Pennsylvania Farm Bureau

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

Re: Proposed rulemaking to amend 7 Pa. Code Ch. 137b (*Preferential Assessment of Farmland and Forest Land under the Clean and Green Act*), published in the August 3, 2013 issue of the *Pennsylvania Bulletin* (43 Pa.B. 4344)

Dear Mr Wolfgang:

Pennsylvania Farm Bureau ("Farm Bureau") appreciates the opportunity to offer comments regarding the aforementioned proposed rulemaking.

Farm Bureau is a statewide general farm organization with a membership of nearly 55,400 farm and rural families in the Commonwealth. Our organization includes 54 county farm bureau affiliates that are active in 63 of Pennsylvania's 67 counties. Our organization's public policy goals and major organizational activities are directed by the active participation of member families who are commercially engaged in the business of agriculture.

Farm Bureau has been a strong supporter of Pennsylvania's Clean and Green Act[1], since its original enactment in 1974. Among the Act's primary purposes is providing to farm families a level of realty tax assessment that more closely reflects the expected economic returns from engagement of their farms in agriculture. Ownership and use of large amounts of land are necessary components for sustaining economic viability in farming. In many situations, land that is prime for agricultural use is also prime for competing non-agricultural land uses that drive up the fair market value and the tax assessment value that would otherwise be assigned to many farm tracts. The Act's allowance for assignment of "use value" tax assessment to farms provides farm families with necessary relief from the economic pressures of property taxation, and greater opportunity to viably keep their farms in agricultural production.

Real property taxation is already a serious economic challenge for Pennsylvania's farm families. And in days to come, farm families may become more vulnerable to economic consequences from property taxation in school districts' efforts to meet future employee pension obligations and other fiscal expenses for which state and federal assistance will not likely be provided.

[1] The Act of December 19, 1974 (P.L. 973, No. 319), as amended, officially titled the "Pennsylvania Farmland and Forest Land Assessment Act of 1974," contained in Purdon's Pennsylvania Statutes under 72 P.S. 5490.1 et seq. Hereafter, all references to "the Act" shall apply to this Act and its provisions.

The Act's assignment of use value assessment is a fair and effective response to the economic realities of farm businesses, the comparatively modest economic returns historically experienced in agriculture, and farmers' high exposure to volatile conditions of price and climate without feasible means of control or recourse.

The proposed rulemaking has been largely prompted by amendments to the Act recently enacted by the General Assembly. We believe these amendments will significantly help farm families take reasonable advantage of economic opportunities that have recently emerged, without compromising the primary character and use of enrolled[2] agricultural lands as farms. While acknowledging the Department's responsibility to ensure that regulations promulgated for the amendatory provisions of the Act do not offer potential for loopholes in interpretation that provide benefits and allowances not reasonably intended in the Act, we believe that the Department's attempt in rulemaking to resolve matters of interpretation must give preference to sustaining the future economic viability and continuation of operating farms enrolled for preferential assessment under the Act.

With these thoughts in mind, we offer the following comments to specific provisions of the regulations offered for amendment by the Department under its proposed rulemaking.[3]

Section 137b.2. Definitions – Proposed addition of "change in use."

Farm Bureau appreciates the effort made through this definition to recognize and clarify that actions by landowners to file plans for subdivision or to issue deeds for subdivision of enrolled lands pursuant to a subdivision plan approval are not events that trigger roll-back taxes or cause termination of enrollment, without actual conveyance of a "divided" tract to another. Much confusion has arisen over the issue of whether activities that are more administrative in function, such as filings for approval of subdivision plans or filing of separate deeds pursuant to approval of subdivision plans, should themselves be treated in the Act as a "change in use" that triggers roll-back taxes and potential termination of preferential assessment, even when the landowner of enrolled land continues to retain ownership and intends to retain ownership for a long time afterward. Landowners may have legitimate reasons for acting more immediately to obtain approval of subdivision plans or creating separate deeds for enrolled land, even though they have every intention in the foreseeable future to retain ownership and maintain and operate this land as a single and cohesive land unit and have no intention to convey any of the "parceled" portions of this land.

