

# THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



## Department of Agricultural Resources

251 Causeway Street, Suite 500, Boston, MA 02114  
617-626-1700 fax: 617-626-1850 [www.mass.gov/agr](http://www.mass.gov/agr)



Maura T. Healey  
GOVERNOR

Kimberley Driscoll  
LIEUTENANT  
GOVERNOR

Rebecca L. Tepper  
SECRETARY

Ashley E. Randle  
COMMISSIONER

March 15, 2023

Dear Friends: I am pleased to be able to announce that in April and May, the Department will be conducting a series of listening sessions across the state as part of its triennial (every three years) review of the APR program. Please find included in this packet details of the meetings and a collection of existing guidance, policies, procedures and regulations relative to the management and oversight of the Program. I hope you will be able to review the materials and provide us with your input and comments.

It is hard to believe that it has been three years since we conducted our first ever series of triennial reviews of the program. When we held our listening sessions in January of 2020, we had no idea that in a matter of weeks our world would be changed dramatically by the pandemic. Much has happened since, but one thing that the pandemic underscored is the critical importance of maintaining our food security and the importance of Massachusetts agriculture.

In order to maintain our food security, we need to protect our agricultural land base and ensure that we have farmers with viable businesses to actually farm the land. The importance of land protection initiatives like the APR program, the Farm Viability Enhancement Program, and the great work of our land trust and non-profit community groups in the face of existential factors like pandemics and climate change, could not be greater.

Yet there are many challenges that persist and, while we have enjoyed many successes, despite our best efforts we are still losing agricultural land. Massachusetts is ranked 9th in the nation for risk of farmland conversion by the American Farmland Trust. At the same time, we have some of the most valuable farmland in the nation for food production. And there continue to be barriers to access for new and underserved farmers and ongoing concerns about food security.

The upcoming sessions are an opportunity for you to provide your input on any updates that are necessary to improve and modernize the management of the APR program. Our goal is to hear from you on the effectiveness of the program and our existing guidance, policies, procedures and regulations.

I look forward to seeing you at the meetings and hearing your valuable feedback. In the meantime, happy reading.

Best,

A handwritten signature in blue ink that reads "Ashley E. Randle".

Ashley E. Randle,  
Commissioner

## **Contents**

1. Letter from Commissioner Ashely E. Randle.
2. Events, dates, times and locations.
3. APR Program Staff.
4. APR Program Manual.
5. APR Program Regulations – 330 CMR 22.00.
6. APR Dwelling Guidelines.
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# PRESERVING FARMLAND FOR FUTURE GENERATIONS

Please come meet the new MDAR Commissioner Ashley Randle and join her and the APR staff for the Spring 2023 Public Listening Sessions. All APR landowners, farmers, Agricultural Lands Preservation Committee (ALPC) members, the Massachusetts Board of Agriculture, state officials, land trusts and individuals interested in Agricultural Preservation Program (APR) efforts to preserve Massachusetts farmland are invited.

The program will include:

## APR PROGRAM UPDATES

(30 minutes)

MDAR staff will speak about policies, procedures, regulations, guidance, and efforts to improve and modernize the APR program after input from the 2020 listening sessions.

## LISTENING SESSIONS

(45 minutes)

MDAR would like to hear your thoughts on what works well and your concerns or challenges with: dwellings on APRs, your ability to conduct non-agricultural commercial activities on APRs (Special Permits), alternative energy on APRs, the sale and transfer of APRs, APR eligibility and ranking, the use of ACEP ALE program to leverage APR funding and other APR related issues.

## COMMUNICATION SESSIONS

(45 minutes)

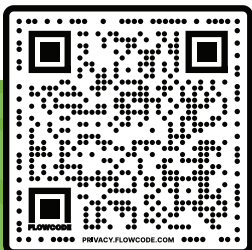
A facilitated Q&A session to better understand participant thoughts on the overall APR program to learn how to better engage with existing and future APR program participants.

## SPRING 2023 LISTENING SESSIONS

6-8 p.m.

(Registration starts at 5:30 p.m.)

- **April 11 - Dighton**  
Bristol County Agricultural High School - Student Commons,  
Gilbert Hall 135 Center Street,  
Dighton
- **April 13 - Stockbridge**  
Stockbridge Town Hall  
50 Main St, Stockbridge
- **May 2 - Amherst**  
Red Barn at Hampshire College  
893 West Street, Amherst
- **May 3 - Danvers**  
Essex North Shore Agricultural &  
Tech School, Media Center  
565 Maple Street, Danvers
- **May 4 - Leominster**  
Fidelity Bank - Community Room  
9 Leominster Connector, Leominster



Go to [mass.gov/apr](https://mass.gov/apr) to register.  
The form is in English, Spanish and Portuguese. (RSVP is not required,  
but highly encouraged.)

APR PROGRAM RESOURCES

# APR PROGRAM STAFF

Our APR staff are available to assist you with all aspects of the APR Program. Please find the appropriate person on this list to assist you.

## APR APPLICATION AND ACQUISITION STAFF

CHRISTINE CHISHOLM  
*Essex & Middlesex Counties,  
Westport & Dartmouth,  
Hampshire County*  
Chris.Chisholm@mass.gov  
617.455.9204

RON HALL  
APR Program Coordinator  
Ronald.Hall@mass.gov  
413.726.2002

MICHELE PADULA  
*Northern Worcester, Franklin, and  
Northern Berkshire Counties*  
Michele.Padula@mass.gov  
617.921.0051

JAY ROSA  
*Southeastern MA, Southern Worcester  
County, Hampden County, Southern  
Berkshire County*  
Jay.Rosa@mass.gov  
857-507-5367

## APR STEWARDSHIP STAFF *for Approvals and Monitoring*

DELIA DELONGCHAMP  
*East of Worcester County*  
Delia.Delongchamp@mass.gov  
617.785.0804

TYLER MAIKATH  
*Worcester County &  
Hampden County*  
Tyler.Maikath@mass.gov  
857-289-4598

TINA SMITH  
*Hampshire County and  
Southern Berkshire County*  
Kristina.Smith@mass.gov  
617.455.5201

**NATHAN MOYER**  
*Franklin County and Northern  
Berkshire County*  
Nathan.Moyer@mass.gov  
413.727.5855

JULIE WEISS  
*SARA Grant*  
Julie.Weiss@mass.gov  
617.913.5317

## APR SALES/TRANSFERS

*OPAVs and ROFRS*

**TAYLOR ARSENAULT**  
Taylor.Arsenault@mass.gov  
617.655.3870

## ADMINISTRATION

DOROTHY DU  
**Administration**  
Dorothy.Du@mass.gov

**DAVE VIALE**  
Lands Programs Supervisor  
David.Viale@mass.gov  
857-243-0365



**AGRICULTURAL PRESERVATION RESTRICTION (APR)**  
**APR PROGRAM GUIDE**

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**UPDATES:**

*This guide summarizes the APR program and is subject to change.*

*APR program updates are available at [www.mass.gov/apr](http://www.mass.gov/apr).*

**RESEARCHER & AUTHOR:**

*Jen Boudrie*

**CONTRIBUTORS & REVIEWERS:**

*Laura Abrams, Melissa Adams, Taylor Arsenault, Denise Barstow, Rick Boudrie, Will Chang, Fred Dabney, Delia Delongchamp, Phil DeMartino, Brian Donohue, Dorothy Du, Brian Farr & layout staff, Susan & Larry Flaccus, Dake Henderson, Barbara Hopson, Rich Hubbard, Mary Jordan, Gerard Kennedy, John Lebeaux, Rick LeBlanc, Bob O'Connor, Kathy Orlando, Jennifer Forman-Orth, Michelle Padula, Nick Patel, Jamie Pottern, Caroline Raisler, Rick Reibstein, Richard Robinson, Warren Shaw, Christine Smith, David Viale*

**COMMENTS:**

*If you have questions or comments please contact MDAR staff at [www.mass.gov/apr](http://www.mass.gov/apr).*

**COVER PHOTO:**

*Massachusetts Farms in the Pioneer Valley*

## Dear Friend of Massachusetts Farmland,

Welcome to our *APR Program Guide*, a handbook for farmland preservation in Massachusetts. From application to stewardship, this guide describes many facets of farmland conservation under the APR program.

Our Department of Agricultural Resources is dedicated to protecting the public trust to provide support for agriculture and highlight its valuable contributions to our economy, our landscape, and our communities. In my travels across the Commonwealth I have visited many farms and I continue to be impressed that we have protected so many precious farms that contribute to the communities we call home.

I want to thank everyone dedicated to preserving farmland in Massachusetts and give a special thanks to all our farmers. Putting your farmland into the APR program is an important decision that takes careful thought and planning, and while it can be a long process, the end result – the permanent protection of agricultural land for farmers and Massachusetts communities – is well worth it.

I hope this guide will help you make an important decision about how to protect your own farmland.



**Ashley E. Randle**

*Commissioner*

MASSACHUSETTS DEPARTMENT OF AGRICULTURAL RESOURCES (MDAR)



## APR Purpose, Value, and Restriction

If you own a farm in Massachusetts, the value of your land for development is probably much higher than it is for agricultural purposes. The goal of an APR is to pay you the difference between the two and to let you or your heirs or other farmers continue to farm it. Placing an APR on your farm has significant advantages, comes with some important restrictions, and can take two or more years to complete. This guide will give you the information you need to understand the APR program and to help you determine if it is right for you.

If you protect your farm through the APR program, your farm will continue to be preserved for agriculture in the future, along with hundreds of other farms across the state in the APR program. While it is a significant process that takes careful thought and planning, it is one that can benefit you, your family and future farmers in years to come.



### ASSISTANCE

MDAR staff and land trust staff are available and happy to assist you throughout the APR application and approval process. You may find MDAR contact information at [www.mass.gov/apr](http://www.mass.gov/apr) and a list of local land trusts at [www.findalandtrust.org/states/massachusetts25](http://www.findalandtrust.org/states/massachusetts25) or [www.massland.org/land-trusts/list](http://www.massland.org/land-trusts/list).

## Abbreviations

### MDAR

Massachusetts Department of Agricultural Resources  
[www.mass.gov/agr](http://www.mass.gov/agr)

### ALPC

Massachusetts Agricultural Lands Preservation Committee  
[www.mass.gov/apr](http://www.mass.gov/apr)

### NRCS

U.S. Department of Agriculture, Natural Resources Conservation Service



## Guide Content

Information for this guide comes from APR program regulations, procedures and documents. It aims to be a comprehensive summary and consistent with the APR application process, stewardship planning, change of ownership guidelines, and resources for the APR program.

The content describes the rights and responsibilities of current and future APR landowners, and the responsibilities of MDAR for protected agricultural land.



## INTRODUCTION HISTORY

### Preserving the Future of Farmland

In 1977, due to concerns about the loss of agricultural land to development and the need for land use planning, the legislature created the Agricultural Preservation Restriction (APR) program through *An Act Providing for the Acquisition of Agricultural Preservation Restrictions by the Commonwealth*. It was the first state program of its kind in the nation.

The APR program preserves and protects agricultural soils from use for non-agricultural purposes or any activity detrimental to agriculture. The voluntary program helps pay farmers the difference between the fair market value and the fair market agricultural land value of their land, in exchange for a permanent deed restriction which prevents any use of the property that will have a negative impact on its agricultural use.

In 1980 the Department of Food and Agriculture, under Commissioner Frederic Winthrop, completed the first APR, an 18-acre parcel of farmland in Salisbury Plains. Today it's part of Bartlett Farm, a 10th generation family-owned vegetable and produce farm that has been operating since 1657 and is one of the oldest farms in the country. Since that first APR, the Department of Agricultural Resources has protected more than 968 farms and more than 75,000 acres.

Past MDAR Commissioner Winthrop at the Wilkie APR in Lakeville.



Past MDAR Commissioner Lebeaux, Massachusetts farmers, and state and federal officials participate in the speaking program atop Mount Sugarloaf to celebrate the 40th anniversary of the legislation that created the APR program.

Acts, 1977. — Chap. 780. 969

**Chap. 780. AN ACT PROVIDING FOR THE ACQUISITION OF AGRICULTURAL PRESERVATION RESTRICTIONS BY THE COMMONWEALTH.**

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide for the protection and preservation of agricultural lands, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Chapter 132A of the General Laws is hereby amended by inserting after section 11 the following four sections:-

Section 11A. The secretary of environmental affairs shall establish a program to assist the commonwealth in the acquisition of agricultural preservation restrictions as defined in section

The Department has developed a productive partnership with the USDA Natural Resources Conservation Service (NRCS) to protect farmland, created an active stewardship program, and has been at the forefront to ensure that this land remains affordable and accessible to farmers and transfers at fair market agricultural value.

While the APR program is just over 40 years old, these are only the early years for a program which protects land for posterity. For the APR program, it's a time for reflection on past accomplishments and a time to look forward to preserving many more acres of farms.

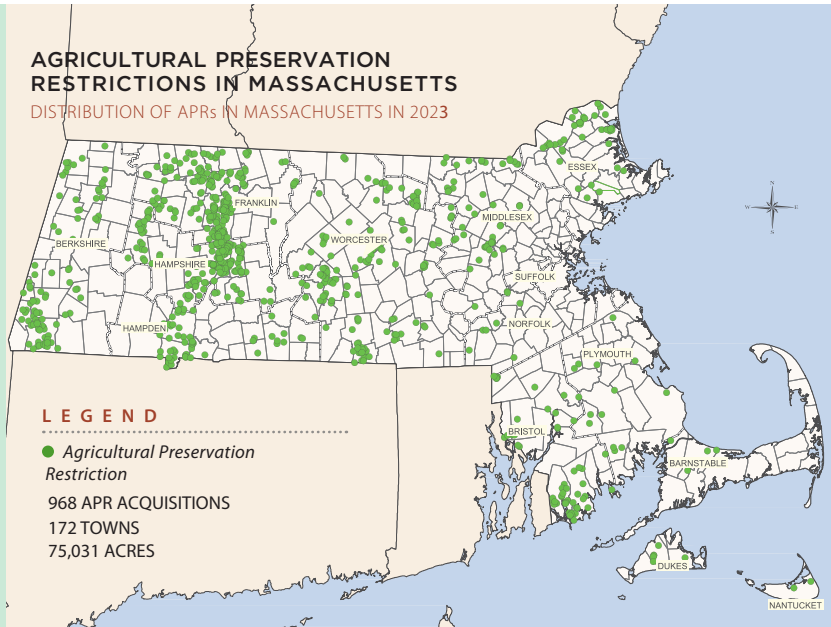
## INTRODUCTION

# APR BENEFITS

The APR program protects agricultural land for farming and from development. It's a voluntary program for landowners faced with a decision about the future use of their farmland. The program helps to pay farmland owners the difference between the fair market value and the fair market agricultural land value of their farms in exchange for a permanent deed restriction that preserves the farmland.

The landowner keeps ownership of the land and can pass it down to future generations or sell it to another farmer.

**Over 960 farms and  
75,000 acres preserved**



The purpose of the Agricultural Preservation Restriction program is to protect farmland.

