

<b>Regulatory Analysis Form</b>		<b>This space for use by IRRC</b>  JUN 20 11 2:35  <b>IRRC Number: 2248</b>
(1) Agency  Department of Agriculture		
(2) I.D. Number (Governor's Office Use)  2-138		
(3) Short Title Agricultural Conservation Easement Purchase Program; Agricultural Security Area Program		
(4) PA Code Cite  7 Pa. Code Chapters 138, 138e and 138I	(5) Agency Contacts & Telephone Numbers  Primary Contact: Sandra Robison, (717) 783-3167  Secondary Contact: Wayne Grube, (717) 783-3167	
(6) Type of Rulemaking (check one)  Proposed Rulemaking XXXXX Final Order Adopting Regulation Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached?  No XXXXX Yes: By the Attorney General Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language.  The Department of Agriculture's ("Department's") regulations with respect to agricultural security areas have not been revised since they were originally promulgated - in 1982. In the time since these regulations were promulgated, the Agricultural Area Security Law (the underlying authority for the regulations) has been revised numerous times. The most recent revisions to this statute were accomplished by the act of May 30 2001 (P.L. __, No. 14)("Act 14 of 2001"). The regulation would replace the outdated agricultural security area regulations at 7 Pa. Code Chapter 138 (relating to agricultural area security program) with an entirely new regulatory chapter (Chapter 138I) that: (a) is consistent with the current Agricultural Area Security Law; (b) reflects the experience the Department has gained in administering the provisions of Chapter 138 over many years; (c) implements the numerous amendments that have been made to the Agricultural Area Security Law over the years; and (d) provides the regulated community with a more user-friendly set of standards and procedures with respect to agricultural security areas.  The regulation would also revise the regulations at 7 Pa. Code Chapter 138e (relating to agricultural conservation easement purchase program) to: (a) reflect various amendments of the Act - most recently by the act of May 30 2001 (P.L. __, No. 14)("Act 14 of 2001"); and (b) reflect the experience the Department has gained in administering the Agricultural Conservation Easement Purchase Program and		

Chapter 138e since that chapter was last revised.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The Agricultural Area Security Law (3 P.S. §§ 901-915)("Act") provides the legal authority for this regulation. In particular, section 15 of the Act (3 P.S. § 915) requires the Department to promulgate regulations necessary to promote the efficient, uniform and Statewide administration of the Act.

### Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation is driven by the need to implement various revisions to the Act that have occurred since the agricultural security area and agricultural conservation easement regulations were last amended. In addition, the proposed regulation contains provisions intended to resolve questions and ambiguities encountered by the Department in its administration of these regulations over the years. It would also formally implement a number of effective informal procedures that have evolved over the years.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no appreciable public health, safety, environmental or general welfare risks associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

County agricultural conservation easement purchase programs will benefit from the revisions to Chapter 138e. These revisions help to resolve some current confusion with respect to various procedures related to the evaluation and purchase of agricultural conservation easements. There are more than 51 such programs throughout the Commonwealth. The benefit to these programs cannot be readily quantified.

Governing bodies of local government units will benefit from the new agricultural security area regulations at Chapter 138l. These new provisions will supplant outdated regulations that no longer track with the provisions of the underlying statutory. These benefits cannot be readily quantified.

Owners of land in current agricultural security areas, landowners seeking to include their land in existing agricultural security areas and landowners seeking to establish new agricultural security areas will also benefit from the regulation. The regulation will provide a clear, step-by-step explanation of the procedures and standards applicable to agricultural security areas. The benefits of this clarification cannot be readily quantified.

Landowners seeking to sell agricultural conservation easements with respect to their farmland would also benefit from the regulation, in that the regulation helps clarify standards and procedures for this type of transaction. These benefits cannot be readily quantified.

### Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Although the regulation will impact upon the entities identified in the response to Question No. 13, above, it is not anticipated these impacts will be adverse impacts. In addition, since many of the new provisions of the regulation simply rephrase or clarify statutory requirements, the impact of these provisions is more the product of the underlying legislation than of the regulation itself.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

County agricultural conservation easement purchase programs (of which there are more than 51), governing bodies of local government units (of which there are several thousand), owners of land in agricultural security areas (of which there are several thousand), landowners seeking to have their land included in agricultural security areas (of which there is an unknown number), owners of land subject to agricultural conservation easements purchased under authority of the Act (of which there are at least 1,500) and persons seeking to sell agricultural conservation easements with respect to their land (of which there is an unknown number) will be required to comply with the regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Department did not make any formal outreach to the regulated community in the drafting of the regulation. Many of the revisions accomplished by the regulation are required by amendments made to the Act since the agricultural security area and agricultural conservation easement regulations were last amended. Other revisions formalize informal procedures developed by the Department in its administration of the regulations over the years.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulation is not expected to result in appreciable costs or savings to the regulated community.

## Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulation is not expected to result in appreciable costs or savings to local government units.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The regulation is not expected to result in appreciable costs or savings to State government.

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Savings</b>	0	0	0	0	0	0
<b>COSTS:</b>						
<b>Regulated</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Costs</b>	0	0	0	0	0	0
<b>REVENUE LOSSES:</b>						
<b>Regulated</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Revenue Losses</b>	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

As stated in response to previous questions, the regulations are not expected to have an appreciable fiscal impact - whether favorable or adverse - on the regulated community, State government or local government.

### Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Agricultural Conservation Easement Purchase Program	\$28,000,000 (1998)	\$28,000,000 (1999)	\$45,000,000 (2000)	\$47,000,000 (2001)
Land Trust Reimbursement Grant Program	\$0	\$0	\$29,622.52	\$41,750.33
Installment Purchase Program	\$0	\$0	\$0	\$420,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The Programs described in the preceding answer will all benefit from the regulation. Pennsylvania has preserved more farmland than any other state, and is looked-to as a leader and innovator in the area of farmland preservation. The regulation would improve all of the programs listed above. It will facilitate the purchase and enforcement of agricultural conservation easements, and by so doing increase the participation of land trusts in the farmland preservation effort and increase the number of persons who participate in long-term installment sales of agricultural conservation easements.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered, in light of the fact the Act requires the Department to implement the provisions of that statute through regulation.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered.

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

It is believed there are no federal standards addressing the subject matter set forth in the regulation. For this reason, no provision of this regulation is "more stringent" than a similar national standard.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The regulation will not put Pennsylvania at a competitive disadvantage with other states. Pennsylvania is the acknowledged national leader in farmland preservation. Pennsylvania has preserved more land for agricultural production than any other State, and is the model for farmland preservation efforts of other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation rescinds the current regulations at 7 Pa. Code Chapter 138 (relating to agricultural area security program) and replaces it with a new chapter - Chapter 1381 (relating to agricultural security area program). It also revises current regulations at Chapter 138e (relating to agricultural conservation easement purchase program).

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Although no public hearings or meetings are currently planned with respect to this regulation, the Department will make an active outreach to administrators of various county agricultural conservation easement purchase programs to familiarize them with the new or revised regulatory provisions.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The regulations will not appreciably change current reporting, record keeping or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

To some extent the entire regulation is geared to the special needs of farmers. Agricultural security areas are intended to provide the normal agricultural operations of farmers some measure of protection in the face of suburban encroachment into farm areas.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will take effect at the earliest date consistent with the regulatory promulgation requirements of the Regulatory Review Act.

(31) Provide the schedule for continual review of the regulation.

The efficacy of this regulation shall be reviewed by the Department on an ongoing basis.



