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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

Original: 2248

Dennis C. Wolff, Secretary Designate
Pennsylvania Department of Agriculture
2301 North Cameron Street
Harrisburg, PA 17110

Dear Secretary Wolff:

Last April, I provided Secretary Hayes with comments on Proposed Rulemaking I.D. No. 2-138, Agricultural Area Security Program; Agricultural Conservation Easement Purchase Program; Agricultural Area Security Program. Since this proposal has not yet been submitted as a final rulemaking, I believe it is appropriate to bring your attention to one important point that I had previously communicated.

My comment was to suggest a change to the minimum criteria for applications in Section 138e.16. The current requirement at Section 138e.16(a)(2), in part, is to have "contiguous acreage of at least 50 acres in size..." I strongly recommend changing the 50-acre minimum to 25 acres. It is my understanding that in a recent conversation with Representative Robert Godshall, you indicated your support for this change, as did Secretary Hayes. Other reasons follow:

First, as proposed last year, Section 138e.255(b)(3)(i)(B) would allow for reimbursement of acquisition expenses to an eligible land trust for an application which has land in "contiguous acreage of at least 25 acres in size..." Whatever analysis was applied here should also be applied to all other easement purchases.

Secondly, there are a growing number of eligible counties receiving applications from productive farms which are less than 50 acres and are not adjacent to other preserved land. There are various situations and reasons why the farms remain productive on smaller areas of acreage, and why they will never qualify for state funding under the current regulations. I have a letter which outlines several very valid examples and would be happy to share it with you.

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POLICY TASK FORCE
PENNSYLVANIA HISTORICAL PRESERVATION CAUCUS

April 10, 2003

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I have read several of your quotes and those of Governor Rendell which emphasize that this administration has promised to “promote profitability for all farms,” “help smaller farms find niche markets, or produce value-added products,” and “support the right to farm.” Often, the smaller parcels that currently do not qualify for preservation due to size are producing products which serve niche markets, or are part of a larger operation that includes several tracts of rental property. If we don’t allow the opportunity for these parcels to remain in agriculture, they will undoubtedly not be part of our agricultural future.

In the January 3, 2003 issue of the *Pennsylvania Bulletin*, the department published a notice amending the standards and procedures for the Land Trust Reimbursement Grant Program. In the introductory paragraphs, the department agrees with reimbursing land trusts for expenses to acquire “a broader range of agricultural conservation easements.” Further statements include, “The Department has since determined it would serve the purposes of the Program to further broaden the criteria for participation.” and that the new procedures will “allow counties...to...facilitate the acquisition of agricultural conservation easements on tracts of land which—although not by themselves ‘economically viable for agricultural production’ under the strict definition of that term—help create larger blocks of contiguous preserved farmland or **otherwise further the eligible county’s farmland preservation effort.**” (emphasis added)

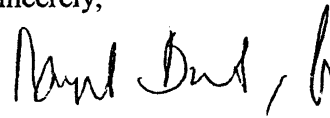
Reducing the minimum eligible acreage broadens the scope of potential easement purchases and helps further the farmland preservation efforts within each county. Given that the goal of the statewide farmland preservation program is to preserve as much quality farmland as possible, and that the department clearly supports this goal, it seems reasonable that the department would also support my recommendation. I am very cognizant and would like to remind you that none of the other minimum criteria will change; all applications will still be subject to the rigorous ranking process and that only the best farms, small or large, will remain those that receive offers for easement purchase.

As you may know, I have introduced legislation (House Bill 671) which will accomplish the above suggestion. The House Agriculture Committee held a hearing on similar legislation in September 2002. The general result of the hearing was that counties agree with the *option* of making the minimum eligible acreage 25 acres. After the hearing, the committee voted unanimously to report that bill. We plan to consider this session’s House Bill 671 within the next month.

Dennis C. Wolff, Secretary Designate
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While we plan to move forward legislatively, it is within your authority, and is less complex, to make the change within regulation. Thank you for your consideration of my request, and please do not hesitate to contact me should you wish to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond Bunt, Jr.", written in a cursive style.

Raymond Bunt, Jr., Chairman
Agriculture and Rural Affairs Committee

cc: Governor Rendell
Honorable Robert Godshall
Russell Redding
Mary Bender
✓ Robert Nyce
Elizabeth Emlen

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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

April 1, 2002

Samuel E. Hayes, Jr., Secretary
Pennsylvania Department of Agriculture
2301 North Cameron Street
Harrisburg, PA 17110

Dear Secretary Hayes:

Pursuant to the Regulatory Review Act of 1986, I submit the following comments on Proposed Rulemaking I.D. No. 2-138, Agricultural Area Security Program; Agricultural Conservation Easement Purchase Program; Agricultural Area Security Program.

It is my understanding that the department is taking into account concerns and recommendations regarding conservation plans (proposed Sections 138e.91 and 138e.222) and survey requirements (proposed Section 138e.73). I trust that all parties involved will achieve a workable solution on those points.

