

APR Program – Summary of Public Comments

Background

The Massachusetts Department of Agricultural Resources (the “Department” or “MDAR”)) held four public listening sessions throughout the state to better understand the attitudes, needs, and issues affecting the agricultural preservation restriction (“APR”) program in the Commonwealth. One of the sessions was a facilitated small group discussion with a report out of three to four main points by each group. The other three sessions were traditional listening sessions with oral testimonies. The public could also submit written comments through an online portal between January 19, 2018 and April 13, 2018.

Over 165 people attended the four listening sessions and the Department recorded 70 comments – 60 from the in-person sessions and the remainder online. Of those comments 12 were from non-profit organizations (“Non-profit”), 3 from government entities (FSA, local municipal, elected officials)(“Government”), and the remainder were individuals. Of the individual comments, 25 either owned or leased land with an APR (“APR Farmer”), 7 from farmers not in the APR program (“Farmer”), and 19 from other citizens (“Other”).

The below represents a summary of the comments provided in-person and online. The specific names have been replaced with the appropriate category: Non-profit, Government, APR Farmer, Farmer, and Other.

Relevant acronyms:

ALE: Agricultural Land Easement

ALPC: Agricultural Lands Preservation Committee

APR: Agricultural Preservation Restriction

COA: Certificate of Approval

DOER: Division of Energy Resources

FSA: Farm Service Agency

NRCS: Natural Resources Conservation Service

OPAV/Option: Option to Purchase at Agricultural Value

ROFR: Right of First Refusal

USDA: United States Department of Agriculture

2/13/18

The Red Barn at Hampshire College APR Traditional Listening Session

57 people in attendance

APR Farmer, Hadley

APR Farmer is concerned about the option to purchase at agricultural value. He heard the highest bidder had the land taken away and given to the lowest bidder. MDAR had said landowners could sell the land to the highest bidder, but now MDAR is telling them that is not the case. Who makes the decision to exercise the option and ROFR? Who makes the decision to change the rules and regulations?

APR Farmer, Hancock

APR Farmer is here to talk about options; he has an APR with an option. He has been told you can't back out once you decide to sell the property. He also hears you have to have your buyer write up a plan and farmers don't write well. The bottom line is that he is concerned the person he selects won't be able to buy the property.

He is concerned that this might personally happen to him and he has no way to back out of the sale or do anything about an MDAR decision. He thinks it must be illegal to do it that way and wants it changed across all options; it should be rescinded across all APRs. He wants to have a say in who buys his farm.

APR Farmer Egermont

APR Farmer owns 270 acres under APR and is a retired dairy farmer. He currently rents the property to another dairy farmer. He is concerned that the option and ROFR could become a problem if not rewritten. He believes the APR program is a very good program and just needs tweaking. He suggests it needs to have language that allows the landowner to back out of the sale.

He stated section C needs to be taken out of the statute; it's too broad, too subjective and has been misused in the past. He hopes MDAR will take a long hard look at section C and what should be allowed in the APR program. He sent comments to Rep. Pignatelli.

He hopes MDAR takes a hard long look at these provisions.

Farmer

Farmer wonders whether there will be a change in any policies related to blueberries and whether unique soils qualify for enrollment in the program.

APR Farmer, Sheffield

APR Farmer is a dairy farmer who milks about 300 cows. He owns a 200 acre APR, has a 200 acre APR under contract, and a third APR with a lifetime lease. He was born into farming, but did not inherit anything. He is a huge supporter of the APR program; for years he leased land and always wanted to own a farm. The APR program made that possible.

He has done a lot of improvements on his farms, including a three unit worker housing project, several barns, and a slurry store. He stated every permit was approved by MDAR. He felt a lot of support from the APR staff, and has no complaints about the APR process.

The dairy industry is tough right now. He is grateful that he does not have a sky high mortgage and that is because of the APR program.

He has a son that is just finishing at an agricultural school and he wants to come home and farm. He believes that this is exactly what the APR program is about - farming through the generations. He does not want to leave him a pile of debt and he won't, thanks to the APR program.

In conclusion, he only wants MDAR to sign up more land for the program.

APR Farmer, Hadley

APR Farmer believes the APR program is a great program, but wants to know what MDAR is doing to preserve farmers, not just farm land. His son wants to take over the farm but he does not know if it is going to be worth it to farm.

He thinks the farming community does not see enough of MDAR out in the field and when he does see a representative it's someone saying no. He would like to see a more proactive approach from MDAR. He'd like to see more listening sessions.

How does marijuana fit into the APR program? Personally, he does not want to see it, but his son is looking at all options.

In closing, MDAR needs to be more proactive with the APR program.

APR Farmer, Holliston

APR Farmer is a farmer that leases 100 acres of APR land. He wants to purchase the property, but there's no ROFR or Option so the owner can charge as much as they want.

Non-profit

Non-profit states that the APR program is a critical program and we must do whatever we can to preserve and expand it. He believes MDAR must implement a policy to allow an APR landowner to withdraw from the Option and ROFR. He feels this should be done now, prior to the completion of listening sessions, and that it has broad support from the land trust community. He stated MDAR needs to improve communications. He acknowledged MDAR has done some improvements, but that it can do more in the future. Asking the public to comment on a draft policy is ok, but should be asking the public for comments prior to drafting a policy.

He stated MDAR must reform the acquisition process and have hard deadlines so that MDAR's partners understand the deadline. He was not confident MDAR staff understands the process and recommends establishing clear benchmarks and flowcharts for the process.

MDAR needs to develop a statewide farmland protection plan that will allow the use of funds on more than just prime soils.

He believes it's crucial to get farmland infrastructure on the APR land. Merely tolerating some structures is not enough, MDAR should be encouraging the infrastructure and encouraging the placement rather than just open land. Farmers need to have year round housing for the employees and the owners.

Farmer, Belchertown

Farmer is a 3rd generation farmer of Devon cattle and maple syrup. There is a 4th and 5th generation of farmers coming on the farm. The farm has been owned and farmed since 1930. They have not been able to get a handle on the APR program because of their lack of proximity to other APRs, but would like to get a handle on how to go under an APR.

APR Farmer, Amherst

APR Farmer believes non-agricultural activities that are complementary to the farm should be allowed in order to allow the farm to diversify. He thinks that if the activity does not negatively impact the resource it should be allowed; for example educational programs, bed and breakfasts, and weddings should be allowed. Farmers need multiple and independent forms of cash flow in order to be successful.

APR Farmer, Amherst

APR Farmer wanted to first thank MDAR for coming out and giving people the opportunity to speak about the program. The APR program is the reason he got involved in the

land trust community. The program has value to farmers, it brings value to towns, and agri-tourism is huge in the valley. Farms are growing food for people and are driving the community. He believes in the importance of land trusts and that they play a critical role in partnerships and in making APRs happen. He wants to stress partnerships in the valley and the importance of redoubling our efforts with partnerships. He stated the real importance of improved communication, between staff and towns and municipal officials.

The whole program is based on solid communication, which he thinks needs work. He said communication builds trust. Without the trust, the APR program does not have applicants or partners.

He stated funding is crucial and that there needs to be more funding.

He is concerned about the wait time; the program used to be more consistent and quicker. He thinks it would be helpful to see a flow chart so that people can understand the process and timing of acquisition.

In conclusion, he believes it's a great program that everyone believes in, but he wants to make it better.

Non-profit

In his experience, MDAR staff was friendly and made it easier to enter the program. He wants procedures in place to make pre-acquisitions possible, especially in towns that have a great deal of development pressure. He stated that there is a lot of prime farmland that is not actively farmed and wouldn't qualify but many farmers would like to get on that land.

