

CHAPTER 138I. AGRICULTURAL SECURITY AREA PROGRAM

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Authority

The provisions of this Chapter 138I issued under the Agricultural Area Security Law (3 P. S. § § 901—915), unless otherwise noted.

Source

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Subchapter A. PRELIMINARY PROVISIONS

Sec.

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§ 138I.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

ALCAB—The Agricultural Lands Condemnation Approval Board of the Commonwealth.

ASA—*Agricultural security area*—A unit of 250 or more acres used for the agricultural production of crops, livestock or livestock products under the ownership of one or more persons and one of the following applies:

(i) The land has been designated as such by the procedures in the act.

(ii) The land has been designated as such under the act of January 19, 1968 (1967 P. L. 992, No. 442) (32 P. S. § § 5001—5012), entitled “An act authorizing the Commonwealth of Pennsylvania and the counties thereof to preserve, acquire or hold land for open space uses,” prior to February 12, 1989, by the governing body of the county or governing body of the municipality in which the agricultural land is located on the basis of criteria and procedures which predate February 12, 1989, and which was not withdrawn from the ASA by August 10, 1989, by the owner providing written notice of withdrawal to the county governing body or governing body of the municipality in which the land is located.

ASA landowner—An owner of land located within an ASA.

ASA proposal form—A Proposal for the Creation or Modification of an Agricultural Security Area form created by the Department.

Act—The Agricultural Area Security Law (3 P. S. § § 901—915).

Advisory committee—An agricultural security area advisory committee.

Agricultural conservation easement—An interest in land, less than fee simple, which interest represents the right to prevent the development or improvement of a parcel for any purpose other than agricultural production.

(i) The easement may be granted by the owner of the fee simple to any third party or to the Commonwealth, to a county governing body or a unit of local government.

(ii) It shall be granted in perpetuity as the equivalent of covenants running with the land.

(iii) The exercise or failure to exercise any right granted by the easement will not be deemed to be management or control of activities at the site for purposes of enforcement of the Hazardous Sites Cleanup Act (35 P. S. § 6020.101—6020.1305).

Agricultural production—

(i) The production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of the crops, livestock or livestock

products if more than 50% of the processed or merchandised products are produced by the farm operator.

(ii) The term includes use of land which is devoted to and meets the requirements of and qualifications for payments or other compensation under a soil conservation program under an agreement with an agency of the Federal government.

Applicant—A landowner proposing the establishment or modification of an ASA in accordance with the requirements of the act and this chapter.

Contiguous acreage—

(i) All portions of one operational unit as described in the deed whether or not the portions are divided by streams, public roads, bridges, and whether or not described as multiple tax parcels, tracts, purparts, or other property identifiers.

(ii) The term includes supportive lands such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds and streams, or as otherwise defined in § 138e.3 (relating to definitions).

County board—The county agricultural land preservation board as appointed by the county governing body under the act.

County fiscal year—The period from January 1 through December 31 of a particular calendar year.

County governing body—The county board of commissioners or, under home rule charters, another designated council of representatives.

County planning commission—A planning commission or agency which has been designated by the county governing body to establish and foster a comprehensive plan for land management and development within the county.

Crops, livestock and livestock products—The term includes:

- (i) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry-beans.
- (ii) Fruits, including apples, peaches, grapes, cherries and berries.
- (iii) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms.
- (iv) Horticultural specialties, including nursery stock and ornamental shrubs, ornamental trees and flowers.

(v) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.

(vi) Timber, wood and other wood products derived from trees.

(vii) Aquatic plants and animals and their byproducts.

Curtilage—The area surrounding a residential structure used for a yard, driveway, onlot sewerage system or other nonagricultural purposes.

Department—The Department of Agriculture of the Commonwealth.

Description of the proposed area—A complete and accurate list of the names of the owners of each parcel of land to be included in the proposed ASA, the tax parcel number or account number of each parcel and the number or account number of acres (including partial acres, to the nearest thousandth) contained in each parcel. The description shall use county tax map references for determining boundaries of each parcel, and no survey of parcels shall be required, except that an individual parcel included in the ASA shall represent less than the entire amount of contiguous land contained in the property of an owner.

