From: Howe, Steve [showe@dauphinc.org]
Sent: Monday, October 30, 2000 12:08 PM
To: irrc@irrc.state.pa.us
Cc: jjewett@irrc.state.pa.us; mcginnis@planetcable.net; Howe, Steve
Subject: Clean & Green

Ratio Explanation - IRRC 10-30...

At your request the attached is offered...

<<Ratio Explanation - IRRC 10-30-2000.doc>>

Any questions, contact me.

Steve H.

ASSESSORS' ASSOCIATION OF PENNSYLVANIA

Clean and Green Committee
Mary Lou McGinnis, CPE, Chairman
Phone: 717-485-3208
E-Mail: mcginnis@planetcable.net
17 North Front Street
Harrisburg, PA 17101-1624

October 30, 2000 Original: 2141

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street
Harrisburg, PA 17101

VIA e-mail: irrc@irrc.state.pa.us

RE: Clean and Green Regulations
Regulation Number 2-133

Dear Executive Director Nyce:

In response to an e-mail request from John Jewett of your staff, the following definitions are offered with explanations as to the application:

Base Year: 72 P.S. § 5020-102 Definitions: "shall mean the year upon which real property market values are based for the most recent county-wide revision of assessment of real property, or other prior year upon which the market value of all real property of the county is based. Real property market values shall be equalized within the county and any changes by the board of revision of taxes or board for the assessment and revision of taxes shall be expressed in terms of such base year values."

Established Predetermined Ratio: 72 P.S. § 5020-102 Definitions: "shall mean the ratio of assessed value to market value established by the Board of County Commissioners and uniformly applied in determining assessed value in any year."

Common Level Ratio: 72 P.S. § 5010-102 Definitions: "shall mean the ratio of assessed value to current market value used generally in the county as last determined by the State Tax Equalization Board pursuant to the Act of June 26, 1947 (P.L. 1046, No. 447), referred to as the State Tax Equalization Board Law."

Common Level Ratio Application: **Amendments to the Second Class A and Third Class County Assessment Law, 72 P.S. § 5010 5349 (d.2)** "The board, after determining the market value of the property, shall then apply the established predetermined ratio to such value unless the common level ratio published by the State Tax Equalization Board on or before July 1 of the year prior to the tax year on appeal before the board varies by more than fifteen percent from the established predetermined ratio, in which case the board shall apply that same common level ratio to the market value of the property."
Amendments to the General County Assessment Law, 72 P.S. § 5020-511(b)(c) "The county commissioners, acting as a board of revision of taxes, or the board for the assessment and revision of taxes, after determining the market value of the property, shall

then apply the established predetermined ratio to such value unless the common level ratio published by the State Tax Equalization Board on or before July 1 of the year prior to the tax year being appealed to the county commissioners, acting as a board of revision of taxes, or the board for the assessment and revision of taxes varies by more than fifteen per centum (15%) from the established predetermined ratio, in which case the commissioners, acting as a board of revision of taxes, or a board for the assessment and revision of taxes, shall apply that same common level ratio to the market value of the property."

In routine practice by the assessor, the above is utilized in the appeal of real property by a property owner to a board of assessment appeals. When a property assessment varies by more than 15% from the established predetermined (established by the county) ratio, the board is obligated to 1) find the current market value of the property and 2) apply the common level ratio of assessment as determined by the STEB to establish the assessment of the real property under appeal.

Clean and Green properties are a constitutionally created, separate, class of property. The above process by the STEB utilizes the sale of ***all*** properties to determine the common level ratio by county. In the opinion of our AAP committee, this is mixing apples and oranges. You cannot utilize the sale of all property to determine the common level ratio of assessment for this **separate** constitutionally created class of property. By utilizing this methodology in application of the common level ratio (as determined by STEB), in our opinion, violates the constitutional requirement that all ***classes*** of property be assessed the same, or by the same methodology. If the assessor were given the option as described in section 137b.33 and/or 137b.71(e), using the base year concept would require the development of a separate common level ratio by STEB. If annual reassessment is mandated, the application of a common level ratio is mute; the assessment would never vary by 15% from the market value, as the use value determined by the Department of Agriculture would be utilized in this annual reassessment process.

If you have questions or would like to discuss this further, please contact me.

Very truly yours,

Mary Lou McGinnis

Mary Lou McGinnis, CPE

Cc: John H. Jewett, via e-mail: jjewett@irrc.state.pa.us
Steven L. Howe, CPE

IRRC

From: Howe, Steve [showe@dauphinc.org]
Sent: Monday, October 23, 2000 12:49 PM
To: irrc@irrc.state.pa.us
Cc: jjewett@irrc.state.pa.us; dwsmith@state.pa.us; mcginnis@planetcable.net
Subject: Clean and Green Regulations, Regulation number 2-133

Original: 2141

Response to
ndepent Reg. Revi...

Attached are the comments requested from the Assessors' Association of PA,
Clean and Green Committee.

Any comments or questions, get back to us ASAP.

Thanks...

Steve Howe

<<Response to Indepent Reg. Review Comm., 10-23-2000.doc>>

ASSESSORS' ASSOCIATION OF PENNSYLVANIA

Clean and Green Committee
Mary Lou McGinnis, CPE, Chairman
Phone: 717-485-3208
E-Mail: mcginnis@planetcable.net

17 North Front Street
Harrisburg, PA 17101-1624

Original: 2141

October 23, 2000

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

VIA E-Mail: irrc@irrc.state.pa.us

RE: Clean and Green Regulations
Regulation Number 2-133

Dear Executive Director Nyce:

On behalf of our association, thank you for the opportunity to comment on the proposed Clean and Green Regulations, known as regulation number 2-133.

In our meeting with your staff last Friday, several points of concern were discussed. In particular, the method by which roll-back interest is calculated (either simple or compound interest), and the creation of "escrow" accounts for landowners who may wish to minimize roll-back tax liability by voluntarily paying taxes in the amount the landowner would be obligated to pay were the land not preferentially assessed.

1. Interest Calculation: the ***method*** by which the roll-back interest is calculated is not of major concern to our association, but only that the method is defined so as to maintain uniformity across the Commonwealth by the assessors responsible for program administration.

2. The assessor is not a tax levying or collecting authority. Local tax collectors are municipally elected and responsible for the collection of taxes as political subdivision are responsible for the setting of millage rates. Our association does not believe its' members should be made responsible for the 1) projecting the tax levy or 2) the collection and maintenance of such escrow of that levy.

Three other topics of discussion arose out of our conversation that we believe are also important and need clarification.

1. Section 137b.33 seems to be in conflict with Section 137b.71(e). In § 137b.33(b), the assessor is given the option to (1) "calculate the preferential assessment of all of the enrolled land in the county each year or (2) establish a base year for preferential

assessment of enrolled land". In §137b.71(e) "a county assessor shall, at least on an annual basis, update property record cards, assessment rolls and any other appropriate records to reflect all changes in the fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land". It seems to us that 137b.33 gives options where 137b.71 takes away any option. For consistency of application, should the assessor be given "options"? It would seem that 137b.33(c-f) negates any "options" given in 137b.33(a & b). In order to be in compliance with 72 P.S. § 5490.5(1) and if regulations 137b.33(c-f) remain unchanged, the assessor has no option and the annual "reassessment" of clean and green enrolled property would be legislatively mandated by these Department of Agriculture regulations. The goal of our association is education of the membership...however, in order to maintain consistency throughout the Commonwealth, the regulation must give clear direction for practice.

2. With regard to § 137.32, and 72 P.S. § 5490.4(b)...it should be made perfectly clear and concise that there is no voluntary opting out of the clean and green program as may be implied in § 137.32. It is clear in 72 P.S. § 5490.4(b) that "Preferential assessment shall continue under the initial application...until land use change takes place.". The AAP supports the position that there is no ability for a landowner to "opt" out.

3. Further clarification should be made to the term "rural enterprise". This has become the "catch all" for the enrollee not to violate the provisions of the act. Our concern is that the original intent of the Act was to provide tax relief for the "farmers", and permit the sale of commodities grown on the farm at a farm, <u>**not**</u> for the benefit of ***commercial enterprise***. As an example, a commercial food processing company purchases an apple farm (for example 50 acres) next to a processing plant they already own on a two-acre tract. In our view, according to the new regulations, both parcels qualify for the preferential assessment program and the processing plant would be assessed, now at its contributory value, not as a commercial enterprise.

Again, thank you for your willingness to allow the AAP to have input into this very important process, one that effects our entire association and the property owners and taxpayers of the Commonwealth. If you desire, we remain available to discuss this further.

Very truly yours,

Mary Lou McGinnis

Mary Lou McGinnis, CPE
Chief Assessor, Fulton County
Clean & Green Committee Chairman and AAP President Elect

Cc: John H. Jewett, Regulatory Analyst, via e-mail: jjewett@irrc.state.pa.us
Dwight Smith, Esquire, Department of Agriculture via e-mail: <u>dwsmith@state.pa.us</u>
Steven L. Howe, CPE via e-mail: showe@dauphinc.org

IRRC

From: Michael Jacobs [mjacobs@psats.org]
Sent: Monday, October 16, 2000 12:09 PM
To: irrc@irrc.state.pa.us
Cc: jjewett@irrc.state.pa.us
Subject: Comments on Proposed Regulation #2-133 (#2141)

Mr. Robert Nyce,   Original: 2141

This email is in response to Mr. Jewett's correspondence to Elam Herr, Director of Legislation for the Pennsylvania State Association of Township Supervisors. Mr. Jewett requested a copy of our resolution dealing with Act 156 of 1998 and the proposed regulation #2-133 (#2141).

The following resolution was passed at our annual convention in April 2000. It was proposed by the Centre County delegation.

00-66 RESOLVED, that PSATS seek legislation to delay the implementation of regulations for Act 156 of 1998, and further, to require an examination of Act 156 of 1998 to determine the financial effects of the act on municipalities and to make necessary changes to relieve any financial strain on them.

If you have any questions or wish to discuss this matter further, please do not hesitate to contact me. Thank you for your time and consideration of this matter.

Michael Jacobs
Legislative Analyst
mjacobs@psats.org

REVIEW COMMISSION
2000 OCT 16 PM 1:15
RECEIVED

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WALTER P. EELLS
ANDREW D. H. RAU
MIGUEL D. PENA*
KARIM P. HUSAIN*

*LL.M. IN TAXATION

ROBERT S. GAWTHROP, JR.
(1940-1995)

ROBERT S. GAWTHROP
(1904-1915: 1933-1936)
THOMAS C. GAWTHROP
(1932-1957)
W. EDWARD GREENWOOD
(1943-1982)

gghlaw@gawthrop.com
www.gawthrop.com

October 11, 2000

Original: 2141

Department of Agriculture
Attention: Raymond C. Pickering
Bureau of Farmland Protection
2301 North Cameron Street
Harrisburg, PA 17110-9408

Re: **Proposed Rule Making, Department of Agriculture**
7 PA Code, Chapters 137, 137A and 137B
Preferential Assessment of Farmland, etc.

Dear Ray:

I have just had an opportunity to review the new proposed Clean and Green regulations and have the following comments and questions. Section 137B.52, Duration of Preferential Assessment, Subparagraph b - I do not understand the reason that an owner of enrolled land may not terminate or waive the preferential assessment of enrolled lands. If an owner is preparing to convey his land for a non-authorized use for tax planning purposes, it is often necessary to establish a landowner's liability for deferred taxes. In other words, a subsequent owner controls when the roll-back takes place.

A companion issue is, who is intended to be responsible for the roll-back taxes, the owner at the time that the use is changed, or the prior owner, or is it to be apportioned? See section 137B.51b. Example 3 does not indicate which "landowner" is liable for the payment of roll-back taxes.

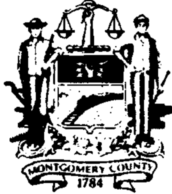
Thank you for your consideration of the foregoing.

Very truly yours,

John S. Halsted

RECEIVED
OCT 13 2000
FARMLAND
PROTECTION

JSH/cb



BOARD OF ASSESSMENT APPEALS

OFFICE - ONE MONTGOMERY PLAZA - SUITE 301

PHONE: 610-278-3761
FAX: 610-278-3560

COUNTY OF MONTGOMERY

COURT HOUSE
P.O. BOX 311
NORRISTOWN, PENNSYLVANIA
19404-0311

Original: 2141

September 29, 2000

RECEIVED
2000 OCT -3 AM 8:34
REGULATORY REVIEW COMMISSION

Department of Agriculture
c/o Ray Pickering
404 Agriculture Building
2301 North Cameron Street
Harrisburg, PA 17101

RE: Proposed Amendments to Clean and Green Regulations

Dear Mr. Pickering:

Our Solicitor and I reviewed the proposed amendments to the Clean and Green Regulations that appeared in the September 2, 2000 issue of the Pennsylvania Bulletin. Enclosed are our comments on the proposed amendments. Thank you for your work on this important issue. If we can be of assistance, please do not hesitate to contact us.

Very truly yours,

Thomas N. Brauner,
Chief Assessor

Joan M. Righter, Esquire
Solicitor

cc: Independent Regulatory Review Commission
Douglas Hill, County Commissioners Association

September 29, 2000

Original: 2141

Comments on the Proposed Amendments to the Department of Agriculture's Regulations implementing the Pennsylvania Farmland and Forest Land Assessment Act (Clean and Green)

Montgomery County Board of Assessment has the following concerns regarding the proposed amendments to the Regulations:

§137b.13 ***Agricultural reserve.***
Section 3 of the Act requires only that an owner have ten acres of land.
This section appears to add additional requirements to qualify for placement in the agricultural reserve category beyond what is required by the Act. This definition appears to require assessors to exclude wetlands and other water areas from the acreage calculations. By way of example, a property containing 3 acres of wetlands and a total of 12 acres of land would not qualify under this regulation. This does not comply with the Act.

§137b.24 ***Ineligible land may appear on an application.***
Although the regulation itself makes clear that the owner must specify the boundaries and acreage of the ineligible land, the example is confusing. The example states "the county will not require the 10-acre tract be surveyed-out or deeded as a prerequisite". In some cases, a survey may be necessary for an owner to specify the boundaries of the ineligible land. We suggest that the example be clarified to eliminate the reference to a tract being "surveyed-out" and re-worded to say "the county can not require the 10-acre tract to be deeded-out".

§137b.52(b) ***No termination of preferential assessment without change of use.***
This regulation contradicts the Act itself. Section 5.1 of the Act (§5490.5a) does not authorize rollback taxes solely in situations where there is a change in use. It provides a catch-all exception for situations where "for any other reason the land is removed from a land use category under section 3" that roll-back taxes are to be levied. Participation in Clean and Green is a covenant. In any other covenant/contract, one party may voluntarily breach the covenant and bear the consequences. There should be a provision to allow the owner of a property enrolled in Act 319 to voluntarily request termination from Clean and Green. There is nothing in the Act to preclude this.

The clause referring to voluntary payment of taxes to minimize rollback tax liability should be eliminated. We can't imagine anyone enrolling in the act that would in the future voluntarily pay more tax than he has to under the program. The sole reason to enroll in the act is to reduce the tax liability. More importantly, this poses an administrative nightmare for both tax collectors and assessment offices. The tax collector levies taxes based on the preferential assessment of the property. If the tax collector receives more taxes than he/she should, how would the tax collector account for the over

payment of taxes. The county treasurer and controller in Montgomery County audit the tax collectors' books to make sure the county receives the appropriate revenue. This may lead to an investigation of the tax collector for inappropriate use of taxpayer's money. Also if in the future a rollback has to be calculated, how does the assessor know what taxes are paid? This would be particularly difficult if a new tax collector is hired and the old records are not retained. The tax collection records are legally only maintained for two years.

§137b.52(e)(2) ***Termination of preferential assessment by county.***
To include this subsection that states that the county is to terminate preferential assessment (in cases of an illegal split-off) on all contiguous land enrolled under the application is not only confusing but it is also incorrect. It is inconsistent with Section 4 of the Act (§5490.4(f)(2)), Section 6 of the Act (§5490.6), and §137b.52(c) of the regulations that provide in cases of an illegal split-off, the remaining land that continues to meet the minimum requirements of Section 3 of the Act is to continue receiving preferential assessment under an amended application, subject to roll-back taxes for the current year plus six prior years.

This subsection should be deleted. We also suggest clarifying that an amended application should be prepared for the remaining acreage for the following year.

RECEIVED
2000 SEP 28 PM 2:07
REVIEW COMMISSION

Comments Offered by

Pennsylvania Farm Bureau

Original: 2141

to the

Pennsylvania Department of Agriculture

Relative to the Proposed Rulemaking

Governing Preferential Assessment of Farmland

and Forest Land under the Clean and Green Act

Contained in the September 2, 2000 Issue

of the *Pennsylvania Bulletin*

Pennsylvania Farm Bureau appreciates the opportunity to offer comments on the Department's proposed rulemaking on Pennsylvania's Clean and Green Act, as amended by Act 156 of 1998.[1] This proposed rulemaking is the culmination of a process in which the Department circulated previous drafts with interested parties and considered comments offered by parties in response to the previous drafts.

Many of the comments that Farm Bureau offered to these previous drafts have been incorporated in the Department's proposed rulemaking, and Farm Bureau appreciates the consideration the Department has given to our previous comments. However, we still feel there are several areas where substantive and technical amendments to the Department's proposed rulemaking are warranted and should be considered by the Department pursuant to its development of final form regulations.

Introduction.

It is important that the Department fully appreciate its role and responsibility in the context of the Clean and Green Act. The Act is not a discretionary program. All counties are required to participate in the program and provide preferential assessment to all properties whose lands qualify for such assessment under the Act. Section 11 of the Act[2] imposes upon the Department the duty to establish regulations which will ensure statewide and uniform administration by counties relative to the determination of lands eligible for preferential assessment, the interpretation of rules on authorized and

[1] Pennsylvania Farmland and Forest Land Assessment Act of 1974, *as amended*, 72 P.S. §§ 5490.1 et seq.

[2] 72 P.S. §§ 5490.11.

unauthorized uses of lands enrolled in preferential assessment, and tax consequences for uses not authorized:

> "The department shall promulgate rules and regulations **necessary to promote the efficient, uniform, Statewide administration of the act."**

The driving force behind the amendments to the Clean and Green Act enacted in Act 156 of 1998 was the lack of uniformity that counties had displayed in administration of their individual Clean and Green programs:

> "A strong consensus emerged from the [Joint State Government Commission] staff's discussions with the interested parties that the [Clean and Green] Act is not being consistently administered. This point was documented by a report written by the [Pennsylvania Bar Association] Agricultural Law Committee, based upon a survey of the county assessors throughout the State, which showed wide variations in the manner in which the counties handled such issues as eligibility, deed requirements, separation and split-offs. . . The assessors said that the department does not give consistent and dependable advice, and as the regulations state, it does not assume administrative responsibility for enforcing its interpretations . . . As part of the Governor's recent initiative to review all State regulations, the department noted that the county assessors favor a revision of current regulations to comply with the mandate of section 11."

Clean and Green, Staff Analysis of the Pennsylvania Farmland and Forest Land Assessment Act of 1974, Joint State Government Commission, April 1997, pp. 57-58.

The numerous amendments enacted in Act 156 provided specific directives to counties' administration of its Clean and Green program, many of which specifically directed counties to act or prohibited counties from acting in the course of their administration of the program.

Farm Bureau believes the enactment of Act 156 reinforces the legislature's intent that the Department promulgate regulations that will best ensure uniform administrative rules among counties statewide, will give counties clear and specific guidance on how

the Clean and Green program must be administered, and will limit the discretion of counties to interpret the Act and regulations pursuant to counties' administration of the program It is this principle that Farm Bureau believes the Department must apply in the course of its review of the provisions proposed in its rulemaking and its consideration of the following comments that Farm Bureau offers.

Farm Bureau Recommendations for Substantive Changes to Proposed Rulemaking.

Farm Bureau offers the following recommendations for substantive changes to the proposed rulemaking:

1. § 137b.84 - Effects of split-off that does not comply with section 6(a.1)(1)(i) of the Act.

We continue to believe the last sentences of Examples 1 and 2 of this section, which state that the land remaining after split-off occurs "continues to receive preferential assessment" after occurrence of a split-off not authorized under section , are not consistent with the statutory provisions of the Clean and Green Act. Section 4(b) of the Act[3] provides that:

> "Preferential assessment shall continue under the initial application, or an application amended under subsection (f), **until land use change takes place.**"

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[3] 72 P.S. §§ 5490.4(b).

And Section 6(a.1)(3) of the Act provides that:

> "**The split-off of land meeting the requirements of paragraph (1)**[4] shall not invalidate the preferential assessment on any land retained by the landowner which continues to meet the provisions of section 3."

When read together, these statutory provisions clearly imply that the portion of enrolled land that remains after a split-off occurs **only** continues to receive preferential assessment if the split-off meets the restrictions and requirements prescribed in Section 6(a.1)(1)(i). For any split-off that does not meet the restrictions and requirements of Section 6(a.1)(1) and triggers roll-back taxes on both the split-off portion and the remainder, preferential assessment on the entire portion of enrolled land should terminate, and remainder should no longer receive the benefit of preferential assessment unless the landowner reapplies.[5]

As drafted, the last sentences of Examples 1 and 2 are likewise not consistent with the provisions of proposed § 137b.52(e)(2), which states:

> "(e) Termination of preferential assessment by county. The maximum area with respect to which a county may terminate preferential assessment may not exceed:
>
> (2) In the case of a split-off that is not a condemnation and that does not meet the maximum size, use and aggregate acreage requirements in section 6(a.1)(1) of the act, **all contiguous land enrolled under the application for preferential assessment.**"

Implied in paragraph (e)(2) is that the county may terminate all contiguous land that is enrolled in the Clean and Green application for a split-off that fails to meet the

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[4] Section 6(a.1)(1) of the Act, **which includes subparagraph (i)**, the topic of § 137.84 .

[5] The statutory rules governing construction and interpretation of statutes require that statutes governing the same class of persons or things shall be construed together, if possible, as one statute. 1 Pa.C.S. § 1932. These rules also require that provisions exempting persons and property from taxation are to be strictly construed. See, 1 Pa.C.S.A. § 1928(5).

requirements of Section 6(a.1)(1)(i) of the Clean and Green Act, notwithstanding the fact that the remainder continues to be used in a manner that would otherwise be consistent the Act's requirements for preferential assessment.

For split-offs that fail to meet the requirements of Section 6(a.1)(1)(i), termination of preferential assessment of the entire contiguous portion of the owner's land and the requirement for the owner to reapply for preferential assessment of the remaining land will be a practical benefit to both the county and the landowner. Through the process of termination and reapplication, county records will be better able to identify and track the history of land transactions that have occurred on enrolled land, and county administrators and landowners of enrolled land will be better able by viewing county records to accurately analyze split-offs that comply and do not comply with Section 6(a.1)(1)(i) of the Act and determine roll-back tax effects of split-offs that do not comply.

We would therefore recommend the last sentence of Examples 1 and 2 of proposed § 137b.84 be deleted and replaced with the following:

> "*Example 1:* . . . **Preferential assessment of the remaining 46-acre tract would also terminate; however if the tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, the owner of the tract may enroll the 46-acre tract for preferential assessment by submitting a new application for enrollment.**
>
> *Example 2:* . . . **Preferential assessment of the remaining 44-acre tract would also terminate; however if the tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, the owner of the tract may enroll the 46-acre tract for preferential assessment by submitting a new application for enrollment."**

2. § 137b.52. Duration of preferential assessment upon change in use of enrolled land to an ineligible use.

For the reasons stated above in our comments to proposed § 137b.84, we also believe that the Clean and Green Act requires the termination of all contiguous enrolled land upon a change in use to any portion of the enrolled land which will, under Section 5.1 of the Act,[6] trigger roll-back taxes on the entire portion of enrolled land, with the exception of actions of an owner of a split-off tract or separated tract that trigger roll-back taxes. The directive of Section 4(b) of the Act that preferential assessment continues until a "land use change" takes place naturally implies that preferential assessment terminates **when** a land use change has taken place. The only significant provision in the Act that addresses a "change in use" is Section 5.1, which provides:

> "If a landowner changes the use of any tract of land subject to preferential assessment under this act to one which is inconsistent with the provisions of section 3 or for any other reason the land is removed from a land use category under section 3, except for a condemnation of the land, the land so removed and the entire tract of which it was a part shall be subject to roll-back taxes plus interest on each year's roll-back tax at the rate of six percent (6%) per annum. After the first seven years of preferential assessment, the roll-back tax shall apply to the seven most recent tax years."

Historically, consistent with the rules governing statutory construction that statutes exempting persons or property from taxation are to be strictly construed[7], this provision has been interpreted in a manner that would trigger roll-back taxes to the entire contiguous area subject to preferential assessment whenever a change to an ineligible use would occur on any portion of the land receiving preferential assessment. Counties

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[6] 72 P.S. 5490.5a.

[7] See, 1 Pa.C.S.A. § 1928(5), as cited in footnote 5 above.

have not hesitated to assess roll-back taxes on the entirety of preferentially assessed land without regard to the duration that the change in use occurred or the size of the area that is actually affected by the change in use.

We believe the proposed regulations do not give sufficiently clear guidance on the effect a change in use of one portion of enrolled land that triggers roll-back taxes on all of such land will have in terminating preferential assessment of the "remainder" that is not directly affected by the land use change. Especially in light of the language contained in Examples 1 and 2 of proposed §137b.84, which suggests that no split-off (including a split-off that triggers roll-back taxes on the entire portion of enrolled land) will terminate preferential assessment of the remainder, § 137b.52 may well be read in a manner that will not terminate preferential assessment of the area of the land where the change in use did not specifically occur, even though the landowner is being assessed roll-back taxes and interest on such area.

Indeed, the language contained in proposed § 137b.52(c) and (d) suggests that such a reading is intended by the Department. Subsection (c) states that split-offs will not terminate preferential assessment of the remainder of enrolled land unless the use of the remaining portion is changed:

> "**Split-offs**, separations and transfers under the act or this chapter **will not result in termination of preferential assessment on the land which is retained by the landowner and which continues to meet the requirements of section 3 of the act** . . ."

The qualifying language that split-offs be done "under the act or this chapter" is not helpful, since the Clean and Green Act does not prohibit the occurrence of any split-off. It only imposes tax consequences for split-offs that are not conducted in accordance

with Section 6(a.1)(1) of the Act.

Subsection (d)'s current language more strongly suggests that changes in use triggering full assessment or roll-back taxes does not terminate preferential assessment of the portion of enrolled land that has not been changed in use:

> "*Payment of roll-back taxes does not affect preferential assessment of remaining land.* The payment of roll-back taxes and interest under the act and this chapter may not result in termination of preferential assessment on the remainder of the land covered by preferential assessment."

The literal language of subsection (d) states that if a landowner changes the use of a portion of his or her land in a manner that triggers roll-back taxes on all of that land, the payment of roll-back taxes will not change the continuation of preferential assessment on the remainder of land that the landowner chooses to continue using for agricultural use, agricultural reserve or forest reserve purposes.

If the proposed regulations are intended by the Department to terminate preferential assessment of the entire contiguous area of land enrolled for preferential assessment upon an event which triggers roll-back tax liability on all of such area, we strongly suggest that:

1. Subsection (c) be revised to limit the scope of split-offs that do not terminate the remainder of preferentially assessed land to those split-offs that are performed in accordance with Section 6(a.1)(1)(i) or 6(a.1)(1)(ii) of the Act.

2. Subsection (d) be revised to:

   (i) limit the scope of the subsection to the payment of roll-back taxes by an owner of a split-off or separated tract; and

(ii) add language which makes it clear that an event by an owner of enrolled land that triggers roll-back taxes on the entire portion of such land will terminate preferential assessment on such land.

Pursuant to our recommendations for revision of subsection (d) we would recommend the following language:

> "(d) *Effect of assessment of roll-back taxes on termination of preferential assessment.* A change in use by the owner of a split-off or separated tract which triggers roll-back taxes and interest under this act shall not result in termination of preferential assessment of preferential assessment on the remainder of the land covered by preferential assessment, even though the liability for roll-back taxes may be based on the remainder. However, a split-off or change in use by the owner of enrolled land which triggers roll-back tax liability on the entire portion of contiguous land enrolled under the application for preferential assessment shall terminate preferential assessment on all of such contiguous land that is owned by the owner."[8]

If, however, the proposed regulations are not intended by the Department to terminate preferential assessment of the entire portion of contiguous area of the owner's enrolled land, we would submit that the proposed regulations are not consistent with the provisions of section 4(b) the Clean and Green Act, would differ significantly from the counties' common understanding and application of termination of preferentially assessed land, and would establish a public policy that makes no practical sense. Landowners will be perpetually burdened with payment of back taxes and

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[8] We would also suggest an example be added similar to the following example to demonstrate that preferential assessment of contiguous land owned by the landowner. Landowner A owns 2 contiguous but separately deeded 50-acre tracts of land enrolled for preferential assessment as agricultural use. Landowner A decides to change the use of 5 acres of one of the tracts for a hardware store. Landowner A would owe roll-back taxes on both tracts, and preferential assessment would terminate for both tracts upon the change of use. Landowner A may again enroll his tracts for preferential assessment upon submitting a new application for enrollment.

interest for violation of any of the restrictions that the Clean and Green Act imposes. A landowner who has been assessed roll-back taxes on his or her entire property and who wants to rid himself or herself of the perpetual cloud of roll-back taxes will need to exercise silly and pointless gamesmanship in order to "change the use" of the entire area of land on which the landowner has already been assessed with roll-back taxes. Since roll-back taxes can be triggered on even temporary changes in use[9], a policy of continuation of remaining land in preferential assessment will cause a landowner who has already been assessed roll-back taxes on each acre of enrolled land to go to each acre of "remaining" land and document that he performed an activity the was contrary to uses that the Act prescribes. Does the Department really want landowners who are assessed the maximum roll-back tax liability to play these games to remove the remaining lands from preferential assessment?