APR Farmer, Leyden

APR Farmer owns 3 APR parcels – purchased in 2014, 2004, and 1979. As he understands it, land owned by people that have horses are not eligible for the APR program, he only sees that prime land is eligible. He believes that a lot of land with horses could feed Massachusetts in the future. On his APRs, he hasn't had any issues come up, and has no complaints.

APR Farmer, Amherst

APR Farmer owns several APR parcels. He thanks MDAR for coming out to Amherst, which makes it easier for people to express themselves.

Without the APR program he would not be in business as a nursery grower. He owes a lot to the APR program. He has dealt with the APR approval process and in the past he was encouraged to go to the ALPC meetings, but recently has felt somewhat discouraged from attending. He thinks openness and communication could be improved. He would like to go to the meetings so whatever is in his application can be explained.

He has been contacted by developers to build solar on APR land. He is interested in a process to build a solar array on APR land. He believes building an array substantial enough in size could bring in money. He would suggest maybe putting it on field edges so as to not interfere with farming. A ½ megawatt, single array should be allowed, and it is consistent with the new SMART program with DOER. He thinks there should be someone at MDAR to help farmers through this process and help facilitate. He thinks a farmer should own and operate the solar array and not be beholden to some company.

Non-profit

The APR program does incredibly important work in the state, and it keeps land viable and accessible to farmers. It should be the top priority to urge the state to increase the funding. Non-profit supports the development of a statewide farmland plan. Non-profit believes there should be a two stream funding approach - 1 matched with USDA funds, 1 with state funding or other sources to allow more flexibility within the program.

Non-profit very much supports the ability of landowners to withdraw from the OPAV, it is a catch-22. The OPAV is very important to keep the prices of farmland affordable. Changes in the program have made it more difficult for land trusts, and it is unclear when they can apply. Timing and a stable process is crucial for the program's success. If there's a narrow window for application, MDAR may lose farmers.

Non-profit encourages strong transparency; this session is great, keep it up.

APR Farmer, Southampton

APR Farmer owns 100 acres of APR land in Southampton. They wouldn't be here without the APR program. They owned 1 parcel 15 years ago, which had about 13 acres. That parcel seemed to be monitored all the time; it's a hay field in pristine condition. They have owned another 87 acres since the 1990s. They call MDAR and ask to be monitored and ask for help, but are not monitored. They now refuse to allow monitors on the 13 acre parcel. They have friends in Worcester County who have never seen APR program monitoring on their property. The program needs to have more consistency. There is some great staff and some not-so-great staff. MDAR needs to provide help when asked. The program needs transparency on who to get in touch with; when you call the Amherst office you don't get to the right folks.

Non-profit

Non-profit wants to reiterate the support of the program others have expressed. He wants to see support for other programs around farm viability and optimizing the use of the land. He wants to thank NRCS for their role in funding and stewardship. He reinforces the other Non-profit's points: Non-profit supports the OPAV, but supports farmers' ability to withdraw. He believes trust and openness are key in the program.

Non-profit

The APR program in Massachusetts is one of the best in the country; it makes farmland available for farmers. The affirmative covenant and OPAV are key. Non-profit wants to see the program allow for the protection of the farmhouse and the infrastructure. Excluding those structures undermines the goals of having a successful farm and affordable operation. They want to see the language regarding subdivision updated to allow the sale of buildings to a land trust for a 99 year lease.

Non-profit

Today brings together all the important players, land trust, staff officials, and farmers. Only 30% of farmland in the valley is protected. At the pace we're moving and with the funding, Non-profit is concerned we're not going to get to protect all that we need to. Funding is critical at both the state and federal level. A wait time of 12-18 months is reasonable but waiting 3 years to close is not reasonable. There needs to be benchmarks and flowcharts to know we're moving towards closing. Pre-acquisitions by land trusts were good as they bought landowners more time.

The practical processes, like an annual application cycle, have brought some clarity to the APR Program but risks losing farmland.

APR Farmer, Southampton

APR Farmer's comment is not APR related but the MDAR should be aware of M.G.L. c. 61, 61A, and 61B and that there are a number of loopholes that developers exploit.

Non-profit

Non-profit wants to reiterate how important the program is to Massachusetts and the importance of communication and understanding the reasoning behind a decision. She wants to mention that the people at the town level are often volunteers. She would like clarity about the timing and the process as it is important for the town folks as well.

Non-profit

Non-profit wants to reiterate how essential this program is for farmers to leave a legacy. There needs to be more funding, ideally funding in two different streams. Flexibility to work with farmers across the board needs to be increased. There should be a rolling application process so if there's an eminent threat, the community should be able to react quickly. Land trusts are there to be partners with MDAR. OPAV does keep the land affordable and just as crucial is allowing a landowner to withdraw that offer. Non-profit wants to ensure that the farmland the farmers have built up can continue. With regard to the legislation related to Section C, she believes it relates back to communication. She strongly recommends that language does not change.

Non-profit

Thank you to John for coming out. For a land trust to be successful, they need access to the funding but also need willing sellers. Trust is crucial. Flexibility is important, and whatever can be built into the program to ensure landowners want to work with land trusts is important.

Other

ROFR and the process - the APR program was created by legislation and in the original formation of the program there was no ROFR, it was created by policy and procedures. Now that it has been implemented there have been some issues. Legislators have created a bill to allow a farmer to withdraw from the sale within 30 days. The policies and the procedures have changed at least 9 times in the past years. She agrees we need more communication.

APR Farmer, Barre

She believes MDAR should exercise flexibility and allow non-agricultural activities if they don't hurt the farm. Her farm was denied a running race pre-2014; ultimately it was allowed. Non-agricultural activities can help keep the farm in business. MDAR should focus on things that aren't permanent but that keep the farm in business.

2/28/18

Middleborough Public Library APR Traditional Listening Session

55 people in attendance

Farmer

Farmer owns two properties under M.G.L. c. 61A, but neither is protected under the APR program. When the opportunity came up to go under APR, it seemed like he would be selling more rights than just agricultural rights. For example, the policy and regulations don't allow the sale of excess soil that comes out of a bog. People here know when you have a bog you get excess loam and the soil will never be used again. He recommends that the policy and regulations are looked at in the APR program for those types of items. He said the sale of gravel might not look like agriculture, but it is truly part of the system that can be used as startup funding.

Other

Other was involved in trying to buy farmland in Westport. If MDAR is going to step in and take it, MDAR should do it before anyone signs a P&S. MDAR should then contact that person and tell them what the process is. The state told them numerous times that they couldn't communicate with the buyer. There has to be an open process, not just ticking off of little boxes. MDAR rendered them homeless after a signed P&S. They went through a lot of trauma and grief. MDAR snatched a property away and advertised it on MDAR's website. The issue is over and done with, but it is ripe for corruption since there is one person who makes the decision. The final result was heartbreaking.

Government

Government agrees with the previous speaker and wonders who actually selects. MDAR needs to look at the APR mission. The biggest area of weakness is not allowing younger, beginning farmers – MDAR needs to give them an opportunity.

APR Farmer, West Bridgewater

APR Farmer is here about a telephone pole that they put on their property. They first want to thank MDAR because it allowed them to build their dream farm. If it wasn't for the APR program they would not have been able to buy the farm. They went through the approval process for a farm store building; they got approval for the electricity and the farm store building. They signed some papers that they probably shouldn't have signed. They couldn't have an easement so they had to find a way to get the easement off of the property. The electric company came up with a way around it with their attorney. Going forward someone shouldn't have to go through what they went through; there should be a boilerplate way to do it. It seems like a lot of electric companies require easements. To avoid expense and aggravation MDAR should warn people right up front and change its policy to allow limited easements for electrical use.

