December 10, 2019

Dear Friends:

While the APR Program is just over 40 years old, these are only the early years for a program which protects land for posterity. In protecting over 70,000 acres and 930 properties, the program has made strong progress in addressing the challenges that gave rise to the program such as the loss of agricultural land, barriers to access for new farmers and concerns about food security. However, despite these efforts, the challenges that gave rise to the program still remain and new challenges have emerged over the course of those 40 years.

Today we are confronting a changing climate and learning how to adapt to greater unpredictability around seasons, weather extremes and unexpected events such as tornadoes, Spring frosts, flooding and forest fires. Other issues that were not contemplated at the start of the program include new opportunities for farms to diversify their sources of income through solar development; hemp and marijuana production; and income generating activities on their land, through both agricultural and appropriate non-agricultural activities. What does the APR program need to do now to address the challenges of the next 40 years? Or the next 100 years?

In January, we will launch the first in a series of statewide APR Review meetings to try to answer some of those questions and to review our existing guidance, policies, procedures and regulations relative to the management and oversight of the program. The meetings are an opportunity for you to provide your input on any updates that are necessary to improve and modernize the management of the program. Our goal is to hear from you on the effectiveness of the program and existing guidance, policies, procedures and regulations.

Having consulted with the Agricultural Lands Preservation Committee (ALPC) and the Board of Agriculture, please find enclosed in this packet a copy of existing guidance, policies, procedures or regulations for you to review in advance of the meetings. Details of the events are also included in the packet. And, I am also taking advantage of this mailing to include our most recent newsletter and an update on the geographical distribution of our Stewardship Staff which will let you know who to call with questions on your APR property.

I look forward to seeing you at the meetings. In the meantime, have a wonderful holiday season.

Best,

John Lebeaux,
Commissioner
JANUARY 2020
LOOKING FORWARD:
FARMLANDS FOREVER

Please join MDAR Commissioner John Lebeaux, APR landowners, farmers, APR staff, Agricultural Lands Preservation Committee (ALPC), Massachusetts Board of Agriculture, state officials, land trusts, and individuals engaged in Agricultural Preservation Restriction (APR) Program efforts to preserve Massachusetts farmlands.

These are regional, public events to review the APR Program. They include updates on: the listening sessions in 2018-2019, policies, procedures, regulations, guidance, and efforts to improve and modernize the APR Program.

Massachusetts Department of Agricultural Resources

APR Program 2020
6-8pm

January 7
Red Barn, Hampshire College
893 West Street, Amherst

January 14
Community Harvest Farm
37 Wheeler Road, North Grafton

January 21
Berkshire Athenaeum, Public Library
1 Wendell Ave, Pittsfield

January 28
Bristol County Agricultural High School
Library Rm 212, Gilbert Hall
135 Center Street, Dighton

January 30
Essex North Shore
Agricultural/Technical School
Smith Hall Cafetorium
565 Maple Street, Danvers

Since 1980, the APR Program has permanently protected 932 farms and 73,368 acres in Massachusetts.

The APR program was the first in the nation and continues to protect and preserve working farms for generations to come.

For information contact Gerard.Kennedy@mass.gov
Who to Contact at MDAR

If you have questions about your APR document, or plans to construct any structures or change your land use in any way, please contact your APR Stewardship Planner in advance. In May 2019, DAR split the state into 3 Stewardship Regions. Staffing for these areas is changing as DAR is working to fill the Western Region.

MDAR APR Stewardship Territories

Legend

MA Towns Boundaries
East Region
North Central Region
Western Region

East Region
(Eastern Worcester County and East)
Delia DeLongchamp
617-626-1737
delia.delongchamp@mass.gov

North Central Region
(Western Worcester and Franklin Counties)
Caroline Raisler
413-726-2006
caroline.raisler@mass.gov

Western Region
(Hampshire, Hampden, and Berkshire Counties)
Currently Vacant, Contact:
Ron Hall
APR Program Coordinator
413-726-2002
ronald.hall@mass.gov
Dear Friends,

Over the past few years the Department has been reviewing what we learned during the Listening Sessions we held in 2018. The Listening Sessions were held after we celebrated our 40th anniversary as part of our efforts to hear your ideas for the next stages of farmland protection in Massachusetts.

Over 165 people attended the four listening sessions and we recorded 70 comments: 12 from non-profit organizations, 3 from government entities and the remainder from 25 landowners and farmers and 19 interested citizens. The major themes, suggestions and issues were on the subjects of acquisition of new APRs, approvals for construction and activities; communication and transparency, and the sale and transfer of APRs.

Comments suggested program eligibility requirements should be changed to include a variety of farmland (not just land with 51% prime agricultural soils) and that aquaculture and equine operations should qualify. Other comments addressed the length of time to close a project; benchmarks and flow charts to outline the acquisition process from start to finish; a statewide farmland protection plan and the need for greater funding.

Regarding approvals for activities on APRs, comments addressed the construction of solar and alternative energy structures as long as they do not impact the protected farmland; and non-agricultural activities, such as weddings, bed and breakfasts and events that should be allowed as a way for farmers to stay economically viable.

Needs were expressed for greater communication from the Department, increased transparency, openness, and explanations for decisions and more staff availability to answer questions.

The area where there was probably the greatest concern had to do with the transfer of APRs and how the option to purchase at agricultural value (OAPAV) and right of first refusal (ROFR) policies are currently implemented.

General concern regarding transfers of APR land included revision of the waiver process: the landowner/seller should be able to withdraw an offer for the Commonwealth to purchase the land, the importance of ROFRs and OAPAVs to ensure that farmland is affordable for a farmer, and that beginning farmers should have an opportunity to buy farmland.

So how are we addressing some of the comments we heard? A focus of the program over the past year has been updating regulations in a public process to address the transfer of APRs. Further details are included in the newsletter but major changes include: a right for a landowner to withdraw a request for a waiver at any time up to a potential APR assignment, a right to appeal to the ALPC, and an automatic waiver provision. The regulations were promulgated August 1, 2019.

As part of our ongoing review of the APR acquisition process, we recruited a Land Acquisition Specialist to focus on the acquisition process and our relationship with the federal NRCS. We will continue to monitor our process to improve our efficiency.

Regarding comments on solar development, the Department as a result of your comments revised the existing policy by removing any requirement for an approval for roof mounted systems. We will continue to seek comments where we have any new policy development.

On the issue of communication around decisions and policies, well we hope to have a more regular release of this newsletter and we intend to conduct greater outreach to the community, are working on new materials and have plans for workshops. We are also building our ability to get out to visit with you by increasing the stewardship component of our program and have increased the number of Stewardship Planners. And starting in the new year we will be holding regional review meetings with the Board of Agriculture and the Agricultural Lands Preservation Committee that will be open to the public. Details inside. I hope I will see you there.