The rules governing statutory construction provide that in interpreting statutes, it is presumed that the General Assembly did not intend a result that is absurd, impossible of execution or unreasonable, and that statutes should be interpreted in a manner that does not lead to such result.[10] We strongly feel that a policy to perpetually continue preferential assessment land which has not been physically changed but which the landowner is nonetheless liable for roll-back taxes will greatly discourage farmers and other landowners from enrolling their lands in the Clean and Green

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[9] See, *Godshall v. Montgomery County Board of Assessment Appeals*, 42 Pa. D. & C.3d 191 (1985), which upheld the assessment of roll-back taxes on preferentially assessed land that was temporarily used for five days each year as the site of a folk festival.

[10] 1 Pa.C.S. § 1922(1).

program in the future. If fewer farmers and landowners are enrolled, the higher tax burdens that farmers and landowners will bear will, in turn, encourage more landowners to sell their lands to development, defeating the Act's public objectives to preserve farmland, forest land and open space land through the encouragement and enrollment of these lands in lower tax assessment.

The more reasonable and logical policy course to be followed is one which continues the practice that many counties have historically followed to terminate preferential assessment of all lands on which the owner is responsible for payment of roll-back taxes.[11]

3. § 137.64(c) and (e) - Restrictions on public use of agricultural reserve lands.

Although some improvements have been made to the Department's previous draft, proposed § 137.64 fails to provide any meaningful criteria for determining conditions that justify or do not justify landowners' restriction of recreational activities on agricultural reserve land, and does not provide counties with sufficient guidance to ensure uniformity among counties in determinations of valid and invalid restrictions on agricultural reserve lands. Furthermore, § 137.64 fails to establish any specific process by which a county will review and determine whether the landowner's proposal for

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[11] It is also worth noting that the language of paragraph (3) of subsection (e) of proposed § 137b.52 implies that counties may terminate preferential assessment of the entire contiguous area of enrolled land upon a change in use that triggers roll-back taxes for the landowner:

> "(e) Termination of preferential assessment by county. The maximum area with respect to which a county may terminate preferential assessment may not exceed:
>
> > (3) In the case when the owner of enrolled land changes the use of the land so that it no longer meets the requirements of section 3 of the act, all contiguous land enrolled under the application for preferential assessment."

restriction of public access or use is justified. In light of the Act's directive to provide uniformity in administration and especially in light of Act 156's intent to encourage uniformity, we continue to believe this section is inadequate as proposed.

The definition of "agricultural reserve" land within Section 2 of the Clean and Green Act[12] clearly and unequivocally states that land enrolled as agricultural reserve must be "open to the public" for "outdoor recreation" or "enjoyment of scenic or natural beauty", and that the allowance of public use must be "without charge or fee" and be provided "on a nondiscriminatory basis". The Act's silence in limiting these requirements strongly suggests that agricultural reserve landowners' authority to limit public access and recreational activity should be itself limited to situations that will likely place residents of the property at substantial risk to their safety and well-being and situations which would seriously impact residents' reasonable use and enjoyment of the property's curtilage.

The only guidance that the Department proposes to provide in § 137.64 is one of reasonability. As the saying goes, reasonable men can differ on both the criteria and the process for determining valid and invalid restrictions. By its very nature, establishment of a "reasonability" standard encourages discord, rather than uniformity, among counties. Each county will be given the discretion to establish its own criteria and procedures to allow or deny restrictions in public use of agricultural reserve land.

In our comments to the Department's earlier draft regulations, Farm Bureau recommended specific language to address our concerns. We again submit the same

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[12] 72 P.S. §§ 5490.2.

language in hopes that the Department may reconsider our position that more specific criteria are needed in order to provide better guidance to counties and landowners in determining valid and invalid restrictions on agricultural reserve land and providing more uniform criteria among counties statewide. We recommend that subsections (c) and (e) of § 137.64 be replaced with the following:

> "(_) *Authorized restrictions of outdoor recreational activities.* A landowner of agricultural reserve land may only prohibit the public generally from performing an activity recognized in this chapter as an outdoor recreational activity or generally restrict the area in which an outdoor recreational activity may be performed by the public upon approval of the county assessor. A general prohibition or restriction of an outdoor recreational activity which is requested by a landowner may only be approved by the county assessor if the landowner demonstrates:
>
> (1) The requested prohibition or restriction is necessary to control public access to portions of the agricultural reserve tract used by the occupier of the tract for residential purposes between the hours of sunset and sunrise;
>
> (2) Allowance of the recreational activity without the requested prohibition or restriction would have a substantial likelihood of placing the residents of the agricultural reserve tract at substantial risk of injury or substantial danger to their safety or well-being;
>
> (3) The requested prohibition or restriction is reasonably necessary for the protection of the safety or health of those members of the public likely to access the land; or
>
> (4) The requested prohibition or restriction is necessary to prevent or minimize damage to the property that would likely occur without the prohibition or restriction.
>
> A landowner may deny access to any individual or may terminate access of any individual whom the landowner reasonably believes is obtaining access for the purpose of assaulting, threatening, harassing or otherwise antagonizing any resident of the land or any other person located on the land, or for the purpose of performing illegal or criminal conduct. A landowner may terminate access of any individual who has failed to notify the landowner before entering the enrolled land, as prescribed in subsection (d). A landowner may immediately act to prohibit or limit individuals from performing or continuing to perform particular activities that have a reasonable likelihood of causing material damage to the landowner's property or placing persons residing on the tract or other persons located on the tract at substantial risk of injury or substantial danger to their safety or well-being."

4. § 137b.41(e). Authority for counties to request additional information.

The Department has significantly improved its earlier draft regarding the authority of counties to require applicants to submit additional information to demonstrate eligibility of their land for preferential assessment. However, as stated in our comments to the Department's previous draft, we believe there are several documents which, if they are submitted by the landowner and they demonstrate eligibility for preferential assessment on the face of the document, should automatically be recognized as establishing eligibility and should preclude counties from authority to request additional information. These documents include:

For demonstration of eligibility of land for agricultural use:

(1) A certified copy of the applicable schedules of the applicant's Federal or State income tax returns.

(2) An affidavit by the person or persons operating the land in question which provides sufficient information on acreage used in agricultural production and the types and quantities of commodities produced on the land in question (or would have been normally been produced, in years in which a natural disaster occurred) to substantiate the land in question is eligible for preferential assessment.

(3) An affidavit by the County Extension Agent or any governmental official which indicates that the land in question is actively used in agricultural production and provides sufficient information on types and quantities produced to substantiate that the land in question is eligible

for preferential assessment.

For demonstration of eligibility of land for forest reserve:

(1) Invoices of sales of trees or products of trees harvested on the land in question that show substantial income was generated from the trees harvested.

(2) Aerial photographs of the land in question that show sufficient quantities of growing timber to substantiate the land in question is eligible for preferential assessment.

(3) A certified copy of a forestry management plan for the land in question prepared by a qualified forestry manager.

(4) An affidavit by a government official which provides information on the land in question to substantiate the land in question is eligible for preferential assessment.

We would recommend that § 137b.41(e) be amended to recognize that the submission of the above documents are automatically deemed to establish eligibility of the land for enrollment in preferential assessment.

5. §137b.62. Authority for counties to request additional information of owners of agriculture use land less than 10 acres.

Consistent with our comments to § 137b.41(e) above, we would recommend that § 137b.62 be amended to recognize that the submission of the following documents are automatically deemed to establish eligibility of the land for preferential assessment as agricultural use:

(1) A certified copy of the applicable schedules of the applicant's Federal or State income tax returns.

(2) An affidavit by the person or persons operating the land in question which provides sufficient information on acreage used in agricultural production and the types and quantities of commodities produced on the land in question (or would have been normally been produced, in years in which a natural disaster occurred) to substantiate the land in question is eligible for preferential assessment.

(3) An affidavit by the County Extension Agent or any governmental official which indicates that the land in question is actively used in agricultural production and provides sufficient information on types and quantities produced to substantiate that the land in question is eligible for preferential assessment.

6. §137b.41(f). Signature of applicant on application for preferential assessment.

The Department has amended this section from its previous draft to require that the signatures of applicants for preferential assessment be "notarized". We fail to see the need or relevance of this requirement. Section 4904 of the Crimes Code[13] already prohibits and imposes substantial criminal penalties for unsworn falsification of written statements to authorities. A fraudulent signature would definitely constitute a false written statement. If a person really intends to fraudulently sign and submit a Clean

[13] 18 Pa.C.S. 4904.

and Green application, the requirement the signature be "notarized" will not act as much of a deterrent. We seriously question how many applications have been submitted in a fraudulent manner. On the other hand, for the overwhelming majority of honest applicants who are trying to submit applications that truly represent their interest to enroll their land in preferential assessment, the requirement for notarization will be an added burden of time and expense. We feel the added protection that the requirement for notarization of signatures may potentially bring is not worth the actual aggravation the requirement will cause for landowners. We would recommend therefore that the requirement for notarized signatures be deleted.

7. § 137b.102 - Recordkeeping of assessment values.

The Department added § 137b.102 to its previous draft. The second sentence of this section would provide:

> "A county assessor shall indicate on the property record cards as much of the information in this section **it deems appropriate** for the performance of its duties under the act and this chapter."

We do not believe the Clean and Green Act, as amended by Act 156, provides the county assessor with the breadth of discretion that the Department would allow in its proposed regulation. Section 5(a) of the Act[14] unequivocally states:

> "[I]t shall be the **duty** of the county assessor:
>
> (1) To indicate on property record cards, assessment rolls, and any other appropriate records the fair market value, the normal assessed value, the use value under section 4.2 and the preferentially assessed value of each parcel granted preferential use assessments under this

[14] 72 P.S. 5490.5(a).

act . . ."

The Act does not provide counties with any discretion to place on record cards whatever information the county deems appropriate for its administration. There is a simple reason for Section 5(a)'s imposition of duty for recordkeeping of information of tax assessment information. The inclusion of Section 5(a)'s requirements was not for the purpose of facilitating county assessors' ease in recordkeeping. Section 5(a)'s requirements were specifically designed to ensure that each landowner enrolled in clean and green would have a single, reliable and up-to-date source of information that the landowner could access in order determine and compare tax assessment values that the county has assigned to the landowner's enrolled land. The fact that the records may not have indicated "fair market value" in the past is no excuse for county assessors not to comply with the requirements of Section 5(a).

Perhaps the Department is reading the term "fair market value" too literally. When one thinks of "fair market value" in the normal and common context of tax assessment, one should conclude that the term means the tax assessment value that is assigned to realty before application of the county's established predetermined ratio. The General County Assessment Law[15] recognizes that the county's determination of tax assessment value is based upon the "fair market value" that the county has assigned to the property. The definition of "established predetermined ratio," which the county applies in calculating a property's tax assessment value, recognizes that the ratio reflects the percentage of the property's "market value" that is used in the

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[15] 72 P.S. 5020-101 et seq.

determining the value that the county will assign to the property for tax purposes:

> "Established predetermined ratio" shall mean the ratio of assessed value to **market value established by the board of county commissioners** and uniformly applied in determining assessed value in any year."[16]

Furthermore, the General County Assessment Law requires counties to determine actual values to property and to apply the established predetermined ratio to determine the property's assessed value for taxation purposes:

> "(a) It shall be the duty of the several elected and appointed assessors, and, in townships of the first class, of the assessors, assistant township assessors and assistant triennial assessors, to rate and value all objects of taxation, whether for county, city, township, town, school, institution district, poor or borough purposes, according to the actual value thereof, and at such rates and prices for which the same would separately bona fide sell. In arriving at actual value the county may utilize either the current market value or it may adopt a base year market value. . .
>
> (a.1) The board of county commissioners shall establish and determine, after proper notice has been given, an established predetermined ratio of assessed value to actual value which may not exceed one hundred per centum (100%) of actual value. **The commissioners, acting as a board of revision of taxes, or board for the assessment and revision of taxes shall apply the established predetermined ratio to the actual value of all real property to formulate the assessment roll."**

While the "fair market value" assigned to the property for tax purposes may not reflect the fair market value of the property if sold today, it is quite clear that Section 5(a) of the Act was applying the term in the context of the term's commonly understood meaning under assessment law. Counties have on their tax rolls the assessed values of all properties assigned under normal assessment rules. The calculation of the "market value" is simple arithmetic – dividing the normal assessed value by the predetermined ratio. Most counties can easily do the math, calculate the "market value" that the county has assigned to the property, and place that figure on property tax

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[16] 72 P.S. 5020-102.

records.

In light of Section 5(a)'s intended purpose to provide landowners with a single and complete source of tax information, we would recommend that the second sentence of proposed § 137b.102 deleted. In the alternative, we would recommend proposed § 137b.102 be amended to limit the county's discretion to omit items required by Section 5(a) to only "fair market value," and that the county be only excused from indicating the "fair market value" on tax records if the records indicate the property's assessed value and the established predetermined ratio that is currently in effect and specifically indicates on each record the formula for calculating the county's assignment of fair market value from the assessed value and predetermined ratio.

8. § 137b.131. Civil penalties.

Although the Department has not addressed this issue in previous drafts, it has come to our attention that several counties may interpret the civil penalty provisions of Section 5.2 of the Act[17] in a manner that would authorize a county to assess a civil penalty against an enrolled landowner whenever the landowner commits any action that triggers roll-back tax consequences, in addition to roll-back taxes and interest that would be due. We strongly feel that this is a total misreading of the Clean and Green Act, and believe that the regulations should be amended to clearly state that civil penalties may not be assessed for actions that trigger roll-back tax and interest liability.

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[17] 72 P.S. § 5490.5b.

Section 5.2 only authorizes assessment of civil penalty for a "violation of the act or any regulation promulgated under the act". Typical of acts that would constitute a violation would be the failure of the landowner to make timely filings of notices for land conveyances and changes in use, as specifically required in Section 4(c.1). But there is nothing in Clean and Green Act which prohibits the landowner from using his or her property in any fashion he or she sees fit, including changes in use and subdivisions and conveyances of his or her property. The Act only prescribes that a landowner whose land is enrolled in Clean and Green be responsible for repayment of certain roll-back taxes and interest if the landowner changes the use or makes conveyances in a manner that triggers roll-back taxes. To repeat, the Act **does not** prohibit the landowner from changing the use of his or her property or from subdividing and conveying his or her property to another. We would therefore recommend that a sentence be added to proposed § 137b.131. which would prohibit the assessment of penalties solely on the basis that the landowner performed an act which triggers responsibility for payment of roll-back taxes and interest.

Farm Bureau Recommendations for Technical Changes to Proposed Rulemaking.

Farm Bureau offers the following recommendations for substantive changes to the proposed rulemaking:

1. § 137b.53(b). Option of county assessor in calculation of preferential assessment.

We believe further clarification is needed to the option provided in paragraph (2) of proposed § 137b.53(b), which would allow counties to establish a "base year" in calculating preferential assessment of enrolled land. In our comments to the Department's previous draft, we expressed concerns that a county could establish and use "base year" values that are higher than the values determined by the Department for enrolled land in the county. Section 4.2[18] of the Act and subsections (c), (d), (e) or (f) of this proposed regulation would require the county to lower the preferentially assessed values.

In subsection (g) of this regulation, a qualifier has been placed on the county's discretion not to recalculate preferentially assessed values of enrolled properties whose applications for preferential assessment are filed on or before June 1, 1998. That qualifier would prohibit counties from maintaining 1998 values if recalculation of preferentially assessed values is required under subsections (c), (d), (e) or (f) of this proposed regulation. We would recommend that a similar qualifier also be added to paragraph (2), to limit the county's discretion to continue values established for a base

[18] 71 P.S. 5490.4b

year if recalculation of preferentially assessed values would otherwise be required by the Act or other provisions of this regulation. We would therefore recommend that paragraph (2) of proposed subsection (b) be amended to read:

> "Establish a base year for preferential assessment of enrolled land in the county, and use this base year in calculating the preferential assessment of enrolled land in the county, **unless recalculation is required under subsection (c), (d), (e) or (f).**"

2. § 137b.22. Landowner may include or exclude from the application tracts described in separate deeds.

While we appreciate the recognition that a landowner is afforded an option of lands in which the landowner may **apply** for preferential assessment, we believe additional language should be included in this proposed section to identify the county's **obligations** in response to an application in which the landowner decides not to enroll all of the separately deeded tracts or an application in which the landowner enrolls two contiguous tracts, one of which does not by itself meet the minimum requirements for preferential assessment. We would suggest this section be amended to read:

> "If the landowner seeking preferential assessment under the act owns contiguous tracts that are described in separate deeds, the landowner may include or exclude any of the contiguous tracts from the application for preferential assessment. **A county assessor may not deny a landowner's application for preferential assessment on the basis that the landowner failed to enroll all contiguous tracts for preferential assessment if the tract or tracts in which the landowner has applied for preferential assessment, when considered as a whole, meet the minimum requirements for eligibility under the act. A county assessor may not deny a landowner's application for preferential assessment on the basis that one of the tracts on which the landowner seeks preferential assessment does not by itself qualify for preferential assessment if the tract is contiguous to one or more tracts that the landowner seeks or has been approved for preferential assessment and such tracts, when considered as a whole, meet the minimum**

requirements for eligibility under the act."

3. § 137b.52(g). Transfer does not trigger roll-back taxes.

We continue to be concerned over the qualifying language contained in the first sentence of this section that a transfer to a new owner "without a change to an ineligible use" does not trigger roll back taxes. There is nothing in this sentence which gives any meaningful reference to the time in which this qualifier is to be measured. We fear that counties may read and apply this qualifier in a manner that would assess roll-back taxes on the conveyor of transferred land if the person to whom the property was transferred changed the use to an ineligible use after the transfer has taken place. Clearly this is not the intent of the Clean and Green Act. Section 6(a.3) of the Act[19] clearly and unequivocally states:

> "If ownership of land subject to a single application for preferential assessment is transferred to another landowner, the land shall continue to receive preferential assessment, and no roll-back taxes shall be due unless there is a subsequent change of use to one inconsistent with the provisions of section 3. **The landowner changing the use of the land to one inconsistent with the provisions of section 3 shall be liable for payment of roll-back taxes."**

The conveyor of property in a manner constitutes a transfer under the Act is not responsible for roll-back taxes, regardless of what the person to whom the property was conveyed does with the property and regardless of conveyor's knowledge of the transferee's future intended use.[20] We believe this qualifier should be deleted from the

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[19] 72 P.S. § 5490.6(a.3).

[20] In this light, we are very concerned over the statement made by the Department in footnote 168 of its *Unofficial Proposed "Clean and Green" Regulations*, which implies that the county has the discretion to impose roll-back taxes upon the person who makes a transfer of property to a developer,

first sentence, or the qualifier be itself limited to apply to only those changes in use that the transferor made before the transfer occurred which would trigger roll-back taxes.

4. § 137b.63. Notice of change of Clean and Green application.

We continue to be troubled by the Department's insistence to include items (6) and (7) in the items of information to be provided in the notice of change of application.

Relative to item (6)'s requirement to describe all conveyances of which the landowner is aware, the landowner likely will only be aware of those conveyances that the landowner performed himself or herself. Where a number of transfers or conveyances have occurred, the listing of conveyances that the latest successor of enrolled land is aware of will hardly provide the county with an accurate picture of all conveyances that have taken place since the land was originally enrolled.

Relative to item (7)'s requirement to identify "the intended use to which the land will be put when transferred . . . if known", the practical effect of this "requirement" will likely be massive assertion by conveyors of enrolled land that they did not know the intended use of the person receiving the property. Counties will be hard pressed to investigate the accuracy or prove the inaccuracy of any conveyor's assertion that he or she did not know the intended use of the conveyed property.

We fail to see any real benefit for these items to be required in the notice of change of application and recommend their deletion.

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even though it is the developer who changes the use after receipt of the property. Section 6(a.3) clearly makes the department's implication erroneous.

5. § 137b.75. Transfer of enrolled land for use as a cemetery.

We continue to believe that the use of the word "transfer" in this proposed section is erroneous, especially in light of the changes to the definition of "transfer" that the Department has made from its previous draft. The amended definition of "transfer", which now appears in proposed §137b.2, states that a "transfer" is:

> "A conveyance of **all of the contiguous enrolled land described in a single application for preferential assessment** under the act. When a single application for preferential assessment includes noncontiguous land, the conveyance of **the entirety of any contiguous land described in that application** is also a transfer."

The definition clearly states that in order to be a "transfer" the entire block of contiguous land receiving preferential assessment must be conveyed. Any conveyance that is less than the entire block of contiguous land does not meet the definition of a "transfer".

Section 8(e)(1)(i) of the Act[21] recognizes that less than the entire block of enrolled land may be conveyed for use as a cemetery. Section 8(e)(1)(i) recognizes that conveyances of less than the entire block of land for cemetery use will not trigger roll-back taxes if the landowner continues to own at least 10 acres of enrolled land after the conveyance for agricultural use, agricultural reserve or forest reserve purposes.

The Department's proposed amendment to the definition of "transfer", which now clearly states the term to mean only those conveyances of the entire block of contiguous land, only adds to the confusion and inconsistency that results from use of "transfer" in the context of § 137b.75, which should authorize conveyances of less than the entire block of contiguous land and which in its current language suggests that

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[21] 72 P.S. § 5490.8(e)(1)(i)

conveyances of less than the entire block are authorized. To avoid this confusion and inconsistency, we would again suggest that the Department replace the word "transfer" with "convey" (or appropriate derivatives) throughout this section.

6. § 137b.76. Transfer of enrolled land for use as a public trail.

Our comments to § 137b.75, and our concerns regarding the use of "transfer" in the context of that section apply equally to this proposed section. We would also suggest that the Department replace the word "transfer" with "convey" (or appropriate derivatives) throughout this section.

7. § 137b.51(e) and (f). Option of county assessors to use lower values.

As we stated in our comments to the Department's previous draft, we applaud the Department's efforts to recognize and correct in these proposed subsections the misconceptions that many counties had regarding the county's requirement to use the Department's values for preferentially assessed land when the county's values were higher than the Department's. Numerous counties erroneously assumed that if the county's values for one of the land use categories was higher than the Department's, the county was obligated to use the Department's values for all land use categories, even though the Department's values for other categories may have been higher. We appreciate the Department's effort in these subsections to correct these misconceptions and to provide counties with proper guidance on when they must use the Department's values and when they may use their own values.

We do, however, see an inconsistency between these two subsections. Subsection (e) refers to the option of counties to use their own values when the values for land use "subcategories" are lower than the Department's, while subsection (f) refers to the option of counties to use their own values when the values for land use "categories" are lower than the Department's. We believe Section 4.2(c) of the Act[22] authorizes counties to use lower county values for any subcategory of land use which the Department would establish and value. Section 4.2(c)'s authority to use lower values is not limited to the main categories of agricultural use, agricultural reserve and forest reserve. We would therefore recommend that amendments be made to subsection (f) to reflect the concept that counties have the option to use lower values for "subcategories" of land use, consistent with language contained in subsection (e).

8. § 137b.76(b). Change in use by owner of Clean and Green land acquired for use as a public trail.

In our comments to the Department's previous draft, we recommended deletion of the last sentence of subsection (b):

"The land is no longer entitled to preferential assessment."

As we mentioned in our comments, this sentence is not necessary, as the conveyance of land to the nonprofit corporation for use as a public trail will automatically cause preferential assessment of the trail corridor to end under Sections 8(e)(1) and (2) of the Act.[23] It appears that the Department intended to delete this sentence in the document

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[22] 72 P.S. 5490.4b(c).

[23] 72 P.S. 5490.8(e)(1) and(2).

released by the Department before the proposed regulations were formally published in the *Pennsylvania Bulletin.* However, this sentence remains in the published version. We again would recommend this sentence be deleted, since the sentence is unnecessary and may be misread by some as requiring preferential assessment of the remaining portion of the land originally enrolled in Clean and Green to be terminated when the owner of the trail changes the use.

9. § 137b.46(a). Application processing fee.

In response to comments submitted by the County Assessors Association, the Department decided to amend its previous draft by adding a sentence which states:

> "This fee is exclusive of any fee which may be charged by the recorder of deeds for recording the application."

We fail to see the need for this sentence. But if the Department feels that the sentence better reflects a landowner's total responsibility for fee payment, we believe that an additional sentence be included which would cross-reference the governing section on recording fees and would also recognize that recording fees are subject to the limitation of that section. We would therefore recommend the addition of the following sentence:

> "The amount of recording fee that may be charged is subject to the limitations prescribed in § 137.82."

10. § 137b.52(f). Termination of preferential assessment on erroneously-enrolled land.

We do not understand the qualifiers that have been added to the last sentence that in order for terminated land to avoid roll-back taxes "the use of the land was not an eligible use at the time it was enrolled" and "preferential assessment is terminated for that reason". The purpose of this subsection is to describe the disposition of land that the county erroneously enrolled for preferential assessment. The underlying assumptions for termination of preferential assessment – that the land did not qualify for preferential assessment when originally applied for and the county is terminating because it erroneously enrolled the land – seem very clear without the inclusion of the last sentence. The qualifiers added in the last sentence will only add confusion to the issue of when roll-back taxes may be excused. We feel that all terminations of preferential assessment of land that the county has erroneously enrolled should be absolutely excused from roll-back taxes and interest. We would therefore recommend the last sentence be deleted and replaced with the following sentence, which sends a clearer and simpler message:

> "The termination of preferential assessment of all land that the county erroneously enrolled shall not trigger the imposition of roll-back taxes or interest."

11. § 137b.1(b). Purpose.

The first sentence of this subsection, which describes the benefits that landowners receive from enrollment in Clean and Green, states that enrolled land will not be assessed at the same "rate" as land that is not enrolled. Most often, when

people think of "rate", they think of the millage rate of tax imposed by the taxing districts, rather than the assessment value assigned by the county. To avoid potential confusion, we would suggest that the term "rate" be replaced with "value for tax assessment purposes" or "tax assessment value".

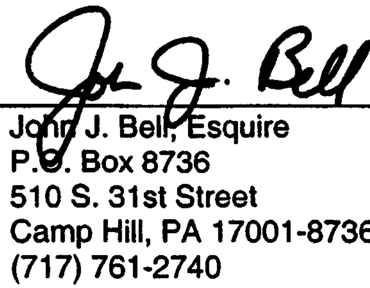
Conclusion.

We want to commend the Department for its effort in the formulation of its proposed rulemaking. We realize that the task to repromulgate a new chapter of regulations to incorporate the statutory changes enacted in Act 156 was not an easy one. The process employed by the Department to seek guidance from interested parties before formal promulgation of proposed regulations helped to facilitate consistency and uniformity in the work product that resulted in the regulations formally proposed. While we recognize the hard work that the Department has done to this point, we also recognize that the Department's work is not fully done. Incorporation of our recommendations into the Department's final form regulations will make a good product better, and will better ensure that the regulations will be understood and applied by all in a uniform manner.

We again thank you for the opportunity for comment.

Respectfully submitted,

PENNSYLVANIA FARM BUREAU,

BY: 

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REGULATORY REVIEW COMMISSION

Original: 2141

September 27, 2000

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

RE: Department of Agriculture Proposed Rulemaking Governing Preferential Assessment of Farmland and Forest Land under the Clean and Green Act (IRRC No. 2141; Agency No. 2-133)

VIA HAND DELIVERY

Dear Mr. Nyce:

Enclosed is a copy of comments submitted by Pennsylvania Farm Bureau to the Department of Agriculture on the aforementioned proposed rulemaking.

Please do not hesitate to contact me if you have any questions regarding any of our comments.

Sincerely,

John J. Bell
Counsel, Governmental Affairs

Enclosure
cc: Richard Sandusky (w/enc)
S:\jjb\act319regs2000com2-cl6.wpd

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2000 SEP 27 PM 12:47
INDEPENDENT REGULATORY REVIEW COMMISSION

Original: 2141

Comments Offered by

Pennsylvania Farm Bureau

to the

Pennsylvania Department of Agriculture

Relative to the Proposed Rulemaking

Governing Preferential Assessment of Farmland

and Forest Land under the Clean and Green Act

Contained in the September 2, 2000 Issue

of the *Pennsylvania Bulletin*

Pennsylvania Farm Bureau appreciates the opportunity to offer comments on the Department's proposed rulemaking on Pennsylvania's Clean and Green Act, as amended by Act 156 of 1998.[1] This proposed rulemaking is the culmination of a process in which the Department circulated previous drafts with interested parties and considered comments offered by parties in response to the previous drafts.

Many of the comments that Farm Bureau offered to these previous drafts have been incorporated in the Department's proposed rulemaking, and Farm Bureau appreciates the consideration the Department has given to our previous comments. However, we still feel there are several areas where substantive and technical amendments to the Department's proposed rulemaking are warranted and should be considered by the Department pursuant to its development of final form regulations.

Introduction.

It is important that the Department fully appreciate its role and responsibility in the context of the Clean and Green Act. The Act is not a discretionary program. All counties are required to participate in the program and provide preferential assessment to all properties whose lands qualify for such assessment under the Act. Section 11 of the Act[2] imposes upon the Department the duty to establish regulations which will ensure statewide and uniform administration by counties relative to the determination of lands eligible for preferential assessment, the interpretation of rules on authorized and

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[1] Pennsylvania Farmland and Forest Land Assessment Act of 1974, *as amended*, 72 P.S. §§ 5490.1 et seq.

