

1 330 CMR 22.00 AGRICULTURAL PRESERVATION RESTRICTION PROGRAM

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17 22.01: Scope and Purpose

18 The scope of 330 CMR 22.00 is to implement the terms of Massachusetts General Laws (“M.G.L.”)
19 c. 20, §§ 23 through 26, and c. 184, §§ 31 and 32. The purpose of 330 CMR 22:00 is to provide
20 guidance and clarification for present and future APR Parcel Owners regarding their responsibilities
21 and the Department’s responsibilities under the Act, in conjunction with the direction and guidance
22 provided in Department policy statements, guidelines, and other informational sources referenced in
23 Section 22.13; to encourage sound soil management practices in accordance with normally accepted
24 agricultural practices; and to regulate activities and uses that may be detrimental to the retention of
25 the land for agricultural use in perpetuity. These regulations shall be retroactive in effect.

26 22.02: Definitions

27 As used in 330 CMR 22.00:

28 Act means Chapter 780 of the Acts of 1977, as amended.

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

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

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

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

41 Agri-Entertainment means entertainment, such as a seasonal event, festival, contest, party,

1 or other time-specific event designed specifically to bring the public to a Farm Enterprise
2 for a farm-related educational experience by displaying a combination of the farm setting
3 and products of agricultural operations with the ultimate goal to encourage the purchase of
4 agricultural products. Agri-entertainment is designed to enhance the agricultural viability of
5 the farm operations.

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

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

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

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

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

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

22 Commissioner means the Commissioner of Agricultural Resources or designee.

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

27 Department means Massachusetts Department of Agricultural Resources.

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

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

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

39 Fair Market Agricultural Business Value (“FMABV”) means, except as otherwise provided
40 in an APR Restriction, a COA, or a Special Permit, value based upon the current potential
41 agricultural operation, including, but not limited to, the following factors: agricultural

1 buildings, infrastructure, goodwill, marketing capacity, management, income generation,
2 and liabilities. Assets and land not under an APR Restriction that are integral to the Farm
3 Enterprise shall be included in the value. Note: such value is not applicable at the time of
4 the original acquisition of the APR Restriction.

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

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

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

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

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

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

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

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

29 Owner means APR Parcel Owner.

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

31 Program means the Agricultural Preservation Restriction Program.

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

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

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

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

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

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

8 Temporary Structure means a structure having no footing or foundation.

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

12 22.03: Composition and Meetings of The Committee

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

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

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

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

33 22.04: Eligibility Requirements

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

36 22.05: Application Procedures

37 (1) Application to Department. Application to the Program shall be made on a form prescribed by
38 the Department and approved by the ALPC. An Application shall be submitted by the
39 landowner or his designee to the Commissioner and a copy shall also be submitted to the
40 Chief Executive Officer of the municipality in which the Project is located. If the Project is
41 located in more than one municipality, a single application covering the entire Project shall

1 suffice, copies of which shall be submitted by the Applicant to the Chief Executive Officer of
2 each municipality. The Chief Executive Officer shall forthwith distribute a copy of the
3 application to the agencies and officials identified in 310 CMR 22.05 (4) (a) below.

4 Applications shall be signed by the landowner or, in the case of a third party application, the
5 third party shall provide to the Department the Owner's written consent and approval.

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

- 9 (a.) A delineation of the Project boundaries as depicted on a United States
10 Geological Survey ("U.S.G.S.") Topographic Map showing the land proposed for
11 APR as well as any excluded contiguous acreage under the same ownership. The
12 Application should also include any existing surveys and aerial photography of the
13 Project;
- 14 (b.) A United States Department of Agriculture ("USDA") Natural Resources
15 Conservation Services ("NRCS") Soils Map showing a breakdown of the
16 Project's various soil types and acreage possessing soil capability Class I through
17 VIII as well as prime farmland, soils of state or local significance, and unique soils;
- 18 (c.) A full description of all commercial agricultural uses and activities including,
19 without limitation, type of crop, acreage devoted to each crop, type and quantity
20 of livestock, and acreage of associated pasture for each of the following:
- 21 1. Project;
 - 22 2. Land leased out to others; and
 - 23 3. Land leased from others;
- 24 (d.) A written statement satisfactory to the Department describing short and long term
25 plans for keeping the land in productive agricultural use and;
- 26 (e.) Statements by Applicant setting forth:
- 27 1. Applicant's good faith intent not to actively market, sell or commit to sell
28 the land included in the Application within a period of 120 days from the
29 date of the Vote of Interest;
 - 30 2. Applicant's consent to allow the Department or an agent of the Department to
31 conduct an inspection of the project, including soil testing limited to agricultural and
32 septic suitability;
 - 33 3. Any and all liens, encumbrances, and easements on Applicant's land to be
34 included in the Project;
 - 35 4. Any other information deemed relevant to the project by the Department and
36 the Applicant.