Best Regards,
John Lebeaux, MDAR Commissioner
AIP Ten-Year Anniversary

For the past 10 years, MDAR’s APR Improvement Program (AIP) has been providing farm viability assistance to farms protected through the APR Program to help keep them profitable and productive. Farms selected to this annual program receive valuable business planning and technical assistance and may also receive a grant to implement projects identified in the plan to improve their farm operation. Recent AIP projects include wash and pack facilities, barn roof repairs, hay and equipment storage barns, farm roadway and drainage improvements, dairy infrastructure, farmstands, and orchard trellising.

Since it began in 2009, AIP has provided $5,825,000 in total grants (average of $68,529 per farm) to 85 APR farms. The program has also provided $68,529,000 in business and technical assistance (average $5,728 per farm).

For more information about AIP, visit the MDAR program website at www.mass.gov/service-details/apr-improvement-program-aip or contact Michael Parker at Michael.Parker@mass.gov or 413-726-2008. The next application is expected to be available in early spring 2020, dependent upon available funding.

A New APR!

MDAR is pleased to announce the preservation of the Windy Hill Farm, a 176-acre family farm located high on a hill on Hulett Hill Road in Sheffield and Brewsters Branch in New Marlborough. Warren Wilcox has farmed the property for more than 50 years, gradually improving the land and making the fields larger by removing stone walls and hedgerows. Warren operated a dairy farm for many years before transitioning to beef cattle in the late 1980s. He continued to hay the fields to support his beef herd and rented the corn land to local dairy farmers.

Windy Hill Farm abuts Crystal Hill Farm in New Marlborough which is under a conservation restriction held by Berkshire Natural Resources Council. Windy Hill Farm was rented by a local dairy farmer, Morven Allen, who purchased the new APR land to continue its long and rich tradition of farming. The Department would like to congratulate Morven and deeply thank Warren for his cooperation during the preservation process and for his strong vision that “he doesn’t want to think of the day when Windy Hill becomes houses”.

MDAR accepts APR applications year round. Landowners should start the process as early as possible. Speak with a local MDAR Field Representative long before the annual application deadline in June.
APR Regulation Updates

Option to Purchase at Agricultural Value (OPAV) and Right of First Refusal (ROFR)

As of July 26, 2019, the Department has updated the APR regulations to include sections outlining the approach the Department must take when considering whether to exercise its options to purchase APR land at the time of sale. The new regulations outline the process that MDAR must follow when reviewing APR transfers, describe an automatic waiver process, a withdrawal option and also a right to appeal decisions to the ALPC for landowners. Here is a summary of how it works:

In 1987, the APR program implemented two tools that give the Commonwealth the ability to purchase APR protected farmland when it is put up for sale. These tools, called an “Option to Purchase at Agricultural Value” (OPAV) and “Right of First Refusal” (ROFR) enable, but do not require the Commonwealth to purchase APR protected land when it is up for sale. Since 1987, all APRs have included a purchase option:

1. APRs acquired 1987-1991 include a ROFR (97 APR Properties).
2. APRs acquired after 1991 include an OPAV (over 630 APR Properties).

In practice, unlike state agencies such as DCR and DFW, MDAR does not purchase APRs. Yet under certain circumstances MDAR may be required to transfer this right to purchase APRs at the time of sale to an interested buyer other than the original buyer. In the vast majority of transfers, MDAR chooses to “waive” its OPAV or ROFR and not become involved in the transfer.

When an APR landowner has a bona-fide offer from an interested buyer the APR landowner, where the APR document contains an OPAV or an ROFR provision, must notify MDAR of their intent to sell and offer the land to the Commonwealth to purchase. Along with this notification, a landowner can also include a request that MDAR waive its right to purchase. Upon receiving the notification, MDAR reviews the details of the sale and decides whether to waive its right or elect to utilize its right to purchase the land. If MDAR elects to utilize or exercise its right to purchase the APR, it will not actually purchase the land but will instead seek to transfer or assign its right to purchase to another person or entity, usually a farmer. The Department will do this through a public bidding process. Owners of APRs that do not include an OPAV or an ROFR provision do not have to notify the Department when selling their APR land.

Over the course of the 40-year history of the APR program, MDAR has waived its right to purchase the APR in the vast majority of cases. MDAR has only transferred its right on four occasions. This transfer of rights (also known as “Assignments”) is rare and has only occurred when MDAR’s review of a proposed sale has concluded that the proposed buyer was not a farmer or where the property was for sale at a greatly inflated price above agricultural value.

At the 2018 APR Listening Sessions, some comments about the waiver process for ROFRs and OPAVs were brought forward. Later, a state audit of the APR program provided recommended changes; one of these specifically gave a landowner the right to withdraw from the waiver process. Legislation subsequently mandated changes.

As of August 2019, MDAR updated the APR regulations to address how requests for waivers of ROFRs or OPAVs will be managed when submitted. The new regulations outline the process that MDAR must follow when reviewing APR sales; and describe an automatic waiver process, a withdrawal option and also a right to appeal decisions to the Agricultural Land Preservation Committee (ALPC) for landowners. The following is a summary of the main changes to the APR regulations:

- An Automatic Waiver requires that MDAR waive its right to purchase when all these criteria are met:
  - The landowner received a good faith offer and submitted to MDAR a certified copy of an executed Purchase and Sale Agreement
  - The landowner provides justification, deemed valid by MDAR, when a purchase price is 20% or greater than the Fair Market Agricultural Land Value. (Agricultural Land Value does not include dwellings that may be on the APR or the value of an Agricultural Business).
  - The buyer has been a farmer for at least two of the five years immediately preceding the landowner’s notice of intent to sell.
  - The buyer submits a Farm Business Plan for review by MDAR and presents a viable and achievable plan that is compatible with the APR and APR parcel.
  - The buyer has no record of a prior violation on an APR held by the Commonwealth. (MDAR may waive this requirement if the violation is deemed minor).
• If the criteria for an Automatic Waiver are not met, the Department may choose to issue a discretionary waiver when:
  o The buyer is a Farmer or Beginning Farmer or a non-profit corporation organized for the purposes of leasing land to one or more farmers or beginning farmers.
  o The buyer submits a Farm Business Plan for review by MDAR and MDAR determines the plan is complete and presents a viable and achievable plan that is compatible with the APR and APR parcel.
  o The buyer has no record of a prior significant APR violation on an APR held by the Commonwealth. (MDAR may waive this requirement if the violation is deemed minor).
  o The buyer provides justification, deemed valid by MDAR, when the purchase price is 20% or greater than the Fair Market Agricultural Value. (Fair Market Agricultural Value includes dwellings that may be on the APR and the value of an Agricultural Business).

• A landowner may withdraw from the Waiver process at any point prior to MDAR exercising its right or transferring its right to purchase.

• A landowner may appeal MDAR’s decision regarding a waiver by contacting ALPC which will then hold a hearing to consider the appeal.

