

COMMONWEALTH OF PENNSYLVANIA



Pennsylvania Department of
AGRICULTURE

AGRICULTURAL SECURITY AREA

HANDBOOK

Bureau of Farmland Preservation
2301 North Cameron Street
Harrisburg, PA 17110
Phone: 717-783-3167
Fax: 717-772-8798
www.agriculture.state.pa.us

TABLE OF CONTENTS

Program Summary.....	Page 3
Benefits of Having an ASA.....	Page 4
Creation of an ASA (One Local Government Unit).....	Page 6
Creation of an ASA (Multiple Local Government Units).....	Page 11
Additions to ASA During 7-Year Review.....	Page 17
Seven-Year Review.....	Page 22
FAQs.....	Page 26
Forms.....	Page 30
Proposal for the creation or modification of an ASA	
Proposal for the addition of an ASA	
Proposal for the removal of an ASA	
ASA Creation Public Notice	
ASA Creation Public Hearing Notice	
ASA Addition Public Notice	
ASA Addition Public Hearing Notice Letter	
Seven Year Review Public Notice	
Seven Year Review Letter	
Seven Year Review Public Hearing Notice	
Seven Year Review Public Hearing Letter	
Township Resolution for ASA Adoption	
Secretary of Township Notarization Letter	
Notary Public Letter	
Letter to Pennsylvania Secretary of Agriculture	
ASA Creation Description Letter for Planning Commission	
ASA Addition Description Letter for Planning Commission	
ASA Review Description Letter for Planning Commission	
Letter of Rejection/Modification to Landowner(s)	
Request by Township for Interim Review	

Act 43 – Agricultural Area Security Law

Agricultural Security Areas

Purpose

The Agricultural Security Area program began in 1981 as a tool for strengthening and protecting agriculture in Pennsylvania. Farm landowners, working together, initiate the process of establishing such Areas in which agriculture is the primary activity. Participating farmers are entitled to special consideration from local and state government agencies, and other “nuisance” challenges, thus encouraging the continuing use of the land for productive agricultural purposes.

Agricultural security areas are intended to promote more permanent and viable farming operations over the long term by strengthening the farming community's sense of security in land use and the right to farm. Agricultural security areas are created by local municipalities in cooperation with individual landowners who agree to collectively place at least 250 acres in an agricultural security area.

Who Should Participate

Landowners with the following eligible property:

1. Noncontiguous farm parcels must be at least 10 acres in size. The farm tracts needed to create a new 250 acre or larger agricultural security area do not have to be under the same ownership or even be located in the same municipality. The Agricultural Area Security Law (Act 43 of 1981) allows for the creation of joint municipality agricultural security areas.
2. The property should be viable agricultural land. Cropland, pasture, and woodland can all be included in an agricultural security area.
3. At least 50% of the land should be in Soil Capability Classes I-IV, as defined by the county soil survey.
4. The property must be zoned to permit agricultural uses.

Registration

The process of establishing an Agricultural Security Area is initiated by petition of owner's productive farmland totaling at least 250 acres. The land to be included must have soils conducive to agriculture and be used for production of crops, livestock, livestock products, horticultural specialties and timber.

Contact your local agricultural land preservation office or township office to obtain agricultural security area application forms.

Additional Info

For additional information on how the Pennsylvania Department of Agriculture oversees the Commonwealth's program to purchase agricultural easements and administers legislative programs designed to preserve farmland through the State Agricultural Preservation Board please contact the Bureau of Farmland Preservation at (717) 783-3167.

Benefits Of Having A Farm Designated An Agricultural Security Area (ASA)

- In Counties that have established Farmland Preservation Programs pursuant to the Agricultural Area Security Law, farms located in an ASA consisting of at least 500 acres are eligible to apply for the purchase of an agricultural conservation easement by the Commonwealth. An ASA designation is a prerequisite for eligibility.
- Local governments are not permitted to enact local laws or ordinances, which would unreasonably restrict farm structures or farm practices within the area.
- Any municipal or political subdivision law or ordinance defining or prohibiting a public nuisance must exclude from the definition of nuisance any agricultural activity or operation conducted using normal farming operations within an agricultural security area.
- All Commonwealth agencies are to encourage the maintenance of viable farming in agricultural security areas and their administrative regulations and procedures shall be modified to do this.
- No agency of the Commonwealth having or exercising powers of eminent domain shall condemn for any purpose any land within any agricultural security area that is being used for productive agricultural purposes unless prior approval has been obtained from the Agricultural Lands Condemnation Approval Board.
- No political subdivision, authority, public utility or other body having or exercising powers of eminent domain shall condemn any land within any agricultural security area for any purpose, unless prior approval has been obtained from Agricultural Lands Condemnation Approval Board and from each of the following bodies: the governing bodies of the local government units encompassing the agricultural security area, the county governing body, and the Agricultural Security Area Advisory Committee.
- Farmers receiving loans through the Small Business First Program and the Machinery and Equipment Loan Fund may receive a 1% reduction in their interest rate if their property is located within an ASA.
- The ASA designation does not restrict the use of the property by the farmer. The farmer may sell or subdivide the property. The farmer or any subsequent owners may develop the property in any manner authorized by local zoning, subdivision and land development regulations.
- The farmer is obligated to maintain the ASA status of the farm for 7 years after the initial application. After the initial seven-year period the farmer may have the ASA designation removed at any time by submitting a written request to the local government.
- The ASA designation will stay with the property when it is sold or subdivided. The only way a property can be removed from an ASA is through the action of the property owner or through a process hearing formal process conducted by the local government.
- The Local Government may review ASA every 7 years or during the 7-year period if there has been significant change of use of the properties located within the ASA. The

property owners of the ASA designated property must be notified in writing of the local government review. If the local government fails to review the ASA at the 7-year interval, the ASA is automatically renewed for an additional 7-year period.

- This is a brief synopsis of the benefits of ASA designation. There are some exceptions and reservations that may apply in certain circumstances.

Creation of Agricultural Security Areas (Located Wholly Within One Local Governmental Unit)

Proposals For Creation

Any owner or owners of land used for agricultural production may submit a proposal to the governing body for the creation of an agricultural security area within such local government unit, provided that such owner or owners own at least 250 acres of viable agricultural land proposed to be included in the area. The proposed area may also consist of any number of noncontiguous tax parcels or accounts, provided that each tax parcel or account is at least ten acres or has an anticipated yearly gross income of at least \$2,000 from the agricultural production of crops, livestock and livestock products on such parcel or account.

Participation

Participation in the agricultural security area shall be available on a voluntary basis to landowners within the jurisdiction of the governing body including those not among the original petitioners. The deletion of land in the agricultural security area shall only occur after seven years or whenever the agricultural security area is subject to review by the governing body.

Submitting The Proposal

The proposal for the creation of an agricultural security area shall be submitted in such a manner and form as is prescribed by the governing body of the local government unit where the proposed area is situated and shall include a description of the proposed area, including the boundaries. Such proposal to the governing body shall be submitted by certified mail with return receipt requested. The return receipt shall serve as notice of the official receipt of the proposal by the governing body and shall verify the official submission date.