APR Farmer, Raynham

It is a great program and he is proud to live in the state with the foresight to protect the land. Without the program he wouldn't be here. Going forward MDAR should look at who buys

an APR; the primary source of income should come from farming. He has a concern about wealthy landowners buying estates. If it's not a farmer buying the land, they probably won't care for it in the same way. The APR program should be for people who want to make their living off the land. They have an APR and haven't encountered any trouble. When looking at structures, MDAR needs to consider whether it's actually necessary for an agricultural purpose. MDAR needs to make sure the building is not for events.

Other

Other owned an APR farm in Westport. His dad owned a farm, about 80 acres. He looked at what is the most value of the property that he could get for the land. Sadly he had to be the generation that sold the farm. It was a horrible story. The stress that MDAR, and the Commissioner put on the two families was huge and he did not have the decency to stop it. The Commissioner had the ability to put the brakes on the situation. Politicians were involved. MDAR left this family homeless with animals and the Others had to sell the property at an incredibly low price based on a purchase price from an unqualified real estate agent. Of course everyone was interested in it. This is not what MDAR is supposed to do; MDAR is supposed to go out and help Massachusetts farmers. He would ask the Commissioner to step aside and let someone who knows what's going on step in. Other had a Mass Health lien that could have been satisfied. The program needs to be scrapped and start from the beginning. APRs hamstringing the next generation. When his dad did the APR he was desperate. MDAR needs to think for the farmer long term. Everyone should carve out a 4 acre house lot. We need to think multiple generations down the road.

APR Farmer, Norwell

He bought an old APR in 2009. In 10 years there won't be any farmland left except for APR farms. He disagrees about putting more restrictions on structures. He would like to have a wedding venue where he can allow children on a field trip to picnic when it's raining. The best part of farming in Massachusetts is that we're surrounded by our customers.

When building a milk bottling plant, program staff said that if he put the building on the building envelope, he wouldn't be restricted. State law only requires that 25% of the product come from the farm. If you build the processing plant on the APR, 50% of the milk has to come from the farm. He thought it was odd that the APR program doesn't match up with the state law. He was told by program staff that if event space was built off the APR land, he couldn't cross the APR land to get to the venue space. He said he appreciates the program, and tells everyone about it, but he thinks it could be better.

Other

Other is a resident of Middleborough. She thinks the APR program in theory is a great idea. She can't think of a better thing than keeping farmland in farming. The sale program is ridiculous - the decision boils down to 4 questions. She has these 4 questions with her and how they were rated. It was shameful. The Commissioner should step down. She is lucky that she had enough space for the Others and their animals to come stay. Everything came to their house. What MDAR did was wrong, absolutely wrong. She just can't believe you would rip it out from under them just before the holiday weekend, before the July 4th weekend. They want to thank everyone who tried to stand up for the Others. She wants to see the farmer that bought this property. She wants to see the paper for their scores. She believes the process should be changed.

Other

He thinks the APR program is a good idea but wants to know if it made a difference that they had a P&S. He wants to know what changes are going to be made to the program. He can't believe one person just has the power to change everything.

Non-profit

Non-profit mentioned that the potential for farm sales in the next ten years is very high and the APR program needs to be evaluated. It's an important part of keeping farmland affordable. Without the APR program farmland will be gone.

APR Farmer, Northborough

APR Farmer is from Worcester County. He was involved in the original bond bill. The legislature convened a committee to look at food shortage issues. Farmland was shrinking and driving the prices to a point where no farmers could afford to buy a farm. Affordability was always a factor. The idea was that a farmland market would be established. The idea would be for farmers to buy farms from each other without having to compete with developers on the open market. There was a desire to preserve open space. Over the past 40 years the program has gone through growing pains.

He currently has 53 acres in the APR program. Since then he bought 2 other APRs that were negotiated by land trusts with the state. He's concerned the state has taken the approach of trying to socially engineer his business. The state should not be deciding who can buy farmland. He thinks the state is making a mistake trying to micromanage farming. It's not MDAR's bailiwick and MDAR has no business dictating farmland value. The appraisers that MDAR uses are not the kind of people that can do that. If you want APR farms to be run by the best farmers, then let us do our business. Don't nickel and dime us on our business. My caution is to back off and don't try to micromanage and be king makers in this industry.

APR Farmer, Plymouth

Part of his farm is in APR. The bureaucracy has gotten a little heavy on these APRs. His is a 1984 APR that allowed a lot to be carved off. He is now 2.5 years into getting a lot for my daughter. Hopefully the end is near.

APR Farmer also raised a question about SARA grant eligibility. The grant says the owner has to own the land for 5 years. If the land is in disarray, why does the owner have to wait 5 years to be eligible for the grant? He has called the Amherst office but has not heard back yet.

APR Farmer, Berkley

APR Farmer's dad sold development rights back in '87. A lot of people here are emotional because it's our land. They are individuals with dreams and need respect. This broad policy that everything fits into one category is wrong. Policies affect their lives and farmers should be better listened to. They've got 4 years into an issue that started in 2014. They think they're close to a resolution. Every week they think they're close. They are people, they are farmers, and they know what is best for their land.

MDAR should find ways to say yes instead of no. MDAR makes policy during the week, they make decisions all week. They want it to be a good relationship. They invite MDAR to come to their farm - see how they care for their land, see what's important to them.

Other

They have an unusual niche because hydroponics are allowed to be certified organic. He's mentioning it because it seems there are big changes coming that will put agriculture under a roof because of profitability. There is a certain percentage of APR land that can be put under a roof. The APR program should adjust to changes like this over time.

Other

Other would ask the Commissioner and Division Director to resign. Everything is done in secret with secret meetings until the letter saying 'thank you for your interest'. They had a deposit, a legally binding P&S in Easton and then their Westport agreement was thrown away by politics. The Commissioner couldn't even pick up the phone. MDAR is supposed to represent agriculture – how many people have agriculture experience. Tell me how a legally binding P&S can be thrown away. He never should have had to cash in all their savings and suffered tax penalties.

Other

The APR program, as important as it is, was challenging to work with. They were always told they could get more bang for their buck in the value. In 2000 they protected land partnering with the APR program. Someone bought the land for \$215,000. The buyer then put it on the market for \$625,000. What young farmer can afford that? The farmer put the value on the 2 acre house lot. They worked with a creative lawyer; the lawyer tied the farm house to the farm lot. If you want to farm, her feeling is that you want to live on the farm not in the city. By the time they got to the next farm they were told that the development pressure was off and that it can't be considered for the APR program. How are you going to tell someone that they waited too long? They got burnt. They were told that they couldn't do it. The APR is here to help people and work with people so that we can get it done. They had to forego the money they would have been entitled to. Fifty-one percent, that's required through the federal side, I know it's not a state problem, but in the town of Dartmouth that almost never happens.

APR Farmer, Middleboro

APR Farmer purchased a property in the 1980s and then put the land in APR. Multiple farmers are leasing the land – it is a success story. APR program staff has been beyond responsive. Someone drew up an APR in 1991 not realizing they're going to expand over time. They have issues with parking. They want some flexibility. It's too bad they have to file for special permits. She wanted to share that there are success stories but thinks there should be more individual assessment.

Other

Their APR is one from 1995. It says the transfer can transfer to a partner. They're about 18 months in now and we still have no idea what a partnership is. They'd like to know what they need to do to qualify. He recommends defining what a partnership is. The theme here is that everyone has something a little different. Every situation is a little different. It's not just big business. He disagrees that you need to be a full time commercial farmer to own APR land. He just wants a better understanding of what he needs to do.

Other

He wants to reassure everyone that MDAR is listening. The board that advises MDAR, the Ag board, has had discussions about what we should do about the APR program. Perhaps MDAR is overreaching in some of its decisions, and MDAR knows about that. The key under M.G.L. c. 61A is flexibility. Flexibility is viability. He thinks there's a willingness to advise. He personally has found the Commissioner is open-minded and willing to talk. They have 3 of the 9 members of the board here.