Economic viability of farmland for agricultural production—The capability of a particular tract of restricted land, other than a tract of 2 acres or less upon which construction and use of the landowner's principal residence or housing for seasonal or full-time farm employees is permitted under section 14.1(c)(6)(iv) of the act (3 P. S. § 914.1(c)(6)(iv)), to meet the criteria in § 138e.16(a) (relating to minimum criteria for applications).

Eligible counties—Counties whose easement purchase programs have been approved by the State Board. For the purpose of annual allocations, an eligible county must have its easement purchase approved by the State Agricultural Land Preservation Board by January 1 of the year in which the annual allocation is made. Counties of the first class are not eligible under any circumstances.

Farm—Land in this Commonwealth which is being used for agricultural production as defined in the act.

Farmland tract or tract—Land constituting all or part of a farm with respect to which easement purchase is proposed. A farmland tract may consist of multiple tracts of land that are identifiable by separate tax parcel numbers, separate deeds or other methods of property identification.

Governing body—The governing body of a local government unit.

Grazing or pasture land—Land, other than land enrolled in the USDA Conservation Reserve Program, used primarily for the growing of grasses and legumes which are

consumed by livestock in the field and at least 90% of which is clear of trees, shrubs, vines or other woody growth not consumed by livestock.

Harm the economic viability of the farmland for agricultural production—To cause a particular tract of restricted land to fail to meet the criteria in § 138e.16(a) or to create, through subdivision, a tract of restricted land, other than a tract of 2 acres or less upon which construction and use of the landowner's principal residence or housing for seasonal or full-time farm employees is permitted under section 14.1(c)(6)(iv) of the act, that would fail to meet the criteria in § 138e.16(a).

Harvested cropland—

(i) Land, other than land enrolled in the USDA Conservation Reserve Program, used for the commercial production of field crops, fruit crops, vegetables and horticultural specialties, such as Christmas trees, flowers, nursery stock, ornamentals, greenhouse products and sod.

(ii) The term does not include land devoted to production of timber and wood products.

Interim review—The review of an existing ASA in accordance with the requirements of section 9(b) of the act (3 P. S. § 909(b)).

Land Capability Class—A group of soils designated by either the county soil survey, as published by USDA-NRCS in cooperation with the Pennsylvania State University and the Department, or the *Soil and Water Conservation Technical Guide* maintained and updated by USDA-NRCS.

Landowner—The person holding legal title to a particular farmland tract.

Land which has been devoted primarily to agricultural use—

(i) Acreage which is a part of restricted land and is harvested cropland, grazing or pasture land, land used for the production of timber and wood products, land containing nonresidential structures used for agricultural production, or other acreage immediately available for agricultural production.

(ii) The term does not include: any acreage upon which immediate agricultural production is impracticable due to residential structures and their curtilages, wetlands, soil quality, topography or other natural or manmade features.

(iii) The term does not include: any tract of 2 acres or less designated as the site upon which the landowner's principal residence or housing for seasonal or full-time employees is permitted under section 14.1(c)(6)(iv) of the act.

Local government unit—A city, borough, township or town or any home rule

municipality, optional plan municipality, optional charter municipality or similar general purpose unit of government which may be created or authorized by statute.

Mansion house—The primary residential structure located upon a parcel.

Nonprofit land conservation organization—A nonprofit organization dedicated to land conservation purposes recognized by the Internal Revenue Service as a tax-exempt organization under the Internal Revenue Code of 1986 (26 U.S.C.A. § § 1—7872).

Normal farming operation—

(i) The customary and generally accepted activities, practices and procedures that farmers engage in year after year in the production and preparation for market of crops, livestock and livestock products and in the production and harvesting of agricultural, agronomic, horticultural, silvicultural, and aquacultural crops and commodities.

(ii) The term includes the storage and utilization of agricultural and food processing wastes for animal feed and the disposal of manure, other agricultural waste and food processing waste on land where the materials will improve the condition of the soil or the growth of crops or will aid in the restoration of the land for the same purposes.