• MDAR is always available to discuss the waiver process with the landowner. Future APR documents will require a meeting with MDAR, the landowner and potential buyer to discuss the ROFR, OPAV and waiver before the sale of an APR.

MDAR will conduct outreach and education sessions in January 2020 to provide updates on the APR Program (see Page 3). The actual regulations are available at www.mass.gov/regulations/330-CMR-2200-agricultural-preservation-restriction-program and can be consulted for details. A landowner can also consult his/her APR document to review individual APR seller requirements. If you would like a printed copy of the regulations, please contact Dorothy Du at dorothy.du@mass.gov or 617-626-1741.

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**Solar Policy Update**

The APR Program no longer requires approval for solar on roofs. Before we adopted this policy, approval was needed for roof-mounted systems. The Listening Sessions and public comments on the solar policy resulted in this change.


Contact stewardship staff for approval and policy info.
Contact Gerry Palano for energy grant/funding info: Gerald.Palano@mass.gov 617-626-1706

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**Energy Grants**

This reimbursement grant program funds agricultural energy projects in an effort to improve energy efficiency and the adoption of alternative energy by Massachusetts farms.

The goal of the program is for farms to become more sustainable and for Massachusetts to maximize the environmental and economic benefits from these technologies.

From July 30, 2018 to July 1, 2019 MDAR awarded $955,000 to 40 farms and 12 of those were APRs!

New applications will open in the Spring of 2020. Contact MDAR for an application BEFORE signing vendor paperwork and before beginning a project to confirm eligibility for an energy grant.
The Kitchen Garden

Caroline Pam and Tim Wilcox started Kitchen Garden Farm in 2006 on one acre of land. This family farm has since expanded to grow certified organic vegetables on 50 acres in Sunderland and Whately. The farm grows more than 100 varieties of vegetables on the farm including heirloom tomatoes, specialty greens and roots, fresh herbs, and a wide variety of sweet and hot peppers. The farm is well known for their srircha and salsas, sold at retailers across the country and available to sample at their popular annual Chilifest event in September, hosted at Mike’s Maze at Warner Farm, also an APR farm.

In 2016, Kitchen Garden Farm received assistance updating their business plan and financial projections as well as a grant for on farm infrastructure improvements through participation in MDAR’s APR Improvement Program. They used a $75,000 AIP grant towards a new 40’ by 96’ year-round facility for washing, packing, and storage of vegetables with 2 walk-in coolers, electrical installation, and a loading dock. This new farm building replaced the garage that they had previously used to wash and pack their vegetables and had outgrown. The new facility provides increased storage capacity and increased efficiencies associated with loading and shipping product and has allowed the farm to extend the season to keep employees year-round and reach new wholesale markets.

Kitchen Garden Farm received two other MDAR grants related to this project: $25,000 from the MDAR Ag-Energy program in fiscal year 2016 for a 27.75kW PV System on the roof of the new building and $11,277 in FY2017 from the Agricultural Food Safety Improvement Program for a new rinse conveyor and bagging table.

Caroline Pam and Tim Wilcox are quick to admit they wouldn’t be where they are without the APR Program. They welcomed visitors to their farm as part of the APR Program 40th anniversary celebration at which time Caroline wrote the following about the APR program as a contributing writer to the Daily Hampshire Gazette: “Over the past 40 years, the APR program has preserved around 500 farms and over 70,000 acres in Massachusetts. We feel very fortunate to own a few of them. But there are thousands more acres of prime farmland still at risk of development, and the APR program is one of the best ways to prevent their permanent loss. Any loss of this precious resource is truly heartbreaking, especially when there are many farmers who are struggling to secure good land.”

Farmland Restoration

Over the past 3 years, the Stewardship Assistance & Restoration on APRs program, also known as SARA, has provided APR farmers with over $250,000.00 to help resolve stewardship restoration issues on their land in areas that were productive at the time the land was put into APR. John Bettencourt, Jr. from Mysti Brook Farm was awarded $16,000.00 in 2018 to restore 5 acres of pasture that were overgrown and unable to be utilized. SARA funds were also allocated to dredge a pond on the farm that now provides water for livestock. SARA projects like John’s are a true reinvestment in the land and will further support the viability of his APR farm into the future.

If you’re not the original APR landowner and interested in APR farmland restoration contact Taylor Arsenault, Taylor.Arsenault@mass.gov 617-626-1348.
Looking Forward

These regional, public, MDAR events provide an opportunity for your input on how to improve and modernize the APR Program.

Evenings 6-8pm

January 7
Red Barn, Hampshire College
893 West Street, Amherst

January 14
Community Harvest Farm
37 Wheeler Road, North Grafton

January 21
Berkshire Athenaeum, Library
1 Wendell Ave, Pittsfield

January 28
Bristol County Agri. High School
Library Rm 212, Gilbert Hall
135 Center Street, Dighton

January 30
Essex North Shore
Agricultural/Technical School
Smith Hall Cafeterium
565 Maple Street, Danvers

Grant and Funding Programs

All grant/funding programs require advance application and approval, and are subject to available funding. Updates at mass.gov/agr.

APR Improvement Program (AIP) Business planning and technical assistance and grants for infrastructure improvements to help sustain active commercial farming on land already protected by the APR Program Michael.Parker@mass.gov 413-726-2008

Ag-Energy Grant Projects for renewable/alternative energy and/or energy efficiency solutions Gerald.Palano@mass.gov 617-626-1706

Agricultural Climate Resilience & Efficiencies (ACRE) Climate/economic resilience and MA Food Plan projects, such as no-till equipment, high tunnels, infrastructure, etc. Laura.Maul@mass.gov 617-626-1739

Agricultural Composting Assistance with management of ag composting operations Sean.Bowen@mass.gov 617-626-1724

Agricultural Environmental Enhancement (AEEP) Conservation practices that protect natural resources, such as drip irrigation and water reuse projects, fencing, and storage of fuel, manure, and pesticides. Laura.Maul@mass.gov 617-626-1739

Agricultural Products Safety Improvement Program (AFSIP) to reduce food safety risks Laura.Maul@mass.gov 617-626-1739

Dairy Farmer Tax Credit Offers state tax credit to help offset cyclical downturns in milk prices Myron.Inglis@mass.gov 617-626-1711

Farm Energy Discount Program 10% discounts on electric/gas bills for agriculture-eligible entities Joao.Tavares@mass.gov 617-626-1719

Farm Viability Enhancement Program (FVEP) For non-APR farmer technical and business planning assistance to expand, repair and modernize existing operations and improve marketing of food processing capacity Melissa.L.Adams@mass.gov 413-726-2001

Food Trust Program Increases local/healthy food access for the nutritionally underserved Rose.Arruda@mass.gov 617-626-1849

Food Ventures Initiatives for low/moderate income areas, Gateway Cities, and rural areas Rose.Arruda@mass.gov 617-626-1849

