



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND  
ENVIRONMENTAL AFFAIRS

**Department of Agricultural Resources**

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**PROPOSED DRAFT**  
**AGRICULTURAL PRESERVATION RESTRICTION REGULATIONS**

**Draft Agricultural Preservation Restriction Regulations 330 CMR 22.00.** Notice to all Massachusetts Residents about the public hearing and comment period for the Department of Agricultural Resources' proposed (DRAFT) Agricultural Preservation Restriction (APR) Regulations. Public meetings will be held **Friday, May 9, 2008, 1:00 - 4:00 pm** at the Deerfield Town Hall, 8 Conway Street, South Deerfield, MA and on **Tuesday, May 13, 2008, 1:00 – 4:00 pm** at the Waltham Experiment Station, 240 Beaver Street, Waltham, MA to inform residents and solicit public comment on the proposed Agricultural Preservation Restriction Program (APR) Regulations per the Department's Authority under M.G.L. c 184 sections. 31-33 & M.G.L. c 20 sections 23-26. The Regulations were discontinued in the mid-1990's. Input from both private individuals and the public sector as well as from program staff, has indicated a need for regulations to be re-established in order to standardize the Program's policies, procedures and applicant processes. Standardization of the Program's processes will help to further the Department's goal of clarifying its decision-making actions. Copies of the proposed draft regulations may be obtained by visiting the Department's website at [www.mass.gov/agr](http://www.mass.gov/agr) or by contacting Chris Chisholm at [Chris.Chisholm@state.ma.us](mailto:Chris.Chisholm@state.ma.us). **Written comments accepted from May 9<sup>th</sup> until May 27, 2008 @ 5:00 p.m.** **Comments can either be mailed to Department of Agricultural Resources, 251 Causeway Street, Suite 500, Boston, MA 02114 Attention APR Regulations or e-mailed to: [APR.regs@state.ma.us](mailto:APR.regs@state.ma.us)**

Presently, the proposed APR Regulations have been through the review and approval process of the Executive Office of Energy and Environmental Affairs and the Executive Office of Administration and Finance and consultation with the Local Government Advisory Committee. In the course of this submittal process several of the proposed draft regulations were routinely discussed and revised including definitional sections, policies and manuals, and application procedures regarding disclosure limitations and confidentiality.

It is to be noted that during the public hearing and comment period the draft Regulations *may be subject to change* and after the public hearing and comment period the Department will review comments and make necessary changes, if any. Once changes have been incorporated in a new version of the proposed Regulations, then the Department will prepare the filing and publications forms necessary to effectively promulgate the APR Regulations.

# DRAFT of PROPOSED APR REGULATIONS

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1           22.01           PURPOSES

2           Specific purposes of 330 CMR 22.00 include:

- 3           1)           To govern the implementation of the terms of M.G.L. c. 20 §§ 23 through 26 and c. 184 §§  
4                   31 and 32;
- 5           2)           To provide guidance to present and future APR Parcel Owners regarding their  
6                   responsibilities and the Department's responsibilities under the Act;
- 7           3)           To govern the writing of future APR Contracts;
- 8           4)           To encourage sound soil management practices in accordance with normally accepted  
9                   agricultural practices, and;
- 10          5)           To regulate and control activities and/or uses, which may be detrimental to the retention of  
11                   the land for agricultural use.

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### 22.02 DEFINITIONS

Throughout 330 CMR 22.00, the following terms shall mean; unless otherwise specified.

Act: chapter 780 of the Acts of 1977 as amended.

Agriculture: those uses of land enumerated in M.G.L. c. 61A §§ 1 and 2.

Agricultural Lands Preservation Committee (Committee or ALPC): 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 Restriction): a restriction in perpetuity on the use of land as defined in M.G.L. c. 184 § 31 and M.G.L. c. 20 § 23, as amended.

Agri-tourism: tourism designed specifically to bring the public onto an APR Parcel 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 on APR Parcels should enhance the agricultural viability of the farm operations.

Agri-entertainment: entertainment, such as a seasonal event, festival, contest, party or other time-specific event designed specifically to bring the public onto an APR Parcel 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 on APR Parcels should enhance the agricultural viability of the farm operations.

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

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

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

APR Value: the difference between the Fair Market Value and the Fair Market Agricultural Land Value as determined by competent appraisers when evaluating a Project.

Certificate of Approval (COA): a certificate in recordable form that allows a structure, improvement, activity or use for agricultural purposes on an APR Parcel with or without

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1 conditions for all instances requiring Departmental approval pursuant to the APR Contract.

