



March 7, 2002

Mary Bender, Director
Department of Agriculture
Bureau of Farmland Preservation
2301 North Cameron Street
Harrisburg, PA 17110

Regarding the proposed rulemaking for part 138e.65(b) relating to the expenditure of state funds for agricultural conservation easements, the Bradford County Agricultural Land Preservation Board requests that the present \$10,000 per-acre price cap NOT be rescinded. It is strongly felt that lifting the present cap is counter to the integrity and purpose of the Agricultural Land Preservation Program.

Lifting the cap severely challenges the cost-effectiveness of a program touted for the number of acres it preserves. It is contrary to addressing the escalating backlog of applications. It appears to favor a minority of interests and locations, where competing land uses are raising real estate prices to unprecedented levels, and where the potential for creating conflicts and nuisance issues are maximized.

The areas most likely to benefit from the proposed amendment, already receive the greatest percentage of allocations and matching funds. At present, one (1) acre of farmland under extreme development pressure is being preserved at the expense of preserving seven to ten (7-10) acres elsewhere. Lifting the cap would exacerbate this issue and decrease the ability to achieve an even distribution of easements across the state.

Considering the average land base required by a fully functional farm, including nearby operational and logistical supports, the price tag for preserving such a network at a rate greater than present would be astronomical. Lifting the cap may very well mean the difference between preserving parcels and preserving communities.

Most Sincerely,

Leslie Wanck, President
Bradford County Agricultural Land Preservation Board



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
BUREAU OF FARMLAND PRESERVATION

March 25, 2002

Jeff Zehr, Administrator
Lehigh County Agricultural
Land Preservation Board
Lehigh County Agricultural Center
Suite 102
4184 Dorney Park Road
Allentown, PA 18104-5728

RECEIVED
2002 MAR 23 AM 10:11
ADMINISTRATOR
REVIEW COMMISSION

Dear Jeff:

The Bureau staff has carefully reviewed your request of March 13, 2002 for the addition of language to the "Rural Enterprise" section of the Lehigh County Program for allowing small composting operations under the Permitted Acts portion of the Deed of Easement. We agree that under certain restricted conditions, composting of on-farm materials may benefit the farming operation and even perhaps generate some additional source of farm income.

Our present concern, however, is focused around the one farm in the farmland preservation program that is mentioned in your letter that is generating high quality compost from vegetable food waste (Wegmans Supermarket) and ground yard waste from nearby communities. Our concern is that this composting operation, as outlined, presents a possible easement violation under the Permitted Acts of the recorded Deed of Easement. The Permitted Acts under the recorded Deed of Easement specifically states that the subject land shall be used solely for the production for commercial purposes of crops, livestock, and livestock products including the processing and retail marketing providing that more than 50% of such processed or merchandised products are produced by the farm operator. In this particular case, as described, all of the compost materials are generated off the farm and hauled to the site for composting. It is immaterial if the operation is a county-sponsored pilot project or not. The recorded Deed of Easement would not support expanding this composting operation for marketing compost since the present operation is presently suspect of violating the terms of the recorded Deed of Easement.

Again, the same principle applies to the question concerning municipalities leasing small areas on preserved farms to produce and store compost. The more than 50% rule applies to any composting operation on eased farms. The recorded Deed of Easement also states under the Permitted Acts that the Grantor is not permitted to perform any activity on the subject land other than agricultural production.

The limits proposed for allowing small on-farm composting are good, but we would strongly recommend additional provisions to be included to confine the composting activities to on-farm agricultural production.

Jeff Zehr
March 25, 2002
Page 2

1. The more than 50% produced on the farm needs to be clearly spelled out in the "Rural Enterprise" section of the County Program.
2. A height limitation should be imposed in order to restrict the potential "mountains" of compost stacked and stored as a result of the composting operation.
3. Annual or more frequent monitoring is necessary to determine if the restrictions are being adhered to and to determine if more than 50% of the materials are produced on the farm.
4. Frequent monitoring by the county is essential to determine if the hazard of turning the composting operation into a fully commercial enterprise is being avoided.

We appreciate your interest in raising these questions and welcome the opportunity to comment. The Bureau could support restricted composting for on-farm benefits. The County Board is cautioned about expanding the composting operations beyond the Permitted Acts within the Deed of Easement. Please keep us informed concerning the investigation and determination by the Lehigh County Agricultural Land Preservation Board concerning the apparent easement violation. We will keep in touch with you concerning the progress of the potential violation and remedial action plan.

If you have any questions, please call our office at (717) 783-3167.