Matching Enterprise Grants for Agriculture (MEGA) Business planning assistance and matching grants for farm improvements for beginning farmers between 1 and 5 years in business beginnerfarmercoordinator@gmail.com 339-235-0859

Organic Cost Share Reimburses certified organic farmers and food processors up to 75% of certification costs Keri.Cornman@mass.gov 617-626-1777

State-owned Farmland Licensing Land can be licensed for 5-year periods for farming Ronald.Hall@mass.gov 413-726-2002

Stewardship Assistance and Restoration on APRs Program (SARA) Restores farmland resources on APR properties Taylor.Arsenault@mass.gov 617-626-1348
330 CMR 22.00: AGRICULTURAL PRESERVATION RESTRICTION PROGRAM

Section

22.01: Scope and Purpose
22.02: Definitions
22.03: Composition and Meetings of the Agricultural Lands Preservation Committee
22.04: Eligibility of Agricultural Preservation Restriction Program
22.05: Application Procedures
22.06: Agricultural Preservation Restriction Program Application Processing and Closing Procedures
22.07: Criteria Applicable in Evaluation of Projects
22.08: Agricultural Preservation Restriction
22.09: Departmental Approvals
22.10: Transfer or Sale of an APR Parcel
22.11: Agricultural Preservation Restriction Parcel Violations
22.12: Release of an Agricultural Preservation Restriction
22.13: Adjudicatory Hearings
22.14: Policies and Guidelines

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)(c).

(Mass. Register #1396 7/26/19)
22.02: continued

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 or 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.
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.
22.06: continued

(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)(c).

(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)(c).

(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.
(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.
22.09: continued

(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 ALFC, 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, § 25(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 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 ALFC 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 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 ¾ 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(e), 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
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.
AGRICULTURAL PRESERVATION RESTRICTION PROGRAM GUIDELINES
REQUESTS FOR A CERTIFICATE OF APPROVAL TO CONSTRUCT A GROUND MOUNTED RENEWABLE ENERGY SYSTEM

I. **PURPOSE:** By obtaining an Agricultural Preservation Restriction ("APR"), it has been and remains the intent of the Commonwealth of Massachusetts to perpetually protect and preserve agricultural lands, to encourage sound soil management practices in accordance with generally accepted agricultural practices, to preserve natural resources, to maintain land in active commercial agricultural use, and to ensure resale of an APR at an agriculturally affordable price for future agricultural use. An APR prohibits activities or uses which may be detrimental to: the actual or potential agricultural viability of an APR, water or soil conservation; generally accepted agricultural practices; and activities or uses which may be wasteful of the natural resources of the Commonwealth.

II. **AUTHORITY:** Per the terms of APRs and at the Department’s discretion, the Department may grant a Certificate of Approval ("COA") to construct an agriculturally related structure, including an agriculturally related Ground Mounted Renewable Energy System ("RES") on the Premises.

III. **DEPARTMENTAL PREREQUISITES TO ISSUING A COA FOR A GROUND MOUNTED RENEWABLE ENERGY SYSTEM:** In order to grant a COA for a Ground Mounted Renewable Energy System, the Department must find all of the following:

1. The APR contains language requiring the Owner to petition the Department for approval to construct an agricultural structure;
2. The Premises is being utilized for commercial agriculture;
3. Non-contiguous APR land or non-APR land owned by the same entity and to be served by the output of the Ground Mounted Renewable Energy System must also have a De-commissioning Plan. The Department reserves the right to require implementation of the plan upon the severing of ownership of the agricultural operations served by the Renewable Energy System;
4. The Ground Mounted Renewable Energy System will be located so as to minimize negative impacts to the agricultural productivity of the Premises;
5. The Applicant has submitted to the Department a detailed site plan showing where the proposed Ground Mounted Renewable Energy System will be located on the Premises and where any existing structures and improvements are currently located;
6. The Ground Mounted Renewable Energy System must have either a rated annual output capacity (kWh or BTUs) not greater than 2.0 times the documented historical or projected annual agricultural energy (kWh or BTUs) use on the APR land or the Agricultural Operation.
7. If approved:
a. The location of the Ground Mounted Renewable Energy System will not interfere or lead to the likelihood of interference with the Agricultural Use; and,
b. The proposed Ground Mounted Renewable Energy System must be sited to minimize impacts on productive agricultural land.

8. If the Ground Mounted Renewable Energy System is to be installed on APR land with prime soils or soils of state significance to farming, the following conditions must apply:
   a. Site preparation and disturbance of the existing soil conditions of the land must be kept to a minimum; and,
   b. No topsoil may be removed unless appropriately stockpiled and replaced on the site.

IV. **Definitions:** As used throughout this Guideline, the words or phrases listed below shall have the following meanings:

Agricultural Operation: a farming business encompassing a single economic unit under the same ownership and control, from which is derived a commercial agricultural product.

Agricultural Use: the raising of 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 to market, as defined in General Laws, Chapter 61A, Chapter 1, as amended. Also horticultural uses, the raising of fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling such products in the regular course of business; or when primarily and directly used in raising forest products under a program certified by the state forester to be a planned program to improve the quantity and quality of a continuous crop for the purpose of selling such products in the regular course of business; or when primarily, directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products and preparing them for market, as defined in General Laws, Chapter 61A, Chapter 2, as amended.

Agricultural Preservation Restriction ("APR"): a perpetual restriction to retain land or water areas predominately in their agricultural farming or forest use by forbidding or limiting certain property development rights.

APR Grantor: the party, parties, entity or entities that executed the APR.

Applicant: the record title owner of the APR who applies for a COA.

Certificate of Approval ("COA"): a certificate in recordable form issued by the Department that allows certain limited activities and uses for agricultural purposes on the APR with or without conditions.

Department: the Department of Agricultural Resources of the Commonwealth of Massachusetts, 251 Causeway Street, Suite 500, Boston, MA 02114-2151.

De-commissioning Plan: a clear plan with contingencies, developed at or before the time of installation, for the de-commissioning of the Renewable Energy System. The plan must account for removing the...
components of the Renewable Energy System and any related infrastructure and returning the Premises to its original condition as closely as possible.

Owner: the record title owner of the Premises.

Premises: the acres of land and buildings and structures thereon described in the Exhibit A attached to and incorporated into the APR.

Ground Mounted Renewable Energy System: any ground mounted (physical structure installed, with or without footings, on the surface of the land) renewable or alternative renewable energy generating source and all its associated infrastructure, including but not limited to any energy storage, that meets the requirements of M.G.L. c. 25A, §§11F and 11F1/2 as recently amended by Chapter 251 of the Acts of 2014. Ground Mounted Renewable Energy System explicitly does not include: 1) systems which use agricultural resources such as biomass as inputs (anaerobic digestion), or 2) systems which are roof mounted to existing structures.

Approved by the Agricultural Lands Preservation Committee at a duly authorized public meeting on December 14, 2018.