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

5 Commissioner: the Commissioner of Agricultural Resources or designee.

6 Defeat or Derogate from the Intent of the Act: To annul or to adversely affect the retention  
7 of land for agricultural use and the preservation of the natural agricultural resources of the  
8 Commonwealth as set forth in M.G.L. c. 20 § 23.

9 Department: Massachusetts Department of Agricultural Resources.

10 Equine Operation: an agricultural activity designed for the primary purpose of breeding  
11 and/or raising horses or other equine animals for the purpose of selling horses or a product  
12 derived from them in the regular course of business as defined in M.G.L. c. 61A §1, as  
13 amended.

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

17 Fair Market Agricultural Value (FMAV): the combined total of the following components  
18 of an APR Parcel, as applicable: fair market agricultural land value; fair market agricultural  
19 business value; and fair market agricultural dwelling value.

20 Fair Market Agricultural Business Value (FMABV): value based upon the current and/or  
21 potential agricultural operation, including, but not limited to the following factors;  
22 agricultural buildings, infrastructure, goodwill, marketing capacity, management, income  
23 generation and liabilities. Assets and land not under an APR Contract that are integral to  
24 the agricultural operation shall be included in the value. Note: such value is not applicable  
25 at the time of the original acquisition of the restriction.

26 Fair Market Agricultural Land Value (FMALV): value based upon the highest and best use  
27 of the land for agricultural purposes. The FMALV may rise and fall commensurate with  
28 market conditions and/or inflation and/or other valuation factors.

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1 Farm Stand: an agricultural facility for the sale of agricultural products consistent with  
2 M.G.L. c. 40A §3.

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

5 Housing for Agricultural Employees: a structure, whether new construction or conversion,  
6 for use only by agricultural employees and their immediate family or other legal dependants  
7 which may be occupied for a period of time, the length of which is dependent upon, in part,  
8 the agricultural operation. Employee status shall be irrespective of ownership interest in the  
9 APR Parcel.

10 Impervious Surface: surfaces that prohibit water penetration into the ground.

11 Municipality: the city(s) or town(s) in which a Project is located.

12 On-farm Energy Generation: energy generation intended for consumption by the whole farm  
13 operation within the commonwealth. Energy generation shall be designed to meet the total  
14 actual, yearly, energy needs of the agricultural operation. Excess energy may be delivered to the  
15 energy market for sale, or credit to be utilized at another time and/or location for the purposes of  
16 the agricultural operation.

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

18 Program: the Agricultural Preservation Restriction Program.

19 Raising: nourishing, maintaining and managing a plant or animal owned in part or in full or  
20 under control through a written contract.

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

26 Structure: a combination of materials assembled at a fixed location to give support or  
27 shelter except such combinations that have little or no impact on the soil.

28 Excluded Structure: an existing structure located on land of an Applicant that is excluded

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1 from a Project at the time of closing an APR or within a building envelope described in an  
2 APR Contract.

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

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

7 Permanent Structure: a structure requiring grading or excavation of soil for footings or a  
8 foundation.

9 Temporary Structure: a structure that has neither footings nor a foundation

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

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### 22.03 COMPOSITION AND MEETINGS OF THE COMMITTEE

- 1 (1) As defined by M.G.L. c. 20 § 24, the members of the Committee shall be the  
2 Commissioner of Agricultural Resources, who shall be Chairman, the Secretary of  
3 Environmental Affairs, the Director of Housing and Community Development, the Director  
4 of the Office of State Planning, the Chairman of the Board of Agricultural Resources or  
5 their respective designees, and four (4) members appointed by the Governor, who shall be  
6 two (2) owners and operators of farms within the commonwealth, the Dean of the College  
7 of Food and Natural Resources of the University of Massachusetts, and the State  
8 Conservationist of the United States Department of Agriculture Soil Conservation Service,  
9 or his or her respective designee, who shall serve as a nonvoting member.  
10
- 11 (2) The Committee shall meet at the call of the Chairman, but not less than quarterly.
- 12 (3) Also, the Chairman shall call a meeting at the written request of any five (5) owners of  
13 APR Parcels. In the event such a request is made, the Committee shall hold such a meeting  
14 within sixty (60) days after such request is received, notice of such meeting shall be given  
15 by its usual form, except such owners making the request shall receive notice by certified  
16 mail at least fourteen (14) days prior to the date of the meeting. Notice shall include, but  
17 not be limited to, the date, time and place of such meeting.
- 18 (4) Notice of meeting shall be in the usual and prescribed form for public meetings.
- 19 (5) Quorum shall consist of five (5) voting members.

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1           22.04           ELIGIBILITY REQUIREMENTS

2                   In order to be eligible for application to the Program, the land under consideration shall be  
3                   actively devoted to agriculture or horticulture as defined in M.G.L. c. 61A §§ 1 through 5,  
4                   inclusive.