Sincerely,



Mary Bender
Director

cc: Wayne Grube, Administrative Officer
Russell Redding, Deputy Secretary
Dwight-Jared Smith, Legal Office

ORIGINAL: 2248



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
BUREAU OF FARMLAND PRESERVATION

March 13, 2002

Robert E. Nyce, Executive Director
The Independent Regulatory Review Commission
14th Floor
333 Market Street
Harristown #2
Harrisburg, PA 17120

Re: NOTICE OF PROPOSED RULEMAKING
Department of Agriculture
7 Pa. Code Chapters 138, 138e and 138l
Agricultural Area Security Program; Agricultural Conservation Easement
Purchase Program; Agricultural Security Area Program
I.D. No. 2-138
Published at 32 Pennsylvania Bulletin 775 (February 9, 2002)

Dear Mr. Nyce:

Pursuant to the requirements of the Regulatory Review Act (at 71 P.S. Section 745.5(c)), please find enclosed a copy of a public comment letter, or copies of multiple public comment letters, recently received at this office with respect to the referenced proposed regulation.

If I may be of further information, please advise.

Sincerely,

A handwritten signature in cursive script that reads "Sandy Robison".

Sandy Robison
Administrative Officer



FARM & NATURAL LANDS TRUST *of York County*

156 North George Street, York, Pennsylvania 17401 (717) 843-4411 Fax (717) 854-7452

March 11, 2002

Ms. Sandy Robison
Bureau of Farmland Preservation
Dept. of Agriculture
2301 North Cameron St.
Harrisburg, PA 17110-9408

Dear Sandy,

As a follow-up to our meeting on March 1, 2002 regarding the proposed regulations to the Land Trust Reimbursement Program, I writing to indicate our support of the regulations. I wanted to specifically communicate our support of the change to 25 acres or more instead of 50 acres or more for properties that are not adjacent to existing easements. As the attached information to submitted Ray Pickering on July 31, 2000 indicates, the Trust would have doubled its submission to the Bureau that year had the minimum acreage been 25 acres. Many landowners can not fully utilize the tax deduction created by a conservation easement due the IRS code restriction on charitable deductions not exceeding 30% of adjusted gross income. The attached example shows how a 50 acre landowner could preserve 25 acres at a time and fully utilize the tax deduction. If the landowner preserves all 50 acres at one time, he/she would lose a \$25,000 charitable deduction assuming a \$25,000 income. We believe this change will help us attract landowners who lease land to our local farmers.

Please call me if you have any questions.

Sincerely,


Jackie S. Kramer
Executive Director

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MAR 12 2002
FARMLAND
PROTECTION



Comments on proposed Ag Security Area Regulations.

References to the ASA in the Act and regulations sometimes imply that the ASA is a unified area. Ideally, it would be, in a manner similar to a zoning district. However, in reality an ASA is usually a smattering of properties throughout a municipality. As a practical matter, this sometimes causes confusion in the interpretation of the Act and regulations.

Regarding posting of notices required under the Act, when an application for an addition to the ASA is filed, I advise the municipality to post notices within, adjacent or near to the parcels being added to the ASA, and not within, adjacent or near to the existing portions of the ASA. This interpretation could be confirmed in the regulations.

Also, I have often had several noncontiguous properties being added to an existing ASA at one time. I have advised municipalities that they are complying with the "five conspicuous places within, adjacent to or near the proposed ASA" if they post at least five notices total, and that it is not necessary to place five notices on each noncontiguous parcel or noncontiguous group of parcels which form a new ASA or which are being added to an existing ASA. For example, if two noncontiguous parcels are being added to an existing ASA, we may post two notices at each addition parcel and one notice at the municipal building. If you agree with my interpretation, this could also be clarified in the regulations.

I have always been curious whether the Act could be interpreted to authorize a property to be included in an ASA without an application for inclusion being filed by the owner of the property. A neighbor or the municipality itself may have a motivation to seek the inclusion of a property in an ASA regardless of the willingness of the property owner to sign an application. If this were possible, then ASA's could be designed to look more like zoning districts, perhaps overlaying effective ag. zoning districts.

The Act seems clear in its statement that, at the initial proposal stage, a parcel may be included in a proposal only at the request of the owner of the parcel. At the modification stage of the review process, however, any landowner with lands adjacent or near to the proposed area who wishes such lands to be included or not included therein, may propose modifications of the proposed area. Does this mean a property owner may propose a modification with respect to property other than his own? Why would the Act mention an owner wishing his lands not to be included, unless someone else had the right to seek their inclusion, either at the initial proposal stage or at the modification stage?

The draft regulations state that any landowner with lands within, adjacent to or near the proposed ASA may propose a modification to a proposal. This language is more general than that in the Act, and could lend support to the theory that the Act should be interpreted to permit any parcel, regardless of its ownership, to be added to or subtracted from a proposal by any owner of property within, adjacent or near to the proposed ASA. Depending on what you think the intent of the Act may be on this issue, the regulations could be more direct in expressing the Act's intent.