Adopted December 20, 2018

[Signature]

John Lebeaux
Commissioner
AGRICULTURAL PRESERVATION RESTRICTION PROGRAM GUIDELINES

REQUESTS FOR A SPECIAL PERMIT TO CONDUCT NON-AGRICULTURAL ACTIVITIES OR USES ON APR LAND

The APR Program is committed to preserving and protecting important agricultural soils, as well as helping to ensure that agricultural land remains available for active income producing agriculture, and the farm enterprise remains sustainable. At the Department’s discretion, it may grant a Special Permit to allow a non-agricultural use or activity on the APR. In order to make a positive determination under M.G.L. C.20 S. 23(b), the Department must find each of the following:

A. The APR land is being actively used for full time commercial agriculture; and

B. The application does not request any new structures or construction activities; and

C. In the event that the APR is co-held by another organization or governmental entity, co-holder approval has been obtained; and

D. The activity is being conducted in accordance with the terms of the APR utilized by the Commonwealth at the time of the application for the Special Permit; and

E. The activities will not defeat or derogate from the intent and purposes of retaining the land for agricultural use and preserving the natural agricultural resources of the Commonwealth.

In order to determine E. above, the Department will use the following criteria:

1. The activity is ancillary, minor, and subordinate to the agricultural activities occurring on the APR Premises (Consideration shall be given to the frequency and duration of the activity; the scale of the activity relative to the size of the farm operation; the gross income of the farm operation; and the extent of existing agricultural activity on the farm.).

2. The activity directly or indirectly benefits the agricultural operation and will not lead to the decrease or downsizing of agricultural activities occurring on the protected land.

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Many farmers hold off-farm jobs and farm on a part time basis. For the purposes of these guidelines “full time commercial agriculture” means that the agricultural use of the land is maximized to the fullest extent possible.

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3. The activity is under the direct control of the farmer. Any contract with a third party to manage the commercial non-agricultural activity subject to the special permit will be provided to the Department with the application, and the Department may make the permit conditional on changes to the contract in order to ensure that the activity or activities are under the farmer’s control and do not defeat or derogate from the intent and purposes of retaining the land for agricultural use and preserving the natural resources of the Commonwealth. All contracts must contain a clause allowing the farmer to discontinue the activity in the event of, or potential for, any damage to the APR land. No Special Permit applications will be reviewed if a signed contract transferring control of that activity to a third party is already in place at the time of application. A draft of any potential contract must be submitted.

4. The activity may occur if limited to: a) existing farm roads and wooded areas which do not interfere with the actual use of the land for agricultural production; or b) time periods that do not interfere with the current agricultural use of the parcel. Activities that occur on prime or state important agricultural soils will receive special scrutiny. Motorized activities, including parking activities, proposed on prime or state important agricultural soils will receive special scrutiny, and may be forbidden or limited.

5. No excavation to specifically support the activity will occur. In limited circumstances the action of pushing soil, for example to re-smooth an area, will not be considered excavation.

6. No new structures as defined in the regulations at 330 CMR 22.00 are allowed. All temporary structures must be removed within a reasonable time frame following the conclusion of the approved use or activity.

7. The activity will not have an adverse impact on the soils, water resources or other natural resources of the protected land.

8. Any non-productive land impacted by the use or activity must not have been converted from active agricultural use to a non-agricultural use within the 5 preceding years, except conversions undertaken in the course of normal agricultural production.

9. In the event that a non-agricultural activity is proposed to occur in an existing structure, any modifications to that structure will be minor and will not prevent the use of the structure for agricultural purposes in the future.

10. Recreational uses, including winter snowmobiling, for which the APR owner may charge a fee, such as fishing or cross country skiing, may be approved if the activities do not interfere with the use of the land for agricultural production and the activities utilize the premises in their existing condition.

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2 Recreational uses, including winter snowmobiling, for which the APR owner does not charge a fee, such as fishing or cross country skiing, are allowed if they are not prohibited by the APR and if the activities do not interfere with the use of the land for agricultural production and the activities utilize the premises in their existing condition.

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The Department may also require the following in making its decision:

1. A surety bond, letter of credit or other form of performance guarantee of sufficient value to fully cover potential damages and need for restoration.

2. Paper and/or electronic plans for the proposed use of the land.

3. A pre and/or post activity assessment of the impact on the APR land, to be conducted by a Department approved technical/ soil expert hired by the applicant.

4. A management plan outlining how any damage to the land will be restored.

5. Comments submitted by the USDA Natural Resource Conservation Service.

Adopted December 1, 2014

[Signature]

Gregory C. Watson
Commissioner
AGRICULTURAL PRESERVATION RESTRICTION PROGRAM GUIDELINES
REQUESTS FOR A CERTIFICATE OF APPROVAL TO CONSTRUCT OR PLACE A DWELLING

I. **PURPOSE:** By obtaining an Agricultural Preservation Restriction ("APR"), it has been and remains the intent of the Commonwealth of Massachusetts to perpetually protect and preserve agricultural lands, to encourage sound soil management practices in accordance with generally accepted agricultural practices, to preserve natural resources, to maintain land in active commercial agricultural use, and to ensure resale of an APR at an agriculturally affordable price for future agricultural use. An APR prohibits activities or uses which may be detrimental to: the actual or potential agricultural viability of an APR; water or soil conservation; good agricultural practices; and activities or uses which may be wasteful of the natural resources of the Commonwealth.

II. **AUTHORITY:** Pursuant to the terms of certain APRs, at the Department’s discretion, it may grant a Certificate of Approval to construct a Dwelling on the Premises.

III. **DEFINITIONS:** As used throughout this Guideline, the words or phrases listed below shall have the following meanings:

- **Agricultural Use:** the raising of 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, as defined in General Laws, Chapter 61A, Chapter 1, as amended. Also horticultural uses, the raising of fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling such products in the regular course of business; or when primarily and directly used in raising forest products under a program certified by the state forester to be a planned program to improve the quantity and quality of a continuous crop for the purpose of selling such products in the regular course of business; or when primarily, directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products and preparing them for market, as defined in General Laws, Chapter 61A, Chapter 2, as amended.

- **Agricultural Land Preservation Committee ("ALPC"):** a committee whose membership, powers, duties and statutory grant of authority are set forth in General Law Chapter 20, Section 24, as amended.

- **Agricultural Preservation Restriction ("APR"):** is 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.
APR Grantor: the party, or parties, or entity who executed the APR.

Applicant: the record title owner of the APR who applies for a COA.

Certificate of Approval ("COA"): a certificate in recordable form issued by the Department that allows certain limited activities and uses for agricultural purposes on the APR with or without conditions.

Department: the Department of Agricultural Resources of the Commonwealth of Massachusetts, 251 Causeway Street, Suite 500, Boston, MA 02114-2151.

