

330 CMR 22.00 AGRICULTURAL PRESERVATION RESTRICTION PROGRAM

Section

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22.01: Scope and Purpose

The scope of 330 CMR 22.00 is to implement the terms of M.G.L. c. 20, §§ 23 through 26, and M.G.L. c. 184, §§ 31 and 32. The purpose of 330 CMR 22.00 is to provide guidance and clarification for present and future APR Parcel Owners regarding their rights and responsibilities and the Department's responsibilities under St. 1977, c. 780, in conjunction with the direction and guidance provided in Department policy statements, guidelines, and other informational sources referenced in 330 CMR 22.14~~3~~; to encourage sound soil management practices in accordance with generally~~normally~~ accepted agricultural practices; and to regulate activities and uses that may be detrimental to the retention of the land for agricultural use in perpetuity. -

22.02: Definitions

As used in 330 CMR 22.00 the following words shall have the following meanings, unless the applicable Agricultural Preservation Restriction provides a different definition, in which case the definition in the Agricultural Preservation Restriction controls:

~~_____~~ Adjudicatory Hearing means an informal hearing under M.G.L. c. 30A, as amended, where parties may present evidence on ~~_____~~ issues of fact, and argument on issues of law and fact prior to the ALPC issuing a written final decision.

~~Add-on~~ means land that, because of size, soil quality, or other factors, would not qualify for a new APR, but which, when combined with other land subject to an existing APR, has the ability to enhance the economic viability (because of infrastructure, utilities, access, etc.) of the existing APR when the parcels are combined.

Agricultural Lands Preservation Committee (~~Committee or~~ ALPC) means a committee in the Department of Agricultural Resources whose membership, powers, duties, and statutory grant of authority are set forth in M.G.L. c. 20, §§ 23 and 24, as amended.

Agricultural Preservation Restriction (~~APR or APR Restriction~~) means a perpetual restriction to retain land or water areas predominately in their agricultural, farming, or forest use, and forbids or limits certain property development rights and uses. restriction and agreement in perpetuity on the use of land as defined in M.G.L. c. 184, § 31.

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

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

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

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Applicant means the record owner(s) of land who submits an ~~a~~ Application for a Project.

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

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

APR Value means ~~the value of the APR Restriction, being~~ the difference between the Fair Market Value and the Fair Market Agricultural Land Value as determined by ~~the competent~~ appraisal obtained by the Department pursuant to 330 CMR 22.06(2)(c)ers, when evaluating a Project.

~~In a resale of an APR Parcel, it is the difference between the Fair Market Value and the Fair Market Agricultural Value as determined by competent appraisers of an APR Parcel at the time of the resale unless otherwise provided.~~

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

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

Chair means the Commissioner as he/she presides over the Agricultural Lands Preservation Committee.

Commissioner means the Commissioner of the Massachusetts Department of Agricultural Resources.

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

Department means the Massachusetts Department of Agricultural Resources.

Departmental Approval means approval by the Department, with or without conditions, that allows a Structure, improvement, excavation, use or activity for Agriculture purposes on an APR Parcel.

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

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

the value based upon the ongoing agricultural business including agricultural buildings, infrastructure, goodwill and other related agricultural business factors. Fair Market Agricultural Business Value is relevant only upon the subsequent sale of the APR Parcel and is not applicable at the time of original purchase of the APR. The Fair Market Agricultural Business Value appraisal includes agricultural business potential and is based upon activities and circumstances existing at the time of the sale of the APR Parcel.

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

Fair Market Agricultural Value (FMAV) means, ~~except as otherwise provided in an APR Restriction, a COA, or a Special Permit,~~ the combined total of the following components of an APR Parcel, as applicable: Fair Market Agricultural Land Value; Fair Market Agricultural Business Value; and ~~f~~Fair ~~M~~Market ~~agricultural~~ ~~D~~Dwelling ~~v~~Value.

Fair Market Dwelling Value means the appraised replacement value of a dwelling(s) on the restricted land.