Related benefits are:

- Strengthening the local farm community by keeping farmland in productive agricultural use and in the hands of farmers
- Offering estate planning and retirement options such as the continued operation of the farm (for example land can be transferred to one child with cash disbursements to other children), or the owner can retire now or in the future without having to sell the farm for development
- Providing experienced and beginning farmers with the opportunity to purchase farmland near or at its fair market agricultural value
- Stabilizing farmland values in regions with escalating land values to guarantee long-term availability of farmland for farmers who want to rent or purchase land to farm
- Providing farmers access to the equity in their land so they can keep their land instead of having to sell for development, making it possible to reinvest in their farms with the purchase of more land, equipment, buildings, or the retirement of farm debt, or to provide for other family needs
- Offering a resource for farmers to transfer ownership to their children by reducing the value of restricted farmland to its fair market agricultural value, which may greatly reduce inheritance taxes and the need for second generation farmers to sell the farmland to pay taxes
- Contributing to food security by making fresh, healthy, local agricultural products available to people in Massachusetts
- Responding to climate change with farmland conservation practices that contribute to soil health and the reduction of greenhouse emissions
- Securing a better future for all Massachusetts residents by contributing to the scenic beauty of the state, tourism, agricultural economy, local food availability, wildlife habitat, quality of life, recreational opportunities, and the preservation of natural resources that might otherwise be lost to development

# APR PROCESS OVERVIEW

## Summary

- *Pre-application planning*
- *See sample APR documents*
- *Fill out application*
- *Farm visits*
- *Application review*
- *ALPC meeting for vote of interest*
- *Review documents*
- *Start appraisal and title process*
- *Offer made*
- *Offer accepted*
- *MDAR application to NRCS*
- *NRCS results*
- *Purchase and sale agreement*
- *Results of municipal or other funding if applicable*
- *ALPC meeting for final vote*
- *Survey work: assignment, review, approval*
- *Receive APR documents*
- *Review BDR*
- *Get appraisal update*
- *NRCS to approve documents*
- *Sign and record documents*
- *Receive check*

If you would like to protect your farmland, read this guide to learn about APR eligibility, the application process, the financials, and the APR program requirements. APR staff and land trust staff are happy to assist you. The APR process may take two or three years, so contact them when you first consider farmland protection.

## Checklist

Here's what you will need to do:

- Learn about the APR program. Find out if your farm is eligible for the program by reviewing this guide, reading online resources at [www.mass.gov/apr](http://www.mass.gov/apr), and talking with APR staff (contact information at [www.mass.gov/apr](http://www.mass.gov/apr)) or contact your local land trust. An asterisk (\*) notes steps where a land trust might be particularly helpful.
- Call MDAR to arrange a meeting with an APR field representative to discuss the APR process, the benefits from the sale of an APR, the support from a land trust, and the allowed farmland uses when you have an APR. It's best to have all family decision-makers present.
- \*Work with an attorney, family tax or business advisor, or other advisors to start planning your funding structure and to review documents.
- Visit your local NRCS field office or go online to the Web Soil Survey to get an APR Soils Packet.
- \*Complete and send in an APR application before the due date provided by MDAR.
- \*Meet with your APR field representative at your property to discuss the application, discuss your farmland and farming operations, and look at the fields.
- Your APR field representative will let you know the outcome of MDAR's review and recommendation to the Agricultural Lands Preservation Committee (ALPC). The ALPC will take either a vote of interest to move forward with an appraisal, or a vote of no interest.
- \*After you receive an appraisal copy and offer, review it with MDAR staff. Within 30 days, review it with family members, heirs, accountant, attorney, etc. and accept or decline MDAR's offer.
- If you accept the offer, notify MDAR of your decision.
- \*Consider applying to the CLTC program if doing a partial landowner donation and start the approval process early to get on the list.
- MDAR may submit your application to its federal funding partner, the USDA Natural Resources Conservation Service (NRCS), for approval. If approved by NRCS, MDAR may bring the project forward to the ALPC for a final vote. A final vote signals the intention of the state to move forward with the APR, subject to funding. If it is not approved by NRCS, another funding partner could be explored.
- \*MDAR contracts with an independent surveyor. You review the 50-percent-cost-share-agreement for the survey before signing. You meet with the surveyor and MDAR field representative, review the survey draft, and review it with your attorney.
- MDAR schedules a site visit for a baseline documentation report (BDR) that describes the condition of the property. Review and sign this initial BDR, and a final BDR prior to closing.
- \*Receive MDAR's packet of landowner documents for your review, your attorney's review and your signature. Complete and sign the APR documents.
- MDAR will arrange for a closing, the APR agreement is recorded, and you receive payment.
- After the APR process is complete, MDAR stewardship staff communicate with you about ongoing monitoring of the farmland and assistance available through the APR program and other MDAR programs.

NOTE: Depending on your situation, these steps may occur in a different order than shown.



## INTRODUCTION

# CASE STUDY



Jim Gipe/Pivot Media

## Kitchen Garden Farm

SUNDERLAND, WHATELY

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 sriracha 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.

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 950 farms and over 75,000 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.”

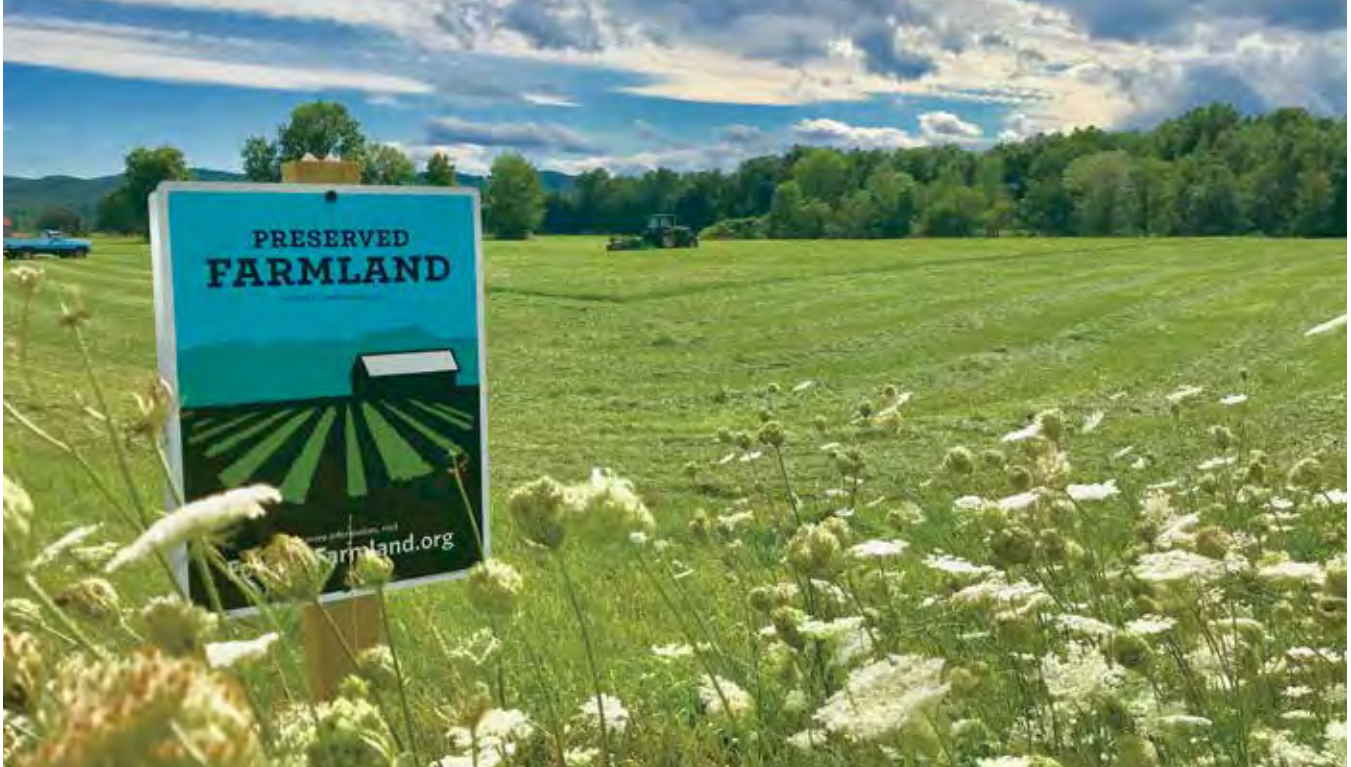
Reprinted and modified with permission  
SOURCE: MDAR APR Prime Newsletter



Northeast Solar

## APPLICATION

# APR PROGRAM ELIGIBILITY



Land must be actively farmed and meet the following requirements to be eligible for the APR program.

### PRIMARY REQUIREMENTS:

- Be at least five acres in size
- Have been devoted to agriculture for the two immediately preceding tax years
- Have produced at least \$500 in gross sales per year for the first five acres plus \$5 for each additional acre

### OTHER CRITERIA CONSIDERED:

- Suitability and productivity of land for agricultural use based on soil classification, physical land features, and location near other farms
- The degree of threat to the continuation of agriculture on the land due to circumstances such as owner's death, retirement, finances, development pressure, health issues, or rental agreement concerns
- The size or composition of the farm that determines economic viability for agriculture, and the likelihood that it will remain in agricultural use in the future

See evaluation criteria on page 15 which must be met to receive funding.

APR program eligibility, requirements and processes may change. Updated information is posted at [www.mass.gov/apr](http://www.mass.gov/apr).

## APPLICATION

# APR PROGRAM ELIGIBILITY

## Getting Started

As early as possible in your thinking and planning process, contact MDAR staff for guidance.

### INITIAL PHONE CALL TO MDAR

- Check eligibility

### FIRST VISIT WITH FIELD REPRESENTATIVE

- Review the APR program
- Discuss options with all decision-makers present if possible
- Review the application:  
*What do I need to do by when*
- Walk the property and look at APR potential
- Plan the APR Boundary Area
- If a land trust partner is involved they may attend as well

### MATERIALS

- Sample draft of APR agreement
- Score sheet
- Include "Soils map packet"

### FOLLOW UP

- Decision-makers talk to co-owner(s), heirs, attorney, accountant; and fill out the application



## Partners Involved in the APR Program

In addition to the landowner(s) and APR program staff, other partners may include the Agricultural Lands Preservation Committee (ALPC), the USDA Natural Resources Conservation Service (NRCS), the local municipality, and a local land trust.

The ALPC is responsible for approving APR applications at meetings which are open to the public. It has 12 members who represent:

- |  |   |
|--|---|
| ① Massachusetts Department of Agricultural Resources     | ⑥ Farmer  |
| ② Board of Food and Agriculture                          | ⑦ Farmer  |
| ③ Department of Housing and Community Development        | ⑧ Farmer  |
| ④ Executive Office of Energy and Environmental Affairs   | ⑨ Farmer  |
| ⑤ UMass Center for Agriculture, Food and the Environment | ⑩ Land Trust  |
|  | ⑪ Farm Advocacy Organization                          |
|  | ⑫ Natural Resources Conservation Service (Non-Voting) |

The names of current committee members are listed at [www.mass.gov/apr](http://www.mass.gov/apr).

## State Regulations

Eligibility for the APR program is based on a state statute which requires APRs to be land actively devoted to agricultural or horticultural uses as defined in sections 1 to 5 of Mass General Law Chapter 61A.

## Land Trusts

Your local land trust may be a helpful initial partner in determining whether an APR or another conservation tool is the best fit for your farm and family. Reach out to them early in the process as well. They may provide staff or advocates who can help throughout the process. For a list of local land trusts in your community visit [www.findalandtrust.org/states/massachusetts25](http://www.findalandtrust.org/states/massachusetts25) or [www.massland.org/land-trusts/list](http://www.massland.org/land-trusts/list). (SEE PAGE 31.)



**APPLICATION**

# THE FINANCIALS

The APR program allows the landowner to access the equity in the land without having to sell the land. A variety of funding sources are available for APRs and farmland purchase, including state, federal (NRCS), municipal, land trusts, and a landowner donation. Call MDAR to discuss your goals and understand options available to you. MDAR staff can discuss this with you by phone and, if appropriate, staff can stop by for a more in-depth discussion.

The APR program works with the federal government through the USDA Natural Resources Conservation Service (NRCS) to access federal funds to match state funds. Because of this partnership, the state is able to protect twice as many acres as it could on its own. If funding is available from partners other than NRCS, it may be used in place of NRCS funding. Municipal funds can include Community Preservation Act (CPA), municipal, or other community funds. Land trusts can also provide funding and other assistance. Each municipality and land trust may help in different ways.

The value of an APR is determined by two appraised values 1) fair market value (FMV) and 2) fair market agricultural land value (FMALV). The FMV is based on the highest profitable land use, which is usually for development. The FMALV is the value that agricultural land would sell for. The difference between the FMV and FMALV is the value of the APR.

MDAR helps pay the value of the APR for the right to save the farmland in perpetuity and is subject to approval by the ALPC. The APR program has a per acre cap limit of \$17,000. Depending on federal and state budgets, some eligible projects can exceed the cap and receive up to \$34,000 per acre for portions of the land.

The example below shows how an APR value is calculated and where funding for the APR value may come from: an MDAR check to the landowner and a local contribution (municipal, land trust, and/or landowner donation).

## Funding

APR funding is a cooperative arrangement that can include MDAR and NRCS (90%) and a local contribution (10%) from a land trust, municipality, another funding partner, and/or a landowner donation with an opportunity for a tax incentive. If the following municipal condition exists, MDAR will reduce the local contribution accordingly: a Right-to-Farm bylaw (-5%).

Example	80 ACRES
FMV .....	\$1,200,000
FMALV .....	- \$200,000
<b>APR VALUE .....</b>	<b>\$1,000,000</b>
STATE & FEDERAL FUNDS .....	+ \$900,000
<b>LOCAL CONTRIBUTION .....</b>	<b>+ \$100,000</b>
SURVEY DEDUCTION* .....	- \$7,000
<b>VALUE OF CHECKS TO LANDOWNER** .....</b>	<b>\$993,000</b>

\* A survey cost-share agreement states that 50 percent of the survey cost will be deducted from the check at the end so that the landowner doesn't have to pay the cost up front.

\*\* State and federal and/or other matching funds.

A landowner can choose to provide a donation of value of any amount up to the entire value of the APR. A portion of this donation may be recouped through tax incentives. The state's Conservation Land Tax Credit must be decided on early in the process and applied for. A federal tax deduction may be applied for after the APR is completed. Please review financials with your tax/financial professional.

## APPLICATION

# THE APPLICATION

Applications may be filed year-round, but to be considered for the next budget cycle they must be submitted before the due date set by MDAR to meet budget cycle and application review process deadlines.

To get started call the APR program office to be assigned an APR field representative to talk about your goals. The application can begin any time of the year but you are highly encouraged to start as early as possible. After an initial phone call, an MDAR field representative will meet you at your property. If your local land trust is available as a partner, they can help you, too.

Understanding the soils of your property is an important part of planning your APR. You can make a

soils map of your farm using Web Soil Survey [www.websoilsurvey.sc.egov.usda.gov/](http://www.websoilsurvey.sc.egov.usda.gov/) or make an appointment with your local USDA-NRCS office or contact MDAR to review maps of your property to obtain a soils map (a soils packet) and map of your property from NRCS.

It's important to provide a map of the entire farm property: the land and building structures. Outline non-agricultural property and buildings that would be excluded; for example, future building lots for family members. If you are uncertain about possible exclusions, please ask NRCS or MDAR to provide a map of the entire farm; you can discuss the exclusion scenarios with your APR field representative during the site visit.

### Start Early!

MDAR accepts applications year-round. Start the process by speaking with an APR field representative as soon as possible, long before the application deadline.

The online application is here: [www.mass.gov/apr](http://www.mass.gov/apr).



## APPLICATION

# FILE YOUR APPLICATION

Complete and sign your APR application. (All owners of record must sign.) Mail it by certified mail along with a soils map to the address on the application. To be considered in the upcoming grant cycle, your application must be received before the application deadline provided by MDAR.