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### 22.05 APPLICATION PROCEDURES

- (1) Application to Department. Application to the Program shall be made on a form provided 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 Municipality in which the Project is located. In the event that 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 each Municipality. Applications must be signed by the landowner.
- (2) Project Information and Description. A Project shall be adequately identified by deed references, assessor map and parcel numbers. In addition, the following information shall be completed on or included with the Application:
- (A) A detailed map of the Project boundaries as depicted on a United States Geological Survey (U.S.G.S.) Topographic Map showing the land area to be considered under a Project as well as contiguous acreage, if any, under the same ownership to be excluded.
  - (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 and/or local significance and unique soils.
  - (C) A full description of the commercial agricultural use and activities including, without limitation, type of crops, acreage devoted to each crop, type and quantity of livestock, and acreage of associated pasture for each of the following:
    - (i) Project;
    - (ii) Land leased out to others; and
    - (iii) Land leased from others.
  - (D) A written statement satisfactory to the Department describing short and long term plans for keeping the land in agricultural use.
  - (E) Statements by Applicant agreeing to:
    - (i) Not sell or commit to sell the land included in the Application within a period of one hundred and twenty (120) days from the date of the Vote of Interest;

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- 1 (ii) Allowing the Department and/or an agent of the Department to conduct an inspection of  
2 the Project, including soil testing limited to agricultural and septic suitability.
- 3 (F) A statement, to the best of the Applicant's knowledge and belief, identifying any and  
4 all liens and encumbrances on Applicant's land to be included in the Project.
- 5 (G) Applicant's asking price for the Project, if known.
- 6 (H) Any other information deemed relevant to the Project by the Department and the  
7 Applicant.
- 8 (3) Limitation on Disclosure. Written information provided to the Department during the  
9 application process may be subject to one or more of the exemptions from disclosure  
10 provided under the state public records law (G.L. c. 66, Sec. 10). The Department will treat  
11 all such information with the level of confidentiality permitted by that statute. If the  
12 Municipality is to provide funds or other assistance as set forth in M.G.L. c. 20 s. 23  
13 toward purchase of the Restriction, the Department reserves the right to disclose  
14 information to the proper municipal authorities to help achieve purchase of the Restriction  
15 and payment to applicant.
- 16 (4) Municipality Requirements. Within sixty (60) days of receipt of an Application submitted  
17 in accordance with 330 CMR 22.05(1), the Municipality shall provide the following  
18 information to the Department with a copy to Applicant:
- 19 (A) Comments or recommendations from, but not limited to, the following agencies and  
20 officials as may be appropriate: Agricultural Commission, Conservation  
21 Commission, Planning Board, Board of Selectmen, Mayor, or City Manager. Such  
22 comments may include the compatibility of the Project with zoning by-laws,  
23 open space plans, natural resource inventories, and other relevant considerations.
- 24 (B) A statement of interest in providing funds or other assistance from the  
25 Municipality if the Project is approved by the Department.
- 26 (C) Failure of a Municipality to supply such additional information shall not be  
27 construed as preventing Committee consideration of such Project.

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### 22.06 APR APPLICATION PROCESSING AND CLOSING PROCEDURES

- 1 (1) Within one hundred and twenty (120) days of receipt of a completed Application for a  
2 Project meeting current eligibility requirements, the Department will complete an  
3 evaluation and shall prepare a recommendation for the Commissioner and/or  
4 Committee.  
5
- 6 (2) Upon receipt of a completed Application for a Project the Commissioner and/or  
7 Committee may authorize or engage in the following, as applicable:
  - 8 (A) A field inspection of the land and an evaluation of the potential agricultural land  
9 use.
  - 10 (B) Referral of the Project to the appropriate Regional Planning Agency for an  
11 opinion of the Project's compatibility with regional planning objectives.
  - 12 (C) Review of the Application and information contained therein as to suitability for  
13 agricultural preservation.
- 14 (3) In the event that additional information is needed, the Department may, with the  
15 consent of the Applicant, extend the one hundred and twenty (120) day time period by  
16 written notice to the Applicant specifying in detail the additional information needed to  
17 evaluate the Project. If the Applicant supplies the specific additional information, the  
18 Department, within sixty (60) days of receipt of such information, shall complete its  
19 evaluation and shall prepare a recommendation for the Committee.
- 20 (4) Upon the completion of the evaluation and recommendation, the Department may take  
21 the following action:
  - 22 (A) Determine if the Project continues to meet Program eligibility requirements, and  
23 in that event, place the Project on the agenda of the next available ALPC  
24 meeting for consideration.
  - 25 (B) If the Project fails to meet Program eligibility requirements, notify the Applicant  
26 in writing within twenty-one (21) days of such determination.
  - 27 (C) In the event that Applicant is notified that the Project fails to meet Program  
28 eligibility requirements, Applicant, within twenty-one (21) days of the notice of

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1 such determination, shall have the right to petition the Commissioner in writing.  
2 Any decision of the Commissioner shall be final, except as otherwise provided  
3 in law. There shall be no duty on the Commissioner to hold a hearing on the  
4 petition.

