum shall consist of five voting members.

22.04: Eligibility Requirements

In order to be eligible for Application to the Program, the land proposed for the APR shall be actively devoted to agriculture or horticulture as defined in M.G.L. c. 61A, §§ 1 through 5.

22.05: Application Procedures

(1) Application to Department. Application to the Program shall be made on a form prescribed by the Department and approved by the ALPC. An Application shall be submitted by the landowner or his designee to the Commissioner and a copy shall also be submitted to the Chief Executive Officer of the municipality in which the Project is located. If the Project is located in more than one municipality, a single application covering the entire Project shall suffice, copies of which shall be submitted by the Applicant to the Chief Executive Officer of each municipality. The Chief Executive Officer shall forthwith distribute a copy of the application to the agencies and officials identified in 330 CMR 22.05(4)(a). Applications shall be signed by the landowner or, in the case of a third party application, the third party shall provide to the Department the Owner's written consent and approval.

(2) Project Information and Description. A Project shall be adequately identified by deed references, assessor's map, and parcel numbers. In addition, the following information shall be completed on or included with the Application:

(a) A delineation of the Project boundaries as depicted on a United States Geological Survey (U.S.G.S.) Topographic Map showing the land proposed for APR as well as any excluded contiguous acreage under the same ownership. The Application should also include any existing surveys and aerial photography of the Project;

(b) A United States Department of Agriculture (USDA) Natural Resources Conservation Services (NRCS) Soils Map showing a breakdown of the Project's various soil types and acreage possessing soil capability Class I through VIII as well as prime farmland, soils of state or local significance, and unique soils;

(c) A full description of all commercial agricultural uses and activities including, without limitation, type of crop, acreage devoted to each crop, type and quantity of livestock, and acreage of associated pasture for each of the following:

1. Project;
2. Land leased out to others; and

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3. Land leased from others;

(d) written statement satisfactory to the Department describing short and long term plans for keeping the land in productive agricultural use and;

(e) Statements by Applicant setting forth:

1. Applicant's good faith intent not to actively market, sell or commit to sell the land included in the Application within a period of 120 days from the date of the Vote of Interest;
2. Applicant's consent to allow the Department or an agent of the Department to conduct an inspection of the project, including soil testing limited to agricultural and septic suitability;
3. Any and all liens, encumbrances, and easements on Applicant's land to be included in the Project;
4. Any other information deemed relevant to the project by the Department and the Applicant.

(3) Disclosure. If the Municipality is to provide funds or other assistance as set forth in M.G.L. c. 20, § 23, toward the purchase of the Restriction, or if otherwise required by the Public Records Law, the Department may be required to disclose information provided to the Department.

(4) Municipality Requirements. Within 60 days of receipt of an Application submitted in accordance with 330 CMR 22.05(1), the Chief Executive Officer of the Municipality shall provide the following information to the Department with a copy to Applicant. Failure of a Municipality to supply such additional information shall not be construed as preventing Committee consideration of such Project:

- (a) Comments or recommendations from, but not limited to, the following agencies and officials as may be appropriate: Agricultural Commission, Conservation Commission, Planning Board, the Chief Executive Officer, and Chief Administrative Officer. The comments may include the compatibility of the Project with zoning by-laws, open space plans, natural resource inventories, and other relevant considerations; and
- (b) A statement signed by the Chief Executive Officer of the Municipality expressing the interest of the Municipality or lack thereof in providing funds or other assistance if the Project is approved by the Department.

22.06: APR Application Processing and Closing Procedures

(1) Within 120 days of receipt of a complete Application for a Project meeting eligibility requirements, the Department shall complete an evaluation.

(2) The Department may arrange for any of the following, as applicable.

- (a) A field inspection of the land and an evaluation of its agricultural potential.
- (b) Referral of the Project to the appropriate Regional Planning Agency for an opinion of the Project's compatibility with regional planning objectives; and
- (c) Review of the Application and information contained therein as to the suitability for agricultural preservation.

(3) In the event that additional information is needed, the Department and the Applicant may, in writing, jointly agree to extend the 120-day time period specifying in detail the additional information needed to evaluate the project. If the Applicant supplies the specific additional information, the Department, within 60 days of receipt of such information, shall complete its evaluation and shall then prepare a recommendation for the Committee.

