

(5) Under section 14.1 of the act (3 P. S. § 914.1), the owner of land within an ASA comprised of 500 or more acres may be eligible to apply through the county board to sell an agricultural conservation easement to the Commonwealth, the county, a local government unit or some combination thereof.

## **Subchapter B. FORMATION OF AN AGRICULTURAL SECURITY AREA**

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### **§ 138l.11. Agricultural security area advisory committee.**

(a) *Time for formation of an advisory committee.* A governing body may establish an advisory committee at any time. When a proposal for the creation of an ASA is received by a governing body, though, the governing body shall establish an advisory committee if it has not already done so.

(b) *Appointment and composition of an advisory committee.* An advisory committee shall be appointed by the chairperson of the governing body of the local government unit in which the ASA is located, or is to be located. The members of the advisory committee

shall serve at the pleasure of that chairperson. An advisory committee shall be composed of five members, as follows:

(1) A member of the governing body of the local government unit, who shall be chairperson of the advisory committee.

(2) One citizen residing within the local government unit.

(3) Three active farmers, each representing a different private or corporate farm situated, at least in part, within the local government unit.

(c) *Functions of an advisory committee.* An advisory committee shall advise the governing body and work with the planning commission in relation to the proposed establishment, modification, review and termination of an ASA. An advisory committee shall render expert advice as to the nature and desirability of these actions, including advice as to the nature of farming and farm resources within the proposed or existing ASA and the relationship of farming in the ASA to the local government unit as a whole.

#### **§ 1381.12. Eligibility to propose the creation of an ASA.**

An owner or a group of owners of land are eligible to propose the creation of an ASA if the following conditions are met:

(1) The land described in the proposal is used for agricultural production (although a reasonable amount of nonviable farm land and nonfarm land may be included if it is not feasible to exclude it).

(2) Some portion of the land described in the proposal lies within the local government unit to which the proposal is submitted.

(3) The total acreage described within the proposal comprises at least 250 acres of viable agricultural land.

(4) If tax parcel numbers or accounts reflect that a parcel is not contiguous to other land included in the proposal, that tax parcel or account is at least one of the following:

(i) Comprised of 10 or more acres.

(ii) Has anticipated yearly gross income of at least \$2,000 from agricultural production.

#### **Cross References**

This section cited in 7 Pa. Code § 1381.21 (relating to effective date of the creation or modification of an ASA); 7 Pa. Code § 1381.41 (relating to removing land that has been

in an ASA for 7 years or more); and 7 Pa. Code § 1381.42 (relating to removing land in the course of the 7-year review or an interim review).

### **§ 1381.13. ASA proposal form.**

(a) *Governing body has discretion.* The governing body may prescribe the manner and form of the process under which it will receive and consider proposals for the formation of an ASA, to the extent the exercise of that discretion does not violate any provision of the act or this chapter. A governing body may require the use of its own ASA proposal form meeting the requirements of subsection (b), or may use the Department's ASA proposal form as described in subsection (c).

(b) *Minimum requirements for a proposal.* An ASA proposal shall, at a minimum, contain the following:

(1) The name of the township, borough, city or other local government unit to which the ASA proposal is submitted.

(2) The county of the local government unit to which the ASA proposal is submitted.

(3) A description of the boundaries of the proposed ASA.

(4) With respect to each farmland parcel listed on the ASA proposal:

(i) The printed name and address of each person owning land proposed for inclusion in the ASA.

(ii) The signature of each person described in subparagraph (i).

(iii) The county tax parcel number or account number identifying the parcel.

(iv) The acreage of the parcel.

(5) Other information as might be reasonably required to establish the boundaries of the proposed ASA, the owners of the parcels of farmland described in the ASA and compliance with the act and this chapter.

(c) *ASA proposal form available from the Department.* The Department will provide any person or local government unit, upon request, copies of an ASA proposal form created by the Department. A request for an ASA proposal form may be directed to the Department in accordance with § 1381.3 (relating to contacting the Department) or the local government unit in which the ASA proposal form would be filed.