Modification Of The Proposal

The governing body shall receive any requests for modifications of the proposal which is submitted by such landowners or local government units up to seven days prior to advertisement of the required public hearing.

Fees

A governing body shall not require landowners included in a proposed agricultural security area to pay any fees in connection with the application for or the review of agricultural security areas. A governing body may by resolution impose reasonable filing fees in connection with the administration and review of an agricultural security area application that proposes to include substantially the same lands as proposed in a previously submitted application that the governing body had rejected within the last 36 months based on the recommendations of the Agricultural Security Area Advisory Committee and the planning commission.

Notice

Upon the receipt of a proposal, the governing body shall acknowledge receipt of the proposal at the next regular or special meeting and shall thereupon provide notice of the proposal by

publishing a notice in a newspaper having general circulation within the proposed agricultural security area and by posting notice in five conspicuous places within, adjacent or near to the proposed area. If the governing body fails to provide the required notice within 15 days of receiving a proposal, a person who is adversely affected by this inaction may bring an action in mandamus to complete compliance.

The notice shall contain the following information:

- (1) A statement that a proposal for an agricultural security area has been filed with the governing body pursuant to this act.
- (2) A statement that the proposal will be on file open to public inspection in the office of the local government unit.
- (3) A statement that any local government unit encompassing or adjacent to the proposed area, or any landowner who owns the land proposed to be included within the proposed area, or any landowner with lands adjacent or near the proposed area who wishes such lands to be included or not included therein, may propose modifications of the proposed area in such form and manner as may be prescribed by the governing body. The statement shall indicate that objections to the proposal, and proposed modifications to the proposal must be filed with the governing body and the planning commission within 15 days of the date of publication of the notice.
- (4) A statement that at the termination of the 15-day period, the proposal and proposed modifications will be submitted to the planning commission and the advisory committee, and that thereafter a public hearing will be held on the proposal, proposed modifications and recommendations of the planning commission and advisory committee.

Report By Planning Commissions

The governing body shall, upon the termination of a 15-day period from the date of publication of the notice, forward the proposal and proposed modifications to the local and county planning commissions. The planning commissions shall have up to 45 days to review the proposal and proposed modifications and report to the governing body its recommendations. The local planning commission shall specifically report on the potential effect that the proposal and proposed modifications will have upon the local government's planning policies and objectives. The failure to submit a report to the governing body within 45 days shall be deemed to constitute approval of the proposed agricultural security area by the planning commissions.

Report By The Agricultural Security Area Advisory Committee

The governing body shall also, upon the termination of the 15-day period, from the date of publication of the notice, forward the proposal and proposed modifications to the Agricultural Security Area Advisory Committee. The committee shall have up to 45 days to review the proposal and proposed modifications and report to the governing body its recommendations concerning the proposal and proposed modifications. The failure of the advisory committee to submit a report to the governing body within 45 days shall be deemed to constitute approval of the proposed agricultural security area by the advisory committee.

Agricultural Security Area Advisory Committee

When a proposal is received by the governing body of any local government for the creation of an agricultural security area, that body shall be established an Agricultural Security Area

Advisory Committee. This committee shall consist of three active farmers, each representing a different private or corporate farm, and one citizen residing within the unit of local government and one member of the governing body of such local government, who shall serve as the chairman of the committee.

The members of the committee shall be appointed by and shall serve at the pleasure of the chairman of the governing body. The members shall serve without salary, but the governing body may entitle each such member to reimbursement for his actual and necessary expenses incurred in the performance of his official duties.

The committee shall advise the governing body and work with the planning commission in relation to the proposed establishment, modification, and termination of agricultural security areas. In particular, the committee shall render expert advice relating to the desirability of such action, including advice as to the nature of farming and farm resources within the proposed area and the relation of farming in such area to the local government unit as a whole.

Public Hearings

The governing body shall hold a public hearing relative to the proposed agricultural security area upon receipt of the reports from the advisory committee and the planning commissions or upon expiration of the 45-day review period. The hearing shall be held at a place within the proposed area or otherwise readily accessible to the proposed area, such as a municipal building. Pursuant to the "Sunshine Act," a hearing notice shall be published in a newspaper having a general circulation within the proposed area. In addition, notice shall be given in writing to those landowners who proposed modifications or whose land is included in proposed modifications, and to all landowners within the proposed agricultural security area. Notice also shall be given by posting such notice in five conspicuous places within, adjacent or near to the proposed area.

The notice shall contain the following information:

- (1) A statement of the time, date and place of the public hearing.
- (2) A description of the proposed area, any proposed additions or deletions and any recommendations of the planning commissions or advisory committee.
- (3) A statement that the public hearing will be held concerning:
 - (i) The original proposal.
 - (ii) Any written amendments proposed during the review period.
 - (iii) Any recommendations proposed by the Agricultural Security Area Advisory Committee and the planning commission.

Evaluation Criteria

The following factors shall be considered by the planning commission, advisory committee, and at any public hearing:

- (1) Land proposed for inclusion in an agricultural security area shall have soils which are conducive to agriculture. This factor will have been satisfied without further consideration if at least 50% in the aggregate of the land to be included in an agricultural security area falls into one of the following categories: land whose soils are classified in Natural Resources Conservation Service Capability Classes I through IV, excepting IV(e); land which falls within the Natural Resources Conservation

Service classification of “unique farm land”; or land whose soils do not meet Capability Classes I through IV but which is currently in active farm use and is being maintained in accordance with the soil erosion and sedimentation plan applicable to such land.

- (2) Use of land proposed for inclusion in an agricultural security area shall be compatible with local government unit comprehensive plans. Any zoning shall permit agricultural use but need not exclude other uses.
- (3) The landowner may propose to include all of his land, regardless of zoning, in an agricultural security area.
- (4) The land proposed for inclusion in the agricultural security area, and any additions which are proposed subsequently, shall be viable agricultural land.
- (5) Additional factors to be considered are the extent and nature of farm improvements, anticipated trends in agricultural economic and technological conditions and any other matter which may be relevant.
- (6) The existence of utility facilities on the proposed area shall not prevent the adoption of such area as an agricultural security area nor shall the rights of utilities with respect to the existing facilities be disturbed or affected by such adoption.

Decision On Proposed Area

The governing body, upon completion of these procedures and considerations may adopt the proposal or any modification of the proposal the governing body deems appropriate, including the inclusion, to the extent feasible, of adjacent viable farm lands if the land owner has made application to be included, and the exclusion, to the extent feasible, of nonviable farm land and nonfarm land. The governing body shall act to adopt or reject the proposal, or any modification, no later than 180 days from the date the proposal was originally submitted. Failure by the governing body to act within this 180-day period shall be deemed adoption of the proposal without modification. An agricultural security area shall become effective upon the adoption of the proposal or its modification by the governing body or upon expiration of the 180-days.

Within ten days of the governing body’s decision to reject or modify the proposal, the governing body shall submit to the owner or owners of the land a written decision stating why the proposal was not adopted or was modified. The written decision shall include a finding of fact, review of the prescribed evaluation criteria and a discussion of reasons for rejection or modification of the proposal.

