**TO:** Joel Barrera, Deputy Chief of Staff, Cabinet Relations

Alexandra Cahill, Chief of Staff, Executive Office of Energy & Environmental Affairs

John Lebeaux, Commissioner, Department of Agricultural Resources

**FROM:** Winton Pitcoff, Director, Massachusetts Food System Collaborative

**RE:** Regulatory Review / Food Plan

Below is a list of regulatory items compiled from the December 2015 Massachusetts Local Food Action Plan, for consideration in the statewide regulatory review process. The Plan was developed through a comprehensive engagement process with more than 1,500 stakeholders reviewing policy issues related to the Commonwealth’s food system. The Plan offers many policy, budgetary, and strategic recommendations toward a set of goals developed by the Massachusetts Food Policy Council, with the ultimate goal being a sustainable, resilient, and equitable food system.

This list is being submitted on behalf of the Massachusetts Food System Collaborative, a network of food system stakeholder organizations working to promote, facilitate and monitor implementation of the Plan.

These are items from the Plan that mention particular regulations or regulatory issues. There are many other items throughout the Plan that, as stakeholders and other interested players pursue their implementation, may well raise additional regulatory issues.

**Department of Agricultural Resources**

Land

Increase the APR program’s current per-acre cap.

Task the ALPC with reviewing current APR program policies related to housing, farm infrastructure, the 5% impervious surface limit, and limits on renewable energy production if sited away from productive agricultural lands, and recommending changes as appropriate.

Allow pre-acquisitions of farmland through the ALE and APR program.

Eliminate the requirement that land be in active agricultural use for 2 years to be eligible for the APR program.

Reduce Chapter 61A minimum requirement to encourage farming on smaller parcels in all communities – urban, suburban, and rural.

Establish a task force with MDAR, ALPC and stakeholder representation to recommend revisions to APR policy around housing on future APRs, including ways to keep existing farmhouses with protected parcels.

Ensure that commercial agriculture is viable on land protected with state-approved Conservation Restrictions, and allow more landowners to donate Agricultural Preservation Restrictions.

Develop a more flexible Conservation Restriction that allows for commercial agriculture in situations where land being protected is suitable for agriculture. Educate land use attorneys and land trust staff on these terms and conditions.

Change MDAR policy to accept donated APRs on farmland that does not meet eligibility requirements for restrictions purchased through the program.

Support the dual use of land for agriculture and renewable energy systems where compatible for lands with an agricultural preservation restriction or enrolled in Chapter 61A. For example, solar panels located high off the ground and spread apart can be compatible with farming operations, including animal grazing.

Explore an exemption for community energy projects that provide energy to multiple users. Lands under Agricultural Preservation Restrictions (APRs), Chapter 61A, and those that qualify for the agricultural zoning exemption under MGL chapter 40A3 could support additional, larger renewable energy projects so long as the project is sited off of prime farm soils and doesn’t negatively impact future farm productivity.

Ensure a consistent and predictable approach to siting energy facilities on farmland by state agencies. State and quasi-state agencies that regulate and support the energy and farm sectors (Massachusetts Department of Energy Resources (DOER), MDAR, DEP, and Massachusetts Clean Energy Center (MassCEC) should hold technical sessions that include a wide array of stakeholders, including farmers, municipalities, and developers to reconcile conflicting approaches.

Farming

Review all state programs, regulations, and laws relevant to farming that include a definition of farming or agriculture and, where possible, establish common definitions as the basis for a consistent and understandable set of rules for farmers to follow.

Engage farmers and other relevant stakeholders in a review of nutrient management regulations; update as needed.

Bring together farmers, plumbers, and regulators to develop a suitable agricultural plumbing code.

Adapt building codes and regulations to promote utilization of vacant industrial buildings for hydroponic growing and other food production.

Develop regulations to facilitate dairy farms’ capacity to sell raw milk and related value-added products direct to consumers while ensuring adequate oversight to protect safety and consumer confidence.

Develop a system of checks and balances to support appropriate engagement of municipal boards of health and conservations commissions in agricultural issues and reduce unwarranted or unjustified regulations.

Require and publicly fund training of local and state regulators in agriculture and food issues.

Address outdated and confusing regulations concerning agricultural labor to better meet the needs of Massachusetts farm businesses while protecting the well-being and security of agricultural workers.

Form a committee to review all state laws and regulations relative to livestock processing, as well as the Commonwealth’s current livestock slaughter and processing capacity, and make recommendations for improvements. The committee should include state health and agricultural officials, livestock producers, UMass Extension professionals, and representatives of existing livestock processing facilities.

Create a sliding fee for livestock processing permits based on the number of animals processed.

Food Access

Modify food procurement contract language to utilize at least 10% of MEFAP dollars to purchase locally produced, healthy food.

**Department of Energy Resources**

Expand and strengthen Executive Order 193 and the Massachusetts Environmental Policy Act (MEPA). Convene a working group to develop recommendations for doing so, including how to address renewable alternative energy (e.g. solar) development on agricultural land.

Review state policies and incentives around renewable alternative energy (e.g. solar) development, to better harmonize state goals around renewable energy development and natural resource protection, including farmland.