5 (5) The ALPC shall consider the Project at the next available meeting and may, after  
6 consideration, act as follows:

7 (A) cast a Vote of Interest;

8 (B) cast a vote of no interest; or

9 (C) take any other action, for just cause, deemed appropriate.

10 (6) Following the ALPC action, the Department shall proceed as follows:

11 (A) Notify Applicant in writing within thirty (30) days of the ALPC action.

12 (B) If the applicant is dissatisfied with the action of the Committee, the Applicant,  
13 within thirty (30) days of receipt of notice, may request in writing a meeting with  
14 the Committee. The Committee, after due notice to all parties concerned, shall hold  
15 a meeting within one hundred and twenty (120) days of its receipt of such a request  
16 and shall reconsider the Project in the light of such relevant and supplementary  
17 information as may be presented to it.

18 (C) In the event of a Vote of Interest, and subject to funding, a full appraisal shall be  
19 carried out for both the full Fair Market Value of the Project and the Fair Market  
20 Agricultural Land Value of the Project to determine the APR Value in accordance  
21 with recognized professional appraisal standards and the applicable Executive Office of  
22 Energy and Environmental Affairs (EEA) appraisal specifications, unless current  
23 appraisals satisfactory to the Department have been prepared.

24 (D) In the event of a Vote of Interest, appraiser(s) may be authorized to engage an  
25 engineer or another qualified individual to perform additional work in order to  
26 provide additional necessary information.

27 (7) The amount paid for the APR Value of the Project may be achieved by the amount paid  
28 by the Commonwealth, and such additional compensation factors such as local

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1 contributions, third party contributions, bargain sales and retained rights.

2 (8) Upon the parties reaching a mutually acceptable amount to be paid for the Project, the  
3 Department shall place the Project on the agenda of the next available ALPC meeting at  
4 which time it shall submit to the ALPC a recommendation for a Final Vote to purchase  
5 the Project, subject to funding.

6 (9) Upon approval and acceptance of a Project by Final Vote of the ALPC, the Department  
7 shall engage an attorney duly licensed and in good standing to practice law in the  
8 Commonwealth of Massachusetts with expertise in the practice of real estate  
9 conveyance and land use law who complies with all current EEA and Department  
10 standards, rules and policies, to prepare all legal instruments, in conjunction with the  
11 Department, required for a closing on the Project, including without limitation, a  
12 purchase and sale agreement. The attorney shall, in addition, complete a title search of  
13 the Project, provide to the Department a certificate of clear and marketable title prior to  
14 closing and attend to the proper execution and recording of all legal instruments. The  
15 legal bills of the attorney for these services are the responsibility of the Department.

16 (10) Upon an affirmative Final Vote of the ALPC, the Applicant shall be responsible for the  
17 following activities, unless otherwise agreed to in writing by the Department and the  
18 Applicant:

19 (A) Clearing all title defects and encumbrances identified by the Department, at Applicant's  
20 expense and preparing a property description and/or boundary sketch plan satisfactory  
21 to the Department. The property description shall be suitable for recording in the  
22 Registry of Deeds, prior to a closing on the Project, also at Applicant's expense.

23 (B) Providing the Department with a full survey of any parcel of land that is being  
24 excluded from the Project, if not a separate deeded parcel. Applicant shall also be  
25 responsible for acquiring, where necessary, approval from the local planning board,  
26 and providing to the Department, documentation showing surveyed lots that are being  
27 excluded, and for recording such approvals and survey plans at the Registry of Deeds.

28 (C) Preparing, in the event it is determined by the Department that the property description  
29 for the Project provided by Applicant is inadequate, a survey plan satisfactory to the

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1 Department to be recorded at the Registry of Deeds with the APR. Up to fifty percent  
2 (50%) of the cost of survey plan preparation may be borne by the Department, within  
3 the sole discretion of the Department. Cost of recording the survey plan shall be borne  
4 by the Applicant.

5 (11) Upon completion of all actions described above, including preparation of all legal instruments  
6 by the Department and/or its attorney (except for the property description and survey plan(s), if  
7 any, which are to be prepared by the Applicant's attorney or surveyor), the Department will  
8 schedule a closing on the Project at or prior to which all legal instruments and documents shall  
9 be executed and final arrangements for payment of funds, adjustments and recording of  
10 documents shall be made.