Government

Rep. Orrall stated that she started working on APR issues in 2012. She was approached by a landowner about a loam issue. She married into a farming community. She has worked every single week for six years trying to resolve a single APR issue. On this particular APR it has been 6 years to resolve issues with regulations. It's the first time we've had an opportunity to discuss the program. By statute there's supposed to be an ALPC committee and an annual report, not sure if that's happening. The ALPC board meeting and the minutes are not posted. It's impossible to know what's happening. She doesn't know when the ALPC meetings are being held or what they're discussing. We are getting close to resolving the one issue she's been working on. It's been a lot of time to resolve something that you would think would be easy to do. We need to continue this discussion. And thank you to the department for being here.

3/15/18

Essex Tech APR Traditional Listening Session

19 people in attendance

APR Farmer, Danvers

APR Farmer stated there used to be 70 farms in Danvers. Today there are only 6 farms left; 2 have APRs and the remaining farms are under M.G.L. c. 61A. He stated he cannot make enough money on his land without doing compost on his property. Last year he had about 60 people that deposited material on his property; all of it was made into loam or compost and made into fertilizer. He believes MDAR needs to resolve a conflict between APRs and composting operations. He stated there is a big need for compost operations to occur on farms.

He stated some of the APRs are going all out on agri-tourism operations. He saw someone out in Harvard doing a food-to-farm dinner that was denied. He thinks it's a valid use for land, and that if it doesn't hurt the land, MDAR should allow it. He believes MDAR needs to maintain good public relations.

In addition, he thinks there are two issues, access to water and the extreme cost of land. He said we never thought land would get this expensive. He stated that we're facing a dilemma now, trying to purchase land is just too expensive.

Other

Other wanted to respond to the MDAR alternative energy guidelines. DOER has promulgated the new SMART regulations. There is an agricultural solar adder, which allows for dual use solar PV. One of the criteria is that the panel is 8 feet off the grade, taking the APR land

and allowing the farmer to put that on his farm to allow the economic viability of the farm. He hopes that this might be a way to keep the APR land viable. He is working with a farmer now who has non-prime farmland; it would be great if he could put solar on that land.

Non-profit

Non-profit stated that the Non-profit values the contributions of the APR program; he is committed to the program and hopes that it remains strong. Non-profit supports the continuation of the OPAV; affordable farmland is important for young farmers. Non-profit is helping young farmers find affordable farmland. Non-profit supports the notion that a landowner can withdraw their notice of intent to sell or assign.

He thinks it is time to revisit the pre-acquisition process. Perhaps ALE money can be used on a small number of projects and MDAR can create a two tier system so not all projects have to meet the ALE requirements. Non-profit would like to see a state only APR process. They also would encourage the application process to be rolling, rather than annual. Non-profit believes we're losing farms with the annual deadline since not all farms can wait 2 years to close. He encourages creativity to help with the pre-acquisition of properties that have an immediate need to close.

APR Farmer, North Andover

APR Farmer has one of the older farms in the APR program. He believes that the program in its initial inception was a good idea - the original concept to see farming continue and other generations of farmers to be on the farm. A lot of good has come out of this program, preserving land, preserving the family legacy, open space, etc. However, he believes APR protected farms are at a disadvantage and there is a real downside including increased regulations and scrutiny of the business. He's concerned.

There is a lack of flexibility in allowing modifications; he believes MDAR/APR needs to be more liberal. If he were making the decision today, he'd have to give it a lot of thought for a lot of reasons. As we look forward, we should also look back. What's going to keep our farms competitive and viable? It's the money, it's the profit. Farms aren't disappearing for lack of interest; they're disappearing for the lack of profit.

He is available and ready to assist to make the program better. He believes with some modification it can be better. There are a lot of people with good intentions. Thanks for coming to Essex County.

Farmer

Farmer owns a dairy farm that she and her husband tried to protect through the APR program back in the 90s. She put years into this process in hopes of preserving what is left. Now seeing all the development around her property, it is just hard to watch.

APR Farmer, Dracut

APR Farmer owns a 110 year old dairy farm. About 18 years ago he had an opportunity to sell the development rights to the state, and it worked very well because he was able to buy additional land. Certainly there are problems, but the benefit outweighs the problems. If you look at the farm bureau survey, a large percentage of people use the APR money to purchase more farmland. 30,000 acres in Massachusetts would be developed without the program. He serves on the ALPC which works with MDAR. ALPC meets 4 times a year and decides what projects go

into the program. We get brought information from the APR staff who do the due diligence, and then ALPC makes the decisions. We should all commit to fighting for more funding for the program.

As a general goal we should be trying to make APR farms the same as non APR farms, in terms of the uses – except for certain restrictions like excavating and building homes.

He thinks it's a great process. We should all come together as people interested in agriculture and make positive suggestions about how to make the program better.

If you look at some of the comments, it's because people do not understand the program when they entered into the program. One of the best tools that could be brought to the program, is someone who could advise farm owners as they're considering entering the program. People would be well served by an advisor.

Other

Other grows sprouts, which he doesn't really think of as agriculture. He likes the idea of grazing under solar. Because it pains him to see these fields completely covered with solar but recognizes additional income is important for farmers. There may be a distinction between productive land and land that looks like a farm.

Other

Other mentioned that she would like to connect with farmers and others about solar.

APR Farmer, Methuen

Last year APR Farmer and his brother bought an APR farm. Coming into an APR farm from a non-restricted farm was different. Funding to buy the farm was different. Most traditional funding sources don't want to deal with you. They tried doing FSA, but it was a disaster. He has been told you have to be careful what you ask for because MDAR will tell you have to rewrite your APR. Their APR is just two lines and it is therefore hard to know what they can and can't do. It's not like the current restriction. They do not know who to call with questions and it is very difficult to find information online. It is difficult to navigate for a new person. Navigating the funding is crucial for the next generation.

Farm APR Farmer bought had no succession planning, there was no next generation. The money to start with is great, but after that first payout there are going to be some problems. Traditional farming is not paying the bills. APR Farmer has to pay their help \$11, that's a little different from the 80s. All we hear about the program is the bad; it's nice to hear the good. We receive so many calls about doing birthday parties and growing marijuana.

Farmer, Essex

Farmer does not have an APR but runs a chicken operation. When his parents sell their farm, he won't be able to buy it and will have to look to other land. He will probably have to look to APR land or other conservation land. He is concerned about FSMA (Food Safety Modernization Act) in the next 4 years, and worried if you can't build buildings on APR land. He is concerned once you get on a property about moving forward, not moving backwards.

Other

Other is glad to hear program is alive and well and we're all alive and well. The program started 40 years ago. He was Commissioner of MDAR from 1975 to 1985.

The problem we were looking at the time was the number of farms going out of business; the statistics were shocking. We looked at why farms went out of business. There were many different reasons, but one factor was that the land was worth too much to farm. It was worth a lot to the local assessor in the form of high taxes, so the first thing we focused on was M.G.L. c. 61A. However, Chapter 61A didn't address how to get equity out of the land, and how after people die they can leave the land to their offspring. How do you get the equity? You get the state to pay farmers for their willingness to preserve the land for agriculture. That part has been taken care of, but we didn't think of everything. Hats off to John for having these sessions. There are likely improvements to be made. They didn't think of everything, but the program has been successful. Examining the program very closely and improving it is admirable. Let's make it work even better than it is.