A new Subchapter D is proposed to include Sections 138l.41 and 138l.42, related to the removal of land from an existing agricultural security area. I cannot find authority within the law for these proposed provisions. The last sentence in Section 8(e) of the act says, "The deletion of land in the agricultural security area shall only occur after seven years or whenever the agricultural security area is subject to review by the governing body." I believe that it was the original (and continuing) intent for deletions of land from an ASA to occur only after at least seven years have passed since the land was included in the ASA and a proposal to delete land can only occur during and in accordance with the review process, as is outlined in Section 8(f) for adding land to an ASA and reinforced in Section 9 for modifying an ASA. Following is the basis for my comment:

Section 8(f) used to be part of section 8(e) and read as one paragraph, so the reference to Section 9 in paragraph (f) shouldn't necessarily be read as a delineation from the more general reference to the review period in paragraph (e). The following is from Act 1992-23, Section 8, and underlined language was added by that act:

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April 1, 2002
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(e) Participation.--Participation in the agricultural security area shall be available on a voluntary basis to landowners within the jurisdiction of the governing body including those not among the original petitioners. The deletion of land in the agricultural security area shall only occur after seven years or whenever the agricultural security area is subject to review by the governing body. The addition of land to the agricultural security area may occur at any time during the seven-year period provided for in section 9: Provided, That any proposal for such addition, and for approval or disapproval thereof, shall follow all the procedures and requirements of sections 5, 6 and 7 and this section for proposal, consideration and decision as to approval or disapproval of the original agricultural security area. If the land comprising the additional proposal could be added to more than one existing agricultural security area, or shall lie in more than one township, the proposal shall be considered as an addition to the agricultural security area which was first approved. Land added to an existing agricultural security area during any seven-year period shall be reviewed at the same time as all other land in the agricultural security area.

Subsequently by Act 1994-100, paragraph (e) was split, creating two separate paragraphs (e) and (f), which is how the language reads in current law. Again, underlined language and brackets were the changes made by Act 1994-100:

(e) Participation.--Participation in the agricultural security area shall be available on a voluntary basis to landowners within the jurisdiction of the governing body including those not among the original petitioners. The deletion of land in the agricultural security area shall only occur after seven years or whenever the agricultural security area is subject to review by the governing body.

(f) Additions of land to agricultural security area during seven-year period.--The addition of land to the agricultural security area may occur at any time during the seven-year period provided for in section 9[: Provided, That any]. Land may be added to an existing agricultural security area located entirely outside the local government unit in which the proposed land is located: Provided That, prior to the submission of the proposal, the local government unit in which the proposed land is located and each local government unit in which the existing agricultural security area is located have adopted an ordinance or resolution allowing all land to be part of an individual agricultural security area located or to be located in all such local government units. Any proposal for such addition, and for approval or disapproval thereof, shall follow all the procedures and requirements of sections 5, 6 and 7 and this section for proposal, consideration and decision as to approval or disapproval of the original agricultural security area except that there shall be no requirement that any proposal for such addition include at least 250 acres of viable agricultural land. If the land comprising the additional proposal could be added to more than one existing agricultural security area, or shall lie in more than one [township] local government unit, the proposal shall be considered as an addition to the agricultural security area which was first approved. Land added to an existing agricultural security area during any seven-year period shall be reviewed at the same time as all other land in the agricultural security area.

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Further language in current Section 9 of the act does not make reference to adding land only, but uses the term "modification." Relevant areas are highlighted in boldface:

Section 9. Review of area.--(a) Review by governing body.--The governing body shall review any area created under section 8 seven years after the date of its creation and every seven years thereafter. In conducting such review, the governing body shall ask for the recommendations of the planning commission, the county planning commission and the advisory committee, and shall, at least 120 days prior to the end of the seventh year and not more than 180 days prior to such date, hold a public hearing at a place within the area or otherwise readily accessible to the area. Prior to the commencement of such review, notice thereof shall be given by publication in a newspaper having a general circulation within the area, by notice posted in five conspicuous places within, adjacent to or near the area and by notice, in writing, to all persons owning land within the area that the agricultural security area will be reviewed in accordance with law. All such notices shall be given 30 days before the commencement of such review. **Persons wishing to modify the area shall submit proposed modifications within 30 days of the date of such notices. Thereafter, in conducting such review the governing bodies shall follow all the procedures and requirements of sections 5, 6, 7 and 8 for the consideration of the agricultural security area and proposed modifications thereto. Within ten days of its action of termination or modification, the governing body shall file a notice of termination or modification with the recorder of deeds, who shall record such notice in such manner and place as has been provided in the original recording of the agricultural security area. The governing body shall also file a notice of termination or modification with the planning commissions of the county and of the local government unit. If the governing body does not act, or if a modification of an area is rejected, the area shall be deemed to be readopted without modification for another seven years.**

Based on the foregoing, I recommend modifying proposed Sections 1381.41 and 1381.42 to reflect that a proposal for deletion of land from an ASA must follow the same procedures as that of adding land, and shall only occur at the seven-year review period provided for in Section 9 of the act.

My final comment is a suggestion to change the minimum criteria for applications in Section 138e.16. The current requirement at Section 138e.16(a)(2), in part, is to have "contiguous acreage of at least 50 acres in size..." I suggest changing the 50-acre minimum to 25 acres. It is my understanding that in a recent conversation with Representative Robert Godshall, you indicated your support for this change. Other reasons follow:

First, proposed Section 138e.255(b)(3)(i)(B) would allow for reimbursement of acquisition expenses to an eligible land trust for an application which has land in "contiguous

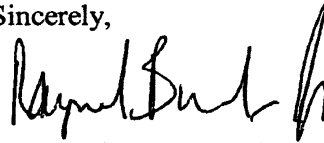
Samuel E. Hayes, Jr., Secretary
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acreage of at least 25 acres in size..." Whatever analysis was applied here should also be applied to all other easement purchases.

Secondly, there are a growing number of eligible counties receiving applications from productive farms which are less than 50 acres and are not adjacent to other preserved land. There are various situations and reasons why the farms remain productive on smaller areas of acreage, and why they will never qualify for state funding under the current regulations. I have a letter which outlines several very valid examples and would be happy to share it with you.

Thank you for your consideration and I encourage you to make changes to the proposed regulation to reflect the comments as described above.

Sincerely,



Raymond Bunt, Jr., Chairman
Agriculture and Rural Affairs Committee

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