

330 CMR: DEPARTMENT OF AGRICULTURAL RESOURCES

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; to encourage sound soil management practices in accordance with generally 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 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.

Agricultural Lands Preservation Committee (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.

Agricultural Preservation Restriction (APR) 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.

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

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

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

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

APR Value means the difference between the Fair Market Value and the Fair Market Agricultural Land Value as determined by the appraisal obtained by the Department pursuant to 330 CMR 22.06(2)(e).

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Beginning Farmer means an individual or entity who has less than two years experience managing or owning a Farm.

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

Certificate of Completion (COC) means a certificate, in recordable form, that attests that the conditions of a COA were completed to the satisfaction of the Department.

Chair means the Commissioner as he or 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 in perpetuity and the preservation of the natural agricultural resources of the Commonwealth.

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.

Farm means the land on which an agricultural use occurs in accordance with those uses defined in M.G.L. c. 61A, §§ 1 and 2 and as listed here: The land shall be deemed to be in agricultural use when primarily and directly used in raising animals including, but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals, for the purpose of selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for market. Also agricultural use shall include horticultural use when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flower, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling these products in the regular course of business; or when primarily and directly used in raising forest products under a certified forest management plan, approved by and subject to procedures established by the state forester, designed to improve the quantity and quality of a continuous crop for the purpose of selling these products in the regular course of business; or when primarily and directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising these products and preparing them for market.

Farmer means an individual, corporation, limited liability company, or partnership that provides documents to demonstrate it:

- (a) owns and operates a farm business; or
- (b) is employed full time on a Farm for a minimum of two years.

The types of documents the Department will accept to demonstrate the definition of Farmer is met include, but are not limited to, property deed, written lease, employment contract, articles of incorporation, partnership agreement, tax return schedule F, or current or previous year's approved M.G.L. c. 61A application.

22.02: continued

Farm Business Plan means a demonstration of how a Potential Purchaser will continue to engage in commercial agriculture to retain and use the land primarily and directly for agricultural purposes pursuant to M.G.L. c. 61A, §§ 1 and 2 and preserve the natural agricultural resources for a period of not less than five years after the date of sale and including at a minimum: Potential Purchaser's commercial Farm experience, identification of all land uses on the APR Parcel, production information and products to be sold for example, crops to be grown, acreage for each crop, livestock to be raised, pasture acreage, use of existing structures on APR Parcel (if applicable), and need for additional structures or capital improvements (if applicable), a description of markets and personnel information (number of employees in existence *vs* need to be hired), how the APR Parcel will operate in conjunction with other farm land owned or leased by the Prospective Purchaser (if applicable).

Fair Market Agricultural Business Value (FMABV) means 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 the value based upon the highest and best use of the land for agricultural purposes. The Fair Market Agricultural Land Value may rise and fall commensurate with market conditions, inflation, or other valuation factors.

Fair Market Agricultural Value (FMAV) means the combined total of the following components of an APR Parcel, as applicable: Fair Market Agricultural Land Value; Fair Market Agricultural Business Value; and Fair Market Dwelling Value.

Fair Market Dwelling Value (FMDV) 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 Stand means an agricultural Structure utilized for the sale of agricultural products not inconsistent with M.G.L c. 40A, § 3.

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

Financial Plan means a plan, whether narrative or otherwise, that demonstrates the Potential Purchaser can support the operation of the Premises without adversely affecting long term viability of the Premises. Such a plan should, at a minimum, include: an estimate of start-up costs, income statement with budget estimates, and expense projections.

Housing for Farm Labor means a Structure, whether a new Structure or conversion of an existing Structure, for use only by seasonal agricultural employees of the Owner. Depending upon the agricultural use of the land, the season may be year-round, for example a dairy operation has a year-round season.

Impervious Surface means 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.

22.02: continued

Minor means past violations that have been resolved to the Department's satisfaction without involving legal action by those with a legal right to enforce, or current violations that either are easily resolved, or constitute non-resource based violations that do not affect the overall viability of the APR Parcel.

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

Option to Purchase Real Estate at Fair Market Agricultural Value means the option of the Department to purchase an APR Parcel at its Fair Market Agricultural Value prior to the Owner selling the APR Parcel to a third party.

Owner means APR Parcel record title owner(s).

Partner Agency means an agency which is partnering with the Department in purchasing, holding or enforcing the terms of the APR.