[2] 72 P.S. §§ 5490.11.

unauthorized uses of lands enrolled in preferential assessment, and tax consequences for uses not authorized:

> "The department shall promulgate rules and regulations **necessary to promote the efficient, uniform, Statewide administration of the act.**"

The driving force behind the amendments to the Clean and Green Act enacted in Act 156 of 1998 was the lack of uniformity that counties had displayed in administration of their individual Clean and Green programs:

> "A strong consensus emerged from the [Joint State Government Commission] staff's discussions with the interested parties that the [Clean and Green] Act is not being consistently administered. This point was documented by a report written by the [Pennsylvania Bar Association] Agricultural Law Committee, based upon a survey of the county assessors throughout the State, which showed wide variations in the manner in which the counties handled such issues as eligibility, deed requirements, separation and split-offs. . . The assessors said that the department does not give consistent and dependable advice, and as the regulations state, it does not assume administrative responsibility for enforcing its interpretations . . . As part of the Governor's recent initiative to review all State regulations, the department noted that the county assessors favor a revision of current regulations to comply with the mandate of section 11."

Clean and Green, Staff Analysis of the Pennsylvania Farmland and Forest Land Assessment Act of 1974, Joint State Government Commission, April 1997, pp. 57-58.

The numerous amendments enacted in Act 156 provided specific directives to counties' administration of its Clean and Green program, many of which specifically directed counties to act or prohibited counties from acting in the course of their administration of the program.

Farm Bureau believes the enactment of Act 156 reinforces the legislature's intent that the Department promulgate regulations that will best ensure uniform administrative rules among counties statewide, will give counties clear and specific guidance on how

the Clean and Green program must be administered, and will limit the discretion of counties to interpret the Act and regulations pursuant to counties' administration of the program It is this principle that Farm Bureau believes the Department must apply in the course of its review of the provisions proposed in its rulemaking and its consideration of the following comments that Farm Bureau offers.

Farm Bureau Recommendations for Substantive Changes to Proposed Rulemaking.

Farm Bureau offers the following recommendations for substantive changes to the proposed rulemaking:

1. § 137b.84 - Effects of split-off that does not comply with section 6(a.1)(1)(i) of the Act.

We continue to believe the last sentences of Examples 1 and 2 of this section, which state that the land remaining after split-off occurs "continues to receive preferential assessment" after occurrence of a split-off not authorized under section , are not consistent with the statutory provisions of the Clean and Green Act. Section 4(b) of the Act[3] provides that:

> "Preferential assessment shall continue under the initial application, or an application amended under subsection (f), **until land use change takes place.**"

[3] 72 P.S. §§ 5490.4(b).

And Section 6(a.1)(3) of the Act provides that:

> "**The split-off of land meeting the requirements of paragraph (1)**[4] shall not invalidate the preferential assessment on any land retained by the landowner which continues to meet the provisions of section 3."

When read together, these statutory provisions clearly imply that the portion of enrolled land that remains after a split-off occurs **only** continues to receive preferential assessment if the split-off meets the restrictions and requirements prescribed in Section 6(a.1)(1)(i). For any split-off that does not meet the restrictions and requirements of Section 6(a.1)(1) and triggers roll-back taxes on both the split-off portion and the remainder, preferential assessment on the entire portion of enrolled land should terminate, and remainder should no longer receive the benefit of preferential assessment unless the landowner reapplies.[5]

As drafted, the last sentences of Examples 1 and 2 are likewise not consistent with the provisions of proposed § 137b.52(e)(2), which states:

> "(e) Termination of preferential assessment by county. The maximum area with respect to which a county may terminate preferential assessment may not exceed:
>
> (2) In the case of a split-off that is not a condemnation and that does not meet the maximum size, use and aggregate acreage requirements in section 6(a.1)(1) of the act, **all contiguous land enrolled under the application for preferential assessment.**"

Implied in paragraph (e)(2) is that the county may terminate all contiguous land that is enrolled in the Clean and Green application for a split-off that fails to meet the

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[4] Section 6(a.1)(1) of the Act, **which includes subparagraph (i)**, the topic of § 137.84 .

[5] The statutory rules governing construction and interpretation of statutes require that statutes governing the same class of persons or things shall be construed together, if possible, as one statute. 1 Pa.C.S. § 1932. These rules also require that provisions exempting persons and property from taxation are to be strictly construed. See, 1 Pa.C.S.A. § 1928(5).

requirements of Section 6(a.1)(1)(i) of the Clean and Green Act, notwithstanding the fact that the remainder continues to be used in a manner that would otherwise be consistent the Act's requirements for preferential assessment.

For split-offs that fail to meet the requirements of Section 6(a.1)(1)(i), termination of preferential assessment of the entire contiguous portion of the owner's land and the requirement for the owner to reapply for preferential assessment of the remaining land will be a practical benefit to both the county and the landowner. Through the process of termination and reapplication, county records will be better able to identify and track the history of land transactions that have occurred on enrolled land, and county administrators and landowners of enrolled land will be better able by viewing county records to accurately analyze split-offs that comply and do not comply with Section 6(a.1)(1)(i) of the Act and determine roll-back tax effects of split-offs that do not comply.

We would therefore recommend the last sentence of Examples 1 and 2 of proposed § 137b.84 be deleted and replaced with the following:

> "*Example 1:* . . . **Preferential assessment of the remaining 46-acre tract would also terminate; however if the tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, the owner of the tract may enroll the 46-acre tract for preferential assessment by submitting a new application for enrollment.**
>
> *Example 2:* . . . **Preferential assessment of the remaining 44-acre tract would also terminate; however if the tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, the owner of the tract may enroll the 46-acre tract for preferential assessment by submitting a new application for enrollment."**

2. § 137b.52. Duration of preferential assessment upon change in use of enrolled land to an ineligible use.

For the reasons stated above in our comments to proposed § 137b.84, we also believe that the Clean and Green Act requires the termination of all contiguous enrolled land upon a change in use to any portion of the enrolled land which will, under Section 5.1 of the Act,[6] trigger roll-back taxes on the entire portion of enrolled land, with the exception of actions of an owner of a split-off tract or separated tract that trigger roll-back taxes. The directive of Section 4(b) of the Act that preferential assessment continues until a "land use change" takes place naturally implies that preferential assessment terminates **when** a land use change has taken place. The only significant provision in the Act that addresses a "change in use" is Section 5.1, which provides:

> "If a landowner changes the use of any tract of land subject to preferential assessment under this act to one which is inconsistent with the provisions of section 3 or for any other reason the land is removed from a land use category under section 3, except for a condemnation of the land, the land so removed and the entire tract of which it was a part shall be subject to roll-back taxes plus interest on each year's roll-back tax at the rate of six percent (6%) per annum. After the first seven years of preferential assessment, the roll-back tax shall apply to the seven most recent tax years."

Historically, consistent with the rules governing statutory construction that statutes exempting persons or property from taxation are to be strictly construed[7], this provision has been interpreted in a manner that would trigger roll-back taxes to the entire contiguous area subject to preferential assessment whenever a change to an ineligible use would occur on any portion of the land receiving preferential assessment. Counties

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[6] 72 P.S. 5490.5a.

[7] See, 1 Pa.C.S.A. § 1928(5), as cited in footnote 5 above.

have not hesitated to assess roll-back taxes on the entirety of preferentially assessed land without regard to the duration that the change in use occurred or the size of the area that is actually affected by the change in use.

We believe the proposed regulations do not give sufficiently clear guidance on the effect a change in use of one portion of enrolled land that triggers roll-back taxes on all of such land will have in terminating preferential assessment of the "remainder" that is not directly affected by the land use change. Especially in light of the language contained in Examples 1 and 2 of proposed §137b.84, which suggests that no split-off (including a split-off that triggers roll-back taxes on the entire portion of enrolled land) will terminate preferential assessment of the remainder, § 137b.52 may well be read in a manner that will not terminate preferential assessment of the area of the land where the change in use did not specifically occur, even though the landowner is being assessed roll-back taxes and interest on such area.

Indeed, the language contained in proposed § 137b.52(c) and (d) suggests that such a reading is intended by the Department. Subsection (c) states that split-offs will not terminate preferential assessment of the remainder of enrolled land unless the use of the remaining portion is changed:

> "**Split-offs**, separations and transfers under the act or this chapter **will not result in termination of preferential assessment on the land which is retained by the landowner and which continues to meet the requirements of section 3 of the act** . . ."

The qualifying language that split-offs be done "under the act or this chapter" is not helpful, since the Clean and Green Act does not prohibit the occurrence of any split-off. It only imposes tax consequences for split-offs that are not conducted in accordance

with Section 6(a.1)(1) of the Act.

Subsection (d)'s current language more strongly suggests that changes in use triggering full assessment or roll-back taxes does not terminate preferential assessment of the portion of enrolled land that has not been changed in use:

> "*Payment of roll-back taxes does not affect preferential assessment of remaining land.* The payment of roll-back taxes and interest under the act and this chapter may not result in termination of preferential assessment on the remainder of the land covered by preferential assessment."

The literal language of subsection (d) states that if a landowner changes the use of a portion of his or her land in a manner that triggers roll-back taxes on all of that land, the payment of roll-back taxes will not change the continuation of preferential assessment on the remainder of land that the landowner chooses to continue using for agricultural use, agricultural reserve or forest reserve purposes.

If the proposed regulations are intended by the Department to terminate preferential assessment of the entire contiguous area of land enrolled for preferential assessment upon an event which triggers roll-back tax liability on all of such area, we strongly suggest that:

1. Subsection (c) be revised to limit the scope of split-offs that do not terminate the remainder of preferentially assessed land to those split-offs that are performed in accordance with Section 6(a.1)(1)(i) or 6(a.1)(1)(ii) of the Act.

2. Subsection (d) be revised to:

   (i) limit the scope of the subsection to the payment of roll-back taxes by an owner of a split-off or separated tract; and

(ii) add language which makes it clear that an event by an owner of enrolled land that triggers roll-back taxes on the entire portion of such land will terminate preferential assessment on such land.

Pursuant to our recommendations for revision of subsection (d) we would recommend the following language:

> "(d) *Effect of assessment of roll-back taxes on termination of preferential assessment.* A change in use by the owner of a split-off or separated tract which triggers roll-back taxes and interest under this act shall not result in termination of preferential assessment of preferential assessment on the remainder of the land covered by preferential assessment, even though the liability for roll-back taxes may be based on the remainder. However, a split-off or change in use by the owner of enrolled land which triggers roll-back tax liability on the entire portion of contiguous land enrolled under the application for preferential assessment shall terminate preferential assessment on all of such contiguous land that is owned by the owner."[8]

If, however, the proposed regulations are not intended by the Department to terminate preferential assessment of the entire portion of contiguous area of the owner's enrolled land, we would submit that the proposed regulations are not consistent with the provisions of section 4(b) the Clean and Green Act, would differ significantly from the counties' common understanding and application of termination of preferentially assessed land, and would establish a public policy that makes no practical sense. Landowners will be perpetually burdened with payment of back taxes and

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[8] We would also suggest an example be added similar to the following example to demonstrate that preferential assessment of contiguous land owned by the landowner. Landowner A owns 2 contiguous but separately deeded 50-acre tracts of land enrolled for preferential assessment as agricultural use. Landowner A decides to change the use of 5 acres of one of the tracts for a hardware store. Landowner A would owe roll-back taxes on both tracts, and preferential assessment would terminate for both tracts upon the change of use. Landowner A may again enroll his tracts for preferential assessment upon submitting a new application for enrollment.

interest for violation of any of the restrictions that the Clean and Green Act imposes. A landowner who has been assessed roll-back taxes on his or her entire property and who wants to rid himself or herself of the perpetual cloud of roll-back taxes will need to exercise silly and pointless gamesmanship in order to "change the use" of the entire area of land on which the landowner has already been assessed with roll-back taxes. Since roll-back taxes can be triggered on even temporary changes in use[9], a policy of continuation of remaining land in preferential assessment will cause a landowner who has already been assessed roll-back taxes on each acre of enrolled land to go to each acre of "remaining" land and document that he performed an activity the was contrary to uses that the Act prescribes. Does the Department really want landowners who are assessed the maximum roll-back tax liability to play these games to remove the remaining lands from preferential assessment?

The rules governing statutory construction provide that in interpreting statutes, it is presumed that the General Assembly did not intend a result that is absurd, impossible of execution or unreasonable, and that statutes should be interpreted in a manner that does not lead to such result.[10] We strongly feel that a policy to perpetually continue preferential assessment land which has not been physically changed but which the landowner is nonetheless liable for roll-back taxes will greatly discourage farmers and other landowners from enrolling their lands in the Clean and Green

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[9] See, *Godshall v. Montgomery County Board of Assessment Appeals*, 42 Pa. D. & C.3d 191 (1985), which upheld the assessment of roll-back taxes on preferentially assessed land that was temporarily used for five days each year as the site of a folk festival.

[10] 1 Pa.C.S. § 1922(1).

program in the future. If fewer farmers and landowners are enrolled, the higher tax burdens that farmers and landowners will bear will, in turn, encourage more landowners to sell their lands to development, defeating the Act's public objectives to preserve farmland, forest land and open space land through the encouragement and enrollment of these lands in lower tax assessment.

The more reasonable and logical policy course to be followed is one which continues the practice that many counties have historically followed to terminate preferential assessment of all lands on which the owner is responsible for payment of roll-back taxes.[11]

3. *§ 137.64(c) and (e) - Restrictions on public use of agricultural reserve lands.*

Although some improvements have been made to the Department's previous draft, proposed § 137.64 fails to provide any meaningful criteria for determining conditions that justify or do not justify landowners' restriction of recreational activities on agricultural reserve land, and does not provide counties with sufficient guidance to ensure uniformity among counties in determinations of valid and invalid restrictions on agricultural reserve lands. Furthermore, § 137.64 fails to establish any specific process by which a county will review and determine whether the landowner's proposal for

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[11] It is also worth noting that the language of paragraph (3) of subsection (e) of proposed § 137b.52 implies that counties may terminate preferential assessment of the entire contiguous area of enrolled land upon a change in use that triggers roll-back taxes for the landowner:

> "(e) Termination of preferential assessment by county. The maximum area with respect to which a county may terminate preferential assessment may not exceed:
>
> > (3) In the case when the owner of enrolled land changes the use of the land so that it no longer meets the requirements of section 3 of the act, all contiguous land enrolled under the application for preferential assessment."

restriction of public access or use is justified. In light of the Act's directive to provide uniformity in administration and especially in light of Act 156's intent to encourage uniformity, we continue to believe this section is inadequate as proposed.

The definition of "agricultural reserve" land within Section 2 of the Clean and Green Act[12] clearly and unequivocally states that land enrolled as agricultural reserve must be "open to the public" for "outdoor recreation" or "enjoyment of scenic or natural beauty", and that the allowance of public use must be "without charge or fee" and be provided "on a nondiscriminatory basis". The Act's silence in limiting these requirements strongly suggests that agricultural reserve landowners' authority to limit public access and recreational activity should be itself limited to situations that will likely place residents of the property at substantial risk to their safety and well-being and situations which would seriously impact residents' reasonable use and enjoyment of the property's curtilage.

The only guidance that the Department proposes to provide in § 137.64 is one of reasonability. As the saying goes, reasonable men can differ on both the criteria and the process for determining valid and invalid restrictions. By its very nature, establishment of a "reasonability" standard encourages discord, rather than uniformity, among counties. Each county will be given the discretion to establish its own criteria and procedures to allow or deny restrictions in public use of agricultural reserve land.

In our comments to the Department's earlier draft regulations, Farm Bureau recommended specific language to address our concerns. We again submit the same

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[12] 72 P.S. §§ 5490.2.

language in hopes that the Department may reconsider our position that more specific criteria are needed in order to provide better guidance to counties and landowners in determining valid and invalid restrictions on agricultural reserve land and providing more uniform criteria among counties statewide. We recommend that subsections (c) and (e) of § 137.64 be replaced with the following:

> "(_) *Authorized restrictions of outdoor recreational activities.* A landowner of agricultural reserve land may only prohibit the public generally from performing an activity recognized in this chapter as an outdoor recreational activity or generally restrict the area in which an outdoor recreational activity may be performed by the public upon approval of the county assessor. A general prohibition or restriction of an outdoor recreational activity which is requested by a landowner may only be approved by the county assessor if the landowner demonstrates:
>
> (1) The requested prohibition or restriction is necessary to control public access to portions of the agricultural reserve tract used by the occupier of the tract for residential purposes between the hours of sunset and sunrise;
>
> (2) Allowance of the recreational activity without the requested prohibition or restriction would have a substantial likelihood of placing the residents of the agricultural reserve tract at substantial risk of injury or substantial danger to their safety or well-being;
>
> (3) The requested prohibition or restriction is reasonably necessary for the protection of the safety or health of those members of the public likely to access the land; or
>
> (4) The requested prohibition or restriction is necessary to prevent or minimize damage to the property that would likely occur without the prohibition or restriction.
>
> A landowner may deny access to any individual or may terminate access of any individual whom the landowner reasonably believes is obtaining access for the purpose of assaulting, threatening, harassing or otherwise antagonizing any resident of the land or any other person located on the land, or for the purpose of performing illegal or criminal conduct. A landowner may terminate access of any individual who has failed to notify the landowner before entering the enrolled land, as prescribed in subsection (d). A landowner may immediately act to prohibit or limit individuals from performing or continuing to perform particular activities that have a reasonable likelihood of causing material damage to the landowner's property or placing persons residing on the tract or other persons located on the tract at substantial risk of injury or substantial danger to their safety or well-being."

4. § 137b.41(e). Authority for counties to request additional information.

The Department has significantly improved its earlier draft regarding the authority of counties to require applicants to submit additional information to demonstrate eligibility of their land for preferential assessment. However, as stated in our comments to the Department's previous draft, we believe there are several documents which, if they are submitted by the landowner and they demonstrate eligibility for preferential assessment on the face of the document, should automatically be recognized as establishing eligibility and should preclude counties from authority to request additional information. These documents include:

For demonstration of eligibility of land for agricultural use:

(1) A certified copy of the applicable schedules of the applicant's Federal or State income tax returns.

(2) An affidavit by the person or persons operating the land in question which provides sufficient information on acreage used in agricultural production and the types and quantities of commodities produced on the land in question (or would have been normally been produced, in years in which a natural disaster occurred) to substantiate the land in question is eligible for preferential assessment.

(3) An affidavit by the County Extension Agent or any governmental official which indicates that the land in question is actively used in agricultural production and provides sufficient information on types and quantities produced to substantiate that the land in question is eligible

for preferential assessment.

For demonstration of eligibility of land for forest reserve:

(1) Invoices of sales of trees or products of trees harvested on the land in question that show substantial income was generated from the trees harvested.

(2) Aerial photographs of the land in question that show sufficient quantities of growing timber to substantiate the land in question is eligible for preferential assessment.

(3) A certified copy of a forestry management plan for the land in question prepared by a qualified forestry manager.

(4) An affidavit by a government official which provides information on the land in question to substantiate the land in question is eligible for preferential assessment.

We would recommend that § 137b.41(e) be amended to recognize that the submission of the above documents are automatically deemed to establish eligibility of the land for enrollment in preferential assessment.

5. §137b.62. Authority for counties to request additional information of owners of agriculture use land less than 10 acres.

Consistent with our comments to § 137b.41(e) above, we would recommend that § 137b.62 be amended to recognize that the submission of the following documents are automatically deemed to establish eligibility of the land for preferential assessment as agricultural use:

(1) A certified copy of the applicable schedules of the applicant's Federal or State income tax returns.

(2) An affidavit by the person or persons operating the land in question which provides sufficient information on acreage used in agricultural production and the types and quantities of commodities produced on the land in question (or would have been normally been produced, in years in which a natural disaster occurred) to substantiate the land in question is eligible for preferential assessment.

(3) An affidavit by the County Extension Agent or any governmental official which indicates that the land in question is actively used in agricultural production and provides sufficient information on types and quantities produced to substantiate that the land in question is eligible for preferential assessment.

6. §137b.41(f). Signature of applicant on application for preferential assessment.

The Department has amended this section from its previous draft to require that the signatures of applicants for preferential assessment be "notarized". We fail to see the need or relevance of this requirement. Section 4904 of the Crimes Code[13] already prohibits and imposes substantial criminal penalties for unsworn falsification of written statements to authorities. A fraudulent signature would definitely constitute a false written statement. If a person really intends to fraudulently sign and submit a Clean

[13] 18 Pa.C.S. 4904.

and Green application, the requirement the signature be "notarized" will not act as much of a deterrent. We seriously question how many applications have been submitted in a fraudulent manner. On the other hand, for the overwhelming majority of honest applicants who are trying to submit applications that truly represent their interest to enroll their land in preferential assessment, the requirement for notarization will be an added burden of time and expense. We feel the added protection that the requirement for notarization of signatures may potentially bring is not worth the actual aggravation the requirement will cause for landowners. We would recommend therefore that the requirement for notarized signatures be deleted.

7. § 137b.102 - Recordkeeping of assessment values.

The Department added § 137b.102 to its previous draft. The second sentence of this section would provide:

> "A county assessor shall indicate on the property record cards as much of the information in this section **it deems appropriate** for the performance of its duties under the act and this chapter."

We do not believe the Clean and Green Act, as amended by Act 156, provides the county assessor with the breadth of discretion that the Department would allow in its proposed regulation. Section 5(a) of the Act[14] unequivocally states:

> "[I]t shall be the **duty** of the county assessor:
>
> (1) To indicate on property record cards, assessment rolls, and any other appropriate records the fair market value, the normal assessed value, the use value under section 4.2 and the preferentially assessed value of each parcel granted preferential use assessments under this

[14] 72 P.S. 5490.5(a).

act . . ."

The Act does not provide counties with any discretion to place on record cards whatever information the county deems appropriate for its administration. There is a simple reason for Section 5(a)'s imposition of duty for recordkeeping of information of tax assessment information. The inclusion of Section 5(a)'s requirements was not for the purpose of facilitating county assessors' ease in recordkeeping. Section 5(a)'s requirements were specifically designed to ensure that each landowner enrolled in clean and green would have a single, reliable and up-to-date source of information that the landowner could access in order determine and compare tax assessment values that the county has assigned to the landowner's enrolled land. The fact that the records may not have indicated "fair market value" in the past is no excuse for county assessors not to comply with the requirements of Section 5(a).

Perhaps the Department is reading the term "fair market value" too literally. When one thinks of "fair market value" in the normal and common context of tax assessment, one should conclude that the term means the tax assessment value that is assigned to realty before application of the county's established predetermined ratio. The General County Assessment Law[15] recognizes that the county's determination of tax assessment value is based upon the "fair market value" that the county has assigned to the property. The definition of "established predetermined ratio," which the county applies in calculating a property's tax assessment value, recognizes that the ratio reflects the percentage of the property's "market value" that is used in the

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[15] 72 P.S. 5020-101 et seq.

determining the value that the county will assign to the property for tax purposes:

> "Established predetermined ratio" shall mean the ratio of assessed value to **market value established by the board of county commissioners** and uniformly applied in determining assessed value in any year."[16]

Furthermore, the General County Assessment Law requires counties to determine actual values to property and to apply the established predetermined ratio to determine the property's assessed value for taxation purposes:

> "(a) It shall be the duty of the several elected and appointed assessors, and, in townships of the first class, of the assessors, assistant township assessors and assistant triennial assessors, to rate and value all objects of taxation, whether for county, city, township, town, school, institution district, poor or borough purposes, according to the actual value thereof, and at such rates and prices for which the same would separately bona fide sell. In arriving at actual value the county may utilize either the current market value or it may adopt a base year market value. . .
>
> (a.1) The board of county commissioners shall establish and determine, after proper notice has been given, an established predetermined ratio of assessed value to actual value which may not exceed one hundred per centum (100%) of actual value. **The commissioners, acting as a board of revision of taxes, or board for the assessment and revision of taxes shall apply the established predetermined ratio to the actual value of all real property to formulate the assessment roll.**"

While the "fair market value" assigned to the property for tax purposes may not reflect the fair market value of the property if sold today, it is quite clear that Section 5(a) of the Act was applying the term in the context of the term's commonly understood meaning under assessment law. Counties have on their tax rolls the assessed values of all properties assigned under normal assessment rules. The calculation of the "market value" is simple arithmetic – dividing the normal assessed value by the predetermined ratio. Most counties can easily do the math, calculate the "market value" that the county has assigned to the property, and place that figure on property tax

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[16] 72 P.S. 5020-102.

records.

In light of Section 5(a)'s intended purpose to provide landowners with a single and complete source of tax information, we would recommend that the second sentence of proposed § 137b.102 deleted. In the alternative, we would recommend proposed § 137b.102 be amended to limit the county's discretion to omit items required by Section 5(a) to only "fair market value," and that the county be only excused from indicating the "fair market value" on tax records if the records indicate the property's assessed value and the established predetermined ratio that is currently in effect and specifically indicates on each record the formula for calculating the county's assignment of fair market value from the assessed value and predetermined ratio.

8. § 137b.131. Civil penalties.

Although the Department has not addressed this issue in previous drafts, it has come to our attention that several counties may interpret the civil penalty provisions of Section 5.2 of the Act[17] in a manner that would authorize a county to assess a civil penalty against an enrolled landowner whenever the landowner commits any action that triggers roll-back tax consequences, in addition to roll-back taxes and interest that would be due. We strongly feel that this is a total misreading of the Clean and Green Act, and believe that the regulations should be amended to clearly state that civil penalties may not be assessed for actions that trigger roll-back tax and interest liability.

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[17] 72 P.S. § 5490.5b.

Section 5.2 only authorizes assessment of civil penalty for a "violation of the act or any regulation promulgated under the act". Typical of acts that would constitute a violation would be the failure of the landowner to make timely filings of notices for land conveyances and changes in use, as specifically required in Section 4(c.1). But there is nothing in Clean and Green Act which prohibits the landowner from using his or her property in any fashion he or she sees fit, including changes in use and subdivisions and conveyances of his or her property. The Act only prescribes that a landowner whose land is enrolled in Clean and Green be responsible for repayment of certain roll-back taxes and interest if the landowner changes the use or makes conveyances in a manner that triggers roll-back taxes. To repeat, the Act **does not** prohibit the landowner from changing the use of his or her property or from subdividing and conveying his or her property to another. We would therefore recommend that a sentence be added to proposed § 137b.131. which would prohibit the assessment of penalties solely on the basis that the landowner performed an act which triggers responsibility for payment of roll-back taxes and interest.

Farm Bureau Recommendations for Technical Changes to Proposed Rulemaking.

Farm Bureau offers the following recommendations for substantive changes to the proposed rulemaking:

1. § 137b.53(b). Option of county assessor in calculation of preferential assessment.

We believe further clarification is needed to the option provided in paragraph (2) of proposed § 137b.53(b), which would allow counties to establish a "base year" in calculating preferential assessment of enrolled land. In our comments to the Department's previous draft, we expressed concerns that a county could establish and use "base year" values that are higher than the values determined by the Department for enrolled land in the county. Section 4.2[18] of the Act and subsections (c), (d), (e) or (f) of this proposed regulation would require the county to lower the preferentially assessed values.

In subsection (g) of this regulation, a qualifier has been placed on the county's discretion not to recalculate preferentially assessed values of enrolled properties whose applications for preferential assessment are filed on or before June 1, 1998. That qualifier would prohibit counties from maintaining 1998 values if recalculation of preferentially assessed values is required under subsections (c), (d), (e) or (f) of this proposed regulation. We would recommend that a similar qualifier also be added to paragraph (2), to limit the county's discretion to continue values established for a base

[18] 71 P.S. 5490.4b

year if recalculation of preferentially assessed values would otherwise be required by the Act or other provisions of this regulation. We would therefore recommend that paragraph (2) of proposed subsection (b) be amended to read:

> "Establish a base year for preferential assessment of enrolled land in the county, and use this base year in calculating the preferential assessment of enrolled land in the county, **unless recalculation is required under subsection (c), (d), (e) or (f).**"

2. § 137b.22. Landowner may include or exclude from the application tracts described in separate deeds.

While we appreciate the recognition that a landowner is afforded an option of lands in which the landowner may **apply** for preferential assessment, we believe additional language should be included in this proposed section to identify the county's **obligations** in response to an application in which the landowner decides not to enroll all of the separately deeded tracts or an application in which the landowner enrolls two contiguous tracts, one of which does not by itself meet the minimum requirements for preferential assessment. We would suggest this section be amended to read:

> "If the landowner seeking preferential assessment under the act owns contiguous tracts that are described in separate deeds, the landowner may include or exclude any of the contiguous tracts from the application for preferential assessment. **A county assessor may not deny a landowner's application for preferential assessment on the basis that the landowner failed to enroll all contiguous tracts for preferential assessment if the tract or tracts in which the landowner has applied for preferential assessment, when considered as a whole, meet the minimum requirements for eligibility under the act. A county assessor may not deny a landowner's application for preferential assessment on the basis that one of the tracts on which the landowner seeks preferential assessment does not by itself qualify for preferential assessment if the tract is contiguous to one or more tracts that the landowner seeks or has been approved for preferential assessment and such tracts, when considered as a whole, meet the minimum**

requirements for eligibility under the act."

3. § 137b.52(g). Transfer does not trigger roll-back taxes.

We continue to be concerned over the qualifying language contained in the first sentence of this section that a transfer to a new owner "without a change to an ineligible use" does not trigger roll back taxes. There is nothing in this sentence which gives any meaningful reference to the time in which this qualifier is to be measured. We fear that counties may read and apply this qualifier in a manner that would assess roll-back taxes on the conveyor of transferred land if the person to whom the property was transferred changed the use to an ineligible use after the transfer has taken place. Clearly this is not the intent of the Clean and Green Act. Section 6(a.3) of the Act[19] clearly and unequivocally states:

> "If ownership of land subject to a single application for preferential assessment is transferred to another landowner, the land shall continue to receive preferential assessment, and no roll-back taxes shall be due unless there is a subsequent change of use to one inconsistent with the provisions of section 3. **The landowner changing the use of the land to one inconsistent with the provisions of section 3 shall be liable for payment of roll-back taxes."**

The conveyor of property in a manner constitutes a transfer under the Act is not responsible for roll-back taxes, regardless of what the person to whom the property was conveyed does with the property and regardless of conveyor's knowledge of the transferee's future intended use.[20] We believe this qualifier should be deleted from the

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[19] 72 P.S. § 5490.6(a.3).