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

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

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

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

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

Impervious Surface means ~~any surface that restricts or prevents water penetration into the ground; a material that does not allow water to percolate into the soil on the APR Parcel; this~~ includes, but is not limited to, surfaces upon which are located Structures for Housing for Farm Labor, agricultural Structures (with and without flooring), and paved areas or roads. Impervious surfaces include permanent, non-~~seasonal~~ rooftops, concrete and asphalt surfaces. —

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

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

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Owner means APR Parcel record title owner(s).

Partner Agency means an agency which is partnering with the Department in purchasing, holding and enforcing the terms of the APR, such as the United States Department of Agriculture.

Program means the Department's Agricultural Preservation Restriction Program.

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

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

Structure means a combination of materials assembled at a fixed location to give support or shelter, whether or not it requires a footing or foundation., ~~except as to such combinations that have little or no impact on the soil. Structure may be understood in the following contexts:—~~

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

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

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

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

~~Temporary Structure~~ means a structure having no footing or foundation.—

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

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22.03: Composition and Meetings of the ALPC Committee

~~(1) (4)~~ The composition and meetings of the ALPC Committee shall be as defined by M.G.L. c. 20, §§ 23 and 24, as amended.

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

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

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

(4) A quorum shall consist of a majority of voting members present at the meeting. ~~five voting members.~~

22.04: Eligibility for APR Program Requirements

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

22.05: Application Procedures

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

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

(a) Deed references, assessor's map, and any and all liens, encumbrances, and easements on the Project;

(b) A delineation of the Project boundaries as depicted on a United States Geological Survey (U-S-G-S-)

~~T~~opographic ~~M~~ap showing the ~~land proposed for APR~~Project as well as any excluded contiguous acreage under the same ownership;

~~(c) The Application should also include~~Copies of any existing surveys and aerial photography of the Project;

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

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

~~1. Project;~~

~~2. Land leased out to others; and~~

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~~3. Land leased from others:-~~

~~(fd) A written statement satisfactory to the Department describing short and long term plans for keeping the land in activeproductive Agricultural use; and,~~

~~(ge) Statements by Applicant setting forth:-~~

~~1. Applicant's good faith intent not to actively market, sell or commit to sell the land included in the Application within a period of 120 days from the date of the Vote of Interest;-~~

~~2. Applicant's consenting to allow the Department, or an agent of the Department, or a Partner Agency to conduct an inspection of the Project, including soil testing limited to agricultural and septic suitability;-~~

~~3. Any and all liens, encumbrances, and easements on Applicant's land to be included in the Project;-~~

~~4. Any other information deemed relevant to the project by the Department and the Applicant.-~~

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

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

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

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

22.06: APR Program ~~2-~~ Application Processing and Closing Procedures

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

(2) The evaluation may include, but is not limited to, the following, ~~as applicable;-~~

(a) A field inspection of the Project land and an evaluation of its agricultural potential;-

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

(c) Review of the Application and information contained therein as to the suitability for agricultural preservation;-

~~(d) Compatibility with Reviewing whether the project meets Partner Agency eligibility criteria;~~

(e) Obtaining and reviewing a full appraisal, obtained at the Department's own expense, carried out for both the Full Fair Market Value of the Project and the Fair Market Agricultural Land Value of the Project to determine the APR Value in accordance with recognized professional appraisal standards and the applicable Executive Office of Energy and Environmental Affairs ("EOEEA") and Partner Agency appraisal specifications; and,

(f) Review of title documents. The Department may, at its own expense, retain an attorney duly licensed and in good standing to practice law in the Commonwealth of Massachusetts with expertise in the practice of real estate conveyance and land use law who complies with all current EOEEA and Department standards, rules, and policies related to title specifications. The attorney shall perform a title search related to the Project, and provide to the Department a title abstract, certificate of title, or other documents as required by the Department. ~~clear and marketable record title acceptable to the Department prior to closing.~~

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

~~(4) Upon the completion of the evaluation and a recommendation, the Department shall either:~~

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

~~(b) Notify the Applicant in writing within 21 days of such determination that the Project fails to meet Program eligibility requirements or funding availability. If the Applicant is notified that the Project fails to meet Program eligibility requirements, Applicant, within 21 days of the notice of such determination, shall have the right to petition the Commissioner in writing for a review of the decision?. The decision of the Commissioner shall be final, except as otherwise provided in law. A hearing on the petition shall be at the discretion of the Commissioner.-~~

- ~~(45)~~ The ALPC shall consider the Project at its next available meeting and may, after consideration:
 - (a) Cast a Vote of Interest Approval;
 - (b) Cast a Vote of nNo interest; or
 - (c) Take any other just and appropriate action consistent with the goals and purposes of the APR Program, together with an explanation of its reasons, therefor.