### **§ 1381.14. Fees.**

(a) *General prohibition.* Except as provided in subsection (b), the governing body may not charge a landowner any fee for the filing of an ASA proposal or for any action the governing body is required to take under the act or this chapter.

(b) *Exception.* A governing body may, by resolution, impose reasonable filing fees for the administration and review of an ASA proposal if all of the following apply:

(1) The proposal includes substantially the same lands as proposed in a previously-submitted application.

(2) The governing body had rejected that previously-submitted application within 36 months preceding the date the proposal was submitted.

(3) The previous rejection was based upon the recommendations of the advisory committee and the planning commission.

#### **§ 1381.15. ASA located in more than one local government unit.**

There are four ways in which an ASA may be created or modified to contain land located in more than one local government unit as follows:

(1) The ASA proposal may be directed to the governing bodies of each of the affected local government units and approved in accordance with the process described in § 1381.31(b) and (c) (relating to adding land to an existing ASA).

(2) A parcel of farmland that straddles the boundary line between two local government units shall be automatically included in the ASA of one of those local government units if the other local government unit has not approved an ASA and the majority of the parcel's viable agricultural land is within the local government unit seeking to create an ASA or add the parcel to an existing ASA, as described in § 1381.32 (relating to automatic inclusion of certain parcels bisected by the dividing line between local government units).

(3) A parcel of farmland that straddles the boundary line between two local government units shall be automatically included in the ASA if the majority of the parcel's viable agricultural land is already in the ASA and an agricultural conservation easement is purchased with respect to the parcel, as described in § 1381.33 (relating to automatic inclusion of certain parcels bisected by the dividing line between local government units upon purchase of an agricultural conservation easement by certain entities).

(4) A parcel of farmland that straddles the boundary line between two counties shall be automatically included in the ASA of one of those counties if an agricultural conservation easement is purchased with respect to the parcel, as described in § 1381.34 (relating to automatic inclusion of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain entities).

**§ 1381.16. Submitting an ASA proposal form to the local government unit.**

(a) *Form submitted by certified mail, return receipt requested.* A person shall submit an ASA proposal form to the governing body of the local government unit in which the ASA is situated. The form shall only be submitted by certified mail, with return receipt requested.

(b) *Date of receipt.* The return receipt shall be official notice that the local government unit has received the ASA proposal form, and the date reflected on that receipt shall constitute the official date of receipt for purposes of calculating the period within which review must occur.

**Cross References**

This section cited in 7 Pa. Code § 1381.19 (relating to decision of local government unit); and 7 Pa. Code § 1381.21 (relating to effective date of the creation or modification of an ASA).

**§ 1381.17. Local government unit action upon receipt of an ASA proposal.**

(a) *Acknowledgement of receipt.* If a local government unit receives an ASA proposal form by certified mail with return receipt requested, the governing body shall acknowledge receipt of the ASA proposal at its next regular or special meeting. The acknowledgement shall be reflected in the minutes of that meeting.

(b) *Providing notice.* Within 15 days of the date of receipt of an ASA proposal, the local government unit shall provide notice of the ASA proposal by doing both of the following:

(1) Publishing a notice that meets the requirements of subsection (c) in a newspaper having general circulation within the proposed ASA.

(2) Posting a notice that meets the requirements of subsection (c) in at least five conspicuous places within, adjacent to or near the proposed ASA.

(c) *Contents of notice.* The notices described in subsection (b) shall contain the following information:

(1) A statement that an ASA proposal has been filed with the governing body under the act.

(2) A statement that the ASA proposal will be on file for public inspection in the office of the local government unit.

(3) A statement that the following persons or entities may propose modifications of the proposed ASA:

- (i) Any local government unit having land within or adjacent to the proposed ASA.
- (ii) Any landowner who owns land proposed to be included within the ASA.
- (iii) Any landowner with lands adjacent to or near the proposed ASA.

(4) A statement that objections to the proposed ASA or proposed modifications to the proposed ASA shall be filed with the governing body and the planning commission within 15 days of the date of publication of the notice, with an explanation of the filing procedure prescribed by the governing body.