4/4/18

Worcester Department of Environmental Protection APR Facilitated Listening Session

32 in attendance, 4 facilitators

Waiver – OPAV/ROFR

Problems identified

- Price fixing – when someone owns an APR and they go to sell, often times there's other land associated with the APR land. When you go to sell, MDAR has an agent come out and asks your sale price. Staff tells you if that price is too high. He put the value into the house, so it lowers the farm land value. It should be the Fair Market Value, and what it sold on the open market. It should not be the APR programs job to decide agricultural value.
- MDAR is taking on a role of deciding who can buy your land. Your whole purpose is to protect the land, should not go above and beyond to look at price.
- Banks have become leery on lending money.
- MDAR should not be saying who is more capable than the other.
- In real estate, the buyer determines the price, and it should remain that way. Allow the market to set the price. Even an appraisal is only a guess. Why isn't a willing buyer just as good a method to determine price.
- Need more face to face with MDAR, should be more willing to listen and be available in person.
- If a seller wants to sell the land and has a buyer, and then MDAR exercises their option, and seller wanted this particular buyer, you can't stop the sale - that makes no sense. Is the landowner the owner or is MDAR the owner? The landowner should decide if they want to sell their property.
- If the scope of the program is to preserve and protect, you can do that without the option.
- Older farmers in Hadley area have lost their trust in the program.
- Transparency in MDAR – regulations should only apply to things going forward, shouldn't apply retroactively. If you pass regulations, let an outside agency approve those regulations.

- Before a buyer is declined, MDAR should ask for a meeting to understand the operation – give suggestions. It's someone livelihood, meet with people and make more time to explain things.
- More communication.

Certificates of Approvals (COAs) for agricultural structures

Problems identified:

- Legibility: when you send the COA into the registry of deeds, you can't read the paperwork you send in for recording.
- Clear timelines to get the paperwork done. Normally you call a person up and they tell you that you can do it, but then you wait. We know they meet once every 60 days or so. There should be a timeline for when you should get a response back from MDAR.
- If you lose a well or something and there's an emergency, you still have to wait the same timeframe, there should be a way to move faster.
- COA for minor improvements to existing structures, solar, sidewalls, you have to go through a whole procedure to get that approved.
- If it doesn't impact topography, minor improvements – digester that needed a trench around the back that needed a trench, the landowner needed a whole bunch of permits even though it was a simple fix.
- Inconsistent APR interpretation, you'll get a different answer if you talk to different MDAR staff, should have consistent policies.
- More training for inspectors, so they are on the same page.
- No easy solutions for old and new APRs.
- Old APRs took woodland and infrastructure, new APRs just focus on soils.
- ALPC fairness on COA appeals, 4 farmers on ALPC, would be nicer if ALPC was all farmers.
- On old APRs, had houses and barns on the land. How can that be separated out in today's standards, how can you carve out structures today, it's a liability for the buyer.

Special Permit for non-agricultural activities or uses

Problems identified

- Economics.
- Special Permits are not a luxury item, but looking for a new economic stream for survival of the farm.
- Special Permit puts the APR farms on a different playing field than non-APR farms.

Suggested Solutions

- Define agriculture more broadly to allow these types of activities. Why are Farm-to-Table events not considered agriculture?
- Designate areas, especially areas that are not integral to agricultural operations, to allow the activity – e.g., weddings. If there's a pond that not integral to the agricultural operation, why not let that be a place to put a pavilion or parking ?
- Timeframe: 5 year special permit is too short, should be longer or even indefinitely – solar leases are usually 10 or 20 years.

- Greater consistency with other state and federal programs – food safety, if the farm is required to update, using the APR land for title 5 purposes.
- What is the actual impact to the resource? Mud runs, if the impact of the activity is not greater than the agricultural activity, why should it be judged different. Taking a harder look at the impact and whether there could be a restoration process if there's an impact.
- Treat this as a dire situation, not just a nice thing to do, it's imperative that this is worked on immediately. Could there be follow up on this topic in the coming year.
- More staff.

Acquisition

- Get people to understand the program
 - Solution: get local people to understand the program and become MDAR's advocate. Have outreach programs, get out and do presentations and do Q&As.
 - Give the public a point of contact, designate one person back at MDAR that can be a resource.
- More openness and transparency in the appraisal process
 - In some instances farmer was not allowed to talk to the appraisal, should be more of a conversation.
- Need to connect farmers with available land
 - Want to train the local people.

1/19/18-4/13/18

Written comments

APR Farmer, Belchertown

Hi, the owner of a Farm, in Belchertown. We run a commercial tree fruit farm on APR-restricted land. I just purchased this farm in 2017, and completed my first year as the owner. I want to share my thoughts on construction approvals, specifically for dwellings on the farm. I understand that the APR committee doesn't want protected land to become developed, however the restrictions around building a residence on the farm are extremely prohibitive. A grower should be able to build his or her home on their farm, in order to manage the land effectively. It is very logistically difficult to live off-farm and still be effective at monitoring and managing. When a farmer buys APR land, they've already gone through an approval process with the committee. The farmer has demonstrated their ability and motivation to continue farming that land, and I cannot understand why the committee would want to have rules in place to prevent that grower from living on the farm they have worked so hard to purchase. The committee should stand as a supportive force for agriculture in Massachusetts, and by having regulations that prevent a grower from housing themselves on their own farm, they are creating a difficult obstacle, and this regulation needs to be re-evaluated.

Other

APR is a Great program. I would like to recommend that aquaculture be considered an APR, automatically. Perhaps when an aquaculture site is approved by the state and local municipality, it could be automatically entered as "farm land" perpetuity? This way, if the farm closes, the area will still be zoned and protected under the aquaculture limitations (I.e. no commercial fishing). Aquaculture sites essentially create areas that are off limits to commercial

fishing, and allow the native species to thrive. Farmers are technically the only commercial people to harvest from the site area (unless local municipality over rules).

Currently, aquaculture sites may only be zoned where commercial fishing is not active and no commercial species exist. What happens, is that once a farm is installed, it typically improves the environment and fosters the return of commercial species. If the farm were to disappear, most likely some commercial species would continue to thrive in the area (due to improved environmental conditions). It would be nice for these species to remain protected from commercial fishermen.

In addition, aquaculture farms are becoming big eco-tourism attractions. My farm alone had several hundred tourists last year. It would be great for aquaculture farms to have access to APR grant funds, especially to be used for tourist/event based activities. Weddings, private events, farm tours, marketing and advertising are all areas of growth for aquaculture farms. Access to APR funds to build out these priorities would be helpful.

Other

My wife and I own 47 acres in Sutton, partial open partial wooded. We would like to learn more about the APR program and where it is headed.

APR Farmer

Years ago we put our farm in to the Mass. APR program. Since enrolling in the program, our electric bill, and farm property taxes have increased from 12,000. per year to over 25,000. per year. Our farm is 87 +/- acres, and we farm about 36 acres. The rest of the farm consist of abandoned fields/ non-productive fields. By being allowed to farm the sun in these fields, it would allow us to diversify our farming business, and allow the farm to stay in our family and hopefully operate in the black instead of the red.

Farmer, Shelburne

For years my long term conservation plan had been to put our 1,050 acre farm into the APR program, so that the farm and land would be preserved for ever as a farming and forestry operation. Our children and grandchildren love the farm and care about preserving it as a working farm, although they may not all have the right skills. Currently about 330 acres are covered by a CR and an APR but the balance remains only in Chapter 61 and 61A. Last summer, as I work to place a CR or an APR on the balance of the land, I discovered that the APR program was not at all well suited for our hill town farm. By APR guidelines, only about 40 acres of prime soils in our main hayfield would qualify. The remaining 245 acres (less 5 acres for buildings) of the main farm did not meet the APR soil guidelines, however APR would be "happy" for me to "gift" those lands into the program, but without compensation for the \$400,000 in development rights. Furthermore, the APR requirements would give the State the right to acquire the 40 acres of prime soils if my children or grandchildren ever decided to sell the farm.

Our farm "works" only as an integrated whole, with the beef and hay operation in the summer and the forestry work in the winter. It is not a farm were taken the core 40 acres out of the heart of it would work either for the new owner of those acres or for the owner of the remaining acres.