There is a typo in Section 1381.18(a)(1). "relating to relating to".

Why do the regulations contain factors for consideration in two different places? Why not combine Section 1381.19(b) with Section 1381.26(a)?

Notice of the decision on an ASA is to be provided to each "affected landowner". Who is an affected landowner? Does this mean only those persons who have submitted a proposal or a modification? In practical effect, anyone in the municipality or an adjoining municipality could be an affected landowner due to the decision of the governing body on an ASA proposal.

Section 1381.21(b) contains the phrase "or as otherwise prescribed by the act." I would always prefer not to read that phrase in regulations.

Section 1381.23(a) and (b)(3) and (b)(4) refer to termination of an ASA. Though this language follows Section 908(g) of the Act, it still seems to be in the wrong place. This area of the regulations appears to be intended to deal with decisions on the creation and modification of ASA's only, not termination. Termination should be covered in Subchapter D or E of the regulations.

There is a typo in Section 1381.24(b). "andany".

Section 1381.24(d)(2) requests an impact analysis from the non-county planning commission, but not a recommendation. It seems to me there should be a recommendation, as well as an impact analysis. The regulation, of course, follows the Act, but the Act seems defective on this point.

Under Section 1381.26(a)(3), is land upon which a lawfully nonconforming agricultural use exists "zoned so as to permit agricultural use" (especially since the 2000 amendments to the MPC)?

Regarding Section 1381.31(d), would not the minimum requirements of Section 1381.12(4) apply to an addition?

A general comment. The term "modification" is used in two respects with regard to ASA's. One is with respect to changes to ASA proposals; the other is with respect to changes to existing ASA's. This can be confusing. I would prefer "modification" to refer only to proposals, and that the terms "additions" or "removals" would be used in the context of changes to existing ASA's.

Section 1381.34 seems unnecessary to me, because when a parcel is divided by a county line, it is also always divided by a municipal boundary.

Section 1381.41(d) authorizes postponement of the recording of removals until the next 7-year review. You may wish to suggest that the removal may be recorded with any addition that is recorded before the next 7-year review.

It seems to me Sections 1381.41 and 1381.42 could be combined easily.

Where are the regulations addressing ALCAB procedures and standards?

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2002 MAR 28 AM 10:11

DEPARTMENT OF TRANSPORTATION
REVIEW COMMISSION



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
BUREAU OF FARMLAND PRESERVATION

March 11, 2002

Robert E. Nyce, Executive Director
The Independent Regulatory Review Commission
14th Floor
333 Market Street
Harristown #2
Harrisburg, PA 17120

Re: NOTICE OF PROPOSED RULEMAKING
Department of Agriculture
7 Pa. Code Chapters 138, 138e and 138l
Agricultural Area Security Program; Agricultural Conservation Easement
Purchase Program; Agricultural Security Area Program
I.D. No. 2-138
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If I may be of further information, please advise.

Sincerely,

A handwritten signature in cursive script that reads "Sandy Robison".

Sandy Robison
Administrative Officer



**Pennsylvania
Farm Bureau**

ORIGINAL: 2248

March 11, 2002

Mary Bender, Director
Bureau of Farmland Preservation
Pennsylvania Dept. of Agriculture
Rm 402 Agricultural Office Bldg.
2301 North Cameron Street
Harrisburg, Pa 17110-9408

Re: Proposed Rulemaking, Pennsylvania Bulletin, Vol. 32, No. 6, February 9, 2002 (relating to Agricultural Area security program)

Dear Ms. Bender:

The Pennsylvania Farm Bureau has reviewed the proposed revisions to the Agricultural Area security program contained in the February 9, 2002 Pennsylvania Bulletin. Farm Bureau has several questions and concerns regarding the proposed Subchapter D. **REMOVING LAND FROM AN EXISTING ASA** (page 794-proposed rulemaking).

The proposed Subchapter addresses removing land that has been in an agricultural area for 7 years or more. The process outlined in the Subchapter raises a serious concern. Consider the following scenario. A farmer joins an ag area. **Three years into the initial 7 year term of the ag area, the farmer wishes to leave the ag area.** What process should the farmer follow? Does a farmer wishing to do this violate the provisions of the proposed subchapter? What are the regulatory consequences for the farmer?

As you know, Farm Bureau has worked for the development of ag areas for the past twenty years. One of the most commonly asked question by farmers has been....If I join an ag area am I locked in for seven years? We have stated that being in an ag area is voluntary in and out. **A farmer can leave an ag area at anytime.** The proposed Subchapter seems to contradict this long held interpretation of the law. Farm Bureau believes that this very important issue must be clarified. Many farmers will not join an ag area if they believe that they can not exit an ag area at anytime. Farmers must be given the option to leave an ag area at anytime. Farm Bureau would appreciate your response to this important matter.

