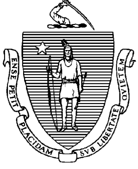
THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



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HEMP AND MARIJUANA PRODUCTION ON APR AND FARM VIABILITY PROTECTED LANDS

INTRODUCTION

Since the 40th 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.

<u>HEMP AND APR LAND</u>

- 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 **<u>must</u>** 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.