[20] In this light, we are very concerned over the statement made by the Department in footnote 168 of its *Unofficial Proposed "Clean and Green" Regulations*, which implies that the county has the discretion to impose roll-back taxes upon the person who makes a transfer of property to a developer,

first sentence, or the qualifier be itself limited to apply to only those changes in use that the transferor made before the transfer occurred which would trigger roll-back taxes.

4. § 137b.63. Notice of change of Clean and Green application.

We continue to be troubled by the Department's insistence to include items (6) and (7) in the items of information to be provided in the notice of change of application.

Relative to item (6)'s requirement to describe all conveyances of which the landowner is aware, the landowner likely will only be aware of those conveyances that the landowner performed himself or herself. Where a number of transfers or conveyances have occurred, the listing of conveyances that the latest successor of enrolled land is aware of will hardly provide the county with an accurate picture of all conveyances that have taken place since the land was originally enrolled.

Relative to item (7)'s requirement to identify "the intended use to which the land will be put when transferred . . . if known", the practical effect of this "requirement" will likely be massive assertion by conveyors of enrolled land that they did not know the intended use of the person receiving the property. Counties will be hard pressed to investigate the accuracy or prove the inaccuracy of any conveyor's assertion that he or she did not know the intended use of the conveyed property.

We fail to see any real benefit for these items to be required in the notice of change of application and recommend their deletion.

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even though it is the developer who changes the use after receipt of the property. Section 6(a.3) clearly makes the department's implication erroneous.

5. § 137b.75. Transfer of enrolled land for use as a cemetery.

We continue to believe that the use of the word "transfer" in this proposed section is erroneous, especially in light of the changes to the definition of "transfer" that the Department has made from its previous draft. The amended definition of "transfer", which now appears in proposed §137b.2, states that a "transfer" is:

> "A conveyance of **all of the contiguous enrolled land described in a single application for preferential assessment** under the act. When a single application for preferential assessment includes noncontiguous land, the conveyance of **the entirety of any contiguous land described in that application** is also a transfer."

The definition clearly states that in order to be a "transfer" the entire block of contiguous land receiving preferential assessment must be conveyed. Any conveyance that is less than the entire block of contiguous land does not meet the definition of a "transfer".

Section 8(e)(1)(i) of the Act[21] recognizes that less than the entire block of enrolled land may be conveyed for use as a cemetery. Section 8(e)(1)(i) recognizes that conveyances of less than the entire block of land for cemetery use will not trigger roll-back taxes if the landowner continues to own at least 10 acres of enrolled land after the conveyance for agricultural use, agricultural reserve or forest reserve purposes.

The Department's proposed amendment to the definition of "transfer", which now clearly states the term to mean only those conveyances of the entire block of contiguous land, only adds to the confusion and inconsistency that results from use of "transfer" in the context of § 137b.75, which should authorize conveyances of less than the entire block of contiguous land and which in its current language suggests that

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[21] 72 P.S. § 5490.8(e)(1)(i)

conveyances of less than the entire block are authorized. To avoid this confusion and inconsistency, we would again suggest that the Department replace the word "transfer" with "convey" (or appropriate derivatives) throughout this section.

6. § 137b.76. Transfer of enrolled land for use as a public trail.

Our comments to § 137b.75, and our concerns regarding the use of "transfer" in the context of that section apply equally to this proposed section. We would also suggest that the Department replace the word "transfer" with "convey" (or appropriate derivatives) throughout this section.

7. § 137b.51(e) and (f). Option of county assessors to use lower values.

As we stated in our comments to the Department's previous draft, we applaud the Department's efforts to recognize and correct in these proposed subsections the misconceptions that many counties had regarding the county's requirement to use the Department's values for preferentially assessed land when the county's values were higher than the Department's. Numerous counties erroneously assumed that if the county's values for one of the land use categories was higher than the Department's, the county was obligated to use the Department's values for all land use categories, even though the Department's values for other categories may have been higher. We appreciate the Department's effort in these subsections to correct these misconceptions and to provide counties with proper guidance on when they must use the Department's values and when they may use their own values.

We do, however, see an inconsistency between these two subsections. Subsection (e) refers to the option of counties to use their own values when the values for land use "subcategories" are lower than the Department's, while subsection (f) refers to the option of counties to use their own values when the values for land use "categories" are lower than the Department's. We believe Section 4.2(c) of the Act[22] authorizes counties to use lower county values for any subcategory of land use which the Department would establish and value. Section 4.2(c)'s authority to use lower values is not limited to the main categories of agricultural use, agricultural reserve and forest reserve. We would therefore recommend that amendments be made to subsection (f) to reflect the concept that counties have the option to use lower values for "subcategories" of land use, consistent with language contained in subsection (e).

8. § 137b.76(b). Change in use by owner of Clean and Green land acquired for use as a public trail.

In our comments to the Department's previous draft, we recommended deletion of the last sentence of subsection (b):

"The land is no longer entitled to preferential assessment."

As we mentioned in our comments, this sentence is not necessary, as the conveyance of land to the nonprofit corporation for use as a public trail will automatically cause preferential assessment of the trail corridor to end under Sections 8(e)(1) and (2) of the Act.[23] It appears that the Department intended to delete this sentence in the document

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[22] 72 P.S. 5490.4b(c).

[23] 72 P.S. 5490.8(e)(1) and(2).

released by the Department before the proposed regulations were formally published in the *Pennsylvania Bulletin*. However, this sentence remains in the published version. We again would recommend this sentence be deleted, since the sentence is unnecessary and may be misread by some as requiring preferential assessment of the remaining portion of the land originally enrolled in Clean and Green to be terminated when the owner of the trail changes the use.

9. § 137b.46(a). Application processing fee.

In response to comments submitted by the County Assessors Association, the Department decided to amend its previous draft by adding a sentence which states:

> "This fee is exclusive of any fee which may be charged by the recorder of deeds for recording the application."

We fail to see the need for this sentence. But if the Department feels that the sentence better reflects a landowner's total responsibility for fee payment, we believe that an additional sentence be included which would cross-reference the governing section on recording fees and would also recognize that recording fees are subject to the limitation of that section. We would therefore recommend the addition of the following sentence:

> "The amount of recording fee that may be charged is subject to the limitations prescribed in § 137.82."

10. § 137b.52(f). Termination of preferential assessment on erroneously-enrolled land.

We do not understand the qualifiers that have been added to the last sentence that in order for terminated land to avoid roll-back taxes "the use of the land was not an eligible use at the time it was enrolled" and "preferential assessment is terminated for that reason". The purpose of this subsection is to describe the disposition of land that the county erroneously enrolled for preferential assessment. The underlying assumptions for termination of preferential assessment – that the land did not qualify for preferential assessment when originally applied for and the county is terminating because it erroneously enrolled the land – seem very clear without the inclusion of the last sentence. The qualifiers added in the last sentence will only add confusion to the issue of when roll-back taxes may be excused. We feel that all terminations of preferential assessment of land that the county has erroneously enrolled should be absolutely excused from roll-back taxes and interest. We would therefore recommend the last sentence be deleted and replaced with the following sentence, which sends a clearer and simpler message:

> "The termination of preferential assessment of all land that the county erroneously enrolled shall not trigger the imposition of roll-back taxes or interest."

11. § 137b.1(b). Purpose.

The first sentence of this subsection, which describes the benefits that landowners receive from enrollment in Clean and Green, states that enrolled land will not be assessed at the same "rate" as land that is not enrolled. Most often, when

people think of "rate", they think of the millage rate of tax imposed by the taxing districts, rather than the assessment value assigned by the county. To avoid potential confusion, we would suggest that the term "rate" be replaced with "value for tax assessment purposes" or "tax assessment value".

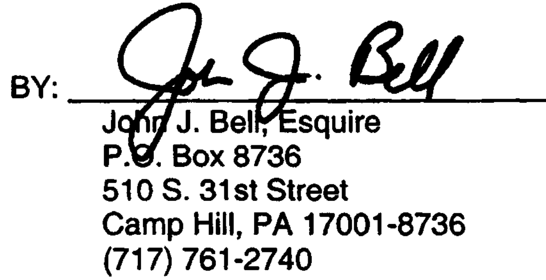
Conclusion.

We want to commend the Department for its effort in the formulation of its proposed rulemaking. We realize that the task to repromulgate a new chapter of regulations to incorporate the statutory changes enacted in Act 156 was not an easy one. The process employed by the Department to seek guidance from interested parties before formal promulgation of proposed regulations helped to facilitate consistency and uniformity in the work product that resulted in the regulations formally proposed. While we recognize the hard work that the Department has done to this point, we also recognize that the Department's work is not fully done. Incorporation of our recommendations into the Department's final form regulations will make a good product better, and will better ensure that the regulations will be understood and applied by all in a uniform manner.

We again thank you for the opportunity for comment.

Respectfully submitted,

PENNSYLVANIA FARM BUREAU,

BY: 

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CO ASSESSORS ASSOC.
COMMENTS

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COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF AGRICULTURE

ANNOTATED COPY

UNOFFICIAL PROPOSED "CLEAN AND GREEN" REGULATIONS

Introduction.

The "Pennsylvania Farmland and Forest Land Assessment Act of 1974" (72 P.S. §§ 5490.1-5490.13), commonly referred to as the "Clean and Green" Act, was amended in 1998. This amendment allows the Pennsylvania Department of Agriculture ("Department") to use "Interim Regulations" to implement the changes wrought by this amendment, but requires these Interim Regulations be supplanted by formal regulations - promulgated in accordance with the Regulatory Review Act – by April 30, 2001.

The document set forth below is an "unofficial" copy of a proposed regulation being considered by the Department. The "official" version of this proposed regulation is to be published in the September 2, 2000 edition of the *Pennsylvania Bulletin*. A complete copy of the proposed regulation can be downloaded from the *Pennsylvania Bulletin* website - www.pabulletin.com - on or after September 2. If any wording or provision of the published proposed regulation differs from this unofficial annotated version, the language of the published proposed regulation controls.

This annotated draft is intended to provide reviewers and potential commentators with references to the provisions of the "Clean and Green" Law driving these regulations, and to provide an explanation of the Department's stance on various questions and issues arising under this document.

The Department has, to date, subjected this document to an extensive review and comment process. An earlier version of this document was circulated for review and comment. Numerous revisions were made in response to comments received. Among the commentators were the following persons or organizations:

- Staff from the offices of Representative Bunt and Senator Wenger ("Legislative Staff")

- A "Clean and Green" work group from the Statewide organization of County Assessors ("County Assessors")

- The Pennsylvania Farm Bureau ("PFB")

- The Director of Assessment for Lancaster County ("Lancaster County")

- The Chief Assessor for Montgomery County ("Montgomery County")

- Dr. Robert S. Barr, President, 21st Century Appraisals, Inc. ("Dr. Barr")

- The Director of Assessment for Lehigh County ("Lehigh County")

- The Chief Assessor for Bradford County and the Bradford County Commissioners (collectively, "Bradford County")

- The Clinton County Assessor ("Clinton County")

- John Becker, Professor of Agricultural Economics and Law, Director of Research at the Agricultural Law Research and Education Center of the Dickinson School of Law, Pennsylvania State University ("Professor Becker")

- The Chief Assessor of Mifflin County ("Mifflin County")

- The County Commissioners of Union County ("Union County")

- The Chief Assessor for Sullivan County ("Sullivan County")

- The Chief Assessor for Warren County ("Warren County")

- The Assessment Manager for Northampton County ("Northampton County")

- Gary J. Heim, Esq., an attorney with extensive experience in agricultural law and related issues, from the Harrisburg law firm of Mette, Evans and Woodside ("Attorney Heim")

- The Dauphin County Assessor's Office ("Dauphin County")

The Document.

The document would establish a new chapter of regulations: 7 *Pennsylvania Code Chapter 137b.* This new chapter would supplant the "Interim Regulations" at 7 Pa. Code Chapter 137a and the formal regulations at 7 Pa. Code Chapter 137.

The document incorporates the substance of the Interim Regulations and – to the extent they are not inconsistent with the Interim Regulations – the substance of the formal regulations.

The document contains a large number of footnotes. These footnotes address comments received to date, reference current authority, provide historical perspective,

offer alternative language for cited provisions and otherwise aide the reader in understanding the document and formulating intelligent comments. Readers are encouraged to read these footnotes.

Many footnotes reference provisions of 7 Pa. Code Chapters 137 or 137a. The reader can access and download these and other regulatory chapters through the Pennsylvania Code website: www.pacode.com.

Again, to the extent any provision of this document varies from the text of the proposed regulation as published in the *Pennsylvania Bulletin*, the text of the *Pennsylvania Bulletin* shall control.

Further Information.

Further information may be obtained by telephoning Doug Wolfgang, Project Review Specialist, at (717) 783-3167, or by e-mail to the web address set forth above.

The annotated unofficial proposed regulation follows:

Annex "A"

CHAPTER 137b. PREFERENTIAL ASSESSMENT OF FARMLAND AND FOREST LAND UNDER THE CLEAN AND GREEN ACT[1]

GENERAL PROVISIONS

Sec.

137b.1. Purpose.

137b.2. Definitions.

137b.3. Responsibilities of the Department.

137b.4. Contacting the Department.

ELIGIBILITY

137b.11. Eligible land.

APPLICATION PROCESS

137b.21. Application forms and procedures.

137b.22. Deadline for submission of applications.

137b.23. Applications where subject land is located in more than one county.

137b.24. County processing of applications.

137b.25. Notice of qualification for preferential assessment.

[1] Dr. Barr and County Assessors recommended the term "use value assessment" replace "preferential assessment" throughout this document. PDA declined to implement this recommendation, given the fact the underlying statute contains numerous references to "preferential assessment".

137b.26. Fees of the county board for assessment appeals.

PREFERENTIAL ASSESSMENT

137b.31. Assessment procedures.

137b.32. Duration of preferential assessment.

137b.33. Calculation and recalculation of preferential assessment.

137b.34. Calculating the contributory value of farm buildings.

OBLIGATIONS OF THE OWNER OF ENROLLED LAND

137b.41. Transfer of enrolled land.

137b.42. Enrolled "agricultural use" land of less than 10 contiguous acres.

137b.43. Notice of change of application.

137b.44. Agricultural reserve land to be open to the public.

IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT

137b.51. Death of an owner of enrolled land.

137b.52. Direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit.

137b.53. Wireless or cellular telecommunications facilities.

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ROLL-BACK TAXES

137b.61. Liability for roll-back taxes.

137b.62. Calculation of roll-back taxes.

137b.63. Due date for roll-back taxes.

137b.64. Liens for nonpayment of roll-back taxes.

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137b.66. Disposition of interest on roll-back taxes.

COUNTY ASSESSOR

137b.71. Duties of a county assessor.

RECORDER OF DEEDS

137b.81. Duty to record.

137b.82. Fees of the recorder of deeds.

MISCELLANEOUS

137b.91. Civil penalties.

137b.92. Distributing taxes and interest.

137b.93. Appealing a decision of the county assessor.

General Provisions

§ 137b.1. Purpose.

This chapter establishes procedures necessary for the uniform Statewide implementation of the Act — commonly known as the Clean and Green Law.[2] The Act provides for land devoted to agricultural use, agricultural reserve use or forest reserve use to be assessed at the value it has for that use rather than at fair market

[2] This section COULD make some reference to the fact that this chapter merges and refines 7 Pa. Code Chapters 137 and 137a. This doesn't appear necessary, though, and would have even less relevance as years pass.

value. The intent of the Act is to encourage the keeping of land in one of these uses.[3]

The benefit to an owner of enrolled land is an assurance that the enrolled land will not be assessed at the same rate as land that is not enrolled land. In almost all cases, an owner of enrolled land will see a reduction in his or her property assessment compared to land assessed or valued at its fair market value. The difference between assessments of enrolled land and land that is *not* enrolled land will be most noticeable when a county is reassessed. The intent of the Act is to protect the owner of enrolled land from being forced to go out of agriculture, or sell part of the land in order to pay taxes.[4]

§ 137b.2. Definitions.[5]

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P. S. § § 5490.1—5490.13), commonly referred to as the Clean and Green Act.[6]

Agricultural commodity—Any of the following:

(i) Agricultural, apicultural, aquacultural, horticultural,[7] floricultural, silvicultural, viticultural and dairy products. [Suggest that the definition of these "cultural's" be included in this definition section.]

(ii) Pasture.

(iii) Livestock and the products thereof.[8]

(iv) Ranch-raised furbearing animals and the products thereof.

(v) Poultry and the products of poultry.

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[3] The 2 preceding sentences are from 7 Pa. Code § 137.1. The term "fair market" value has been substituted for "development value", though.

[4] This section paraphrases 7 Pa. Code § 137.5. This language had been included in a footnote to an earlier draft, and County Assessors recommended it be set forth in the body of the regulation (with several revisions). PFB also recommended revisions to this section.

[5] This section combines all of the definitions from the regulations at 7 Pa. Code Chapter 137, the Interim Regulations at Chapter 137a and the Act.

[6] Blends definitions from 7 Pa. Code §§ 137.12 and 137a.2.

[7] The phrase "including Christmas trees" had been included in an earlier draft. This was inconsistent with the statutory definition of this term, though.

[8] The phrase "including, but not limited to, equine" had been included in an earlier draft. This was inconsistent with the statutory definition of this term, though. County Assessors asked: (1) Whether there is a minimum number of animals that would have to be present for the animals to be considered "livestock";"(2) Whether agriculture extension offices might have a definition that could be used; (3) Whether dogs could be considered "livestock"; and (4) Whether there is a definition of this term. The answer to each of these questions is "no." Dr. Barr suggested a requirement of 2 or more animals or beehives to constitute an "agricultural commodity."

(vi) Products commonly raised or produced on the ~~farms~~ farms which are intended for human consumption or are transported or intended to be transported in commerce. [By the inclusion of the word "the" it limits the participants in Clean and Green to the actual farm, not the processors of agricultural commodities, i.e. to eliminate the breweries or commercial processors of products.]

(vii) Processed or manufactured products of products commonly raised or produced on the farms which are intended for human consumption or are transported or intended to be transported in commerce.[9] [See comments above (vi).]

Agricultural reserve—Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for such use, without charge or fee, on a nondiscriminatory basis.[10] The term includes any farmstead land on the tract.[11]

Agricultural use—Land which is used for the purpose of producing an agricultural commodity or is devoted to and meets the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal government.[12]

(i) The term includes any farmstead land on the tract.

(ii) The term includes a woodlot.

(iii) The term includes land which is rented to another person and used for the purpose of producing an agricultural commodity.[13]

Assessment ratio or *county's established predetermined ratio*—The ratio

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[9] From 72 P.S. § 5490.2. County Assessors recommended the word "transported" in paragraph (vii) be deleted. PDA did not delete this term, though, since it is part of the statutory definition.
[10] *Verbatim* from 72 P.S. § 5490.2.
[11] This sentence is added for clarity. It appears in the statutory definitions of "agricultural use" and "forest reserve", and is referenced at 72 P.S. §§ 5490.3(a)(2) and 5490.4b(a). Warren County notes this sentence does NOT appear in the statutory definition of "agricultural reserve", although it appears in the definitions of "agricultural use" and "forest reserve." Union County does not believe farmstead land should be included in "agricultural reserve" land.

County Assessors, Bradford County and Lancaster County asked whether there should be a requirement the landowner *make the public aware* the land is available for use by the public. Dr. Barr stated that landowners shouldn't be required to advertise the public uses to which their "agricultural reserve" land may be put, but that County Assessors were free to advertise this information. PDA believes it reasonable for the landowner to advise the County Assessor of the types of public uses to which the agricultural reserve land may be put. These regulations do not impose any requirements in this regard, though.
[12] County Assessors asked what percentage of the land must be in agricultural use to qualify for preferential assessment. PDA notes § 137b.11(**n**) (relating to eligible land) would allow for ineligible land to be included on an application for preferential assessment. PDA believes at least a majority of the land should be in agricultural use. This is not formalized in this regulation, though. Dr. Barr would require that at least 51% of tillable land be actively farmed.
[13] This is a non-substantive rework of 72 P.S. § 5490.2.

established by a taxing body that determines on what portion of the assessed value the millage rate is to be levied, as prescribed by assessment law.[14]

Capitalization rate—The percentage rate used to convert income to value, as determined by the most recent 5-year rolling average of 15-year fixed loan interest rates offered to landowners by the Federal Agricultural Mortgage Corporation or other similar Federal agricultural lending institution, adjusted to include the landowner's risk of investment and the effective tax rate.[15] <u>Note: if effective tax rate is included, see pg. 11 "net return to land" should exclude real estate taxes as an expense.</u>

Class A beneficiaries for inheritance tax purposes – The following relations to a decedent: grandfather, grandmother, father, mother, husband, wife, lineal descendants, wife, widow, husband, or widower of a child. Lineal descendants include all children of the natural parents and their descendants, whether or not they have been adopted by others, adopted descendants and their descendants and stepdescendants.[16]

Contiguous tract—All portions of one operational unit as described in the deed or deeds, whether or not the portions are divided by streams, public roads or bridges and whether or not the portions are described as multiple tax parcels, tracts, purparts or other property identifiers. The term includes supportive lands, such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds and streams.[17]

Contributory value of farm building—The value of the farm building as an allocated portion of the total fair market value assigned to the tract, irrespective of replacement cost of the building.

(i) The preferred method of calculating the contributory value of a farm building shall be a method based upon fair market comparison and the extraction of the value of the farm building from the total fair market value of the parcel.

(ii) Alternate methods of calculating this value may be used when the contributory value of a farm building using the preferred approach would not accurately reflect this contributory value.[18]

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[14] *Verbatim* from 7 Pa. Code § 137a.2.
[15] *Verbatim* from 72 P.S. § 5490.2.
[16] The definition derives from 7 Pa. Code § 137.45(b). The explanation of what constitutes a "lineal descendant" was revised, at the suggestion of Professor Becker, to track with the definition of that term in the Inheritance and Estate Tax Act, at 72 P.S. § 9102.
[17] *Verbatim* from 72 P.S. § 5490.2.
[18] *Verbatim* from 7 Pa. Code § 137a.2. Also note: Section 137b.34 (relating to calculating the contributory value of farm buildings) has been added. Legislative Staff would favor deleting (i) and (ii) from this definition, since they do not appear in the Act. These provisions were drafted, though, with the assistance of county assessors in an effort to provide some more specific guidance than is provided by the Act. For this reason, PDA has elected to leave these provisions in the proposed rulemaking.

County—The county assessor, the county board of assessment or other county entity responsible to perform or administer a specific function under the Act.[19]

Curtilage—The land surrounding a residential structure and farm building used for a yard, driveway, on-lot sewage system or access to any building on the tract.[20]

Department—The Department of Agriculture of the Commonwealth.[21]

Enrolled land—Land eligible for a preferential assessment under an approved application for preferential assessment filed in accordance with the Act.[22]

Fair market value—The price as of the valuation date for the highest and best use of the property which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is under no obligation to buy would pay for the property.[23]

Farm building—A structure utilized to store, maintain or house farm implements, agricultural commodities or crops, livestock and livestock products, as defined in the Agricultural Area Security Law (3 P. S. § § 901—915).[24]

Farmstead land—Any curtilage and land situated under a residence, farm building or other building which supports a residence, including a residential garage or workshop.[25]

Forest reserve—Land, 10 acres or more, stocked by forest trees of any size and capable of producing timber or other wood products.

(i) The term includes farmstead land on the tract.

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[19] *Verbatim* from 7 Pa. Code § 137a.2. Regulations at 7 Pa. Code § 137.12 referred to "county assessor or county board of assessment".

[20] *Verbatim* from 72 P.S. § 5490.2. Dr. Barr suggested specifying that this term includes land underneath buildings. Attorney Heim suggested adding clarification that the curtilage includes the garden and the buildings which support a residence. PDA is reluctant to implement these revisions in light of the fact the definition is prescribed by the Act.

[21] *Verbatim* from 72 P.S. § 5490.2.

[22] This term was introduced in the Interim Regulations, at 7 Pa. Code § 137a.2.

[23] *Verbatim* from 7 Pa. Code § 137a.2. This also replaces the definition of this term at 7 Pa. Code § 137.61(b), which provided as follows: "Fair market value means the price a property will bring in the open market for its highest and best use, where there is a willing seller and a willing buyer, neither of whom is compelled to enter into the transaction."

[24] Substantively identical to definition of same term at 72 P.S. § 5490.2. Dr. Barr suggested revising this definition to clarify that a farm building need not actually be utilized, but must "have utility for..." farm purposes. In light of the fact the definition is prescribed by the Act, PDA did not implement this suggestion in the proposed rulemaking.

[25] *Verbatim* from 72 P.S. § 5490.2. Mifflin County asked whether this term would also apply to a second or third house on a tract of enrolled land. PDA believes this other house would be included within the definition of this term.

(ii) The term includes land which is rented to another person and used for the purpose of producing timber or other wood products.[26]

Income approach—The method of valuation which uses a capitalization rate to convert annual net income to an estimate of present value. Present value is equal to the net annual return to land divided by the capitalization rate.[27]

Ineligible land—Land which is not used for any of the three eligible uses (agricultural use, agricultural reserve or forest reserve) and therefore cannot receive use value assessment.[28]

Land use category—Agricultural use, agricultural reserve or forest reserve.[29]

Land use subcategory—A category of land in agricultural use, agricultural reserve or forest reserve, established by the Department and assigned a particular use value in accordance with sections 3 and 4.1 of the Act (72 P. S. § § 5490.3 and 5490.4a). A land use subcategory may be based upon soil type, forest type, soil group or any other recognized subcategorization of agricultural or forest land.[30]

Net return to land—Annual net income per acre after operating expenses are subtracted from gross income. Calculation of operating expenses shall not include interest or principal payments or real estate taxes.[31]

Normal assessment—The total fair market value of buildings and ineligible land, as of the base year of assessment, on a tract multiplied by the assessment ratio.[32]

Outdoor recreation—Passive recreational use of land that does not entail the erection of permanent structures, grading of the land, the disturbance or removal of topsoil or any change to the land which would render it incapable of being immediately converted to agricultural use.

(i) The term includes hiking, hunting, horseback riding and similar passive recreational uses of the land.

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[26] This term includes the substance of the definition at 72 P.S. § 5490.2. Subsection (ii) is additional, and is intended to clarify that it is the use of the land for timber production – and not the person who produces and harvests the timber – that determines whether land is "forest reserve" land.

[27] *Verbatim* from 72 P.S. § 5490.2.

[28] *Verbatim* from 7 Pa. Code § 137a.2.

[29] *Verbatim* from 72 P.S. § 5490.2.

[30] *Verbatim* from 7 Pa. Code § 137a.2.

[31] *Verbatim* from 72 P.S. § 5490.2.

[32] *Verbatim* from 7 Pa. Code § 137a.2, except for the phrase "as of the base year of assessment", which was added at the recommendation of County Assessors. Dr. Barr also offered comment on this definition. This also replaces the definition of this term at 7 Pa. Code § 137.61(b), which provided as follows: "Normal tax assessment means the fair market value of the land multiplied by the local assessment ratio, and is the value to be taxed at the appropriate millage rate in cases where a tax assessment under the act is not used for taxing purposes." County Assessors asked whether this term is used to refer to assessments *other* than preferential assessments. PDA responds in the affirmative.

(ii) The term does not include the use of land for baseball, soccer fields, football fields, golf courses or similar uses.[33]

Pasture—Land, other than land enrolled in the USDA Conservation Reserve Program, used primarily for the growing of grasses and legumes for consumption by livestock.[34]

Person—A corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.[35]

Preferential assessment—The total use value of land qualifying for assessment under the act.[36]

Roll-back tax—The amount equal to the difference between the taxes paid or payable on the basis of the valuation and the taxes that would have been paid or payable had that land not been valued, assessed and taxed as other land in the taxing district in the current tax year, the year of change, and in 6 of the previous tax years or the number of years of preferential assessment up to 7.[37] [Discussion…the term "roll-back tax" now only refers to the actual tax, not penalty or interest is included. According to the footnote, interest in added in accordance with another section of the statute. Review with counsel that this definition does not impede the collection of the "roll-back tax" and the penalty and interest.]

Rural enterprise incidental to the operational unit—A commercial enterprise or venture that is conducted within 2 acres or less of enrolled land and, when conducted, does not permanently impede or otherwise interfere with the production of an agricultural commodity on that portion of the enrolled land that is not subject to roll-back taxes under section 8(d) of the Act (72 P.S. § 5490.8(d)) as a result of that

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[33] *Verbatim* from 7 Pa. Code § 137a.2.

[34] This is a revision of the definition of this term at 7 Pa. Code § 137a.2. The definition is borrowed from the definition of "grazing or pasture land" in the regulation at 7 Pa. Code § 138e.3 – the "definitions" section of the agricultural conservation easement purchase program regulations. At the suggestion of Legislative Staff and Dr. Barr, the following was deleted from an earlier version of this definition: "…which are consumed by livestock in the field and at least 90% of which is clear of trees, shrubs, vines or other woody growth not consumed by livestock."

[35] *Verbatim* from 7 Pa. Code § 137a.2. This definition comes from the Statutory Construction Act, at 1 Pa.C.S. § 1991.