Within ten days of the creation of an agricultural security area, a description of the area including tax parcel identifier, shall be filed by the governing body with:

- (1) The recorder of deeds, who shall record the description. Recording shall be done in a manner which is sufficient to give notice to all persons who have, may acquire or may seek to acquire an interest in land in or adjacent to the created agricultural security area.
- (2) The planning commission of the county.
- (3) The planning commission of the local government unit.

Upon the failure of the governing body to file a description or the recorder of deeds to record the created agricultural security area in accordance with the time or manner requirements prescribed, any person adversely affected may file a petition with the court of common pleas to compel immediate compliance with these provisions.

Within ten days of the recording of the agricultural security area, the governing body shall notify the Secretary of Agriculture that the area has been approved and recorded, modified or terminated. The notification shall be in writing and shall include the number of landowners, the total acreage of the area, the date of approval by the governing body and the date of recording. A copy of the actually recoded document, which indicates the location of recording, (book and page or instrument number) shall be provided with this notification.

Review Of Area

The governing body shall review the area seven years after the date of its creation and every seven years thereafter. In conducting such review, the governing body shall ask for the recommendations of the planning commission, the county planning commission and the advisory committee, and shall, at least 120 days prior to the end of the seventh year and not more than 180 days prior to the such date, hold a public hearing at a place within the area or otherwise readily accessible to the area. Prior to the commencement of such review, notice thereof shall be given by publication in a newspaper having a general circulation with the area, by notice posted in five conspicuous places within, adjacent to or near the area and by notice, in writing, to all persons owning land within the area that the agricultural security area will be reviewed in accordance with law. All such notices shall be given 30 days before the commencement of such review. Persons wishing to modify the area shall submit proposed modifications within 30 days of the date of such notices. Thereafter, in conducting such review the governing bodies shall follow all the procedures and requirements for the consideration of a new agricultural security area and proposed modifications thereto. Within ten days of its action of termination or modification, the governing body shall file a notice of termination or modification with the recorder of deeds, who shall record such notice in such manner and place as has been provided in the original recording of the agricultural security area. The governing body shall also file a notice of termination or modification with the planning commissions of the county and of the local government unit. If the governing body does not act, or if a modification of an area is rejected, the area shall be deemed to be readopted without modification for another seven years.

If, within the seven-year period, 10% of the land within the agricultural security area is diverted to residential or nonagricultural commercial development, the governing body may review the diversion and may request, in writing, that the local and county planning commissions and the agricultural security area advisory committee study its review and make recommendations within 30 days of the written request. The governing body shall thereupon conduct a public hearing, after providing the same notice as required above. The hearing shall be held no sooner than 45 days after the governing body has submitted written requests for review and recommendation to the planning commissions and advisory committee. The governing body then may terminate or modify the agricultural security area. Within ten days of its action of termination or modification, the governing body shall provide notice in the manner to the parties described above.

Appeals

Any party in interest aggrieved by a decision or action of the governing body relating to the creation, composition, modification, rejection or termination of an agricultural area may take an appeal to the court of common pleas, in the manner provided by law within 30 days after such decision or action.

Creation of Agricultural Security Areas (Property Located In More Than One Local Governmental Unit)

Joint or multi-municipal agricultural security areas are not expressly permitted. If a property is proposed to be included in an agricultural security area of a local government unit different from that where it is located there are several things that must be done.

1. The ASA proposal that includes parcels located in different local government units must be submitted to all of the local government units where parcels listed in the proposal are located.
2. The proposal must meet all the requirements listed below.
3. The minimum acreage requirements of the proposal shall be based upon the entire proposal and not by the individual government units.
4. The proposal shall be advertised, reviewed by planning commissions and the Agricultural Security Area Advisory Committees in accordance with the requirements below.
5. The governing bodies of each local government unit must hold a public hearing in accordance with the requirements below.
6. The governing bodies may cooperate in the review of a proposed agricultural security area and may provide joint public notices, a joint Agricultural Security Area Advisory Committee and a joint public hearing on the agricultural security area.
7. If a joint Agricultural Security Area Advisory Committee is established, its membership must reflect the requirements for each individual municipality as listed below. For example a joint Agricultural Security Area Advisory Committee consisting of two local government units would have 10 members, and one with 3 municipalities would have 15.
8. Each local government unit must approve the proposed agricultural security area at a properly advertised meeting of that body.
9. Local government units may advertise a joint meeting for the purpose of the agricultural security area proposal. If this is done, each local government unit must independently approve the proposal.
10. A rejection by a governing body shall exclude only that portion of the proposal that is situated within that local government unit.
11. The rejection of any portion of the agricultural security area proposal shall not preclude the approval of the remaining portion of the agricultural security area as an agricultural security area of the other local government units provided that the total acreage approved is at least 250 acres and meets all other requirements listed below.

Automatic Inclusion Of Property In An Agricultural Security Area

All land which is part of a parcel of farmland included in the proposal and transected by the dividing line between two local government units shall automatically become part of the agricultural security area if the majority of the viable agricultural land of the parcel is located within the proposed agricultural security area and the local government unit in which the minority of the viable agricultural land of the parcel is located has not approved an agricultural security area. The governing body, which approves the agricultural security area containing this property, is responsible for ensuring that all the requirements listed below have been met.

Proposals For Creation

Any owner or owners of land used for agricultural production may submit a proposal to the governing body for the creation of an agricultural security area within such local government unit, provided that such owner or owners own at least 250 acres of viable agricultural land proposed to be included in the area. The proposed area may also consist of any number of noncontiguous tax parcels or accounts, provided that each tax parcel or account is at least ten acres or has an anticipated yearly gross income of at least \$2,000 from the agricultural production of crops, livestock and livestock products on such parcel or account.

Participation

Participation in the agricultural security area shall be available on a voluntary basis to landowners within the jurisdiction of the governing body including those not among the original petitioners. The deletion of land in the agricultural security area shall only occur after seven years or whenever the agricultural security area is subject to review by the governing body.

Submitting The Proposal

The proposal for the creation of an agricultural security area shall be submitted in such a manner and form as is prescribed by the governing body of the local government unit where the proposed area is situated and shall include a description of the proposed area, including the boundaries. Such proposal to the governing body shall be submitted by certified mail with return receipt requested. The return receipt shall serve as notice of the official receipt of the proposal by the governing body and shall verify the official submission date.

Modification Of The Proposal

The governing body shall receive any requests for modifications of the proposal which is submitted by such landowners or local government units up to seven days prior to advertisement of the required public hearing.

Fees

A governing body shall not require landowners included in a proposed agricultural security area to pay any fees in connection with the application for or the review of agricultural security areas. A governing body may by resolution impose reasonable filing fees in connection with the administration and review of an agricultural security area application that proposes to include substantially the same lands as proposed in a previously submitted application that the governing body had rejected within the last 36 months based on the recommendations of the Agricultural Security Area Advisory Committee and the planning commission.