Yours truly,

A handwritten signature in black ink that reads "Bill Adams".

William Adams
Director, Natural Resources

S:/baa/act43

ORIGINAL: 2248

LANCASTER COUNTY

AGRICULTURAL PRESERVE BOARD

COUNTY COMMISSIONERS
PAUL THIBAUT, Chairman
HOWARD "PETE" SHAUB, Vice-Chairman
RON FORD

50 NORTH DUKE STREET
PO BOX 83480
LANCASTER, PA 17608-3480
TELEPHONE: 717-299-8366

March 9, 2002

JUNE L. MENGEL
Director

Mary Bender, Director
Bureau of Farmland Preservation
2301 N. Cameron St.
Harrisburg, PA 17110-9408

RE: PROPOSED RULEMAKING [7 PA. CODE CHS. 138, 138e & 1381]

Dear Mary:

Thank you for the opportunity to respond to the hard work that your staff and the Department of Agriculture's legal office has put forth in the drafting of the proposed rulemaking as it relates to the Agricultural Security Area Law.

I would first like to indicate that I was able to read the comments relating to the same as written by Jeff Zehr, County Administrator from Lehigh County, and I support his comments.

I understand that PFFPA will be permitted to make comments after March 11th, subsequent to their semi-annual meeting on March 18th. With that fact in my mind, I will limit my comments / questions to the following:

CHAPTER 138e. AGRICULTURAL CONSERVATION EASEMENT PURCHASE PROGRAM

138e.61 Application (b)(2)(ii) - What is the relevance to requiring a "breakdown of the acreage proposed for easement purchase in each local government unit and a breakdown of the number of acres of viable agricultural land in the acreage proposed for easement purchase in each local government unit." Has "viable agricultural land" been defined? What is the purpose of such a breakdown per local government unit? This appears to serve no valuable purpose and oddly enough the same has not been clearly specified in the following section addressing a farmland tract that is bisected by the dividing line between two or more counties.



138e.73 Survey (a) - (c) - I echo all of Jeff Zehr's concerns, which were very well stated. I think the ability of all surveyors across the Commonwealth to supply this information should be taken into consideration and also the cost, which may be quite high if not prohibitive in some instances.

138e.91 (8), relating to the Conservation Plan/Conservation Plan Agreement - The Act requires a landowner to have a Conservation Plan in place. The Deed of Agricultural Conservation Easement, the legally binding document, *requires* that a Conservation Plan be followed. I question the need and the legality of a Conservation Plan Agreement, specifically when we are having the landowner sign the document *and frequently* it is a tenant farmer who is farming the ground and has the Conservation Plan for the subject property. It seems like another piece of paper that may or may not be useful?

138e.93(a), relating to Post Settlement Procedures - Why does a county board have to make and retain copies of the documents identified after settlement but before recording? What purpose does this serve? Is this done in the event that the documents are lost after settlement? It seems as though this might be a redundant step.

(d)(1)(iii) - A settlement sheet is not always prepared. This section should be modified to say, "If settlement agent deems applicable"

(d)(1)(iv) - This section requires that a "marked-up title insurance commitment document, reflecting that all listed title insurance exceptions have been addressed and resolved prior to the purchase of the agricultural conservation easement". I would suggest that this action be expanded to say "or a Title Insurance Policy". This would address those cases whereby a Title Insurance Policy is issued immediately following settlement and is available the same day. This would avoid unnecessary copying and paperwork.

(e) - I see no need to have to send certified copies of recorded documents to the State. Copies of said documents should be sufficient. Certified copies take time and cost money. Perhaps the State wishes to hold the original deed of agricultural conservation easement? Although, it would appear reasonable to have the counties maintain the originals because the counties bear the responsibility of perpetually managing, monitoring and enforcing said easements.

138e.222 Conservation Plan - My comments are mentioned above with reference the newly proposed requirement of a Conservation Plan Agreement.

CHAPTER 1381. AGRICULTURAL SECURITY AREA PROGRAM

Subdivision - I have an overall concern with subdivision; which I think needs to be addressed and it may or may not be appropriate to do so in these regulations. It may or may not be possible to do so in these regulations.

I believe it was the originally conceived that if an easement was placed on a farm (farmland tract, as defined is land constituting all or part of a farm with respect to which easement purchase is proposed...) regardless of whether the farm consisted of one deed or more, or one deed with multiple parcels/tracts/purparts described, that the easement acted as an umbrella and covered the farm. Moreover for purposes of the easement, the farm, again regardless of number of deeds and or tracts would be considered ONE farm for the purposes of the easement language. However, the very definition of Subdivision in these Regulations undermines this intent. Moreover, Subdivision as defined by the MPC undermines the intended use of subdivision on preserved farms.