Numerous provisions of the Act have established the statutory theme that determinations of issues related to the Act (such as eligibility for initial enrollment and continuation of enrollment) are to be based on the physical characteristics and function of the enrolled land's contiguous area as a land unit, rather than what the enrolled land may be comprised in parceled deeds or other legal documents. Farm Bureau believes the intended objectives of this proposed definition are consistent with that theme, and should be included in final rulemaking.

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[2] References to "enrolled" land throughout these comments are intended to mean and apply to land enrolled for preferential assessment pursuant to the Act.

[3] The order in which our comments will appear are the same as the order of proposed amendments to regulations appearing in the Department's proposed rulemaking.

Relative to exception (i), we would recommend two changes. First, we believe there is a typographical error in the use of the word "subdivide," and would recommend that "subdivided" be used in its place. Second, we would suggest that the word "sold" may not be as broad a term as should be used in prescribing this exception. When read literally, physical conveyances of subdivided parcels other than sales would not fall within the exception of a change in use. We do not believe the intended effect of this exception was to distinguish between conveyances made pursuant to sale and conveyances made through gift or other non-sale transactions by the landowner.

We have concern with the potential confusion in interpretation that may arise under exception (iii), as drafted. We believe the Department is attempting to prescribe in regulation the statutory principle clearly established in numerous provisions of the Act that the mere act of conveyance of enrolled land is not considered to be a "change in use" that triggers roll-back tax or imposes roll-back tax liability on the grantor of the conveyance. However, inclusion of the phrase "as long as the land continues in an eligible use," in absence of any clearer context or application of this condition, may lead to interpretations that the grantor is responsible for the grantee's "continuation" of land use in accordance with Act's required land use, and is liable for roll-back tax when the grantee fails to do so. We recommend further revisions to this provision to more clearly and explicitly state that the exception applies to any conveyance of enrolled land, notwithstanding any "change in use" by the grantee subsequent to conveyance. We further recommend that the exception more clearly identify the type of "land" for which the conveyance exception provided in this provision would apply.

Section 137b.2. Definitions – Proposed addition of "division by conveyance or other action of the owner."

As this proposed definition is essentially the same as the rulemaking's proposed definition of "change in use," Farm Bureau would offer the same comments in general support and the same recommendations for further amendments to exceptions (i) and (iii) as were offered above to the rulemaking's proposed definition of "change in use."

Section 137b.2. Definitions – Proposed amendment to "outdoor recreation."

A sentence is proposed to be added to the definition that attempts to identify those activities considered to part of "outdoor recreation." However, the express list of activities proposed does not appear to be as broad or inclusive as the list of activities considered to be "recreational activity" under the rulemaking's proposed definition of that term. The Department's proposed definition of "recreational activity" mirrors the definition contained in the Act. Farm Bureau sees no legitimate reason why the definition of "outdoor recreation" and the types of activities considered to be part of "outdoor recreation" should not be at least as broad as the types of activities to be included in the proposed rulemaking's definition of "recreational activity." We would recommend further amendments to this definition to more clearly and expressly recognize that "outdoor recreation" includes those activities that fall within the scope of the rulemaking's proposed definition of "recreational activity."

Section 137b.2. Definitions – Proposed addition of "silvicultural products."

Farm Bureau would recommend clarification of this definition be made in several areas.

The proposed definition seems to suggest that cut trees and tree parts grown and marketed by an "actively-cultivated tree or tree product production operation" would fall within the scope of "silvicultural products," in the same fashion as trees marketed in "live" form by that operation. However, the term "tree product" used in the definition is not itself defined, and the proposed definition of "silvicultural products" does not explicitly recognize trees that are ultimately intended to be marketed in cut form as falling within the definition's scope. Attempts have been made in interpretation of other laws to distinguish between the production and marketing of live Christmas trees, which are considered to be part of "agriculture," and the production of Christmas trees intended to be cut and marketed in that form, which are not considered to be part of "agriculture." We believe Christmas trees produced for ornamental purposes should be considered to be a "silvicultural product," regardless of whether the tree is ultimately marketed in live or cut form. We would recommend more explicit language to recognize that cut trees marketed for ornamental purposes fall within the scope of a "silvicultural product."