(4) Upon the completion of the evaluation and recommendation, the Department shall either: (a) Place the Project on the agenda of the next available ALPC meeting for consideration, if it determines that the Project continues to meet all Program eligibility requirements; or (b) Notify the Applicant in writing within 21 days of such determination that the Project fails to meet Program eligibility requirements. If the Applicant is notified that the Project fails to meet Program eligibility requirements, Applicant, within 21 days of the notice of such determination, shall have the right to petition the Commissioner in writing. The decision of the Commissioner shall be final, except as otherwise provided in law. A hearing on the petition shall be at the discretion of the Commissioner.

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- (5) The ALPC shall consider the Project at its next available meeting and may, after consideration:
 - (a) Cast a Vote of Interest;
 - (b) Cast a Vote of No interest; or
 - (c) Take any other just and appropriate action consistent with the goals and purposes of the APR Program, together with an explanation of its reasons therefor.

- (6) Following the ALPC action, the Department shall proceed as follows:
 - (a) It shall notify Applicant in writing within 30 days of the ALPC action;
 - (b) If the Applicant is dissatisfied with the action of the Committee, the Applicant may, within 30 days of receipt of notice, request in writing a meeting with the Committee. After due notice to all parties concerned, the Committee shall hold a meeting within 120 days of its receipt of request and shall reconsider the Project in the light of such relevant and supplementary information as may be presented to it;
 - (c) After a Vote of Interest, and subject to funding, a full appraisal shall be carried out for both the Full Fair Market Value of the Project and the Fair Market Agricultural Land Value of the Project to determine the APR Value in accordance with recognized professional appraisal standards and the applicable Executive Office of Energy and Environmental Affairs (EOEEA) appraisal specifications; and
 - (d) After a Vote of Interest, appraiser(s) may be authorized to engage an engineer or another qualified individual to perform additional work in order to provide additional necessary information.

- (7) The amount paid for the APR shall be the sum of the amount paid by the Commonwealth, plus any additional consideration such as local contributions, third party contributions, bargain sales, and retained rights.

- (8) Upon the parties reaching a mutually acceptable amount to be paid for the Project, the Department shall place the Project on the agenda of the next available ALPC meeting with its recommendation for a Final Vote to purchase an APR Restriction, subject to funding.

- (9) Upon approval and acceptance of a Project by Final Vote of the ALPC, the Department, at its own expense, shall arrange for an attorney duly licensed and in good standing to practice law in the Commonwealth of Massachusetts with expertise in the practice of real estate conveyance and land use law who complies with all current EEA and Department standards, rules, and policies. The attorney, in collaboration with Department staff, shall prepare all legal instruments required for a closing on the Project, including without limitation, a purchase and sale agreement. The attorney shall complete a title search of the Project, provide to the Department a certificate of clear and marketable record title acceptable to the Department prior to closing and attend to the proper execution and recording of all legal instruments.

- (10) Upon an affirmative Final Vote of the ALPC, the Applicant shall be responsible for the following activities, unless otherwise agreed in writing by the Department and the Applicant:
 - (a) Clearing all title defects and encumbrances identified by the Department, at the Applicant's expense, and preparing a metes and bounds description of the APR Parcel and any excluded parcels based upon the survey required in 330 CMR 22.06(10)(b). The Applicant shall certify that the boundary description of the APR Parcel, the survey, and any excluded parcels, have been examined and have been found to be free of error. Moreover, the recording of the APR with the aforesaid description will be conclusive as to the non-existence of any other excluded parcel or parcels, and shall serve as a waiver of any claim to exclusion other than as stated in the APR document. The property description shall be suitable for recording in the Registry of Deeds or Land Court (hereinafter both the "Registry of Deeds"); and
 - (b) Preparing a survey plan of the APR parcel satisfactory to the Department and suitable for recording in the Registry of Deeds, such plan also showing any excluded parcel if not separately deeded. The Department may at its sole discretion cover up to 50% of the cost of the survey plan preparation. The cost of recording the survey plan shall be borne by the Applicant. The Applicant shall also be responsible for acquiring, where necessary, approval from the local planning board.

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(11) Upon completion of all actions described above, including preparation of all legal instruments and the securing of all necessary funding for the transaction, the Department will schedule a closing on the Project at or prior to which all legal instruments and documents shall be executed and final arrangements for payment of funds, adjustments, and recording of documents shall be made.