[36] *Verbatim* from 7 Pa. Code § 137a.2. Although County Assessors and other commentators suggested the term "use value assessment" supplant "preferential assessment" throughout the proposed regulation, and PDA agrees the term may be more descriptive of the actual assessment of enrolled land, PDA believes it should adhere to the "preferential assessment" terminology used throughout the Act. Legislative Staff recommended the term "use value assessment" be deleted and the term "preferential assessment" used throughout this document. PDA has implemented that recommendation.

[37] The first sentence of this definition is *verbatim* from 72 P.S. § 5490.2. The following sentence appeared in the interim regulations at 7 Pa. Code § 137a.2, but was deleted from this draft: "The amount also includes interest on each year's roll-back at the rate of 6% per annum." Although the inclusion of interest in the definition of "roll-back taxes" was originally intended to obviate the need to refer to "roll-back taxes, plus interest…", it was inconsistent with the definition of "roll-back" taxes in the Act. Interest on roll-back taxes is prescribed at 72 P.S. § 5490.5a.

commercial enterprise or venture.[38]

Separation—A division, by conveyance or other action of the owner, of enrolled land into two or more tracts of land, the use of which continues to be agricultural use, agricultural reserve or forest reserve and all tracts so formed meet the requirements of section 3 of the Act (72 P.S. § 5490.3).[39]

Split-off—A division, by conveyance or other action of the owner, of enrolled land into two or more tracts of land, the use of which on one or more of the tracts does not meet the requirements of section 3 of the Act (72 P.S. § 5490.3).[40]

Tract—A lot, piece or parcel of land. The term does not refer to any precise dimension of land.[41]

Transfer— A conveyance of all of the contiguous enrolled land described in a single application for preferential assessment under the Act. Where a single application for preferential assessment includes *non-contiguous* land, the conveyance of the entirety of any contiguous land described in that application is also a transfer.[42] [I don't understand!!]

USDA—United States Department of Agriculture.[43]

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[38] This definition was recommended by PFB. The term is used at 72 P.S. § 5490.8(d)(1). An earlier draft of this document repeated the definition of this term *verbatim* from 7 Pa. Code § 137a.2. County Assessors asked for further clarification of this term in the regulations. PDA believes PFB's proposed definition is an improvement over the former definition, which read as follows:

> An activity or use of land that does not permanently impede or otherwise interfere with the production of an agricultural commodity. Examples of uses that would permanently impede or otherwise interfere with the production of an agricultural commodity include quarrying, mining or selling topsoil.

Attorney Heim suggested including examples such as woodworking shops, leather shops, arts and craft shops, small engine repair shops and small businesses operated out of the home (such as beauty shops, tax services and notary services). He also suggested businesses that might be a sideline of agricultural production – such as seed, fertilizer or chemical sales – be included among these examples.

Mifflin County also suggested examples be included.

Legislative Staff favors keeping the definition broad. Dr. Barr found a broad definition acceptable, also.

On balance, PDA is inclined to agree with Legislative Staff and Dr. Barr. If PDA establishes a regulatory checklist of those businesses that would constitute "rural enterprises incidental to the operational unit", the list might be construed as an *exclusive* list.

[39] *Verbatim* from 7 Pa. Code § 137a.2. This term also appears in the Act at 72 P.S. § 5490.2, but the term "enrolled land" and the reference to the Purdon's citation to section 3 of the Act have been added.

[40] This term is defined at 72 P.S. § 5490.2. The term "enrolled land" and the reference to the Purdon's citation to section 3 of the Act have been added.

Dr. Barr suggested adding a phrase such as "or meets the requirements of 72 P.S. § 5490.6(a.1)(1)(i) or (ii)" to the end of this definition. PDA has kept the definition as it appears in the Act. The provisions describing split-offs at 72 P.S. § 5490.6(a.1)(1)(i) and (ii) serve to differentiate between those split-offs that trigger roll-back taxes on the tract split-off and those split-offs that trigger roll-back taxes on both the tract split-off *and the remainder of the enrolled tract.*

[41] *Verbatim* from 72 P.S. § 5490.2.

[42] This definition has been revised in response to several commentators.

[43] *Verbatim* from 7 Pa. Code § 137a.2.

USDA-ERS—The United States Department of Agriculture—Economic Research Service.[44]

USDA-NRCS—The United States Department of Agriculture—Natural Resources Conservation Service.[45]

Woodlot—An area of less than 10 acres, stocked by trees of any size and contiguous to or part of land in agricultural use or agricultural reserve.[46]

§ 137b.3. Responsibilities of the Department.

(a) *General.* The Department's responsibilities are to provide the use values described in section 4.1 of the Act (72 P.S. § 5490.4a) and provide the forms and regulations necessary to promote the efficient, uniform Statewide administration of the Act.[47] [Comment: Is a statewide, uniform application anticipated or is every county on their own for it's development?]

(b) *Information gathering.* The Department will collect information from county assessors for each calendar year to insure that the Act and this chapter are being implemented fairly and uniformly throughout this Commonwealth. This information shall be collected through a survey form to be provided county assessors by the Department no later than December 15 each year, and which county assessors

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[44] *Verbatim* from 72 P.S. § 5490.2.

[45] *Verbatim* from 72 P.S. § 5490.2.

ALSO NOTE: Definitions of "use-value assessment" and "use value" were deleted. These read as follows:

> *Use-value assessment*—The preferential assessment as determined under the provisions of the act.
>
> *Use value*—The value that land qualifying for assessment under the chapter has for its particular use as determined by the county assessor, considering available evidence of the soils capability for its particular use.

[46] *Verbatim* from 72 P.S. § 5490.2. Attorney Heim suggested the phrase "contiguous to or" be replaced with some phrase such as "contiguous to, or historically transferred as." Although the point is well-taken, PDA did not feel it could stray from the statutory definition of this term.

[47] This subsection restates 7 Pa. Code § 137.2, but deletes a sentence from an earlier draft which read: "The Department has an advisory role, and not an active enforcement role - in the administration of the act and this chapter." This restates the duties imposed on PDA by the Act, at 72 P.S. §§ 5490.4a and 5490.11. The subsection is intended to emphasize that the Courts, rather than the Department, should be the ultimate arbiter of disputes between landowners and taxing bodies with respect to issues arising under the Act. The Department's role under the Act is rather limited. Attorney Heim suggested language indicating the Department would be a resource of information for those implementing and participating in preferential assessment. PDA chose to draft this section to track with the specific language of the Act, though. The Preamble to this proposed regulation will reflect that the Department can act as an educational and advisory resource on Clean and Green matters.

shall complete and submit to the Department by January 31 of the following year.[48]

§ 137b.4. Contacting the Department.[49]

For purposes of this chapter, communications to the Department shall be directed to the following address:

Pennsylvania Department of Agriculture
Bureau of Farmland Protection
2301 North Cameron Street
Harrisburg, PA 17110-9408
Telephone: (717) 783-3167
Facsimile: (717) 772-8798

Eligibility

§ 137b.11. Eligible land.

(a) *General.* Three types of land are eligible for preferential assessment under the Act: land in agricultural use, land in agricultural reserve and land in forest reserve.[50]

(b) *Agricultural use.* Land that is in agricultural use is eligible for preferential assessment under the Act if it has been in agricultural production[51] for at least 3 years preceding the application for preferential assessment[52], and is *either*:

(1) Comprised of 10 or more contiguous acres (including any farmstead land and woodlot)[53]; *or*

(2) Has anticipated yearly gross agricultural production income of at

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[48] This subsection incorporates the substance of 7 Pa. Code § 137.67. Since this section addresses the *Department's* responsibility, though, the same subjects are addressed in § 137b.71(l) (relating to duties of a county assessor), which addresses the *County Assessor's* responsibility.
[49] *Verbatim* from 7 Pa. Code § 137a.24.
[50] County Assessors asked whether a pending House Bill that would include "wildlife preserves" among eligible uses should be addressed in this regulation. They also asked this question in the context of their review of § 137b.1 (relating to purpose). PDA declines to address pending legislation in this proposed rulemaking. If the act is amended while the regulation is in the promulgation process, though, PDA will revise the regulation as quickly as possible.
[51] The term "production" was substituted for "use" at the suggestion of Legislative Staff and County Assessors. It was also suggested a reference to producing an "agricultural commodity" be included.
[52] PFB suggested the phrase "preceding the application for preferential assessment" be deleted. PDA believes the inclusion of this phrase is consistent with the Act, at 72 P.S. § 5490.3(a)(1).
[53] The paranthetical phrase was added at the suggestion of Legislative Staff.

least $2,000 from the production of an agricultural commodity.[54]

(c) *Agricultural reserve.* Land that is in agricultural reserve is eligible for preferential assessment under the Act if at least 60%[55] of the land is in USDA-NRCS land capability classifications I through VI,[56] excluding water areas and wetland areas, and the land is comprised of 10 or more contiguous acres[57] (including any farmstead land).[58]

(d) *Forest reserve.* Land that is in forest reserve is eligible for preferential assessment under the Act if it is presently stocked with trees such that it is capable of producing annual growth of 25 cubic feet per-acre[59], and the land is comprised of 10 or more contiguous acres (including any farmstead land).[60]

(e) *Inclusion of farmstead land.* Farmstead land is an integral part of land in agricultural use, agricultural reserve or forest reserve. In considering whether land is in agricultural use, agricultural reserve or forest reserve, a county shall include any portion of that land that is farmstead land. Farmstead land shall be considered to be land that qualifies for preferential assessment under the Act and this chapter.[61]

(f) *Residence not required.* A county may not require that an applicant for preferential assessment under the act be a resident of the county or reside on the land with respect to which preferential assessment is sought.[62]

(g) *Common ownership required.* A landowner seeking preferential assessment under the act shall be the owner of every tract of land listed on the application.

> *Example 1:* Husband and wife are joint owners of 2 contiguous 100-acre tracts of farmland. They have common ownership of both tracts and may include these tracts in a single application for preferential assessment.
>
> *Example 2:* Husband and wife are joint owners of a 100-acre tract of farmland. Husband and son are joint owners of a contiguous 100-acre tract of farmland. These two tracts may not be combined in a single application for preferential assessment.[63]

(h) *County-imposed eligibility requirements.* A county assessor may not impose eligibility requirements or conditions other than those prescribed in section 3

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[54] See 72 P.S. § 5490.3(a)(1). This also restates a portion of 7 Pa. Code § 137.8(a). County Assessors asked whether this $2,000 amount should be adjusted for inflation. Although this point is well-taken, PDA is without authority to change this $2,000 amount.
[55] Wayne County and Dr. Barr raised the question of whether this "60%" figure should be retained since it allows up to 40% of the land to be of low soil quality. The exclusion of water areas and wetland areas was added to eliminate some of this land.
[56] This supplants the more expansive explanation of the soil capability classes at 7 Pa. Code § 137.9(c). That subsection referenced the "Soil Conservation Service" rather than USDA-NRCS.
[57] See 72 P.S. § 5490.3(a)(2) and 7 Pa. Code § 137.10(b).
[58] This parenthetical phrase was added at the behest of Legislative Staff.
[59] This restates 7 Pa. Code § 137.10(a).
[60] See 72 P.S. § 5490.3(a)(3).
[61] This subsection is a reworking of 7 Pa. Code § 137a.3(a). The Act specifically includes farmstead land within the types of land that are eligible for preferential assessment. See 72 P.S. § 5490.2.
[62] See 72 P.S. § 5490.4(b.2). *Verbatim* from 7 Pa. Code § 137a.3(b).
[63] This subsection is *verbatim* from 7 Pa. Code § 137a.3(c).

of the Act (72 P. S. § 5490.3).[64]

Example: A county may not require an owner of contiguous—but separately deeded—tracts of land to consolidate the tracts in a single deed or require any alteration of existing deeds as a condition of eligibility for preferential assessment.

(i) *Multiple tracts on a single application.* A landowner seeking preferential assessment under the act may include more than one tract in a single application for preferential assessment, regardless of whether the tracts on the application have separate deeds, are identified by separate tax parcel numbers or are otherwise distinct from each other.

(1) *Contiguous tracts.* A landowner seeking preferential assessment under the act may include in the application individual contiguous tracts that would not—if considered individually—qualify for preferential assessment. If two or more tracts on a single application for preferential assessment are contiguous, the entire contiguous area shall meet the use and minimum size requirements for eligibility.

(2) *Noncontiguous tracts.* If any tract on a single application for preferential assessment is not contiguous to another tract described on that application, that individual tract shall—by itself—meet the use and minimum size requirements for eligibility.[65]

(j) *Inclusion of all contiguous land described in the deed to the tract with respect to which enrollment is sought.* A landowner may not apply for preferential assessment for less than the entire contiguous portion of land described in the deed applicable to a tract with respect to which preferential assessment is sought.[66]

Example 1: A landowner owns a single, 100-acre tract of farmland described in a single deed, and wishes to apply for preferential assessment under the Act. The application may not be for less than the entire 100 acres.

Example 2: A landowner owns 150 acres of farmland described in a single deed, and wishes to apply for preferential assessment under the Act. The deed to this land describes 3 separate tracts: 2 contiguous 50-acre tracts and a noncontiguous 50-acre tract. The landowner's options are as follows: (1) Enroll the contiguous 50-acre tracts; (2) Enroll the noncontiguous 50-acre tract; or (3) Enroll *both* the contiguous 50-acre tracts *and* the noncontiguous 50-acre tract. The landowner does not have the option to enroll only one of

[64] Source: 72 P.S. § 5490.3(e). *Verbatim* from 7 Pa. Code § 137a.3(d).
[65] *Verbatim* from 7 Pa. Code § 137a.3(e).
[66] *Verbatim* from 72 P.S. § 5490.3(a.1)(1). This also clarifies a language from 7 Pa. Code § 137.7. See also 7 Pa. Code § 137a.3(f).

the contiguous 50-acre tracts.[67]

(k) *Exclusion of noncontiguous tract described in a single deed.* If two or more tracts of land are described in a single deed, a landowner seeking preferential assessment under the act may exclude from the application for preferential assessment any separately-described tract that is not contiguous to the tract or tracts for which preferential assessment is sought.

Example: A landowner owns 150 acres of farmland described in a single deed, and wishes to apply for preferential assessment under the Act. The deed to this land describes 3 separate tracts: 2 contiguous 50-acre tracts and a noncontiguous 50-acre tract. The landowner has the option to seek to enroll the noncontiguous 50-acre tract.[68]

(l) *Landowner may include or exclude from the application tracts described in separate deeds.* If the landowner seeking preferential assessment under the Act owns contiguous tracts that are described in separate deeds, the landowner may include or exclude any of the contiguous tracts from the application for preferential assessment.[69]

(m) *Land adjoining preferentially assessed land with common ownership is eligible.*

(1) *General.* A tract of land in agricultural use, agricultural reserve or forest reserve shall receive a preferential assessment under the act regardless of whether the tract meets the 10-contiguous-acres minimum acreage requirement or the $2,000-per-year minimum anticipated gross income requirement, or both, established in section 3 of the Act (72 P.S. § 5490.3) if all of the following occur:

(i) The landowner owns both the tract for which preferential assessment is sought and a contiguous tract of enrolled land.

(ii) The landowner files an amended application for preferential assessment, describing both the tract for which preferential assessment is sought and the contiguous tract of enrolled land. The amended application shall be in accordance with the Act and this chapter.

(2) *Roll-back taxes.* A violation of the provisions of preferential assessment on a tract added under paragraph (1) shall trigger liability for roll-

[67] This example has been revised at the suggestion of Montgomery County, which noted the previous version did not accurately track with the requirements of the Act, at 72 P.S. § 5490.3(a.1)(1). Legislative Staff had suggested the earlier version of this example be deleted.

[68] *Verbatim* from 7 Pa. Code § 137a.3(g). Montgomery County suggested this example specify that – on the facts presented - the landowner would be *required* to enroll the noncontiguous 50-acre tract by a separate application. PDA believes the landowner has the option to accomplish enrollment of noncontiguous tracts in a single application.

[69] *Verbatim* from 7 Pa. Code § 137a.3(h).

back taxes, plus interest, on that tract and all other contiguous tracts identified in the amended application.[70]

(n) *Ineligible land may appear on an application, although it cannot receive preferential assessment.* A landowner seeking preferential assessment under the Act shall include ineligible land on the application if the ineligible land is part of a larger contiguous tract of eligible land, and the use of the land which causes it to be ineligible exists at the time the application is filed. Although this ineligible land may not receive preferential assessment, the applicant shall specify the boundaries and acreage of the ineligible land[71] The ultimate determination of whether land is eligible or ineligible shall be made by the county assessor.

Example: A landowner owns a 100-acre tract of land—90 acres of which is productive farmland and 10 acres of which is occupied by an auto salvage yard. If the landowner seeks preferential assessment of the 90 acres of farmland, the application shall describe the entire 100-acre tract and the county will not require the 10-acre tract be surveyed-out or deeded as a prerequisite to the application being considered. If preferential assessment is granted, it will apply to the 90 acres of farmland. The 10-acre tract would continue to be assigned its fair market value and assessed accordingly.[72]

(o) *Multiple land use categories on a single application.* An applicant for preferential assessment under the Act may include land in more than one land use category in the application.[73] A county assessor shall allow the applicant to submit an application that designates those portions of the tract to be assessed under each of the different land use categories.

Example: A landowner owns 100 acres of land. The landowner may submit an application that designates 75 acres in agricultural use, 13 acres in agricultural reserve and 12 acres in forest reserve, if the acreage identified by the landowner for the particular land use category meets the minimum criteria in section 3 of the Act (72 P.S. § 5490.3) for that land use category.[74]

(p) *Land located in more than one tax district.* If land for which preferential assessment is sought lies in more than one taxing district, the county's determination as to whether the land meets applicable minimum acreage requirements for eligible land shall be made on the basis of the total contiguous acreage – without regard to the

[70] From 7 Pa. Code § 137a.3(i).
[71] Dr. Barr asked whether a property owner could declare any portion or amount of his/her property "ineligible" at the time the original application for preferential assessment is filed. The answer to this question is "no." The determination as to what constitutes "eligible" land is left to the county assessor. In light of this comment, PDA added the final sentence to this subsection.
[72] *Verbatim* from 7 Pa. Code § 137a.3(j). Northampton County thought this example was confusing and unnecessary.
[73] See 72 P.S. § 5490.4(b.3). See also 7 Pa. Code § 137.7.
[74] *Verbatim* from 7 Pa. Code § 137a.3(k).

boundaries of the taxing districts in which the land is located.[75]

> *Example 1:* A landowner has a 100-acre tract of farmland - 94 acres of which lies in Township A and 6 acres of which lies in Township B. The landowner files an application seeking preferential assessment of this land. The fact that the tract lies in 2 separate townships shall be immaterial to the determination of whether the 100-acre tract meets the requirements for preferential assessment under the Act.
>
> *Example 2:* A landowner has a 100-acre tract of farmland - 94 acres of which lies in County A and 6 acres of which lies in County B. The landowner files an application in each County, seeking preferential assessment of that portion of the 100-acre tract lying within the respective Counties. The fact that the tract lies in 2 separate counties shall be immaterial to the determination of whether the land described in the application meets the requirements for preferential assessment under the Act.

(q) Assessment of ineligible land. Land and buildings that are included in an application for preferential assessment under the act but are ineligible for preferential assessment shall be appraised at fair market value and shall be assessed accordingly.[76]

Application Process

§ 137b.21. Application forms and procedures.[77]

(a) *Standardized application form required.* A county shall require a landowner seeking to apply for preferential assessment under the Act to make that application on a current "Clean and Green Valuation Application" form – a uniform preferential assessment application form developed by the Department.[78] The Department will provide an initial supply of these forms to a county upon request. The county assessor shall maintain an adequate supply of these forms.[79]

(b) *Application form and worksheets.* A landowner seeking to apply for

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[75] This subsection restates 7 Pa. Code § 137.63. Professor Becker suggested an example be inserted. PDA has inserted 2 examples in response.

[76] *Verbatim* from 7 Pa. Code § 137a.3(l), except the phrase "appraised at " replaces "given a". This was at the suggestion of County Assessors.

[77] The regulation at 7 Pa. Code § 137.24 allowed for a "preliminary application." It read as follows:

> A landowner may file a preliminary application to determine whether the landowner's land qualifies for the tax assessment under the act. The landowner shall complete Form AAO-82 and the appropriate work sheets for the use category under which the landowner is applying. The landowner shall indicate that these completed forms are only a preliminary application.

As drafted, this regulation does not allow for "preliminary application."

[78] See 72 P.S. § 5490.4(c).

[79] This is a slight rework of 7 Pa. Code § 137a.4(a).

preferential assessment under the Act shall complete a Clean and Green Valuation Application. The county assessor shall complete the appropriate sections of the current "Clean and Green Valuation Worksheet" form for each category of eligible land described in the application. The Department will provide an initial supply of these forms to a county upon request.

(c) *Obtaining an application and reviewing this chapter.* A landowner seeking preferential assessment under the Act may obtain an application form and required worksheets from the county board of assessment office. A county assessor shall retain a copy of this chapter at the county board of assessment office, and shall make this copy available for inspection by any applicant or prospective applicant.[80]

(d) *Required language.* An application for preferential assessment shall contain the following statement:

> The applicant for preferential assessment hereby agrees, if the application is approved for preferential assessment, to submit 30 days[81] notice to the county assessor of a proposed change in use of the land, a change in ownership of a portion of the land or of any type of division or conveyance of the land. The applicant for preferential assessment hereby acknowledges that, if the application is approved for preferential assessment, roll-back taxes under the Act in 72 P. S. § 5490.5a may be due for a change in use of the land, a change in ownership of a portion of the land, or any type of division or conveyance of the land.[82]

(e) *Additional information.* A county assessor may require an applicant to provide additional information or documentation necessary to substantiate that the land is eligible for preferential assessment. A county assessor requiring additional information shall notify the applicant in writing and shall clearly state in the notice the reasons why the application or other information or documentation submitted by the applicant is insufficient to substantiate eligibility, and shall identify the particular information the county assessor requests to substantiate eligibility.

(f) *Signature of all landowners required.* An application for preferential assessment shall not be accepted by a county if it does not bear the notarized signature of all of the owners of the land described in the application.[83]

§ 137b.22. Deadline for submission of applications.

(a) *General.* A landowner seeking preferential assessment under the act shall

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[80] This subsection reworks 7 Pa. Code § 137.23(b).

[81] Earlier drafts had required "written" notice. Legislative Staff noted that this was inconsistent with the language of the Act, at 72 P.S. § 5490.4(c). The "written" notice requirement has been deleted as a result.

[82] See 72 P.S. § 5490.4(c). See also 7 Pa. Code § 137a.4(b). County Assessors suggested the application also refer to roll-back taxes and describe the penalties for violating the act. PDA believes this is a good suggestion, and will revise the application form accordingly.

[83] *Verbatim* from 7 Pa. Code § 137a.4(c), except for the word "notarized" – which was added at the recommendation of County Assessors, Lancaster County and Dr. Barr.

apply to the county by June 1. If the application is approved by the county assessor, preferential assessment shall be effective as of the commencement of the tax year of each taxing body commencing in the calendar year immediately following the application deadline.[84]

> *Example 1:* A landowner applies for preferential assessment on or before June 1, 2001. The application is subsequently approved. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2002.

> *Example 2:* A landowner applies for preferential assessment on or after June 2, 2001, but not later than June 1, 2002. The application is subsequently approved. The application deadline is June 1, 2002. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2003.

(b) *Exception: years in which a county implements countywide reassessment.* In those years when a county implements a countywide reassessment, or a countywide reassessment of enrolled land, the application deadline shall be extended to either a date 30 days after the final order of the county board for assessment appeals or by October 15 of the same year, whichever date is sooner. This deadline is applicable regardless of whether judicial review of the order is sought.[85]

§ 137b.23. Applications where subject land is located in more than one county.

If a landowner seeks to enroll a tract of land for preferential assessment under the Act, and the tract is located in more than one county, the landowner shall file the application with the county assessor in the county to which the landowner pays property taxes.[86]

§ 137b.24. County processing of applications.

A county shall accept and process in a timely manner all complete and accurate applications for preferential assessment so that, if the application is accepted, preferential assessment is effective as of the tax year of each taxing body commencing in the calendar year immediately following the application deadline[87].

> *Example 1:* An application for preferential assessment is filed on or

[84] This subsection comes *verbatim* from 7 Pa. Code § 137a.5(a), except that the example has been revised to reflect the lapse of time since the Interim Regulations were published. This subsection also restates 7 Pa. Code § 137.22.
[85] *Verbatim* from 7 Pa. Code § 137a.5(b). Required under 72 P.S. § 5490.4(b.1).
[86] This derives from 7 Pa. Code § 137.23(b).
[87] See 72 P.S. § 5490.4(a.1). *Verbatim* from 7 Pa. Code § 137a.6. County Assessors recommended further refinement of the language in this paragraph.

before June 1, 2001. The county must review and process the application so that—if the application is approved—preferential assessment can take effect as of the commencement of the tax year of each taxing body commencing in 2002 (the calendar year immediately following the application deadline).

Example 2: An application for preferential assessment is filed at some point from June 2, 2001 through June 1, 2002. The county must review and process the application such that—if the application is approved—preferential assessment can take effect as of the commencement of the tax year of each taxing body commencing in 2003 (the calendar year immediately following the application deadline).

§ 137b.25. Notice of qualification for preferential assessment.

A county assessor shall provide an applicant for preferential assessment under the Act with written notification of whether the land described in that application qualifies for that preferential assessment or fails to meet the qualifications for preferential assessment.[88]

§ 137b.26. Fees of the county board for assessment appeals.

(a) *Application processing fee.* A county board for assessment appeals may impose a fee of no more than $50 for processing an application for preferential assessment under the Act, or for processing changes other than those described in subsection (b). This fee may be charged regardless of whether the application is ultimately approved or rejected.[89] This fee is exclusive of any fee which may be

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[88] Earlier drafts had restated the requirement of 7 Pa. Code § 137.25 in a subsection – subsection (b) – which read as follows:

> (b) *Notice from landowner.* After receiving written notification that the land described in an application for preferential assessment under the Act qualifies for that preferential assessment, the landowner shall provide the county assessor written notice of the landowner's intent and desire to receive preferential assessment of that land under the Act.

PDA has deleted this subsection, and the County Assessors, Dr. Barr and Lancaster County also recommended this deletion.

Attorney Heim suggested there be a requirement the county assessor calculate the preferential assessment, notify the applicant of what the preferential assessment would be and afford the applicant the opportunity to opt-out of enrollment at that point – a point *before* preferential assessment would actually begin. PDA has considered this suggestion, and prefers to leave the application process as simple as possible. An application for preferential assessment means that the applicant wants to receive an assessment calculated in accordance with the requirements of the Act. No further evidence of this intent should be required.

[89] See 72 P.S. § 5490.4(e). *Verbatim* from 7 Pa. Code § 137a.7(a), except for the phrase "or rejected" – which was added at the suggestion of County Assessors.

charged by the recorder of deeds for recording the application.[90]

(b) *Circumstances under which initial application shall be amended without charge.* A county board for assessment appeals may not charge any fee for amending an initial application for preferential assessment to reflect changes resulting from one or more of the following:

(1) Split-off.

(2) Separation.

(3) Transfer or change of ownership[91].

Preferential Assessment

§ 137b.31. Assessment procedures.[92]

(a) *Use values and land use subcategories to be provided by the Department.* The Department will determine the land use subcategories and provide county assessors use values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year.[93]

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[90] This clarification was requested by County Assessors.

[91] See 72 P.S. § 5490.4(f)(1). *Verbatim* from 7 Pa. Code § 137a.7(b). Legislative Staff requested the regulation clearly state that no fees should be charged by county assessors beyond the initial application fee, and that all further revisions should be at no charge. PDA has elected to track the language of this section with the language of the Act.

[92] This section supplants 7 Pa. Code § 137.62, which provided in its entirety as follows:

> **§ 137.62. Method for determining tax assessment.**
>
> The method used by the county assessor to calculate the assessments under the act should be logical, uniform and reasonable. The method shall consider not only the available evidence of the capability of the soils for the particular use, but shall also consider the evidence of the capability of the parcel of land when it is devoted to the proposed particular use. The capability of the soils should be derived from available soil surveys such as the soil survey at Pennsylvania State University, the National Cooperative Soil Survey and the United States Census of Agricultural Categories of Land Use Classes. The capability of the land devoted to the use could be determined by an analysis of the evidence of the productive capability of the land, including such factors as average annual net return (average annual gross return less average annual management costs) discounted at an appropriate interest rate. The Department of Agriculture can distribute upon request suggested methods for calculating tax assessments for land devoted to agricultural use, agricultural reserve use or forest reserve use under the act.

[93] This subsection restates 7 Pa. Code § 137a.9(a), but deletes any reference to the June 30, 1999 deadline date set forth at 72 P.S. § 5490.4b(a), since that deadline has already been met.

(b) *Determining use values and land use subcategories.*

(1) *Agricultural use and agricultural reserve.* In calculating appropriate county-specific agricultural use values and agricultural reserve use values, and land use subcategories, the Department will consult with the Department of Agricultural Economics and Rural Sociology of the College of Agricultural Sciences at the Pennsylvania State University, the Pennsylvania Agricultural Statistics Service, USDA-ERS, USDA-NRCS and other sources the Department deems appropriate. In determining county-specific agricultural use and agricultural reserve use values, the Department will use the income approach for asset valuation.[94]

(2) *Forest reserve.* In calculating appropriate county-specific forest reserve use values and land use subcategories, the Department will consult with the Bureau of Forestry of the Department of Conservation and Natural Resources. [95]

(c) *County assessor to determine total use value.*

(1) For each application for preferential assessment, the county assessor shall establish a total use value for land in agricultural use and agricultural reserve, including farmstead land, by considering available evidence of the capability of the land for its particular use utilizing the USDA-NRCS Agricultural Land Capability Classification system and other information available from USDA-ERS, The Pennsylvania State University and the Pennsylvania Agricultural Statistics Service. Contributory value of farm buildings, as calculated in accordance with § 137b.34 (relating to calculating the contributory value of farm buildings) shall be used.[96]

(2) For each application for preferential assessment, the county assessor shall establish a total use value for land in forest reserve, including farmstead land, by considering available evidence of capability of the land for its particular use. Contributory value of farm buildings, as calculated in accordance with § 137b.34 (relating to calculating the contributory value of farm buildings), shall be used.[97]

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[94] See 72 P.S. § 5490.4a(b). See 7 Pa. Code § 137a.9(b). County Assessors suggested the regulation be more specific as to the "other sources" PDA might consult with. PDA believes an effort to specify all possible sources through regulation might limit PDA's flexibility, and declines to implement this suggestion.