(5) A statement that at the termination of the 15-day period described in paragraph (4), the ASA proposal and all 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 the recommendations of the planning commission and advisory committee.

(d) *Window for receipt of objections or proposed modifications.* The governing body shall receive and consider any proposed modifications of a proposed ASA from the entities described in subsection (c)(3) until no more than 7 days prior to the advertisement of the public hearing described in § 1381.18 (relating to public hearing by local government unit on ASA proposal).

(e) *Submitting documents to the planning commission and the advisory committee.* Upon the termination of the 15-day period described in subsection (c)(4) and (5), the governing body shall submit the ASA proposal and all proposed modifications to the planning commission and the advisory committee for review. The governing body shall retain a record of the date upon which the referenced materials are submitted to these reviewing bodies.

### **Cross References**

This section cited in 7 Pa. Code § 1381.24 (relating to planning commission action with respect to an ASA proposal); and 7 Pa. Code § 1381.25 (relating to advisory committee action with respect to an ASA proposal).

### **§ 1381.18. Public hearing by local government unit on ASA proposal.**

(a) *Public hearing required.* The governing body shall hold a public hearing on an ASA proposal or proposed modification of an ASA. The public hearing shall be scheduled after the earlier of the following:

(1) Receipt of both the report of the planning commission, as described in § 1381.24 (relating to planning commission action with respect to an ASA proposal) and the report of the advisory committee, as described in § 1381.25 (relating to advisory committee action with respect to an ASA proposal).

(2) The expiration of the 45-day review periods afforded the planning commission under § 1381.24(b) and the advisory committee under § 1381.25(b).

(b) *Hearing notice required.* The governing body shall provide notice of the public hearing described in subsection (a) by doing the following:

(1) Publishing a hearing notice in a newspaper having general circulation in the proposed ASA.

(2) Providing a written hearing notice to the following:

(i) Any landowner who proposed a modification to the ASA.

(ii) Any person owning land included in the proposed modifications to an existing ASA.

(iii) Any person owning land included within the proposed ASA.

(3) Posting a written hearing notice in at least five conspicuous places within, adjacent to or near the proposed ASA or the proposed modifications.

(c) *Contents of hearing notice.* The hearing notice described in subsection (b) shall contain the following:

(1) A statement of the time, date and location of the public hearing.

(2) A description of the proposed ASA, and any proposed additions or deletions.

(3) A summary of the recommendations contained in the reports of the planning commission and the advisory committee. If the planning commission did not render its report within the 45-day period described in § 1381.24(b), or the advisory committee did not render its report within the 45-day period described in § 1381.25(b), the notice shall report this fact and indicate that the reviewing body is deemed to have given its approval to the proposed ASA or proposed modifications.

(4) A statement that the public hearing will be held concerning the following:

(i) The original ASA proposal.

(ii) Any written amendments proposed during the review period.

(iii) Any recommendations proposed by the planning commission or the advisory committee.

(d) *Location of public hearing.* The public hearing described in subsection (a) shall be held at a place either within the proposed ASA or at a location readily accessible to the proposed ASA—such as a nearby municipal building.

### **Cross References**

This section cited in 7 Pa. Code § 1381.17 (relating to local government unit action upon receipt of an ASA proposal); and 7 Pa. Code § 1381.52 (relating to interim review).

### **§ 1381.19. Decision of local government unit.**

(a) *180-day deadline.* A governing body shall act to adopt or reject an ASA proposal, or any modification of a proposal, within 180 days of the official date of receipt of the ASA proposal, as this date is described in § 1381.16(b) (relating to submitting an ASA proposal form to the local government unit). If the governing body fails to act within this 180-day period, the ASA proposal shall be deemed adopted by the governing body, and any proposed modifications to the ASA proposal shall be deemed rejected by the governing body.

(b) *Factors to be considered in reaching decision.* The governing body shall consider the following in reaching its decision with respect to an ASA proposal or proposed modifications:

(1) The factors in § 1381.26(a) (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee).