At this juncture, if a farm is preserved and is identified in multiple deeds, or one deed with multiple parcels/tracts/purparts, the farm can be legally separated the same way REGARDLESS of any subdivision guidelines to the contrary.

For instance, in Lancaster County we have a 50-acre agricultural subdivision minimum. But, if we have a farm that consists of 120 acres, but is described in three deeds of say 45 acres, 13 acres and 88 acres, respectively, the landowner could convey the farm in that manner. Similarly, it is very possible that a like outcome could happen if a farm was described in ONE deed, but in multiple parcels; such as a 79 acre farm that is described in one deed with Parcels A, B & C: Parcel A consisting of 9 acres, Parcel B consisting of 25 acres and Parcel C consisting of 45 acres. It is very likely that this farm could also be split the same way. We have already experienced two situations of the same in Lancaster whereby we have had to allow subdivisions that are in conflict with our subdivision regulations and our Board's determination of "economic viability." And, I believe York County had a similar situation(s) a few years ago: multiple deeds & multiple ownership under one Easement.

There are already close to 2,000 farms preserved across the Commonwealth, that legally can be sold separately because the splitting of these preserved farms does not constitute a legal subdivision. I don't believe that any of us realize the magnitude of what these types of splits may do to the viability of farms and the integrity of the preservation program due to the huge investment of tax dollars that have preserved farms not anticipating that they can be split into potentially unviable little parcels. I do not believe that we can "grandfather" anything to

address the almost 2,000 farms preserved; however, I would strongly encourage that something be done to eliminate this problem for the future.

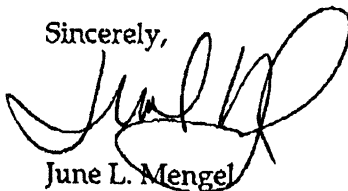
In lieu of any change in the definition of subdivision in the Act and/or Regulations, we have attempted to address this overwhelming problem in Lancaster. For whatever it is worth, when we have a survey done, we require that the surveyor describe the farm in one parcel and then we pay to have a corrective deed put on record immediately prior to the Deed of Agricultural Conservation Easement. If it is not possible for the surveyor to describe the farm in one parcel OR if we do not need a survey, we add "Merger of Tracts" language to our legal description, which is recorded with the Deed of Agricultural Conservation Easement (we do this with county & state Easements.) This Merger of Tracts language indicates that for the purposes of the Easement, the farm is considered to be one tract and as such subject to the terms of the Easement.

1381.40 Removing land that has been in ASA for seven years or more

- (a) I'm assuming this was an addition made at some point to the Act that I never clearly identified? I thought that the only time land could be withdrawn was during the seven-year review period and/or an interim review. If this is an allowance that I was not aware of, I apologize for my oversight. If, however, this is not specifically addressed in the Act or any amendments thereto, I think this allowance is highly inappropriate & could cause substantial monitoring problems for townships, counties and the Commonwealth. Moreover, I think that the seven year or interim review time frames for removal are equitable and easier to manage.

Thank you for the opportunity to respond to these proposed Regulations. I look forward to additional participation in this process through the PFPA organization.

Sincerely,



June L. Mengel
Director

/jlm

**York County Agricultural Land Preservation Board
118 Pleasant Acre Road Suite F
York, Pennsylvania 17402
717-840-7400**

March 8, 2002

Pennsylvania Department Of Agricultural
Bureau of Farmland Protection
Attn: Sandy Robison, Admin. Off.
2301 North Cameron Street
Harrisburg, Pennsylvania 17110-9408

Dear Sandy;

The York County Agricultural Land Preservation Board and staff reviewed the most recently released proposed rulemaking to revise Title 7 of the PA Code by rescinding the regulations at Chapter 138, amending the regulations at Chapter 138e and establishing new regulations at Chapter 1381. The County Board and staff offer the following review comments;