**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
BUREAU**

**(Pursuant to Commonwealth Documents Law)**

# 2248

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.  
Attorney General

By: *Cristina J. Caputo*  
(Deputy Attorney General)

JAN 25 2002

DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

DEPARTMENT OF AGRICULTURE

DOCUMENT/FISCAL NOTE NO. 2-138

DATE OF ADOPTION 11/30/01

*Samuel E. Hayes, Jr.*  
Samuel E. Hayes, Jr. Secretary

TITLE

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

By: *Sandra W. Stoner*

DATE OF APPROVAL  
1/3/02  
(Deputy General Counsel)  
~~(Chief Counsel - Independent Agency)~~  
(Strike inapplicable title)

Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

**Notice of Proposed Rulemaking**

Title 7 - AGRICULTURE  
7 Pa. Code Chapters 138, 138e and 138f

Agricultural Area Security Program; Agricultural  
Conservation Easement Purchase Program; Agricultural  
Security Area Program

# **PROPOSED RULEMAKING**

## **DEPARTMENT OF AGRICULTURE**

### **AGRICULTURAL AREA SECURITY PROGRAM; AGRICULTURAL CONSERVATION EASEMENT PURCHASE PROGRAM; AGRICULTURAL SECURITY AREA PROGRAM [7 PA. CODE CHS. 138, 138e and 138I]**

The Department of Agriculture (Department) proposes to revise Title 7 of the Pennsylvania Code by rescinding the regulations at Chapter 138 (relating to agricultural area security program), amending the regulations at Chapter 138e (relating to agricultural conservation easement purchase program) and establishing new regulations at Chapter 138I (relating to agricultural security area program). The revisions would read as set forth in Annex A.

#### ***Statutory Authority***

The Agricultural Area Security Law (3 P.S. §§ 901-915)("Act") provides the legal authority for this regulation. In particular, section 15 of the Act (3 P.S. § 915) requires the Department to promulgate regulations necessary to promote the efficient, uniform and Statewide administration of the Act.

#### ***Purpose***

The proposed regulation would accomplish the following regulatory objectives:

1. Replace the outdated regulations at 7 Pa. Code Chapter 138 (relating to agricultural area security program) with an entirely new regulatory chapter (Chapter 138I) that: (a) more-accurately tracks with the Act; (b) reflects the experience the Department has gained in administering the provisions of Chapter 138 over many years; (c) implements the numerous amendments that have been made to the Act over the years; and (d) provides the regulated community with a more user-friendly set of standards and procedures with respect to agricultural security areas.
2. Revise the regulations at 7 Pa. Code Chapter 138e (relating to agricultural conservation easement purchase program) to: (a) reflect various amendments of the Act - most recently by the act of May 30 2001 (P.L. \_\_, No. 14)("Act 14 of 2001"); and (b) reflect the experience the Department has gained in administering the Agricultural Conservation Easement Purchase Program and Chapter 138e since that chapter was last revised.

## ***Background***

The Act addresses two critical prongs of the Commonwealth's farmland preservation effort: agricultural security areas and agricultural conservation easements. The Act provides definitions, standards and procedures for each, and makes it the responsibility of the Department to implement the Act through regulation.

In summary, an agricultural security area is an area of 250 acres or more of farmland so designated by a local government unit. This designation affords landowners limited protections against nuisance suits based upon agricultural activities conducted on the land, limited protections against condemnation of the land and other limited benefits. It also makes an owner of farmland located in agricultural security areas comprised of 500 or more acres eligible to sell an agricultural conservation easement with respect to that farmland. An agricultural conservation easement restricts the subject land to agricultural production.

The Department's regulations relating to agricultural security areas have not been revised *since 1982* - the year in which they were originally promulgated. The provisions of the Act relating to agricultural security areas have been revised numerous times since 1982 - most recently by Act 14 of 2001. Given the extensive regulatory revisions that would be necessary to bring the current agricultural security area regulations into-step with the Act, the Department proposes to rescind those regulations (7 Pa. Code Chapter 138) and replace that chapter with an entirely new chapter (7 Pa. Code Chapter 138I).