(12) Upon recording of the APR Restriction, and subject to available funding, the Department shall engage an independent contractor to prepare a baseline report that will document existing conditions and uses of the APR Parcel. A copy of the report will be provided to the Owner, for verification that the baseline accurately reflects the activities and conditions on the APR parcel.

22.07: Criteria Applicable in Evaluation of Projects

(1) In evaluating a project, the Committee shall consider the following as priority criteria to best fulfill the purposes of St. 1977, c. 780:

- (a) The degree to which the Project would serve to preserve and enhance the agricultural resource base of the Commonwealth of Massachusetts;
- (b) The suitability of land as to soil classification and other criteria for agricultural use; and
- (c) The Fair Market Value of such land and the Fair Market Value of such land when used for agricultural purposes as determined by independent appraisals.

(2) In addition, the Committee may consider additional criteria, including the following:

- (a) Contribution of the project in the development of a continuing program of acquiring multiple APRs within a defined geographical area or areas; and
- (b) Degree to which a Municipality where a Project is located is prepared to provide assistance to the Commonwealth for purchase of an APR by providing funds, legal, and enforcement services or other assistance satisfactory to the Committee, pursuant to M.G.L. c. 20, § 23.
- (c) Opportunities for individual and family farm ownership and for employment through farm related processing, storage, transportation, and marketing of farm products.
- (d) Degree of threat from any cause to the continuation of agriculture on the Project.

22.08: APR Restriction

An APR Restriction shall serve to memorialize the intent of an Owner and the Commonwealth as to the future use of an APR Parcel.

(1) Form and Content. The Commissioner shall be responsible for establishing the form and content of each APR Restriction.

(2) Terms and Conditions. An APR Restriction shall include such terms and conditions as are applicable under the provisions of St. 1977, c. 780 and Massachusetts law and necessary to implement the provisions of St. 1977, c. 780 and Program. Specifically, such terms and conditions may include, without limitation, statement of purpose, ownership rights, prohibited uses and acts, uses and acts requiring Department approval, processes and procedures, affirmative duty to farm, inspection and enforcement rights, and option to purchase at agricultural value.

(3) Statutory Impact. All APR Restrictions are established pursuant to provisions of St. 1977, c. 780 and Massachusetts law, which provisions are incorporated as part of all contracts, unless expressly provided otherwise by agreement of the Department and the Applicant.

(4) Nature of APR Restriction. The APR Restriction is a binding agreement between an owner of an APR Parcel and the Commonwealth, exists in perpetuity, runs with the land, binds all future owners of the APR Parcel, and shall be recorded at the appropriate Registry of Deeds. Any inconsistency between the language of an APR Restriction and the language of a policy or regulation shall be resolved in favor of the APR Restriction.

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22.09: Department Approvals

In accordance with the APR Restriction, certain activities, uses, and improvements may be subject to departmental approval. Such approvals shall be subject to a process that may lead to issuance of a Certificate of Approval (COA) or Special Permit by the Department, with or without conditions, pursuant to the following:

(1) Certificate of Approval. While Regular Farming Maintenance and Practices (plowing, planting, spraying, harvesting, and other such generally accepted practices) are generally allowed by right in the APR Restriction, approvals may be required for new agricultural structures, activities, practices, uses, and improvements that significantly impact the agricultural resource protected by the APR as determined by the Department (COA Required Activities/COA Activities). The Department may, by a COA, authorize COA Required Activities that the Department finds to be compatible with the APR Program. A COA shall be subject to the following procedures:

(2) COA Required. Improvements that serve to enhance the agricultural productivity of the APR Parcel consistent with M.G.L. c. 61A, §§ I and 2, may be subject to a COA with or without conditions, but are generally allowed by right.

(a) Unless otherwise provided, a COA shall be subject, at a minimum, to the following thresholds:

1. The activity will not result in the APR Parcel having Impervious Surfaces greater than five acres or 5% of the Parcel, whichever is less; and
2. The activity will minimize, to the fullest extent possible, the loss of quality agricultural soils; and
3. The activity will not interfere with or lead to the likelihood of future interference with agricultural operations and will preserve, maximize, and realize the agricultural potential of the parcel, and in addition will enhance or lead to the likelihood of enhancing future agricultural operations.