1. Regarding 138e.11 General Requirements. Edit (d) to read " A county program shall contain provisions for the participation of local government units in the preservation of farmland through the purchase of agricultural conservation easements provided the easement application is eligible to be considered for easement purchase under current county program eligibility minimum criteria for applications. Local government unit recommendations must meet all requirements for qualification and ranking for participation through the county agricultural conservation easement program for agricultural conservation easement purchase. "
2. Regarding 138e.67. Requirements of the agricultural conservation easement deed. Recommend this entire section be reviewed by several professional survey firms, across the state, to ensure that the majority of survey firms have the available technology to provide this level of work standard, or final product. Talks with one York County Professional Surveyor, Jon Myers, Shaw Surveying, indicated this language represents to him an increase in both technology and cost for each survey. Adherence to the requirement that all surveys meet the current boundary survey standards as published by the Pennsylvania Society of Land Surveyors will ensure efficiency, cost-effectiveness, uniformity, and a user-friendly set of standards will be available to the regulated community.
3. Regarding 138e.91. Recommendation for purchase. Recommendation that (8) A copy of the conservation plan should be required immediately prior to the easement settlement, as well as any conservation plan agreements. Once a fully executed sales agreement is signed by all officials, after state board approval, the landowner then is assured he will receive the easement funds. At this point the landowner is most motivated to get the plan completed and sign any necessary agreement. The sales agreement does provide 120

days to settle. This is the point at which state officials can hold the landowner's easement check until a conservation plan and agreement are delivered. This requirement takes significant time by staff located in county and federal agencies to accomplish this task. Most federal agencies are under staffed and over-burdened by an increase in federal conservation programs throughout the year. It is unreasonable to anticipate the conservation plan will be available prior to State Board Review. As previously discussed on March 1, 2002, a letter prepared by a conservation official verifying that a completed conservation plan will be provided prior to settlement. The completed conservation plan shall be provided prior to easement settlement. This additional time allows local conservation and preservation officials the opportunity to prioritize workloads.

Regarding the type of conservation plan, York requires a Resource Management Plan (RMS) , if you use the language 'conservation plan' only, you can get receive plans that deliver something less than an RMS plan.

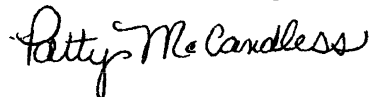
Lastly, on this section, under no conditions should a completed conservation plan become a year-end encumbrance requirement. Significant easement funds will be lost by many counties lacking conservation staff for plan writing to meet this Bureau change.

4. Regarding 138e.201. Responsibility For Inspection and Enforcement. (a) (1) (2) Additional language clarifying the inspection and enforcement of easements within the county which have been preserved under the provisions and requirements of the county agricultural conservation easement program guidelines. Under no conditions should county boards and staff be required to inspect or enforce easements under taken by local government units or private conservation organizations without a cooperative agreement detailing those conditions of inspection and enforcement.

These are the comments of the York County Ag Land Preserve Board and staff. We would like you to seriously consider our comments as you update the laws providing for the purchase of agricultural conservation easements in Pennsylvania. We, in Pennsylvania , have administered a truly, great program since 1989 and made such progress because our laws have remained user-friendly and are capable of providing uniformity with some flexibility. Our hope is this will remain the same after the proposed changes are in effect.

Sincerely;

Patty H. McCandless, Program Director



cc: Mary Bender, Mike Waugh, Kristen Ebersole, Kerry Golden



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
BUREAU OF FARMLAND PRESERVATION

March 8, 2002

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If I may be of further information, please advise.

Sincerely,

A handwritten signature in cursive script that reads "Sandy Robison".

Sandy Robison
Administrative Officer

Pennsylvania Association of REALTORS®

The Voice for Real Estate in Pennsylvania

2401 Chambers Hill Road
Harrisburg, PA 17112-2106
Telephone: (717) 661-3700
Fax: (717) 661-3708
http://www.parealtors.org

March 4, 2002

Department of Agriculture, Division of Land and Erosion Control
Attention: Sandra Robinson
241 North Cameron Street
Harrisburg, Pennsylvania 17102

Dear Ms. Robinson:

On behalf of the 20,000 members of the Pennsylvania Association of REALTORS® (PAR), we oppose the proposed rule concerning procedures for handling the agricultural conservation easement purchase program established in the *Pennsylvania Bulletin*.

Proposed § 138c.23 (relating to postsettlement recording and reporting procedures) would formalize the basic recordkeeping, recording and reporting procedure and provide a step-by-step explanation of the necessary record retention, recording and reporting requirements.

Comment: PAR is concerned that smaller and/or rural counties simply do not have the administrative capacity to comply with these postsettlement recording and reporting procedures.

Proposed § 138c.104 (relating to installment sales) would add new language to address long-term installment purchases of agricultural conservation easements that defer the payment of principal for up to 30 years. This type of installment purchase option has been facilitated by an allocation of up to \$500,000 for the purchase of each.

Comment: Does the Department have a specific plan for how the \$500,000 allocation will be used? PAR is concerned the allocation should be used solely for the purchase of easements and not for administrative purposes.

Proposed § 138c.22 (relating to conservation plans) would require a landowner to execute a conservation plan agreement, acknowledging the need to implement the conservation plan. The conservation plan agreement would also acknowledge that failure to implement and follow through on the requirements of a conservation plan would constitute a violation of the terms of the deed of agricultural conservation easement.