## Application Attachments

### REQUIRED DOCUMENTS

- Most recent deed of property ownership
- Contact information for all owners or members of a trust or corporation (if applicable)
- Documentation proving signatory authority (if a trust or corporation)
- Maps
  - *Copy of any existing boundary survey (if available)*
  - *Assessor's map showing tax parcel boundaries*
  - *Aerial photo map showing property boundary and excluded areas*
  - *A USDA NRCS soils map showing breakdown of soil types, acreage with soil capability, class I through VIII and prime farmland, soils of state or local significance, and unique soils*
- List of any and all liens, encumbrances and easements on the property (if any)
- Current lease or other rental agreement on farmland being considered for APR (if any)
- A description of all commercial agricultural activity: type of crop, acreage for each crop, type and quantity of livestock, and acreage of pasture
- A written statement of short- and long-term plans for keeping the land in active agricultural use

### HELPFUL BUT NOT REQUIRED

- USDA-NRCS conservation plan
- Forest management plan
- Succession plan for the property

### NOTE

If a municipality provides funding or other assistance, MDAR and the municipality may disclose applicant information to each other.

SOURCE: [www.mass.gov/apr](http://www.mass.gov/apr)



## APPLICATION

# PROPERTY VISIT

After MDAR receives your application, an APR field representative will call to make an appointment and meet you at the property to discuss the APR program, answer your questions, ask you questions about the farmland and farming operations, and walk the property to look at the fields. If you have the following documents, share them with the field representative during the visit because they may help your application.

- USDA-NRCS Conservation Plan (NRCS)
- Forest Management Plan (NRCS)
- Succession Plan for the property (Land for Good)
- Lease Agreements covering the land proposed for restriction (Land for Good)

The field representative will review with you the map and any property and buildings that would be excluded; for

example, future potential building lots. You may be advised to exclude portions of a woodland, wetland or open field that do not contain productive agricultural soils. MDAR can help find ways to work with land trusts or other partners to protect ineligible land through other funding programs or a donation that may provide compensation. If you are uncertain about the possibilities, discuss exclusion scenarios during your visit with your APR field representative. You may also want to discuss this with family members prior to the visit. If a land trust is also a partner they may also attend the site visit.

MDAR aims to complete projects within two to three years after an offer is accepted. Delays may occur due to the approval processes, funding availability, documentation, title search, legal notices, surveys, and unforeseeable circumstances. If you have questions about the application process, please contact your APR field representative.

## Family Plans

Consider having all decision-makers at the table from the beginning to talk about the future of the land. Looking for ideas about how to talk with family? Here are two good resources and there are many more: [www.masswoods.org/legacy](http://www.masswoods.org/legacy) and [www.landforgood.org/resources/toolbox/toolbox-farm-families/](http://www.landforgood.org/resources/toolbox/toolbox-farm-families/).



## APPLICATION

# APPLICATION EVALUATION

After applications are received, they are evaluated by MDAR and ALPC for available funding. MDAR scores applications for eligibility and desirability based on these criteria:

- AGRICULTURAL PRODUCTION FOR AT LEAST LAST 2 YEARS
- COMMERCIAL OPERATION
  - *Products raised and sold: vegetables, fruit, hay, pasture, trees (Christmas, sugarbush, etc.)*
  - *Landowner/farmer participation in farm operation*
  - *Farm buildings*
- LAND USE
  - *Total number of acres*
  - *At least 5 acres of active agricultural land*
  - *Percent of acres of prime, state, and locally important soils*
  - *Percent of acres in open agricultural use*
- LOCATION NEAR OTHER ACTIVE COMMERCIAL FARMS
- MUNICIPAL RIGHT-TO-FARM BY LAW
- FMV and FMALV
  - *The FMV and FMALV of the farmland determined by the independent appraisal*

MDAR may also consider these and other priorities:

- Degree of threat, from any cause, to the continuation of agriculture on the farmland
- Land features and soil classification for agricultural use
- Opportunities for individual and family farm ownership and employment through farm-related processing, storage, transportation, and marketing of farm products
- Preservation priority for the agricultural resource base of the Commonwealth of Massachusetts

See complete text 330 CMR 22 [www.mass.gov/files/documents/2017/09/15/330cmr22.pdf](http://www.mass.gov/files/documents/2017/09/15/330cmr22.pdf)

After applications are scored, they are ranked in order of desirability and compete for available funding. MDAR sends its recommendations and evaluation sheets to the Agricultural Lands Preservation Committee (ALPC) for review before its meetings. The ALPC meets quarterly as needed and these public meetings are advertised through MDAR's email lists and website at [www.mass.gov/apr](http://www.mass.gov/apr). You will be notified of the date of the meeting in which your application will be discussed. You are welcome to attend, but are not required to.

The ALPC will issue a "vote of interest" or "vote of no interest" or take other action with an explanation of its reasons. Following a vote of interest, MDAR will hire an independent appraiser to appraise the property.

You are notified in writing within 30 days of the ALPC vote. If you are dissatisfied with the result, you may request, within 30 days of the notification, to present supplementary information to the ALPC. The ALPC will hold a meeting within 120 days of your request to reconsider the application. ALPC information is available at [www.mass.gov/apr](http://www.mass.gov/apr).

# APPLICATION EVALUATION

**SAMPLE MDAR / ALPC SCORESHEET FOR APPLICATION - *Subject to Change***

**APR Parcel Scoresheet for Applications received 7/1/2018 - 6/30/2019**

Date:

Prepared by:

Landowner's Name:		Total Acres:	
Property Address:		Eligible Acres:	
<b>Application Eligibility and Land Determination Requirements</b>			
<b>Thresholds - State</b>			Yes
Parcel fulfills at least one EEA Land Conservation Priority			<input type="checkbox"/>
Products raised on parcel are sold in the normal course of business (i.e. commercial operation)			<input type="checkbox"/>
Parcel in active agricultural production for at least previous two years			<input type="checkbox"/>
Parcel contains at least 5 acres of active agricultural land			<input type="checkbox"/>
<b>Thresholds - Federal</b>			
Parcel consists of a single contiguous land parcel			<input type="checkbox"/>
Parcel contains ≥ 33% open farmland and ≤ 66% woodland			<input type="checkbox"/>
Parcel contains ≥ 50% of a combination of prime/state important soils			<input type="checkbox"/>
If sod/nursery operation, parcel meets NRCS tolerance for soil loss			<input type="checkbox"/>
<b>Parcel Attributes</b>			
% in open ag use: ___%	Points	% prime/state soils: ___%	Points
33-50%	25	51-65%	25
51-75%	50	66-80%	50
76-100%	75	81-100%	75
Total		Total	
<b>Land Use</b>			
<b>Land Use Majority (circle one)</b>			Points
Vegetable/Small Fruit/Tobacco			75
Hay/Forage/RowCrops/Orchard/Vineyard			50
Pasture			25
Christmas Trees/Sugarbush			10
Total			
<b>Location</b>			
Active commercial APR land within 2.5 mile radius: ___ac		Points	
None		0	
1-250 acres		10	
251-500 acres		25	
over 500 acres		50	
Abutting (including across street)		+10	
Total		Total	
<b>Ownership/Succession</b>			
Attribute		Points	
Land owner is also farm operator		50	
Farm operator makes majority of income farming		25	
Farm operator has long term (5+ yr) written lease w/owner		15	
Farm owner/operator owns other APR land		10	
Written succession plan prepared by professional		10	
Total		Total	
<b>Size</b>			
Acres of land in open ag use: ___acres		Points	
5-25		10	
26-75		25	
76 +		50	
Total		Total	
<b>Intensity/Productivity</b>			
Percent of open land intensively farmed: ___%		Points	
0-25%		0	
26-75%		25	
76-100%		50	
Total		Total	
<b>Agricultural Priorities</b>			
Priority		Points	
Right to Farm Bylaw		10	
Total		Total	
Single fam building permits - 5 yr average: ___permits			Points
between 1 and 5			5
6-15			15
More than 15			25
Total			Total
<b>Additional Information</b>			Points
Parcel contains at least 75% prime soils (20 points)			
Staff Comments (1-40 points):			
Additional Comments/Considerations:			
Total Points			



## APPLICATION

# TITLE & APPRAISAL

MDAR will assign a title attorney and an independent appraiser of the property. The title exam will be conducted by the attorney using publicly available registry documents. The title exam will determine if you hold a clear title and identify liens and encumbrances such as mortgages, tax liens, easements and rights of way. It will be important for you to retain an attorney to review this work.

MDAR will schedule a time for the appraiser to visit your farm. You and the APR field representative should be on site to confirm the APR boundary and answer any questions the appraiser may have. The appraisal process takes about 90 days. You will receive a copy of the appraisal. If a land trust partner is involved they may also attend the site visit.

The appraisal provides a professional opinion of the FMV of the land to be protected before placement of the APR and an opinion of the FMALV of the land protected after the APR is in place. The difference between the two appraisals is the APR value.

### REVIEW THE OFFER AND FUNDING

A local contribution can include municipal funds, land trust funds, other partner funds, and/or a landowner donation. The latter could qualify the landowner to apply for the state's conservation land tax credit (CLTC) and a federal tax incentive. If interested, check with the CLTC program for available funding and apply for a tax credit for the allowable portion of the landowner donation value. Information is available at [www.mass.gov/service-details/conservation-land-tax-credit-cltc](http://www.mass.gov/service-details/conservation-land-tax-credit-cltc). An appraisal will be required for the CLTC or for federal tax deduction purposes to submit with your tax return. The appraisal must be done not sooner than 60 days prior to closing but can be updated if older than that. MDAR must sign off on the IRS form 8283 when you file income tax forms.

### YOUR RESPONSIBILITIES AS LANDOWNER

- Clearing up any issue on the title, if the title exam indicates it is needed
- Approving a description of the physical features and boundaries of the APR property and any excluded land based upon a survey
- Paying 50 percent of the survey cost performed by independent surveyor hired by MDAR - the amount is deducted from the check at the end so families do not need to pay this cost up front
- Participating in the preparation, review, and signing of the baseline document report (BDR) that describes the present condition of the APR property

## The Offer from MDAR

The offer to purchase an APR is based on the difference between the FMV and FMALV determined by MDAR's independent appraisal. You will receive a copy of the appraisal and an offer letter to review with MDAR staff.

Within 30 days, you should review the offer with family members, heirs, accountant, attorney, land trust partner, etc. and ask any questions that arise before deciding whether or not to accept MDAR's offer. This often includes deciding on a local contribution: such as municipal funds, other locally-raised funds, or to donate some value. A landowner donation may be eligible for tax incentives such as the state conservation land tax credit (CLTC), as well as a federal tax incentive.

Planning for a local contribution from the municipality, a land trust or your donation should begin early in the process since it takes time to complete funding authorizations, fund raising, and/or a CLTC application. Final decisions and fine-tuning can then be made in the timeframe after the official offer. MDAR's offer is contingent upon ALPC's final vote to move forward.

## APPLICATION

# OFFER ACCEPTANCE

## Your Acceptance of the Offer

Within 30 days of receiving the offer, you must notify MDAR in writing to accept or decline the offer. Once you accept the offer, **MDAR submits the application materials to NRCS or other partner(s) for matching funds (up to 40 percent) to purchase the APR.** MDAR will submit the final paperwork to NRCS or other partner(s) for their review. Approval is subject to funding availability.

MDAR's APR program usually secures matching federal NRCS funds. Like MDAR, NRCS has a budget, and applications compete for available funding. Like MDAR and ALPC, NRCS has an evaluation and approval process and may also meet with the landowner. NRCS staff will visit the property to verify application information and confirm the property is eligible.

**Signing a purchase and sale agreement is required. This is a binding agreement to sell the APR. You should have an attorney review it before signing.**

Projects that pass both MDAR and NRCS eligibility for funding go to ALPC for a final vote. They are selected for funding in partnership with NRCS and go into a federal agreement. If funding is limited, those projects that rank the highest will receive funding. If your project is not funded, consult with your APR field representative about your funding alternatives.



## ALPC Final Vote

ALPC will meet to review projects accepted for MDAR funding, NRCS funding or other funding, and then issue a final vote to approve the acquisition of these APR projects.



## NRCS FUNDING

The APR program typically includes federal funding managed through MDAR. NRCS eligibility forms and application are provided by MDAR. NRCS, like MDAR, has a ranking and approval process, and will also meet with the landowner.

NRCS relies on the USDA Farm Service Agency (FSA) to determine landowner eligibility for NRCS funding. Landowners must go to the FSA office and fill out eligibility paperwork close to the time the APR application is submitted.

## APPLICATION

# SURVEY WORK

## Survey Work

Following the final vote at the ALPC meeting, the land to be protected by the APR needs to have boundaries surveyed. You are required to cover 50 percent of the cost which is deducted from your payment at the time of closing so you do not need to pay the cost up front.

MDAR will draft a survey-cost-share agreement for you to review and sign, and then will assign an independent surveyor. You will need to meet the surveyor and MDAR field representative on the property. If a land trust partner is involved, they may also help with this process. After the surveyor submits a draft survey to MDAR for review and approval, you and your attorney will receive a copy of the survey results. This is an opportunity to find out if any remaining issues need to be resolved. In some cases the surveyor presents the survey to the planning board for municipal approval, records the survey at the Registry of Deeds, and provides a metes-and-bounds property description to MDAR.

### THE SURVEY CHECKLIST

- Read and sign the survey-cost-share agreement.
- Meet with surveyor and APR field representative
- You, your attorney and MDAR review the survey draft for approval
- A land trust partner may also help with this process

## Review of Title and APR Agreement

You and your attorney will also receive the title exam and APR restriction document for your review and approval.



## Baseline Documentation Report (BDR)

No more than 90 days prior to closing, a baseline documentation report is established for each new APR to document the condition of the property at the time the APR was created. It includes maps, photos, and written documents describing the property's boundaries, resources, and building structures. You will have an opportunity to review and sign off on the BDR. No more than 30 days before closing, a final site visit may be necessary to confirm that the BDR is up to date and conditions have not changed since it was initially created.

The final copy of the BDR is given to you and a copy is put on file at MDAR. These reports are permanent records for future reference and are a baseline for making decisions in the interest of protecting the APR property in the future.

### SITE VISITS

APR stewardship staff **or** **contracted monitors** will complete the BDR within 90 days of the APR closing.

A final site visit within 14 days of the closing confirms the property description.



## APPLICATION

# APPRAISAL UPDATE & NRCS APPROVAL

## Appraisal Update

If the appraisal is more than one year old, MDAR will pay for a supplemental appraisal report to update the APR value 1) based on the final configuration of the APR property after the survey, and 2) due to passage of time and possible change of land value.

## NRCS Approval

When NRCS funds are used, at least 90 days prior to closing MDAR will submit documents to NRCS for approval. Once they have been reviewed, MDAR will notify you of the results.



### LANDOWNER PACKET YOU WILL RECEIVE FROM MDAR

- *APR Agreement*
- *Exhibit A - Property Description*
- *Exhibit B – Farmstead Map*
- *Survey*
- *Homestead Status*
- *Disclosure Statements*
- *Electronic Funds Transfer Form*
- *Mechanics Lien/Title Insurance Affidavit*
- *W-9 Form with Instructions*

## Preparation for Closing

Prior to closing you will receive a landowner packet of documents from MDAR for final review. Documents may vary depending on the federal NRCS process or the timeframe for the closing. After the legal documents are completed and the funding is secured, including those from a funding partner if applicable, MDAR will schedule a closing to arrange for payment, and recordings.

It is important for you to engage an attorney, preferably early in the process, to assist with the review of all the documents and help complete the closing.

Closings are often not done in person unless planned in advance.

## Receipt of Payment

After the closing, you will receive final payment for the APR on your land along with a copy of the APR agreement.

The APR agreement is a long-term obligation to protect farmland in Massachusetts. By entering into an APR agreement with MDAR you are ensuring that your land is permanently protected for agricultural purposes. An APR agreement is a legally binding and permanent interest in your property. MDAR's stewardship program is a resource to help ensure that terms are carried out.

### Baseline Documentation Report

A baseline document report (BDR) is prepared for every new APR to document the conditions of the property at the time it is protected. The BDR contains a detailed narrative, maps, and photographs to describe the property. MDAR stewardship staff and contractors use the BDR as a reference during monitoring visits to identify changes to the property (human-made or natural) and assure that the terms of the APR are upheld in perpetuity. If you need a copy of your BDR, please contact MDAR.

