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TESTIMONY ON CLEAN AND GREEN

PRESENTED TO THE HOUSE AGRICULTURE AND RURAL AFFAIRS COMMITTEE

By Kristen Goshorn, Government Relations Manager

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Harrisburg, PA

Good afternoon. My name is Kristen Goshorn, and I am the Government Relations Manager for the County Commissioners Association of Pennsylvania (CCAP). CCAP is a non-profit, non-partisan association providing legislative, education, research, insurance, technology and other services on behalf of all the Commonwealth's 67 counties.

Thank you for the opportunity to appear before you to present our thoughts on topics related to Clean and Green, including legislation currently referred to this committee, as well as developing issues related to oil and gas development on Clean and Green properties.

As you are aware, the property tax is the only source of revenue available to counties to fund our obligations. We are unique in this respect from the school districts, townships, boroughs and cities who have all acquired alternate tax bases besides the property tax. Counties administer the assessment system, with responsibility for assigning values to properties. As such, the county assessment office is the place where the Clean and Green program is administered. So while the tax base of all local jurisdictions is impacted by preferential assessment, counties have a special interest in this program. The county is responsible for determining eligibility, assigning a use value to eligible properties and overall administration of the program.

Historically, CCAP has opposed granting special tax status to certain classes of property, but we believe that when special status is granted by the state, the state should fund the loss of revenue to local municipalities. Special tax status for some property owners inevitably shifts the tax burden to other property owners, and equity among taxpayers is a concern of county officials. However, CCAP has been involved in negotiating various changes to Clean and Green, and aside from some complaints from the public and media regarding owners of mini-estates who are also obtaining tax breaks through this program in the agricultural reserve and forest reserve categories, many commissioners believe that Clean and Green is an important support to the agricultural industry in Pennsylvania. We support preservation of agricultural land, and support the concepts behind Clean and Green as one element in achieving this objective.

Exploration of Marcellus shale for extraction of natural gas is booming in many parts of Pennsylvania, and counties are struggling to interpret how the Clean and Green law applies to properties where gas is being extracted. Recently, our Association contacted the Department of Agriculture to request their assistance in interpreting and applying Clean and Green to properties impacted by a lease of rights to natural gas. The Department indicated that it could not issue guidance to counties based on current content of the law.

We believe the General Assembly should act to grant some clarification to how Clean and Green applies to properties that have been leased for various purposes, including wind, solar, natural gas development and other uses. The law was amended to clarify for leases of land covered by preferential assessment to be used for wireless or cellular telecommunications. Lands leased for these types of purposes remain eligible for Clean and Green as long as the tract of land leased does not exceed ½ acre containing only one tower, is accessible and the tract is not sold or subdivided. A lease is not considered a subdivision for purpose of cellular and wireless towers. Preferential assessment for the land which is not leased is not affected, and roll-back taxes are imposed on the tract of land that has been leased with fair market value of the leased tract being adjusted accordingly.

We seek uniformity and believe that any change to the statute dealing with lease types must recognize and delineate when a change in the use of the land has occurred that would cause all or any part of the tract to be ineligible for preferential assessment. For example, we know that with extraction methods being used in Marcellus shale whereby developers hope to be able to extract horizontally in order to reduce the number of wellheads needed on the surface, some leases will result in no change of use. Other leased properties will be disturbed for roads, buildings, and well-heads, which all would constitute a change in use for at least a portion of some tracts enrolled in Clean and Green, and change in use should trigger imposition of the roll-back tax. Better clarity will not only benefit county assessment offices as administrators of the program, but also landowners who need to know how gas development will or will not impact their preferential assessment when negotiating leases with developers.

House Bill 656, which is was reported by this committee in June of 2007, seeks to put some clarity to the issue of leasing land under preferential assessment for wind towers. It allows imposition of rollback taxes on the tract that has been leased, without invalidating the preferential assessment of the land that has not been leased. This is very similar to the existing statutory language governing cellular towers on Clean and Green properties. Some have advocated that there be a flat acreage limit as is present for the cellular towers. However, because the lease is clearly recorded, the assessors' office can make the adjustment based on the actual amount of land leased and we do not feel that the acreage amount is necessary. HB 656 does not address a scenario which is more likely with wind towers than cell towers, where many wind towers could be erected on the same tract of land. Some assessors have raised the question of at what point do or should the number of leases or percentage of acres leased in a preferentially assessed tract change the use and trigger ineligibility for the entire tract

Finally, I would like to address two bills currently referred to the committee, HB 667 and HB 1960, which would amend the Clean and Green statute. House Bill

667, sponsored by Representative Sonney, is problematic as drafted and CCAP opposes this legislation. House Bill 1960, sponsored by Representative Hershey, will relieve local school districts, municipalities and counties of the loss of tax revenue.

HB 667 includes language that would allow a landowner to remove entire tracts from preferential assessment at any time by providing notice to the county assessment by July 1 of the year immediately preceding the tax year for which removal is requested, and by paying rollback taxes. We believe this portion of the legislation, in Section 8.1 (a) is acceptable to counties. However, the second half of the bill would be very problematic for assessment offices.

Section 8.1(b) allows a landowner receiving preferential assessment to remove the property without penalty any time a statutory change becomes effective which results in an increase in the use value assessment. We believe this issue should be addressed by the General Assembly on a case-by-case basis as the the Clean and Green statute is amendment so that policymakers can make judgment about whether, for example, a change should trigger any kind of grace period to allow affected landowners to withdraw without penalty. Section 8.1 (c) provides that for purposes of Clean and Green, the county cannot adjust the assessed value at any time other than the beginning of a tax year. This treatment is different from that of any other taxpayer, whose assessed property values can be adjusted at any time.

Most problematic is Section 8.2 of HB 667, which provides that if a statutory change becomes effective which causes an already-enrolled property to be ineligible for Clean and Green, no breech has occurred, and no rollback taxes or penalties can be imposed. This section also states that the tract shall continue to receive preferential assessment under the terms that were applicable at the time the preferential assessment was last recorded for the tract. This language will force counties to administer different versions of the Clean and Green law based on when the property was last enrolled, and this would be a very problematic and time-consuming mandate for assessment offices. Over the long term we will have to rely on historical records, rather than statutes, to remember the terms of enrollment on various parcels, which could create significant title and legal hurdles for property transfers, as well as creating equity problems among similar properties.

CCAP supports Representative Hershey's House Bill 1960. This legislation would provide for assistance payments to local municipalities which lose 10% or more of assessed value as a result of Clean and Green. If the taxing authority meets this requirement, it would apply to the Department of Community and Economic Development for relief. The taxing jurisdiction would be reimbursed by the state for the difference between the use value and the assessed value multiplied by the

tax rate. This addresses a CCAP policy, which states that tax revenues forgone or lost by any grant of special status should be reimbursed by the state.

Again, CCAP thanks you for the opportunity to offer our comments on Clean and Green. I would be happy to answer your questions at this time.