(b) Actions requiring a COA may include:

1. Construction of a Farm Stand;
2. Construction of Housing for Agricultural Employees, provided that the need for such housing was not created by the conversion of suitable existing housing structures or other existing structures to non-agricultural uses on the APR Parcel;
3. Construction of Residential Dwellings. The construction of a dwelling to be used for family living by the land owner and the land owner's family wherever such construction is not expressly allowed in the APR Restriction;
4. Construction for On-farm Energy Generation that shall comply with the then applicable Department policies;
5. Construction of Other Structures. Agricultural structures that are customarily used for normal generally accepted farming practices or farming maintenance;
6. Equine Operation. As defined in 330 CMR 22.02, an equine operation is considered to be agricultural or horticultural use of an APR Parcel, as defined in M. G.L. c. 61A, § § 1 and 2;
7. A proposed equine operation maintaining horses or other equine animals on a commercial basis for a primary purpose other than breeding or raising. This is considered a non-agricultural activity and is allowed on an APR Parcel as follows:
 - a. All equine facilities and infrastructure for a primary purpose other than breeding or raising are maintained on an excluded parcel, and the APR Parcel is used primarily for agricultural or horticultural use, which may include pasture feed production for equine or other farm animals, as defined by M.G.L.c. 61A, §§I and 2, as amended, and such APR is managed in accordance with a conservation farm plan approved by NRCS; or

b. All equine facilities and infrastructure maintained on the APR Parcel for the primary purpose other than breeding or raising must exist within the footprint of pre-existing structures and shall require a Special Permit as described in 330 CMR 22.09(2), instead of a COA. A Special Permit approved by the ALPC for equine facilities and infrastructure maintained on the APR Parcel shall ensure that the APR Parcel is used primarily for agricultural or horticultural uses, which may include pasture feed production for equine and other farm animals as defined in M.G.L. c. 61A, §§1 and 2, and which is managed in accordance with a conservation farm plan approved by NRCS, subject to any additional conditions as determined by the ALPC.

8. Soil Removal. The removal of soil in excess of normal harvesting of an agricultural crop unless conducted in accordance with best management practices developed by the relevant agricultural industry and approved by the Department.

9. Subdivisions. The division of an existing APR Parcel into two or more separate APR Parcels. A Subdivision allows for separate ownership and operation of the subdivided parcels only if that arrangement is in the best interests of the ongoing agricultural viability of the separated parcels. When considering a subdivision application, the size of a parcel of farmland can, in some cases, determine its future agricultural viability. Considerations such as the quality of a parcel's soils, ability to support existing and potential agricultural enterprises, and the strength and nature of an area's agricultural industry, factor into determining the agricultural viability of an APR Parcel, and the ALPC must find compliance with the requirements of all of the following subsections:

a. The subdivision results in the creation of separate APR Parcels that are independently economically viable for agriculture or facilitates the sale of an APR Parcel to a commercial farmer as an "add-on" (i.e. a parcel that is not economically viable in and of itself, but becomes viable if attached to another APR Parcel) to another APR protected farm.

b. The Owners of the resulting separate APR Parcels have agreed to amended and updated APRs, which shall include, at a minimum, provisions that:

- i. Limit or prohibit future construction of structures, including dwellings;
- ii. Provide an option to acquire at agricultural value;
- iii. Provide an affirmative covenant to farm; and
- iv. Provide other mutually agreed upon restrictions for ensuring the future viability of the APR Parcels.

c. In the case of an "add-on" approval that ties the smaller parcel to the other APR Parcel, the Owner has agreed to update the APR Restriction to permanently unify the parcels.

d.) The subdivision will facilitate the sale or transfer in ownership of APR protected land to a person who has provided to the Department a suitable plan for active agricultural production thereon.

e. An approval for subdivision may be granted only to the Owner of the APR Parcel and is valid only with respect to a specific request. The subdivision shall be implemented within one year from the date of approval or said approval shall become null and void. In order to determine the extent to which a request for subdivision satisfies the above considerations, the Owner must provide the ALPC with the following information in writing:

- i. The names and addresses of the proposed owners of each parcel to be created by the subdivision;
- ii. The intended uses of each parcel to be created, including a five year business plan for each parcel; and
- iii. A Natural Resource Conservation Service farm conservation plan for each parcel, including a schedule for implementation.

