

Joint Committee on Environment, Natural Resources and Agriculture

September 12, 2017

Testimony in Support of HB 441, An Act to Promote the Care and Well-being of Livestock  
Against HB 416, An Act Enhancing the Issuance of Citations for Cruel Conditions  
for Animals  
Against HB 458, An Act to Promote and Strengthen Agricultural Preservation

Good morning Chairman Pignatelli, Chairwoman Gobi, and members of the Committee,

My name is Kathy Orlando and I live in Sheffield, one of the most actively agricultural areas in Berkshire County. For over 25 years I have worked to support agriculture, our farms and our farmers, and to protect the farmland critical to all three. I am the Executive Director for Land Protection at the Sheffield Land Trust, and Chairman of the Massachusetts Land Trust Coalition Steering Committee. I also serve on the Sheffield Agricultural Commission, having done so since helping to get it established through Town Meeting vote, and on the board of the Berkshire County Farm Bureau. I also grew up helping out on friend's farms and still lend a hand whenever I can be useful.

Thank you for this opportunity to support HB 441 (An Act to Promote the Care and Well-being of Livestock) and to oppose both HB 416 (An Act Enhancing the Issuance of Citations for Cruel Conditions for Animal), and HB 458 (An Act to Promote and Strengthen Agricultural Preservation). I will briefly address each below.

#### HB 441, An Act to Promote the Care and Well-being of Livestock

As you know, this bill would establish a Livestock Care and Standards Board to advise the Commissioner of Agriculture on appropriate actions to help ensure the humane keeping and treatment of livestock, and the viability of farms and related businesses, as well as to promulgate regulations and standards toward that end.

To my mind the diverse, practical and well-balanced make-up of the Board is at the heart of this legislation and why it is so important. Having the proposed mix of farmers, veterinarians experienced with livestock, representatives of the Dept. of Public Health, animal welfare organizations, farming and farm support organizations, as well as representatives of those overseeing and training veterinarians will ensure that all aspects of any question or issue related to livestock care and well-being are addressed.

The provision that the Board include consideration of the health, safety and comfort of the animals, as well as food safety, biosecurity, public health and the financial impacts on and viability of farms and related businesses further ensures a full vetting of all aspects of any topic. The requirement that at least 2/3 of the Board has to approve any vote makes sure that there is substantial agreement across all the sectors representing different interests, knowledge and experience.

Why is this bill needed after the passage of Ballot Questions 3? Because Question 3 only spoke to a very narrow set of circumstances and practices that don't even apply to the vast majority of Massachusetts farms, while the Care and Standards Board would establish a way to effectively address any question or issue that comes up. It can also be an invaluable asset to help prevent issues from arising by being proactively aware of what is happening across the state or elsewhere in the country. Anyone who supported Question 3 should be supporting this bill as more relevant, comprehensive and practical way of looking out for the care and well-being of livestock.

The passage of Question 3 does make Section CC unnecessary.

## HB 416, An Act Enhancing the Issuance of Citations for Cruel Conditions for Animals

This bill is a perfect example of where a Livestock Care and Standards Board would be invaluable. There are many differences between dogs and livestock that make it problematic to simply add the provision that a law specifically crafted to address chaining and tethering of dogs to a stationary object now “also apply to farm animals”. Different animals require different conditions and kinds of care, even within the category of livestock, never mind between livestock and a pet. Think about the difference between tethering a dog and tethering a bull. From hours of the day to the weight of tethers, there are many areas where for the health and safety of the animals as well as for the people around them there should be an individual analysis of what is appropriate for each species. The Care and Standards Board would be ideally suited to do that.

## HB 458, An Act to Promote and Strengthen Agricultural Preservation

Contrary to its name, this bill would actually weaken and make it more difficult to protect farmland and agriculture. It proposes to remove section (c) from the definition of an Agricultural Preservation Restriction. That section articulates that agricultural preservation restrictions are meant to prevent “other acts and uses detrimental to such retention of the land for agricultural use”.

All of the restrictions defined in MGL Chapter 184, Section 31 have such a provision, appropriately tailored to the type of restriction, because without it such documents would become outdated and irrelevant as circumstances and times changed – not to mention be unwieldy in length to cover even the current known conditions. Can you imagine having to list every

The intent of the programs would be undermined and the taxpayer dollars wasted. This enabling legislation, like that in other states across the country, specifically provides for protection of the varied resources in perpetuity to explicitly say that the usual prohibition against tying something up forever was intentionally being changed in these circumstances because of the public benefit to society. So the guiding language must be broad to accommodate the unknown in that “forever”.

The legislation enabling these restrictions provides the intent and big picture guidance so that everyone when it was passed and in future generations would understand its purpose. It is short, sweet and to the point. The complexities of how to actually implement the legislation, the “how to” of the programs are left to regulations and even more details to policies and guidelines. The details in the regulations, policies and guidelines can change to accommodate the unknown as it comes, based on the roadmap provided by the broad language of the statute.

Can you imagine having to think of every conceivable current and future circumstance that could be detrimental to agriculture (including those that technology had not yet been invented for) and include that exhaustive list in the document. It isn't possible.