We also note that the proposed rulemaking only attempts to add and define the term "silvicultural products," and does not include definitions for other general terms such as "horticultural products" and "floricultural products" listed in the definition of "agricultural commodity" whose production will qualify land for preferential assessment. As drafted, the definition of "silvicultural products" is expressly limited to "trees and tree products." While we are hopeful that persons administering the Act will continue to recognize that "silvicultural products" are but one component of product whose land qualifies for enrollment in clean and green, we are concerned that someone may draw an inference from the rulemaking's express definition of "silvicultural products" that lands used for production commodities such as "horticultural products" and "floricultural products" not expressly defined in the regulations do not qualify for enrollment. We would recommend language be added to the definition of "silvicultural products" to more explicitly recognize that the action taken to include and define is not intended to exclude land used for production of other ornamental products from enrollment in clean and green.

In similar fashion as the comments expressed above for "tree products," we would recommend that any further attempt in final rulemaking to clarify by definition the type of ornamental tree, shrub and plant products whose lands would qualify for enrollment in clean and green more explicitly recognizes that the production of ornamental shrubs, plants or flowers intended to be marketed in cut or partial form falls within the scope of "agricultural use," as would production of those intended to be marketed in live form.

Section 137b.12. Agricultural Use – Proposed Example 4.

Farm Bureau objects to what we believe to be the Example's intended objective to exclude the raising and keeping of horses by a horse boarding operation as an "agricultural use" activity. There is little doubt that same activities described in the Example would be considered part of "agricultural use" if commercially performed by the owner of the horses, regardless of whether the horses are being raised for horse racing or for recreational use. We do not see the role and function of the horse boarding operator as materially different from the role and function of persons commercially engaged in "contract" production of livestock or poultry. The "contract" livestock or poultry grower is not the owner of the animals he or she is raising and maintaining, and compensation provided pursuant to the "contract" is for the performance of raising and maintenance activities upon livestock and poultry. The only difference we see between a "contract" grower and a horse boarding operator is that instead of having one or two production and maintenance "contracts" the horse boarding operator has several contracts with animal owners.

We would also note that recent changes in state statutes have clearly advanced the public policy principle that commercial horse boarding and similar equine operations are to be treated as part of mainstream agriculture in the Commonwealth. Amendments to the Agricultural Area Security Law enacted in 2005[4] both allow for inclusion of land that supports horse boarding and similar commercial equine operations in agricultural security areas, and allow for lands supporting equine operations within an agricultural security area to qualify and be considered for land preservation under the state's farmland preservation program.

We strongly encourage the Department to rethink the position originally expressed in the proposed rulemaking and rewrite Example 4 to recognize that land devoted to horse boarding operations may qualify for preferential assessment as "agricultural use."

Section 137b.12. Agricultural Use – Proposed Example 8.

Farm Bureau commends and supports the analysis and conclusion stated in this Example. As noted above in our comments to Section 137b.2's proposed definitions of "change in use" and "division by conveyance or other action of the owner," the Act establishes a clear statutory theme that matters of interpretation and application of the Act and its legislative purposes should focus on the entire area of enrolled land utilized by the landowner, rather the individual components of parceled land that may exist under separately created deeds or other legal documents. Many of today's farm operations are not comprised of strictly contiguous land area. Farm families engaged in these operations need to own and utilize several noncontiguous land tracts in order to sustain viability. The Example correctly concludes that land used for Tier I generation by a "multi-parceled" farm operation should retain preferential status as "agricultural use" if the majority of the energy generated is used by any "parcel" of that farm operation, regardless of whether the "parcel" of the farm where the energy is used may differ from the "parcel" of the farm where the energy is generated. We strongly believe the Example and the conclusion drawn from the Example are consistent with the focus that the Act intended to be applied in its interpretation and administraton, and will further a primary objective of the Act to sustain and enhance farm viability through preferential assessment.