(3) Procedures for a COA:

(a) Application. An Owner shall submit to the Department an Application, signed by the Owner on a form prescribed by the Commissioner describing all proposed APR Parcel Activities.

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(b) Review and Recommendation. Within 90 days of receipt of a completed Application, the Department shall review the Application, inspect the APR Parcel, and prepare a recommendation to approve or reject the Application.

(c) ALPC Consideration. Upon completion of a recommendation, the Department shall place the Application on the agenda for the next available ALPC meeting, and the applicant shall be so notified of the ALPC action. In extraordinary or emergency circumstances, the Commissioner may consider, and, if appropriate, take action, granting the Application for APR Parcel activities without ALPC consideration.

(d) Notice of Action. Within 21 days of the ALPC meeting at which an Application is acted upon, or within 21 days of the Commissioner's action, the Department shall notify the Applicant in writing of the action taken on the Application (Notice of Action).

(e) Certificate of Approval. If an Application is approved, the Department shall, within 45 days of Notice of Action, issue a COA in recordable form. A Certificate of Approval may require an Owner to post a bond or other security, satisfactory to the Department, for completion of the activities required by the COA. A COA may be transferable to a subsequent owner of the APR Parcel with approval of the Department

(4) APR Parcel Owner Responsibilities. The COA shall set forth the following certain time specific obligations.

(a) Registry Recording. The Owner shall, within 21 days of the receipt of the COA, record it with the appropriate Registry of Deeds at his or her own expense and provide the Department with a copy of the recorded document. If the COA is not recorded within a period of 21 days, unless the period is extended at the request of the Owner and approved by the Department, the COA shall be null and void.

(b) Performance of the COA Activities. Owner shall commence the approved COA Activities within one year of recording of the COA. As to a COA approving construction or excavation (Construction), the Owner must, in addition, complete the approved Construction within two years of the recording date.

(c) Interruption of the COA Activities. If unforeseen circumstances or other factors prevent the Owner from complying with the provisions of the COA, the Owner shall immediately notify the Department in writing and immediately cease all further work or activity.

(d) Non-conforming work. If the performance of the COA Activities fails to conform to the COA, the Owner shall, upon request of and at the sole discretion of the Department, take action as necessary to end the non-conformance, including, but not limited to, bringing the activity into compliance with the COA, putting the APR Parcel back into its prior condition, removing any structure, or ceasing work immediately.

(e) Notice of Completion of the COA Activities. The Owner shall, within 30 days of the completion of the COA Required Activities, notify the Department in writing (Notice of Completion).

(5) Department Responsibilities. Upon satisfactory completion of the COA Required Activities and receipt of Notice of Completion, the Department shall perform the following:

(a) Inspection of the COA Activities. The Department shall, within 60 days of receipt of the Notice of Completion from Owner, inspect the completed COA Activities to determine compliance with the COA;

(b) Certificate of Completion (COC). The Department shall within 30 days of its inspection, if the COA Activities conform to the COA, issue a COC and provide a copy to the Owner; and

(c) Registry Recording. The Department shall, within 30 days of issuance of a COC, record it at the appropriate Registry of Deeds at the Department's expense and shall provide the Owner with a copy of the recorded document.

(6) Special Permit. A Special Permit is a Departmental approval that permits a certain commercial non-agricultural activity or use that is minor in comparison to the currently existing agricultural use on the APR Parcel. All applicable provisions of M.G.L. c. 20, § 23(b), and of other applicable statutes, unless otherwise provided by the applicable APR Restriction, shall govern an Owner who seeks a Special Permit. All conditions of the Special Permit terminate at the expiration of the Special Permit, except as otherwise provided. In connection with the Special Permit, the following specific provisions are applicable:

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- (a) An Application for Special Permit shall be allowed only after consideration and favorable action by the ALPC at a public meeting allowing for public input, including that of the applicant, except as otherwise provided in 330 CMR 22.09;
- (b) New structures or construction activities shall not be allowed under a Special Permit; (c) An Owner who is granted a Special Permit shall commence Special Permit activity within one year of issuance of a Special Permit; and
- (d) A Special Permit shall have a maximum term of five years and may be extended only at the request of the Owner and with the approval of the Department.