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MAR 7 2002
LAND AND EROSION CONTROL
PROTECTION

Comment: PAR is concerned about the maintenance of conservation easements, specifically if heirs do not continue to implement a conservation plan. The regulation does not specifically address remedies and/or penalties for violating a conservation plan agreement. PAR urges the Department to consider including such remedies and/or penalties in the proposed regulation.

Proposed § 138e.255(b)(3)(i)(B) (relating to State Board review of applications) would allow reimbursement with respect to an agricultural conservation easement purchase involving as few as 25 acres of land, when the previous standards required at least 50 acres of land.

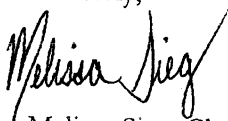
Comment: There is sentiment among PAR membership that the Department should maintain the previous 50-acre standard. As such, could the Department provide a rationale for reducing the standard to 25 acres of land?

PAR would also like to raise three general questions with regard to the Commonwealth's farmland preservation effort.

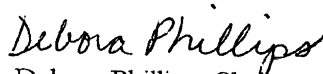
- 1.) With reference to Agricultural Security Areas – What happens to the remaining landowners when a parcel of land is removed from the ASA and the ASA falls below 250 acres?
- 2.) How did the Department determine that there will be no fiscal cost in implementing the proposed rulemaking?
- 3.) What is the agricultural goal of Farmland Preservation?

Thank you for providing us with a venue to voice our concerns about these proposed regulations. Please feel free to contact Derenda Updegrave, PAR's Director of Government Affairs, should you have any questions about our comments.

Sincerely,



Melissa Sieg, Chair
Legislative Committee



Debora Phillips, Chair
Land Use and Local Issues Subcommittee

March 7, 2002

Ms. Sandra Robison
Department of Agriculture
Bureau of Farmland Preservation
2301 North Cameron Street
Harrisburg, PA 17110-9408

Dear Sandy:

The Lehigh County Agricultural Land Preservation Board has reviewed the new proposed regulations for the Pennsylvania Agricultural Security Area Program and for the Agricultural Conservation Easement Program and we offer the following comments.

Page and section numbers refer to the proposed regulations as published in the February 9, 2002 edition of the *Pennsylvania Bulletin*.

Preamble Comments:

Page 775, 1st column, last paragraph - The second sentence should probably read, "This designation affords landowners limited protections against nuisance laws and ordinances...."

Annex "A" Comments:

Page 779, Section 138e16. Minimum Criteria for Applications

We understand that the wording for this section of the proposed regulations comes directly from the some of changes in the Agricultural Area Security Law made because of the amendments included in Act 14 of 2001. Unfortunately, the proposed Minimum Criteria appears to leave out the possibility of one county program preserving a "whole farm" in cases where the following conditions exist:

- 1) A farm is bisected by the dividing line between the purchasing county and an adjoining county.
- 2) The farm is already enrolled in **two** different ASAs, one part of the farm is enrolled in an ASA that is based in a township located in the purchasing county and one part of the farm is enrolled in an ASA that is based in the township of the adjoining county.

March 7, 2002
Sandra Robison

Before the Act was changed, we advised landowners whose farms were split by county and township lines to apply to get each portion of their farm enrolled in the appropriate ASAs of each county and township where their land was located.

Now it appears that the regulations would prohibit a county board from using Commonwealth funds to preserve a "whole farm" in a cross county situation, if the entire acreage of the farm was enrolled in two or more agricultural security areas. Are we reading this correctly?

Perhaps this could be fixed by changing the Section 138e.16.(a)(1)(i) to read:

"Located in one or more agricultural security areas consisting of 500 acres or more."

Page 779 & 780, Section 138e.61. Application.

The application form should allow a landowner to state that his/her land is enrolled in two or more agricultural security areas, if this is the case (as per discussion above).

Page 780 - 781, Section 138e73. Survey Requirements

I showed this section to one of our surveyors and he felt it was well written and was a good idea to geo reference our boundary surveys and to require more permanent monumentation for the two ground control points located along the traverse. It will be very useful to be able to take digital files of our surveys and "drop" them right into our GIS systems.

Our main concern is **how much more it will cost** to meet these new survey requirements? We are asking one of our surveyors to follow the proposed requirements on a farm he is surveying for us now as a test case to see how well it will work and what the added cost will be. We were also wondering how many registered surveyors are equipped to use GPS technology in their survey work and what it will cost surveyors to obtain this equipment or contract this work out to someone else?

Page 781, Section 138e93. Postsettlement Recording and Reporting Procedures.