[95] See 72 P.S. § 5490.4a(c).

[96] See 72 P.S. § 5490.4b(a). County Assessors note that - as stated – this language would require county assessors to recalculate use values, and asked whether it was the intent of the Act that county assessors be able to adopt the land use values provided by PDA without calculating their own. "Total use value" is the land use value and the contributory value of buildings. A county assessor can calculate land use values using categories and subcategories provided by PDA without having to calculate a separate land use value by category.

[97] See 72 P.S. § 5490.4b(b). This subsection is *verbatim* from 7 Pa. Code § 137a.9(c). County Assessors wanted to know what sort of buildings would be on forest reserve land. PDA replies that under the Act it is

(d) *Determining preferential assessment.* The preferential assessment of land is determined by multiplying the number of acres in each land use subcategory by the use value for that particular land use subcategory, and then adding these products and multiply product by the pre-determined ratio in effect by County to arrive at the assessment to which the millage rate is applied. The Department will establish land use subcategories as part of the procedure to establish use values.[98]

(e) *Option of county assessors to establish and use lower use values.* A county assessor may establish use values for land use subcategories that are less than the use values established by the Department for those same land use subcategories. A county assessor may use these lower use values in determining preferential assessments under the Act. Regardless of whether the county assessor applies use values established by the Department or lower use values established by the county assessor, the county assessor shall apply the use values uniformly when calculating or recalculating preferential assessments, and shall apply these use values to the same land use subcategories as established by the Department.[99] Calculation and recalculation of preferential assessments shall be made in accordance with § 137b.33 (relating to calculation and recalculation of preferential assessment). A county assessor may not, under any circumstances, establish or apply use values that are higher than those use values established by the Department.[100]

(f) *Option of county assessors to select between county-established use values and use values provided by the Department.* Where a county assessor has established use values for the three land use categories (agricultural use, agricultural reserve and forest reserve), and the use values for some – but not all – of these land use categories are *lower* than those provided by the Department, the county assessor has the option to apply the lower use value with respect to each individual land use category, without regard to whether it was provided by the Department or established by the county assessor.[101]

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acceptable for there to be buildings on such land, and that the language in the proposed regulation relating to "contributory value" of such buildings is, therefore, appropriate.

[98] *Verbatim* from 7 Pa. Code § 137a.9(d).

[99] See 72 P.S. § 5490.4b(c). See 7 Pa. Code § 137a.9(e). Subsection (f) of this section describes what "uniformly" means. Northampton County stated that this requirement would not result in "uniform" assessments within a county and would constitute unlawful "spot assessment". PDA disagrees. In addition, the application of clean and green use values is required under the Act. Also, PDA is aware of at least one instance where a Court of Common Pleas (Dauphin County) reviewed this question and determined that the separate assessment of enrolled properties did not constitute unlawful spot assessment.

PFB requested this provision be clarified. PDA believes the requirement that a county assessor using county-assessor generated use values apply those use *values to the same land use subcategories as provided by PDA* will provide a meaningful basis for comparison and will allow for a simple determination of whether the use values will result in a higher assessment than if the use values of PDA are applied.

[100] County Assessors asked whether they could require forest management plans for previously-enrolled forest reserve parcels. PDA believes that if a county assessor is using timber types to calculate preferential assessment, it is reasonable for the county assessor to require verification of timber type. This does not constitute a "forest management plan", though.

[101] This was inserted in response to the stance taken by several counties that the county assessor must elect to use *all* of the use values provided by the Department or *all* of the use values generated by the county assessor. This stance is not supported by the Act. 72 P.S. § 5490.4b(c) provides as follows:

§ 137b.32. Duration of preferential assessment.[102]

(a) *General.* Enrolled land shall remain under preferential assessment for as long as it continues to meet the minimum qualifications for preferential assessment. Land that is in agricultural use, agricultural reserve or forest reserve shall remain under preferential assessment even if its use changes to either of the other two uses.[103]

Example: A landowner owns a 100-acre tract of enrolled land, consisting of 85 acres in agricultural use and 15 acres in forest reserve. If the landowner later amends his application to one in which 60 acres are in agricultural use, 30 acres are in agricultural reserve and 10 acres are in forest reserve, the entire 100-acre tract continues to receive preferential assessment (although different use values and land use subcategories may apply in recalculating the preferential assessment).[104]

(b) ~~(b)~~ *No termination of preferential assessment without change of use.*[105] An owner of enrolled land may not unilaterally terminate or waive

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A county assessor may establish use values which are less than the values provided by the department under section 4.1 (72 P.S. § 5490.4a), but **lesser values shall be applied uniformly** to all land in the county eligible for preferential assessment. (Clarification and emphasis added).

The foregoing simply means that – where a county assessor develops use values that are *lower* than those provided by the Department for a particular land use category (agricultural use, agricultural reserve or forest reserve) - the county assessor may elect to use these lower use values, but must apply the lower use values uniformly throughout the county.

One county faced the following situation: The use values provided by the Department for the "forest reserve" use category were *lower* than the forest reserve use values developed by the county assessor. The use values provided by the Department for the "agricultural use" use category were *higher* than those developed by the county assessor for that land use category. The county assessor took the position that, since he was compelled to use the Department's lower "forest reserve" use values, the requirement of 72 P.S. § 5490.4b(c) that use values "...be applied uniformly..." also required him to use the higher use values provided by the Department for "agricultural use" land. This is not an accurate reading of the plain language of 72 P.S. § 5490.4b(c), though. Although the county assessor certainly had the *discretion* to use the higher "agricultural use" values provided by the Department, he was not *required* to do so. This new subsection is intended to correct that misinterpretation. The example is included for further clarification.

County Assessors recommend adding the following:

The county assessor shall adopt a schedule of values per land use category and that schedule shall be applied uniformly. That schedule can consist of DOA values or county derived values so long as the values utilized via the schedule are applied uniformly.

[102] In summary, this section restates 7 Pa. Code § 137a.10 and supplants 7 Pa. Code § 137.11.

[103] *Verbatim* from 7 Pa. Code § 137a.10(a). This also restates 7 Pa. Code § 137.10.

[104] This example is *verbatim* from 7 Pa. Code § 137a.10(a).

[105] Attorney Heim, Northampton County, Lancaster County, Warren County, Sullivan County and Bradford County all suggested an owner of enrolled land should have the right to opt-out of preferential assessment at any time and pay roll-back taxes, without regard to whether the use of the enrolled land has changed to something other than agricultural, agricultural reserve or forest reserve.

the preferential assessment of enrolled land. Preferential assessment terminates as of the change of use of the land to something other than agricultural use, agricultural reserve or forest reserve. It is this event – the change of use of the enrolled land to something other than agricultural use, agricultural reserve or forest reserve – that terminates preferential assessment and triggers liability for roll-back taxes and interest. ~~Although an owner of enrolled land may not unilaterally terminate or waive the preferential assessment of enrolled land, the landowner may minimize roll-back tax liability by voluntarily paying taxes in the amount the landowner would be obligated to pay were the land not preferentially assessed.~~[106]

[Note: The County assessor has no statutory authority to collect taxes. There is nothing in the statute to provide for a voluntary withdraw from the program which this eludes to . Once in the program you are in forever, unless a violation occurs. This is in opposition to everything in the program here-to-for.

Example 1: An owner of 60 acres of enrolled land no longer wishes to have the enrolled land receive a preferential assessment under the Act. The landowner writes the county assessor and notifies the county assessor of this desire. The landowner does not change the use of the land from one of the land use categories. The preferential assessment of the land shall continue.

Example 2: Same facts as Example 1, except the landowner changes the use of the 60 aces of enrolled land to something other than agricultural use, agricultural reserve or forest reserve, and the change of use occurs on July 1. Preferential assessment ends as of that change of use, and roll-back taxes and interest are due as of the date of the change of use.

~~*Example 3:* Same facts as Example 1, except that the landowner began to receive preferential assessment in the 1998 tax year. Beginning with the 2000 tax year and each tax year thereafter, the landowner elects to voluntarily pay – and the county assessor agrees to accept – property taxes on the basis of the enrolled land's fair market assessed value, rather than the enrolled land's preferential assessment value. On September 1, 2004, the landowner changes the use of all of the land to something other than agricultural use, agricultural reserve or forest reserve. Preferential assessment ends as of the change of use, and the landowner is liable for the payment of roll-back taxes. Assuming the landowner paid all of the taxes due for tax~~

The Act (at 72 P.S. § 5490.4(b)) provides that: "Preferential assessment shall continue under the initial application ...**until land use change takes place.**" For this reason, the proposed regulation does not provide for a voluntary termination of preferential assessment without a change of use of the land.

PFB notes that, although PDA is technically correct in its position that preferential assessment continues until land use change takes place, as a practical matter a landowner could voluntarily begin making tax payments as if the enrolled land was assessed at its fair market value, and thereby reduce the amount of roll-back taxes that will be due when land use change eventually occurs. Some language offered by PBF has been added to this section.

[106] This sentence was added at PFB's suggestion.

~~years 2000, 2001, 2002, 2003 and 2004 based upon the normal assessed value of the enrolled land, the landowner would only be liable for roll-back taxes and interest for tax years 1998 and 1999—the only tax years of the 7-year period for roll-back tax liability in which the landowner paid taxes based upon preferential assessment, rather than the enrolled land's normal assessed value.~~[107]

~~*Example 4:* Same facts as Example 3, except that on September 1, *2007*, the landowner changes the use of all of the land to something other than agricultural use, agricultural reserve or forest reserve. Preferential assessment ends as of the change of use, and the landowner is liable for the payment of roll-back taxes. Since the landowner had been voluntarily paying taxes on the basis of the normal assessed value of the enrolled land for a period *longer* than the 7-year period for roll-back tax liability, though, the landowner's roll-back tax liability would be zero.~~[108]

[*Note:* examples 3 and 4 are deleted as not applicable.]

(c) *Split-offs, separations, transfers and other events.* Split-offs, separations and transfers under the act or this chapter shall not result in termination of preferential assessment on the land which is retained by the landowner and which continues to meet the requirements of section 3 of the Act (72 P. S. § 5490.3). In addition, the following events shall not result in termination of preferential assessment on that portion of enrolled land which continues to meet the requirements of section 3 of the Act (72 P.S. § 5490.3):

(1) The lease of a portion of the enrolled land to be used for a wireless or cellular communication tower in accordance with section 6(b.1) of the Act (72 P.S. § 5490.6(b.1)) and § 137b.53 (relating to wireless or cellular telecommunications facilities).

(2) The change of use of a portion of the enrolled land to another land use category (agricultural use, agricultural reserve or forest reserve).

(3) Condemnation of a portion of the land.

(4) The sale or donation of a portion of the enrolled land to any of the entities described in section 8(b)(1)—(7) of the Act (72 P. S. § 5490.8(b)(1)—(7)), for the purposes described in that section, and § 137b.54 (relating to option to accept or forgive roll-back taxes in certain instances).

(5) The use of up to 2 acres of the enrolled land for direct commercial sales of agriculturally related products or for a rural enterprise incidental to the operational unit, in accordance with section 8(d) of the Act (72 P.S. § 5490.8(d)), and § 137b.52 (relating to direct commercial sales of

[107] This example was added at the suggestion of PFB.
[108] This example was added at the suggestion of PFB.

agriculturally related products and activities; rural enterprises incidental to the operational unit).

(6) The conveyance of a portion of the enrolled land to a nonprofit corporation for use as a cemetery, in accordance with section 8(e) of the Act (72 P.S. § 5490.8(e)) and § 137b.55 (relating to transfer of enrolled land for use as a cemetery).

(7) The conveyance of a portion of the enrolled land to a nonprofit corporation for use as a trail, in accordance with section 8(e) of the Act (72 P.S. § 5490.8(e)) and § 137b.56 (relating to transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail).

(8) The distribution, upon the death of the owner of the enrolled land, of the enrolled land among the beneficiaries designated as Class A for inheritance tax purposes, in accordance with section 6(d) of the Act (72 P.S. § 5490.6(d)) and § 137b.51 (relating to death of an owner of enrolled land).[109]

(d) *Payment of roll-back taxes does not affect preferential assessment of remaining land.* The payment of roll-back taxes and interest under the Act and this chapter may not result in termination of preferential assessment on the remainder of the land covered by preferential assessment.

Example 1: A landowner owns a 100-acre tract of enrolled land, which is in agricultural use. The landowner splits-off a tract of no more than 2 acres and that 2-acre tract is used for a residential dwelling as described in section 6(a.1)(1)(i) of the Act (72 P.S. § 5490.6(a.1)(1)(i)) and meets the other criteria in that paragraph. Although the 2-acre tract is no longer entitled to receive preferential assessment, the 98-acre tract shall continue to receive preferential assessment. Also, roll-back taxes would be due with respect to the 2-acre tract.[110]

Example 2: Landowner A owns a 100-acre tract of enrolled land, which is in agricultural use. Landowner A splits-off a 2-acre tract and sells it to Landowner B, with the understanding that Landowner B will use the land for a residential dwelling permitted under section 6(a.1)(1)(i) of the Act (72 P.S. § 5490.6(a.1)(1)(i)). Roll-back taxes are due with respect to the 2-acre tract. Landowner B does not erect the permitted residential dwelling, but converts the 2-acre tract to commercial use. Landowner B owes roll-back taxes with respect to the entire 100-acre tract (under section 6(a.1) of the Act – 72 P.S. § 5490.6(a.1)). Landowner A has no liability for any of the roll-back

[109] This subsection is a slight rework of 7 Pa. Code § 137a.10(b). Attorney Heim asked whether lineal descendants were included in "Class A" beneficiaries. Please see the revised definition of this term at § 137b.2 (relating to definitions).

[110] Northampton County raised a question as to whether roll-back taxes would be due under these circumstances. PDA believes the assessment of roll-back taxes is required by the Act, at 72 P.S. § 5490.6(a.1)(2). A detailed analysis of this issue is set forth in a footnote to § 137b.61 (relating to liability for roll-back taxes).

taxes which were triggered and are owed by Landowner B as a result of the conversion of the 2-acre tract to commercial use.[111] If the 98-acre tract owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the Act (72 P.S. § 5490.3), it shall continue to receive preferential assessment.

Example 3: Landowner A owns a 100-acre tract of enrolled land, which is in agricultural use. Landowner A separates the land into a 50-acre tract and two 25-acre tracts, and sells a 25-acre tract to Landowner B. All 100 acres continue in agricultural use and continue to meet the requirements of section 2 of the act. No roll-back taxes are due. The entire 100-acre tract shall continue to receive preferential assessment.

Example 4: Same facts as Example 3, except that within 7 years of the separation, Landowner B changes the use of his 25-acre tract to something other than agricultural use, agricultural reserve or forest reserve. Landowner B shall pay roll-back taxes with respect to the entire 100-acre tract (under section 6(a.2) of the Act – 72 P.S. § 5490.6(a.2)). If the 75 acres owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 2 of the act, it shall continue to receive preferential assessment under the Act.

Example 5: Same facts as Example 3, except that more than 7 years after the date of separation, Landowner B changes the use of his 25-acre tract to something other than agricultural use, agricultural reserve or forest reserve. Landowner B shall pay roll- back taxes on his 25-acre tract (under section 6(a.2) of the Act – 72 P.S. § 5490.6(a.2)). If the 75 acres owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the Act (72 P.S. § 5490.3), it shall continue to receive preferential assessment under the Act.[112]

(e) *Termination of preferential assessment by county.* The maximum area with respect to which a county may terminate preferential assessment may not exceed:

(1) In the case of a split-off that is not a condemnation and that meets the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the Act (72 P.S. § 5490.6(a.1)(1)(i)), the land so split-off.

(2) In the case of a split-off that is not a condemnation and that does not meet the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the Act (72 P.S. § 5490.6(a.1)(1)(i)), all contiguous land enrolled under the application for preferential assessment.

(3) In the case when the owner of enrolled land changes the use of the

[111] This sentence was added at the suggestion of PFB.
[112] This subsection is a slight rework of 7 Pa. Code § 137a.10(c).

land so that it no longer meets the requirements in section 3 of the Act (72 P.S. § 5490.3), all contiguous land enrolled under the application for preferential assessment.

(4) In the case when the owner of enrolled land leases a portion of that land for wireless or cellular telecommunications in accordance with section 6(b.1) of the Act (72 P.S. § 5490.6(b.1)), and § 137b.53 (relating to wireless or cellular telecommunications facilities), the land so leased.

(5) In the case of condemnation, the land so condemned.

(6) In the case when enrolled land is sold or donated to an entity described in section 8(b)(1)—(7) of the Act (72 P.S. § 5490.8(b)(1)-(7)) in accordance with the requirements in those paragraphs, the land so sold or conveyed.

(7) In the case when not more than 2 acres of enrolled land is used for direct commercial sales of agriculturally related products and activities or for rural enterprises incidental to the operational unit, in accordance with section 8(d) of the Act (72 P.S. § 5490.8(d)) and § 137b.52 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit), the land so used for those purposes.

(8) In the case when a portion of enrolled land is conveyed to a nonprofit corporation for use as a cemetery in accordance with section 8(e) of the Act (72 P.S. § 5490.8(e)) and § 137b.55 (relating to transfer of enrolled land for use as a cemetery), the land so transferred.

(9) In the case when a portion of the enrolled land is conveyed to a nonprofit corporation for use as a trail in accordance with section 8(e) of the Act (72 P.S. § 5490.8(e)) and § 137b.56 (relating to transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail), the land so transferred.

(10) In the case when enrolled land is distributed upon the death of the landowner among the beneficiaries designated as Class A for inheritance tax purposes in accordance with section 6(d) of the Act (72 P.S. § 5490.6(d)) and § 137b.51 (relating to death of an owner of enrolled land), the portion that fails to meet the requirements for preferential assessment in section 3 of the Act (72 P.S. § 5490.3).[113]

(f) *Termination of preferential assessment on erroneously-enrolled land.* If a county assessor erroneously allows the enrollment of land that did not, at the time of enrollment, meet the minimum qualifications for preferential assessment, the county assessor shall, in accordance with section 3(d)(2) of the Act (72 P.S. § 5490.3(d)(2)), provide the landowner written notice that preferential assessment is to be terminated.

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[113] This subsection is a slight rework of 7 Pa. Code § 137a.10(d).

The notice shall state the reasons for termination and afford the landowner the opportunity for a hearing. If the use of the land was not an eligible use at the time it was enrolled, and preferential assessment is terminated for that reason, no roll-back taxes shall be due from the landowner as a result.[114]

(g) *Transfer does not trigger roll-back taxes.* The transfer of all of the enrolled land described in a single application for preferential assessment to a new owner without a change to an ineligible use shall not trigger the imposition of roll-back taxes.[115] Where the enrolled land consists of several noncontiguous tracts enrolled under a single application for preferential assessment, the transfer of all of the contiguous acreage within such a noncontiguous tract shall not trigger the imposition of roll-back taxes.[116]

§ 137b.33. Calculation and recalculation of preferential assessment.

(a) *New values each year.* As described in § 137b.31 (relating to assessment procedures), the Department will determine the land use subcategories and provide a county use values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year.[117]

(b) *Option of county assessor in calculation of preferential assessment.* A county assessor shall calculate the preferential assessment of enrolled land using *either* of the following methods:

(1) Calculate the preferential assessment of all of the enrolled land in the county each year.[118]

(2) Establish a base year for preferential assessment of enrolled land in the county, and use this base year in calculating the preferential assessment of enrolled land in the county.[119]

(c) *Required recalculation of preferential assessment if current assessment is*

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[114] This subsection is new, and was added to address a concern expressed by Legislative Staff and a county assessor regarding the need for a process by which land that did not qualify for enrollment under the Act but which was enrolled, nevertheless, can be removed from preferential assessment without triggering liability for roll-back taxes.

[115] *Verbatim* from 7 Pa. Code § 137a.10(e). This also supplants 7 Pa. Code § 137.42, which provided as follows: "The landowner can convey all his land to another person and the land will still retain the tax assessment under the act, as long as there is no change to an ineligible use".

[116] This sentence is new, and was added to address a revision that was made to the definition of "transfer" at § 137b.2 (relating to definitions).

[117] This subsection is a slight rework of 7 Pa. Code § 137a.11(a). Warren County raises a general question regarding the Department's authority in this area. The Act (at 72 P.S. § 5490.4a) requires the Department to issue the referenced values each year. Dr. Barr noted his agreement with this provision.

[118] Attorney Heim noted that this requirement might result in a substantial change in taxes from one year to the next.

[119] Montgomery County raised concerns with respect to this language.

based upon use values higher than those provided by the Department. A county assessor shall calculate the preferential assessment of all enrolled land in the county using either the current use values and land use subcategories provided by the Department or lower use values established by the county assessor.[120]

> *Example 1:* All of the enrolled land in a particular county receives a preferential assessment under the act that is calculated with use values that are lower than the use values provided by the Department. The county has the option of either continuing to assess all enrolled land using its lower use values or recalculating the preferential assessment of all enrolled land using the use values provided by the Department.
>
> *Example 2:* All of the enrolled land in a particular county receives a preferential assessment under the act that is calculated with use values that are higher than the use values provided by the Department. The county shall recalculate the preferential assessment of all enrolled land using either the use values provided by the Department or lower use values determined by the county assessor.

(d) *Required recalculation of preferential assessment if farmstead land has not been preferentially assessed as agricultural use, agricultural reserve or forest reserve.* A county assessor shall recalculate the preferential assessment on any tract of enrolled land which contains farmstead land if the earlier calculation did not value and assess the farmstead land as agricultural use, agricultural reserve or forest reserve. This recalculation shall be accomplished in accordance with § 137b.31 (relating to assessment procedures).[121]

> *Example:* In calculating the preferential assessment of enrolled land, a county has assessed farmstead land at its fair market value, rather than as part of the land that is in agricultural use, agricultural reserve or forest reserve. The county shall recalculate these assessments so that the farmstead land receives preferential assessment, rather than assessment based on fair market value.

(e) *Required recalculation of preferential assessment if contributory value of farm buildings has not been used in determining preferential assessment of land in agricultural use, agricultural reserve or forest reserve.* A county assessor shall recalculate the preferential assessment on any tract of enrolled land if the earlier calculation did not consider the contributory value of any farm buildings on that land. This recalculation shall be accomplished in accordance with § 137b.31 (relating to assessment procedures)[122]

(f) *Required recalculation of preferential assessment in county-wide reassessment.* If a county undertakes a county-wide reassessment, or a county-wide reassessment of enrolled land, the county assessor shall recalculate the preferential assessment of all of the enrolled land in the county, using either the current use values

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[120] This subsection is a slight rework of 7 Pa. Code § 137a.11(b).
[121] This subsection is a slight rework of 7 Pa. Code § 137a.11(c).
[122] This subsection is a slight rework of 7 Pa. Code § 137a.11(d).

and land use subcategories provided by the Department, or lower use values established by the county assessor and land use subcategories provided by the Department.[123]

(g) *Land enrolled prior to June 2, 1998.* A county assessor is not obligated under the Act or this chapter to recalculate the preferential assessment of land that is the subject of applications for preferential assessment filed on or before June 1, 1998, unless recalculation is required under subsections (c), (d), (e) or (f).[124]

§ 137b.34. Calculating the contributory value of farm buildings.

A county assessor shall be responsible to calculate the contributory value of farm buildings on enrolled land.[125]

Obligations of the Owner of Enrolled Land

§ 137b.41. Transfer of enrolled land.

When enrolled land is transferred to a new owner, the new owner shall file an amendment to the original application for the purposes of providing the county assessor with current information and to sign the acknowledgements required under section 4(c) of the Act (72 P. S. § 5490.4(c)).[126]

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[123] This subsection is a slight rework of 7 Pa. Code § 137a.11(e).

[124] This subsection is a slight rework of 7 Pa. Code § 137a.11(f). Attorney Heim noted that the same base year must apply no matter WHEN the application for preferential assessment is made.

[125] This section has been revised in response to numerous commentators who found fault with various specific methodologies proposed by the Department. Lancaster County stated: "The examples over-define and complicate assessment/appraisal concepts by an agency removed from Pennsylvania Assessment requirements/mass appraisal practice, etc." An option would be to define "contributory value of farm buildings" at § 137b.2 (relating to definitions) exactly the same as it is defined in the Act, and insert the recommended methodologies currently set forth in the definition of that term at § 137b.2 here, in this section.

[126] *Verbatim* from 7 Pa. Code § 137a.18. Although Dr. Barr favors deleting this provision, PDA believes it must include this provision in light of the Act, at 72 P.S. § 5490.4(f). That subsection requires an adjustment of the initial application for preferential assessment upon transfer or change of ownership of the enrolled land.

Bradford County favors this provision.

Warren County wanted to know what recourse it would have in the event the amended application is not filed. The Act provides for a penalty of up to $100 under these circumstances (see 72 P.S. §§ 5490.4(f) and 5490.5b), but does not allow for termination of preferential assessment absent a change in use of the land to something other than agricultural use, agricultural reserve or forest reserve.

§ 137b.42. Enrolled "agricultural use" land of less than 10 contiguous acres.

(a) *Demonstration of anticipated yearly gross income from agricultural production.* If a landowner has a contiguous tract of less than 10 acres of enrolled agricultural use land, the county assessor may require the landowner to demonstrate each year that the anticipated yearly gross income from the production of agricultural commodities on the enrolled land is at least $2,000. A landowner may not be required to demonstrate more than once per year that the enrolled land has sufficient anticipated yearly gross income from the production of agricultural commodities to continue to receive preferential assessment. A county assessor requiring additional information shall notify the landowner in writing and shall clearly state in the notice the reasons why the information or documentation submitted by the landowner fails to demonstrate sufficiency of income, and shall identify the particular information the county assessor requests to demonstrate sufficiency of income.

(b) *Annual requirement; circumstances beyond the landowner's control.* The $2,000 anticipated annual gross income requirement referenced in this section shall be met each year, *unless* circumstances beyond the landowner's control are the cause of the requirement not being met.[127]

(c) *Examples.*

Example 1: A landowner owns 9 acres of enrolled land. The land contains a 9-acre orchard, and is enrolled as agricultural use land. Although the landowner reasonably anticipated production well above the $2,000 minimum production requirement in a particular year, and represented that to the county assessor, a drought, hailstorm or blight causes the orchard's production to drop below $2,000 that year. Preferential assessment of the orchard shall continue.[128]

Example 2: A landowner owns 9 acres of enrolled land. The land contains a 9-acre orchard, and is enrolled as agricultural use land. A plant disease destroys the fruit trees. Although the landowner replants the orchard, it will take several years for gross income from agricultural production from that orchard to meet the $2,000 requirement. Preferential assessment of the orchard shall continue. [129]

Example 3: A landowner owns 8 acres of enrolled land. The tract generates over $2,000 in gross annual income from swine production. The landowner sells the swine herd and does not begin another agricultural production operation on the land. The land is no longer in agricultural use. The landowner's failure to continue the land in an agricultural use capable of producing income constitutes a change to an ineligible use. The landowner is

[127] This comes from 7 Pa. Code § 137.8(a) and (b).

[128] This example is derived from 7 Pa. Code § 137.8(b).

[129] This example comes from 7 Pa. Code § 137.8(b).

liable for roll-back taxes and interest, and preferential assessment shall terminate.[130]

§ 137b.43. Notice of change of application.

(a) *Landowner's responsibility to provide advance notice of changes.* An owner of enrolled land shall provide the county assessor of the county in which the land is located at least 30 days' advance written notice[131] of any of the following:

(1) A change in use of the enrolled land to some use other than agricultural use, agricultural reserve or forest reserve.

(2) A change in ownership with respect to the enrolled land or any portion of the land.

(3) Any type of division, conveyance, transfer, separation or split-off of the enrolled land.[132]

(b) *Contents of notice.* The notice described in subsection (a) shall include the following information:[133]

(1) The name and address of any person to whom the land is being conveyed, granted or donated.

(2) The date of the proposed transfer, separation or split-off.

(3) The amount of land to be transferred, separated or split-off.

(4) The present use of the land to be transferred, separated or split-off.

(5) The date of the original application for preferential assessment under the Act.

(6) A description of previous transfers, separations or split-offs of that enrolled land from the date of preferential assessment, of which the landowner

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[130] This example was added at the suggestion of Sullivan County.

[131] Attorney Heim believes this advance written notice requirement is impracticable, and would prefer notice be given within 30 days of the change – whether before *or after* the change. Although the point is well-taken, PDA believe the 30-day advance notice is required under the Act, at 72 P.S. § 5490.4(c).

Verbatim from 7 Pa. Code § 137a.19(a), except for the phrase "transfer, separation or split-off", which comes from 7 Pa. Code § 137.41(a). Also, the language in paragraph (1) restates 7 Pa. Code § 137.52. Paragraph (4) appeared in earlier drafts, and was deleted at the suggestion of Attorney Heim. It read as follows:

> (4) Commencement of direct commercial sales of agriculturally related products and activities on the enrolled land, or commencement of a rural enterprise incidental to the operational unit, as these terms are described in § 137b.52 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit).