Potential Assignee means the person or entity who responded to the Department's Request for Statement of Interest and has expressed interest in being assigned the Department's Option to Purchase Real Estate at Agricultural Value or Right of First Refusal. If the entity is a corporation or limited liability company, it must provide the Department the articles of incorporation demonstrating that the corporation or limited liability company was formed for the purpose of owning and operating a Farm, or meets the definition of Farmer. If the entity is a partnership, the Department must be provided a partnership agreement which evidences the partnership was formed for the purpose of owning and operating a Farm, or meets the definition of Farmer.

Potential Purchaser means the person or entity who has entered into a *bona fide* purchase and sale agreement with the Owner.

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.

Purchase Price means the price listed for the APR Parcel in the purchase and sale agreement by and between the Owner and the Potential Purchaser.

Right of First Refusal means the right of the Department to purchase an APR Parcel according to specific terms set by the Owner prior to the Owner selling the APR Parcel to a third party.

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

Statement of Interest means the Potential Assignee's written response that it desires to receive the Department's assignment and providing proof the Potential Assignee is qualified to receive the assignment.

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.

Vote of Interest means a vote by the ALPC indicating an interest in purchasing an APR on the identified Project, subject to available funding.

Waiver means a document in recordable form issued by the Department that waives the Department's Right of First Refusal, Option to Purchase Real Estate at Fair Market Agricultural Value or other similar right to purchase or assign the right to purchase the APR Parcel.

22.03: Composition and Meetings of the Agricultural Lands Preservation Committee

- (1) The composition and meetings of the ALPC shall be as defined by M.G.L. c. 20, §§ 23 and 24.
- (2) The ALPC shall meet at the call of the Chair.
- (3) The Chair shall call a meeting at the written request of any five owners of APR Parcels. If such a request is made, the ALPC shall hold such a meeting within 60 days after such request is received. The 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.

22.04: Eligibility of Agricultural Preservation Restriction Program

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

22.05: Application Procedures

- (1) Application to Department. Application to the 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 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 distribute a copy of the Application to the agencies and officials identified in 330 CMR 22.05(4)(a).
- (2) Project Information and Description. The Application shall contain, at a minimum, the following information:
 - (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 (USGS) topographic map showing the Project as well as any excluded contiguous acreage under the same ownership;
 - (c) Copies of any existing surveys and aerial photography of the Project;
 - (d) A United States Department of Agriculture (USDA) Natural Resources Conservation Services (NRCS) soils map showing a breakdown of the Project's various soil types and acreage possessing soil capability Class I through VIII as well as prime farmland, soils of state or local significance, and unique soils;
 - (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;
 - (f) A written statement to the Department describing short and long term plans for keeping the land in active Agriculture; and
 - (g) Statement by Applicant consenting to allow the Department, 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) Disclosure. If a Municipality is to provide funds or other assistance as set forth in M.G.L. c. 20, § 23 toward the purchase of the APR, or if otherwise required by the Public Records Law, the Department may be required to disclose information provided to the Department.
- (4) Municipality Participation. 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 ALPC's consideration of such Project:

22.05: continued

- (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: Agricultural Preservation Restriction Program Application Processing and Closing Procedures

- (1) Upon 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:
 - (a) A field inspection of the Project 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;
 - (c) Review of the Application and information contained therein as to the suitability for agricultural preservation;
 - (d) Compatibility with Partner Agency eligibility criteria;
 - (e) Obtaining and reviewing a full appraisal, obtained at the Department's own expense, carried out for both the 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, if applicable; 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.
- (3) Upon the completion of the evaluation and a recommendation, the Department shall:
 - (a) Place the Project on the agenda of the next available ALPC meeting for consideration, if it determines that the Project continues to meet all Program eligibility requirements; or
 - (b) Notify the Applicant in writing that the Project fails to meet Program eligibility requirements or funding availability.
- (4) The ALPC shall consider the Project at its next available meeting and may, after consideration:
 - (a) Cast a Vote of Interest;
 - (b) Cast a vote of no interest; or
 - (c) Take any other just and appropriate action consistent with the goals and purposes of the APR Program, together with an explanation of its reasons.
- (5) Following the ALPC action:
 - (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 ALPC, the Applicant may, within 30 days of receipt of notice, request in writing a meeting in order to present supplementary information to the ALPC. After due notice to all parties concerned, the ALPC 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.