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

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

6 (a) Comments or recommendations from, but not limited to, the following agencies
7 and officials as may be appropriate: Agricultural Commission, Conservation
8 Commission, Planning Board, the Chief Executive Officer, and Chief
9 Administrative Officer. The comments may include the compatibility of the
10 Project with zoning by-laws, open space plans, natural resource inventories,
11 and other relevant considerations; and

12 (b) A statement signed by the Chief Executive Officer of the Municipality
13 expressing the interest of the Municipality or lack thereof in providing funds
14 or other assistance if the Project is approved by the Department.

15 22.06 APR: Application Processing and Closing Procedures

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

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

19 (a) A field inspection of the land and an evaluation of its agricultural potential.

20 (b) Referral of the Project to the appropriate Regional Planning Agency for an
21 opinion of the Project's compatibility with regional planning objectives; and

22 (c) Review of the Application and information contained therein as to the
23 suitability for agricultural preservation.

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

30 (4) Upon the completion of the evaluation and recommendation, the Department shall
31 either:

32 (a) Place the Project on the agenda of the next available ALPC meeting for
33 consideration, if it determines that the Project continues to meet all Program
34 eligibility requirements; or

35 (b) Notify the Applicant in writing within 21 days of such determination that the
36 Project fails to meet Program eligibility requirements. If the Applicant is
37 notified that the Project fails to meet Program eligibility requirements,
38 Applicant, within 21 days of the notice of such determination, shall have the
39 right to petition the Commissioner in writing. The decision of the
40 Commissioner shall be final, except as otherwise provided in law. A hearing
41 on the petition shall be at the discretion of the Commissioner.

- 1 (5) The ALPC shall consider the Project at its next available meeting and may, after
2 consideration:
- 3 (a) Cast a Vote of Interest;
- 4 (b) Cast a Vote of No interest; or
- 5 (c) Take any other just and appropriate action consistent with the goals and
6 purposes of the APR Program, together with an explanation of its reasons
7 therefor.
- 8 (6) Following the ALPC action, the Department shall proceed as follows:
- 9 (a) It shall notify Applicant in writing within 30 days of the ALPC action;
- 10 (b) If the Applicant is dissatisfied with the action of the Committee, the Applicant
11 may, within 30 days of receipt of notice, request in writing a meeting with the
12 Committee. After due notice to all parties concerned, the Committee shall hold a
13 meeting within 120 days of its receipt of request and shall reconsider the Project
14 in the light of such relevant and supplementary information as may be presented
15 to it;
- 16 (c) After a Vote of Interest, and subject to funding, a full appraisal shall be carried
17 out for both the Full Fair Market Value of the Project and the Fair Market
18 Agricultural Land Value of the Project to determine the APR Value in accordance
19 with recognized professional appraisal standards and the applicable Executive Office
20 of Energy and Environmental Affairs (“EOEEA”) appraisal specifications; and
- 21 (d) After a Vote of Interest, appraiser(s) may be authorized to engage an engineer
22 or another qualified individual to perform additional work in order to provide
23 additional necessary information.
- 24 (7) The amount paid for the APR shall be the sum of the amount paid by the Commonwealth,
25 plus any additional consideration such as local contributions, third party contributions,
26 bargain sales, and retained rights.
- 27 (8) Upon the parties reaching a mutually acceptable amount to be paid for the Project, the
28 Department shall place the Project on the agenda of the next available ALPC meeting
29 with its recommendation for a Final Vote to purchase an APR Restriction, subject to
30 funding.
- 31 (9) Upon approval and acceptance of a Project by Final Vote of the ALPC, the Department,
32 at its own expense, shall arrange for an attorney duly licensed and in good standing to
33 practice law in the Commonwealth of Massachusetts with expertise in the practice of
34 real estate conveyance and land use law who complies with all current EEA and
35 Department standards, rules, and policies. The attorney, in collaboration with
36 Department staff, shall prepare all legal instruments required for a closing on the
37 Project, including without limitation, a purchase and sale agreement. The attorney shall
38 complete a title search of the Project, provide to the Department a certificate of clear
39 and marketable record title acceptable to the Department prior to closing and attend to
40 the proper execution and recording of all legal instruments.
- 41 (10) Upon an affirmative Final Vote of the ALPC, the Applicant shall be responsible for the