The Department's regulations relating to agricultural conservation easements also need to be revised to reflect amendments to the Act. The proposed regulation would implement these necessary revisions. In addition, a number of the revisions offered in the proposed regulation would fine-tune current provisions to make for the more effective and efficient administration of the Commonwealth's agricultural conservation easement purchase program. More often than not, these revisions simply formalize informal procedures that have evolved over the course of the Department's administration of this program, or that appear in the technical guidebook the Department was required to develop under section 14.1(a)(3)(xv) of the act (3 P.S. § 914.1(a)(3)(xv)).

## ***Need for the Proposed Rulemaking***

The proposed regulation is driven by the need to implement various revisions to the Act that have occurred since the agricultural security area and agricultural conservation easement regulations were last amended. In addition, the proposed regulation contains provisions intended to resolve questions and "gray areas" encountered by the Department in its administration of these regulations over the years. It would also formally implement a number of effective informal procedures that have evolved over the years.

The Department is satisfied of the need for the proposed regulation, and believes the document is consistent with the principles outlined in Executive Order 1996-1, "Regulatory Review and Promulgation."

### ***Overview of the Major Provisions of the Proposed Rulemaking***

Proposed § 138e.3 (relating to definitions) would revise the definitions of several terms to reflect statutory revisions.

The Act was revised by the act of December 21, 1998 (P.L. 1056, No. 138)("Act 138 of 1998") to allow for local government units to participate in the agricultural conservation easement purchase process. A number of the provisions of the proposed regulation would reflect and implement this statutory change. These include §§ 138e.11(d) (relating to general requirements), 138e.67(g) and (i) (relating to requirements of the agricultural conservation easement deed), 138e.201 (relating to responsibility) and 138e.204 (relating to enforcement).

Act 14 of 2001 amended the Act to describe a narrow set of circumstances under which an agricultural conservation easement may be purchased with respect to a parcel of farmland that straddles a county or local government unit boundary line, with part of the parcel being within an agricultural security area and the remainder outside of the agricultural security area. A number of the provisions of the proposed regulation would reflect and implement this statutory change. Proposed § 138e.16(a) (relating to minimum criteria for applications) would revise the eligibility criteria for agricultural conservation easement purchases to allow for this type of acquisition. Proposed § 138e.61(b) (relating to application) would revise the application form to require the basic information necessary to determining whether a proposed agricultural conservation easement purchase meets the revised eligibility criteria.

Proposed §§ 138e.65(b) (relating to easement value and purchase price) and 138e.66(c)(iii) (relating to offer of purchase by county board) would reflect that the former \$10,000-per-acre cap on the expenditure of State funds in an agricultural conservation easement purchase transaction has been rescinded (by Act 14 of 2001).

Proposed § 138e.73 (relating to survey requirements) would be an entirely new section. This section is not driven by revisions to the Act but, instead, by the need to have a uniform Statewide set of minimum criteria for a survey of a proposed agricultural conservation easement purchase. This section would provide needed guidance to county agricultural conservation easement purchase programs, and would provide the Department the data it needs to maintain an accurate computerized record of the location and the metes and bounds of agricultural conservation easements purchased under authority of the Act. The technical requirements of this section are consistent with modern survey practices and reflect the typical quality of surveys the Department has accepted over the years. Since this section would formalize an informal standard that has

been in effect for some time, the Department believes it will have minimal impact on the regulated community.

Proposed § 138e.93 (relating to post-settlement recording and reporting procedures) would be an entirely new section. There was some initial inconsistency and confusion within both the regulated community and the Department as to the appropriate documentation and post settlement follow-through that should be attendant to each agricultural conservation easement purchase under the Act. Over years of administering the Statewide agricultural conservation easement purchase program, though, the basic record-keeping, recording and reporting procedure set forth in this proposed section evolved. The proposed section would formalize this procedure and provide a step-by-step explanation of the necessary record retention, recording and reporting requirements.