Dwelling: a residence and all related infrastructure which may include driveway, septic system, all utilities, and well. Dwelling explicitly does not include improvements that are prohibited by the APR.

Dwelling Occupant(s): the person(s) proposed to occupy the Dwelling.

Fair Market Value ("FMV"): the most probable price that the Premises 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. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title to a buyer under conditions whereby: 1) buyer and seller are typically motivated; 2) both parties are well informed or well advised, and acting in what they consider their own best interests; 3) a reasonable time is allowed for exposure in the open market; 4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and 5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Fair Market Agricultural Value ("FMAV"): the combined total of the Fair Market Agricultural Land Value and the Fair Market Agricultural Business Value and the Fair Market Agricultural Dwelling Value.

Fair Market Agricultural Business Value ("FMABV"): the value based upon the ongoing agricultural business including agricultural buildings, infrastructure, goodwill and other related agricultural business factors. FMABV is relevant only upon the subsequent sale of the Premises and is not applicable at the time of original purchase of this Restriction by the Grantee. The FMABV appraisal includes agricultural business potential and is based upon activities and circumstances existing at the time of the sale of the Premises. The appraisal is not intended to contemplate speculative business potential that is dependent on management, investment or other prospective activities. FMABV may, when applicable, consider the value of ongoing agricultural business including agricultural buildings, infrastructure, goodwill and other related agricultural business factors on land owned by Grantor, but excluded from this Restriction ("non-Restricted land"), when such business on non-Restricted land is integral to the agricultural business on the Premises.

Fair Market Agricultural Dwelling Value ("FMADV"): the appraised replacement value of a dwelling(s) on the Premises.

Fair Market Agricultural Land Value ("FMLAV"): the value based upon the highest and best use of the land for agricultural purposes, including such considerations as location, types of soil, and climate, but excluding buildings or uses thereof. Permanently installed agricultural improvements, such as in-ground irrigation or drainage systems, are considered part of the land. Agricultural land value is solely the value January 5, 2015; Massachusetts Department of Agricultural Resources Guidelines
Requests for a Certificate of Approval to Construct or Place a Dwelling
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of the land, which value the landowner retains following the sale of this Restriction to the Grantee. FMALV is applicable at both the time of the Grantee’s purchase of this Restriction and at the time of subsequent sale. The FMALV may rise and fall commensurate with market conditions and/or inflation or other valuation factors such as upkeep of the land, and/or improvements in the condition of the soil or its productivity. It is understood that land improvements may increase the FMALV.

Owner: the record title owner of the Premises.

Premises: the acres of land and buildings and structures thereon that was described in the Exhibit A attached to and incorporated into the APR.

IV. DEPARTMENTAL PREREQUISITES TO ISSUING A COA FOR A DWELLING: In order to grant a COA for a Dwelling, the Department must find all of the following:

1. The APR contains language allowing the Owner to petition the Department for approval to construct a Dwelling; and
2. The Premises is being utilized for commercial agriculture to the fullest extent possible. A majority of open productive agricultural land must be in commercial Agricultural Use; and
3. The proposed Dwelling will be occupied by the Owner and/or his or her immediate family members (spouse, parents, children and grandchildren [the Dwelling Occupant]); and
4. At the time of the application, at least one Dwelling Occupant has been regularly and actively engaged in the daily operation of agricultural activities on the Premises for at least two growing seasons immediately prior to the application; and
5. Based upon a monitoring report and other due diligence conducted by the Department after receipt of the request for a Dwelling, there are no existing violations on the applicable APR or any APR owned by the Dwelling Occupant or Applicant at the time of filing of the application; and
6. The Dwelling will not defeat or derogate from the intent and purposes of retaining the land for Agricultural Use and preserving the natural resources of the Commonwealth. In order to determine if this criteria is met, the Department must find all of the below:
   a. The need for the Dwelling is directly related to, and being driven by, the current Agricultural Use of the Premises at the time of the Application. A proposed Agricultural Use of the Premises will not be considered. Applicant must demonstrate to the Department that the Agricultural Use of the Premises necessitates an on-site Dwelling. An Agricultural Use of the Premises for predominately hay or Christmas tree production does not necessitate a Dwelling; and
   b. The Dwelling will not negatively impact the actual or potential agricultural viability of the Premises; and
   c. If approved, the Dwelling will not negatively impact the future affordability of the Premises for Agricultural Use. If approved, the existence of the Dwelling will not increase the FMAV beyond the sum of the FMALV plus the FMABV plus the FMADV. In such a circumstance, a COA may be considered conditioned upon the granting of an updated APR with an Option to Purchase at Agricultural Value; and

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d. The Premises is of a size and is comprised of a soil resource that makes it economically viable in and of itself. Viability will be determined at the time of the Application; and

e. If the Applicant was the APR Grantor, there was no land excluded from the APR for the possibility of the construction of a Dwelling; and

f. No reasonable alternative Dwelling site exists on non-APR land owned by the Applicant or the Dwelling Occupant. Reasonable alternatives include, but are not limited to, dwellings or buildable lots owned by the Applicant or Dwelling Occupant, in reasonable proximity to the Premises.

V. **DEPARTMENTAL CONSIDERATIONS WHEN ISSUING A COA FOR A DWELLING:** Upon the Department finding the above criteria have been met and a Dwelling is approved on the Premises, the Department must consider all the following standards to minimize the impact to the soil resource and ensure that the Premises will remain affordable for future owners:

1. The size and value of the approved Dwelling must be supported by the ongoing agricultural activity on the Premises and proportionate to the income produced by the agricultural activities on the Premises and not off-Premises income, as determined by a qualified person appointed by the Department.

2. The Dwelling location minimizes impact to prime or state important soils on the Premises. An incremental cost of construction to locate the Dwelling in a location of minimal impact will not be considered.

3. The Dwelling location, if possible, is near the perimeter of the Premises, close to street frontage, near other structures, along a pre-existing driveway, or other access road.

4. A maximum of 15,000 square feet will be impacted by the Dwelling. Recreational improvements including, but not limited to, swimming pools, athletic courts and fields (tennis, basketball, etc.) will not be allowed.

Adopted January 5, 2015

[Signature]

Gregory C. Watson
Commissioner
AGRICULTURAL PRESERVATION RESTRICTION PROGRAM GUIDELINES
REQUESTS FOR A CERTIFICATE OF APPROVAL TO SUBDIVIDE LAND

I. PURPOSE:

By obtaining an Agricultural Preservation Restriction ("APR"), it has been and remains the intent of the Commonwealth of Massachusetts to perpetually protect and preserve agricultural lands, to encourage sound soil management practices in accordance with generally accepted agricultural practices, to preserve natural resources, to maintain land in active commercial agricultural use, and to ensure resale of land subject to an APR at an agriculturally affordable price for future agricultural use. An APR prohibits activities or uses which may be detrimental to: the actual or potential agricultural viability of the land subject to an APR; water or soil conservation; good agricultural practices; and activities or uses which may be wasteful of the natural resources of the Commonwealth.