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

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### 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 the Act:
- (A) The degree to which the Project would serve to preserve and enhance the agricultural resource base of the commonwealth;
  - (B) The suitability of land, as to soil classification and other criteria for agricultural use.
  - (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 the following criteria:
- (A) Contribution of the Project in the development of a continuing program of acquiring multiple APRs within a defined geographical area or areas;
  - (B) Degree to which a Municipality where a Project is located is prepared to provide assistance to the Commissioner 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; and
  - (E) Other matters shown to be relevant by, and subject to a majority vote of the Committee.

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### 22.08 APR CONTRACT

Each APR shall be governed by a specific recorded APR Contract executed when the Commonwealth was conveyed a restriction. Each APR Contract is to be considered the instrument memorializing the intent of all parties 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 Contract to be executed at or prior to an APR Closing.
- (2) Terms and Conditions: An APR Contract shall include such terms and conditions as are applicable under the provisions of the Act and Massachusetts law and necessary to implement the provisions of the Act 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 Contracts are established pursuant to provisions of the Act and Massachusetts law, which provisions are incorporated as part of all contracts unless expressly eliminated by agreement of the Department and the Applicant.
- (4) Nature of APR Contract: APR Contracts are binding agreements between an owner of an APR Parcel and the Department and exist in perpetuity, run with the land and bind all future owners of the APR Parcel and shall be recorded at the appropriate registry of deeds. When language in an APR Contract contradicts or conflicts with a regulation or policy under 330 CMR 22.00, the APR Contract shall control.

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### 22.09 DEPARTMENT APPROVALS

In accordance with the APR Contract, certain activities, uses or 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 practices (plowing, planting, spraying, harvesting, and other such agricultural farming practices) are allowed by right in the APR Contract, approvals under a COA may be required for new agricultural structures, activities, uses and improvements (APR Parcel Activities or The Work) that significantly impact the agricultural resource protected by the APR. Recorded Restrictions and applicable Massachusetts Law specify and control approvals for non-prohibited APR Parcel Activities requiring Department approval. Certificates of Approval for any APR Parcel Activities requiring Department approval shall be subject to the following procedures:

(A) APR Parcel Activities Requiring a Certificate of Approval: Improvements that serve to enhance the agricultural productivity of the APR Parcel pursuant to M.G.L. c. 61A §§ 1 and 2 may be subject to a COA with or without conditions, but are generally allowed by right.

(i) As part of the process for Department approval of any proposed APR Parcel Activity, the APR Parcel owner must demonstrate to the Department's satisfaction that the proposed APR Parcel Activity meets the following criteria, unless otherwise provided in an existing APR contract:

(a) The activity minimizes to the fullest extent possible the loss of high quality agricultural soils; and

(b) The activity does not result in Impervious Surfaces that permanently change more than five percent (5%) of the soil profile on an APR Parcel under one hundred (100) acres or permanently change more than (5) acres of the soil profile on an

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1 APR Parcel over one hundred (100) acres; and

2 (c) The activity will not interfere with or lead to the likelihood of  
3 interference in the future with agricultural operations.

4 (ii) While generally accepted maintenance activities are not subject to a  
5 COA, APR Parcel owners are advised that APR Parcel Activities, upon  
6 determination of the Department may require a COA. APR Parcel  
7 Activities that may require a COA include without limitation the  
8 following:

9 (a) Construction of a Farm Stand

10 (b) Construction of Housing for Agricultural Employees: The use of  
11 suitable existing housing or other structures on the APR Parcel for  
12 approved commercial non-agricultural uses may not create the  
13 need for Housing.

14 (c) Construction of Residential Dwellings for APR Parcel owners and APR  
15 Parcel owners' Family ("Owners' Residential Dwelling") If prohibited  
16 by the existing APR contract, APR Parcel owner may not construct an  
17 Owners' Residential Dwelling on the APR Parcel.

18 If the existing APR contract expressly permits construction of an  
19 Owners' Residential Dwelling, the Department shall provide approval  
20 through a COA for construction of an Owners' Residential Dwelling if  
21 the proposal for Owners' Residential Dwelling meets the criteria listed in  
22 Section 22.09 (1) (A) (i) above.

23 If the existing APR contract requires Department approval for  
24 construction of an Owners' Residential Dwelling or otherwise restricts  
25 said construction, the COA process will address the various other aspects  
26 of the required approval, the Application, and the potential impact on the  
27 APR Parcel, as well the criteria listed in Section 22.09 (1) (A) (i) above,  
28 in order to determine if an approval is to be given. Many contracts may  
29 further restrict the construction of dwellings and in such event, any such

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1 contract restrictions must be specifically addressed in the COA, in  
2 addition to those restrictions and/or conditions identified above.