(2) The inclusion, to the extent feasible, of adjacent viable farmland where the landowner has applied to have the land included.

(3) The exclusion, to the extent feasible, of nonviable farmland and nonfarm land. It is not ordinarily feasible to require the exclusion or surveying-out of the incidental nonviable farm land and nonfarm land that is typically present on a parcel of viable agricultural land.

(i) This nonviable farm land or nonfarm land might include hedgerows, driveways and farm roads, lands containing soils in Land Capability Classes V—VIII, and land upon which farm buildings or residential structures and their curtilages are located.

(ii) The exclusion of nonviable farm land and nonfarm land becomes more feasible as the percentage of these types of land—as a proportion of a parcel's total acreage—increases and the percentage of viable agricultural land within the parcel decreases.

(4) The existence of utility facilities on land proposed for inclusion in an ASA will not prevent the inclusion of that land in an ASA.



### **Cross References**

This section cited in 7 Pa. Code 1381.21 (relating to effective date of the creation or modification of an ASA); and 7 Pa. Code § 1381.51 (relating to seven-year review).

#### **§ 1381.20. Notice of decision of the local government unit.**

(a) *Rejection or modification.* If a governing body rejects or modifies an ASA proposal, it shall provide each landowner affected by the rejection or modification with a written decision as described in subsection (c). This decision shall be provided by mail, and shall be mailed to each affected landowner within 10 days of the decision.

(b) *Approval.* If a governing body approves an ASA proposal, it shall provide each landowner affected by the approval with written notification of this approval and the effective date of the ASA or ASA modifications. This notification shall be provided by mail, and shall be mailed to each affected landowner within 10 days of the decision.

(c) *Contents of written decision.* The written decision described in subsection (a) shall contain the following:

(1) Findings of fact.

(2) A review of the evaluation criteria in § 1381.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee).

(3) A discussion of the reasons for rejection or modification of the proposal.

### **Cross References**

This section cited in 7 Pa. Code § 1381.51 (relating to seven-year review).

#### **§ 1381.21. Effective date of the creation or modification of an ASA.**

(a) *ASA proposal or modification covering land in a single local government unit.* If an ASA proposal or proposed modification involves land located entirely within a single local government unit, the ASA shall become effective upon the date the governing body of the local government unit approves the ASA. If proposed modifications to an ASA proposal are made, and the modifications involve land located entirely within the same single local government unit as the proposed ASA, the modifications shall become effective as of the date the governing body of the local government unit approves the modifications.

(b) *ASA proposal or modification covering land in more than one local government unit.* If an ASA proposal or proposed modification involves land located in more than one local government unit, the ASA shall become effective upon the date a local government

unit, or a combination of local government units, approves a portion of the ASA proposal that meets the minimum acreage and other requirements for an ASA in § 1381.12 (relating to eligibility to propose the creation of an ASA), or as otherwise prescribed by the act. The remaining portions of the ASA proposal shall become effective upon the date of local government unit approval.

(c) *Deemed approval date.* If a governing body fails to approve, reject or modify an ASA proposal within 180-days of the official date of receipt of the ASA proposal, as described in §§ 1381.16(b) and 1381.19(a) (relating to submitting an ASA proposal form to the local government unit; and decision of local government unit), the ASA proposal shall be deemed to have been adopted without modification, and the ASA shall become effective as of the expiration of that 180-day period.

(d) *Automatic inclusion: certain parcels transected by the dividing line between local government units.* If a portion of a parcel is located within a local government unit that does not have an ASA established within its borders, that portion may—without the approval of the governing body of that local government unit—be included in the ASA of an adjoining local government unit in accordance with the procedure described in § 1381.32 (relating to automatic inclusion of certain parcels bisected by the dividing line between local government units). The ASA shall become effective upon the date the governing body of the adjoining local government unit approves the ASA.