In addition, § 137b.52(d) was deleted in response to this comment.

[133] This restates 7 Pa. Code § 137.41(a).

is aware.

(7) The intended use to which the land will be put when transferred, separated or split-off, if known.

(8) The tax parcel number.[134]

(c) *Landowner's duty to notify.* As stated in § 137b.21(d) (relating to application forms and procedures), a person applying for preferential assessment of land under the act shall acknowledge on the application form the obligation described in subsection (a).[135]

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[134] This paragraph was inserted at the suggestion of Attorney Heim.

[135] This is a slightly-revised version of 7 Pa. Code § 137a.19(b).

An earlier draft also contained a subsection addressing the imposition of civil penalties. This was deleted at the suggestion of Legislative Staff and Attorney Heim. It provided as follows:

> (d) *Civil penalty for failure to provide notice.* A county board for assessment appeals may assess a civil penalty against a person who fails to provide notice required under subsection (a). This civil penalty shall be in accordance with section 5.2 of the Act (72 P. S. § 5490.5b) and § 137b.91 (relating to civil penalties).

§ 137b.44. Agricultural reserve land to be open to the public.[136]

(a) *General.* An owner of enrolled land that is enrolled as agricultural reserve land shall allow the land to be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty without charge or fee, on a nondiscriminatory basis. Enrolled land that is in agricultural use or forest reserve is excluded from this

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[136] This topic has been the subject of numerous comments.

PFB favors requiring that hunting be allowed (with reasonable restrictions) on agricultural reserve land.

Bradford County and Legislative Staff favor requiring the applicant to identify the types of public uses to which the agricultural reserve land may be put.

Attorney Heim favors formalizing the uses to which agricultural use land may be put. He also suggested that the public use requirement is meant to be somewhat onerous in order to dissuade persons with residential estates from enrolling their land as "agricultural reserve" land.

Professor Becker suggested the regulation explain what would constitute a reasonable basis for a landowner to deny public access to agricultural reserve land, and also noted that "time of day" restrictions might be appropriate.

PDA has added subsection (e) to afford county assessors some discretion with respect to requiring owners of agricultural reserve land to identify those types of recreational uses to which that land may be put.

PFB suggested the following provisions be added:

> (c) *Authorized restrictions of outdoor recreational activities.* A landowner of agricultural reserve land may only prohibit the public generally from performing an activity recognized in this chapter as an outdoor recreational activity or generally restrict the area in which an outdoor recreational activity may be performed by the public upon approval of the county assessor. A general prohibition or restriction of an outdoor recreational activity which is requested by a landowner may only be approved by the county assessor if the landowner demonstrates:
>
> (1) The requested prohibition or restriction is necessary to control public access to portions of the agricultural reserve tract used by the occupier of the tract for residential purposes between the hours of sunset and sunrise;
>
> (2) Allowance of the recreational activity without the requested prohibition or restriction would have a substantial likelihood of placing the residents of the agricultural reserve tract at substantial risk of injury or substantial danger to their safety or well-being;
>
> (3) The requested prohibition or restriction is reasonably necessary for the protection of the safety or health of those members of the public likely to access the land; or
>
> (4) The requested prohibition or restriction is necessary to prevent or minimize damage to the property that would likely occur without the prohibition or restriction.
>
> A landowner may deny access to any individual or may terminate access of any individual whom the landowner reasonably believes is obtaining access for the purpose of assaulting, threatening, harassing or otherwise antagonizing any resident of the land or any other person located on the land, or for the purpose of performing illegal or criminal conduct. A landowner may terminate access of any individual who has failed to notify the landowner before entering the enrolled land, as prescribed in subsection (d). A landowner may immediately act to prohibit or limit individuals from performing or continuing to perform particular activities that have a reasonable likelihood of causing material damage to the landowner's property or placing persons residing on the tract or other persons located on the tract at substantial risk of injury or substantial danger to their safety or well-being.
>
> (d) *Entry upon the agricultural reserve land.* A person shall, whenever possible, notify the landowner before entering any agricultural reserve land."

requirement.[137]

(b) *Actual use by public not required.* Enrolled land that is enrolled as agricultural reserve land need not actually be *used* by the public for the purposes described in subsection (a) in order to continue to receive a preferential assessment. It must, however, be *available* for use for those purposes.[138]

(c) *Reasonable restrictions on use allowed.* A landowner may place reasonable restrictions on public access to enrolled land that is enrolled as agricultural reserve land. These restrictions might include limiting access to the land to pedestrians only, prohibiting hunting or the carrying or discharge of firearms on the land, prohibiting entry where damage to the land might result or where hazardous conditions exist, or other reasonable restrictions.[139]

(d) *Entry upon the agricultural reserve land.* A person shall, whenever possible, notify the landowner before entering upon enrolled land that is enrolled as agricultural reserve land. The landowner may deny entry when damage to the property might result. The landowner can prohibit entry to areas of the agricultural reserve land upon prior notification to the county assessor of the existence of a hazardous condition on that land. The landowner's reasons to deny entry to the land shall be based upon fact and acceptable to the county assessor.[140]

(e) *County assessor's discretion.* A county assessor may establish reasonable guidelines by which an owner of enrolled agricultural reserve land may identify the conditions under which the land shall be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty, and by which the county assessor may maintain an up-to-date summary of the locations of agricultural reserve land within the county and the public uses to which these agricultural reserve lands may be put. A county assessor may disseminate this information to the public.[141]

Impact of Specific Events or Uses on Preferential Assessment

§ 137b.51. Death of an owner of enrolled land.

(a) *Inheriting a tract that does not meet minimum requirements for preferential assessment.* Upon the death of an owner of enrolled land, if any of the

[137] This section restates 7 Pa. Code § 137.6. The requirement is imposed by the Act, under the definition of "agricultural reserve" at 72 P.S. § 5490.2. It also restates a portion of 7 Pa. Code § 137.9(a).
[138] PFB suggested this subsection be deleted. The Department has elected to retain this subsection. At worst, this provision is neutral. At best, it would prevent the termination of preferential assessment on the basis the agricultural reserve land had not actually been used by the public.
[139] This is new, and is intended to illustrate the reasonable limitations a landowner might place upon members of the public using enrolled agricultural reserve land for recreational purposes. The reference to "damage to the land" comes from 7 Pa. Code § 137.9(b).
[140] This is a paraphrased version of 7 Pa. Code § 137.9(b).
[141] This subsection is new, and was drafted in response to comments.

enrolled land that is divided among the beneficiaries designated as Class A for inheritance tax purposes no longer meets the minimum qualifications for preferential assessment, preferential assessment shall terminate with respect to the portion of the enrolled land that no longer meets the minimum requirements for preferential assessment, and no roll-back tax may be charged on any of the land that no longer meets the requirements for preferential assessment.[142]

> *Example:* Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and the land is divided among several Class A beneficiaries, as follows: Landowner B—75 acres. Landowner C—2 acres. Landowner D—23 acres. The tracts owned by Landowners B and D continue in agricultural use. The 2-acre tract owned by Landowner C no longer meets the size or income requirements in section 3 of the Act (72 P. S. § 5490.3). Under these facts, preferential assessment of the 2-acre tract ends. Landowner C does not owe roll-back taxes with respect to this tract. Landowners B and D continue to receive preferential assessment.

(b) *Inheriting a tract that meets the minimum requirements for preferential assessment.* If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and the tract continues in agricultural use, agricultural reserve or forest reserve, preferential assessment shall continue. If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and subsequently changes the use of that tract so that it does not qualify for preferential assessment, that beneficiary shall owe roll-back taxes with respect to the portion of the enrolled land he inherited, but no roll-back taxes are due with respect to any other portion of the enrolled land inherited by another beneficiary.[143]

> *Example 1:* Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and Landowners B and C each inherit a 50-acre tract, as Class A beneficiaries. The tracts owned by Landowners B and C continue in agricultural use. Preferential assessment continues.

> *Example 2:* Same facts as Example 1, except Landowner B converts the 50-acre tract of agricultural land to industrial use. Landowner B owes roll-back taxes with respect to the 50-acre tract. Landowner A does not owe roll-back taxes. Preferential assessment continues with respect to Landowner A's tract.

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[142] *Verbatim* from 7 Pa. Code § 137a.12(a). Also see 72 P.S. § 5490.6(d). This section supplants 7 Pa. Code § 137.45. A slightly-revised version of the definition of "Class A beneficiary" that had been set forth in 7 Pa. Code § 137.45(b) has been moved to 7 Pa. Code § 137b.2 (relating to definitions).
[143] *Verbatim* from 7 Pa. Code § 137a.12(b).

§ 137b.52. Direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit.

(a) *General.* An owner of enrolled land may apply up to 2 acres of enrolled land toward direct commercial sales of agriculturally related products and activities, or toward a rural enterprise incidental to the operational unit, without subjecting the entirety of the enrolled land to roll-back taxes, if *both* of the following apply to the commercial activity or rural enterprise:

(1) The commercial enterprise does not permanently impede or otherwise interfere with the production of an agricultural commodity on that portion of the enrolled land which is not subject to roll-back taxes under section 8(d)(2) of the Act (72 P.S. § 5490.8(d)(2))[144]; and

(2) The commercial activity is owned and operated by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, or by a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes.[145]

(b) *Roll-back taxes and status of preferential assessment.* If a tract of 2-acres-or-less of enrolled land is used for direct commercial sales of agriculturally related products and activities, or toward a rural enterprise incidental to the operational unit, the 2-acre-or-less tract shall be subject to roll-back taxes, and preferential assessment of that 2-acre-or-less tract shall end. The remainder of the enrolled land shall continue under preferential assessment as long as that remainder continues to meet the requirements for eligibility in section 3 of the Act (72 P. S. § 5490.3).[146]

(c) *Inventory by county assessor to determine ownership of goods.* A county assessor may inventory the goods sold at the business to assure that they are owned by the landowner or persons who are class A beneficiaries of the landowner for inheritance tax purposes, or by a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, and that the goods meet the requirements of this section.[147]

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[144] This paragraph was revised at the suggestion of PFB.

[145] See 72 P.S. § 5490.8(d)(1) and (d)(1)(i). This subsection restates a portion of 7 Pa. Code § 137a.13, but adds the reference to ownership/operation of the commercial activity set forth in the Act (at 72 P.S. § 5490.8(d)(1)(i)) and the regulation at § 137.69(b). This replaces 7 Pa. Code § 137.69(a) and (d). The most recent revision to this subsection was at the suggestion of Attorney Heim.

[146] See 72 P.S. § 5490.8(d)(1). This restates a portion of 7 Pa. Code § 137a.13. This also replaces 7 Pa. Code § 137.69(d). Although Dr. Barr expressed disagreement with this paragraph, PDA believes the referenced section of the Act requires the assessment of roll-back taxes on land involved in the described commercial activities.

[147] See 72 P.S. § 5490.8(d)(1)(ii). This restates 7 Pa. Code § 137.69(c).

An earlier draft also contained a subsection (d), which was deleted since it was not specifically authorized or required under the Act. The subsection read as follows:

(d) *Landowner to notify county assessor.* If a landowner seeks to commence direct

§ 137b.53. Wireless or cellular telecommunications facilities.

(a) *Permitted use.* A landowner may lease a tract of enrolled land to be used for wireless or cellular telecommunications, if all of the following conditions are satisfied:

(1) The tract so leased does not exceed 1/2 acre.

(2) The tract does not have more than one communication tower located upon it. [148]

(3) The tract is accessible.

(4) The tract is neither conveyed nor subdivided. A lease may not be considered a subdivision.[149]

(b) *Roll-back taxes imposed with respect to leased land.* A county assessor shall assess and impose roll-back taxes upon the tract of land leased by an owner of enrolled land for wireless or cellular telecommunications purposes.[150]

(c) *Preferential assessment ends and fair market value assessment commences with respect to leased land.* A county assessor shall assess land leased in accordance with subsection (a) based upon its fair market value.[151]

(d) *Preferential assessment continues on unleased land.* The lease of enrolled land in accordance with subsection (a) does not invalidate the preferential assessment of the remaining enrolled land that is not so leased, and that enrolled land shall continue to receive a preferential assessment, if it continues to meet the minimum requirements for eligibility in section 3 of the Act (72 P. S. § 5490.3).[152]

(e) *Wireless services other than wireless telecommunications.* Wireless services other than wireless telecommunications may be conducted on land leased in accordance with subsection (a) if the wireless services share a tower with a wireless telecommunications provider.[153]

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commercial sales of agriculturally-related products and activities on land receiving a preferential assessment under the Act, or seeks to operate a rural enterprise incidental to the operational unit on that land, the landowner shall notify the county assessor at least 30 days in advance of commencement of the operation or enterprise, using the procedure set forth in § 137b.43(a)(4) (relating to notice of change of application).

[148] Attorney Heim asked the reason for this restriction. PDA responds that the restriction is required under the Act, at 72 P.S. § 5490.6(b.1)(2).

[149] *Verbatim* from 7 Pa. Code § 137a.14(a). Attorney Heim suggested the phrase "even if subdivision is required by local law" be added to the end of this sentence.

[150] *Verbatim* from 7 Pa. Code § 137a.14(b).

[151] *Verbatim* from 7 Pa. Code § 137a.14(c).

[152] *Verbatim* from 7 Pa. Code § 137a.14(d).

[153] *Verbatim* from 7 Pa. Code § 137a.14(e). Attorney Heim notes the use of the term "provider" in this subsection and the next, and asks whether the term "related company" would be preferable. Although the

(f) *Responsibility for obtaining required permits.* The wireless or cellular telecommunications provider shall be solely responsible for obtaining required permits in connection with any construction on a tract of land which it leases for telecommunications purposes under subsection (a).[154]

(g) *Responsibility of municipality for issuing required permits.* A municipality may not deny a permit necessary for wireless or cellular communications use for any reason other than the applicant's failure to strictly comply with permit application procedures.[155]

§ 137b.54. Option to accept or forgive roll-back taxes in certain instances.

(a) *Option to accept or forgive principal on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located may accept or forgive roll-back taxes with respect to that portion of the enrolled land that is granted or donated to any one of the following:

(1) A school district.

(2) A municipality.

(3) A county.

(4) A volunteer fire company.

(5) A volunteer ambulance service.

(6) A religious organization, if the religious organization uses the land only for construction or regular use as a church, synagogue or other place of worship, including meeting facilities, parking facilities, housing facilities and other facilities which further the religious purposes of the organization.

(7) A not-for-profit corporation that qualifies as tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)(3)), if prior to accepting ownership of the land, the corporation enters into an agreement with the municipality wherein the subject land is located guaranteeing that the land will be used exclusively for recreational purposes, all of which shall be available to the general public free of charge. If the corporation changes the use of all or a portion of the land or charges admission or any other fee for the use or enjoyment of the facilities, the

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Department agrees the term would be more expansive and, perhaps, more descriptive of the entities likely to be involved in establishing these towers, the Act (at 72 P.S. § 5490.6(b.2) and (b.3)) uses the term "provider."

[154] *Verbatim* from 7 Pa. Code § 137a.14(f).

[155] *Verbatim* from 7 Pa. Code § 137a.14(g). Attorney Heim asked the reason for the inclusion of this subsection. This subsection restates a provision found in the Act, at 72 P.S. § 5490.6(b.3).

corporation shall immediately become liable for all roll-back taxes and accrued interest previously forgiven.[156]

(b) *No option to forgive interest on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located may not forgive interest due on roll-back taxes with respect to that portion of the enrolled land that is granted or donated to any one of the entities or for any of the uses described in subsection (a)(1) through (a)(7). That interest shall be distributed in accordance with section 8(b.1) of the Act (72 P.S. § 5490.8(b.1)). [157]

§ 137b.55. Transfer of enrolled land for use as a cemetery.[158]

(a) *Transfers*[159]. If an owner of enrolled land sells, donates or otherwise transfers any portion of the enrolled land to a nonprofit corporation for use as a cemetery, and at least 10 acres of the remainder of the enrolled land remain in agricultural use, agricultural reserve or forest reserve after the transfer, no violation of preferential assessment will be deemed to have occurred and roll-back taxes may not be assessed with respect to either the transferred portion of the enrolled land or the remainder of the enrolled land.[160]

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner sells 20 acres of the enrolled land to a nonprofit corporation for use as a cemetery. The remaining 30-acre tract continues in agricultural use. Under these facts, no roll-back taxes are due with respect to either tract. The 30-acre tract continues to receive preferential assessment. The 20-acre tract receives an assessment based on fair market value.

(b) *Exception.* If a nonprofit corporation acquires enrolled land as described in subsection (a), and subsequently changes the use of the land to some use other than as a cemetery or transfers the land for use other than as a cemetery, or uses the land for something other than agricultural use, agricultural reserve or forest reserve, the nonprofit corporation shall be required to pay roll-back taxes on that land.[161]

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[156] *Verbatim* from 7 Pa. Code § 137a.15.
[157] This new subsection was added in response to a comment offered by County Assessors.
[158] See the Act, at 72 P.S. § 5490.8(e).
[159] Both Legislative staff and the PFB raised concerns regarding the use of the word "transfer" throughout this section. PDA believes it has addressed these concerns in the revisions to the definition of "transfer" at § 137b.2 (relating to definitions).
[160] *Verbatim* from 7 Pa. Code § 137a.16(a). County Assessors sought clarification that a for-profit cemetery would not be treated the same as a nonprofit cemetery. PDA believes the language of subsection (a) is sufficiently clear in this regard.
[161] Parts of this subsection come from 7 Pa. Code § 137a.16(b). The references to "agricultural use, agricultural reserve and forest reserve" in the subsection and the example are new, and were added at the suggestion of Sullivan County. Although the Department believes this revision makes sense, it should be noted that the Act (at 72 P.S. § 5490.8(e)(2)) does not include these eligible uses as uses to which cemetery land could be put without triggering roll-back taxes.

Example: Same facts as the example under subsection (a), but 2 years after it acquired the 20-acre tract, the nonprofit corporation changes the use to something other than cemetery use, agricultural use, agricultural reserve or forest reserve. The nonprofit corporation owes roll-back taxes with respect to the 20-acre tract. The owner of the 30-acre tract is not liable for the payment of any roll-back taxes triggered by the nonprofit corporation's change of use.[162]

§ 137b.56. Transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail.[163]

(a) *Transfers.*[164] If an owner of enrolled land sells, donates or otherwise transfers any portion of the enrolled land, or transfers an easement or right-of-way with respect to any portion of the enrolled land, no violation of preferential assessment will be deemed to have occurred and roll-back taxes may not be assessed with respect to either the transferred portion of the enrolled land or the remainder of the enrolled land if all of the following occur:

(1) The land is transferred to a nonprofit corporation.

(2) The transferred land is used as an unpaved trail for nonmotorized passive recreational use. Walking, jogging, running, roller skating, in-line skating, pedacycling, horseback riding and the use of animal-drawn vehicles are examples of passive recreational use, as are all other forms of man-powered or animal-powered conveyance.

(3) The transferred land does not exceed 20 feet in width.

(4) The transferred land is available to the public for use without charge.

(5) At least 10 acres of the remainder of the enrolled land remain in agricultural use, agricultural reserve or forest reserve.[165]

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 20-foot-wide pathway across the land to a nonprofit corporation for use as a trail, and otherwise complies with paragraphs (1)—(5) and section 8(e) of the Act (72 P. S. § 5490.8(e)). Under these facts, no roll-back taxes are due with respect to either tract. The trail receives an assessment based upon fair market value. The remainder of the landowner's 50-acre tract continues to receive a preferential assessment.

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[162] This sentence was added at the suggestion of PFB.
[163] See the act, at 72 P.S. § 5490.8(e)(1)(iii).
[164] See the footnote for § 137b.55(a) (relating to transfer of enrolled land for use as a cemetery).
[165] *Verbatim* from 7 Pa. Code § 137a.17(a). County Assessors requested this section be revised to require that the trail not "permanently render the land incapable of producing an agricultural commodity (i.e. pave the trail)." The phrase "an unpaved" was added to paragraph no. 2 in response.

(b) *Exception.* If a nonprofit corporation acquires enrolled land or an easement or right of way with respect to enrolled land as described in subsection (a), and the use of the land is subsequently changed to a use other than the use described in subsection (a)(1)—(5) or section 8(e) of the Act (72 P.S. § 5490.8(e)), the nonprofit corporation shall be required to pay roll-back taxes on that land. The land is no longer entitled to preferential assessment.[166]

> *Example:* A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 15-foot-wide pathway across the land to a nonprofit corporation for use as a trail. The conveyance is for a use described in subsection (a)(1)—(5) or section 8(e) of the Act (72 P.S. § 5490.8(e)). The nonprofit corporation subsequently changes the use of the trail to a motorcycle trail, a snowmobile trail or some other use not allowed under subsection (a)(1)—(5) or section 8(e) of the Act (72 P.S. § 5490.8(e)). Under these facts, roll-back taxes are due with respect to the 15-foot-wide tract. The remainder of the 50-acre tract continues to receive a preferential assessment. The owner of the remainder continuing to receive preferential assessment is not liable for any roll-back taxes triggered by the nonprofit corporation's change of use.[167]

Roll-Back Taxes

§ 137b.61. Liability for roll-back taxes.

(a) *General.* If an owner of enrolled land changes the use[168] of the land to something other than agricultural use, agricultural reserve or forest reserve or changes the use of the enrolled land so that it otherwise fails to meet the requirements of section 3 of the Act (72 P. S. § 5490.3), or uses the land for something other than agricultural use, agricultural reserve or forest reserve,[169] that landowner shall be responsible for the payment of roll-back taxes and the property shall be removed from this preferential assessment program.[170] The owner of enrolled land may not be liable for any roll-back tax triggered as a result of a change to an ineligible use by the owner

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[166] *Verbatim* from 7 Pa. Code § 137a.17(b), except the following sentence was deleted: "The land is no longer entitled to preferential assessment." This was deleted since the Act (at 72 P.S. § 5490.8(e)(1) and (2)) indicates preferential assessment of the land has already ended.
[167] This sentence was added at the behest of PFB, and is appropriate under the Act, at 72 P.S. § 5490.8(e)(2).
[168] Attorney Heim seeks clarification of the point where "change of use" occurs. Is it the filing of a development plan? The sale of land to a developer? PDA believes it should leave this determination to county assessors, to be made on a case-by-case basis.
[169] This phrase was added in response to a comment raised by Sullivan County with respect to § 137b.55(a). Please refer to that section.
[170] This addresses the same subject matter as 7 Pa. Code § 137.51 and § 137.55(1). It also partially restates 7 Pa. Code § 137.43.

of a split-off tract.[171]

(b) *Split-off tract.* Where a split-off tract meets all of the following criteria, which are set forth in section 6(a.1)(1) of the Act (72 P.S. § 5490.6(a.1)(1)), roll-back taxes are only due with respect to the split-off tract, and are not due with respect to the remainder[172]:

(1) The tract split off does not exceed 2 acres annually, except that a maximum of the minimum residential lot size requirement annually may be split off if the property is situated in a local government unit which requires a minimum lot size of 2—3 acres.

(2) The tract is used for agricultural use, agricultural reserve or forest reserve or for the construction[173] of a residential dwelling to be occupied by the person to whom the land is conveyed.

(3) The total tract split off does not exceed the lesser of 10 acres or 10% of the entire tract of enrolled land.[174]

(c) *Split-off that complies with section 6(a.1)(1)(i) of the Act.* If enrolled land undergoes split-off and the tract that is split-off meets the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the Act (72 P.S. § 5490.6(a.1)(1)(i)), the landowner who conducted the split-off shall owe roll-back taxes with respect to the split-off tract. The preferential assessment of that split-off tract shall be terminated.[175] If the remainder of the enrolled land is in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the Act (72 P.S. § 5490.3), no roll-back taxes are due with respect to that remainder, and preferential assessment shall continue with respect to that tract.[176]

Example: Landowner owns 50 acres of enrolled land. Landowner splits-off 2 acres for a residential dwelling, in compliance with section 6(a.1)(1)(i) of the Act (72 P.S. § 5490.6(a.1)(1)(i)). The landowner owes roll-back taxes on the 2-acre tract, and the preferential assessment of that tract shall be terminated. The remaining 48-acre tract would continue to receive a preferential assessment, assuming it remains in agricultural use, agricultural reserve or forest reserve and otherwise continues to meet the requirements of

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[171] This derives from 7 Pa. Code § 137a.20(a). This also restates the example set forth in 7 Pa. Code § 137.55(3)(iii).
[172] This sentence has been revised from the most recent draft, which erroneously indicated that roll-back taxes would *not* be due with respect to the split-off tract that meets the requirements of the Act, at 72 P.S. § 5490.6(a.1)(1). PFB and Attorney Heim noticed this error. A more detailed discussion of this issue is set forth in the footnote following the example in subsection (c).
[173] Attorney Heim asked about *existing* dwellings, as opposed to the *construction* of dwellings. The term "construction" appears in the Act, at 72 P.S. § 5490.6(a.1)(1)(i).
[174] From 7 Pa. Code § 137a.20(b). This restates the substance of 7 Pa. Code § 137.44, but adds the reference to required lot sizes of 2-3 acres which appears in the Act, at 72 P.S. § 5490.6(a.1)(1)(i). This also supplants and clarifies 7 Pa. Code § 137.55(3)(ii).
[175] This sentence supplants 7 Pa. Code § 137.55(3)(iv), which addressed reversion to normal assessment.
[176] *Verbatim* from 7 Pa. Code § 137a.20(c).

section 3 of the Act (72 P.S. § 5490.3).[177]

[177] This example was set forth in the Interim Regulations, at 7 Pa. Code § 137a.20(c). Northampton County and Montgomery County raised the question of whether roll-back taxes should be due with respect to a split-off tract that meets the requirements of section 6(a.1)(1)(i) of the Act (72 P.S. § 5490.6(a.1)(1)(i)). The Department's position is that roll-back taxes are *always* due with respect to a tract that is split-off in accordance with 72 P.S. § 5490.6(a.1)(1)(i). Here is the Department's legal rationale for this position:

The Clean and Green Law, at 72 P.S. § 5490.6(a.1)(1), provides as follows:

> ... The landowner changing the use of the land to one inconsistent with the act shall be liable for payment of roll-back taxes. The *owner of land which continues to be eligible for preferential assessment* shall not be liable for any roll-back taxes triggered as a result of a change to an ineligible use by the owner of the split-off tract. *Roll-back taxes under section 5.1(72 P.S. § 5490.5a) shall not be due if one of the following provisions applies:*
>
> > (i) The tract split off does not exceed two acres annually, except that a maximum of the minimum residential lot size requirement annually may be split off if the property is situated in a local government unit which requires a minimum residential lot size of two to three acres; the tract split off is used only for agricultural use, agricultural reserve or forest reserve or for the construction of a residential dwelling to be occupied by the person to whom the land is conveyed; and the total tract or tracts so split off do not exceed the lesser of ten acres or ten percent (10%) of the entire tract subject to the preferential assessment. (Clarification and emphasis added).

The Clean and Green Law, at 72 P.S. § 5490.6(a.1)(2), provides as follows:

> *Each tract which has been split off under paragraph (1)(i) (72 P.S. § 5490.6(a.1)(1)(i), set forth above) shall be subject to roll-back taxes for such period of time as provided in section 5.1(72 P.S. § 5490.5a).* The landowner changing the use if the land shall be liable for payment of roll-back taxes. (Clarification and emphasis added).

It is necessary to reconcile 72 P.S. § 5490.6(a.1)(1) and 72 P.S. § 72 P.S. § 5490.6(a.1)(1)(2). The former makes a ***general*** statement that roll-back taxes *are not* triggered by a split-off as described in 72 P.S. § 5490.6(a.1)(1)(i). It makes no specific reference to the split-off tract or the remainder tract. The latter, on the other hand, makes the ***specific*** statement that roll-back taxes *are* due with respect to a tract that has been split-off in accordance with 72 P.S. § 5490.6(a.1)(1)(i). These provisions can be reconciled under the rules of statutory construction and interpretation.

The Statutory Construction Act of 1972 (at 1 Pa.C.S.A. § 1501 *et seq.*) provides guidance on the question at hand:

> ...Every statute shall be construed, if possible, to give effect to all its provisions (1 Pa.C.S.A. § 1921(a)).
>
> Whenever a ***general*** provision in a statute shall be in conflict with a ***special*** provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both ... (1 Pa.C.S. § 1933)(Emphasis added).

In the matter at hand, the only way to construe the language of 72 P.S. § 5490.6(a.1)(1) and (2) to give effect to the ***specific*** requirement that roll-back taxes be triggered with respect to a tract that has been split-off in accordance with 72 P.S. § 5490.6(a.1)(1)(i) and the ***general*** statement regarding exemption from roll-back taxes is to construe the ***general*** statement as referring only to the remainder land, and not the split-off land. In other words, **if a tract is split-off in accordance with 72 P.S. § 5490.6(a.1)(1)(i), roll-back taxes must be paid with respect to the split-off tract but not with respect to the remainder tract.**

(d) *Split-off that does not comply with section 6(a.1)(1)(i) of the Act.* If enrolled land undergoes split-off and the tract that is split-off does not meet the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the Act (72 P.S. § 5490.6(a.1)(1)(i)), the landowner who conducted the split-off shall owe roll-back taxes with respect to all of the enrolled land.

> *Example 1:* Landowner owns 50 acres of enrolled land. Landowner splits-off 4 acres in a single year. This split-off would not meet the size requirements in section 6(a.1)(1)(i) of the Act (72 P.S. § 5490.6(a.1)(1)(i)),. The landowner owes roll-back taxes on the entire 50-acre tract. The 4-acre tract no longer receives preferential assessment. If the 46-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the Act (72 P.S. § 5490.3), though, preferential assessment would continue with respect to that tract.