### APR Documents

Each APR agreement is unique. You should keep copies of correspondence and documents stored in a safe place and be able to refer to them at any time. These might include your APR agreement, letters, notices, specific paperwork for your APR land, and information regarding the APR program. MDAR keeps records on file if you need a copy and APR staff are available to answer questions.

If you are interested in adding or modifying property structures and/or land use activities, please read your APR agreement or contact APR stewardship staff beforehand to be familiar with your rights and responsibilities under the APR agreement. There are times when MDAR approval is needed before changes can be made; see agricultural and non-agricultural changes that require a certificate of approval or a special permit on pages 22-24.

### THE APR AGREEMENT

The APR is a binding agreement between you and the state of Massachusetts. It exists in perpetuity, runs with the land, binds all future owners of the APR land, and is recorded at the appropriate Registry of Deeds. Any inconsistency between the language of an APR agreement and the language of a regulation or policy (such as a new MDAR policy) will be resolved in favor of the APR agreement.

### Communication with MDAR

MDAR staff are available year-round for questions and answers. To help MDAR ensure consistency with the APR agreement, stewardship staff may contact you annually to provide you with an opportunity:

- To ask questions
- To request approvals or permits for changes and activities that impact your farmland
- To receive information about technical assistance and grants to support your farm viability and growth

MDAR stewardship staff, state-approved contractors, and/or NRCS staff may conduct reviews which include:

- An annual, routine, visual inspection of your farm with prior notice to you
- An on-site visit regarding an approval or a violation that requires a follow up
- A report with photos, maps or written documents to describe conditions of the property over time

## LONG-TERM MANAGEMENT STEWARDSHIP



### The Approval Process for Changes to Your APR Land

Over time, you may want to make changes on a property with an addition or an innovative project. Changes that require approval may include, but are not limited to, these activities and uses: buildings and structures, field alterations, educational use, energy, events, recreation, some agritourism activities, and vehicle storage/parking.

Changes to your APR property may require an approval from the APR Program. Contact APR Stewardship staff to discuss any changes requiring approval and send an MDAR application for the change to MDAR.

If the application is approved, and after the change is implemented, the stewardship staff will make a site visit to confirm that the outcome aligns with the terms of the approval and to document the project.

The following two pages describe the two approval processes: 1) a certificate of approval (COA) for agricultural changes and 2) a special permit for non-agricultural changes. Both approvals assure that any changes made will protect or improve the agricultural land.





### Certificate of Approval (COA)

Changes in **agricultural** structures or activities require a COA. Unless otherwise stated in your APR agreement changes:

- Cannot result in impervious surfaces greater than five acres or five percent of the APR land, whichever is less, and if the APR agreement has a more stringent requirement, it will prevail
- Must minimize, to the fullest extent possible, the loss of agricultural soils
- Must not interfere with agricultural operations and will preserve, maximize, and realize the agricultural potential of the APR land, and in addition, improve future agricultural operations

You should review your APR agreement to understand what does and does not require approval.

**Examples** of actions that require a COA include, but are not limited to, construction and activities such as:

- Construction: farm stand, housing for farm labor, alternative energy system, or any other agriculture-related structure
- Soil excavation for any reason

NOTE: Roof-mounted solar does not require approval.

### PROCEDURES FOR A COA

- ① You send a signed COA application describing the proposed use, activity, or structure.
- ② Within 90 days, MDAR will review the application, may inspect the APR property, and issue a decision.
- ③ If approved, MDAR will issue a COA which may require specific conditions.
- ④ If denied, MDAR will mail a written notice and offer the right to request (within 21 days) an appeal hearing before the ALPC. *See page 24 for more information.*

#### YOUR RESPONSIBILITIES

- You must begin the approved activity within one year of receiving the COA.
- Construction or excavation must be completed within two years.
- You must follow the conditions set forth in the COA.
- You must notify MDAR in writing within 30 days of the completion of the COA activities.

#### MDAR RESPONSIBILITIES

Upon completion of the COA activities, MDAR shall:

- Inspect the completed COA to determine compliance with the agreement.
- Confirm the inspection results in writing.

Contact the Stewardship Planner for your area for an application form. Find planner for your area at [www.mass.gov/apr](http://www.mass.gov/apr).



## Special Permit

A **non-agricultural** activity on an APR property requires a special permit. It may be issued for a five-year-maximum timeframe and may be renewable upon request after review by MDAR. The activity must align with the APR agreement, Massachusetts building codes, and APR program special permit guidelines in effect at the time of the application.

**Examples** of non-agricultural events or activities include but are not limited to: concerts, festivals, races, weddings, or the use of land to store or park trailers, boats, cars, or other non-agricultural equipment.

### MDAR MAY GRANT A SPECIAL PERMIT IF:

- The APR farmland is actively used for full-time commercial agriculture.
- The activity is minor, ancillary and subordinate to the agricultural use of the APR property.
- The use or activity does not conflict with the purpose of the APR.
- The request does not require new construction.

### YOUR RESPONSIBILITIES

- You must start the activity within one year of approval.
- You must follow the conditions set forth in the Special Permit.
- A special permit may be issued for any length of time up to a maximum of five years.
- You may request that MDAR renew the special permit.
- You must record the special permit at the Registry of Deeds and provide a copy to MDAR.

### MDAR RESPONSIBILITIES

- At any time during the initial or renewed term, MDAR may conduct a site visit to confirm compliance with the special permit.
- Confirm the inspection results in writing.

SOURCE:  
<https://www.mass.gov/doc/apr-special-permit-policy/download>

### PROCEDURES FOR A SPECIAL PERMIT

- ① Sign and send a request describing all proposed non-agricultural activities or uses.
- ② MDAR will review the request, may inspect the land, and issue a decision within 90 days.
- ③ If approved, MDAR will issue a special permit. The APR landowner, among other conditions, may be required to post a bond or other security.
- ④ If denied, MDAR will mail a written notice and offer the right to request (within 21 days) an appeal hearing before the ALPC.

Special Permit information is available at [www.mass.gov/apr](http://www.mass.gov/apr) at "APR Program Details."

## Appeal Hearings for Certificates of Approval and Special Permits

You may request a hearing before the ALPC regarding the denial of a COA or a special permit. MDAR will mail you a written denial notice and offer the right to request (within 21 days) an appeal hearing before the ALPC. After receiving your request, the ALPC will:

- ① Hold an adjudicatory hearing which means you may present evidence and facts.
- ② Provide a designated a hearing officer to preside over the hearing.
- ③ Assemble an official record of the hearing.
- ④ Render the final decision.

### Compliance

If it comes to MDAR's attention that the terms of the APR agreement are not being upheld, procedures for enforcement of the terms include but are not limited to the following:

- A site visit by MDAR staff.
- If a violation of the APR terms is identified, a written notice is sent to you requesting voluntary restoration or reparation of the property. MDAR's goal is to communicate and work cooperatively so that you and MDAR will achieve mutually acceptable solutions. If a satisfactory agreement is reached between you and MDAR, an inspection will be made to confirm satisfactory implementation, and you will receive written correspondence to confirm resolution of the issue.
- If MDAR and the landowner cannot reach a satisfactory resolution, MDAR may pursue resolution through legal means. Refer to your APR agreement to see prohibited uses, acts, and structures on your APR property. These may include, but not be limited to: residential dwellings, dumping of waste, earth mining/removal, storage of vehicles, and easements for utilities or roads.

Also see previous pages 22-24 for examples of activities and uses that may require a COA or special permit.





## SELLING OR TRANSFERRING LAND

## Selling or Transferring APR Land

A landowner wishing to sell or transfer ownership of an APR property should notify APR staff immediately. **Not all, but most APR agreements include an Option to Purchase at Agricultural Value (OPAV) or Right of First Refusal (ROFR) and need an MDAR waiver before the sale.** A waiver states that MDAR waives its right to purchase the farmland which would then allow the sale.

It's important for you to review and understand the process for the sale or transfer of APR land. The process and timeframe are clearly described in the APR agreement and may be different for each APR agreement. It's important to review it with your attorney and realtor. Please note that the process for a decision on an approval for a sale or transfer could take up to 120 days.

## Notifying MDAR

If you intend to sell or transfer, and receive an offer to purchase, you must notify MDAR in writing as stated in your APR agreement. For example, a letter requesting a waiver for an OPAV must include copies of:

- The offer to purchase
- Purchase and sale agreement and amendments
- Any appraisal prepared for the proposed sale specifying fair market agricultural value (FMAV) (*See glossary.*)
- Any appraisal prepared for the sale in which the landowner acquired the APR property
- Other relevant documents relating to the proposed sale

Documentation will be reviewed to assure a property transfer is allowed. If the sale or transfer contains non-APR property, such as a house or land that is not enrolled in an APR, the landowner needs to apportion the value between the APR property and non-APR property. Written notice to MDAR is required and, unless otherwise agreed to, must be delivered by certified mail, return receipt requested; or hand delivered to MDAR's address listed at [mass.gov/agr](https://www.mass.gov/agr).

## OPAV PURPOSE

The OPAV's purpose is to make sure farms sell to farmers at an agricultural value. Because of the OPAV, which was pioneered by MDAR in 1992 as the first in the nation, hundreds of preserved farms have remained in the hands of Massachusetts farmers.

## CONSIDERING A SALE OR TRANSFER?

Notify MDAR immediately. Some APRs have an Option to Purchase at Agricultural Value (OPAV) or Right of First Refusal (ROFR) and may need an MDAR waiver before the sale which may take up to 120 days. This information is clearly described in your APR agreement. If you can't find it, notify MDAR to request a copy.

Of the approximately 970 APR agreements about 650 have an OPAV, 100 have a ROFR, and the rest are early APR agreements with no such provisions.

**Right of First Refusal (ROFR)** is the right to allow the Commonwealth the opportunity to purchase the property if it is offered for sale. If you apply for a waiver MDAR may, and usually does, waive its right to purchase.

**Option to Purchase at Agricultural Value (OPAV)**

is a legal tool to help ensure the agricultural land remains available to farmers at agricultural value.

OPAV, ROFR, and Waiver guidelines are available at <https://www.mass.gov/service-details/apr-change-of-ownership>

# SELLING OR TRANSFERRING LAND

## FOR LANDOWNERS

### Selling or Transferring APR Land

Not sure where to start or what to do?  
Here are some quick suggestions:

- Review your APR agreement and contact MDAR as early as possible. Can't find your APR agreement? Call APR staff to request a copy.
- Some APRs contain a Right of First Refusal (**ROFR**) or an Option to Purchase at Agricultural Value (**OPAV**). Check your APR agreement to understand if either of these applies to your APR land.
- If there is an ROFR or an OPAV, specific procedures must be followed (samples include: obtaining an appraisal of the FMAV, preparing a farm plan, drafting an offer letter, etc.) Your APR agreement - in combination with APR guidelines,

policies and regulations - lists the requirements and the timeframe for the process. A decision could take up to 120 days after all documents are submitted to MDAR.

- It is advisable to contact an attorney to help you through not only the land sale/transfer process but also the APR-specific process.
- APR staff are available to walk you through the process.

*Please note that polices and guidelines may change over time. APR Program updates are available at [www.mass.gov/APR](http://www.mass.gov/APR) or you may contact MDAR staff.*

## FOR REAL ESTATE PROFESSIONALS

### Questions and Considerations Before Listing a Property

- Is all or a portion of the property in agricultural use?
- Does it have an Agricultural Preservation Restriction (APR)? If so, the buyer must be informed and should read the APR agreement before deciding to purchase the property.
- Each APR property has an APR agreement that is a public record at the Registry of Deeds. The landowner and MDAR also have copies of the APR agreement.
- Some APRs contain a Right of First Refusal (ROFR) or an Option to Purchase at Agricultural Value

(OPAV). You and the landowner must check the APR agreement to understand if either of these applies to the APR land.

- If there is an ROFR or an OPAV, specific procedures must be followed (examples include: obtaining an appraisal of the FMAV, preparing a farm plan, drafting an offer letter, etc.).
- The landowner's APR agreement - in combination with APR guidelines, policies and regulations - lists requirements and the timeframe for the process. Information is available at [www.mass.gov/apr](http://www.mass.gov/apr).

- It could take up to 120 days after all documents are submitted to MDAR before a decision is made.
- Does the listing make it clear that the land is subject to an APR?
- Does the P&S limit the price to Agricultural Value and list the price for any non-APR land separately?
- Does the APR agreement prohibit sub-division?
- The buyer may be required to submit a farming resume, farm business plan and a financial plan.

#### CONTACT INFORMATION:

Refer to the Staff list on the APR program website - [www.mass.gov/apr](http://www.mass.gov/apr) - for the APR Transfer Coordinator.

# SELLING OR TRANSFERRING LAND

## Guideline and Policy Updates

MDAR and the Executive Office of Energy and Environmental Affairs (EEA) have established guidelines, policies, and procedures in addition to APR documents, that are periodically updated and provide further guidance for APR landowners. Any inconsistency between the language of an APR agreement, policy or regulation will be resolved in favor of the APR agreement. All APR regulations and MDAR policy documents are posted on MDAR's website and MDAR will provide copies to a landowner upon request. The ALPC may advise and make a recommendation to MDAR for policy development or changes, and must approve any changes. ALPC meetings are held quarterly as needed, are open to the public, and are a forum for the public to comment on proposed changes to policy.

The complete regulations and ALPC information are available at [www.mass.gov/apr](http://www.mass.gov/apr) and may be consulted for details. If you would like a printed copy of the regulations, please contact the MDAR APR office at 617-626-1700, [www.mass.gov/apr](http://www.mass.gov/apr).

## APR Release

An APR is a restriction in perpetuity and may only be released, in whole or in part, in accordance with MDAR policies and Massachusetts Laws. The release is a difficult and rare process. For information see APR regulations at [www.mass.gov/apr](http://www.mass.gov/apr).





**Adjudicatory Hearing:**

A hearing where parties may present evidence on issues of fact and argument on issues of law prior to the ALPC issuing a written final decision.

**APR Agreement:** The APR restriction document.

**Agricultural Conservation Easement Program (ACEP):**

A voluntary federal program to help farmers preserve their agricultural land.

**Agricultural Land Easements (ALE):**

A voluntary federal program under the ACEP program offering financial assistance to eligible applicants for the purchase of agricultural land easements to help protect land devoted to food production.

**Agricultural Lands Preservation Committee (ALPC):**

A committee in the Department of Agricultural Resources whose membership, powers, duties, and statutory grant of authority are set by Mass General Law. ALPC oversees APR acquisitions and appeals: e.g. certificates of approval, special permits, Right of First Refusal, Option to Purchase at Agricultural Value.

**Agricultural Preservation**

**Restriction (APR):** A perpetual restriction - to protect land or water areas for their agricultural, farming, or forest use - that prohibits or limits certain property development rights and uses that are detrimental to agriculture.

**Agriculture:** The uses of land enumerated in Mass General Law c. 61A, §§ 1 and 2: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIX/Chapter61A>.

**Applicant:** The record owner(s) of land who submits an application for an APR project.

**Application:** A written request submitted by the landowner seeking an APR or a departmental approval.

**APR Parcel:** The land and improvements encumbered by an APR.

**APR Value:** The difference between the fair market value (FMV) and the fair market agricultural land value (FMALV) as determined by the appraisal obtained by the MDAR pursuant to Mass General Law.

**Baseline Documentation**

**Report (BDR):** Document of the conditions of the APR property at the time it is protected. The BDR contains a detailed narrative, maps, and photographs to describe the property.

**Certificate of Approval (COA):**

A certificate from MDAR, in recordable form, that allows a structure, improvement, activity, or use for agricultural purposes on an APR parcel.