Analyze impact of EEA’s 2013 policy changes related to solar incentives, and develop recommendations (in conjunction with recommendations developed under Action 3.4.2) to further incentivize commercial solar development on existing infrastructure or on lands with marginal natural resource value.

**Department of Environmental Protection**

Update the state Farming in Wetlands guide (last updated in 1996), and include new examples of situations involving the Wetlands Protection Act agricultural exemption. Provide training to farmers and Agriculture Commissions on the guide and the agricultural exemption. Require Conservation Commission members to take a training course on the agriculture exemption.

Explore expanding the statewide Commercial Food Waste Disposal Ban to phase in smaller food waste generators and residential food waste over time.

Clarify expiration/sell by dates, and reduce the number of foods that require a date label, using information from Harvard Law School’s Food Law and Policy Clinic.[1]

Increase education and consistent implementation of public health regulations regarding food donation.

Consider changes to Mass DEP’s Groundwater Discharge Permitting regulations that would exempt farms from needing a groundwater discharge permit for farm waste provided they adhere to MDAR and NRCS best practices.

Mass DEP and MDAR should continue to implement the “Regulatory Certainty” effort.

Raise the net metering cap for investor-owned utilities to increase the potential for cleaner, local energy generation.

**Division of Marine Fisheries**

Perform a review of regulations related to the seafood supply chain, and recommend reformation of those that are overly-restrictive or outdated.

Support and collaborate with the Division of Marine Fisheries’ Shellfish advisory panel to establish an interagency committee to review and update shellfish regulations and policies. The committee should also be informed by the Interstate Shellfish Sanitation Conference.

**Department of Public Health**

Create clear expectations and interpretation of the food code, and a mandatory public process for issuing DPH and local BOH regulations so that all stakeholders are involved in the process of crafting and reviewing proposed regulations prior to implementation.

Require training for all boards of health agents on the Massachusetts Food Code, food safety, best practices, and FSMA, conducted by DPH, MA Health Officers Association, and the MA Association of Health Boards.

Develop a publicly-available inventory of food processing-related regulations that identifies relevant regulations and codes by business types. This could be in the form of a searchable digital interface.

Develop streamlined regulatory processes for multi-use facilities, such as shared kitchens and food trucks.

Review and clarify the language of Good Manufacturing Practices regulations, which are currently vague.

Maintain an updated food code in Massachusetts. Establish a process by which the State will stay current with FDA Food Code. Promulgate new information on Food Code updates to local Boards of Health.

Expand training and support services for safe food handling and processing across state agencies and all levels of government.

Ensure continued support and funding for the Massachusetts Public Health Inspector Training that trains local regulators to uniformly enforce food regulations, and require that local regulators participate.

Set standard to review science-based health regulations every five years.

Adopt MDAR’s Commonwealth Quality Program as Massachusetts’ farm food safety standard to meet all federal requirements.

**Multiple agencies that hold land**

Create standard policies around farming state-owned land, allowing normal agricultural practices so long as they are not inconsistent with mission of the controlling agency and there is recognition of any restrictions on the parcel in question.

Open state-owned woodlands to maple syrup production.

Change state law or policy to enable state agencies to use leases longer than the current 5-year maximum licenses on state-owned land.

Change state law to allow state agencies to retain and reinvest the revenues they receive from leasing farmland to farmers. Develop guidelines around lease fees.

Strengthen state farmland loss mitigation and land disposition policies.

**Multiple agencies that purchase food**

Develop and share standardized contract language for all state agencies and municipal purchasers to enable greater purchasing of Massachusetts-produced food products.

Mandate minimum local food procurement for state universities and colleges, in addition to state agencies, and provide adequate reporting requirements and staffing for enforcement.

Increase purchase allowance for local foods for all state colleges, universities, day-care providers, and K-12 schools.

Establish a tracking mechanism and reporting requirement for local food purchasing by public institutions.

Establish benchmarks for local food procurement by state institutions. Consider modeling these benchmarks on already existing benchmark goals, like the Massachusetts Executive Branch’s targets for purchases from minority- and women-owned businesses.

**All agencies: Regulatory practices**

As new regulations or revisions to existing ones are considered, regulators should work directly with stakeholders, including providers of technical, educational, and financial assistance, to produce a consensus draft of new regulations prior to their release for review by the general public. Regulators and stakeholders should work together to craft regulations that are based on farming practices that are currently achievable; identify how these practices can be improved over time; and develop processes for making such improvements, such as allowing for extended phase-in periods, and providing education and technical assistance.

Ensure that regulatory processes are transparent; that they operate in a timely and predictable fashion; and that they are appropriate to the size of the farm being regulated.

Train and manage regulators to enforce regulations consistently, and to offer technical assistance to farmers so that compliance concerns can be remedied quickly. Ensure that regulators who conduct on-site farm inspections are well-versed in farming issues and are able to understand and address specific concerns found on one farm in a broader context.

Review regulations at least every 10 years to ensure that the standards they set match the reality of current agricultural practices and needs and other concerns.

Facilitate improved communication among agencies and stakeholders with a focus on balancing regulations and farm viability.

Ensure that food processors are offered support when they seek support related to regulations. Provide resources, not penalties, as first line of action.