[4] Act 61 of 2005.

Section 137b.13. Agricultural Reserve.

While the rulemaking proposes to add a provision to the main text of this Section to recognize continued preferential assessment status for agricultural reserve land devoted to development and operation of Tier I energy generation systems for primary utilization on the agricultural reserve land, no specific examples of the application of this provision are offered, as are offered under Section 137b.12 for Tier I energy systems developed and utilized by agricultural use lands. Farm Bureau would recommend that examples be included in this Section similar in nature to those offered for Section 137b.12. We particularly suggest inclusion of an example that incorporates the spirit and intended effect of continuation of preferential assessment captured in Example 8 of Section 137b.12.

Section 137b.14. Forest Reserve.

We also note that with respect to land enrolled in forest reserve, a similar provision to the main text of this Section is proposed to be added as is proposed for Section 137b.13 for agricultural reserve land, but without offering specific examples of application of this provision. Consistent with our recommendations for Section 137b.13, Farm Bureau recommends that examples be included in this Section similar in nature to those offered for Section 137b.12, and particularly recommends inclusion of an example that incorporates the spirit and intended effect of continuation of preferential assessment captured in Example 8 of Section 137b.12.

Section 137b.15. Inclusion of Farmstead Land – Proposed amendments to Subsection (b).

Farm Bureau is concerned with the confusion that may arise and the erroneous interpretation of the Act that may be drawn from the proposed language to be added to the main text of this Subsection. When read literally and in isolation, the added provisions would suggest that farmstead land located within agricultural reserve or forest reserve areas can **never** receive preferential assessment, unless and until an ordinance is adopted by county commissioners that authorizes the farmstead land to receive preferential assessment.

Our concern is that there is no express language that attempts to explain how the language to be added to this Subsection should be read and applied in the context of Section 4.2(d) of the Act[5] and the proposed provisions to be added under Section 137b.51(g) of the regulations.

We do not necessarily believe that the Department has an erroneous understanding of the Act, relative to the type of assessment to be assigned to farmstead land within agricultural reserve or forest reserve areas. At least the Examples to proposed Section 137b.51(g) seem to recognize the principle established under Section 4.2(d) of the Act that farmstead land within an agricultural reserve or forest reserve portion of enrolled land receive "agricultural use value" assessment whenever the majority of contiguous area of enrolled land is "agricultural use" or a majority of the total land enrolled in the landowner's clean and green application in enrolled as "agricultural use."

[5] 72 P.S. § 5490.4b(d).

The absence of any language to give express direction in this Subsection on the application of proposed Section 137b.51(g) may lead some administrators of the Act to erroneously conclude that directives prescribed under Section 137b.51(g) for "agricultural use value" assessment of farmstead land only apply if the county first passes an ordinance pursuant to this Subsection to authorize it.

Farm Bureau recommends that language be added to this Subsection to make it more explicitly clear that the requirements for preferential assessment of farmstead land prescribed in Section 137b.51(g) apply, whether or not the county passes an ordinance to authorize preferential assessment of farmstead land within "agricultural reserve" or "forest reserve" portions of enrolled land.

Section 137b.51. Assessment Procedures – Proposed amendments to Subsection (c) (County assessor to determine total use value).

We have the same concern and reasons for concern regarding the proposed amendments to this Subsection as expressed above in our comments to the proposed amendments to Section 137b.15(b), and believe this Subsection suffers from the drafting deficiencies as proposed Section 137b.15(b). Farm Bureau recommends additional further amendments to this Subsection to make it more explicitly clear that the requirements for preferential assessment of farmstead land prescribed in Section 137b.51(g) apply, whether or not the county passes an ordinance to authorize preferential assessment of farmstead land within "agricultural reserve" or "forest reserve" portions of enrolled land.