**Commissioner:** The commissioner of the Massachusetts Department of Agricultural Resources.

**Conservation Land Tax**

**Credit (CLTC):** A state tax credit available for the donation of conservation land. [www.mass.gov/service-details/commonwealth-conservation-land-tax-credit-cltc](http://www.mass.gov/service-details/commonwealth-conservation-land-tax-credit-cltc).

**Departmental Approval:** Approval by MDAR, with or without conditions, that allows a structure, improvement, excavation, use or activity on an APR parcel.

**Energy and Environmental**

**Affairs (EEA):** An executive office of the Commonwealth that oversees the stewardship of open space, the protection of environmental resources, and advancement of clean energy.

**Fair Market Agricultural**

**Business Value (FMABV):** Value of an agricultural business including agricultural buildings, infrastructure, goodwill, agricultural business potential, activities and circumstances at the time of sale of the APR parcel. FMABV is relevant only upon the sale of the APR parcel and not applicable at the time of original purchase of the APR.

**Fair Market Agricultural Land**

**Value (FMALV):** Value based upon the highest and best use of the land for agricultural purposes. The FMALV may rise and fall commensurate with market conditions, inflation, or other valuation factors. It is established by an independent appraisal arranged by MDAR.

## GLOSSARY

**Fair Market Agricultural Value**

**(FMAV):** The combined total of the following: fair market agricultural land value, fair market agricultural business value, and fair market agricultural dwelling value.

**Fair Market Agricultural Dwelling**

**Value (FMADV):** Appraised replacement value of a dwelling(s) on the restricted land.

**Fair Market Value (FMV):**

The most probable price that a parcel would bring in a competitive and open market under all conditions requisite for a fair sale, assuming the price is not affected by undue stimulus. It is established by an independent appraisal arranged by MDAR.

**Farm Stand:**

An agricultural structure for the sale of agricultural products not inconsistent with MGL c.40A, § 3.

**Final Vote:**

A vote of the ALPC approving or rejecting a project that had previously received a vote of interest.

**Housing for Farm Labor:**

A structure, whether new structure or conversion of an existing structure, for use only by seasonal agricultural employees of the owner. Depending on the agricultural use of the land, the season may be year-round, for example a dairy operation has a year-round season.

**Impervious Surface:** A material that does not allow water to percolate into the soil; this includes, but is not limited to, building structures and rooftops, and paved areas or roads with concrete and asphalt surfaces.

**Municipality:** The city or town in which a project is located.

**NRCS:** U.S. Department of Agriculture, Natural Resources Conservation Service, which provides federal financial and technical assistance to farmers.

**Option to Purchase at Agricultural**

**Value (OPAV):** A legal tool to ensure the agricultural land remains available for agricultural use in the future at a price a farmer can afford.

**Owner:** APR parcel record title owner(s).

**Partner Agency or Organization:**

A partner with MDAR in purchasing, holding or enforcing the terms of the APR.

**Program:** MDAR's Agricultural Preservation Restriction program.

**Project:** An area of land for which an APR application has been submitted.

**Right of First Refusal (ROFR):**

The document with provides the Commonwealth the right to purchase the APR property if it's offered for sale.

**Special Permit:** An MDAR approval in the form of a recordable certificate that permits a temporary non-agricultural activity or use on an APR Parcel, subject to all requirements and conditions in the applicable APR agreement, to all provisions of M.G.L. c. 20, § 23, and to any conditions contained in the special permit.

**Structure:** Materials assembled at a location to provide support or shelter, whether or not it requires a footing or foundation.

**Violations:** Prohibited uses, acts, and structures on APR farmland that are inconsistent with the APR agreement.

**Vote of Interest:** A vote by the ALPC indicating an interest in purchasing an APR subject to available funding.

**Waiver:** An MDAR issued document that waives MDARs right to purchase or assign the right to purchase an APR parcel.

## LAND PROTECTION RESOURCES

## FEDERAL ASSISTANCE

The USDA Natural Resources Conservation Service provides financial and technical assistance to farms through the following programs and services.

[www.ma.nrcs.usda.gov](http://www.ma.nrcs.usda.gov)

- The Agricultural Management Assistance (AMA) program helps agricultural producers use conservation to manage risk and solve natural resource issues through natural resources conservation.
- Conservation Planning offers technical assistance to conserve and sustain agricultural production.
- The Conservation Stewardship Program (CSP) helps agricultural producers maintain and improve their existing conservation systems and adopt additional conservation activities to address priorities.
- The Environmental Quality Incentives Program (EQIP) provides financial and technical assistance to agricultural producers in order to address natural resource concerns and deliver environmental benefits such as improved water and air quality, conserved ground and surface water, reduced soil erosion and sedimentation or improved or created wildlife habitat.
- The Web Soil Survey provides soil data and maps online.

## ESTATE PLANNING

If you are interested in estate, legacy or succession planning there are many good resources available.

Two examples are Mass Woods [www.masswoods.org](http://www.masswoods.org) and Land for Good [www.landforgood.org](http://www.landforgood.org).

## LAND TRUSTS

Land trusts offer a broad range of support for landowners wishing to conserve their land and preserve their farms. Many local land trusts are available for help. A long list is available at [www.massland.org/land-trusts/list](http://www.massland.org/land-trusts/list) and [www.landtrustalliance.org](http://www.landtrustalliance.org).

A few include:

- American Farmland Trust [www.Farmland.org](http://www.Farmland.org)
- Berkshire Natural Resources Council [www.bnrc.org](http://www.bnrc.org)
- Buzzards Bay [www.savebuzzardsbay.org](http://www.savebuzzardsbay.org)
- East Quabbin Land Trust [www.eqlt.org](http://www.eqlt.org)
- Essex County Greenbelt [www.ecga.org](http://www.ecga.org)
- Franklin Land Trust [www.franklinlandtrust.org](http://www.franklinlandtrust.org)
- Kestrel Land Trust [www.kestreltrust.org](http://www.kestreltrust.org)
- Mount Grace Land Trust [www.mountgrace.org](http://www.mountgrace.org)
- Sheffield Land Trust [www.sheffieldland.org](http://www.sheffieldland.org)
- Westport Land Trust [www.westportlandtrust.org](http://www.westportlandtrust.org)

## MDAR TECHNICAL ASSISTANCE AND GRANTS/FUNDING

In addition to the APR program, MDAR also provides other agricultural assistance. Many programs are available for APR landowners and non-APR landowners at [www.mass.gov/guides/agricultural-grants-and-financial-assistance-programs](http://www.mass.gov/guides/agricultural-grants-and-financial-assistance-programs). MDAR also offers assistance in developing a business plan through MDAR's Growing Your Farm - A Business Planning Course. Information is available at: [www.mass.gov/service-details/agricultural-business-training-program-abtp](http://www.mass.gov/service-details/agricultural-business-training-program-abtp)

Other resources are also available. Please ask APR staff for suggestions.





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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)(e).

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 vs need to be hired), how the APR Parcel will operate in conjunction with other farm land owned or leased by the Prospective Purchaser (if applicable).

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

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

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

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

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

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

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

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

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

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

22.02: continued

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

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

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

Owner means APR Parcel record title owner(s).

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

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

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

Program means the Department's Agricultural Preservation Restriction Program.

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

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

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

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

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

Structure means a combination of materials assembled at a fixed location to give support or shelter, whether or not it requires a footing or foundation.

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

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

22.03: Composition and Meetings of the Agricultural Lands Preservation Committee

- (1) The composition and meetings of the ALPC shall be as defined by M.G.L. c. 20, §§ 23 and 24.
- (2) The ALPC shall meet at the call of the Chair.
- (3) The Chair shall call a meeting at the written request of any five owners of APR Parcels. If such a request is made, the ALPC shall hold such a meeting within 60 days after such request is received. The ALPC shall give notice of the meeting in the usual and prescribed manner and form, stating the date, time, and place of the meeting, and shall, not less than 14 days before the meeting, send a copy of the notice to owners making the request.
- (4) A quorum shall consist of a majority of voting members present at the meeting.

22.04: Eligibility of Agricultural Preservation Restriction Program

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

22.05: Application Procedures

- (1) Application to Department. Application to the Department to enroll a Project in the Program shall be made on a form prescribed by the Department and approved by the ALPC. An Application shall be submitted by the Applicant to the Commissioner and a copy shall also be submitted to the chief executive officer of the Municipality in which the Project is located. If the Project is located in more than one Municipality, a single Application covering the entire Project shall suffice, copies of which shall be submitted by the Applicant to the chief executive officer of each Municipality. The chief executive officer shall distribute a copy of the Application to the agencies and officials identified in 330 CMR 22.05(4)(a).
- (2) Project Information and Description. The Application shall contain, at a minimum, the following information:
  - (a) Deed references, assessor's map, and any and all liens, encumbrances, and easements on the Project;
  - (b) A delineation of the Project boundaries as depicted on a United States Geological Survey (USGS) topographic map showing the Project as well as any excluded contiguous acreage under the same ownership;
  - (c) Copies of any existing surveys and aerial photography of the Project;
  - (d) A United States Department of Agriculture (USDA) Natural Resources Conservation Services (NRCS) soils map showing a breakdown of the Project's various soil types and acreage possessing soil capability Class I through VIII as well as prime farmland, soils of state or local significance, and unique soils;
  - (e) A full description of all commercial agricultural uses and activities occurring on the Project including, without limitation, type of crop, acreage devoted to each crop, type and quantity of livestock, and acreage of associated pasture;
  - (f) A written statement to the Department describing short and long term plans for keeping the land in active Agriculture; and
  - (g) Statement by Applicant consenting to allow the Department, an agent of the Department, or a Partner Agency to conduct an inspection of the Project, including soil testing limited to agricultural and septic suitability.
- (3) Disclosure. If a Municipality is to provide funds or other assistance as set forth in M.G.L. c. 20, § 23 toward the purchase of the APR, or if otherwise required by the Public Records Law, the Department may be required to disclose information provided to the Department.
- (4) Municipality Participation. The chief executive officer of the Municipality may provide the following information to the Department with a copy to Applicant. Failure of a Municipality to supply such additional information shall not be construed as preventing the ALPC's consideration of such Project:



22.05: continued

- (a) Comments or recommendations from, but not limited to, the following agencies and officials as may be appropriate: Agricultural Commission, Conservation Commission, Planning Board, the chief executive officer, and chief administrative officer. The comments may include the compatibility of the Project with zoning by-laws, open space plans, natural resource inventories, and other relevant considerations; and
- (b) A statement signed by the chief executive officer of the Municipality expressing the interest of the Municipality, or lack thereof, in providing funds or other assistance if the Project is approved by the Department.

22.06: Agricultural Preservation Restriction Program Application Processing and Closing Procedures

- (1) Upon receipt of a complete Application for a Project meeting the eligibility requirements, the Department shall review the Application and complete an evaluation.
- (2) The evaluation may include, but is not limited to, the following:
  - (a) A field inspection of the Project and an evaluation of its agricultural potential;
  - (b) Referral of the Project to the appropriate regional planning agency for an opinion of the Project's compatibility with regional planning objectives;
  - (c) Review of the Application and information contained therein as to the suitability for agricultural preservation;
  - (d) Compatibility with Partner Agency eligibility criteria;
  - (e) Obtaining and reviewing a full appraisal, obtained at the Department's own expense, carried out for both the Fair Market Value of the Project and the Fair Market Agricultural Land Value of the Project to determine the APR value in accordance with recognized professional appraisal standards and the applicable Executive Office of Energy and Environmental Affairs (EOEEA) and Partner Agency appraisal specifications, if applicable; and,
  - (f) Review of Title Documents. The Department may, at its own expense, retain an attorney duly licensed and in good standing to practice law in the Commonwealth of Massachusetts with expertise in the practice of real estate conveyance and land use law who complies with all current EOEEA and Department standards, rules, and policies related to title specifications. The attorney shall perform a title search related to the Project, and provide to the Department a title abstract, certificate of title, or other documents as required by the Department.
- (3) Upon the completion of the evaluation and a recommendation, the Department shall:
  - (a) Place the Project on the agenda of the next available ALPC meeting for consideration, if it determines that the Project continues to meet all Program eligibility requirements; or
  - (b) Notify the Applicant in writing that the Project fails to meet Program eligibility requirements or funding availability.
- (4) The ALPC shall consider the Project at its next available meeting and may, after consideration:
  - (a) Cast a Vote of Interest;
  - (b) Cast a vote of no interest; or
  - (c) Take any other just and appropriate action consistent with the goals and purposes of the APR Program, together with an explanation of its reasons.
- (5) Following the ALPC action:
  - (a) The Department shall notify Applicant in writing within 30 days of the ALPC action; and
  - (b) If the Applicant is dissatisfied with the action of the ALPC, the Applicant may, within 30 days of receipt of notice, request in writing a meeting in order to present supplementary information to the ALPC. After due notice to all parties concerned, the ALPC shall hold a meeting within 120 days of its receipt of request and shall reconsider the Project in the light of such relevant and supplementary information as may be presented to it.

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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)(e).
- (7) Upon the Applicant accepting an offer to purchase an APR, the Project shall be placed on the agenda of the next available ALPC meeting for consideration of a Final Vote.
- (8) Upon a Final Vote of the ALPC, the Applicant shall be responsible for the following activities, unless otherwise agreed in writing by the Department and the Applicant:
  - (a) Clearing all title defects and encumbrances identified by the Department, at the Applicant's expense, and approving a metes and bounds description of the APR Parcel and any excluded parcels based upon a survey. The Applicant shall confirm in writing that the boundary description of the APR Parcel, the survey, and any excluded parcels, have been examined and have been found to be free of error;
  - (b) Paying 50% of the cost of the survey. The Department shall retain a surveyor to perform the survey according to EOEEA and Partner Agency, if applicable, specifications;
  - (c) Cooperate in the preparation, review, and signing of a baseline report documenting the present conditions of the APR Parcel, and other documents as may be required by the Department or Partner Agency to acquire the APR; and
  - (d) Participate in a conference with the Department to discuss, and for the Department to explain, the terms and conditions of the APR.
- (9) Upon completion of all actions described in 330 CMR 22.06(8)(a) through (d), including preparation of all legal instruments and the securing of all necessary funding for the transaction, including all documents required for obtaining funding from Partner Agency, if applicable, the Department will schedule a closing on the Project at or prior to which all legal instruments and documents shall be executed and final arrangements for payment of funds, adjustments, and recording of documents shall be made by the Department.

22.07: Criteria Applicable in Evaluation of Projects

- (1) In evaluating a Project, the ALPC shall consider the following as priority criteria to best fulfill the purposes of the APR Program, as established by St. 1977, c. 780:
  - (a) The degree to which the Project would serve to preserve and enhance the agricultural resource base of the Commonwealth of Massachusetts;
  - (b) The suitability of land as to soil classification and other criteria for agricultural use; and
  - (c) The Fair Market Value of such land and the Fair Market Value of such land when used for agricultural purposes as determined by the independent appraisal obtained by the Department pursuant to 330 CMR 22.06(2)(e).
- (2) In addition, the ALPC may consider additional criteria including, but not limited to, the following:
  - (a) Contribution of the Project in the development of a continuing program of acquiring multiple APRs within a defined geographical area or areas;
  - (b) Degree to which a Municipality where a Project is located is prepared to provide assistance to the Commonwealth for purchase of an APR by providing funds, legal, and enforcement services or other assistance satisfactory to the ALPC, pursuant to M.G.L. c. 20, § 23;
  - (c) Opportunities for individual and family farm ownership and for employment through farm related processing, storage, transportation, and marketing of farm products; and
  - (d) Degree of threat from any cause to the continuation of Agriculture on the Project.