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- (6) 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 330 CMR 22.06(2)(e).
- (7) Upon the Applicant accepting an offer to purchase an APR, the Project shall be placed on the agenda of the next available ALPC meeting for consideration of a Final Vote.
- (8) Upon a Final Vote of the ALPC, the Applicant shall be responsible for the following activities, unless otherwise agreed in writing by the Department and the Applicant:
 - (a) Clearing all title defects and encumbrances identified by the Department, at the Applicant's expense, and approving a metes and bounds description of the APR Parcel and any excluded parcels based upon a survey. The Applicant shall confirm in writing 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;
 - (b) Paying 50% of the cost of the survey. The Department shall retain a surveyor to perform the survey according to EOEEA and Partner Agency, if applicable, specifications;
 - (c) Cooperate in the preparation, review, and signing of a baseline report documenting the present conditions of the APR Parcel, and other documents as may be required by the Department or Partner Agency to acquire the APR; and
 - (d) Participate in a conference with the Department to discuss, and for the Department to explain, the terms and conditions of the APR.
- (9) Upon completion of all actions described in 330 CMR 22.06(8)(a) through (d), 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, if applicable, 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.

22.07: Criteria Applicable in Evaluation of Projects

- (1) In evaluating a Project, the 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 obtained by the Department pursuant to 330 CMR 22.06(2)(e).
- (2) In addition, the ALPC may consider additional criteria including, but not limited to, the following:
 - (a) Contribution of the Project in the development of a continuing program of acquiring multiple APRs within a defined geographical area or areas;
 - (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 ALPC, 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; and
 - (d) Degree of threat from any cause to the continuation of Agriculture on the Project.

22.08: Agricultural Preservation Restriction

An APR shall serve to memorialize the 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, in conjunction with the Partner Agency, if applicable.

22.08: continued

(2) Terms and Conditions. An APR shall include such terms and conditions as the Department deems necessary to implement the purposes of St. 1977, c. 780, and Partner Agency requirements, if applicable. Such terms and conditions may include, without limitation, statement of purpose, retained rights, prohibited uses and acts, uses and acts requiring Departmental Approval, processes and procedures, affirmative covenants to farm, inspection and enforcement rights, and Option to Purchase Real Estate at Fair Market Agricultural Value.

(3) Pre-sale Conference. An APR shall additionally include a requirement for a conference, prior to a notice of intent to sell, between the Owner, Department and the proposed purchaser to discuss the requirements of the transfer or sale of an APR Parcel. The conference shall occur on the APR Parcel under consideration or in a manner and time agreed upon by the Owner, proposed purchaser of the APR Parcel and the Department. Following submission of a notice of intent to sell, the Department may communicate directly with the Owner or seek an additional conference with the Owner and proposed purchaser to clarify any element of the Owner's notice of intent to sell and waiver request.

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

22.09: Departmental Approvals

In accordance with the terms of the APR, certain activities, uses, and improvements require Departmental Approval. Such approvals are issued in the form 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 generally accepted agricultural practices are generally allowed by right in the APR, the terms of an APR may require an approval for certain agricultural Structures, activities, practices, uses, and improvements. The Department may, by issuing a COA, authorize those Structures, activities, practices, uses, and improvements that the Department finds to be consistent with APR, Massachusetts law, and regulations of the Department.

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

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

(b) Actions requiring a COA may include, but are not limited to:

1. Construction of a Farm Stand;
2. Construction of Housing for Farm Labor;
3. Construction of residential dwellings;
4. Construction of an alternative energy system;
5. Construction of other agriculturally related structures;
6. Soil excavation; and
7. Subdivision.

(2) 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 describing the proposed use, act, or Structure requiring a COA.

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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.

(c) Certificate of Approval. If an Application is approved, the Department shall issue a COA in recordable form. A COA may require specific conditions including, but not limited to, requiring an Owner to post a bond or other security. 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).

(3) APR Parcel Owner Responsibilities.

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

(b) 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.

(c) Nonconforming Work. If the performance of the COA activities fails to conform to the COA, the Owner shall, take all action necessary to end the nonconformity including, but not limited to, restoring the APR Parcel to its prior condition, removing any Structure, or ceasing work immediately.