Notice

Upon the receipt of a proposal, the governing body shall acknowledge receipt of the proposal at the next regular or special meeting and shall thereupon provide notice of the proposal by publishing a notice in a newspaper having general circulation within the proposed agricultural security area and by posting notice in five conspicuous places within, adjacent or near to the proposed area. If the governing body fails to provide the required notice within 15 days of

receiving a proposal, a person who is adversely affected by this inaction may bring an action in mandamus to complete compliance.

The notice shall contain the following information:

- (1) A statement that a proposal for an agricultural security area has been filed with the governing body pursuant to this act.
- (2) A statement that the proposal will be on file open to public inspection in the office of the local government unit.
- (3) A statement that any local government unit encompassing or adjacent to the proposed area, or any landowner who owns the land proposed to be included within the proposed area, or any landowner with lands adjacent or near the proposed area who wishes such lands to be included or not included therein, may propose modifications of the proposed area in such form and manner as may be prescribed by the governing body. The statement shall indicate that objections to the proposal, and proposed modifications to the proposal must be filed with the governing body and the planning commission within 15 days of the date of publication of the notice.
- (4) A statement that at the termination of the 15-day period, the proposal and proposed modifications will be submitted to the planning commission and the advisory committee, and that thereafter a public hearing will be held on the proposal, proposed modifications and recommendations of the planning commission and advisory committee.

Report By Planning Commissions

The governing body shall, upon the termination of a 15-day period from the date of publication of the notice, forward the proposal and proposed modifications to the local and county planning commissions. The planning commissions shall have up to 45 days to review the proposal and proposed modifications and report to the governing body its recommendations. The local planning commission shall specifically report on the potential effect that the proposal and proposed modifications will have upon the local government's planning policies and objectives. The failure to submit a report to the governing body within 45 days shall be deemed to constitute approval of the proposed agricultural security area by the planning commissions.

Report By The Agricultural Security Area Advisory Committee

The governing body shall also, upon the termination of the 15-day period, from the date of publication of the notice, forward the proposal and proposed modifications to the Agricultural Security Area Advisory Committee. The committee shall have up to 45 days to review the proposal and proposed modifications and report to the governing body its recommendations concerning the proposal and proposed modifications. The failure of the advisory committee to submit a report to the governing body within 45 days shall be deemed to constitute approval of the proposed agricultural security area by the advisory committee.

Agricultural Security Area Advisory Committee

When a proposal is received by the governing body of any local government for the creation of an agricultural security area, that body shall be established an Agricultural Security Area Advisory Committee. This committee shall consist of three active farmers, each representing a different private or corporate farm, and one citizen residing within the unit of local government

and one member of the governing body of such local government, who shall serve as the chairman of the committee.

The members of the committee shall be appointed by and shall serve at the pleasure of the chairman of the governing body. The members shall serve without salary, but the governing body may entitle each such member to reimbursement for his actual and necessary expenses incurred in the performance of his official duties.

The committee shall advise the governing body and work with the planning commission in relation to the proposed establishment, modification, and termination of agricultural security areas. In particular, the committee shall render expert advice relating to the desirability of such action, including advice as to the nature of farming and farm resources within the proposed area and the relation of farming in such area to the local government unit as a whole.

Public Hearings

The governing body shall hold a public hearing relative to the proposed agricultural security area upon receipt of the reports from the advisory committee and the planning commissions or upon expiration of the 45-day review period. The hearing shall be held at a place within the proposed area or otherwise readily accessible to the proposed area, such as a municipal building. Pursuant to the “Sunshine Act,” a hearing notice shall be published in a newspaper having a general circulation within the proposed area. In addition, notice shall be given in writing to those landowners who proposed modifications or whose land is included in proposed modifications, and to all landowners within the proposed agricultural security area. Notice also shall be given by posting such notice in five conspicuous places within, adjacent or near to the proposed area.

The notice shall contain the following information:

- (1) A statement of the time, date and place of the public hearing.
- (2) A description of the proposed area, any proposed additions or deletions and any recommendations of the planning commissions or advisory committee.
- (3) A statement that the public hearing will be held concerning:
 - (i) The original proposal.
 - (ii) Any written amendments proposed during the review period.
 - (iii) Any recommendations proposed by the Agricultural Security Area Advisory Committee and the planning commission.

Evaluation Criteria

The following factors shall be considered by the planning commission, advisory committee, and at any public hearing:

- (1) Land proposed for inclusion in an agricultural security area shall have soils which are conducive to agriculture. This factor will have been satisfied without further consideration if at least 50% in the aggregate of the land to be included in an agricultural security area falls into one of the following categories: land whose soils are classified in Natural Resources Conservation Service Capability Classes I through IV, excepting IV(e); land which falls within the Natural Resources Conservation Service classification of “unique farm land”; or land whose soils do not meet Capability Classes I through IV but which is currently in active farm use and is being

- maintained in accordance with the soil erosion and sedimentation plan applicable to such land.
- (2) Use of land proposed for inclusion in an agricultural security area shall be compatible with local government unit comprehensive plans. Any zoning shall permit agricultural use but need not exclude other uses.
 - (3) The landowner may propose to include all of his land, regardless of zoning, in an agricultural security area.
 - (4) The land proposed for inclusion in the agricultural security area, and any additions which are proposed subsequently, shall be viable agricultural land.
 - (5) Additional factors to be considered are the extent and nature of farm improvements, anticipated trends in agricultural economic and technological conditions and any other matter which may be relevant.
 - (6) The existence of utility facilities on the proposed area shall not prevent the adoption of such area as an agricultural security area nor shall the rights of utilities with respect to the existing facilities be disturbed or affected by such adoption.

Decision On Proposed Area

The governing body, upon completion of these procedures and considerations may adopt the proposal or any modification of the proposal the governing body deems appropriate, including the inclusion, to the extent feasible, of adjacent viable farm lands if the land owner has made application to be included, and the exclusion, to the extent feasible, of nonviable farm land and nonfarm land. The governing body shall act to adopt or reject the proposal, or any modification, no later than 180 days from the date the proposal was originally submitted. Failure by the governing body to act within this 180-day period shall be deemed adoption of the proposal without modification. An agricultural security area shall become effective upon the adoption of the proposal or its modification by the governing body or upon expiration of the 180-days.

Within ten days of the governing body's decision to reject or modify the proposal, the governing body shall submit to the owner or owners of the land a written decision stating why the proposal was not adopted or was modified. The written decision shall include a finding of fact, review of the prescribed evaluation criteria and a discussion of reasons for rejection or modification of the proposal.

Within ten days of the creation of an agricultural security area, a description of the area including tax parcel identifier, shall be filed by the governing body with:

- (1) The recorder of deeds, who shall record the description. Recording shall be done in a manner which is sufficient to give notice to all persons who have, may acquire or may seek to acquire an interest in land in or adjacent to the created agricultural security area.
- (2) The planning commission of the county.
- (3) The planning commission of the local government unit.

