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3015

August 28, 2013

Doug Wolfgang, Director
Bureau of Farmland Preservation
Pennsylvania Department of Agriculture
2301 North Cameron Street
Harrisburg, PA 17110-9408

Dear Mr. Wolfgang:

On behalf of the County Commissioners Association of Pennsylvania (CCAP), representing all 67 counties in the commonwealth, I write to share our comments relative to the proposed rulemaking related to the Pennsylvania Farmland and Forest Land Assessment Act of 1974, otherwise known as Clean and Green, as published in the Pennsylvania Bulletin on August 3, 2013.

County governments are integral partners in protection of the commonwealth's farmland, forest land and open spaces. Most counties participate in the farmland preservation program, and many have implemented Clean and Green programs to provide preferential assessment to land remaining in agricultural use, agricultural reserve and forest reserve. Because of the dual role that counties serve both in administering the Clean and Green program and dealing with the impact on local revenues, the recent changes in statute and the corresponding proposed regulatory changes are of significant interest to counties. Below we share some questions and comments regarding the proposal.

The new requirement under Act 190 of 2012, allowing for the use of one half acre for direct commercial sales of agriculturally related products without rollback penalty, is captured under section 173b.72. However, clause (b)(2) of that section is unclear as to what should be determined as land devoted to the direct commercial sales. For instance, if a landowner runs a small farm stand that is at the end of a driveway or roadway, does the ingress or egress count toward the half acre (since the farm stand would not otherwise be accessible) or any small parking areas associated with the farm stand? To assure uniformity in application across the counties, we recommend the regulations clarify this matter.

In addition, provisions related to the consideration of oil and gas drilling on property enrolled in Clean and Green have particular significance to our counties located in the shale gas drilling. For the most part, it appears that the proposed regulations follow the parameters outlined in Act 88 of 2010 and Act 35 of 2011. However, we recommend that in 173b.73a(b)(1)(ii), the rights to exploration and removal of oil and gas clearly delineate that these activities are related to surface activities rather than subsurface activities. There may be situations wherein a property owner has severed the oil and gas rights from the surface property prior to the December 26, 2010, cutoff date, but did not also authorize exploration or drilling on their surface property prior to that date. In that case, the construction of an appurtenant facility

on that landowner's property after December 26, 2010, would be outside the rights that were granted for exploration and other activity, and should therefore be subject to rollback taxes.

Also, we note that Example 3 and 4 under the same section illustrate situations wherein a 50 percent interest in exploration and extraction rights were sold to a third party. Is 50 percent intended to be some sort of threshold that triggers the prohibition on imposing roll-back taxes (i.e., if less than a 50 percent interest is sold, then the property would in fact be subject to roll-back taxes), or would roll-back taxes not be imposed in any situation wherein any proportion of exploration and extraction rights were sold? We recommend that this issue be clarified in the proposed regulations.

While not necessary for inclusion in these regulations, CCAP further believes that a public education effort will be needed to better inform property owners of these changes (particularly insofar as the new statutory and regulatory changes apply to those enrolled in the program prior to the changes) and their obligations to report relevant changes in the use of their land to the county assessment office. For instance, that they are required to report any appurtenant oil and gas structures on a property not otherwise drilled, or any lease for a pipe storage yard within 10 days of such activity, or wind power generation system within 30 days following commencement of electricity generation.

Finally, CCAP would also be pleased to work with you and the Department of Environmental Protection to streamline the process by which DEP provides a copy of the well production report to the county assessor to determine rollback taxes (as referenced in 173b.73a(b)(2)). It is our understanding that DEP has taken the position that making the production reports available on its public website meets the statutory requirement to provide the county assessor a copy of the well production report as well. However, we recommend (either as part of these regulations or as part of separate discussions) there be some of notification to counties to alert them when the new reports are posted every six months and if possible to make it clear which wells in the reports are new wells that came online just within the previous six month reporting period.

We thank you for your attention to these comments. If you have any questions or would like to discuss further, please feel free to contact me at your convenience at 717-232-7554 x3148 or at lschaefer@pacounties.org.

Sincerely,

Lisa Schaefer

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