Section 137b.51. Assessment Procedures – Proposed addition of Subsection (g) (Valuation of farmstead land).

As noted in our comments to the proposed amendments to Section 137b.15(b) and Section 137b.51(c) above, Farm Bureau believes that the language proposed for the main text and the Examples for this Subsection correctly represent the applicable law prescribed under Section 4.2(c) of the Act, which requires farmstead land to be assigned at "agricultural use" value whenever the farmstead land is located within an area enrolled as "agricultural use" or the farmstead land is located on any portion enrolled land in which either the majority of contiguous area of the enrolled land is enrolled as "agricultural use" or a majority of the landowner's total area of land enrolled in clean and green is enrolled as "agricultural use," regardless of whether any ordinance to "authorize" preferential assessment is enacted by a county under Section 3(g) of the Act.

As stated above, our general problem with the provisions of this Subsection and with the proposed amendments to Sections 137b.15(b) and 137b.51(c) is the failure in the rulemaking to expressly recognize that the requirements for preferential assessment of farmstead land under Section 4.2(d) are not conditioned by enactment of an ordinance by the county commissioners, or to expressly recognize the legal effect of the county's enactment of ordinance for farmstead land pursuant to Section 3(g) as expanding the scope of farmstead land within agricultural reserve or forest reserve areas to receive preferential assessment beyond what is already required under Section 4.2(d).

Farm Bureau recommends more detailed effort be made in final rulemaking to clarify and reconcile these provisions consistent with the discussion above.

Section 137b.53(f). Required recalculation of preferential assessment in countywide reassessment.

No proposed amendment to this Subsection is being offered under the proposed rulemaking. However we believe there may be a technical omission of language in this provision, as it exists currently. Subsection (c) of this Section, which requires counties to recalculate assigned use values of enrolled land that are higher than use values calculated for the county by the Department, provides that when this situation occurs:

> *"A county assessor shall calculate the preferential assessment of all enrolled land in the county by using **either** the current use values and land use subcategories provided by the Department **or lower use values established by the county assessor**."* (emphasis added)

The inclusion of the "or" clause in Subsection (c) is in recognition of the discretionary authority provided to counties under Section 4.2(c) of the Act[6] to establish use values for enrolled land that are below the use values annually calculated by the Department.

Subsection (f) requires counties to recalculate use values for enrolled land during the time in which the county performs a countywide reassessment of all real property or of all preferentially assessed real property. In describing the method to be applied pursuant to the county's recalculation, Subsection (f) uses language which mirrors subsection (c):

> *"If a county undertakes a countywide reassessment, or a countywide reassessment of enrolled land, the county assessor shall calculate the preferential assessment of all enrolled land in the county, by using **either** the current use values and land use subcategories provided by the Department."* (emphasis added)

However, the "or" clause has not been included.

We do not believe the omission of the "or" clause was intended by the original drafters of subsection (f), as counties would still have the discretion under Section 4.2(c) of the Act to establish lower values than those calculated by the Department. However, a literal reading of this Subsection and omission of this clause may suggest that when the county performs a countywide reassessment the county only has authority to use the Department's calculated values and must use the Department's calculation of use values most recent to the time when the countywide reassessment occurs.

For consistency with Section 4.2(c) of the Act and the regulatory provisions of Section 137b.53(c), Farm Bureau recommends that *"or lower use values established by the county assessor"* be added after *"Department."*.

[6] 72 P.S. § 5490.4b(c).

NEW Section 137b.73a. Gas, oil and coal bed methane – Subsection (a) (General) and Subsection (b) (Roll-back tax liability.

Farm Bureau believes the language in these subsections should more specifically and explicitly state that the execution of leases or similar activities under Subsection (a)(1) to provide future gas, oil or coal bed methane development do not impose liability for roll-back taxes, and would recommend further amendments to these Subsections to reflect this position.

NEW Section 137b.73a. Gas, oil and coal bed methane – Examples 1 through 4 of Subsection (b)(1).