Nutrient management plan—A written site-specific plan which incorporates best management practices to manage the use of plant nutrients for crop production and water quality protection consistent with the Nutrient Management Act (3 P. S. § § 1701—1718).

Parcel—A tract of land in its entirety which is assessed for tax purposes by one county, including any portion of that tract that may be located in a neighboring county. The county responsible for assessing an entire tract, on its own or in conjunction with either the Commonwealth or a local government unit, or both, shall be eligible to purchase agricultural conservation easements covering the entire tract.

Pennsylvania Municipalities Planning Code—53 P. S. § § 10101—11201.

Person—A corporation, partnership, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

Planning commission—A local government planning commission or agency which has been designated by the governing body of the local government unit to establish and foster a comprehensive plan for land management and development within the local government unit.

Restricted land—Land which is subject to the terms of an agricultural conservation easement acquired under the act.

Secretary—The Secretary of Agriculture of the Commonwealth.

7-year review—The periodic review of an existing ASA in accordance with section 9(a) of the act.

Soils available for agricultural production—Soils on land that is harvested cropland, pasture or grazing land, or land upon which no structure, easement, roadway, curtilage or natural or manmade feature would impede the use of that soil for agricultural production.

Soils report—A report which identifies and sets forth the amount of each land capability class found on a farm land tract.

State Board—The State Agricultural Land Preservation Board.

State-certified general real estate appraiser—A person who holds a current general appraiser's certificate issued under the Real Estate Appraisers Certification Act (63 P. S. § § 457.1—457.19).

Subdivision—The division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development, or as otherwise defined in § 138e.3.

Title report—

(i) A report prepared by a person authorized by the Insurance Department to engage in the sale of title insurance or an attorney setting forth the existence of any liens, restrictions or other encumbrances on a farmland tract.

(ii) The term does not include the title search, but does include the title binder or the title commitment, or both.

USDA—The United States Department of Agriculture.

USDA-NRCS—The Natural Resources Conservation Service of the USDA. This entity was formerly known as the Soil Conservation Service.

Viable agricultural land—Land suitable for agricultural production and which will continue to be economically feasible for that 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.

§ 138l.2. Purpose.

This chapter provides regulatory guidance with respect to the benefits of having land in an ASA, the application and review process under which an ASA is formed, the procedures involved in recording an ASA, the addition of land to an existing ASA and the removal of land from an existing ASA, and to otherwise further the purposes of the act.

§ 1381.3. Contacting the Department.

(a) The forms referenced in this chapter may be obtained from the Department, by contacting the following: Director, Bureau of Farmland Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408, (717) 783-3167.

(b) These forms shall also be available and may be downloaded from the Department's website, at the following internet website address: www.-pda.state.pa.us.

Cross References

This section cited in 7 Pa. Code § 1381.13 (relating to ASA proposal form); and 7 Pa. Code § 1381.23 (relating to notification of secretary by governing body).

§ 1381.4. Benefits of having land within an ASA.

The following are among the benefits and protections resulting from the inclusion of land within an ASA:

(1) Under section 11 of the act (3 P. S. § 911), local government units must encourage the ASA by not enacting laws or ordinances which would restrict farm structures or farm practices, unless the laws or ordinances bear a direct relationship to the public health or safety.

(2) Under section 11 of the act, a local law or ordinance defining or prohibiting a public nuisance must exclude from the definition of the nuisance any agricultural activity or operation conducted using normal farming operations within the ASA if the agricultural activity or operation does not bear a direct relationship to the public health and safety.

(3) Under section 12 of the act (3 P. S. § 912), Commonwealth agencies with programs that might negatively affect farmers must conduct their programs in a manner that will encourage the continuance of viable agriculture in the ASA.

(4) Under section 13 of the act (3 P. S. § 913), entities seeking to acquire land within an ASA by eminent domain (condemnation) must—under certain circumstances delineated in the act—obtain the advance approval of ALCAB before the taking can occur.