(c) Prompt recording of agricultural security area; reporting to the State Board

This section of the proposed regulations will be difficult to enforce, as we have a hard time now getting some townships to record their regular ASA additions in a timely fashion. **What happens if a township fails to record an addition to their ASA that occurs automatically because of an easement purchase? Some townships may balk at having to pay for the recording of ASA status for a piece of land located in another municipality.**

March 7, 2002
Sandra Robison

Page 782, Section 138e102. Allocation of Funds to Counties

Why is another funding certification needed from the counties for encumbering State matching funds, when each county annually certifies what they are making available in county matching funds for easement purchases? If a second certification is really necessary, because Lehigh County is a home rule county, it would be more appropriate for our County Executive and/or Chief Fiscal Officer to sign a statement that county funds are available for a specific county only purchase, not the County Governing Board.

Page 783, Section 138e104. Installment Sales

(d) (5) Should the first word in this paragraph be "The" instead of "If"?

Page 783, Section 138e.222. Conservation Plan

We feel the requirement for a signed conservation plan agreement and an approved conservation plan prior to State Board approval is a **very good idea**. **We do need to make landowners more aware that good conservation will be a requirement for all land enrolled in the farmland preservation program!**

Chapter 138L.Agricultural Security Area Program

It is good to have some clearly written regulations governing the ASA program, as there has been much confusion over the years at the municipal level as to how to administer this program.

Page 788, Section 138L.13. ASA Proposal Form

(a) **Governing body has discretion.** Does this paragraph imply that a municipality would have the right to designate open enrollment periods for additions to ASAs and be able to refuse acceptance of ASA proposals at other times?

Page 791, Section 138L.22. Filing of ASA description by governing body; recording of the ASA description

It would also be very helpful to county farmland preservation boards if municipalities were required to file all ASA descriptions with the **local farmland preservation office** (if one exists).

Page 791, Section 138L.24. Planning Commission Action with Respect to an ASA Proposal

Page 792, Section 138L.25. Advisory Commission Action with Respect to an ASA Proposal

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Sandra Robison

Page 792, Section 138I.26. Factors to be Considered by the Governing Body of the Local Government Unit, the Planning Commission, and the Advisory Committee.

In our opinion, the above **three** sections would more logically follow **Section 138I.17. Local Government Unit Action Upon Receipt of an ASA Proposal** and precede **Section 138I.18. Public Hearing by Local Government Unit on ASA Proposal**. This would put the information in the sequence that the municipalities should follow after receiving an ASA proposal.

Page 793, Section 138I.32 Automatic Inclusion of Certain Parcels Bisected by the Dividing Line Between Local Government Units

We want to make sure we understand this section correctly. If a farm bisected by a township boundary has previously enrolled **the majority** of its viable agricultural land in **Township A's** ASA, the farmland owner needs to apply to **Township "B"** to get the other portion of their farm into an ASA, if **Township B** has an existing ASA. In a different scenario, where **Township B** does not have an existing ASA, the landowner would apply to **Township A** to get their additional land into **Township A's** ASA. Do we have this straight??

Maybe some examples would help make this section more understandable to landowners and municipalities.

Page 793, Section 138I.33 Automatic Inclusion of Certain Parcels Bisected by the Dividing Line Between Local Government Units Upon the Purchase of an Agricultural Conservation Easement by Certain Entities

(b) Exception

Why is there an exception made for 100% Commonwealth funded easement purchases?

Page 794, Section 138I.34. Automatic Inclusion of Portions of Certain Parcels Bisected by the Dividing Line Between Counties Upon the Purchase of an Agricultural Conservation Easement by Certain Parties.

(b) Exception

Again, why is there an exception made for 100% Commonwealth funded easement purchases? It seems to us, that the use of 100% Commonwealth funds is **appropriate** in cases where farms straddle the boundary between two counties.

March 7, 2002
Sandra Robison

Page 794, Section 1381.41. Removing Land that has been in an ASA for 7 Years or More

We didn't realize landowners had the ability to opt out of an ASA at anytime after their land has been in the ASA for 7 years or more, unless done during a 7 year review or an interim review. Is this opt out provision mentioned in the Act?

We have some concerns about the possibility of large land holders / land speculators to use this provision in the regulations to effectively eliminate entire ASAs by pulling enough of their own land out of an ASA to cause the termination of an ASA; thus penalizing other farmland owners who may rely on the farming protections afforded by their ASA. This could also be harmful and destabilizing to areas where agricultural conservation easements have been acquired.

Thanks for letting us comment on the proposed regulations and we look forward to the Bureau of Farmland Preservation's response to our questions and suggestions.

Sincerely,

Jeffrey W. Zehr
Farmland Preservation Specialist
Lehigh County Agricultural Land Preservation Board