(e) *Automatic inclusion: certain agricultural conservation easement purchases involving land in more than one local government unit.* If a portion of a parcel is not located within an ASA, but an agricultural conservation easement is purchased with respect to the parcel in accordance with § 1381.33 (relating to automatic inclusion of certain parcels bisected by the dividing line between local government units upon the purchase of an agricultural conservation easement by certain entities), the portion shall become part of an ASA upon the purchase of the agricultural conservation easement.

(f) *Automatic inclusion: cross-county agricultural conservation easement purchases.* If a portion of a parcel is not located within an ASA, but an agricultural conservation easement is purchased with respect to the parcel in accordance with § 1381.34 (relating to automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement), the portion shall become part of an ASA upon the purchase of the agricultural conservation easement.

### **Cross References**

This section cited in 7 Pa. Code § 1381.22 (relating to filing of ASA description by governing body; recording of the ASA description).

**§ 1381.22. Filing of ASA description by governing body; recording of the ASA description.**

(a) *Responsibility of governing body.* Within 10 days of the effective date of the creation or modification of an ASA, as described in § 1381.21 (relating to effective date of the creation or modification of an ASA), the governing body shall file a description of the ASA with the following:

- (1) The recorder of deeds of any county within which the ASA is located.
- (2) The county planning commission.
- (3) The planning commission of the local government unit.

(b) *Optional filing by governing body.* The governing body may file a description of the ASA with the office of the county board. This filing is encouraged, but not required.

(c) *Responsibility of the recorder.* A recorder of deeds receiving an ASA description from a governing body as described in subsection (a) shall record the description in a manner sufficient to give notice to all persons who have an interest in land within the ASA or in lands adjoining the ASA.

### **Cross References**

This section cited in 7 Pa. Code § 1381.21 (relating to effective date of the creation or modification of an ASA); 7 Pa. Code § 1381.23 (relating to notification of secretary by governing body); 7 Pa. Code § 1381.41 (relating to removing land that has been in an ASA for 7 years or more); and 7 Pa. Code § 1381.42 (relating to removing land in the course of the 7-year review or an interim review).

### **§ 1381.23. Notification of Secretary by governing body.**

(a) *Responsibility of the governing body.* Within 10 days of the recording of the ASA, as described in § 1381.22 (relating to filing of ASA description by governing body; recording of the ASA description), the governing body shall notify the Secretary that the ASA has been approved, modified or terminated. This notification shall be accomplished by mailing written notification to the address in § 1381.3 (relating to contacting the Department).

(b) *Contents of notice.* The written notice described in subsection (a) shall include the following information:

- (1) The number of landowners whose land is in the ASA. The notification shall include only one landowner when land is under multiple ownership or is comprised of multiple parcels or accounts.
- (2) The total acreage of the ASA.
- (3) The effective date of the approval, modification or termination.

(4) The date upon which the approval, modification or termination was recorded in accordance with § 1381.22.

#### **§ 1381.24. Planning commission action with respect to an ASA proposal.**

(a) *Record of the date of receipt.* If a governing body submits an ASA proposal and all proposed modifications to a planning commission in accordance with § 1381.17(e) (relating to local government unit action upon receipt of an ASA proposal), the planning commission shall retain a record of the date upon which the referenced materials are received. This may be accomplished by time-stamping the documents, providing the governing body written confirmation of the date of receipt or other reasonable means of creating a record of the date upon which the documents were received.

(b) *45-day review period.* A planning commission shall have up to 45 days from receipt of an ASA proposal and any proposed modifications from the governing body within which to submit a report to that governing body. If the planning commission fails to submit this report to the governing body within the 45-day review period, this failure to act shall be deemed to constitute the planning commission's approval of the ASA proposal. A report is considered "submitted" when it is delivered to the governing body.

(c) *Factors to be considered.* The planning commission shall consider the factors in § 1381.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee) in reaching its recommendation concerning the ASA proposal and proposed modifications.

(d) *Contents of report.*

(1) *Report by a county planning commission.* If the planning commission described in subsection (b) is a county planning commission, its report shall contain that body's recommendations concerning the proposal and proposed modifications.

(2) *Report by a planning commission that is not a county planning commission.* If the planning commission described in subsection (b) is not a county planning commission, its report shall relate the potential effect of the proposal and proposed modifications upon the local government's planning policies and objectives.