- ~~(56)~~ Following the ALPC action, ~~the Department shall proceed as follows:~~
 - (a) ~~The Department~~ shall notify Applicant in writing within 30 days of the ALPC action; and
 - (b) If the Applicant is dissatisfied with the action of the ~~Committee~~ALPC, the Applicant may, within 30 days of receipt of notice, request in writing a meeting in order to present supplementary information to ~~with~~ the ALPCCommittee. After due notice to all parties concerned, the CommitteeALPC shall hold a meeting within 120 days of its receipt of request and shall reconsider the Project in the light of such relevant and supplementary information as may be presented to it.
 - (c) After a Vote of Interest, and subject to funding, a full appraisal shall be carried out for both the Full Fair Market Value of the Project and the Fair Market Agricultural Land Value of the Project to determine the APR Value in accordance with recognized professional appraisal standards and the applicable Executive Office of Energy and Environmental Affairs ("EOEEA") appraisal specifications; and
 - (d) After a Vote of Interest, appraiser(s) may be authorized to engage an engineer or another qualified individual to perform additional work in order to provide additional necessary information.

- ~~(67)~~ The amount paid for the APR shall be the amount presented to the Applicant in a letter offering to purchase an APR on the Project. However, this sum shall not exceed the difference between the Fair Market Value and Fair Market Agricultural Land Value, as determined by the appraisal obtained by the Department pursuant to 22.06(2)(e), of the amount paid by the Commonwealth, plus any additional consideration such as local contributions, third party contributions, and bargain sales, and retained rights.

- ~~(78)~~ Upon the parties reaching a mutually acceptable amount to be paid for the Project, the Department shall place the Project on the agenda of the next available ALPC meeting with its recommendation for a Final Vote to purchase an APR Restriction, subject to funding.

- ~~(89)~~ Upon approval and acceptance of a Project by Final Vote of the ALPC, the Department's title attorney shall, at its own expense, shall arrange for an attorney duly licensed and in good standing to practice law in the Commonwealth of Massachusetts with expertise in the practice of real estate conveyance and land use law who complies with all current EEA and Department standards, rules, and policies. The attorney, in collaboration with Department staff, shall prepare all legal instruments required for a closing on the Project, including without limitation, a purchase and sale agreement. The attorney shall complete a title search of the Project, provide to the Department a certificate of clear and marketable record title acceptable to the Department prior to closing and attend to the proper execution and recording of all legal instruments.

- ~~(94)~~ Upon an affirmative Final Vote of Approval of the ALPC, the Applicant shall be responsible for the following activities, unless otherwise agreed in writing by the Department and the Applicant:
 - (a) Clearing all title defects and encumbrances identified by the Department, at the Applicant's expense, and approving a preparing a metes and bounds description of the APR Parcel and any excluded parcels based upon the survey, required in 330 CMR 22.06(10)(b). The Applicant or its attorney shall confirm in writing ~~shall certify~~ that the boundary description of the APR Parcel, the survey, and any excluded parcels, have been examined and have been found to be free of error; Moreover, the recording of the APR with the aforesaid description will be conclusive as to the non-existence of any other excluded parcel or parcels, and shall serve as a waiver of any claim to exclusion other than as stated in the APR document. The property description shall be suitable for recording in the Registry of Deeds or Land Court (hereinafter both the "Registry of Deeds"); and
 - (b) Paying 50% fifty percent (50%) of the cost of the survey plan. The Department shall retain a surveyor to perform the survey according to EOEEA and Partner Agency specifications; and.
 - (c) Cooperate in the preparation, of, review, and signing of a baseline report that documents the present conditions of the APR Parcel, and other documents required by the Department or Partner Agency to acquire the APR. Preparing a survey plan of the APR parcel satisfactory to the Department and suitable for recording in the Registry of Deeds, such plan also showing any excluded parcel if not separately decided. The Department may at its sole discretion cover up to 50% of the cost of the survey plan preparation. The cost of recording the survey plan shall be borne by the Applicant. The Applicant shall also be responsible for acquiring, where necessary, approval from the local planning board.