(7) Procedures for a Special Permit.

- (a) Application. For all APR Parcel activities on an APR Parcel requiring a Special Permit, an Owner shall sign and submit to the Department an Application, on a form prescribed by the Commissioner, describing all proposed non-agricultural activities.
- (b) Review and Recommendation. Within 90 days of receipt of a completed Application, the Department shall review the Application, inspect the APR Parcel, and prepare a recommendation to approve or reject the Application.
- (c) ALPC Consideration. Upon completion of a staff recommendation, the Department shall place the Application on the agenda for the next available ALPC meeting, and the applicant shall be notified of the ALPC's action. In extraordinary or emergency circumstances, the Commissioner may consider, and, if appropriate, take action granting the Application for non-agricultural activities on an APR Parcel without ALPC action.
- (d) Notice of Action. Within 21 days of final ALPC action at which an Application is acted upon, or within 21 days of the Commissioner's action, the Department shall notify the Applicant in writing of the action taken on the Application.
- (e) Issuance of Special Permit. If an Application is approved, the Department shall, within 45 days of Notice of Action, issue a Special Permit in recordable form. A Special Permit may require an APR Parcel owner to post a bond or other security satisfactory to the Department for completion of the activities required.

(8) APR Parcel Owner Responsibilities. The Special Permit shall set forth the following certain time specific obligations to be met by the Owner:

- (a) Registry Recording. The Owner shall, within 21 days of the receipt of the Special Permit, record it with the appropriate Registry of Deeds at Owners own expense and provide the Department with a copy of the recorded document. In the event that the Special Permit is not recorded within a period of 21 days, unless the period is extended at the request of the Owner and approved by the Department, the Special Permit shall be null and void.
- (b) Unforeseen Circumstances. If unforeseen circumstances or other factors prevent the Owner from complying with the terms of the Special Permit, the Owner shall immediately notify the Department in writing.
- (c) Non-conformity with Special Permit. If the Owner fails to comply with the terms of the Special Permit, upon request of and at the sole discretion of the Department, the Owner shall take such remedial action as prescribed by the Department to end the non-conformity, including, but not limited to, bringing the activity into compliance with the Special Permit, and returning the APR Parcel to its prior condition.

(9) Other Department Rights. At any time during the initial or extended term the Department may, in its discretion, conduct an inspection to ascertain compliance with the Special Permit.

22.10: Notification

Where the APR Restriction provides for a right of first refusal, an option to purchase at agricultural value, or a similar right at the time of sale held by the Department, the following provisions shall apply:

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(1) Proposed Sale or Conveyance of an APR Parcel. If an APR Parcel is subject to a Right of First Refusal or Option to Purchase at Fair Market Agricultural Value (Option), and the Owner receives an offer to purchase, the Owner shall notify the Department in writing. The written notice shall include copies of the following: the offer to purchase; purchase and sale agreement and amendments; any appraisal prepared for proposed sale, and any appraisal prepared for sale at which Owner acquired the APR Parcel; other relevant documents pertaining to the proposed sale. Notice shall also include a letter from Owner requesting a waiver, and in the case of an Option, an offer to sell the APR Parcel to the Commonwealth pursuant to the terms of the Option. A summary of buyer's agricultural experience and farm plan for immediate and future agricultural use of the APR Parcel shall also be included.

(2) Proposed Sale or Conveyance of Excluded Land. In the event that the proposed sale or conveyance contains agricultural or other land, with or without structures located thereon not subject to the APR Restriction (for example, land that is part of a Farm Enterprise), Owner shall also provide a written apportionment of values in the Purchase and Sales Agreement as between the APR Parcel and the land/structures not subject to the APR Restriction.

(3) Form of Notice. Notice to the Department shall be in writing and sent by certified mail, return receipt requested, or hand delivered to the Department's main office at 251 Causeway Street, Suite 500, Boston, MA 02114.

22.11: APR Parcel Violations

The Department shall monitor the APR Restriction. The Department shall work with the Owner for a resolution of any identified violations.

(1) Determination of Violation. If the Department has reason to believe a violation has occurred, it shall determine the extent of any violation. The Department shall meet with the Owner to determine if a violation has occurred.