#### **Cross References**

This section cited in 7 Pa. Code § 1381.18 (relating to public hearing by local government unit on ASA proposal).

#### **§ 1381.25. Advisory committee action with respect to an ASA proposal.**

(a) *Record of the date of receipt.* If a governing body submits an ASA proposal and all proposed modifications to an advisory committee in accordance with § 1381.17(e) (relating to local government unit action upon receipt of an ASA proposal), the advisory

committee shall retain a record of the date upon which the referenced materials are received. This may be accomplished by time-stamping the documents, providing the governing body written confirmation of the date of receipt or other reasonable means of creating a record of the date upon which the documents were received.

(b) *45-day review period.* An advisory committee shall have up to 45 days from receipt of an ASA proposal and any proposed modifications from the governing body within which to submit a report to that governing body. If the advisory committee fails to submit this report to the governing body within the 45-day review period, this failure to act shall be deemed to constitute the advisory committee's approval of the ASA proposal. A report is considered "submitted" when it is delivered to the governing body.

(c) *Factors to be considered.* The planning commission shall consider the factors in § 1381.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee) in reaching its recommendation concerning the ASA proposal and proposed modifications.

(d) *Contents of report.* The report of an advisory committee shall contain that body's recommendations concerning the proposal and proposed modifications.

#### **Cross References**

This section cited in 7 Pa. Code § 1381.18 (relating to public hearing by local government unit on ASA proposal).

#### **§ 1381.26. Factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee.**

(a) *Factors.* The governing body of the local government unit, the planning commission and the advisory committee shall consider the following factors in their respective reviews of an ASA proposal and proposed modifications:

(1) *Soil quality.* Land proposed for inclusion in an ASA shall have soils which are conducive to agriculture. This factor will have been satisfied without further consideration if the land to be included in the ASA meets one or more of the following standards:

(i) At least 50% of the land contains soils classified in Land Capability Classes I—IV.

(ii) At least 50% of the land falls within the Land Capability Class for "unique farmland."

(iii) At least 50% of the land contains soils that do not meet Land Capability Classes I—IV, but the land is in current active farm use and is being maintained in accordance with a soil erosion and sedimentation plan applicable to that land.

(2) *Consistency with comprehensive plans.* The use of land proposed for inclusion in an ASA shall be compatible with local government unit comprehensive plans.

(3) *Zoning.* If the land is subject to zoning requirements, it shall be zoned so as to permit agricultural use. The land need not be zoned to exclude other uses. A landowner may propose to include any land in an ASA, but the land must meet the zoning requirements of this paragraph.

(4) *Viable agricultural land.* Land proposed for inclusion in an ASA shall be viable agricultural land.

(5) *Extent and nature of farm improvements.* The extent and nature of farm improvements shall be considered.

(6) *Trends in agricultural economics.* Anticipated trends in agricultural conditions shall be considered.

(7) *Trends in agricultural technology.* Anticipated trends in agricultural technology shall be considered.

(8) *Other factors.* The governing body of the local government unit, the planning commission and the advisory committee may consider any other matter that may be relevant to its review and decision.

(b) *Resource materials.* The following are among the resource materials that may be used in reviewing an ASA proposal and proposed modifications:

(1) Soil surveys of the Pennsylvania State University.

(2) Soil surveys and other information provided by the National Cooperative Soil Survey.

(3) Soil survey maps prepared by USDA-NRCS.

(4) The United States census of agricultural categories of land use classes.

(5) Any other relevant published data, maps, charts, or results of soil or land use surveys made by any county, State or Federal agency.

### **Cross References**

This section cited in 7 Pa. Code § 1381.19 (relating to decision of local government unit); 7 Pa. Code § 1381.20 (relating to notice of decision of the local government unit); 7 Pa. Code § 1381.24 (relating to planning commission action with respect to an ASA proposal); and 7 Pa. Code § 1381.25 (relating to advisory committee action with respect to an ASA proposal).