Upon the failure of the governing body to file a description or the recorder of deeds to record the created agricultural security area in accordance with the time or manner requirements prescribed, any person adversely affected may file a petition with the court of common pleas to compel immediate compliance with these provisions.

Within ten days of the recording of the agricultural security area, the governing body shall notify the Secretary of Agriculture that the area has been approved and recorded, modified or terminated. The notification shall be in writing and shall include the number of landowners, the total acreage of the area, the date of approval by the governing body and the date of recording. A copy of the actually recoded document, which indicates the location of recording, (book and page or instrument number) shall be provided with this notification.

Review Of Area

The governing body shall review the area seven years after the date of its creation and every seven years thereafter. In conducting such review, the governing body shall ask for the recommendations of the planning commission, the county planning commission and the advisory committee, and shall, at least 120 days prior to the end of the seventh year and not more than 180 days prior to the such date, hold a public hearing at a place within the area or otherwise readily accessible to the area. Prior to the commencement of such review, notice thereof shall be given by publication in a newspaper having a general circulation with the area, by notice posted in five conspicuous places within, adjacent to or near the area and by notice, in writing, to all persons owning land within the area that the agricultural security area will be reviewed in accordance with law. All such notices shall be given 30 days before the commencement of such review. Persons wishing to modify the area shall submit proposed modifications within 30 days of the date of such notices. Thereafter, in conducting such review the governing bodies shall follow all the procedures and requirements for the consideration of a new agricultural security area and proposed modifications thereto. Within ten days of its action of termination or modification, the governing body shall file a notice of termination or modification with the recorder of deeds, who shall record such notice in such manner and place as has been provided in the original recording of the agricultural security area. The governing body shall also file a notice of termination or modification with the planning commissions of the county and of the local government unit. If the governing body does not act, or if a modification of an area is rejected, the area shall be deemed to be readopted without modification for another seven years.

If, within the seven-year period, 10% of the land within the agricultural security area is diverted to residential or nonagricultural commercial development, the governing body may review the diversion and may request, in writing, that the local and county planning commissions and the agricultural security area advisory committee study its review and make recommendations within 30 days of the written request. The governing body shall thereupon conduct a public hearing, after providing the same notice as required above. The hearing shall be held no sooner than 45 days after the governing body has submitted written requests for review and recommendation to the planning commissions and advisory committee. The governing body then may terminate or modify the agricultural security area. Within ten days of its action of termination or modification, the governing body shall provide notice in the manner to the parties described above.

Appeals

Any party in interest aggrieved by a decision or action of the governing body relating to the creation, composition, modification, rejection or termination of an agricultural area may take an appeal to the court of common pleas, in the manner provided by law within 30 days after such decision or action.

Additions to Agricultural Security Areas During The Seven-Year Period (Located Wholly Within One Local Governmental Unit)

The addition of land to the agricultural security area may occur at any time during the seven-year period. If the land comprising the additional proposal could be added to more than one existing agricultural security area the proposal shall be considered as an addition to the agricultural security area, which was first approved.

Proposals For Addition

Any owner or owners of land used for agricultural production may submit a proposal to the governing body for the addition to an agricultural security area within such local government unit. The proposed area may also consist of any number of noncontiguous tax parcels or accounts, provided that each tax parcel or account is at least ten acres or has an anticipated yearly gross income of at least \$2,000 from the agricultural production of crops, livestock and livestock products on such parcel or account. There shall be no requirement that any proposal for such addition include at least 250 acres of viable agricultural land.

Submitting The Proposal

The proposal for the addition to an agricultural security area shall be submitted in such a manner and form as is prescribed by the governing body of the local government unit where the proposed area is situated and shall include a description of the proposed area, including the boundaries. Such proposal to the governing body shall be submitted by certified mail with return receipt requested. The return receipt shall serve as notice of the official receipt of the proposal by the governing body and shall verify the official submission date.

Modification Of The Proposal

The governing body shall receive any requests for modifications of the proposal that was submitted by such landowners or local government units up to seven days prior to advertisement of the required public hearing.

Fees

A governing body shall not require landowners to pay any fees in connection with the application for or the review of agricultural security areas. A governing body may by resolution impose reasonable filing fees in connection with the administration and review of an agricultural security area application that proposes to include substantially the same lands as proposed in a previously submitted application that the governing body had rejected within the last 36 months based on the recommendations of the Agricultural Security Area Advisory Committee and the planning commission.

Notice

Upon the receipt of a proposal, the governing body shall acknowledge receipt of the proposal at the next regular or special meeting and shall thereupon provide notice of the proposal by publishing a notice in a newspaper having general circulation within the proposed agricultural security area and by posting notice in five conspicuous places within, adjacent or near to the

proposed area. If the governing body fails to provide the required notice within 15 days of receiving a proposal, a person who is adversely affected by this inaction may bring an action in mandamus to complete compliance.

The notice shall contain the following information:

- (1) A statement that a proposal for an addition to an agricultural security area has been filed with the governing body pursuant to this act.
- (2) A statement that the proposal will be on file open to public inspection in the office of the local government unit.
- (3) A statement that any local government unit encompassing or adjacent to the proposed area, or any landowner who owns the land proposed to be included within the proposed area, or any landowner with lands adjacent or near the proposed area who wishes such lands to be included or not included therein, may propose modifications of the proposed area in such form and manner as may be prescribed by the governing body. The statement shall indicate that objections to the proposal, and proposed modifications to the proposal must be filed with the governing body and the planning commission within 15 days of the date of publication of the notice.
- (4) A statement that at the termination of the 15-day period, the proposal and proposed modifications will be submitted to the planning commission and the advisory committee, and that thereafter a public hearing will be held on the proposal, proposed modifications and recommendations of the planning commission and advisory committee.

Report By Planning Commissions

The governing body shall, upon the termination of a 15-day period from the date of publication of the notice, forward the proposal and proposed modifications to the local and county planning commissions. The planning commissions shall have up to 45 days to review the proposal and proposed modifications and report to the governing body its recommendations. The local planning commission shall specifically report on the potential effect that the proposal and proposed modifications will have upon the local government's planning policies and objectives. The failure to submit a report to the governing body within 45 days shall be deemed to constitute approval of the proposed agricultural security area by the planning commissions.

Report By The Agricultural Security Area Advisory Committee

The governing body shall also, upon the termination of the 15-day period, from the date of publication of the notice, forward the proposal and proposed modifications to the Agricultural Security Area Advisory Committee. The committee shall have up to 45 days to review the proposal and proposed modifications and report to the governing body its recommendations concerning the proposal and proposed modifications. The committee shall render expert advice relating to the desirability of such action, including advice as to the nature of farming and farm resources within the proposed area and the relation of farming in such area to the local government unit as a whole. The failure of the advisory committee to submit a report to the governing body within 45 days shall be deemed to constitute approval of the proposed agricultural security area by the advisory committee.