(2) Response. If the Department finds that a violation has occurred, it shall give prompt written notice to the Owner.

(a) Within 60 days of receipt of the written notice, the Owner shall provide a written response including proposals to correct the violation.

(b) If the proposed plan is approved by the Department, the Owner shall have 60 days to implement the plan and shall give progress reports as directed by the Department.

A site inspection or inspections to confirm the satisfactory implementation of the plan will be completed by Department staff within 30 days of the initial progress report. If the violation is corrected to the satisfaction of the Department, a written acknowledgement will be issued by the Department within 30 days to the Owner.

(3) Violation Resolution. If the Department and the Owner cannot reach a satisfactory resolution of the violation, the Department shall pursue resolution through all available legal means in accordance with the General Laws and the APR Restriction.

22.12: Release of an Agricultural Preservation Restriction

(1) Where the Commissioner has determined there to be extraordinary circumstances, and where the release clearly yields a substantial benefit to the agricultural resources of the Commonwealth, an APR may be released in whole or in part but only in accordance with M. G.L. c. 184, § 32, Article 97 of the Articles of Amendment to the Constitution of the Commonwealth, and the Land Disposition Policy of the Executive Office of Energy and Environmental Affairs and applicable "no net loss policies" of the Department.

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(2) The release shall be approved only where the Commissioner finds that the land to be released is DO longer suitable for agriculture or horticulture.

In making this determination the present use, nature, quality, and other attributes of the agricultural land proposed for release, including soil quality ,land value, adaptability and fitness for other uses, and the nature, scope, and importance of any probable beneficial effect on the public good resulting from the release including, without limitation, the nature and adequacy of the consideration proposed by the Owner in exchange for the release.

(3) The Owner shall file with the Department a written request for the release together with a full disclosure of all information relative to the anticipated uses of the land to be released. The request shall be on a form prescribed by the Department and shall include a detailed statement of the consideration that the Owner proposes in exchange for the release.

(4) Prior to a release, the Commissioner shall determine:

- (a) the current market value of the interest of the Commonwealth to be released, which shall take into account any increase in value of the enlarged unrestricted land, owned or controlled by the Owner resulting from the addition of the parcel released, whether or not contiguous to the parcel; and
- (b) any diminution in the value of the remaining APR Parcel.

(5) To satisfy the then applicable Land Disposition Policy of the Executive Office of Energy and Environmental Affairs and applicable "no net loss policies" of the Department, the Owner shall provide, on terms satisfactory to the Commissioner, an A PR on unrestricted land determined by the Commissioner to be:

- (a) of equal or greater area and
- (b) of equal or greater agricultural quality, including soil and other agricultural attributes, meeting all APR Program requirements and
- (c) of equal or greater value to the total value of 330 CMR 22.12(4).

At the sole discretion of the Commissioner, in the event that 330 CMR 22.12(5)(c) cannot be met, a payment making up the difference in value may be made to the Department's Environmental Trust Fund or any other fund or party as directed by the Commissioner.

(6) The Commissioner may require, at the sole expense of the Owner, work to be performed including, but not limited to, engineering, surveys, appraisals, title services, and document preparation related to the transaction.

(7) Prior to a release, a 2f3 vote of both houses of the General Court shall be required in accordance with M.G.L. c. 184, § 32, and the approval of any Co-holder.

22.13: Policies and Manuals

The Department and the Executive Office of Energy and Environmental Affairs have established guidelines, policies, and procedures in addition to the APR Restriction documents that are periodically updated and that provide further guidance for Owners. Any inconsistency between the language of an APR Restriction and the language of a policy or regulation shall be resolved in favor of the APR Restriction. The Department shall provide copies thereof to any Owner upon request and post on its website all APR Regulations and Department Policy documents. The ALPC may advise and make a recommendation to the Department for policy development or changes. The ALPC meeting is open to the public and is a forum for the public to comment on proposed changes to policy; however, it shall be the sole discretion of the Commissioner to establish and implement Policy.

REGULATORY AUTHORITY

330 CMR 22.00: M.G.L. c. 184, §§ 31 through 33; M.G.L. c. 20, §§ 23 through 26; M.G.L. c. 61A, §§ 1 through 5; M.G.L. c. 40A, § 3.