1 following activities, unless otherwise agreed in writing by the Department and the
2 Applicant:

- 3 (a) Clearing all title defects and encumbrances identified by the Department, at the
4 Applicant's expense, and preparing a metes and bounds description of the APR Parcel
5 and any excluded parcels based upon the survey required in subsection (10)(b) below,
6 The Applicant shall certify that the boundary description of the APR Parcel, the
7 survey, and any excluded parcels, have been examined and have been found to be free
8 of error. Moreover, the recording of the APR with the aforesaid description will be
9 conclusive as to the non-existence of any other excluded parcel or parcels, and shall
10 serve as a waiver of any claim to exclusion other than as stated in the APR document.
11 The property description shall be suitable for recording in the Registry of Deeds or
12 Land Court (hereinafter both the "Registry of Deeds"); and
- 13 (b) Preparing a survey plan of the APR parcel satisfactory to the Department and suitable
14 for recording in the Registry of Deeds, such plan also showing any excluded parcel if
15 not separately deeded. The Department may at its sole discretion cover up to (50%) of
16 the cost of the survey plan preparation. The cost of recording the survey plan shall be
17 borne by the Applicant. The Applicant shall also be responsible for acquiring, where
18 necessary, approval from the local planning board.

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

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

28 22.07: Criteria Applicable in Evaluation of Projects

29 (1) In evaluating a project, the Committee shall consider the following as priority criteria to best
30 fulfill the purposes of the Act:

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

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

- 38 (a) Contribution of the project in the development of a continuing program of
39 acquiring multiple APRs within a defined geographical area or areas; and
- 40 (b) Degree to which a Municipality where a Project is located is prepared to provide

1 assistance to the Commonwealth for purchase of an APR by providing funds, legal,
2 and enforcement services or other assistance satisfactory to the Committee,
3 pursuant to M.G.L. c. 20 § 23.

4 (c) Opportunities for individual and family farm ownership and for employment through
5 farm related processing, storage, transportation, and marketing of farm products.

6 (d) Degree of threat from any cause to the continuation of agriculture on the Project.

7 22.08: APR Restriction

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

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

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

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

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

26 22.09: Department Approvals

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

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

39 (2) COA Required. Improvements that serve to enhance the agricultural productivity of the
40 APR Parcel consistent with M.G.L. c. 61A, §§ 1 and 2, may be subject to a COA with or
41 without conditions, but are generally allowed by right.

- 1 (a) Unless otherwise provided, a COA shall be subject, at a minimum, to the
2 following thresholds:
- 3 1. The activity will not result in the APR Parcel having Impervious
4 Surfaces greater than 5 acres or 5% of the Parcel, whichever is less;
5 and
 - 6 2. The activity will minimize, to the fullest extent possible, the loss of
7 quality agricultural soils; and
 - 8 3. The activity will not interfere with or lead to the likelihood of
9 future interference with agricultural operations and will preserve,
10 maximize, and realize the agricultural potential of the parcel, and in
11 addition will enhance or lead to the likelihood of enhancing future
12 agricultural operations.

13 (b) Actions requiring a COA may include:

- 14 1. Construction of a Farm Stand;
- 15 2. Construction of Housing for Agricultural Employees, provided that
16 the need for such housing was not created by the conversion of
17 suitable existing housing structures or other existing structures to
18 non-agricultural uses on the APR Parcel;
- 19 3. Construction of Residential Dwellings. The construction of a dwelling
20 to be used for family living by the land owner and the land owner's
21 family wherever such construction is not expressly allowed in the APR
22 Restriction;
- 23 4. Construction for On-Farm Energy Generation that shall comply with
24 the then applicable Department policies;
- 25 5. Construction of Other Structures. Agricultural structures that are
26 customarily used for normal generally accepted farming practices or
27 farming maintenance;
- 28 6. Equine Operation. As defined in 330 CMR 22.02, an equine
29 operation is considered to be agricultural or horticultural use of an
30 APR Parcel, as defined in M.G.L. c. 61A §1 and §2, as amended;
- 31 7. A proposed equine operation maintaining horses or other equine
32 animals on a commercial basis for a primary purpose other than
33 breeding or raising. This is considered a non-agricultural activity
34 and is allowed on an APR Parcel as follows:

- 35 (a) All equine facilities and infrastructure for a primary
36 purpose other than breeding or raising are maintained on
37 an excluded parcel, and the APR Parcel is used primarily
38 for agricultural or horticultural use, which may include
39 pasture feed production for equine or other farm animals,
40 as defined by M.G.L.c. 61A §§1 and 2, as amended, and
41 such APR is managed in accordance with a conservation

1 farm plan approved by NRCS; or

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

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

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

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

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

42 1. Limit or prohibit future construction of structures,
43 including dwellings;

2. Provide an option to acquire at agricultural value;
3. Provide an affirmative covenant to farm; and
4. 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:

1. The names and addresses of the proposed owners of each parcel to be created by the subdivision;
2. The intended uses of each parcel to be created, including a five year business plan for each parcel; and
3. 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.

(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

1 notify the Applicant in writing of the action taken on the Application (“Notice of
2 Action”).

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

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

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

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

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

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

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

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

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

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

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

4 (6) Special Permit. A Special Permit is a Departmental approval that permits a certain
5 commercial non-agricultural activity or use that is minor in comparison to the currently
6 existing agricultural use on the APR Parcel. All applicable provisions of M.G.L. c. 20 §
7 23(b), and of other applicable statutes, unless otherwise provided by the applicable APR
8 Restriction, shall govern an Owner who seeks a Special Permit. All conditions of the
9 Special Permit terminate at the expiration of the Special Permit, except as otherwise
10 provided therein. In connection with the Special Permit, the following specific
11 provisions are applicable:

12 (a) An Application for Special Permit shall be allowed only after consideration and
13 favorable action by the ALPC at a public meeting allowing for public input,
14 including that of the applicant, except as otherwise provided in section (E) (iii)
15 below;

16 (b) New structures or construction activities shall not be allowed under a Special
17 Permit;

18 (c) An Owner who is granted a Special Permit shall commence Special Permit
19 activity within one year of issuance of a Special Permit; and

20 (d) A Special Permit shall have a maximum term of five years and may be extended
21 only at the request of the Owner and with the approval of the Department.

22 (7) Procedures for a Special Permit.

23 (a) Application. For all APR Parcel activities on an APR Parcel requiring a Special
24 Permit, an Owner shall sign and submit to the Department an Application, on a form
25 prescribed by the Commissioner, describing all proposed non-agricultural activities.

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

29 (c) ALPC Consideration. Upon completion of a staff recommendation, the Department
30 shall place the Application on the agenda for the next available ALPC meeting, and
31 the applicant shall be notified of the ALPC's action. In extraordinary or emergency
32 circumstances, the Commissioner may consider, and, if appropriate, take action
33 granting the Application for non-agricultural activities on an APR Parcel without
34 ALPC action.

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

38 (e) Issuance of Special Permit. If an Application is approved, the Department shall,
39 within 45 days of Notice of Action, issue a Special Permit in recordable form. A
40 Special Permit may require an APR Parcel owner to post a bond or other security
41 satisfactory to the Department for completion of the activities required.

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

3 (a) Registry Recording. The Owner shall, within 21 days of the receipt of the
4 Special Permit, record it with the appropriate Registry of Deeds at Owners own
5 expense and provide the Department with a copy of the recorded document. In
6 the event that the Special Permit is not recorded within a period of 21 days,
7 unless the period is extended at the request of the Owner and approved by the
8 Department, the Special Permit shall be null and void.

9 (b) Unforeseen Circumstances. If unforeseen circumstances or other factors prevent
10 the Owner from complying with the terms of the Special Permit, the Owner shall
11 immediately notify the Department in writing.