> *Example 2:* Landowner owns 50 acres of enrolled land. Landowner splits-off 2-acre tracts in 3 different years. The aggregate amount of land split-off (6 acres) exceeds the 10% cap in section 6(c.1)(1)(i) of the Act (72 P.S. § 5490.6(a.1)(1)(i)). Under these facts, the aggregate total of split-off land could not exceed 5 acres. The landowner owes roll-back taxes on the entire 50-acre tract. The three 2-acre tracts no longer receive preferential assessment. If the remaining 44-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the Act (72 P.S. § 5490.3), though, preferential assessment would continue with respect to that 44-acre tract.

(e) *Split-off occurring through condemnation.* If any portion of a tract of enrolled land is condemned, the condemnation may not trigger liability for roll-back taxes on either the condemned portion of the enrolled land or the remainder. If the condemned portion or the remainder of the enrolled land remains in agricultural use, agricultural reserve or forest reserve, and meets the criteria in section 3 of the Act (72 P.S. § 5490.3), preferential assessment shall continue with respect to that condemned portion or remainder.[178]

(f) *Split-off occurring through voluntary sale in lieu of condemnation.* If any portion of a tract of enrolled land is - in *lieu* of requiring the condemnation process to proceed - voluntarily sold by a landowner to an entity that possesses the lawful authority to acquire that portion through condemnation, the transfer may not trigger liability for roll-back taxes on either the split-off portion of the enrolled land or the

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This interpretation is also consistent when the legislative history of the Clean and Green Law is considered. Prior to the revisions to the Clean and Green Law accomplished by Act 156 of 1998, the Clean and Green Law clearly stated (at 72 P.S. § 5490.6(b)) that roll-back taxes would be triggered with respect to a tract which is split off in accordance with the standards that are currently set forth at 72 P.S. § 5490.6(a.1)(1)(i). By reverse implication, roll-back taxes were *not* due with respect to the remainder tract. The conclusion reached in this footnote is, therefore, consistent with the prior legislative history and intent of the Clean and Green Law.

[178] *Verbatim* from 7 Pa. Code § 137a.20(e). See the act, at 72 P.S. § 5490.6(a.1)(1)(ii). This also restates 7 Pa. Code § 137.46(a). Condemnation is also referenced at 7 Pa. Code § 137.55(3)(i).

remainder. If the split-off portion or the remainder of the enrolled land remains in agricultural use, agricultural reserve or forest reserve, and meets the criteria in section 3 of the Act (72 P.S. § 5490.3), preferential assessment shall continue with respect to that split-off portion or remainder.[179]

(g) *Change in use of separated land occurring within 7 years of separation.* If enrolled land undergoes separation, and one of the tracts created through separation is converted to other than agricultural use, agricultural reserve or forest reserve within 7 years of the date of the separation, or is converted so that it no longer meets the requirements of section 3 of the Act (72 P.S. § 5490.3), the owner of the ineligible tract owes roll-back taxes with respect to all of the enrolled land. The ineligible tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive a preferential assessment.[180]

> *Example:* Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A sells Landowner B a 50-acre portion of this enrolled land. Both 50-acre tracts continue in agricultural use, and preferential assessment continues with respect to both tracts. Six years after the original 100-acre tract of enrolled land was separated, Landowner B converts his 50-acre tract to industrial use. Landowner B owes roll-back taxes with respect to the entire 100-acre tract. Landowner A's 50-acre tract continues to receive preferential assessment, and the preferential assessment of Landowner B's 50-acre tract ends.

(h) *Change in use of separated land occurring 7 years or more after separation.* If enrolled land undergoes separation, and one of the tracts created through separation is converted to other than agricultural use, agricultural reserve or forest reserve 7 years or more after the date of the separation, the owner of the separated tract owes roll-back taxes with respect to that separated tract, but does not owe roll-back taxes with respect to the remainder of the enrolled land. The separated tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive a preferential assessment.[181]

> *Example:* Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A sells Landowner B a 50-acre portion of this enrolled land. Both 50-acre tracts continue in agricultural use, and preferential assessment continues with respect to both tracts. Eight years after the original 100-acre tract of enrolled land was separated, Landowner B converts his 50-acre tract to industrial use. Landowner B owes roll-back taxes with respect to the 50-acre tract which he has converted to ineligible use. Landowner A's 50-acre tract continues to receive preferential assessment, and the preferential

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[179] This rephrases 7 Pa. Code § 137.46(b). This is included for discussion purposes.

[180] *Verbatim* from 7 Pa. Code § 137a.20(f). Also, this restates a portion of 7 Pa. Code § 137.43. This also supplants 7 Pa. Code § 137.55(2).

[181] *Verbatim* from 7 Pa. Code § 137a.20(g). Also, this restates a portion of 7 Pa. Code § 137.43. This also supplants 7 Pa. Code § 137.55(2). County Assessors asked whether the 7-year period referenced in this section to "insulate" the owners of enrolled land. PDA agrees that this is probably correct. The 7-year requirement is found in the Act, at 72 P.S. § 5490.6(a.2).

assessment of Landowner B's 50-acre tract ends.

§ 137b.62. Calculation of roll-back taxes.

A county assessor shall calculate roll-back taxes using the following formula:[182]

(1) If preferential assessment has been in effect for *7 tax years or more*, calculate the difference between preferential assessment and normal assessment in the current tax year,[183] and in each of the 6 tax years immediately preceding the current tax year. If preferential assessment has been in effect for *less than 7 tax years*, calculate the difference between preferential assessment and normal assessment in the current tax year, and in each of the tax years in which the enrolled land was preferentially assessed.[184]

(2) With respect to each of these sums, multiply that sum by the corresponding factor, which reflects ~~simple~~ compound interest[185] at the rate of 6% per annum from that particular tax year to the present: [The statue clearly states that interest is at the rate of 6% per annum which is compound interest, it is not simple interest on the compounding balance.]

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[182] This reworks 7 Pa. Code § 137a.20(h). A reference to this formula superceding the formula set forth at 7 Pa. Code § 137.54 has been deleted. The substance of this section replaces 7 Pa. Code § 137.53.

[183] At the suggestion of Lancaster County, language requiring that this sum be prorated to "reflect the portion of the tax year which preceded the date upon which liability for roll-back taxes was triggered" has been deleted. In Lancaster County's words:

> Why complicate the procedure by requiring a proration of the rollback tax due in the year of change. The appropriate way to handle this matter would be to rollback to the market value base tax amount, effective January 1 of the year the change takes place. Do not charge the 6% interest for the current year. Handle as an excess and let the tax collector bill for the difference in tax between the preferential assessment tax and the market value tax. The second year tax lean calculation would include 6% interest on the year of change and the second year tax difference, and so on to the seventh year as shown in the examples.

[184] This paragraph is a reworked version of 7 Pa. Code § 137a.20(h)(1), and is intended to clarify that roll-back taxes are not due with respect to any time before preferential assessment was implemented, and should be prorated to reflect the portion of the current tax year which lapsed before roll-back taxes were triggered.

[185] In the drafting of this document there has been considerable controversy as to whether interest on roll-back taxes should be compound or simple.

Dr. Barr, Professor Becker (citing 41 P.S. § 201), Lehigh County, Mifflin County and Bradford County recommended interest be simple. Compound interest was acceptable to Legislative Staff, County Assessors and Montgomery County.

The relevant language from the Act is at 72 P.S. § 5490.5a, which states that certain tracts of land "...shall be subject to roll-back taxes plus interest on each year's roll-back tax at the rate of six percent (6%) per annum." On balance, the Department believes it will be more defensible in the regulatory promulgation process to interpret the Act as requiring simple interest, rather than compound interest, on roll-back taxes.

~~*Year*~~	~~*Factor*~~
~~Current Tax Year~~	~~1.00~~[186]
~~1 Tax Year Prior~~	~~1.06~~
~~2 Tax Years Prior~~	~~1.12~~
~~3 Tax Years Prior~~	~~1.18~~
~~4 Tax Years Prior~~	~~1.24~~
~~5 Tax Years Prior~~	~~1.30~~
~~6 Tax Years Prior~~	~~1.36~~

Note: Factors should be corrected to reflect compound factors, not simple.

(3) Add the individual products obtained under Step (2). The sum equals total roll-back taxes, - including simple interest at 6% per annum on each year's roll-back taxes.[187]

> *Example 1:* Landowner's liability for roll-back taxes is triggered on July 1, *7 or more tax years* after preferential assessment began. The county assessor calculates the difference between the preferential assessment and normal assessment in the current tax year and in each of the 6 tax years preceding the current tax year, in accordance with this section. The county assessor determines the appropriate sum to be $2,000 in each full year, and prorates this sum with respect to the current tax year.[188]

~~*Year*~~	~~*Amount Multiplied by Factor*~~
~~Current Tax Year~~	~~$1,000 x 1.00 = $1,000~~
~~1 Tax Year Prior~~	~~$2,000 x 1.06 = $2,120~~
~~2 Tax Years Prior~~	~~$2,000 x 1.12 = $2,240~~
~~3 Tax Years Prior~~	~~$2,000 x 1.18 = $2,360~~
~~4 Tax Years Prior~~	~~$2,000 x 1.24 = $2,480~~
~~5 Tax Years Prior~~	~~$2,000 x 1.30 = $2,600~~
~~6 Tax Years Prior~~	~~$2,000 x 1.36 = $2,720~~

~~TOTAL ROLL-BACK TAXES, WITH INTEREST: $15,520~~

[Note: should be corrected to reflect compound interest.]

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[186] An earlier draft would have charged interest on roll-back taxes from the initial year they are due. Bradford County, Montgomery County and Lancaster County stated their position that interest should not be charged with respect to this initial year. Sullivan County favored charging interest from the initial year. PDA elected to revise this provision to reflect interest is NOT due with respect to this initial year.

[187] This procedure is mathematically different from the procedure for calculating roll-back taxes set forth in 7 Pa. Code § 137.54, and from the Interim Regulation at 7 Pa. Code § 137a.20 – which required compound interest rather than simple interest.

[188] This example is a slightly-reworked version of 7 Pa. Code § 137a.20(h)(3).

Example 2: Landowner's liability for roll-back taxes is triggered on July 1, *less than 7 tax years* after preferential assessment began. The county assessor calculates the difference between the preferential assessment and normal assessment in the current tax year and each of the tax years since preferential assessment began, in accordance with this section. The county assessor determines the appropriate sum to be $2,000 in each of these years. The county assessor would calculate roll-back taxes and interest in accordance with the chart set forth in Example 1, calculating for only those tax years in which preferential assessment occurred.

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§ 137b.63. Due date for roll-back taxes.

If roll-back taxes are owed, they are due on the day of the change in use or other event triggering liability for those roll-back taxes.[189]

§ 137b.64. Liens for nonpayment of roll-back taxes.

The county can refer a claim for unpaid roll-back taxes and interest to the county's Tax Claim Bureau, and take other actions necessary to cause a lien to be placed on the land for the value of the roll-back taxes and interest and other administrative and local court costs. The lien can be collected in the same manner as other lien-debts on real estate.[190]

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[189] This attempts to restate part of 7 Pa. Code § 137.56. The remainder of that section read as follows:

> That day can be the date of conveyance of his land to another who does not desire to continue with an eligible use. The day of change of use can also be determined by the county assessor to be that day when the landowner has taken substantial steps to begin to change to an ineligible use. Usually, the county assessor will accept the day of change of use as submitted under the notice requirements in § 137.52 (relating to notifying the county assessor).

County Assessors suggested the due date for roll-back taxes be the date of the change of use as submitted by the landowner (as required under § 137b.43) or the date the county assessor discovers there has been a change of status/use of the enrolled land triggering liability for roll-back taxes. PDA believes either approach would be acceptable.

Attorney Heim suggested the Department do a better job of defining that moment which constitutes "change of use." The Department does not believe it could draft a definition that would fit all situations and for this reason believes it better to leave this determination in the hands of individual county assessors.

[190] Although 7 Pa. Code § 137.57 is the basis for this section, the language has also been reworked to address County Assessors' comments that the Tax Claim Bureau is the entity through which delinquent roll-back taxes are pursued. The language relating to liens supplants a portion of 7 Pa. Code § 137.64. That language read as follows:

§ 137b.65. Time period within which roll-back taxes are to be calculated and notice mailed.

(a) *General.* A county assessor shall calculate the roll-back taxes, and mail notice of these roll-back taxes to the affected landowner, within 5 days of learning of a change in status triggering liability for roll-back taxes. The county assessor shall also mail a copy of the notice to the other taxing bodies of the district in which the land is located.[191]

(b) *Notice of change of application.* If a county assessor receives a "notice of change of application" described in § 137b.43 (relating to notice of change of application), and that notice triggers liability for roll-back taxes, the 5-day period described in subsection (a) shall commence as of receipt of that notice.[192]

§ 137b.66. Disposition of interest on roll-back taxes.[193]

(a) *"Eligible county" explained.* A county is an "eligible county" under the Agricultural Area Security Law (3 P. S. § § 901—915), and for purposes of this chapter, if it has an agricultural conservation easement purchase program that has been approved by the State Agricultural Land Preservation Board in accordance with that statute.[194]

> ...The county assessor shall file a claim for roll-back taxes and interest for years prior to the current year with the tax claim bureau or the county treasurer, whichever is more appropriate. This action shall constitute a lien on the owner's land having the same effect as if it were filed by the taxing bodies.

County Assessors noted that the lien is established through referral to the Tax Claim Bureau of the County.

[191] This restates a portion of 7 Pa. Code § 137.64. It appears this 5-day period was established with the idea it was required under the Act, at 72 P.S. § 5490.5(a)(2). The provision at 72 P.S. § 5490.5(b), though, more-specifically addresses the subject of calculation of roll-back taxes and does not provide a time within which the calculation of roll-back taxes must be made or notice mailed. Note that the Act does not provide any penalty – such as forfeiture of entitlement to roll-back taxes – where a county assessor does not provide a landowner written notice of roll-back taxes within 5 days of receipt of notice of an event triggering liability for roll-back taxes. This issue was raised by Sullivan County.

The following sentence appeared in the most recent draft, and was deleted in response to comments from PFB and Legislative Staff:

> If a person other than the landowner is liable for the roll-back taxes, it is the responsibility of the landowner to promptly convey this notice of roll-back tax liability to that person.

[192] This restates a portion of 7 Pa. Code § 137.64. Sullivan County asked whether a county assessor's failure to act within this 5-day period (which is noted in the Act, at 72 P.S. § 5490.5(

[193] Warren County made the observation that the redirection of interest on roll-back taxes required under the Act (at 72 P.S. § 5490.8(b.1)) and described in this section deprives taxing bodies of money (interest on roll-back taxes) to which they would otherwise have been entitled. This is an accurate observation.

[194] See the Agricultural Area Security Law, at 3 P.S. § 903. *Verbatim* from 7 Pa. Code § 137a.22(a).

(b) *Disposition in an eligible county.*[195]

(1) *County treasurer.* If a county is an eligible county, the county treasurer shall make proper distribution of the interest portion of the roll-back taxes it collects to the county commissioners or the county comptroller, as the case may be. The county commissioners or comptroller shall designate all of this interest for use by the county agricultural land preservation board. This interest shall be in addition to other local money appropriated by the eligible county for the purchase of agricultural conservation easements under section 14.1(h) of the Agricultural Area Security Law (3 P. S. § 914.1(h)).

(2) *County agricultural land preservation board.* A county agricultural land preservation board that receives interest on roll-back taxes in accordance with paragraph (1) shall segregate that money in a special roll-back account. Notwithstanding any other provisions of the Agricultural Area Security Law, the eligible county board under the Agricultural Area Security Law shall, in its discretion and in accordance with its approved county agricultural conservation easement purchase program, give priority to the purchase of agricultural conservation easements from agricultural security areas located within the municipality in which the land subject to the roll-back tax is located.

(c) *Disposition in a county that is not an eligible county.* If a county is not an eligible county, the county treasurer shall forward the interest portion of the roll-back taxes it collects to the Agricultural Conservation Easement Purchase Fund. The county treasurer shall coordinate with the Department's Bureau of Farmland Protection, at the address in § 137b.4 (relating to contacting the department) to accomplish this transfer.[196]

County Assessors

§ 137b.71. Duties of a county assessor.

(a) *General.* A county assessor shall perform all the duties prescribed by the act and this chapter.[197] The county assessor has the major responsibility for administration of the Act.[198]

(b) *Record keeping.* A county assessor shall indicate on assessment rolls and

[195] See 72 P.S. § 5490.8(b.1). *Verbatim* from 7 Pa. Code § 137a.22(b).
[196] *Verbatim* from 7 Pa. Code § 137a.22(c).
[197] This is a rework of 7 Pa. Code § 137a.21(a).
[198] This sentence is from 7 Pa. Code § 137.3. It was added to clarify that it is the County Assessor, rather than the Department, that has responsibility to administer the Act. The remainder of 7 Pa. Code § 137.3 merged entirely into this section. This also restates a portion of 7 Pa. Code § 137.61(a).

any other appropriate records the base year fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land. A county assessor shall indicate on property record cards such of the foregoing information as it deems appropriate for the performance of its duties under the act and this chapter.[199]

(c) *Recording approved applications.* A county assessor shall record any approved application in the office of the recorder of deeds in the county where the land is preferentially assessed.[200]

(d) *Determining total use value.* A county assessor shall determine the total use value for all enrolled land. The contributory value of farm buildings shall be used in determining the total use value.[201]

(e) *Annual update of records.* A county assessor shall, at least on an annual basis, update property record cards, assessment rolls and any other appropriate records to reflect all changes in the fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land.[202] This subsection does not require that a county assessor recalculate the preferential assessment of all enrolled land each year, but instead requires the county assessor to maintain reasonably current records reflecting any changes in preferential assessment.[203] [Is this a mandate for annual reassessment of clean and green properties and annual new fair market values...clarification is necessary!!!]

(f) *Notification of change in preferential assessment status.* A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of an approval, termination or change with respect to the preferential assessment status. This written notice shall apprise the landowner and the taxing body of the right to appeal the action in accordance with section 9 of the Act (72 P. S. § 5490.9). The written notice shall be mailed within 5 days of the change of status. If the written notice terminates or changes preferential

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[199] See 72 P.S. § 5490.5(1). This is a revision of 7 Pa. Code § 137a.21(b). This also restates a portion of 7 Pa. Code § 137.61(a). The final sentence is new, and was added to address a comment raised by County Assessors, who noted that property record cards never indicate the fair market value of any property.

[200] *Verbatim* from 7 Pa. Code § 137a.21(c).

[201] *Verbatim* from 7 Pa. Code § 137a.21(d).

Attorney Heim suggested county assessors be required to make calculations of preferential assessments available for landowner review. The Department does not believe it is necessary to impose such a requirement.

[202] See 72 P.S. § 5490.5(1).

[203] This sentence comes from 7 Pa. Code § 137a.21(e). It also restates a portion of 7 Pa. Code § 137.61(a). County Assessors noted that fair market value information is not available annually. PDA agrees. As written, the subsection would require a record update with respect to fair market value information only in those years when there is NEW information.

assessment status it shall set forth the reasons for the change or termination.[204]

(g) *Notification of change in factors affecting total assessment.* A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of any change in the base year fair market value, the normal assessment, the use value or the preferential assessment. This written notice shall apprise the landowner and the taxing body of the right to appeal the action in accordance with section 9 of the Act (72 P.S. § 5490.9). The written notice shall be mailed within 5 days of the change.[205]

(h) *Adjusting records to reflect split-off, separation or transfer.* A county assessor shall adjust an approved and recorded application for preferential assessment under the act to reflect a change when an owner of enrolled land changes enrollment status as a result of a split-off, separation, transfer or change of ownership. These changes may include those actions described in § 137b.32 (relating to duration of preferential assessment). A county assessor may require the preparation, execution and filing of a new application for preferential assessment (without charging the landowner an application fee) to accomplish such an adjustment.[206]

(i) *Enforcement and evidence gathering.* The evidentiary burden shall be on a county assessor to produce evidence demonstrating that a split-off tract is actively being used in a manner which is inconsistent with residential use, agricultural use, agricultural reserve or forest reserve.[207]

(j) *Assessment of roll-back taxes.* A county assessor shall calculate, assess and file claims with the county's Tax Claim Bureau for roll-back taxes owed under the act.[208]

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[204] *Verbatim* from 7 Pa. Code § 137a.21(f). This also restates a portion of 7 Pa. Code § 137.61(a). County Assessors asked that the 5-day deadline be extended to a 30-day deadline. PDA is limited by the Act in this regard: The provision at 72 P.S. § 5490.5(a)(2) establishes this 5-day deadline.

[205] See 72 P.S. § 5490.5(a)(3). *Verbatim* from 7 Pa. Code § 137a.21(g), except for the phrase "base year" – which was added at the recommendation of County Assessors. This also restates a portion of 7 Pa. Code § 137.61(a). County Assessors requested the 5-day deadline be extended to 30 days. The Act (at 72 P.S. § 5490.5(a)(3)) fixes this deadline, though.

[206] *Verbatim* from 7 Pa. Code § 137a.21(h), except for the requirement no fee be charged the landowner by the county assessor for filing such an amended application.

PFB disagreed with this subsection and recommended it be deleted. The Department disagrees with PFB. A county assessor can use a new application to update records. In addition, a new application allows successor landowners to sign the acknowledgement required under the Act, at 72 P.S. § 5490.4(c).

[207] *Verbatim* from 7 Pa. Code § 137a.21(i).

[208] See 72 P.S. § 5490.5(b). *Verbatim* from 7 Pa. Code § 137a.21(j), except for the phrase "with the county's Tax Claim Bureau" – which was a clarification recommended by County Assessors. This also restates a portion of 7 Pa. Code § 137.61(a).

(k) *Record of tax millage.* A county assessor shall maintain a permanent record of the tax millage levied by each of the taxing authorities in the county for each tax year.[209]

(l) *Submission of information to the Department.* A county assessor will compile and submit the information required by the Department under § 137b.3(b) (relating to responsibility of the department).[210]

Recorder of Deeds

§ 137b.81. Duty to record.

A recorder of deeds shall record approved applications for preferential assessment in a preferential assessment docket, and record changes of land use triggering the imposition of roll-back taxes.[211]

§ 137b.82. Fees of the recorder of deeds.

A recorder of deeds may charge a landowner whose application for preferential assessment is approved a fee for filing the approved application in a preferential assessment docket. This fee may also be charged with respect to the filing of an amendment to a previously-approved application. A recording fee may not be charged unless the application or amendment has been approved by the county board for assessment appeals. The maximum fee for recording approved preferential assessment applications and amendments thereto shall be in accordance with laws relating to the imposition of fees by recorders of deeds.[212]

Miscellaneous

[209] This subsection restates a portion of 7 Pa. Code § 137.61(a). Sullivan County questioned whether this subsection was necessary. The Department believes this subsection restates a duty imposed by the Act, at 72 P.S. § 5490.5(a)(4).
[210] This subsection complements § 137b.3 (relating to responsibility of the department), which requires the Department to compile certain information from county assessors. This subsection imposes the corresponding duty on county assessors to provide this information. This subsection derives from 7 Pa. Code § 137.67.
[211] This restates a portion of 7 Pa. Code § 137.70. The phrase "preferential assessment docket" replaces the phrase "separate tax assessment docket book", though. The former is used in the Act, at 72 P.S. § 5490.4(d), and affords Recorders of Deeds greater latitude in filing.
[212] See 72 P.S. §§ 5490.4(d) and 5490.4(f)(1). *Verbatim* from 7 Pa. Code § 137a.8. This also supplants the last sentence of 7 Pa. Code § 137.70.

§ 137b.91. Civil penalties.[213]

(a) *General.* A county board for assessment appeals may assess a civil penalty of not more than $100 against a person for each violation of the act or this chapter.[214]

(b) *Written notice of civil penalty.* A county board for assessment appeals shall assess a civil penalty against a person by providing that person written notice of the penalty. This notice shall be served by certified mail or personal service. The notice shall set forth the following:

(1) A description of the nature of the violation and of the amount of the civil penalty.

(2) A statement that the person against whom the civil penalty is being assessed may appeal the penalty by delivering written notice of the appeal to the county board for assessment appeals within 10 calendar days of receipt of the written notice of penalty.[215]

(c) *Appeal hearing.* If timely notification of the intent to contest the civil penalty is given, the person contesting the civil penalty shall be provided with a hearing in accordance with 2 Pa.C.S. Chapter 5, Subchapter B and Chapter 7, Subchapter B (relating to local agency law).[216]

(d) *Final civil penalty.* If, within 10 days from the receipt of the notification described in subsection (b), the person against whom the civil penalty is assessed fails to notify the county board for assessment appeals of intent to contest the assessed penalty, the civil penalty shall become final.[217]

§ 137b.92. Distributing taxes and interest.

The county treasurer or tax claim bureau shall be responsible for the proper distribution of the taxes to the proper taxing authority (i.e., political subdivision) and the proper distribution of interest in accordance with § 137b.66 (relating to disposition of interest on roll-back taxes).[218]

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[213] See 72 P.S. § 5490.5b.
[214] This is a rework of 7 Pa. Code § 137a.23(a).
[215] *Verbatim* from 7 Pa. Code § 137a.23(b).
[216] *Verbatim* from 7 Pa. Code § 137a.23(c).
[217] *Verbatim* from 7 Pa. Code § 137a.23(d).
[218] This is a rework of 7 Pa. Code § 137.65. County Assessors recommended the section distinguish between disposition of taxes and disposition of interest, to more closely track with the requirements of the Act. PDA implemented this recommendation. Sullivan County suggested this provision remain in the proposed regulation.

§ 137b.93. Appealing a decision of the county assessor.

A landowner whose land is the subject of an application for preferential assessment under the Act, or a political subdivision affected by the preferential assessment of that land may appeal a decision of the county assessor regarding the application and the method used to determine preferential assessments under the Act. The landowner shall first appeal to the county board of assessment. After this board has made a decision, the landowner then has a right to appeal to the court of common pleas.[219]

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[219] This restates 7 Pa. Code § 137.29.

COUNTY OF SULLIVAN

ASSESSMENT OFFICE
Laporte PA 18626
(570) 946-5061

Kristin R. Shultz, CPE
Chief Assessor

Kristine K. Bedford, CPE
Assistant Assessor

Betty Reibson
James C. Rogers
Pamela Kravitz Arthur
Board of Appeals

Original: 2141

TO: PA Department of Agriculture

FAX#: (717) 772-8798 (Doug Wolfgang's Fax)

FROM: Kristin R. Shultz, Chief Assessor

DATE: September 27, 2000

SUBJECT: Response to Proposed Rules & Regulations for Implementation of Clean & Green

COPY: File

Section 137b.1 Purpose.
Toward the end of (b)'s paragraph it states "The intent of the act is to protect the owner of enrolled land from being forced to go out of agriculture, or sell part of the land to pay taxes." It was my understanding that the intent of this act was to preserve open space. If the intent has changed shouldn't those utilizing their properties as second or vacation homes be excluded from Clean & Green? Maybe there should be income guidelines for enrollment.

Section 137b.2 Definitions.
Under the Agriculture Reserve the term "open space lands" should be further defined. This could be interpreted as properties free from an improvement either wooded or field. Was it the intent that farmable property not being utilized agriculturally be placed in the Agricultural Reserve category or does it apply to any of the eligible uses?

As an example: Sullivan County has several "private" lake associations owning hundreds of wooded acres around their respective lakes simply to keep away development. If they opted to enroll in Clean & Green could they be placed in the agricultural reserve category? Any county resident cannot join these associations, the only way one could pay to be a member is you lived within their limits. Some you are not permitted to swim or boat in their lakes unless you are a member, some you are permitted for a fee.

Section 137b.131 Civil Penalties.
The term "violation" should be defined. What constitutes a violation of this Act?

Not that my opinion carries any weight, however I think these regs are looking much better. I personally still disagree with Section 137b.52 (b) but sooner or later the courts will pick that one up I guess.

Original 2141

PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

September 20, 2000

Mr. Raymond C. Pickering
Pennsylvania Department of Agriculture
Bureau of Farmland Protection
2301 North Cameron Street
Harrisburg, PA 17110-9408

Dear Mr. Pickering:

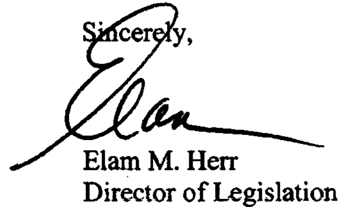
This letter is in response to Act 156 of 1998, "Clean and Green", and the recent publication of the Department's regulations in the *Pennsylvania Bulletin*. Act 156 amends the Farmland and Forest Land Assessment Act of 1974 to set aside the interest penalty on rollback taxes, which is the amount equal to the difference between the taxes paid on the basis of the valuation and the taxes that would have been paid had that land not been valued or assessed. This applies to the land taken out of Clean and Green that pertains to farmland preservation.

There are 1,457 townships of the Second Class in Pennsylvania, many of which contain vast amounts of farmland and land devoted to various agricultural products. This Act has the potential to dramatically reduce the revenue stream to counties, school districts and townships. In the summary section of the *Bulletin*, Agricultural Secretary Hayes clearly points out the increase in costs and loss of revenue that will confront the counties. However, there is no mention of the impact on school districts and townships.

In April of 2000, during our annual state convention, our members adopted a resolution that called for "... a delay in implementation of Act 156 of 1998, and further, to require an examination of Act 156 of 1998 to determine the financial effects of the act on municipalities and make the necessary changes to relieve any financial strain inflicted upon them." The growing fear among townships is the potential loss of revenue from land that would qualify for the exemption under Act 156, but will never be used for agricultural purposes.

If you have any questions, or wish to discuss these comments further, please do not hesitate to contact me.

Sincerely,



Elam M. Herr
Director of Legislation

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cc: Representative Kerry Benninghoff
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