22.08: Agricultural Preservation Restriction

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

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

22.08: continued

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

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

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

22.09: Departmental Approvals

In accordance with the terms of the APR, certain activities, uses, and improvements require Departmental Approval. Such approvals are issued in the form of a Certificate of Approval (COA) or Special Permit by the Department, with or without conditions, pursuant to the following:

(1) Certificate of Approval. While generally accepted agricultural practices are generally allowed by right in the APR, the terms of an APR may require an approval for certain agricultural Structures, activities, practices, uses, and improvements. The Department may, by issuing a COA, authorize those Structures, activities, practices, uses, and improvements that the Department finds to be consistent with APR, Massachusetts law, and regulations of the Department.

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

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

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

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

(2) Procedures for Requesting a COA.

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

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) 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 ALPC, and the Department may specify a time limit to request a hearing, not to exceed the timing provided for in M.G.L. c. 20, § 23(c).
- (7) APR Parcel Owner Responsibilities. The Special Permit shall set forth, at a minimum, the following specific obligations to be met by the Owner:
- (a) Registry Recording. The Owner may record it with the appropriate Registry of Deeds at Owners' own expense and provide the Department with a copy of the recorded document.
  - (b) Unforeseen Circumstances. If unforeseen circumstances or other factors prevent the Owner from complying with the terms of the Special Permit, the Owner shall immediately notify the Department in writing.
  - (c) Nonconformity with Special Permit. If the Owner fails to comply with the terms of the Special Permit, the Owner shall take such remedial action to end the nonconformity, including, but not limited to, bringing the activity into compliance with the Special Permit, and restoring the APR Parcel to its prior condition.
- (8) Other Department Rights. At any time during the initial or renewed term the Department may, in its discretion, conduct an inspection to ascertain compliance with the Special Permit.

22.10: Transfer or Sale of an APR Parcel

Where the APR provides for a Right of First Refusal, an Option to Purchase Real Estate at Fair Market Agricultural Value, or a similar right at the time of sale held by the Department, unless otherwise provided by the specific terms of an APR, the following provisions shall apply, in addition to any Department guidelines for waivers approved by the ALPC and in effect at the time of the notification of sale:

- (1) Proposed Sale or Conveyance of an APR Parcel. If an APR Parcel is subject to a Right of First Refusal or Option to Purchase Real Estate at Fair Market Agricultural Value, and the Owner receives an offer to purchase, the Owner shall notify the Department in writing. The written notice of intent to sell shall, at a minimum, include copies of the following: the offer to purchase; purchase and sale agreement and amendments; any appraisal prepared for proposed sale, and any appraisal prepared for sale at which Owner acquired the APR Parcel; other relevant documents pertaining to the proposed sale Notice shall include, if applicable, a letter from Owner requesting a waiver, and in the case of an Option to Purchase Real Estate at Fair Market Agricultural Value or Right of First Refusal, an offer to sell the APR Parcel to the Commonwealth pursuant to the terms of the Option to Purchase Real Estate at Fair Market Agricultural Value or Right of First Refusal.
- (2) Proposed Sale or Conveyance of Excluded Land. In the event that the proposed sale or conveyance contains agricultural or other land not subject to the APR, Owner shall also provide a written apportionment of values in the purchase and sale agreement, if relevant, as between the APR Parcel and the land/Structures not subject to the APR.
- (3) Form of Notice. Notice to the Department shall be in writing and sent by certified mail, return receipt requested, or hand delivered to the Department's main office at 251 Causeway Street, Suite 500, Boston, MA 02114, or the address listed on the Department's website (<https://www.mass.gov/orgs/massachusetts-department-of-agricultural-resources>).
- (4) Automatic Waiver of Right to Purchase. The Department shall issue a Waiver upon finding all the criteria in 330 CMR 22.10(4)(a) through (e) has been met, however, if the criteria in 330 CMR 22.10(4)(a) through (e) has not been met, the Department may issue a discretionary waiver pursuant to 330 CMR 22.10(5):

22.10: continued

- (a) The Owner has:
    - 1. received a good faith offer;
    - 2. submitted to the Department a certified copy of an executed purchase and sale agreement for fixed consideration payable upon delivery of the deed for an APR Parcel;
  - (b) The Potential Purchaser is a Farmer and has been a Farmer for a period of two years of the last five years immediately preceding the date of the notice of intent to sell;
  - (c) The Potential Purchaser submits a Farm Business Plan which the Department determines is complete and presents a viable and achievable plan that is compatible with the APR and APR Parcel location;
  - (d) If the Purchase Price is 20% or more than the Fair Market Agricultural Land Value, the Farm Business Plan must additionally include a written justification that the Department deems valid. Such valid justification for an increased purchase price may include valuation for Fair Market Agricultural Business Value and Fair Market Dwelling Value;
    - If the Owner does not determine the Fair Market Agricultural Land Value, the Owner may be eligible for a discretionary waiver pursuant to 330 CMR 22.10(5); and
  - (e) The Potential Purchaser has no prior record of a violation of the written agreement or terms of any APR held by the Commonwealth. The Department may waive this requirement if the violation is deemed Minor.
- (5) Discretionary Waiver of Right to Purchase. The Department may issue a Waiver upon finding all the criteria in 330 CMR 22.10(5)(a) through (e) has been met:
- (a) The Potential Purchaser is a:
    - 1. Farmer;
    - 2. Beginning Farmer; or
    - 3. nonprofit corporation organized for the purposes of leasing land to one or multiple Farmer(s) or Beginning Farmer(s);
  - (b) The Potential Purchaser provides a Farm Business Plan, which the Department determines is complete and presents a viable and achievable plan that is compatible with the APR and APR Parcel location. The Farm Business Plan must specifically include the following, if the Potential Purchaser is a:
    - 1. Farmer, the Farm Business Plan must include the total acreage of the current farming operation and number of years in business;
    - 2. Beginning Farmer, the Farm Business Plan must list:
      - a. other relevant professional experience, degrees, courses, workshops, education and training; and
      - b. a Financial Plan must be provided.
    - 3. nonprofit corporation, the Farm Business Plan must be written by the Farmer(s) or Beginning Farmer(s) to whom the corporation intends to lease the APR Parcel and the purposes of the organization must be demonstrated by providing the Articles of Incorporation;
  - (c) The Potential Purchaser has no prior record of a violation of the written agreement or terms of any APR held by the Commonwealth. The Department may waive this requirement if the violation is deemed Minor;
  - (d) The Owner has complied with any specific terms enumerated in the applicable Right of First Refusal or Option to Purchase Real Estate at Fair Market Agricultural Value; and
  - (e) If the APR requires a determination of Fair Market Agricultural Value and the Purchase Price is 20% or more than the Fair Market Agricultural Value, the Farm Business Plan must additionally include a written justification that the Department deems valid. Such valid justification for an increased purchase price may include proximity to other land owned or leased by the Potential Purchaser; unique characteristics of APR Parcel; and purchasing agricultural or other land not subject to the APR with the intention of operating the APR Parcel in conjunction with the other land as one Farm.
- (6) Exercise of Right to Purchase. If the Potential Purchaser does not qualify for an Automatic or Discretionary Waiver, the Department may seek to exercise its right to purchase and assign the right to purchase the APR Parcel. In the event the Department exercises its right to purchase, the Department shall send the Owner a notice of election to purchase not more than three business days after said decision is made. The notice of election to purchase shall be in writing and include, at a minimum, the procedural next steps with timeframes including when the land will be assigned.

22.10: continued

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

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

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

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

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

22.11: Agricultural Preservation Restriction Parcel Violations

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

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

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

- (a) The Owner shall provide a written response including any relevant pictures or information within the time period set forth by the Department in the written notice of violation.
- (b) Upon receiving a response from the Owner, the Department shall outline a proposed plan, or require the Owner to propose a plan to correct the violation. The creation of a plan may require assistance from a Partner Agency or other entity with technical expertise. Upon the creation of a plan approved by the Department, the Owner shall implement the plan within the timeframe approved by the Department and shall give progress reports as directed by the Department.
- (c) A site inspection to confirm the satisfactory completion of the plan will be completed by Department staff.
- (d) If the violation is corrected to the satisfaction of the Department, a written acknowledgement will be issued by the Department within 30 days to the Owner.

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

(4) Joint and Several Liability The Owner and its successors in title, shall be jointly and severally liable for any violation of the terms of the APR, Certificate of Approval, Special Permit, or M.G.L. c. 184, §§ 31 through 33; M.G.L. c. 20, §§ 23 through 26, and rules, regulations and policies thereunder.

22.11: continued

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

22.12: Release of an Agricultural Preservation Restriction

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

(2) Pursuant to M.G.L. c. 184, § 32, the Department may be requested to deem the APR Parcel or a portion thereof is no longer suitable for Agriculture. In making this determination the Department may consider the present use, nature, quality, and other attributes of the agricultural land proposed for release, including soil quality.

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

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

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

(5) To determine compliance with any applicable Land Disposition Policy of the Executive Office of Energy and Environmental Affairs, the Commissioner may be asked to determine if other land of the Owner not restricted by an APR, and proposed to be placed under an APR is:

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

(6) The Commissioner may require, at the sole expense of the Owner, work to be performed including, but not limited to, engineering, surveys, appraisals, title services, and document preparation related to any assessment requested under 330 CMR 22.12.

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

22.13: Adjudicatory Hearings

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



22.13: continued

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

22.14: Policies and Guidelines

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

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22.14: continued

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

REGULATORY AUTHORITY

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

NON-TEXT PAGE

THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

251 Causeway Street, Suite 500, Boston, MA 02114  
617-626-1700 fax: 617-626-1850 www.mass.gov/agr



DEVAL L. PATRICK  
Governor

MAEVE VALLELY BARTLETT  
Secretary

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 ("FMALV"): 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

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:

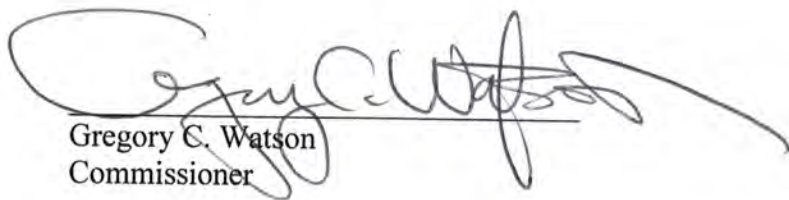
1. The APR contains language allowing the Owner to petition the Department for approval to construct a Dwelling; and
2. The Premises is being utilized for commercial agriculture to the fullest extent possible. A majority of open productive agricultural land must be in commercial Agricultural Use; and
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

- 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



Gregory C. Watson  
Commissioner



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources  
251 Causeway Street, Suite 500, Boston, MA 02114  
617-626-1700 fax: 617-626-1850 www.mass.gov/agr



DEVAL L. PATRICK  
Governor

MAEVE VALLELY BARTLETT  
Secretary

GREGORY C. WATSON  
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<sup>1</sup>; 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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<sup>1</sup> 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.



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<sup>2</sup>.

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<sup>2</sup> 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.

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



Gregory C. Watson  
Commissioner

# THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



## Department of Agricultural Resources

251 Causeway Street, Suite 500, Boston, MA 02114  
617-626-1700 fax: 617-626-1850 www.mass.gov/agr



CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lt. Governor

MATTHEW A. BEATON  
Secretary

JOHN LEBEAUX  
Commissioner

### **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 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"):** 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.

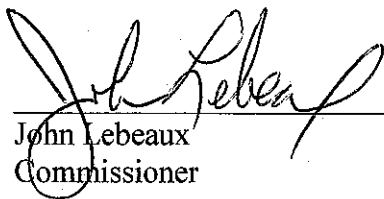
Owner: the record title owner of the Premises.

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

  
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John Lebeaux  
Commissioner

# THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



## Department of Agricultural Resources

251 Causeway Street, Suite 500, Boston, MA 02114  
617-626-1700 fax: 617-626-1850 www.mass.gov/agr



CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lt. Governor

KATHLEEN A. THEOHARIDES  
Secretary

JOHN LEBEAUX  
Commissioner

### **HEMP AND MARIJUANA PRODUCTION ON APR AND FARM VIABILITY PROTECTED LANDS**

#### **INTRODUCTION**

Since the 40<sup>th</sup> anniversary of the Massachusetts Department of Agricultural Resources (“Department”) Agricultural Preservation Restriction (“APR”) Program in 2017, the Department has taken input through statewide listening sessions held over the past few years. One concern shared with the Department during the listening sessions that were held during 2020 is the inability of APR landowners to engage in activities involving legal cannabis production in an effort to diversify land use and provide new income sources. After reviewing these concerns and evaluating the evolving state of the law as it relates to the legalization of medical and adult use marijuana in Massachusetts and cultivation of hemp in the United States, the Department has been reviewing its policies related to hemp and marijuana and evaluating whether the Department may recognize such activities as horticultural uses in a manner consistent with the laws and intent of the APR Program.

The APR Program is required by statute to utilize the definitions of agriculture and horticulture set forth in M.G.L. c. 61A, Sections 1 and 2. M.G.L. Chapter 61A, Section 2 could benefit from legislative clarification to address questions related to cannabis: the statute is ambiguous. The Department is exercising its discretion to resolve that ambiguity in favor of a more expansive view of horticultural uses for the limited purposes of the APR Program that includes growing both hemp and marijuana in accordance with law. This interpretation is consistent with the Program’s interpretation of flower, nursery, and greenhouse uses and recognizes that the use of land for hemp and marijuana production fits within the Program’s intent.

While medical and adult use marijuana has been legalized in Massachusetts, it remains illegal at the federal level. Therefore, the Department cannot allow any activities involving marijuana on an APR that is federally funded or subject to USDA enforcement.

This recognition that lawfully growing hemp and marijuana are horticultural uses applies only to the APR and Agricultural Covenant land programs within the Department that rely on M.G.L. c. 61A for their definitions. The Department takes no position as to how this statute should apply to programs outside of the Department’s purview. It also applies only to hemp production and processing that is conducted in accordance with applicable state and federal law under the Department’s Hemp Program and marijuana activities that are conducted in accordance with applicable state law and as licensed through the Cannabis Control Commission (“CCC”).

Finally, hemp and marijuana activities remain subject to licensing requirements as well as municipal oversight and regulation, including zoning and wetlands protections. Any questions related to licensing or municipal oversight or regulation should be directed to the specific licensing entity or the municipality in which the APR or Agricultural Covenant is located.

Nothing in this document is intended as legal or tax advice and the Department encourages all APR landowners to work with the necessary professionals to seek guidance and advice as needed. This document is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal, nor are any limitations hereby placed on otherwise lawful litigation prerogatives of the Department. Nothing contained herein is nor shall be considered to override the specific terms contained within any APR or Agricultural Covenant.

The Department looks forward to working with APR and Agricultural Covenant landowners and the farming community on the implementation of this new interpretation and has prepared the following guidance. APR and Agricultural Covenant landowners are invited to reach out to the Department with any questions prior to pursuing licensing for hemp or marijuana.

## HEMP AND APR LAND

- Hemp is recognized as an agricultural commodity by the United States Department of Agriculture (“USDA”) and is legal under both state and federal law.
- Lawful hemp activities may be permitted on all APRs and is not considered a violation by the Department.
- Hemp production and processing **must** still be licensed through the Department’s Hemp Program.
- APR landowners should also review the terms of their APR carefully as nothing in this guidance overrides any language or other restrictions contained within an APR or within the APR Regulations promulgated at 330 CMR 22.00 (“APR Regulations”).
- Impervious surface limits contained in the APR document and within the APR Regulations still apply.
- Requirements within the APR document and within the APR Regulations for Departmental Approvals for structures, excavation, and other matters still apply, along with any requirement for co-holder approval for such matters if required by the APR document.
- Nothing in this guidance shall be interpreted as to require the Department to issue approvals or waivers for impervious surface limits, structures or any other matter subject to Departmental Approval.
- Hemp production must still meet any municipal oversight and regulation, including, but not limited to zoning and wetlands protections.
- All terms and conditions of an APR still apply and must be complied with.
- APR landowners seeking to engage in activities related to hemp should consult with the Department’s APR Stewardship Program with any questions surrounding Departmental Approvals, Impervious Surface limits or other language within the APR document or APR Regulations.