Public Hearings

The governing body shall hold a public hearing relative to the proposed addition to an agricultural security area upon receipt of the reports from the advisory committee and the planning commissions or upon expiration of the 45-day review period. The hearing shall be held at a place within the proposed area or otherwise readily accessible to the proposed area, such as a municipal building. Pursuant to the “Sunshine Act,” a hearing notice shall be published in a newspaper having a general circulation within the proposed area. In addition, notice shall be given in writing to those landowners who proposed modifications or whose land is included in proposed modifications, and to all landowners within the proposed agricultural security area. Notice also shall be given by posting such notice in five conspicuous places within, adjacent or near to the proposed area.

The notice shall contain the following information:

- (1) A statement of the time, date and place of the public hearing.
- (2) A description of the proposed area, any proposed additions or deletions and any recommendations of the planning commissions or advisory committee.
- (3) A statement that the public hearing will be held concerning:
 - (i) The original proposal for addition.
 - (ii) Any written amendments proposed during the review period.
 - (iii) Any recommendations proposed by the Agricultural Security Area Advisory Committee and the planning commission.

Evaluation Criteria

The following factors shall be considered by the planning commission, advisory committee, and at any public hearing:

- (1) Land proposed for inclusion in an agricultural security area shall have soils which are conducive to agriculture. This factor will have been satisfied without further consideration if at least 50% in the aggregate of the land to be included in an agricultural security area falls into one of the following categories: land whose soils are classified in Natural Resources Conservation Service Capability Classes I through IV, excepting IV(e); land which falls within the Natural Resources Conservation Service classification of “unique farm land”; or land whose soils do not meet Capability Classes I through IV but which is currently in active farm use and is being maintained in accordance with the soil erosion and sedimentation plan applicable to such land.
- (2) Use of land proposed for inclusion in an agricultural security area shall be compatible with local government unit comprehensive plans. Any zoning shall permit agricultural use but need not exclude other uses.
- (3) The landowner may propose to include all of his land, regardless of zoning, in an agricultural security area.
- (4) The land proposed for inclusion in the agricultural security area, and any additions, which are proposed subsequently, shall be viable agricultural land.
- (5) Additional factors to be considered are the extent and nature of farm improvements, anticipated trends in agricultural economic and technological conditions and any other matter, which may be relevant.

- (6) The existence of utility facilities on the proposed area shall not prevent the adoption of such area as an agricultural security area nor shall the rights of utilities with respect to the existing facilities be disturbed or affected by such adoption.

Decision On Proposed Area

The governing body, upon completion of these procedures and considerations may adopt the proposal or any modification of the proposal the governing body deems appropriate, including the inclusion, to the extent feasible, of adjacent viable farm lands if the land owner has made application to be included, and the exclusion, to the extent feasible, of nonviable farm land and nonfarm land. The governing body shall act to adopt or reject the proposal, or any modification, no later than 180 days from the date the proposal was originally submitted. Failure by the governing body to act within this 180-day period shall be deemed adoption of the proposal without modification. An addition to an agricultural security area shall become effective upon the adoption of the proposal or its modification by the governing body or upon expiration of the 180-days.

Within ten days of the governing body's decision to reject or modify the proposal, the governing body shall submit to the owner or owners of the land a written decision stating why the proposal was not adopted or was modified. The written decision shall include a finding of fact, review of the prescribed evaluation criteria and a discussion of reasons for rejection or modification of the proposal.

Within ten days of the creation of an agricultural security area, a description of the area including tax parcel identifier, shall be filed by the governing body with:

- (1) The recorder of deeds, who shall record the description. Recording shall be done in a manner which is sufficient to give notice to all persons who have, may acquire or may seek to acquire an interest in land in or adjacent to the created agricultural security area.
- (2) The planning commission of the county.
- (3) The planning commission of the local government unit.

Upon the failure of the governing body to file a description or the recorder of deeds to record the created agricultural security area in accordance with the time or manner requirements prescribed, any person adversely affected may file a petition with the court of common pleas to compel immediate compliance with these provisions.

Within ten days of the recording of the agricultural security area, the governing body shall notify the Secretary of Agriculture that the area has been approved and recorded, modified or terminated. The notification shall be in writing and shall include the number of landowners, the total acreage of the area, the date of approval by the governing body and the date of recording. A copy of the actually recoded document, which indicates the location of recording, (book and page or instrument number) shall be provided with this notification.

Review Of Area

Land added to an existing agricultural security area during any seven-year period shall be reviewed at the same time as all other land in the agricultural security area.

Appeals

Any party in interest aggrieved by a decision or action of the governing body relating to the creation, composition, modification, rejection or termination of an agricultural area may take an appeal to the court of common pleas, in the manner provided by law within 30 days after such decision or action.

Seven-Year Review of Agricultural Security Areas

The governing body shall review an Agricultural Security Area (ASA) seven years after the date of its creation and every seven years thereafter. At such time the governing body may make additions or deletions to the ASA.

Notice

30 days before the commencement of the seven year review, notice of the review shall be given by publication in a newspaper having a general circulation with the area, by notice posted in five conspicuous places within, adjacent to or near the area and by notice, in writing, to all persons owning land currently designated as ASA.

The notice shall contain the following information:

- (1) A statement that a required 7-year review of the agricultural security area will be conducted by the governing body pursuant to Act 43 of 1981.
- (2) A statement that the ASA will be on file open to public inspection in the office of the local government unit.
- (3) A statement that any local government unit encompassing or adjacent to the proposed area, or any landowner who owns the land proposed to be included within the ASA, or any landowner with lands adjacent or near the ASA who wishes such lands to be included or not included therein, may propose modifications of the ASA in such form and manner as may be prescribed by the governing body. The statement shall indicate that objections to the proposal, and proposed modifications to the proposal must be filed with the governing body and the planning commission within 30 days of the date of publication of the notice.
- (4) A statement that at the termination of the 30-day period, the ASA and proposed modifications will be submitted to the planning commission and the advisory committee, and that thereafter a public hearing will be held on the ASA, proposed modifications and recommendations of the planning commission and advisory committee.

Proposals For Modifications

Persons wishing to modify the area shall submit proposed modifications to the governing body within 30 days of the date of notices. Any owner or owners of land used for agricultural production may submit a proposal to the governing body for the modification of the ASA to include their property in the ASA, provided that each tax parcel or account is at least ten acres or has an anticipated yearly gross income of at least \$2,000 from the agricultural production of crops, livestock and livestock products on such parcel or account. Any owner or owners of land currently designated ASA may submit a proposal to the governing body for the modification of the ASA to remove their property from the ASA.

Fees

A governing body shall not require landowners included in a proposed agricultural security area to pay any fees in connection with the application for or the review of agricultural security areas. A governing body may by resolution impose reasonable filing fees in connection with the

administration and review of an agricultural security area application that proposes to include substantially the same lands as proposed in a previously submitted application that the governing body had rejected within the last 36 months based on the recommendations of the Agricultural Security Area Advisory Committee and the planning commission.

Report By Planning Commissions

The governing body shall, upon the termination of the 30-day period from the date of publication of the notice, forward the proposal and proposed modifications to the local and county planning commissions. The planning commissions shall have up to 45 days to review the ASA and proposed modifications and report to the governing body its recommendations. The local planning commission shall specifically report on the potential effect that the ASA and proposed modifications will have upon the local government's planning policies and objectives. The failure to submit a report to the governing body within 45 days shall be deemed to constitute approval of the proposed agricultural security area by the planning commissions.