Any future buyer would need the entire 285 acre main farm, (and the other lands which are partial hay lands covered by a CR and partially wood lands) to have a chance to maintain a successful farming operation.

The APR programs needs to be structured to support the combination of hay lands, pastures lands and forests that make up most of the farms in the hill towns, not just lands that have soils of a certain standard. Otherwise these hill town farm will eventually get chopped up into house lots (as many of them already are) and will disappear from the agricultural lands currently available to grow crops, cattle, and forests.

Other

Our feeling is green energy production should be allowed in an APR where it can be integrated seamlessly with agricultural operations. Solar and Wind have the opportunity to be implemented in grazing areas or be mounted on appropriate infrastructure. These green energy solutions fit easily into the larger idea of maintaining open spaces for agricultural purposes.

APR Farmer

We began doing truckfest and mud bogs in 2009 – before I APRed the land. Each year, at the conclusion of the event, we would fill in the bog because we grew corn on that field and we parked trailers on it beginning in October, which is only three weeks after the event. We learned a little each year from doing truckfest- there would be some settling of the soil, so we would have to go back and push a second time each year. One year, at the very beginning, we brought in purchased topsoil because of dips, but every other year we just had to move around what was already there. Although this was not the case for the first year, for all the ensuing years we would fill in the mud bog on the last night of the event, while the rented excavator was still there to do the job more efficiently and effectively. Then we do more settling push at the end of September.

As I've stated at many of the meetings I've been to, we get a good crop of corn off of the field every year because of the fact that we did a good job putting the soils back into the hole immediately, and of spreading a lot of manure and rye on the field. Last year, I went to an ALPC meeting with a 10 foot stalk of corn, which grew from the deeper mud pit, to prove this point.

The whole issue finally came to a head in 2016, after many years of doing mud bogs without any complications from the state. After a very unfair episode with the state conservation commission about some family land in Monson, Massachusetts, I grew a disdain and mistrust for conservation. I even wrote on my APR contract that it would be null and void if we couldn't do the haunted hay rides because of my lack of trust for the system. APR program staff could tell how uncomfortable I was, so she explained to me that seasonal events to benefit the farm are fine, but that I cannot do something permanent, such as a gas station. That settled my nerves; however, I didn't realize, quite honestly, that I had to check in with the state every time we had an event at the farm. We were already doing the mud bogs and had to deal with the town police and fire departments, the board of health, and the town administration, which, trust me, was plenty annoying and much more difficult to my surprise than the town conservation commission. It never entered my mind after all this that we had to deal with the state, as well, so that part is my fault.

What I also find quite annoying is that the science experts ruined the dairy industry in the early 80s with some inconclusive studies on milk and butter, and then 35 years later did a 180 on their findings. We farmers suffered all of the hardships of poverty and suicides, while the

science experts did not suffer at all and paid no consequence or restitution. Furthermore, the soil experts now have me over a barrel – only I don't have to wait 35 years for them to say, "Oops I did it again". The real expert here – the land – tells me every year that I am doing a good job caring for the land and soil. At one of the meetings, an APR rep said that it takes years for the damage to be done to the soil, which is not true. If this was the case, brownie mix would only be mixed for five seconds. The more the land becomes diluted, the more of an even mixture it becomes.

Four APR reps have come to see the mud bog after it has been refilled and not one of them have been able to recognize where the mud bogs actually are dug. And even better, I tried to do a land swap with the bog land and a field not in APR and was told it would not be a good swap for APR because the mud bog field was a better nutrient field than the field I wanted to swap with, which was a hay field that gets manure spread on it two to three times a year – go figure.

In closure, I am at fault for excavating the soil – thought I didn't realize it since we were already doing the event and were not told to cease and desist. But I am also at fault for taking damn good care of the land, as small percentage of the active land that I farm it may be, and for working my ass off to keep this place running and paying my bills.

APR Farmer

This dispute concerns the disposition of a 32.2 acre parcel on unimproved farmland on [REDACTED] in Hadley MA. The [REDACTED] parcel is one of three adjacent parcels of real estate which were formally owned by [REDACTED] with a first mortgage from [REDACTED] Savings Bank. This was an agricultural enterprise which included a farm to table establishment known as the [REDACTED] Restaurant. The 32 acres of farmland is subject to an Agricultural Preservation Restriction (APR) and also an "option to purchase at agricultural value" which is held by the Massachusetts Department of Agricultural Resources (MDAR). The two other parcels contain a restaurant building and a parking lot parcel and are not APR lands and are not subject to an option to purchase.

In April of 2014 Mr. [REDACTED] filed for bankruptcy. In December of 2014 [REDACTED] Savings Bank began foreclosure proceedings on these three parcels, including the 32 acres of APR farmland on [REDACTED]. [REDACTED] Chicopee savings Bank commissioned an appraisal of this parcel that recognized the APR and the option to purchase. The appraisal was conducted in late January/early February of 2015. The appraiser's access to the [REDACTED] parcel was extremely limited by the record-breaking snow falls and the snow drifts that had accumulated on the property last winter. This was a contributing factor which led to material omissions which severely affected the valuation of this farmland.

On February 2, 2015 [REDACTED] submitted an appraisal of the [REDACTED] parcel valued at \$305,000. Missing from this valuation were necessary adjustment to the Sales Comparison Approach for the specific characteristics of these 32 acres. The harsh weather conditions precluded a detailed field inspection to assess the soil conditions and the value of improvements, like fencing and an underground irrigation system. A subsequent appraisal conducted by [REDACTED] Inc. (the most experienced appraiser of APR properties for MDAR) found that the [REDACTED] comparable values led to an estimate of \$9,436/ per acre, which was too low. Using proper comparisons of agricultural land sales prices the [REDACTED] estimate of the [REDACTED] parcel's 32.2 acres was \$10,500/acre. This produces a land value of \$340,000. The property also contained approximately 5,000 linear feet of high quality animal fencing, once used to contain bison. The contributory value of this agricultural fencing after depreciation is \$30,000. There is also an underground irrigation system that adds a contributory value of \$10,000 to the value of this property. [REDACTED]'s appraisal established a market value of \$380,000 using a Sales Comparison Approach, the same method used by [REDACTED]. Additionally, the auction price included a 5% buyer's premium. It is essential to understand the fundamental problems associated with the \$305,000 valuation of the [REDACTED] parcel because this appraisal is at the core of the problem that we now seek to remedy.

On February 4, 2015 a foreclosure auction took place on all three parcels, the restaurant, the parking lot and the [REDACTED] parcel. [REDACTED] principle acting on behalf of, [REDACTED] LLC, a limited liability corporation based in Hampshire County Massachusetts, was the successful bidder of the restaurant and parking lot parcels, which were auctioned first. The 32 acre [REDACTED] parcel was auctioned next. [REDACTED] President of [REDACTED]'s Farms, Inc. a corporation based in Franklin County Massachusetts, bid \$405,000. Mr. [REDACTED] successfully out bid Mr. [REDACTED] with a bid of \$410,000. Mr. [REDACTED] tendered a \$50,000 deposit and signed a sales memorandum with [REDACTED] Savings Bank. This breaks down to \$19,500 for the buyer's premium and \$390,500 for the land and improvements. In addition Mr. [REDACTED] successfully bid on 24 acres that adjoin the [REDACTED] parcel situated between the restaurant parcel and the Lowe's Store to the west.