## MARIJUANA AND APR LAND

### **A. Federally Funded APRs**

- Marijuana is still a Schedule I Controlled Substance under federal law.
- Since the early 1990s the federal government has helped to finance the acquisition of APRs and maintains enforcement status as a Co-holder or through a Contingent Right of Enforcement. Nearly all recently acquired APRs were purchased with federal financing.
- The Department cannot allow any activities involving marijuana on an APR that is federally funded or subject to USDA enforcement.
- Contact the Department's APR Stewardship Program to determine whether or not your APR is a federal APR.

### **B. State-Only Funded APRs**

- Medical and adult use marijuana have been legalized within the Commonwealth of Massachusetts.
- Lawful marijuana production on land protected by an APR where there is no federal interest in the Restriction is not considered a violation by the Department.
- All marijuana related activities **must** still be licensed by the CCC.
- APR landowners seeking to engage in activities related to marijuana should reach out to the Department's APR Stewardship Program **prior** to applying for licensure with the CCC to determine whether such activity may be conducted on their APR.
- APR landowners should also review the terms of their APR carefully as nothing in this guidance overrides any language or other restrictions contained within an APR or within the APR Regulations promulgated at 330 CMR 22.00 ("APR Regulations").
- Impervious surface limits contained in the APR document and within the APR Regulations still apply.
- Requirements within the APR document and within the APR Regulations for Departmental Approvals for structures, excavation, and other matters still apply, along with any requirement for co-holder approval for such matters if required by the APR document.
- Nothing in this guidance shall be interpreted as to require the Department to issue approvals or waivers for impervious surface limits, structures or any other matter subject to Departmental Approval.
- Marijuana production **must** still meet any municipal oversight and regulation, including, but not limited to zoning and wetlands.
- All terms and conditions of an APR still apply and must be complied with.

## **HEMP, MARIJUANA AND AGRICULTURAL COVENANTS**

- Landowners who have participated in the Department’s Farm Viability Enhancement Program have land that is restricted by an Agricultural Covenant pursuant to M.G.L. Chapter 20, Section 27 (“Agricultural Covenants”).
- Agricultural Covenants also rely on M.G.L. c. 61A for its definitions.
- Hemp is recognized as an agricultural commodity by the United States Department of Agriculture (“USDA”) and is legal under both state and federal law.
- Medical and adult use marijuana have been legalized within the Commonwealth of Massachusetts.
- Lawful hemp and marijuana production on land protected by a Farm Viability Enhancement Program Covenant is not considered a violation by the Department.
- Hemp production **must** still be licensed through the Department’s Hemp Program
- All marijuana related activities **must** still be licensed by the CCC.
- Nothing in this guidance overrides any language or other restrictions contained within an Agricultural Covenant pertaining to Departmental Approvals for structures, excavation, and other matters.
- Marijuana and Hemp activities remain subject to licensing requirements, municipal oversight and regulation, including zoning and wetlands protection.
- All terms and conditions of an Agricultural Covenant still apply and must be complied with.
- Landowners with questions should reach out to the Department’s Farm Viability Enhancement Program.

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Department of Agricultural Resources

251 Causeway Street, Suite 500, Boston, MA 02114  
617-626-1700 fax: 617-626-1850 www.mass.gov/agr



CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lt. Governor

MATTHEW A. BEATON  
Secretary

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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 purposed 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.

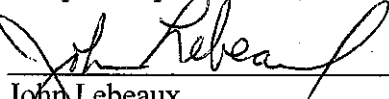
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New APR: an updated APR in the format current at the time of the issuance of the COA.

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



## AGRICULTURAL PRESERVATION RESTRICTION (APR)

# CHANGE IN OWNERSHIP

## Selling or Transferring APR Land

**Not all, but most APR agreements include an Option to Purchase at Agricultural Value (OPAV) or Right of First Refusal (ROFR) and need an MDAR waiver before the sale – if yours does not MDAR will let you know.** A landowner wishing to sell or transfer ownership of an APR property with a ROFR or OPAV should notify APR staff immediately to request a waiver. A waiver states that MDAR waives its right to purchase the farmland which would then allow the sale of the APR to move ahead.

It's important for you to review and understand the process for the sale or transfer of your APR land. The process and timeframe are clearly described in your APR agreement and may be different for each landowner APR agreement. It's important to review your APR agreement with your attorney and realtor. Please note that the process for a decision on an approval for a sale or transfer could take up to 120 days.

## Notifying MDAR

If you intend to sell or transfer and receive an offer to purchase, you must notify MDAR in writing as stated in your APR agreement. For example, a letter requesting a waiver for an OPAV must include copies of:

- The offer to purchase
- The purchase and sale agreement and any amendments
- Any appraisal prepared for the proposed sale specifying the fair market agricultural value (FMAV)
- Any appraisal prepared for the sale in which the landowner acquired the APR property
- Other relevant documents relating to the proposed sale

Documentation will be reviewed. If the sale or transfer contains non-APR property, such as a house or land that is not covered by an APR, the landowner should apportion the value between any APR property and any non-APR property. Written notice to MDAR is required and unless otherwise agreed to must be delivered by certified mail, return receipt requested; or hand delivered to MDAR's address listed at [mass.gov/agr](http://mass.gov/agr).

## CONSIDERING A SALE OR TRANSFER?

Notify MDAR immediately. Some APRs have an Option to Purchase at Agricultural Value (OPAV) or Right of First Refusal (ROFR) and may need an MDAR waiver before the sale which may take up to 120 days. This information is clearly described in your APR agreement. If you can't find it, notify MDAR to request a copy.

Of the approximately 900 APR agreements about 650 have an OPAV, 100 have an ROFR, and the rest are early APR agreements with no such provisions.

**Right of First Refusal (ROFR)** is the right to allow the Commonwealth the opportunity to purchase the property if it is offered for sale. If you apply for a waiver MDAR may, and usually does, waive its right to purchase.

### **Option to Purchase at Agricultural Value (OPAV)**

is a legal tool to ensure the agricultural land remains available to farmers at agricultural value.

OPAV, ROFR, and Waiver guidelines are available at [www.mass.gov/apr](http://www.mass.gov/apr) at "APR Program Details".

# LANDOWNER INFORMATION

## Guideline and Policy Updates

MDAR and the Executive Office of Energy and Environmental Affairs (EEA) have established guidelines, policies, and procedures in addition to APR documents, that are periodically updated and provide further guidance for APR landowners. Any inconsistency between the language of an APR agreement, policy or regulation will be resolved in favor of the APR. All APR regulations and MDAR policy documents are posted on MDAR's website and MDAR will provide copies to a landowner upon request. The ALPC may advise and make a recommendation to MDAR for policy development or changes. ALPC meetings are held quarterly as needed, are open to the public, and are a forum for the public to comment on proposed changes to policy.

The complete regulations are available at [www.mass.gov/apr](http://www.mass.gov/apr) and may be consulted for details.

### OPAV PURPOSE

The OPAV's purpose is to make sure farms are available to farmers at an agricultural value. Because of the OPAV, which was pioneered by MDAR in 1992 as the first in the nation, hundreds of protected farms have remained in the hands of Massachusetts farmers.

## Guidance

The pages that follow may assist you with APR change of ownership process.





# SELLING OR TRANSFERRING LAND

## FOR LANDOWNERS

### Selling or Transferring APR Land

Not sure where to start or what to do?  
Here are some quick suggestions:

- Review your APR agreement and contact MDAR as early as possible. Can't find your APR agreement? Contact APR staff to request a copy.
- Some APRs contain a Right of First Refusal (ROFR) or an Option to Purchase at Agricultural Value (OPAV). Check your APR agreement to understand if either of these applies to your APR land.
- If there is an ROFR or an OPAV, specific procedures must be followed (samples include: obtaining an appraisal of the Fair Market Agricultural Value (FMAV) or the Fair Market

- Value (FMV), preparing a farm plan, drafting an offer letter, etc.) Your APR agreement - in combination with APR guidelines, policies and regulations - lists the requirements and the timeframe for the process. A decision could take up to 120 days after all documents are submitted to MDAR.
- MDAR has published regulations describing the process at [www.mass.gov/apr](http://www.mass.gov/apr).
  - It is advisable to contact an attorney to help you through not only the land sale/transfer process but also the APR-specific process.
  - APR staff are available to walk you through the process.

## FOR REAL ESTATE PROFESSIONALS

### Questions and Considerations Before Listing a Property

- Is all or a portion of the property in agricultural use?
- Does it have an Agricultural Preservation Restriction (APR)? If so, the buyer must be informed and should read the APR agreement before deciding to purchase the property.
- Each APR property has an APR agreement that is a public record at the Registry of Deeds. The landowner and MDAR also have copies of the APR agreement.
- Some APRs contain a Right of First Refusal (ROFR) or an Option to Purchase at Agricultural Value (OPAV).

You and the landowner must check the APR agreement to understand if either of these applies to the APR land.

- If there is an ROFR or an OPAV, specific procedures must be followed (examples include: obtaining an appraisal of the FMAV, preparing a farm plan, drafting an offer letter, etc.).
- The landowner's APR agreement - in combination with APR guidelines, policies and regulations - lists requirements and the timeframe for the process. Information is available at [www.mass.gov/apr](http://www.mass.gov/apr).

- It could take up to 120 days after all documents are submitted to MDAR before a decision is made.
- Does the listing make it clear that the land is subject to an APR?
- Does the Purchase and Sale limit the price to the FMAV and list the price for any non-APR land separately?
- Does the APR agreement prohibit sub-division?
- The buyer may be required to submit a farming resume, farm business plan and a financial plan.

#### UPDATES:

Please note that policies and guidelines may change over time. Any inconsistency in the language of an APR agreement, policy or regulation will be resolved in favor of the APR agreement. APR Program updates are available at [www.mass.gov/APR](http://www.mass.gov/APR).

# OPAV, ROFR, AND WAIVER POLICY

## 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 1985, 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 1985, **most** APRs have included a purchase option:

- ① APRs before 1985 do not have an ROFR or OPAV
- ② APRs acquired between 1985 and the first half of 1994 include a ROFR
- ③ APRs acquired after the second half of 1994 include an OPAV

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 with an APR agreement that 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. After 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 exercise its right to purchase the APR property, 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 without 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 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.

# WAIVER REQUIREMENTS

## Waiver Requirements

When an APR landowner has a bona-fide offer from an interested buyer the APR landowner must notify MDAR of the intent to sell and offer the land to the Commonwealth to purchase or request that MDAR waive its right to purchase the property. 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.

- An **Automatic Waiver** requires that MDAR waive its right to purchase when all these criteria are met:
  - *The buyer is a farmer.*
  - *The buyer submits a Farm Business Plan.*
  - *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 (FMALV). Fair Market Agricultural Land Value (FMALV) does not include dwellings that may be on the APR or the value of an Agricultural Business.*
  - *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:
  - *The buyer is a farmer, a beginning farmer or a non-profit corporation organized for the purposes of leasing land to one or more farmers or beginning farmers.*
  - *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.*
  - *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).*
  - *The buyer provides justification, deemed valid by MDAR, when the purchase price is 20% or greater than the Fair Market Agricultural Land Value (FMAV). Fair Market Agricultural Land Value includes the value of dwellings that may be on the APR and the value of an Agricultural Business.*
- A landowner may withdraw from the offer and 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 the 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 agreements will require a meeting with MDAR, the landowner and potential buyer

### TIMELINE & TASKS

Thinking about selling or transferring APR land?

#### STEP 1

Review your APR agreement and contact MDAR as early as possible. Can't find your APR agreement? Call an APR staff member to request a copy.

#### STEP 2

Notify MDAR of intent to sell. Request a **Waiver** if you have an offer. See Waiver Requirements.

to discuss the ROFR, OPAV and waiver before the sale of an APR.

If MDAR elects to or exercise its right to purchase the APR, it will not typically 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 RFP process.

A landowner can also consult his/her APR agreement 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](mailto:dorothy.du@mass.gov)

# APR Transfer Due Diligence Checklist

## Seller

1. Contact Taylor Arsenault, APR Stewardship Planner, to discuss potential sale:
  - Taylor.Arsenault@mass.gov
  - 617-655-3870
2. Determine if buyer is eligible (farmer, beginning farmer, non-profit with ag leasing purpose, etc.).
3. Review APR document for ROFR or OPAV<sup>1</sup> language. Either of these will affect the sale process.
4. Confirm your understanding of the APR boundary; contact Taylor Arsenault to determine if a survey exists
5. Do you have an advisor or attorney to help with the transfer? If not, it is advised that you engage one.
6. You may be contacted by your MDAR APR stewardship planner to ensure your APR is in compliance. NOTE: *You will not be able to transfer your property until violations are addressed.*
7. If there's a real estate listing, ensure that it states the property is subject to an APR and accurately represents any restrictions, such as those concerning dwellings and subdivision.
8. Ensure the sale price is based on agricultural value as required. See APR manual for reference.
9. Ensure the Purchase & Sale Agreement meets requirements:
  - Will not expire prior to the end of the ROFR/OPAV waiver decision deadline.
  - Apportions value of non-APR land separately.
  - Fully executed.

## Buyer

1. Contact Taylor Arsenault to discuss potential sale:
  - Taylor.Arsenault@mass.gov
  - 617-655-3870
2. Call APR program to discuss:
  - APR restrictions (including ROFR/OPAV requirements)
  - APR Compliance status
  - APR boundary/survey
  - Planned future uses
3. Check waiver eligibility requirements (are you a farmer, beginning farmer, non-profit with ag leasing purpose, etc.)
4. Do you have an advisor or attorney to help with the transfer? If not, it is advised that you engage one.
5. Ensure that sale price is based on agricultural value, as required in OPAV. See APR manual.
6. Ensure that Purchase & Sale Agreement meets requirements:
  - Will not expire prior to the end of the ROFR/OPAV waiver decision deadline.
  - Apportions value of non-APR land separately.
  - Fully executed.

<sup>1</sup> ROFR – Right of First Refusal; OPAV – Option to Purchase at Agricultural Value





## 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 Plan<sup>1</sup>.

1. Information	
Purchaser Name:	<input type="text"/>
Operation Name:	<input type="text"/>
Legal Structure:	<input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> LLC <input type="checkbox"/> Other _____
Mailing Address:	<input type="text"/>
City, State, Zip:	<input type="text"/>
Home Phone:	<input type="text"/>
Mobile Phone:	<input type="text"/>
E-Mail:	<input type="text"/>
<input type="checkbox"/> Site address same as above	

<sup>1</sup> 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).



Massachusetts Department of Agricultural Resources  
251 Causeway Street, Suite 500  
Boston, MA 02114

## 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?**



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Boston, MA 02114

**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.**



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Boston, MA 02114

**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?**





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**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:**



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**List the types of capital improvements (such as new buildings, wells, irrigation, fencing) that you are you 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 ?**



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**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 1<sup>st</sup> year;**

# THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



## Department of Agricultural Resources

251 Causeway Street, Suite 500, Boston, MA 02114  
617-626-1700 fax: 617-626-1850 www.mass.gov/agr



CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lt. Governor

KATHLEEN A. THEOHARIDES  
Secretary

JOHN LEBEAUX  
Commissioner

### AGRICULTURAL PRESERVATION RESTRICTION (APR) PROGRAM POLICY APR Local Matching Funds

- I. **PURPOSE:** To leverage APR funding, educate communities about the public and local benefits of APR land, and encourage local financial support for APR acquisitions.
- II. **AUTHORITY:** M.G.L. c. 20, sec. 23, which established the APR Program, authorizes the Commissioner to establish policies for the management and oversight of the program. 330 CMR 22.14 also provides that it shall be the sole discretion of the Commissioner to implement and establish policy, after consultation with the Agricultural Land Preservation Committee (ALPC). See also: M.G.L. Chapter 21a, Chapter 184 Sections 31 Regulation 301 CMR 51
- III. **SCOPE:** This policy applies to acquisitions of APRs to which the APR Program provides funding.
- IV. **POLICY:** A minimum amount of matching funds must be provided for APR acquisitions in the following ways:

#### Projects with appraised values within the APR Cap Policy:

For projects valued less than or equal to the APR price per acre cap, a minimum local match of 10% of the appraised APR value is required. However, this minimum match shall be reduced to 5% if a Right to Farm Bylaw has been established in the community in which the project is located.