Proposed § 138e.104 (relating to installment sales) would add new language to address long-term installment purchases of agricultural conservation easements that defer the payment of principal for up to 30 years. The Department is currently involved in an effort to encourage the purchase of agricultural conservation easements by a method that allows for the purchaser to leverage purchase funds and allows the seller to gain favorable tax consequences (such as favorable capital gains tax treatment). The proposed language addresses this effort. This long-term installment purchase effort has been facilitated by an allocation of up to \$500,00 for this purpose by Act 14 of 2001.

The proposed regulation would place increased emphasis on the importance of a conservation plan to the Statewide agricultural conservation easement purchase effort. In summary, a conservation plan is a written description of land management practices which, when implemented, will improve and maintain the soil, water and related plant and animal resources of the land. Although the current regulation requires a conservation plan exist with respect to a parcel of farmland before an agricultural conservation easement is sold with respect to the parcel, the Department believes it necessary to place greater regulatory emphasis on the requirement a landowner actually *implement* the conservation plan. To this end, proposed § 138e.222 (relating to conservation plan) would revise that section to require a landowner to execute a "conservation plan agreement" acknowledging the need to implement the conservation plan. The conservation plan agreement would also acknowledge that failure to implement and follow-through on the requirements of a conservation plan would constitute a violation of the terms of the deed of agricultural conservation easement.

The proposed regulation would add several new sections describing the Land Trust Reimbursement Grant Program. This program was originally authorized under Section 1716 of the Administrative Code of 1929 (71 P.S. § 456(a)(3)), which took effect in 1999. The procedures and standards for the program were established by a notice published at 29 *Pa. Bulletin* 6342 (December 18, 1999), and were revised by a notice published at 30 *Pa. Bulletin* 5546 (October 28, 2000). Act 14 of 2001 continued this

program under its authority (at 3 P.S. § 914.5), and required the program be formalized through regulation. Proposed §§ 138e.251 (relating to program in general) through 138e.256 (relating to decision of the State Board) essentially restate the procedures and standards of this ongoing program.

Proposed § 138e.253 (relating to registration of eligible land trust) would describe the documentation and procedures necessary to the registration of a land trust with the Department. The application process described in subsequent sections is rather straightforward. One of the few substantive differences between the standards and procedures for the Land Trust Reimbursement Grant Program established earlier by notice and the standards and procedures that would be established by the proposed regulation is found at proposed § 138e.255(b)(3)(i)(B) (relating to State Board review of applications). That provision would allow reimbursement with respect to an agricultural conservation easement purchase involving as few as 25 acres of land, where the previous standards required at least 50 acres of land.

Proposed Chapter 138I (relating to agricultural security area program) would supplant the current regulation at Chapter 138 (relating to agricultural area security program).

Proposed § 138I.1 (relating to definitions) would repeat definitions from the Act and also repeats a number of definitions from § 138e.3 (relating to definitions) of the agricultural conservation easement purchase program regulations. This section would also allow for the use of "ASA" as an abbreviation for the term "agricultural security area."

Proposed § 138I.10 (relating to agricultural security area advisory committee) would provide guidance to a local government unit on the necessity of establishing an agricultural security area advisory committee. Although the Act does not require the formation of this committee until an application for the formation of an ASA is received by the local government unit, a local government unit is free to form an agricultural security area advisory committee at any time.

Proposed § 138I.11 (relating to eligibility to propose the creation of an ASA) would set forth the eligibility criteria for the inclusion of land within an ASA. Paragraph (1) of that section would acknowledge that some portion of land within an agricultural security area might not be farmland or viable farmland and should not have to be surveyed-out and excluded from the ASA. This is suggested in section 3 of the Act (3 P.S. § 903), under the definition of "description of the proposed area."