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~~(8101)~~ Upon completion of all actions described above, including preparation of all legal instruments and the securing of all necessary funding for the transaction, including all documents required for obtaining funding from Partner Agency, the Department will schedule a closing on the Project at or prior to which all legal instruments and documents shall be executed and final arrangements for payment of funds, adjustments, and recording of - documents shall be made by the Department.

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

22.07: Criteria Applicable in Evaluation of Projects

(1) In evaluating a Pproject, the ~~Committee~~ ALPC shall consider the following as priority criteria to best fulfill the purposes of the APR Program, as established by St. 1977, c. 780:

- (a) The degree to which the Project would serve to preserve and enhance the agricultural resource base of the Commonwealth of Massachusetts;
- (b) The suitability of land as to soil classification and other criteria for agricultural use; and,
- (c) The Fair Market Value of such land and the Fair Market Value of such land when used for agricultural purposes as determined by the independent appraisal ~~is~~ obtained by the Department pursuant to 330 CMR 22.06(2)(e).

(2) In addition, the ~~Committee~~ ALPC may consider additional criteria, including, but not limited to, the following:

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

22.08: ~~APR Restriction~~ Agricultural Preservation Restriction

An APR ~~Restriction~~ shall serve to memorialize the intent agreement of an Owner and the Commonwealth, and Partner Agency or co-holder, if any, as to the future use of an APR Parcel.

(1) Form and Content. The Commissioner shall be responsible for establishing the form and content of each APR ~~Restriction~~, in conjunction with the Partner Agency. -

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

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

~~(34)~~ Nature of APR Restriction. The APR ~~Restriction~~ is a binding agreement between an ~~o~~ Owner of an APR Parcel and the Commonwealth, exists in perpetuity, runs with the land, binds all future owners of the APR Parcel, and shall be recorded at the appropriate Registry of Deeds-. Any inconsistency between the language of an APR ~~Restriction~~ and the language of a policy or regulation shall be resolved in favor of the APR ~~Restriction~~.

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

~~68. Soil Excavation: Removal. The removal of soil in excess of normal harvesting of an agricultural crop unless conducted in accordance with best management practices developed by the relevant agricultural industry and approved by the Department, and,~~

~~79. Subdivisions. The division of a lot, tract, or an existing APR Parcel into two or more separate APR Parcels. A Subdivision allows for separate ownership and operation of the subdivided parcels only if that arrangement is consistent with the stated purpose of the applicable APR in the best interests of the ongoing agricultural viability of the separated parcels. When considering a subdivision application, the size of a parcel of farmland can, in some cases, determine its future agricultural viability. Considerations such as the quality of a parcel's soils, ability to support existing and potential agricultural enterprises, and the strength and nature of an area's agricultural industry, factor into determining the agricultural viability of an APR Parcel, and the Department, at a minimum, ALPC must find compliance with the requirements of all of the following subsections:~~

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

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

~~i. Limit or prohibit future construction of structures, including dwellings; ii. Provide an option to acquire at agricultural value;~~

~~iii. Provide an affirmative covenant to farm; and~~

~~iv. Provide other mutually agreed upon restrictions for ensuring the future viability of the APR Parcels.~~

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

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

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

~~i. The names and addresses of the proposed owners of each parcel to be created by the subdivision;~~

~~ii. The intended uses of each parcel to be created, including a five year business plan for each parcel; and~~

~~iii. A Natural Resource Conservation Service farm conservation plan for each parcel, including a schedule for implementation.~~

~~(23) Procedures for Requesting a COA:~~

~~(a) Application. An Owner shall submit to the Department an Application, signed by the Owner on a form prescribed by the Department Commissioner describing the proposed use, act, or Structure requiring a COA, all proposed APR Parcel Activities.~~