Report By The Agricultural Security Area Advisory Committee

The governing body shall also, upon the termination of the 30-day period, from the date of publication of the notice, forward the ASA and proposed modifications to the Agricultural Security Area Advisory Committee. The committee shall have up to 45 days to review the ASA and proposed modifications and report to the governing body its recommendations concerning the ASA and proposed modifications. The failure of the advisory committee to submit a report to the governing body within 45 days shall be deemed to constitute approval of the proposed agricultural security area by the advisory committee.

Public Hearings

At least 120 days prior to the end of the seventh year and not more than 180 days prior to the such date, the governing body shall hold a public hearing relative to the ASA upon receipt of the reports from the advisory committee and the planning commissions or upon expiration of the 45-day review period. The hearing shall be held at a place within the proposed area or otherwise readily accessible to the proposed area, such as a municipal building. Pursuant to the "Sunshine Act," a hearing notice shall be published in a newspaper having a general circulation within the proposed area. In addition, notice shall be given in writing to those landowners who proposed modifications or whose land is included in proposed modifications, and to all landowners within the ASA. Notice also shall be given by posting such notice in five conspicuous places within, adjacent or near to the proposed area.

The notice shall contain the following information:

- (1) A statement of the time, date and place of the public hearing.
- (2) A description of the proposed area, any proposed additions or deletions and any recommendations of the planning commissions or advisory committee.
- (3) A statement that the public hearing will be held concerning:
 - (i) The original ASA.
 - (ii) Any written amendments proposed during the review period.
 - (iii) Any recommendations proposed by the Agricultural Security Area Advisory Committee and the planning commission.

Evaluation Criteria

The following factors shall be considered by the planning commission, advisory committee, and at any public hearing:

- (1) Land proposed for inclusion in an agricultural security area shall have soils which are conducive to agriculture. This factor will have been satisfied without further consideration if at least 50% in the aggregate of the land to be included in an agricultural security area falls into one of the following categories: land whose soils are classified in Natural Resources Conservation Service Capability Classes I through IV, excepting IV(e); land which falls within the Natural Resources Conservation Service classification of “unique farm land”; or land whose soils do not meet Capability Classes I through IV but which is currently in active farm use and is being maintained in accordance with the soil erosion and sedimentation plan applicable to such land.
- (2) Use of land proposed for inclusion in an agricultural security area shall be compatible with local government unit comprehensive plans. Any zoning shall permit agricultural use but need not exclude other uses.
- (3) The landowner may propose to include all of his land, regardless of zoning, in an agricultural security area.
- (4) The land in the agricultural security area, and any additions which are proposed, shall be viable agricultural land.
- (5) Additional factors to be considered are the extent and nature of farm improvements, anticipated trends in agricultural economic and technological conditions and any other matter which may be relevant.
- (6) The existence of utility facilities in the ASA or on proposed areas shall not prevent the adoption of such area as an agricultural security area nor shall the rights of utilities with respect to the existing facilities be disturbed or affected by such adoption.

Decision On Proposed Area

The governing body, upon completion of these procedures and considerations may readopt the ASA or any modification to the ASA the governing body deems appropriate, including the inclusion, to the extent feasible, of adjacent viable farm lands if the land owner has made application to be included, and the exclusion, to the extent feasible, of nonviable farm land and nonfarm land. The governing body shall act to readopt or terminate the ASA, and to adopt or reject or any modification, no later than 180 days from the date the proposal was originally submitted. Failure by the governing body to act within this 180-day period shall be deemed readoption of the ASA without modification. An agricultural security area shall become effective upon the readoption of the proposal or its modification by the governing body or upon expiration of the 180-days.

Within ten days of the governing body’s decision to terminate or modify the ASA, the governing body shall submit to the owner or owners of the land affected, a written decision stating why the ASA was terminated or was modified. The written decision shall include a finding of fact, review of the prescribed evaluation criteria and a discussion of reasons for termination or modification of the proposal.

Within ten days of its action of termination or modification of the ASA, a description of the properties including tax parcel identifier, shall be filed by the governing body with:

- (1) The recorder of deeds, who shall record the description in such manner and place as has been provided in the original recording of the agricultural security area.
- (2) The planning commission of the county.
- (3) The planning commission of the local government unit.

Upon the failure of the governing body to file a description or the recorder of deeds to record in accordance with the time or manner requirements prescribed, any person adversely affected may file a petition with the court of common pleas to compel immediate compliance with these provisions.

Within ten days of the recording of the termination or modifications, the governing body shall notify the Secretary of Agriculture of the termination or modifications. The notification shall be in writing and shall include the number of landowners, the total acreage of the area, the date of approval by the governing body and the date of recording. A copy of the actually recorded document, which indicates the location of recording, (book and page or instrument number) shall be provided with this notification.

Appeals

Any party in interest aggrieved by a decision or action of the governing body relating to the creation, composition, modification, rejection or termination of an agricultural area may take an appeal to the court of common pleas, in the manner provided by law within 30 days after such decision or action.

Failure Of Governing Body To Conduct 7-Year Review

If the governing body fails to conduct a 7-year review, the area shall be deemed to be readopted without modification for another seven years.

If, within the seven-year period, 10% of the land within the agricultural security area is diverted to residential or nonagricultural commercial development, the governing body may review the diversion and may request, in writing, that the local and county planning commissions and the agricultural security area advisory committee study its review and make recommendations within 30 days of the written request. The governing body shall thereupon conduct a public hearing, after providing the same notice as required above. The hearing shall be held no sooner than 45 days after the governing body has submitted written requests for review and recommendation to the planning commissions and advisory committee. The governing body then may terminate or modify the agricultural security area. Within ten days of its action of termination or modification, the governing body shall provide notice in the manor to the parties described above.

FREQUENTLY ASKED QUESTIONS

1. What is an agricultural security area?

Act 43 of 1981 allows any owner or owners of land used for agricultural production to submit a petition to their township supervisor for creation of an agricultural security area (ASA). Two hundred and fifty or more acres of viable agricultural land must be involved. Approval authority for the ASA petition is in the hands of the township supervisors. If the petition is approved, participating landowners agree to keep their land for agriculture use in return for certain benefits that the township will give. The term of an ASA is seven years followed by a re-certification process.

2. Will I be penalized if I change land uses while in an ASA?

Participation in an ASA is purely voluntary. There are no penalty provisions for an individual who changes land use while in an ASA.

3. Is the creation of an ASA the same as zoning?

An ASA designation is NOT zoning.

4. Can an ASA be in more than one township?

Yes, but approval must be given by each township. If one of the townships involved rejects the petition, the acreage in that township must be subtracted from the total acreage. If this lowers the acreage below the prescribed 250 acres, then the petition must be withdrawn.

Land that is transected by the dividing line between two local government units shall automatically become part of the ASA if the majority of the viable agricultural land of the parcel is located within the proposed agricultural security area; AND the local government unit in which the minority of the viable agricultural land of the parcel is located has not approved an agricultural security area.