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

(4) Department Responsibilities. Upon satisfactory completion of the COA activities, the Department may perform the following:

(a) Inspection of the COA Activities. The Department may, within a reasonable period of time, inspect the completed COA activities to determine compliance with the terms of the COA.

(b) Certificate of Completion (COC). The Department may within a reasonable period of time after 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.

(5) Special Permit. A Special Permit is a Departmental Approval that permits a certain non-agricultural activity or use that does not Defeat or Derogate from the Intent of St. 1977, c. 780. All applicable provisions of M.G.L. c. 20, § 23(b) and of other applicable statutes, unless otherwise provided by the applicable APR, shall govern the granting of a Special Permit. In connection with the Special Permit, the following specific provisions are applicable:

(a) An Application for Special Permit shall be granted 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;

(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.

(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 only at the request of the Owner and with the approval of the Department.

(6) Procedures for a Special Permit.

(a) Application. For all 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, describing all proposed non-agricultural activities or uses.

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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.

(c) Issuance of Special Permit. If an Application is approved, the Department shall, within a reasonable amount of time, 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).

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

(a) Registry Recording. The Owner may record it with the appropriate Registry of Deeds at Owners' own expense and provide the Department with a copy of the recorded document.

(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) Nonconformity with Special Permit. If the Owner fails to comply with the terms of the Special Permit, the Owner shall take such remedial action to end the nonconformity, including, but not limited to, bringing the activity into compliance with the Special Permit, and restoring the APR Parcel to its prior condition.

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

22.10: Transfer or Sale of an APR Parcel

Where the APR provides for a Right of First Refusal, an Option to Purchase Real Estate at Fair Market 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 any Department guidelines for waivers approved by the ALPC and in effect at the time of the notification of sale:

(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 Real Estate at Fair Market Agricultural Value, and the Owner receives an offer to purchase, the Owner shall notify the Department in writing. The written notice of intent to sell 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 include, if applicable, a letter from Owner requesting a waiver, and in the case of an Option to Purchase Real Estate at Fair Market Agricultural Value or Right of First Refusal, an offer to sell the APR Parcel to the Commonwealth pursuant to the terms of the Option to Purchase Real Estate at Fair Market Agricultural Value or Right of First Refusal.

(2) Proposed Sale or Conveyance of Excluded Land. In the event that the proposed sale or conveyance contains agricultural or other land not subject to the APR, Owner shall also provide a written apportionment of values in the purchase and sale agreement, if relevant, as between the APR Parcel and the land/Structures not subject to the APR.

(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 (<https://www.mass.gov/orgs/massachusetts-department-of-agricultural-resources>).

(4) Automatic Waiver of Right to Purchase. The Department shall issue a Waiver upon finding all the criteria in 330 CMR 22.10(4)(a) through (e) has been met, however, if the criteria in 330 CMR 22.10(4)(a) through (e) has not been met, the Department may issue a discretionary waiver pursuant to 330 CMR 22.10(5):

22.10: continued

- (a) The Owner has:
 - 1. received a good faith offer;
 - 2. submitted to the Department a certified copy of an executed purchase and sale agreement for fixed consideration payable upon delivery of the deed for an APR Parcel;
- (b) The Potential Purchaser is a Farmer and has been a Farmer for a period of two years of the last five years immediately preceding the date of the notice of intent to sell;
- (c) The Potential Purchaser submits a Farm Business Plan which the Department determines is complete and presents a viable and achievable plan that is compatible with the APR and APR Parcel location;
- (d) If the Purchase Price is 20% or more than the Fair Market Agricultural Land Value, the Farm Business Plan must additionally include a written justification that the Department deems valid. Such valid justification for an increased purchase price may include valuation for Fair Market Agricultural Business Value and Fair Market Dwelling Value;

If the Owner does not determine the Fair Market Agricultural Land Value, the Owner may be eligible for a discretionary waiver pursuant to 330 CMR 22.10(5); and
- (e) The Potential Purchaser has no prior record of a violation of the written agreement or terms of any APR held by the Commonwealth. The Department may waive this requirement if the violation is deemed Minor.