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~~(b) Review and Recommendation. Within 90 days of receipt of a completed Application, the Department shall review the Application and may inspect the APR Parcel.~~

~~and prepare a recommendation to approve or reject the Application.~~

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

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

~~(e) Certificate of Approval. If an Application is approved, the Department shall, within 45 days of Notice of Action, issue a COA in recordable form. A COA certificate of approval may require specific conditions, including but not limited to, requiring an Owner to post a bond or other security, satisfactory to the Department, for completion of the activities required by the COA. A COA may be transferable to a subsequent owner of the APR Parcel only with approval of the Department.~~

~~(d) Certificate of Approval Denial. If an Application for a COA is denied, the Department shall notify the Owner in writing of the denial. The notification of denial shall contain a notice of a right to request a hearing before the ALPC, and the Department may specify a time limit to request a hearing, not to exceed the timing provided for in M.G.L. c. 20, § 23(c), as amended.~~

~~(34) APR Parcel Owner Responsibilities. The COA shall set forth the following certain time specific obligations, unless the COA has different time frames, in which case the time frames in the COA shall control.~~

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

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

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

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

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

~~(45) Department Responsibilities. Upon satisfactory completion of the COA activities Required Activities and receipt of Notice of Completion, the Department may shall perform the following:~~

~~(a) Inspection of the COA Activities. The Department may shall, within a reasonable period of time 60 days of receipt of the Notice of Completion from Owner, inspect the completed COA activities to determine compliance with the terms of the COA.~~

~~(b) Certificate of Completion (COC). The Department may shall within a reasonable period of time after 30 days of its inspection, if the COA activities conform to the COA, issue a COC, if required, in recordable form and provide a copy to the Owner, and~~

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

~~(56) Special Permit. A Special Permit is a Departmental approval that permits a certain commercial non-agricultural activity or use that does not Defeat or Derogate from the Intent of St. 1977, c. 780, is minor in comparison to the currently existing agricultural use on the APR Parcel. All applicable provisions of M.G.L. c. 20, § 23(b), as amended, and of other applicable statutes, unless otherwise provided by the applicable APR Restriction, shall govern the granting of an Owner who seeks a Special Permit. All conditions of the Special Permit terminate at the expiration of the Special Permit, except as otherwise provided. In connection with the Special Permit, the following specific provisions are applicable:~~

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- ~~(a) (a)~~ An Application for Special Permit shall be ~~granted~~allowed only after the Department applies the Agricultural Preservation Restriction Program Guidelines "Requests for a Special Permit to Conduct Non-agricultural Activities or Uses on APR Land" in effect at the time of the Application;
~~— consideration and favorable action by the ALPC at a public meeting allowing for public input, including that of the applicant, except as otherwise provided in 330 CMR 22.09;—~~
- ~~(b) (b)~~ However, at a minimum, the Department may grant a Special Permit if:
1. The APR Parcel is being actively utilized for full-time commercial Agriculture;
 2. The activity is minor, ancillary and subordinate to the Agricultural use of the APR Parcel;
 3. Such uses and activities are not inconsistent with the purpose of the APR and shall not defeat nor derogate from the purpose of this Restriction; and,
 4. The request is limited to uses and activities requiring no new construction.
- ~~New structures or construction activities shall not be allowed under a Special Permit;~~ (c) An Owner who is granted a Special Permit shall commence Special Permit activity within one year of issuance of a Special Permit; and,
- (d) A Special Permit shall have a maximum term of five years and may be ~~renewed~~extended only at the request of the Owner and with the approval of the Department.

~~(67)~~ Procedures for a Special Permit.