The Examples proposed for this Subsection use the term "third party" throughout to identify the person who owns the right to perform subsurface exploration and extraction of coal bed methane. As we read these Examples, we find that only two parties are actually engaged – the surface owner of enrolled land subject to coal bed methane development and the owner of the subsurface right of coal bed methane exploration and extraction. There does not seem to be "third party" engaged in these examples, and use of this term may cause confusion in understanding and interpretation of these examples and their application in determining assessment of roll-back taxes. Farm Bureau recommends elimination of the term "third party," and use of terms to identify persons to more clearly show that only two persons are involved in the Examples. For illustrative examples to other provisions of Chapter 137b, the Department has used simpler designations such as alphabetical letters (eg. "Landowner A") to identify each party involved in a specific fact pattern described in the example. The Department may wish to use similar identifications of persons pertinent to the fact patterns provided in Examples 1 through 4.

NEW Section 137b.73b. Temporary leases for pipe storage yards.

Consistent with Section 6(c.3) the Act[7], this proposed Section directs that the portion of enrolled land subject to a temporary pipe storage lease "shall be restored to the original use which qualified it for preferential assessment." However, this Section does not provide guidance on the issue of whether the formerly leased land continues to be assessed at fair market value or land once again receives use value assessment upon restoration to its original use. Farm Bureau believes that regulations promulgated in final rulemaking should provide guidance relative to this issue. All things remaining the same, there is no reason why preferential assessment of the formerly leased land should not be resumed upon termination of the lease. Although the express provisions of Section 6(c.3) require "restoration" of the leased land, the landowner will most likely need to nothing or next-to-nothing to meet this requirement. Since Section 6(c.3) places an absolute maximum of two years for any area to be leased and used for pipe storage, we believe preferential assessment of the formerly leased land should automatically be resumed upon the end of the effective period of the lease, unless the county assessor determines after inspection of the leased portion that the requirement for restoration to the land's original use has not been met.

[7] 72 P.S. § 5490.6(c.3).

Section 137b.81. General (liability for roll-back taxes) – Proposed amendments.

Farm Bureau has serious concern with the amendment proposed for the second sentence of this Section, as drafted.

In its current form, the second sentence reads:

> *"The owner of enrolled land will not be liable for any roll-back tax triggered as a result of a change to an ineligible use by the owner of the split-off tract."*

Farm Bureau believes that the current language for this sentence accurately represents the legal principle that the Act intends to be applied, which absolves the landowner who created the split-off from any further roll-back liability in the event the owner of the split-off tract would use his or her land in a manner other than what is authorized under Section 6(a.1)(2) of the Act[8].

The proposed rulemaking would add the phrase, "in accordance with the applicable sections of the act" to the end of the existing sentence. The result would read:

> *"The owner of enrolled land will not be liable for any roll-back tax triggered as a result of a change to an ineligible use by the owner of the split-off tract* ***in accordance with the applicable sections of the act****."* (emphasis added)

We believe the addition of this language and its placement creates confusion in interpretation relative to the legal effect of roll-back-tax triggering events committed by the split-off owner will have on the owner who originally created the split-off. Our reading of the amended provision is that the original landowner's absolution from liability for roll-back tax would once again be dependent upon the conduct of the split-off owner in complying with the Act's restrictions in land use. The phrase to be added seems to be grammatically dependent and associated with the word "change," which in turn, creates the inference that the owner of enrolled tract **will be liable** for any change in land use by the owner of the split-off tract that is not "in accordance with the applicable sections of the act." The provisions of Section 6(a.1) of the Act clearly absolve the landowner creating the split-off from any further liability for roll-back taxes that may be triggered from use of the split-off land after the split-off has occurred.

Farm Bureau recommends the proposed amendment to the second sentence be deleted, or further amendments be made to more clearly reflect what the Department intended to accomplish through its proposed amendment to this sentence.