outside Auction
or after

320 LF
x \$937.50/foot
= \$300,000

Although, these parcels were financed with separate mortgages they were all part of the [REDACTED] family farm which has been farmed for over 100 years. The dwelling that housed the [REDACTED] family was also successfully acquired at bid by Mr. [REDACTED]. Additionally, the restaurant has deed restrictions requiring the sale of farm grown products. The value of all of these parcels together as one economic agricultural enterprise is greater than the sum of its parts. This enterprise value also adds to the agricultural value that [REDACTED] Farm proposes to develop as it seeks to protect, preserve and revitalize approximately 65 acres of contiguous farmland that had once been the [REDACTED] family farm. [REDACTED]'s farm plan proposes to develop the [REDACTED] on this property with an integrated and regenerative approach to agriculture. The underlying ecologically based plan creates a high diversity of overlapping yields based on a comprehensive approach to water and nutrient management. The plan includes intensive vegetable production, an orchard, nuttree and field crops that will be featured in a farm to table café menu and sold at the market. The 32 acre [REDACTED] parcel is essential to this plan. Keeping contiguous tracts of farmland in production and maintaining the farm house (and the farm to table restaurant) connected to the farmland has been a stated goal of MDAR. The recently released Draft Food System Plan is replete with goals that are directly supported by [REDACTED] mission. In addition to agricultural production, [REDACTED] proposes the development of an educational center and demonstration gardens to engage, educate and become a resource to increase the availability of healthy foods for the community. [REDACTED] will create jobs and economic opportunity in food and farming and increase production, sales and consumption of Massachusetts-grown foods. These are also the goals that the Massachusetts Food Policy Council established when they launched the food system planning process.

Before the auction [REDACTED] spoke with [REDACTED] of the Amherst office of MDAR about [REDACTED]'s plans for the [REDACTED] parcel. [REDACTED] said that MDAR was likely to let the sale go through as long as it was to a qualified farmer. [REDACTED] is a qualified farmer, he has farmed approximately 225 acres of local farm land on seven parcels all in Hadley. MDAR has worked with Mr. [REDACTED] on other APR parcels including a 17 acre parcel of APR land that he has subsequently acquired as part of [REDACTED]'s purchase of [REDACTED], also in Hadley.

What brought about the disruption of the sale of the [REDACTED] to Mr. [REDACTED] acting on behalf of [REDACTED] was MDAR's establishment of new policies in late May of 2015, well after the [REDACTED] foreclosure auction. These program guidelines were subtitled "assignment of option to purchase at agricultural value". Specifically, there was an unpublished internal policy, which had never been implemented before, that was invoked in this case which said that whenever an offered price is 25% higher than the agricultural land value, then MDAR will exercise its option. Reportedly, this policy is attempting to keep farmland affordable. Herein lies the problem, MDAR chooses to use the discredited [REDACTED] assessment from February of 2015 that placed an incomplete and incorrect value of \$305,000 on the [REDACTED] parcel to establish the agricultural value of their option. Furthermore, MDAR is attempting to assign their option to purchase at agricultural value, to [REDACTED] Farms the losing bidder who had previously placed a qualified bid on this property of \$405,000 during the February foreclosure auction. This fact removes any validity to the argument that this land was too expensive, for a traditional dairy farmer. Mr. [REDACTED] established that he could economically sustain a purchase price of \$405,000 on the 32 acre [REDACTED] parcel with a farm plan that we now know involves growing feed corn, soy beans and hay. Nor can MDAR assert that other farmers were priced out, because when a Request for Statement of Interest was issued on May 18, 2015 only [REDACTED] farm and [REDACTED]

responded. This MDAR policy on assignment of option to purchase at agricultural value is poorly applied in this case, because of the failure to properly establish the true agricultural value of the Spruce Hill parcel. To assign MDAR's option to purchase at \$305,000 to a farmer who has previously bid \$100,000 more for this property is on its face just wrong. When the end result is to break apart a 100 year old farm that has agricultural products vertically integrated into farm to table and farm to market operations, that too is also very wrong. When the end result is to block [REDACTED] Farm from developing the type of agricultural enterprise that Secretary Beaton and Commissioner Lebeaux are promoting in the in the Massachusetts Food System Plan, then the MDAR's actions are at cross-purposes with other statewide policies and these actions must be reexamined. The Food System Plan's goals are: to increase production, to create jobs, to protect the land and to increase the availability of fresh, healthy food. No other competing farm plan can outperform [REDACTED] plan's ability to fulfill these goals.

The problem began with an appraisal commissioned by [REDACTED] conducted under less than ideal circumstances to accommodate the schedule of their February foreclosure auction. This appraiser, Mr. [REDACTED], has acknowledged that he had difficulty with the appraisal because of the severe weather he encountered last February. MDAR should use its discretion to request a second appraisal from [REDACTED] Savings Bank, the current owner of the APR land, and reestablish a truer assessment of the agricultural value of the 32 acre [REDACTED] APR parcel. This being the first application of these new policies on options to purchase at agricultural value, MDAR should make every effort to ensure that these new guidelines are being implemented appropriately. We respectfully request that MDAR conducts a review of its refusal to release the waiver of their option to purchase at agricultural value on the [REDACTED] parcel and that this includes requesting a properly conducted second appraisal for this property.

Non-Profit

Dear Commissioner Lebeaux,

I appreciate the opportunity to submit these written comments regarding the Agricultural Preservation Restriction Program. I offer them with the hope that as MDAR moves to address concerns about how the program is currently functioning, it is done with the goal of ensuring that this important program continues to support Massachusetts agriculture by making agricultural land both available and affordable for purchase by Massachusetts' farmers well into the future.

The APR Program continues to be the state's most important farmland conservation program. Hundreds of parcels and thousands of acres of farmland across Massachusetts are in agricultural use today - and not under houses and shopping malls - thanks to the program. Nothing should be done to "fix" the program that jeopardizes its effectiveness as a farmland conservation program.

"Option at Agricultural Value"

An effort is underway, through such means as Senate Bill 2175, to eliminate or render useless the "Option to Purchase at Agricultural Value" (OPAV). The OPVA is critical to the APR Program's continued effectiveness. It has been responsible for steering APR land ownership into farmers' hands, not only through it being exercised by MDAR, but by its very existence. In my experience, most APR landowners understand that there is no point in even considering an offer to purchase from a non-farmer buyer, and at above agricultural value, since in such a case MDAR is likely to exercise the OPAV. In addition, the OPAV serves to keep buyers of APR land honest when it comes to their stated agricultural intentions and willingness to pay a certain price for APR land since the OPAV continues beyond their ownership. If they have paid a purchase price above what is justified based upon the APR land's agricultural potential, then they run the risk of not recouping their investment when they someday go to sell the land.

The OPAV was not only created to maintain the "affordability" of APR land and to ensure that farmers have an opportunity to acquire it, but to enable

appraisers who are hired by MDAR to determine a property's "APR value" to use "agricultural value" as the highest restricted value, thereby maintaining higher APR values. Pre-OPAV, APR appraisers were faced with the realization that the highest restricted value in many parts of the state was no longer agricultural value, but "estate value"; values driven by people looking for a scenic, private estate-like property who were willing and able to pay much higher prices for APR farms than any farmer could justify paying. These estate buyers were driving-up comparable sale values of APR land, and since APR value is the difference between a property's "fair market value" and its "restricted value", the result was shrinking appraised APR values, making it harder to convince landowners to sell their APRs, and forcing owners of APR land to sell at a high estate value in order to realize their land's full value.

While the OPAV is aimed at maintaining the "affordability" of APR land it was never, however, intended to engineer the agricultural value of APR land. Affordable doesn't necessarily mean inexpensive, and as competition increases amongst farmers for a limited supply of farmland, including APR land, it is inevitable that agricultural values are going to increase. Increasing agricultural values are a good thing since they mean that agriculture is alive and thriving. The OPAV is not, as it is being applied today, intended to artificially suppress agricultural values where a strong market for farmland is driving values up. Owners of APR land should not be denied the right to receive as much money for their land as possible, as long as sale prices are being driven by farmers who are competing for that land for commercial agricultural purposes. The OPAV was aimed at preventing non-farmers - estate buyers - from purchasing and driving-up values of APR land.