- (a) Application. For all ~~APR Parcel activities on an APR Parcel~~activities or uses requiring a Special Permit, an Owner shall sign and submit to the Department an Application, on a form prescribed by the ~~Department~~Commissioner, describing all proposed non-agricultural activities or uses.
- (b) Review and Recommendation. ~~Upon~~Within 90 days of receipt of a completed Application, the Department shall review the Application, and may inspect the APR Parcel, ~~and prepare a recommendation to approve or reject the Application.~~
- ~~(c) ALPC Consideration.~~ Upon completion of a staff recommendation, the Department shall place the Application on the agenda for the next available ALPC meeting, and the applicant shall be notified of the ALPC's action. ~~In extraordinary or emergency circumstances, the Commissioner may consider, and, if appropriate, take action granting the Application for non-agricultural activities on an APR Parcel without ALPC action.~~
- ~~(d) Notice of Action.~~ Within 21 days of final ALPC action at which an Application is acted upon, or within 21 days of the Commissioner's action, the Department shall notify the Applicant in writing of the action taken on the Application.
- ~~(e) Issuance of Special Permit.~~ If an Application is approved, the Department shall, within a reasonable amount of time~~45 days of Notice of Action~~, issue a Special Permit in recordable form. A Special Permit may require an APR Parcel Owner, among other conditions, to post a bond or other security satisfactory to the Department for completion of the activities required.
- ~~(d) Denial of Special Permit.~~ If an Application is denied, the Department shall notify the Owner in writing of the denial. The notification of denial shall contain a notice of a right to request a hearing before the ALPC, and the Department may specify a time limit to request a hearing, not to exceed the timing provided for in M.G.L. c. 20, § 23(c), as amended.

~~(78)~~ APR Parcel Owner Responsibilities. The Special Permit shall set forth, at a minimum, the following ~~certain time~~-specific obligations to be met by the Owner:

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

~~(89)~~ Other Department Rights. At any time during the initial or ~~renewed~~extended term the Department may, in its discretion, conduct an inspection to ascertain compliance with the Special Permit.

~~22.10: Notification—~~

Where the APR ~~Restriction~~ provides for a right of first refusal, an option to purchase at agricultural value, or a similar right at the time of sale held by the Department, unless otherwise provided by the specific terms of an APR, the following provisions shall apply, in addition to Departmental ~~g~~Guidelines for waivers in effect at the time of the notification of sale:

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

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

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

22.11: APR Parcel Violations

The Department or its authorized agents and any entities co-holding the APR shall ~~may enter the APR Parcel, including buildings and Structures, with prior notice, to ascertain compliance~~ monitor with the APR ~~Restriction~~. The Department shall work with the Owner for a resolution of any identified violations or potential violations of the APR, any statute, regulation, policy, COA, or Special Permit.

(1) Determination of Violation. If the Department has reason to believe a violation has occurred, it shall determine the extent of any violation. The Department ~~shall~~ may make contact with the Owner to discuss the Department's determination. ~~meet with the Owner to determine if a violation has occurred.~~

(2) Response. If the Department finds that a violation has occurred, written notice stating the particulars of the violation shall be given to the Owner ~~it shall give prompt written notice to the Owner.~~

(a) ~~The~~ Within 60 days of receipt of the written notice, the Owner shall provide a written response including any relevant pictures or information within the time period set forth by the Department in the written notice of violation, proposals to correct the violation.

(b) Upon receiving a response from the Owner, the Department ~~may respond within 30 days in writing~~ shall outline ~~ing~~ a proposed plan, or require ~~ing~~ the Owner to propose a plan to correct the violation. The creation of a plan may require assistance from a Partner Agency or other entity with technical expertise. Upon the creation of a plan if the proposed plan is approved by the Department, the Owner shall have 60 days to implement the plan within in the timeframe approved by the Department and shall give progress reports as directed by the Department.

(c) A site inspection ~~or inspections~~ to confirm the satisfactory completion ~~implementation~~ of the plan will be completed by Department staff.

(d) ~~within 30 days of the initial progress report.~~ If the violation is corrected to the satisfaction of the Department, a written acknowledgement will be issued by the Department within 30 days to the Owner.

(3) Violation Resolution. If the Department and the Owner cannot reach a satisfactory resolution ~~to~~ of the violation or the Owner fails to complete the agreed upon plan, the Department shall pursue resolution through all available legal means, ~~in accordance with the General Laws and the APR Restriction.~~ If a court determines that the APR has been violated, the Department may seek reimbursement for any reasonable costs of enforcement, including court costs, reasonable attorney's fees, and other payments ordered by such court.