In order to determine if a Subdivision is necessary to the actual or potential agricultural viability of the land subject to an APR, the Department must consider the intent and purpose of the APR, as well as the proposed uses of the subdivided parcels. An Applicant for Subdivision must demonstrate to the Department that it is in the best long-term interest of the land subject to the APR, from both an agricultural and economic standpoint, to subdivide the APR into two or more parcels.

II. DEPARTMENTAL PREREQUISITES TO ISSUING A CERTIFICATE OF APPROVAL:

A. PRELIMINARY APPROVAL: In order to preliminarily approve a request for a Subdivision, the Department must find all of the following:
   1. The Subdivision is consistent with the stated purposes of the applicable APR;
   2. The Applicant has complied with the terms of the Original APR, including obtaining all required Federal approvals;
   3. The Application includes a Farm Plan sufficient to demonstrate the subdivided parcels will be utilized to the fullest extent possible for commercial Agricultural Use;
   4. The Subdivision creates either:
      a. two or more parcels that are economically viable for commercial Agricultural Use in and of themselves. Economic viability will be determined by the parcels':
         i. quality of soils and ability to support existing and potential commercial Agricultural Uses;
         ii. sufficiency of current infrastructure, including residences and farm buildings; and
         iii. road frontage and available markets for agricultural products; or
      b. one parcel that is economically viable for commercial Agricultural Use (see II.4.a. i-iii above) and an Add-on parcel that will be conveyed to an adjacent APR Owner. An Add-on must be allowed by the terms of the Original APR. If Add-on is requested, the right to request a COA for a dwelling remains with the Original APR;
5. The Subdivision results in each parcel of a sufficient size, quality and configuration to support commercial Agricultural Use of the parcel now and in the future;

6. The Subdivision results in parcels of minimum acreage acceptable to the Department, as follows:
   a. If the proposed subdivision includes land with an existing residential dwelling or labor housing and related infrastructure, acres of land actually in commercial Agricultural Use must be a minimum of 10 acres; or
   b. If neither parcel is an Add-on and there is no existing residential dwelling or labor housing, each proposed subdivided parcel must not be less than five acres; or
   c. If an Add-on with no existing residential dwelling or labor housing, the parcel may be less than 5 acres;

7. The parcels resulting from the Subdivision have functionally separate Essential Structures. For example a septic system and related infrastructure must remain on the same parcel as the dwelling it supports;

8. The Subdivision will result in practical and legal access for each subdivided parcel, unless subdivided parcel is an Add-on that will be combined with an adjacent APR. No new rights of way or access easements on land subject to the APR may be created; and

9. The Application, if it includes an Add-on, must additionally include proof satisfactory to the Department that the APR Owner which will incorporate the Add-on has agreed to the addition.

B. CONDITIONAL APPROVAL: Upon the Department finding the above criteria have been met the Department will issue a preliminary Subdivision approval letter stating the conditions that must be met. The Department may only issue the final COA when the following minimum conditions have been met:

   1. If required by the Department, or the terms of the Original APR, in order to ensure the intent and purpose of the APR is protected, APR Owner executes a New APR, or amends the Original APR to include an Option to Purchase Real Estate at Agricultural Value, for the newly created subdivided parcel(s) and provides it to the Department for recording;
   2. If not already separate legal lots, a full or partial survey separating the parcels must be prepared and approved by the Department;
   3. If applicable, co-holder approval is obtained and provided to the Department;
   4. If Subdivision results in an Add-on the following documents after Departmental review and approval must be recorded: executed amended Original APR, deed transferring the property, and executed amended APR incorporating Add-on parcel.
   5. All expenses related to the survey and recording of any documents at the appropriate Registry of Deeds is responsibility of the APR Owner;
   6. At the discretion of the Department, if subdivided parcel contains a dwelling at the time of Subdivision, a New APR with Option to Purchase at Real Estate Agricultural Value may be required; and
   7. If required by the terms of the Original APR, the Department has obtained Federal approval.

C. FINAL APPROVAL: In order to issue a Certificate of Approval for Subdivision, the Department must find all of the following:

   1. All conditions of II B. have been met;
   2. The Department has received all executed documents; and
   3. The Department has received all fees for the payment of recording costs.
III. **Definitions:** As used throughout this Guideline, the words or phrases listed below shall have the following meanings:

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

**Agricultural Use:** the raising of 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, as defined in General Laws, Chapter 61A, Chapter 1, as amended. Also horticultural uses, the raising of fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling such products in the regular course of business; or when primarily and directly used in raising forest products under a program certified by the state forester to be a planned program to improve the quantity and quality of a continuous crop for the purpose of selling such products in the regular course of business; or when primarily, directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products and preparing them for market, as defined in General Laws, Chapter 61A, Chapter 2, as amended.

**Agricultural Preservation Restriction ("APR"):** is 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.

**APR Owner(s):** at the time of Application, the record title owner(s) of the land subject to the Original APR.

**Applicant(s):** the record title owner(s) of the land subject to the Original APR who applies for a COA.

**Application:** a form to be filled out by an Applicant that contains the relevant information related to the request for the issuance of a COA.

**Certificate of Approval ("COA"):** a written certificate in recordable form issued by the Department that allows certain limited activities and uses for agricultural purposes on the APR with or without conditions.

**Department:** the Department of Agricultural Resources of the Commonwealth of Massachusetts, 251 Causeway Street, Suite 500, Boston, MA 02114-2151.

**Essential Structures:** permanent and temporary structures related to the commercial Agricultural Use of the Premises. Including but not limited to waste disposal systems, alternative energy facilities, and irrigation access points.

**Farm Plan:** a narrative that includes, at a minimum, how the Premises will be utilized to the fullest extent possible for commercial agriculture for a five (5) year period including but is not limited to, the following: identification of all land uses on the farm, crops to be grown, acreage for each crop, livestock to be raised, pasture acreage, use of existing structures on Premises (if applicable), and need
for additional structures (if applicable) and timeline for implementation of the plan. The narrative shall include a map or diagram identifying each land use proposed for the farm.

**Premises:** the acres of land and buildings and structures thereon that were described in the Exhibit A attached to and incorporated into the Original APR.

**Original APR:** the initial APR, as amended.

**New APR:** an updated APR in the format current at the time of the issuance of the COA.

**Subdivision:** the division of a lot, tract, or parcel of land subject to an APR into two or more parcels.

**IV. Authority:** Pursuant to the terms of the APR, the Department may in its discretion approve a subdivision of land as it deems necessary to further the purposes of the APR.

Adopted September 10, 2015

John Lebeaux
Commissioner
MDAR APR Program Application for Certificate of Approval (COA)

PART I

Landowner contact (name, address, phone & email):

APR property address:

APR property name & recording info:

Is the APR Co-held by a municipality? Yes / No
   If Yes, you may need to request additional approval from the Co-holder. Check with APR Program.
   *Note: The Co-holder is identified in the APR document or a separately recorded Co-holder Agreement.