Farm Bureau also has concern with the sentence proposed to be added to this Section, as drafted. Presumably, this sentence is being proposed in response to the provisions of Section 6(a.3) of the Act[9], which recognizes and deems "transfers" of enrolled land as not subject to roll-back tax. The rulemaking's proposed sentence, however, would limit the types of conveyances deemed to be "transfers" relieved from roll-back tax to:

> *"transfers of* ***all*** *enrolled land* ***under*** *a single application."* (emphasis added)

[8] 72 P.S. § 5490.6(a.1)(2).

[9] 72 P.S. § 5490.6(a.3).

Section 6(a.3) of the Act, on the other hand, uses differing language to identify the types of "transfers" deemed to be relieved of roll-back taxes:

> *"ownership of land* ***subject to*** *a single application for preferential assessment. . ."* (emphasis added)

We believe the difference in language prescribed in Section 6(a.3) of the Act is significant, and provides for a broader scope of conveyances to be deemed to be relieved of roll-back tax liability than what is suggested in the rulemaking's proposed language.

As you are aware, the Act allows for noncontiguous "tracts" to be enrolled as part of a single application. In order for approval and enrollment, however, each of the noncontiguous "tracts" must individually meet the minimum requirements for the particular clean and green category in which the "tract" is being enrolled.[10] Additionally, the landowner applying for enrollment may not include in the application less than the entire portion of the deeded parcel of land to be enrolled.[11]

Section 6(a.3)'s use of the term "land subject to a single application" reflects, in our view, a logical extension of the same principle that the focus of interpretation of the Act and its application be the "unit" of contiguous area that is enrolled or to be enrolled in clean and green. We see the main objective behind Section 6(a.3) is to recognize as "transfers" not subject to roll-back tax those conveyances of clean and green land that will clearly retain qualification for preferential assessment upon conveyance. Since each contiguous land "unit" in a single application has already been determined to qualify for preferential assessment pursuant to the application process, the outright conveyance of this "unit" will continue to qualify for preferential assessment, since lands comprising the "unit" are being conveyed under existing deeds.

We believe that Department's proposed provision, which fails to recognize the outright conveyance of contiguous area of a land unit that is part of a multi-unit application for clean and green, is unduely restrictive, and is inconsistent with the principles of logic and administration that are consistently established through numerous provisions of the Act.

Farm Bureau recommends further amendments to the sentence proposed in this Section to also recognize that "units" of contiguous area identified in a single application that are conveyed in entirety to another fall within the scope of "transfers" relieved of roll-back tax.

Section 137b.82. Split-off tract – Proposed amendments.

Farm Bureau offers several comments, relative to this Section and the amendments to this Section proposed under the Department's rulemaking.

Relative to the language proposed to be added to the introductory statement to this Section, we would recommend the word *"accurate"* be replaced by *"met"*.

[10] *See*, Regulation 137b.19, 7 Pa. Code § 137b.19.

[11] *See*, Regulation 137b.20, 7 Pa. Code § 137b.20.

We have significant concern with interpretation and practical application of the sentence proposed to be added to condition (3), which reads:

> *"In calculating the total tract or tracts split off, the total shall include the acreage of all tracts that have been split-off from the enrolled tract since enrollment."*

We recognize that the split-off provisions of Section 6(a.1)(1)(i) of the Act do not themselves provide sufficient guidance on how compliance with the 10-acre/10-percent limitation in total maximum area for split-off of enrolled land is to be assessed and determined. But the proposed provision for "calculation" of total area of split-off land provides no greater practical insight or resolution of the ambiguity, confusion and hardship that current landowners of clean and green landowners can often face in trying to determine whether a particular split-off would meet or violate the 10-acre/10-percent rule, especially in situations where the enrolled land has been enrolled in clean and green for decades, has had multiple owners during its enrollment, or has had multiple separations or has had additional separations within originally separated tracts. The proposed provision does nothing to simplify the real challenges that landowners of enrolled land can face in identifying split-offs on portions of enrolled land that the landowner does not own, nor does the proposed provision provide any insight or resolution of the host of unanswered legal questions that can arise from the timing and degree of split-offs occurring on separated land. The legal and practical issues surrounding the 10-acre/10-percent rule become even more unwieldy in situations where separated land to originally enrolled land are subject to further separations.