(5) Discretionary Waiver of Right to Purchase. The Department may issue a Waiver upon finding all the criteria in 330 CMR 22.10(5)(a) through (e) has been met:

- (a) The Potential Purchaser is a:
 - 1 Farmer;
 - 2 Beginning Farmer; or
 - 3 nonprofit corporation organized for the purposes of leasing land to one or multiple Farmer(s) or Beginning Farmer(s);
- (b) The Potential Purchaser provides a Farm Business Plan, which the Department determines is complete and presents a viable and achievable plan that is compatible with the APR and APR Parcel location. The Farm Business Plan must specifically include the following, if the Potential Purchaser is a:
 - 1. Farmer, the Farm Business Plan must include the total acreage of the current farming operation and number of years in business;
 - 2. Beginning Farmer, the Farm Business Plan must list:
 - a. other relevant professional experience, degrees, courses, workshops, education and training; and
 - b. a Financial Plan must be provided.
 - 3. nonprofit corporation, the Farm Business Plan must be written by the Farmer(s) or Beginning Farmer(s) to whom the corporation intends to lease the APR Parcel and the purposes of the organization must be demonstrated by providing the Articles of Incorporation;
- (c) The Potential Purchaser has no prior record of a violation of the written agreement or terms of any APR held by the Commonwealth. The Department may waive this requirement if the violation is deemed Minor;
- (d) The Owner has complied with any specific terms enumerated in the applicable Right of First Refusal or Option to Purchase Real Estate at Fair Market Agricultural Value; and
- (e) If the APR requires a determination of Fair Market Agricultural Value and the Purchase Price is 20% or more than the Fair Market Agricultural Value, the Farm Business Plan must additionally include a written justification that the Department deems valid. Such valid justification for an increased purchase price may include proximity to other land owned or leased by the Potential Purchaser; unique characteristics of APR Parcel; and purchasing agricultural or other land not subject to the APR with the intention of operating the APR Parcel in conjunction with the other land as one Farm.

(6) Exercise of Right to Purchase. If the Potential Purchaser does not qualify for an Automatic or Discretionary Waiver, the Department may seek to exercise its right to purchase and assign the right to purchase the APR Parcel. In the event the Department exercises its right to purchase, the Department shall send the Owner a notice of election to purchase not more than three business days after said decision is made. The notice of election to purchase shall be in writing and include, at a minimum, the procedural next steps with timeframes including when the land will be assigned.

22.10: continued

(7) Statement of Interest. Upon the Department exercising its right to purchase, the Department may then solicit from the public Statements of Interest from those persons or entities seeking to be assigned the right to purchase the APR Parcel. The Statements of Interest shall be posted on the Department's website

(<https://www.mass.gov/orgs/massachusetts-department-of-agricultural-resources> and include an itemized list of the documents required. In some cases the APR document restricts who may be eligible to receive such assignment.

(8) Assignment of Right to Purchase. In order for the Department to assign the right to purchase the APR Parcel, the Department must find all the below criteria have been met:

- (a) The Owner has not withdrawn their offer to sell pursuant to 330 CMR 22.10(9);
- (b) The Potential Assignee complied with the terms of the request for Statements of Interest;
- (c) The Potential Assignee satisfies the discretionary Waiver criteria in 330 CMR 22.10(5)(a) through (c); and
- (d) If there is more than one qualified Potential Assignee, the Owner shall select the Potential Assignee.

(9) Right to Withdraw. An Owner shall have the right to withdraw the Owner's notice of intent to sell at any point prior to the Department's exercise or assignment of the Right of First Refusal or an Option to Purchase Real Estate at Fair Market Agricultural Value. An Owner's decision to withdraw a notice of intent to sell shall not affect an Owner's right or obligation to submit to the Department any future offer to purchase the APR Parcel.

22.11: Agricultural Preservation Restriction Parcel Violations

The Department or its authorized agents and any entities co-holding the APR may enter the APR Parcel, including buildings and Structures, with prior notice, to ascertain compliance with the APR. 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 may make contact with the Owner to discuss the Department's determination.

(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.

- (a) 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.
- (b) Upon receiving a response from the Owner, the Department shall outline a proposed plan, or require 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 approved by the Department, the Owner shall implement the plan within the timeframe approved by the Department and shall give progress reports as directed by the Department.
- (c) A site inspection to confirm the satisfactory completion of the plan will be completed by Department staff.
- (d) 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 the violation or the Owner fails to complete the agreed upon plan, the Department shall pursue resolution through all available legal means. 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 M.G.L. c. 184, §§ 31 through 33; M.G.L. c. 20, §§ 23 through 26, and rules, regulations and policies thereunder.

