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Senate of Pennsylvania

April 1, 2002

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The Honorable Samuel E. Hayes, Jr.
Secretary
Department of Agriculture
2301 North Cameron Street
Harrisburg, PA 17110-9408

RE: Notice of Proposed Rulemaking #2-138 (IRRC #2248)

Dear Secretary Hayes:

Thank you for the opportunity to comment on the above referenced proposed regulation. It is appropriate and timely to update the regulations for the Agricultural Area Security Law and I commend you and your staff for your diligent work.

Generally, I recommend the Department give serious consideration to most of the comments that were sent to you by interested parties. Specifically, I raise the following questions and would like to bring the following suggestions to your attention.

- §138e.73. Survey requirements. Subsection (b).
It is my understanding that you have already worked with the other interested parties on this subsection and will take into account their concerns and recommendations.
- §138e.91. Recommendation for purchase. Subsection (8).
It is my understanding that you have already worked with the other interested parties on this subsection and will take into account their concerns and recommendations.
- §138e.201. Responsibility. Subsection (a)(2).
It is my understanding that you have already worked with the other interested parties on this subsection and will take into account their concerns and recommendations.
- §138e.204. Enforcement. Subsection (a).
It is my understanding that you have already worked with the other interested parties on this subsection and will take into account their concerns and recommendations.

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DEPARTMENT OF AGRICULTURE
REVIEW COMMISSION

- §138e.222. Conservation plan.

It is my understanding that you have already worked with the other interested parties on this subsection and will take into account their concerns and recommendations.

- §138e.254. Applying for a reimbursement grant. Subsection (c).

It is my understanding that you have already worked with the other interested parties on this subsection and will take into account their concerns and recommendations.

- §138l – Generally.

In the current regulations, 7 PaCode §138, there is a section entitled “§138.3. Benefits to landowners of joining an agricultural area.” This section details the many benefits afforded a landowner by a local government unit upon enrolling their land in an ASA; it is based in law through §12 (Policy of Commonwealth agencies) of the act. The section was not added back into the proposed rule, §138l, although in §138l.2. Purpose, it states in part, “The purpose of this chapter is to provide regulatory guidance with respect to the benefits of having land in an ASA,....” I believe this section, as it appeared in §138.3, is significant and imperative, and should be retained. Additionally, (and even though legally it has no bearing) this language is consistent with language that appears in the Right to Farm Law (Act 133 of 1982) as well as the Municipalities Planning Code (Act 247 of 1968). I would recommend that section 138.3 be reinstated in its entirety into 138l, with one clarification (as follows):

(a) The local government unit shall encourage the agricultural area by not enacting laws or ordinances which would restrict farm structures or farm practices unless the laws or ordinances bear a direct relationship to the public health or safety.

(b) A local law or ordinance defining or prohibiting a public nuisance shall exclude from the definition of the nuisance agricultural activity or operation conducted using normal farming operations within the agricultural area if the agricultural activity or operation does not bear a direct relationship to the public health and safety.

(c) Commonwealth agencies with programs that might negatively affect farmers shall conduct their programs in a manner that will encourage the continuance of viable agriculture in the areas.


(d) Limitations are placed on the use of land condemnation procedures—eminent domain—by Commonwealth and local agencies unless approval is obtained from the Board.

(e) There may be financial benefits to the participants if they elect to sell the rights to develop their land to the county governing body as part of a purchase program that counties may authorize. The purchase of development rights program is voluntary for the counties to begin and voluntary for the area participants to use, so it will not be a benefit in all cases. ~~Only counties, not~~ Counties and local government units; are permitted to purchase and sell development rights; and they may incur debt to do so.

- §1381.15. ASA located in more than one local government unit. And/or §1381.22. Filing of ASA description by governing body; recording of the ASA description. Within one or more of these sections, wherever it is most appropriate, reference should be made to more clearly illustrate the fact that it is the governing body which approves the agricultural security area containing the land described under §5(a.2)(2) of the act that is responsible for recording, filing and notification required under §8 of the act. (5(a.2)(2)(ii) of the Act).
- §1381.41. Removing land that has been in an ASA for 7 years or more. It is my understanding that you have already worked with the other interested parties on this subsection and will take into account their concerns and recommendations.

Thank you for the opportunity to comment on the above-reference regulations. I look forward to continuing to work with you on this proposal. If I may be of any assistance, please do not hesitate to contact me.

Sincerely,


Senator Mike Waugh
Chairman
Agriculture & Rural Affairs

MW/kje

cc: Mary Bender
Sandra Robison
Russell Redding
Dwight Smith
James Smith ✓