In regard to how the OPAV is being administered today, MDAR's has taken the position that once the OPAV is triggered by an APR landowner's notice of intent to sell, the OPAV process cannot be stopped; the process of identifying and qualifying a buyer under the OPAV must proceed through to a closing, even if the landowner changes their mind about selling their farm or objects to idea of selling it to a buyer selected by MDAR. Understandably, this position has created considerable consternation amongst APR owners and backlash against MDAR and the OPAV. To rectify this situation, owners of APR land should be allowed to withdraw their notice to sell at any time during the OPAV process.

APR Program Administration

Much of the criticism that MDAR is facing concerning how the APR Program is being administered appears to flow from concern about the lack of transparency in the decision-making process related to program regulations and policies. The APR Program enjoys a wide spectrum of advocates and supporters; farmers, land trusts and other conservation and environmental organizations, town and state officials, local food advocates, and the broader citizenry. While these constituents may not always see eye-to-eye when it comes to how the APR Program should be administered, they all recognize the importance of the program and should, therefore, be considered by MDAR to be important allies and an asset to the program. Greater transparency in MDAR's decision making process by providing more opportunities for constituent input can only strengthen support for the APR Program.

MDAR's decision to go from a rolling application process to a once-a-year APR application acceptance schedule is creating real hardship for farmland owners and difficulties for land trusts that have been asked to assist with APR applications. Landowners who are faced with having to

make a quick decision about the future of their land are not in a position to wait months until the next APR application cycle rolls around. Many landowners are willing to wait for APR funding, but they need to know if their land is of interest to the APR Program and that funding for their APR will, eventually, come their way, even if it is two or three years away. Massachusetts' land trusts have played a critical role over the years in securing threatened farmland by providing interim funding to landowners while they wait for their APR funds, something land trusts are unable to do without a "final vote" from the APR Program. I understand that the decision to go to a once-a-year schedule was driven by the APR Program feeling the need to synchronize its application process with USDA's "Agricultural Land Easement" (ALE) Program's approval process. This would suggest that MDAR should have two tracks for APR applications - one for applications for which MDAR is going to receive ALE matching funds and one for applications that are to be funded with state funds only - and that rather than running all applications through the ALE track, MDAR limit the ALE funded applications to the minimum number needed to take full advantage of Massachusetts' allocated ALE matching funds.

APR Funding

Many of the pressures that the APR Program is experiencing when it comes to the application process seem to stem from the fact that APR funding, both state and federal, have been significantly reduced over the years. More robust state funding would make the APR Program less reliant upon federal ALE funding, thus eliminating the need for a once-a-year application schedule and making a two-track application process more feasible or, for that matter, allowing Massachusetts to decide to opt-out of receiving ALE funding all together. It would also allow the program to go back to funding APRs on farms that may not meet strict ALE standards for such things as size, soil quality, and percent farmland/woodland, but which still contribute in a significant way to the viability of Massachusetts agriculture.

State Farmland Action Plan

The 2015 "Massachusetts Local Food Action Plan" calls for the development of a formal State Farmland Action Plan. Such a plan would be aimed at establishing a baseline for Massachusetts' active agricultural land so that acres in production can be tracked over time; measurable goals and benchmarks related to farmland protection, retention and access can be set; and state program funding levels to meet those goals and benchmarks can be established. I urge MDAR to move forward with the development of such a plan ASAP.

Again, thank you for this opportunity to offer comments on the APR Program!

Non-profit

Thank you for the opportunity to provide comment on the Massachusetts Agricultural Preservation Restriction (APR) program, a critical tool for protecting Massachusetts farmland for current and future generations. [REDACTED] was founded in 1891 and is the largest conservation and preservation non-profit in Massachusetts with over 140,000 members. We have been a supporter of the APR program since its beginnings. The APR program was established in 1977 under former Massachusetts Department of Agricultural Resources (MDAR) Commissioner Frederic Winthrop, who went on to become Executive Director of The Trustees. Under Mr. Winthrop's leadership, The [REDACTED] founded the affiliate Massachusetts Farm and Conservation Lands Trust (MFCLT) which has been a key support to the APR program. The MFCLT has raised funds to purchase farms at risk of development, sold ownership of the APRs to the commonwealth, and sold the newly protected parcels to established farmers. This public and non-profit collaboration has been very successful, resulting in the protection of many farms. The MFCLT has been able to step in and purchase land when the commonwealth could not, and to do so at prices that were out of reach for private farmers before an APR restriction was put in place.

The Massachusetts APR program broke new ground nationally and has achieved important and significant progress in its 40+ year history, including protection of over 900 farms on over 70,000 acres of farmland in the commonwealth. The collaborative efforts of many players and partners, both public and private, have been key to the success of the program. The Trustees has worked closely with the commonwealth, farmers, and other land trusts to support the protection of farmland under the APR program. In addition to our work purchasing and protecting farmland via the MFCLT, we presently own over 300 acres of farmland under APR protection on three properties. [REDACTED] and the land trust community have also been

instrumental in securing capital funds to support the APR program and are advocates for the program with the Massachusetts legislature and our congressional delegation.

The APR program is at a crossroads. **Funding has declined, and the program is in dire need of further state and federal funds to keep up with the rising need for farmland protection and ballooning land costs in Massachusetts. In addition, a strategic prioritization of unprotected farmland in Massachusetts, informed by a State Farmland Action Plan, will be crucial to developing a renewed vision for the APR program and securing funding.** Such a plan would (1) determine the resources needed to improve state data collection around farmland trends; (2) establish a statewide baseline of land in active agricultural production, or the process for doing so with improved data collection, and a system for tracking acres of farmland in production over time; (3) set measurable goals and benchmarks related to farmland protection, retention, and access; and (4) recommend state program spending levels to meet those goals and benchmarks.

In addition, we note that **recent changes to the APR program diminish the ability of organizations like [REDACTED] to play a key role in protecting farmland.** A primary area of concern for [REDACTED] lies in the changes to APR program policy regulating the assignment of Option to Purchase at Agricultural Value (OPAV). These changes, made by MDAR, effectively bar land trusts and non-profits from participating in the APR program by changing the definition of a farmer to individuals engaged in commercial agriculture and entities formed for the express purpose of operating a commercial farm. The change to the definition of farmer under OPAV bars organizations like [REDACTED] from acquiring APR land, limits our involvement in APR transactions, and prohibits the kind of farmland purchase and protection work we have done via the MFCLT. **We request that the change to OPAV restricting the definition of a farmer be rescinded.** Taking non-profits and land trusts like [REDACTED] out of the mix of organizations that can engage with the APR program weakens the scope and impact of the program. Given the importance and challenge of farmland preservation, we have the greatest chance of success when utilizing as many resources and as many knowledgeable and motivated stakeholders as possible.

Also related to OPAV guidelines, **we support changing policy that currently prohibits a landowner from withdrawing a notice of intent to sell property pursuant to either an OPAV or a Right of First Refusal. We request a revision to APR program policy to allow a landowner to withdraw such notice or offer within appropriate time frames.** Finally, we note that there was no process for input and comment before changes to OPAV guidelines were made. We suggest creating a process whereby more input can be received, such as **requiring regulatory and policy changes to the APR program to be subject to approval of the Agricultural Lands Preservation Committee (ALPC).**

The [REDACTED] remains deeply committed to the continued success of the APR program. We thank MDAR for hosting listening sessions and taking comments on this important program. As an organization with over 125 years of experience protecting and preserving land in the commonwealth, we know how important farmland protection has been, is now, and will be for

years to come. The [REDACTED] asks for your support in strengthening the APR program through the allocation of additional funds for the program and implementation of a State Farmland Action Plan, as well as for changes to APR program guidelines that allow us and other non-profits and land trusts to continue to fully participate in the APR program.

Thank you again for the opportunity to provide this comment.