12 (c) Non-Conformity with Special Permit. If the Owner fails to comply with the
13 terms of the Special Permit, upon request of and at the sole discretion of the
14 Department, the Owner shall take such remedial action as prescribed by the
15 Department to end the non-conformity, including, but not limited to, bringing
16 the activity into compliance with the Special Permit, and returning the APR
17 Parcel to its prior condition.

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

21 22.10: Notification

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

25 (1) Proposed Sale or Conveyance of an APR Parcel.

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

36 (2) Proposed Sale or Conveyance of Excluded Land.

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

1 (3) Form of Notice.

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

5 22.11: APR Parcel Violations

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

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

11 (2) Response. If the Department finds that a violation has occurred, it shall give prompt written
12 notice to the Owner. (A) Within 60 days of receipt of the written notice, the Owner shall
13 provide a written response including proposals to correct the violation. (B) If the proposed
14 plan is approved by the Department, the Owner shall have 60 days to implement the plan
15 and shall give progress reports as directed by the Department. A site inspection or
16 inspections to confirm the satisfactory implementation of the plan will be completed by
17 Department staff within 30 days of the initial progress report. If the violation is corrected to
18 the satisfaction of the Department, a written acknowledgement will be issued by the
19 Department within 30 days to the Owner.

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

23 22.12: Release of an Agricultural Preservation Restriction

24
25 (1) Where the Commissioner has determined there to be extraordinary circumstances, and
26 where the release clearly yields a substantial benefit to the agricultural resources of the
27 Commonwealth, an APR may be released in whole or in part but only in accordance with
28 M.G.L. c. 184, § 32, as amended, Article 97 of the Articles of Amendment to the
29 Constitution of the Commonwealth, and the Land Disposition Policy of the Executive
30 Office of Energy and Environmental Affairs and applicable "no net loss policies" of the
31 Department.

32
33 (2) The release shall be approved only where the Commissioner finds that the land to be
34 released is no longer suitable for agriculture or horticulture.

35
36 In making this determination the present use, nature, quality, and other attributes of the
37 agricultural land proposed for release, including soil quality, land value, adaptability and
38 fitness for other uses, and the nature, scope, and importance of any probable beneficial
39 effect on the public good resulting from the release including, without limitation, the nature
40 and adequacy of the consideration proposed by the Owner in exchange for the release.

41
42 (3) The Owner shall file with the Department a written request for the release together with a
43 full disclosure of all information relative to the anticipated uses of the land to be released.

1 The request shall be on a form prescribed by the Department and shall include a detailed
2 statement of the consideration that the Owner proposes in exchange for the release.

- 3
- 4 (4) Prior to a release, the Commissioner shall determine (1) the current market value of the
5 interest of the Commonwealth to be released, which shall take into account any increase in
6 value of the enlarged unrestricted land, owned or controlled by the Owner resulting from
7 the addition of the parcel released, whether or not contiguous to the parcel, and (2) any
8 diminution in the value of the remaining APR Parcel.
- 9
- 10 (5) To satisfy the then applicable Land Disposition Policy of the Executive Office of Energy
11 and Environmental Affairs and applicable “no net loss policies” of the Department, the
12 Owner shall provide, on terms satisfactory to the Commissioner, an APR on unrestricted
13 land determined by the Commissioner to be (a) of equal or greater area and (b) of equal or
14 greater agricultural quality, including soil and other agricultural attributes, meeting all APR
15 Program requirements and (c) of equal or greater value to the total value of 22.12 (4). At
16 the sole discretion of the Commissioner, in the event that (c) cannot be met, a payment
17 making up the difference in value may be made to the Department’s Environmental Trust
18 Fund or any other fund or party as directed by the Commissioner.
- 19
- 20 (6) The Commissioner may require, at the sole expense of the Owner, work to be performed
21 including, but not limited to, engineering, surveys, appraisals, title services, and document
22 preparation related to the transaction.
- 23
- 24 (7) Prior to a release, a two-thirds vote of both houses of the General Court shall be required in
25 accordance with M.G.L. c. 184, § 32, and the approval of any Co-holder.

26 22.13: Policies and Manuals.

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

37 22.14: Regulatory Authority

38 330 CMR 22.00: M.G.L. c. 184 §§ 31 through 33, M.G.L. c. 20 §§ 23 through 26, M.G.L.
39 c. 61A §§ 1 through 5, M.G.L.c. 40A§3.