5. Can I participate in an ASA even if my land does not connect with the proposed area's boundaries?

Non-connecting parcels are permitted in an ASA designation. Non-connecting areas can be made up of one or more parcels and must be at least ten acres in size or the parcel must be able to generate a yearly gross income of at least \$2,000 from the agricultural production of crops, livestock, and/or livestock products.

6. Will I have to have my land surveyed if I join an ASA?

Act 43 does not require the surveying of any parcels except for when an individual puts a portion and not his/her entire acreage into an ASA.

7. Can forestland be in an ASA?

Yes, forestland is included under the definition of “crops, livestock and livestock products” in Act 43.

8. What are the benefits of being in an ASA?

Under Act 43, local officials are encouraged to support agriculture by not passing nuisance laws that would restrict normal farming operations.

While benefiting from participation in an ASA, a farm operator shall nonetheless engage only in normal acceptable farming practices. The act does not take away a local government’s right to control nuisances when they bear directly on public health and safety.

The act also protects farm operators by discouraging condemnation of agricultural land through eminent domain. Participants receive the advantage of having additional reviews of the proposed condemnation.

Low-level radioactive waste or hazardous waste sites may not be located on agricultural land established under the Agricultural Security Area Law (PA Code Title 25, Chapter 236, Article 236-128 and Chapter 269a, Article 269a-12 citing criteria).

Landowners in an ASA are eligible to voluntarily apply to sell an agricultural conservation easement to the Commonwealth, county, and/or township.

9. Are there any restrictions on land use within an ASA?

There are no restrictions placed on land use as a result of being in an ASA. A landowner retains the right to subdivide, sell, or change the use of his/her land regardless of his/her participation in an ASA. However, landowners are not exempt from laws such as zoning ordinances, deed restrictions, or current state environmental laws.

10. Is the ASA designation permanent?

The ASA designation should be reviewed every seven years after its establishment, or it continues as it exists. Also, the areas may be reviewed at any time if 10% of the land is converted to non-agricultural uses. The review process includes the same steps as the initial designation process: a report from the ASAAC and the local and county planning commissions, and a public hearing. The public hearing is arranged the same as the first hearing, except that it is held in a 60-day period starting 180 days before the end of every seven years.

Landowners who want their land excluded from an ASA must notify the local government unit of their intent at least 120 days before the end of the seven-year review process.

11. Do I have to conduct a seven-year review for each addition to an ASA?

NO. Seven-year reviews should be conducted every seven years on the anniversary of the creation of an ASA. Land added to an ASA during any seven-year period should be reviewed at the same time as all other land in the ASA The purpose of the seven-year review is to update the ASA’s records. Any modifications to the ASA or deletions from the ASA should be made at this time.

12. If the township has an existing ASA, should new properties wishing to become part of an ASA be included in the existing ASA or should the township create a new ASA?

If a township has an existing ASA, any future proposals are considered to be additions to the original ASA.

13. Is it required that townships perform a seven-year review? What is the penalty for not conducting a review?

If a township does not conduct a seven-year review, the ASA is considered to be readopted, without modification, for another seven years. The Agricultural Security Area Law does not provide for a specific “penalty” if a township does not take action to conduct a seven-year review. However, it is in the best interest of landowners, local government units, county land preservation boards, and the Pennsylvania Department of Agriculture that a review be conducted. Failure to conduct a review could result in the following ramifications: (1) Land withdrawn from an ASA may not be properly documented in local/state records, (2) Land added to an ASA may not be properly documented in local/state records.

14. Can a landowner put under 10 acres in an ASA (for example, a 2.5-acre vegetable garden that produces \$2,000 of agricultural production)?

YES, if the agricultural production is for commercial purposes, and the anticipated value of the production is at least \$2,000, the tax parcel that includes the garden meets the requirements of the law.

15. Is it required that all farms in an ASA be in current operation?

NO. As long as the farms consist of viable land, are at least 10 acres in size (or meet the \$2000 anticipated production value criterion), and have not been diverted to residential or nonagricultural commercial use, the farms do not need to be currently operating to remain in the ASA.

16. Should individual parcels be listed if they are part of one account (landowner’s name)?

YES. The tax parcel number or account number of each parcel and the number of acres (including partial acres, to the nearest thousandth) contained in each parcel must be listed with the owner’s name(s) for each parcel of land to be included in an ASA.

17. What is “viable agriculture” and how is it determined if \$2,000 worth of production is possible?

Viable agricultural land is “land suitable for agricultural production and which will continue to be economically feasible for such use if real estate taxes, farm use restrictions, and speculative activities are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of urban and related nonagricultural development.” It is the responsibility of the Township, and therefore the ASAAC, to determine if a parcel’s anticipated yearly gross income is at least \$2,000 worth of agricultural production. See section titled “ASAAC Responsibilities” on page 73 for more information.

18. Can farms in an ASA be subdivided?

The law does not specifically address this question. However, farms in an ASA can be subdivided and remain in the ASA if each subdivision meets the requirements for participation and the tax parcel ownership changes are properly recorded and documented during an interim or a seven-year review.

19. Does a subdivision have to be recorded as an amendment?

The law does not specifically address this question. However, proper recording should be done and reflected in a seven-year or interim review. This will protect subdivision owners from zoning restrictions, condemnation proceedings, etc, and will protect their eligibility to enter the agricultural easement program.

20. If a proper proposal is made to the local government unit, and after the 180 days the local governing body refuses to act, who records the ASA at the recorder of deeds office? What are the legal steps that follow?

The law states “failure by the governing body to act within the 180-day period shall be deemed adoption of the proposal without modification.” The ASA becomes effective upon expiration of the 180-day period if the proposal is not acted upon beforehand.

The law also states that it is the responsibility of the local governing body to file a description of the ASA with the recorder of deeds office within ten days of creation.

The steps that follow the recording include filing a description of the ASA with the local and county planning commissions (the description should also be sent to the County Agricultural Land Preservation Board, if one exists in the county), and sending notification to the Secretary of Agriculture of the creation, modification, or termination of the ASA.

NOTE: During the 180-day period, the applicant may bring an action in mandamus to complete compliance with the section of the law requiring the governing body to provide public notice of the proposal to create an ASA. There may also be grounds to appeal to the court of common pleas for persons aggrieved by an action or decision of the governing body.

21. Exactly when and to what extent does the State have jurisdiction over decisions and procedures for ASAs, and when is it the Townships’ responsibility?

The law does not give the Commonwealth the power to tell local government units what decisions to make. However, the law does specify procedures for the ASA creation, modification, and termination processes. And, it makes some provisions for “automatic” creation or readoption if the local governing unit does not act. The Department of Agriculture also has the power to promulgate regulations pertaining to the Agricultural Area Security Law.

The law specifies what the townships are supposed to do and when; however, there are not provisions for any sanctions against responsible parties if procedures are not followed.

AGRICULTURAL SECURITY AREA

FORMS AND SAMPLES