#### Projects eligible for the APR Over Cap Policy:

For projects valued more than the APR price per acre cap, and that are eligible to go over the APR price per acre cap, and that are being offered more than the APR price per acre cap, a minimum local match of 10% of the appraised APR value is required. There is no opportunity to further reduce this minimum match requirement.

- V. **DEFINITIONS:** As used throughout this policy, the words or phrases listed below shall have the following meanings:

Agricultural Preservation Restriction (APR): a perpetual restriction set forth in M.G. L. c. 184 § 34 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 Value: The difference between the Fair Market Value and the Fair Market Agricultural Land Value as determined by the appraisal obtained by the Department pursuant to 330 CMR 22.06(2)(e).

APR Cap & Over Cap Policy: Policy imposing a per acre spending cap on new APR acquisitions, approved by the ALPC on November 30, 2021, and as amended thereafter.

Local Match: A cash or in-kind contribution towards the acquisition of an APR. The source of the match can come from any combination of the following sources: a non-state or federal entity such as a municipality, land trust or other non-profit organization, or non-government organization, or a bargain sale from the landowner. Examples of in-kind contributions are services approved by the Department including but not limited to an appraisal, survey, title exam, environmental site assessment.

Right to Farm Bylaw: A general bylaw enacted by a municipality with a purpose and intent to state with emphasis the Right to Farm accorded to all citizens of the Commonwealth under Article 97, of the Constitution, and all state statutes and regulations thereunder including but not limited to Massachusetts General Laws Chapter 40A, Section 3, Paragraph 1; Chapter 90, Section 9, Chapter 111, Section 125A, Chapter 128 Section 1A, and Chapter 243 Section 6.

VI. **REFERENCE LINKS:**

M.G.L. Chapter 21a

M.G.L. Chapter 184 Section 31

M.G.L. Chapter 20 Sections 23

330 CMR 22

301 CMR 51

VII. **POLICY HISTORY:**

2022-01-11: Policy amended herein and adopted

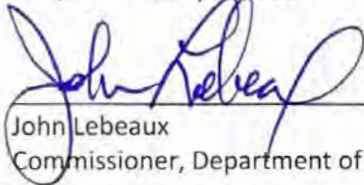
2008-11-19: Policy amended. See Interim guidance memo<sup>1</sup>

2004-07-12: Policy created via establishment of Commonwealth Capital Program (See ALPC minutes)

1998-11-22: Local Match encouraged but not required. No formal policy established. (See ALPC minutes)

Consultation to the ALPC conducted at a duly authorized public meeting January 10<sup>th</sup>, 2022.

Adopted January 14, 2022



John Lebeaux

Commissioner, Department of Agricultural Resources

<sup>1</sup> Memo dated 11-19-2008, from Ronald Hall, APR Program Coordinator & Scott Soares, Assistant Commissioner – Chief of Staff, to APR staff, legal services, municipalities, and land organizations, entitled “Interim Guidance Document for APR-Municipal (APR-Muni) Grants on revised Financial Match Requirement”.



**AGRICULTURAL PRESERVATION RESTRICTION (APR) PROGRAM POLICY**  
**APR Purchase Price Limitations**

- I. **PURPOSE:** The purpose of this policy is to provide a clear and transparent methodology on how the ALPC considers fair market value when evaluating APR projects, while meeting the obligation 301 CMR 51.06 (1), M.G.L. Chapter 20, Section 24(b)(ii) and the 330 CMR 22.07(1)(c), which require both a limitation to APR purchase price and that the ALPC consider fair market value as a priority criterion when evaluating APR projects.
- II. **AUTHORITY:** M.G.L. Chapter 20, Section 24 establishes the ALPC and requires that the ALPC consider fair market value when evaluating projects. 330 CMR 22 requires that the ALPC consider value as one of the priority criteria when evaluating projects. See also: M.G.L. Chapter 184, Sections 31-33, M.G.L. Chapter 20, Sections 23-26, and 301 CMR 51.
- III. **SCOPE:** This policy applies to acquisition of APRs which is funded by the Department.
- IV. **POLICY:** The ALPC limits the Department's purchase price contribution in the following ways:

Cap Policy: Unless otherwise allowed by the "Over Cap Policy" defined below, the Department limits its purchase price contribution to a maximum of \$17,000/acre, but no more than fair market value as determined by an appraisal and also subject to the Department's [Local Match Policy](#).

Over Cap Policy: In circumstances where a project is determined by the ALPC, in its discretion, to be a high priority when compared to other APR opportunities, the ALPC may agree to approve to go over the \$17,000/acre cap up to a maximum of \$34,000/acre but no more than fair market value as determined by an appraisal.

Implementation of Over the Cap Funding:

If a project qualifies for Over the Cap funding, the following rules shall apply:

1. Above cap spending up to \$34,000/acre may only be applied to Open Farmland acreage consisting of Prime and/or State important soils in Agricultural Use.
  2. Any pending project which qualifies for the Over Cap Policy must be matched by a fixed minimum of 10% of the total appraised APR Value. Said match can be accomplished by any combination of Local Match sources. For example, if the APR Program determines an appraised APR restriction value is \$300,000, then a minimum match of \$30,000 is required.
- V. **DEFINITIONS:** As used throughout this policy, the words or phrases listed below shall have the following meanings:

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

Agricultural Use: The uses of land enumerated in M.G.L. c. 61A, §§ 1 and 2.

Agricultural Preservation Restriction (APR): a perpetual restriction set forth in M.G. L. c. 184 § 34 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 Value: The difference between the Fair Market Value and the Fair Market Agricultural Land Value as determined by the appraisal obtained by the Department pursuant to 330 CMR 22.06(2)(e).

Bargain Sale: A real estate transaction in which the landowner donates part of the value of the APR by accepting a purchase price less than the appraised value of the APR.

Department: Massachusetts Department of Agricultural Resources

Local Match: A cash or in-kind contribution towards the acquisition of an APR. The source of the match can come from any combination of the following sources: a non-state or federal entity such as a municipality, land trust or other non-profit organization, or non-government organization, or a Bargain Sale from the landowner.

Open Farmland: The uses of land enumerated in M.G.L. c. 61A, §§ 1 and 2, excluding land that is forested.

Prime and/or State Important Soils: Soils identified by the U.S. Department of Agriculture as prime farmland or farmland of statewide importance.


## VI. REFERENCES:

[M.G.L. Chapter 184 Section 34](#)  
[M.G.L. Chapter 20 Sections 23 & 24](#)  
[M.G.L. Chapter 61A Sections 1-5](#)  
[330 CMR 22](#)  
[301 CMR 51](#)  
[APR Local Matching Funds Policy](#)

## VII. POLICY HISTORY:

2021-10-27: ALPC voted to adopt the policy herein.  
2015-12-10: Food Policy Council accepted the Local Food Action Plan, which recommended a policy change.  
2003-08-01: ALPC voted to increase the cap policy.  
1983: Estimated year the Cap of \$10,000 per acre was established.

Approved and adopted by the Agricultural Lands Preservation Committee at a duly authorized public meeting on October 27, 2021.

  
\_\_\_\_\_  
John Lebeaux  
Commissioner  
Date: 4/8/2022



AGRICULTURAL PRESERVATION RESTRICTION (APR)

TRAINING, GRANTS & FUNDING

Training

MDAR offers training for beginning and experienced farmers in Massachusetts. Two current courses include:

- **Exploring the Small Farm Dream** – a course for those thinking about or in the planning stages of starting their own farm to generate income
- **Growing Your Farm Business** – a planning course to help established farmers develop a business plan and financial projections for their farm business

More information is available at [www.mass.gov/service-details/agricultural-business-training-program-abtp](http://www.mass.gov/service-details/agricultural-business-training-program-abtp).

Technical Assistance

Technical assistance is available to all farms including APR farms. Contact the appropriate staff listed for assistance.

Funding

All MDAR grants and funding programs require an application and are subject to available funding. The asterisk (\*) notes two grants that are only available for APR farms. All other funding programs are available to APR and non-APR farms except the Farm Viability Enhancement Program\*\*. Find complete descriptions and updates at [www.mass.gov/apr](http://www.mass.gov/apr) at "Agricultural Grants and Financial Assistance".

APR IMPROVEMENT PROGRAM (AIP)\*

Business planning assistance and grants for infrastructure improvements to help sustain active commercial farming on land already protected by the APR Program

Diego.Irizarry-Gerould@mass.gov  
857.248.1671

AG-ENERGY GRANT

Projects for renewable energy or energy efficiency

Gerald.Palano@mass.gov  
617.626.1706

AGRICULTURAL CLIMATE RESILIENCE & EFFICIENCIES (ACRE)

Climate/economic resilience, and MA Food Plan projects

Laura.Maul@mass.gov 617.626.1739

AGRICULTURAL COMPOSTING IMPROVEMENT PROGRAM

Assistance with agricultural composting management

Sean.Bowen@mass.gov  
617.626.1724

AGRICULTURAL ENVIRONMENTAL ENHANCEMENT (AEEP)

Conservation practices that prevent direct impacts on water quality, and ensure efficient use of water

Laura.Maul@mass.gov  
617.626.1739

AGRICULTURAL FOOD SAFETY IMPROVEMENT PROGRAM (AFSIP)

Supports agricultural operation efforts 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 electricity and natural gas bills for agriculture-eligible entities

Joao.Tavares@mass.gov  
617.626.1719

# TRAINING, GRANTS & FUNDING

## FARM VIABILITY ENHANCEMENT PROGRAM (FVEP)\*\*

*For non-APR farmer technical and business planning assistance to expand, upgrade and modernize existing operations*

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 6 years in business*

Jessica.Camp@mass.gov  
617.823.0871

## ORGANIC COST SHARE

*Reimburses certified organic farmers and food processors up to 75% of organic certification costs*

Keri.Cornman@mass.gov  
617.626.1777

## STATE-OWNED FARMLAND LICENSING

*Land can be licensed for 5-year periods to farmers for farming*

Barbara.Hopson@mass.gov  
413.726.2003

## STEWARDSHIP ASSISTANCE AND RESTORATION ON APRS PROGRAM (SARA)\*

*Protects resources on APR properties*

Julie.Weiss@mass.gov  
617.913.5317

## Farm Viability Enhancement Program (FVEP)\*\*

This program provides business planning and technical assistance to help established farms identify strategies to increase farm viability such as: new or expanded enterprises, increased productivity, marketing, and or environmental sustainability. Participants selected to participate in the program may be offered grant funds in return for signing an agricultural covenant on the farm property to keep it in agricultural use for a 10 or 15-year term. Eligible uses of funds are: capital projects on the farm such as constructing barns, farm stands or agricultural buildings, modernizing equipment, or improving food processing capacity.

The FVEP can be a stepping stone to the APR program. It includes a temporary restriction that requires farming on the land. The FVEP is also useful for farms that do not meet APR criteria - due to soil type, farm size and other requirements - but would benefit from improvements.



## APR Improvement Program (AIP)

This MDAR program provides business planning, technical assistance, and grants to commercial farms with land that has already been protected through MDAR's Agricultural Preservation Restriction (APR) Program to help sustain active commercial farming on the land.

Grants are provided on a cost reimbursement basis, for capital infrastructure improvements on the farm identified through the AIP planning process. Last year, grants awarded ranged from \$60,000 - \$120,000, with a 25% required match. Please check the current Request for Response, which should be available on the MDAR website in the coming weeks, for current program details including eligibility requirements, grant levels and match requirements, timeline, and a current application. A copy can also be mailed to you upon request.

Examples of uses of grant funds include new or improved agricultural buildings, such as barns, livestock housing, farmstands and processing facilities; or resource improvements, such as wells, establishing perennial crops, or fencing.

The program also provides additional technical assistance in identified areas of need such as family succession, marketing, or financial tracking to help increase farm viability. To date, 106 APR farms have benefited from AIP, receiving a total of \$7,425,000 in grant funds and \$591,503 in technical and business assistance.

**For more information, please visit <https://www.mass.gov/service-details/apr-improvement-program-aip> or contact Diego Irizarry-Gerould at [Diego.Irizarry-Gerould@mass.gov](mailto:Diego.Irizarry-Gerould@mass.gov) or 857-248-1671**



*Dick's Market Garden is a 2<sup>nd</sup> generation family farm on 260 acres in Lunenburg, MA that grows vegetables, fruit, and flowers for retail sale at their farm store and multiple farmers markets throughout eastern Massachusetts. In fiscal year 2019, owner Stephen Violette participated in the APR Improvement Program (AIP) to address their need to increase the efficiency and food safety of their wash-pack operations. The farm had been washing and packing a high volume of produce in a cramped open-air wash area. Violette received technical and business planning assistance as well as a \$100,000 AIP grant towards the construction of a new 1,800 square foot wash-pack and storage facility.*

*Participation in AIP helped Dick's Market Garden achieve their goal of a produce washing facility that meets the standards of both the Food Safety Modernization Act (FSMA) and the Commonwealth Quality Program (CQP) certification. The new structure allows the farm to efficiently process, cool, and store produce.*

*Dick's Market Garden also received a \$25,000 Agricultural Food Safety Improvement Program grant from MDAR in fiscal year 2019 for furnishing the inside of the structure with compliant equipment, including a Brush Washer, Rinse Conveyor, and stainless steel sinks and washing surfaces.*

# Stewardship Assistance and Restoration on APRs Program (SARA)

The Stewardship Assistance and Restoration on APRs (SARA) helps resolve stewardship issues caused by a prior owner to restore active commercial farming on land that has already been protected through the Department's Agricultural Preservation Restriction (APR) Program. Funds may be used for materials and contracted labor or equipment rental costs to clear or reclaim inactive fields that are out of production at no fault of the current owner. Examples of eligible projects include clearing vegetation, stabilizing soil loss, correcting drainage issues, cutting back grown in field edges, or reseeding or applying soil or crop amendments to inactive cropland or pastureland in order to bring it back into production. Grant funds of up to \$35,000 are available on a cost reimbursement basis with a 15% match of total project costs required by the farm participant.

<https://www.mass.gov/service-details/stewardship-assistance-and-restoration-on-aprs-sara>

**Contact:** Julie Weiss SARA Grant Coordinator [Julie.Weiss@mass.gov](mailto:Julie.Weiss@mass.gov) Cell: (617) 913-5317

## Statistics

Completed through FY 2022

- ▶ 48 Awards Granted
- ▶ \$905,019 in Funding
- ▶ At least 130 Acres Pasture or Cropland Restored
- ▶ At least 4.0 Miles of Farm Access Roads Restored

### Project Eligibility

- ▶ Clear/Reclaim Inactive Fields
- ▶ Pulling Rocks/Stumps
- ▶ Applying Soil Amendments
- ▶ Clean Up Debris
- ▶ Restore Farm Access Roads
- ▶ Address Drainage Issues
- ▶ Restore Resources Affected by Natural Disasters
- ▶ Restore Resources Affected by Third Party

### Allowable Expenses

- ▶ Contracted Labor
- ▶ Equipment Rental
- ▶ Purchase of Necessary Materials