Take an example from another context to illustrate the concept. It would be like saying child protection laws needed to list everything, both physical and mental, that could be harmful to children in order to be able to protect them. Nobody thought to include burning a child with a cigarette in the initial legislation? Too bad. Nobody had yet developed the technology to share inappropriate photographs of children through their phones so that wasn't included? So sorry. The absurdity is clear to see in something so easy to picture.

The legislation for agricultural preservation restrictions, like conservation restrictions, historic preservation restrictions, watershed preservation restrictions and affordable housing restrictions needs the flexibility of broad language to stand the test of time.

I understand that some people have issues with specific processes and decisions by the APR Program, as is inevitable with any program, but the regulations, policies and guidelines are the place to address those issues if it can't be done on an individual basis. In my over 25 years working in land conservation and with farmers the vast majority of those I work with and talk to have had positive experiences with the APR Program. For many it has meant the difference between being able to keep their farm or not, or being able to afford to buy a new one.

Our APR Program has been the inspiration and model for other farmland protection programs across the country for a reason, and it is essential to the future of agriculture here in Massachusetts. Removing section (c) would pull the legs out from under this essential resource. We are celebrating the Program's 40<sup>th</sup> Anniversary this year, let's make sure we don't undermine its next 40 and beyond.

Again, thank you for this opportunity to support HB 441 (An Act to Promote the Care and Well-being of Livestock) and to oppose both HB 416 (An Act Enhancing the Issuance of Citations for Cruel Conditions for Animal), and HB 458 (An Act to Promote and Strengthen Agricultural Preservation).

Respectfully,  
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### **MGL Chapter 184, Section 31: Restrictions, defined**

Section 31. A **conservation restriction** means a right, either in perpetuity or for a specified number of years, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming or forest use, to permit public recreational use, or to forbid or limit any or all (a) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground, (b) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (c) removal or destruction of trees, shrubs or other vegetation, (d) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, (e) surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition, (f) activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or (g) **other acts or uses detrimental to such retention of land or water areas.**

A **preservation restriction** means a right, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land or in any order of taking, appropriate to preservation of a structure or site historically significant for its architecture, archeology or associations, to forbid or limit any or all (a) alterations in exterior or interior features of the structure, (b) changes in appearance or condition of the site, (c) uses not historically appropriate, (d) field investigation, as defined in section twenty-six A of chapter nine, without a permit as provided by section twenty-seven C of said chapter, or (e) **other acts or uses detrimental to appropriate preservation of the structure or site.**

An **agricultural preservation restriction** means a right, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land appropriate to retaining land or water areas predominately in their agricultural farming or forest use, to forbid or limit any or all (a) construction or placing of buildings except for those used for agricultural purposes or for dwellings used for family living by the land owner, his immediate family or employees; (b) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such a manner as to adversely affect the land's overall future agricultural potential; and (c) **other acts or uses detrimental to such retention of the land for agricultural use.** Such agricultural preservation restrictions shall be in perpetuity except as released under the provisions of section thirty-two. All other customary rights and privileges of ownership shall be retained by the owner including the right to privacy and to carry out all regular farming practices.

A **watershed preservation restriction** means a right, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land appropriate to retaining land predominantly in such condition to protect the water supply or potential water supply of the commonwealth, to forbid or limit any or all (a) construction or placing of buildings; (b) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance except as needed to maintain the land and (c) **other acts or uses detrimental to such watershed.** Such watershed preservation restrictions shall be in perpetuity except as released under the provisions of section thirty-two. All other customary rights and privileges of ownership shall be retained by the owner, including the right to privacy.

An **affordable housing restriction** means a right, either in perpetuity or for a specified number of years, whether or not stated in the form of a restriction, easement, covenant or condition in any deed, mortgage, will, agreement, or other instrument executed by or on behalf of the owner of the land appropriate to (a) limiting the use of all or part of the land to occupancy by persons, or families of low or moderate income in either rental housing or other housing or (b) restricting the resale price of all or part of the property in order to assure its affordability by future low and moderate income purchasers or (c) **in any way limiting or restricting the use or enjoyment of all or any portion of the land for the purpose of encouraging or assuring creation or retention of rental and other housing for occupancy by low and moderate income persons and families.** Without in any way limiting the scope of the foregoing definition, any restriction, easement, covenant or condition placed in any deed, mortgage, will, agreement or other instrument pursuant to the requirements of the Rental Housing Development Action Loan program or the Housing Innovations Fund program established pursuant to section three of chapter two hundred and twenty-six of the acts of nineteen hundred and eighty-seven or pursuant to the requirements of any program established by the Massachusetts housing partnership fund board established pursuant to chapter four hundred and five of the acts of nineteen hundred and eighty-five, including without limitation the Homeownership Opportunity Program, or pursuant to the requirements of sections twenty-five to twenty-seven, inclusive, of chapter twenty-three B, or pursuant to the requirements of any regulations or guidelines promulgated pursuant to any of the foregoing, shall be deemed to be an affordable housing restriction within the meaning of this paragraph.