Type of Approval*: New Structure/Improvement/Excavation/Alternative Energy/Labor Housing/Residential Dwelling

Briefly, describe need for approval:

Describe impact to productive, agricultural areas:

*If Labor Housing or Residential Dwelling, see Part II questions.

Complete the following applicable questions:

If agricultural structure, list dimensions, square footage, relationship to existing roads, utilities and other buildings, usage of structure, usage of proposed site:

If retail structure, list types of products grown and sold, % of anticipated products grown on-farm, seasonality:

If agricultural improvement (ie. irrigation system, drainage system, etc.), list type, size:

If excavation (ie. new farm road, leveling knoll, erosion repair, etc.). list area dimensions/volume, types of soils affected:

If energy, describe system, outputs, power offsets, location/siting, current on-APR farm energy usage:

Landowner(s) signature/date:
MDAR APR Program Application for Certificate of Approval (COA)

Request for Certificate of Approval (COA) Requirements

- You must include a map/layout plan suitable for an attached Exhibit A with your submission of this application and return to your APR Program staff person. The map must show the approximate location of the proposed work.
- Upon review of this application, the APR Program reserves the right to request additional materials such as business plans, projected income, additional site plans, or Farm Plan.
- Work related to this application may not begin prior to receiving a recordable Certificate of Approval (COA) from the Department.
PART II. G. SPECIAL PERMIT FOR A NON-AGRICULTURAL USE

APR Owner: _____________________________________________

APR Project ID: ___________________________________________

Non-Agricultural Activity Proposed: _____________________________________________

1. If the answers to the following questions are "yes", do not proceed with the application. Instead contact your APR Field Agent for information on how to proceed.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>___</td>
<td>___</td>
</tr>
</tbody>
</table>

a. Do you have a contract in place with a third party to manage the proposed non-ag. use ?
b. Do you intend to construct any new structures for the proposed non-ag. use ?
c. Will the proposed non-ag. use have an adverse impact on soil resources ?
d. Will the proposed non-ag use require any excavation ?
e. Has the area where the proposed non-ag. use will be sited been converted from active agricultural use to non-agricultural use in the preceding five years ?

2. List the non-agricultural use, the types of associated activities, dates, attendance, admission charge:

<table>
<thead>
<tr>
<th>Non-Agricultural Use</th>
<th>Activities</th>
<th>Date(s)</th>
<th>Attendance</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

3. Draw on the attached map/sketch/plan where the proposed non-ag. use/event/activity will be occurring on the APR and specifically describe here:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

4. Describe all current agricultural operations in detail (include type of operation, seasonality factors, commercial sales/vending agreements/retail/cooperative ventures):

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
5. What is the direct relationship between the proposed non-ag. use and the current existing agricultural operations (if none exists, what is justification of need for non-ag. use/event/activity): ____________________________

__________________________________________________________________________

6. Describe how the proposed non-ag. use will benefit the existing agricultural operations: ____________________________

__________________________________________________________________________

7. Describe any changes you need to make to existing structures to accommodate the activity: ____________________________

__________________________________________________________________________

8. Gross income derived from the farm in the preceding two tax years (with most recent first) 1. $ ___________ 2. $ ___________

Anticipated gross income from proposed non-ag. use: $ ___________

Explain by type of activity any anticipated increase in sales of farm products as a result of the permitted activity:

__________________________________________________________________________

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NOTE: Upon further review, you may be asked to provide the following: a business plan, projected agricultural uses plan, Natural Resources Conservation Service Farm Management Plan, a surety bond, letter of credit or other form of performance insurance of an amount or value commensurate with potential damages and need for restoration.

All Department Approvals may be subject to specific binding conditions as stated in the final Approval document issued by MDAR. This Special Permit Application will not be complete until a field visit has been scheduled with either your Field Representative or the Stewardship Planner, either alone or in combination with a Department approved, experienced soil expert

Application will not be considered complete without the attachment of a map/sketch/plan showing area of impact/location of proposed non-agricultural use.
FARM BUSINESS PLAN PROGRAM TEMPLATE
FOR THE AGRICULTURAL PRESERVATION RESTRICTION (APR) PROGRAM

This Farm Business Plan Template is provided as a helpful template for purchasers of APR land who are seeking to comply with the regulatory requirements under 330 CMR 22:10 for a Farm Business Plan. Purchasers are not required to use this template but are required to follow the provisions of the regulations for a Farm Business Plan¹.

1. Information

<table>
<thead>
<tr>
<th>Purchaser Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operation Name:</td>
</tr>
<tr>
<td>Legal Structure:</td>
</tr>
<tr>
<td>Mailing Address:</td>
</tr>
<tr>
<td>City, State, Zip:</td>
</tr>
<tr>
<td>Home Phone:</td>
</tr>
<tr>
<td>Mobile Phone:</td>
</tr>
<tr>
<td>E-Mail:</td>
</tr>
</tbody>
</table>

☐ Site address same as above

¹ 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).
Information

Describe your commercial farming experience (as employee, manager or owner). Include name and location of each farm, your title, main responsibilities and number of years at each property.

Provide a short and long term mission statement for the APR Parcel. What steps do you need to take to get there?
List the agricultural activities you are proposing for the first five year period on the APR Parcel. Please provide acres for each crop as well as yield estimates. For livestock operations please provide type and number of animals along with product projections (ex. lbs. of milk or cheese). If the land will be leased to another grower, please provide the grower’s name and contact information.

If you currently own or lease other farm land, please describe the operation in as much detail as possible (acres, crops, number of animals, etc.). Describe how the APR Parcel will be used in conjunction with your existing farm business.
Describe how the products grown/produced on the APR Parcel will be marketed (ex. Farm stand onsite, farm stand at another location owned by your business, wholesale, farmers’ markets, CSA, PYO, etc.). For each outlet provide the estimated percentage and details if possible (ex. specific farmers’ markets, restaurants, supermarkets, etc.).

How many people will earn a full time income off the APR Parcel within the first five years?

How many people will be employed part time on the farm?
Provide the name of the proposed farm manager(s) and describe his/her role. Also provide the farm manager's past agricultural experience.

Please list all of the existing structures on the APR and their proposed uses:
List the types of capital improvements (such as new buildings, wells, irrigation, fencing) that you are anticipating making (with DAR approval) on the APR Parcel in the first five years of your ownership of the APR.

What type of agricultural equipment do you possess or intend to acquire to support the needs of your operation?
Do you anticipate seeking approval for a non-agricultural activity or use within the first 5 years of ownership? If so, please describe.

What type of metrics will you use to gauge the success of your business?

Examples might be an % increase in sales by year 3 or # of people visiting the farm in 1st year;