3 (d) Construction for On-Farm Energy Generation

4 (e) Other Construction: Agricultural structures that are usually or  
5 customarily used for normal generally accepted farming practices.

6 (f) Equine Operation: For purposes of these Regulations, an equine  
7 operation, as defined in section 22.02, is considered to be  
8 agricultural or horticultural use of an APR Parcel, as defined in  
9 M.G.L. c. 61A §§ 1 and 2 as amended.

10 A proposed equine operation maintaining horses or other equine  
11 animals on a commercial basis for a primary purpose other than  
12 breeding and raising is allowed on an APR parcel as follows:

13 1) All equine facilities and infrastructure for a primary  
14 purpose other than breeding and/or raising are  
15 maintained on an excluded parcel, and the APR parcel is  
16 used primarily for agricultural or horticultural use, which  
17 may include pasture and/or feed production for equine or  
18 other farm animals, as defined in M.G.L. c. 61A §§ 1 and  
19 2, as amended, and such APR is managed in accordance  
20 with a conservation farm plan approved by NRCS; or

21 2) All equine facilities and infrastructure maintained on the  
22 APR Parcel for a primary purpose other than breeding  
23 and/or raising must exist within the footprint of pre-  
24 existing structures and shall require a Special Permit as  
25 described in Section 22.09 (2), instead of a COA. Special  
26 Permits approved by the ALPC for equine facilities and  
27 infrastructure maintained on the APR Parcel must ensure  
28 that the APR Parcel is used primarily for agricultural or  
29 horticultural uses, which may include pasture and/or feed

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1 production for equine and other farm animals as defined  
2 in M.G.L. c. 61A §§ 1 and 2, and is managed in  
3 accordance with a conservation farm plan approved by  
4 NRCS, and may be subject to additional conditions  
5 determined by the ALPC.

6 (g) Soil Removal: Soil Removal as part of the harvest of an  
7 agricultural crop, unless conducted in accordance with best  
8 management practices developed by the relevant agricultural  
9 sector and approved by the department.

10 (h) Subdivisions: Division of an existing APR Parcel into two or  
11 more separate APR Parcels. Subdivision allows for separate  
12 ownership of the subdivided parcels, only if that arrangement is in  
13 the best interests of the ongoing agricultural viability of the  
14 separated parcels.

15 1) When considering a subdivision application, the size of a  
16 parcel of farmland can, in some cases, determine its future  
17 agricultural viability. Considerations such as the quality  
18 of a parcel's soils, their ability to support existing and  
19 potential agricultural enterprises, and the strength and  
20 nature of an area's agricultural industry, factor into  
21 determining the agricultural viability of an APR Parcel  
22 and the ALPC must find all of the following:

23 a) The subdivision creates remaining APR Parcels that are  
24 economically viable for agriculture in and of themselves,  
25 or;

26 Facilitates the sale of an APR Parcel to a commercial  
27 farmer as an "add-on" (i.e. a parcel that is not  
28 economically viable in and of itself, but becomes more  
29 viable if attached to another APR Parcel) to another APR  
30 protected farm;



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- b) The intended uses of each parcel to be created, including a five year business plan for each parcel;
- c) A NRCS farm conservation plan for each parcel, including a schedule for implementation.

(B) Procedures for a COA:

- (i) Application: For all APR Parcel Activities requiring a COA, an APR Parcel Owner shall submit to the Department a written application on a form approved by the Commissioner (Application), describing all proposed APR Parcel Activities. An Application must be signed by the APR Parcel Owner.
- (ii) Review and Recommendation: Upon 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 within ninety (90) days.
- (iii) ALPC Consideration: Upon completion of a recommendation, the Department shall place the Application on the agenda for the next available ALPC meeting for consideration, and if appropriate, the applicant shall be so notified of the ALPC action. In extraordinary and/or emergency circumstances, the Commissioner may consider, and if appropriate, take action granting the Application for APR Parcel Activities without ALPC consideration.
- (iv) Notice of Action: Within twenty-one (21) days of the ALPC meeting at which an Application is acted upon or within twenty-one (21) days of the Commissioner's action, the Department shall notify the Applicant in writing, of the action taken on the Application (Notices of Action).
- (v) Certificate of Approval: In the event that an Application is approved, the Department shall, within forty-five (45) days of Notice of Action, issue a Certificate of Approval (COA) in recordable form. In the event a COA is issued with conditions, the COA shall detail all conditions imposed by the Department. A Certificate of Approval may require an APR Parcel owner to post a surety bond for completion of the activities