(4) Joint and Several liability. The Owner and its successors in title, shall be jointly and severally liable for any violation of the terms of the APR, Certificate of Approval, Special Permit, or General Laws, Chapters 184, Sections 31 through 33, as amended, and Chapter 20, Sections 23 through 26, as amended, and rules, regulations and policies thereunder.

(5) Partner Agency Right of Enforcement. The United States has a right of enforcement for those APRs held with the United States Department of Agriculture in order to protect the public investment. The Secretary of the United States Department of Agriculture (the "Secretary"), or his or her assigns, on behalf of the United States, may exercise those rights under any authority available under State or Federal law if the Department, or its successors or assigns, fails to enforce any of the terms of the APR, as determined in the discretion of the Secretary. As set forth in the APRs held with the United States, the United States is entitled to recover any and all administrative and legal costs from the Department and/or the Owner, including attorney's fees or expenses, associated with any enforcement or remedial action related to the enforcement of the APR.

22.12: Release of an ~~APR~~ Agricultural Preservation Restriction

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

~~(2) Pursuant to M.G.L. c. 184, § 32, as amended, the Department may be requested to deem the APR Parcel or a portion thereof is no longer suitable for Agriculture. I~~

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

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

(3) ~~An~~The Owner ~~shall may~~ file with the Department a written request ~~that the Department deem the APR Parcel or a portion thereof no longer suitable for Agriculture. for the release together with a full disclosure of all information relative to the anticipated uses of the land to be released.~~The request shall be on a form prescribed by the Department and shall include a detailed statement of the consideration that the Owner proposes in exchange for the release and an appraisal determining the value of the land proposed to be released.

(4) Prior to a release, by the General Court in accordance with M.G.L. c. 184, § 32, as amended, and Article 97 of the Articles of Amendment to the Constitution, the Commissioner ~~shall may be requested to~~ determine:

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

(5) To ~~satisfy the then~~determine compliance with any applicable Land Disposition Policy of the Executive Office of Energy and Environmental Affairs ~~and applicable "no net loss policies" of the Department, the Owner shall provide, on terms satisfactory to the Commissioner may be asked to determine, if other land of the Owner not restricted by an APR, and proposed to be placed under an APR is an A PR on unrestricted land determined by the Commissioner to be:~~

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

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

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

(7) Prior to a release, a ~~2/3~~ vote of both houses of the General Court shall be required in accordance with M.G.L. c. 184, § 32, as amended, and the approval of any ~~c~~Co-holder of the APR.

~~22.13: Adjudicatory Hearings~~

~~Pursuant to M.G.L. c. 20, § 23(c), as amended, any applicant aggrieved by a decision of the Department denying a request for a Certificate of Approval for agricultural activities or Structures or for a Special Permit may request an Adjudicatory Hearing before the ALPC. Upon receipt of a request for an Adjudicatory Hearing, the ALPC shall:~~

- ~~(1) hold an Adjudicatory Hearings;~~
- ~~(2) designate a hearing officer who shall preside over the hearing, assemble an official record of the hearing, and submit a proposed written decision to the ALPC; and,~~
- ~~(3) render the final decision.~~

~~22.14: Policies and GuidelinesManuals-~~

The Department and the Executive Office of Energy and Environmental Affairs have established guidelines, policies, and procedures in addition to the APR ~~Restriction~~ documents that are periodically updated and that provide further guidance for Owners. Any inconsistency between the language of an APR ~~Restriction~~ and the language of a policy or regulation shall be

resolved in favor of the APR ~~Restriction~~. The Department shall provide copies thereof to any Owner upon request and post on its website all APR Regulations and Department ~~p~~Policy documents. The ALPC may advise and make a recommendation to the Department for policy development or changes. The ALPC meeting is open to the public and is a forum for the public to comment on proposed changes to policy; however, it shall be the sole discretion of the Commissioner to establish and implement ~~p~~Policy.

REGULATORY AUTHORITY

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

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~~12/25/09 330 CMR 139~~