22.11: continued

(5) Partner Agency Right of Enforcement. A Partner Agency may have a right of enforcement as described in the applicable APR. Specifically, 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 (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 Agricultural Preservation Restriction

(1) An APR is a restriction in perpetuity. An APR may only be released, in whole or in part, in accordance with M.G.L. c. 184, § 32 and the Articles of Amendment to the Constitution of the Commonwealth, Article 97 and applicable policies of the Department.

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

(3) An Owner may file with the Department a written request that the Department deem the APR Parcel or a portion thereof no longer suitable for Agriculture. 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 and the Articles of Amendment to the Constitution, Article 97, the Commissioner 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 determine compliance with any applicable Land Disposition Policy of the Executive Office of Energy and Environmental Affairs, 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:

- (a) of equal or greater area;
- (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).

(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 any assessment requested under 330 CMR 22.12.

(7) Prior to a release, a $\frac{2}{3}$ vote of both houses of the General Court shall be required in accordance with M.G.L. c. 184, § 32 and the approval of any co-holder of the APR.

22.13: Adjudicatory Hearings

Pursuant to M.G.L. c. 20, § 23(c), any Owner 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, or any Owner who is subject to and aggrieved by a Determination of the Department to exercise or assign a Right of First Refusal or Option to Purchase Real Estate at Fair Market Agricultural Value may request an Adjudicatory Hearing before the ALPC.

22.13: continued

- (1) Certificate of Approval and Special Permit. Upon receipt of a request for an Adjudicatory Hearing, the ALPC shall:
- (a) hold an Adjudicatory Hearing;
 - (b) 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
 - (c) render the final decision.
- (2) Right of First Refusal or Option to Purchase Real Estate at Fair Market Agricultural Value.
- (a) The Department shall:
 1. notify the APR Parcel Owner, who may be then the aggrieved Owner, in writing by certified mail of the notice of election to purchase not more than three business days after said decision is made by the Department to exercise or assign a Right of First Refusal or Option to Purchase Real Estate at Fair Market Agricultural Value; and
 2. include notice that the Owner has a right, not more than ten business days after receipt of such determination by the Department, to request an Adjudicatory Hearing before the ALPC.
 - (b) The ALPC shall:
 1. upon receipt of a timely request, hold an Adjudicatory Hearing within a reasonable time;
 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. make the final decision not more than 15 business days after holding the Adjudicatory Hearing.
 - (c) The Owner shall:
 1. provide written consent to extend the time period to allow for the completion of the Adjudicatory Hearing and for the Department to finalize a sale should the Department prevail in the event that the time period established in the APR to exercise its Right of First Refusal or Option to Purchase Real Estate at Fair Market Agricultural Value together with the time period to complete the underlying land sale if the rights are assigned is less than 90 days in total; and
 2. have the above consent modify the time periods set forth in the APR but shall not affect any other APR term or right.

22.14: Policies and Guidelines

- (1) The Department and the Executive Office of Energy and Environmental Affairs have established guidelines, policies, and procedures in addition to the APR documents that are periodically updated and that provide further guidance for Owners. Any inconsistency between the language of an APR and the language of a policy or regulation shall be resolved in favor of the APR. The Department shall provide copies thereof to any Owner upon request and post on its website (<https://www.mass.gov/orgs/massachusetts-department-of-agricultural-resources>) all APR Regulations and Department policy documents. The ALPC may advise and make a recommendation to the Department for policy development or changes. The ALPC meeting is open to the public and is a forum for the public to comment on proposed changes to policy; however, it shall be the sole discretion of the Commissioner to establish and implement policy.
- (2) Review.
- (a) The Department shall review once every three years and in consultation with the ALPC and Board of Agriculture, established under M.G.L. c. 20, § 1, all existing guidance, policies, procedures and regulations relative to the management and oversight of the Program and propose updates to the guidance, policies, procedures or regulations that are necessary to improve and modernize the management of the Program;
 - (b) The Department shall conduct regional public hearings to assess the effectiveness of the Program and existing guidance, policies, procedures and regulations; and

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22.14: continued

(c) The Department shall make a good faith effort to mail a copy of any guidance, policy, or regulation, whether proposed or promulgated to all Owners not less than 21 days prior to the date of the regional public hearing.

REGULATORY AUTHORITY

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

NON-TEXT PAGE