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1 required by the COA. A COA may be transferable to a subsequent owner  
2 of the APR Parcel with approval of the Department

3 (C) APR Parcel Owner Responsibilities: Once the Department issues a COA, an  
4 owner of an APR Parcel has certain time specific obligations to carry out  
5 approved APR Parcel Activities, as follows:

- 6 (i) Registry Recording: The APR Parcel owner shall, within twenty-one  
7 (21) days of the receipt of the COA, record it at the appropriate registry  
8 of deeds at his or her own expense and provide the Department with a  
9 copy of the recorded document. In the event that the COA is not  
10 recorded within a period of twenty-one (21) days, unless the period is  
11 extended at the request of the APR Parcel owner and approved by the  
12 Department, the COA shall be null and void.
- 13 (ii) Performance of the Work: An APR Parcel owner shall commence the  
14 approved APR Parcel Activities within one (1) year of recording of the  
15 COA. As to a COA approving construction and/or excavation  
16 (Construction), the APR Parcel owner must, in addition, complete the  
17 approved Construction within two (2) years of the recording date.
- 18 (iii) Interruption of the Work: In the event that unforeseen circumstances or  
19 other reasons prevent the APR Parcel owner from complying with the  
20 COA approving the APR Parcel Activities, the APR Parcel owner shall  
21 immediately notify the Department in writing and cease all further Work  
22 or activity immediately.
- 23 (iv) Non-conforming Work: In the event that the performance of the APR  
24 Parcel Activities fails to conform to the COA, the APR Parcel owner  
25 shall, upon request of and at the sole discretion of the Department, take  
26 action as necessary to end the non-conformance, including but not limited  
27 to, bringing the activity into compliance with the COA, putting the APR  
28 Parcel back into its prior condition, removing any structure and/or ceasing  
29 work immediately.

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1 (v) Notice of Completion of the Work: The APR Parcel owner shall, within  
2 thirty (30) days of the completion of the Work, notify the Department in  
3 writing (Notice of Completion).

4 (D) Department Responsibilities: Upon satisfactory completion of the Work and  
5 receipt of Notice of Completion, the Department shall perform the following:

6 (i) Inspection of the Work: The Department shall, within sixty (60) days of  
7 receipt of the Notice of Completion from APR Parcel owner, inspect the  
8 completed APR Parcel Activities to determine compliance with the COA.

9 (ii) Certificate of Completion: The Department shall within thirty (30) days  
10 of its inspection, if the APR Parcel Activities conform to the COA, issue a  
11 Certificate of Completion (COC) and provide a copy to the APR Parcel  
12 owner.

13 (iii) Registry Recording: The Department shall, within thirty (30) days of  
14 issuance of a COC, record it at the appropriate registry of deeds at the  
15 Department's expense and provide the APR Parcel owner with a copy of  
16 the recorded document.

17 (2) Special Permit: A Departmental approval that permits a certain commercial non-  
18 agricultural activity or use that is minor in comparison to the Agricultural use. All  
19 applicable provisions of M.G.L. c. 20 § 23(b) or other relevant statutes unless otherwise  
20 provided for by the Applicable APR Contract shall govern an APR Parcel owner who  
21 seeks a Special Permit. Any conditions of the Special Permit imposed or negotiated as a  
22 result of the Application for Special Permit shall terminate at the expiration of the  
23 Special Permit. In addition, the following specific provisions shall apply:

24 (A) An Application for Special Permit may be allowed only after consideration and  
25 favorable action by the ALPC at a public meeting allowing for public input,  
26 including that of the applicant.

27 (B) New structures or construction activities are not allowed under a Special Permit.

28 (C) An APR Parcel owner who was granted a Special Permit must commence a  
29 Special Permit Activity within one (1) year of issuance of a Special Permit.

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- 1 (D) A Special Permit may be extended only at the request of the APR Parcel owner  
2 and with the approval of the Department.

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### 22.10 NOTIFICATION

Where the APR Contract provides for a right of first refusal, an option to purchase at agricultural value, and/or a similar right at the time of sale held by the Department, the APR Parcel Owner has the following responsibilities:

(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 Agricultural Value (Option), notification shall include: a copy of the offer to purchase; bona fide purchase and sales agreement; any appraisal prepared for the proposed sale of the APR Parcel; a summary of buyer's agricultural experience and Farm Plan for the APR Parcel; any other documents pertaining to sale described in the particular APR Contract; a request for 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.

(2) Proposed Sale or Conveyance of Excluded Land:

In the event that the proposed sale or conveyance contains non-restricted agricultural assets and the APR Parcel Owner wishes them to be included in the FMAV, attested copies of the Purchase and Sale shall be provided to the Department.