Instead of the proposed provision, Farm Bureau believes the Department should consider development of regulations that establish safe-harbor principles that provide landowners of enrolled land with simpler and more straightforward means to identify whether a contemplated split-off of enrolled land will comply with or will violate the 10-acre/10-percent rule.

We also understand the problems in interpretation that have arisen from Commonwealth Court's decision in the case of *Donnelly v. York County Board of Assessment*, 976 A.2d 1226 (Pa. Commw. 2009). There is little doubt that the Court had erroneously assumed the wrong set of facts in rendering legal holdings on issues pertinent to this case, and had offered opinions on legal matters that were not pertinent to the actual facts of the case. To anyone with common sense and reasonable judgment, the Court's holdings in this case cannot stand as valid legal precedent in guiding how the Act's split-off provisions are to be interpreted and applied. Farm Bureau believes the 2010 amendments to the Act's split-off provisions enacted by General Assembly[12], which were largely prompted by the Court opinion in *Donnelly*, have clarified the principles of interpretation to be applied to split-offs to the point where the Court's holdings in *Donnelly* should no longer serve as legal precedent. We would recommend, however, that the Department consider the inclusion of an illustrative example that includes the same set of facts as the actual facts in the *Donnelly* case and expressly states the correct conclusions that: (i) roll-back taxes for split-offs done in accordance with the Act's prescribed standards are limited to the area split-off; (ii) the landowner who originally conveys the split-off tract is solely responsible for payment of any roll-back tax due from the conveyance; and (iii) the owner of the split-off tract is solely responsible for payment of any roll-back tax triggered through use of his or her split-off tract.

[12] Act 88 of 2010.

Section 137b.84. Split-off that does not comply with section 6(a.1)(1)(i) of the act – Proposed amendments.

The rulemaking proposes to add a statement to this Section that, in our opinion, is very vague and unclear on meaning or intended application, which reads:

> *"Nothing contained herein shall affect any liability for roll-back taxes which may become due under section 6(a.2) of the act (72 P.S. § 5490.6(a.2) for changed use within seven years of a separation."*

Farm Bureau believes much more specific language or illustrative examples are needed to better identify what this language means and how it is to be applied in the context of split-offs that fail to meet the requirements of Section 6(a.1)(1)(i) of the Act. In absence of more specific language or illustrative examples, Farm Bureau would recommend deletion of this sentence.

Section 137b.87. Change in use of separated land occurring within 7 years of separation – Proposed amendments.

The rulemaking proposes to delete the statement currently contained in the main text of this Section that:

> *"The remaining enrolled land shall continue to receive a preferential assessment."*

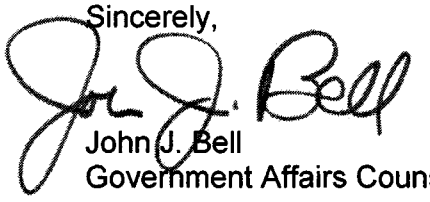
We are not clear on the Department's reasoning behind its proposed deletion, especially in light of the statement currently contained in the Example to this Section that expresses virtually the same principle as the principle proposed for deletion.

If the Department believes that the statement in the main text is "redundant" because of the statement of the principle in the Example, we would suggest the Department replace the existing general statement with one that more specifically and definitively prescribes the effect of the change in use of one separated tract will have on preferential assessment status of the other tracts conveyed under the Act's separation provisions. For example, we would suggest a replacement of the statement proposed for deletion with a statement similar to one that would read: *"Conversion in use of one of the tracts created through separation to a use that renders the tract ineligible for preferential assessment shall not terminate or otherwise affect preferential assessment of the other tracts created through the separation."*

Conclusion.

We thank the Department for the opportunity to provide comments relative to this proposed rulemaking. Please feel free to contact us if you have any questions regarding any of the discussion above.

Sincerely,



John J. Bell
Government Affairs Counsel

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