

July 8, 2010

Representative Charles Murphy  
Chair, House Ways and Means Committee  
State House  
Room 237  
Boston, MA 02133

Dear Chairman Murphy:

We write on behalf of our respective organizations in opposition to Senate Bill 2221, currently pending before your committee. American Farmland Trust, the Massachusetts Land Trust Coalition and The Trustees of Reservations are all organizations active in farmland protection efforts around the Commonwealth and strong proponents of the Agricultural Preservation Restriction (APR) program. We work closely with land trusts, farm and conservation organizations, the Department of Agricultural Resources and Executive Office of Energy and Environmental Affairs, the Agricultural Lands Preservation Committee and key legislators to secure adequate funding for the program and to see that the program is implemented in a way that ensures continued public and landowner support.

For this reason, we are deeply concerned about Senate Bill 2221 that would allow for the partial release of land owned by Ron and Linda Weston in Brimfield from the APR program. We understand that the land to be released will be used for a wedding banquet facility. We fear this legislation would set a dangerous precedent for the APR program, allowing landowners who have protected their land through the program to subsequently seek release of that land from the program for a purely non-agricultural, commercial purpose, despite the continued viability of the land for agricultural production.

Senate Bill 2221 allows for release of 7.7 acres of a 77-acre parcel of land enrolled in the APR program. As a condition precedent to that release, the Westons would be required to amend the current restriction to add a currently unrestricted 8 acre parcel to the larger restricted parcel. The bill also requires the Westons, as a condition subsequent to the release, to implement, on a yearly basis, one of six farm-related management plans for the remaining restricted land, using up to 5% of annual gross revenues from any commercial activities conducted on the released parcel.

The proposed legislation concerns us for a number of reasons, as follows:

- (1) The legislation directly contravenes a vote taken by the Agricultural Lands Preservation Committee (ALPC) and a staff recommendation from the Department of Agricultural Resources (MDAR).

The Agricultural Lands Preservation Committee is a statutorily-created committee composed of 9 voting members, including four state officials (the Commissioner of Agriculture; the Secretary of the Executive Office of Energy and Environmental

Affairs or designee; the Director of Economic and Community Development or designee; and the Chair of the state Board of Agriculture) and four farmers, that reviews and votes on requests from landowners with land enrolled in the APR program for land swaps, special permits and other modifications to their restrictions.

In April of 2006, the ALPC considered a request by Mr. Weston for essentially the same land “swap” as is now proposed in the legislation. AFT understands that Mr. Weston was present at that meeting and presented his request for the land swap. The Committee also considered a written Narrative for Request for Swap of Land compiled by MDAR staff, which laid out the request and the policy (still in effect today) under which such land swaps should be considered. The MDAR staff recommendation was not to support the request, and the ALPC voted unanimously against the request. The meeting minutes indicate that the ALPC did not approve the request “due to the fact that the non-APR land is not as suitable or readily available for agricultural production, as is the existing APR land, and that the proposal does not further the intent of the APR statute; thus there is no perceived public good.” There is no indication in the minutes that the Commissioner of Agriculture disagreed with the ALPC’s action.

- (2) The parcel to be released remains suitable for agricultural production and its release would jeopardize the future viability of the remaining APR parcel..

We have reviewed letters from two consultants hired by Mr. Weston to consider the agricultural productivity of the 7.7 parcel to be released and the 8 acre parcel to be protected. Both consultants indicate that the agricultural productivity of the two parcels is comparable; however, both state that the proposed addition is steep and suitable only for continued forest management. While the consultants indicate that the parcel proposed to be taken out of the APR program has constraints because of wet soils and a high water table, neither state that the land is unsuitable for agricultural production; indeed, one of the consultants cites blueberries, Christmas trees, and hay/pasture as crops that would be suited to the soil type.

The acreage proposed for release is also centrally located in the 77-acre APR parcel. If released, the 8 acre parcel could be sold independently from the remaining APR land, leaving a large doughnut hole in the center of the APR and making management of the remaining APR land more difficult.

- (3) It is unclear whether Mr. Weston is complying with the terms of his existing special permit under the APR program.

In April of 2006, Mr. Weston was granted a special permit by the ALPC to conduct wedding-related activities and horse boarding on his APR land. In approving the special permit, the ALPC indicated that any activities carried out under the special permit will be ancillary to the agricultural use of the property.

In response to an inquiry from American Farmland Trust, Commissioner of Agriculture Scott Soares could not confirm that Mr. Weston is complying with the

terms of the special permit. While Commissioner Soares is aware of continued Christmas tree harvesting on the property, the Department has not examined the extent of that production and harvest and whether Mr. Weston's wedding-related activities are indeed ancillary to agricultural uses of the APR property.

- (4) The legislation does not require Mr. Weston to compensate the Commonwealth for any difference in the fair market value between the parcel to be released and the parcel to be protected.

M.G.L. Chapter 184, Section 32 requires that any restriction that has been purchased with state funds be released only if repurchased by the landowner at its then current fair market value. Given its location, it would appear that the land proposed for release has a higher fair market value than the land proposed to be added. However, no appraisal appears to have been done of either parcel in order to determine the relative value of each. While the legislation does require Mr. Weston to devote a small percent of any gross revenues derived from commercial activities conducted on the released parcel to enhancing the agricultural productivity of the remaining APR parcel, the contribution is capped annually to the actual cost of implementing one of six farm-related management plans. Moreover, this requirement should not be considered a substitute for compensation for the difference in values, if any, between the two parcels.

- (5) It is unclear what public good would be derived from this legislation.

Mr. Weston acknowledges that his purpose in seeking a release of this APR land is to construct a wedding banquet facility on the released parcel; indeed, a drawing of the proposed banquet facility is displayed on the farm's website (<http://www.hollowbrookfarms.com/weddings.html>). This swap does not enhance the agricultural productivity or allow for better management of the entire 77-acre APR parcel, and is likely, in fact, to negatively impact future management of the larger parcel should one or the other of the parcels be sold to a different owner. While the productivity of the land to be restricted appears to be comparable to the land proposed for release, the land proposed for inclusion is steep, is suited only for forest crops, and is not land that would otherwise qualify for enrollment in the APR program today as an add-on parcel. For these reasons, we see this legislation as setting a dangerous precedent of allowing partial APR releases for purely non-agricultural commercial purposes, where there is no perceptible benefit to the larger APR parcel, to the APR program, or to the public.

We urge you and members of the committee not to favorably report this measure out of the committee. We would welcome an opportunity to discuss this bill and our concerns with any committee members or staff, and appreciate Committee's attention to our concerns.

Sincerely,

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cc: Representative Steve Kulik