(3) Form of Notice:

Notice to the Department shall be in writing by certified mail, return receipt requested or hand delivered to the Department's offices, which at the time of publication of this regulation are located at 251 Causeway Street, Suite 500, Boston, MA 02114.

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### 22.11 APR PARCEL VIOLATIONS

The Department may monitor APR Parcels to ensure compliance with the applicable APR Contract. The Department shall work with the APR Parcel owner for a resolution of any identified violations.

(1) Alleged Violation: If the Department becomes aware of an alleged violation, it will, within thirty (30) days or as soon as feasible after a site visit occurs, determine the extent of any violation. The Department will meet with the APR Parcel owner at the time of or subsequent to the site visit to review the facts and status of the Department response to the alleged violation.

(2) Confirmed Violation: If a violation is confirmed, a written notice of violation (Violation Notice) will be provided to the APR Parcel owner within thirty (30) days of confirmation.

(A) The APR Parcel owner's written response, including, where feasible, a proposed plan to correct the violation, shall be mailed or delivered to the Department within sixty (60) days of receipt of the Violation Notice.

(B) If the proposed plan is approved by the Department, the APR Parcel owner shall have sixty (60) days, where feasible to satisfactorily implement the plan and notify the Department in writing. A site inspection to confirm the satisfactory implementation of the plan will be completed by Department staff within thirty (30) days of such notice, where feasible. If the violation is corrected to the satisfaction of the Department, a written acknowledgement will be issued by the Department within thirty (30) days to the APR Parcel owner.

(3) Violation Resolution: If the Department and the APR Parcel 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 Contract.

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### 22.12 RELEASE OF AN AGRICULTURAL PRESERVATION RESTRICTION

An APR may be released in whole or in part only in accordance with M.G.L. c. 184 § 32 as amended, Article 97 of the Amendments to the Massachusetts Constitution and the Executive Office of Energy and Environmental Affairs Article 97 Land Disposition Policy. A release will be considered only in extraordinary circumstances. Upon such circumstances, certain requirements must be met, including but not limited to, the following:

- (1) Notice: An owner of an APR Parcel shall notify the Department in writing of his or her intent to seek a release including a detailed statement of reasons.
- (2) Agricultural/Horticultural Sustainability: Before the release of an APR Parcel pursuant to M.G.L. c. 184 § 32, the APR Parcel Owner must demonstrate to the satisfaction of the Commissioner that the portion of the APR Parcel proposed for release is no longer suitable for agriculture or horticulture. The decision of the Commissioner shall be final.
- (3) Instrument Survey: In the event that a determination is made that a portion of the APR Parcel is not suitable for agricultural or horticultural purposes, the owner shall, at his or her own expense, provide an instrument survey plan suitable for recording of the portion of the APR Parcel proposed for release.
- (4) Compensation: In the event that the release of an APR Parcel or a portion thereof is approved, the owner must compensate the Commonwealth acting by and through the Department at the current full Fair Market Value as part of the condition of a release. The current full Fair Market Value shall be determined by an independent appraiser satisfactory to the Department and the APR Parcel Owner at the owner's expense.
- (5) Mitigation: In the event that the release of an APR Parcel or a portion thereof is approved, the owner must mitigate with the Department to its satisfaction as part of the condition of a release and to comply with the Article 97 Land Disposition Policy referenced above "...to ensure no net loss of article 97 lands under the ownership and control of the Commonwealth and its political subdivisions."
- (6) Legislative Action: Any release of an APR Parcel or a portion thereof may be accomplished only pursuant to the provisions of M.G.L. c. 184 § 32 and Article 97 of the

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1

Amendments to the Massachusetts Constitution.

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1           22:13           POLICIES AND MANUALS

2           The Department and the Executive Office of Energy and Environmental Affairs (“EOEEA”)  
3           maintain guidelines, policies and procedures in addition to APR Contract forms, which are  
4           periodically updated and provide further guidance for APR Parcel Owners. The Department  
5           shall provide a copy to any APR Parcel Owner upon request and post on its website all APR  
6           Regulations and Department Policy documents and shall request comments for the  
7           Department’s consideration on all regulation and policy changes. The role of the ALPC is to  
8           advise and make a recommendation to the Department for policy development or changes and  
9           it is the sole discretion of the Commissioner to set and implement Policy. The APR Parcels  
10          shall only be encumbered by Massachusetts General Law and the APR Contract.

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1           22.14           REGULATORY AUTHORITY

2           M.G.L. c. 184 §§ 31 through 33

3           M.G.L. c. 20 §§ 23 through 26