Prior to Act 14 of 2001, an ASA could not be located in more than one local government unit unless each affected local government unit approved its participation in that ASA. Act 14 of 2001 added three other scenarios under which land might be included in the ASA of another local government unit without the consent of the local

government unit in which the land is located. Proposed § 1381.14 (relating to ASA located in more than one local government unit) would summarize all four scenarios under which an ASA might include land in more than one local government unit.

Proposed § 1381.15 (relating to submitting an ASA proposal form to the local government unit) would emphasize that the *only* acceptable way by which to deliver an ASA proposal form to a local government unit is by certified mail, with return receipt requested. The local government unit's receipt of this notice triggers the commencement of the 180-day period within which review of the ASA proposal must be completed. The "official date of receipt" used in this section is referenced in several other sections of the chapter.

Proposed §§ 1381.16 (relating to local government unit action upon receipt of an ASA proposal) and 1381.17 (relating to public hearing by local government unit on ASA proposal) provide step-by-step explanations of the actions a local government unit must take after receiving an ASA proposal.

The effective date of an ASA or a modification to an ASA can vary - depending on the particular circumstances involved. Proposed § 1381.20 (relating to effective date of the creation or modification of an ASA) would identify each set of circumstances and the appropriate effective date. For example, if land is added to an ASA by virtue of its being part of an agricultural conservation easement purchase, the land becomes part of the ASA as of the sale of the agricultural conservation easement. If land becomes part of an ASA because of the failure of a local government unit to approve or reject the ASA proposal within 180 days of receipt, the ASA becomes effective as of the expiration of this 180-day period. Proposed § 1381.20 would address each set of circumstances under which an ASA can be formed or modified, and assign the appropriate effective date for each such ASA creation or modification.

Proposed § 1381.21 (relating to filing of ASA description by governing body; recording of ASA description) would clarify the obligation of a governing body of a local government unit to file a description of an ASA, or any modification thereof, with the county recorder of deeds, the county planning commission and the planning commission of the local government unit. In addition, it would clarify the obligation of a county recorder of deeds to properly record this information.

Proposed §§ 1381.23 (relating to planning commission action with respect to an ASA proposal) and 1381.24 (relating to advisory committee action with respect to an ASA proposal) would describe the roles of the entities referenced in their respective titles. In summary, each of these entities must record the date of receipt of an ASA proposal or proposed modification, review the proposal within a 45-day review period, apply the same review criteria as are applied by the local government unit and report its conclusions to the local government unit. Failure to act within this 45-day review period is deemed to be a recommendation the local government unit approve the ASA proposal or proposed modification.

Proposed § 1381.25 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee) would restate review criteria prescribed by the Act.

Proposed §§ 1381.30 (relating to adding land to an existing ASA) through 1381.33 (relating to automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain parties) would describe all of the various circumstances under which land may be incorporated into an existing ASA. Act 14 of 2001 added several new methods by which land can be automatically incorporated into an existing ASA, and these new methods are set forth in the referenced sections.

Proposed §§ 1381.40 (relating to removing land that has been in an ASA for seven years or more) and 1381.41 (relating to removing land in the course of the 7-year review or interim review) would describe the two procedures by which land can be removed from an ASA. The first allows an owner of land that has been in an ASA for seven or more years to simply notify the governing body of the land to be withdrawn from the ASA. This notice would be by certified mail, return receipt requested. Although the withdrawal would be effective upon receipt of this notice, the governing body would have the option to wait until its next review of the ASA (whether a regular 7-year review or an interim review) to record the withdrawal.

Proposed § 1381.50 (relating to 7-year review) would describe the process by which the Act requires an ASA be reviewed at regular intervals. Proposed § 1381.51 (relating to interim review) would describe the process to be exercised by a local government unit that opts to review an ASA before review would ordinarily be required.

### ***Affected Individuals and Organizations***

The proposed regulation would have some effect upon county agricultural conservation easement purchase programs, local government units, owners of land who have land in an ASA or who seek to include land in an ASA and owners of land who seek to sell agricultural conservation easements under authority of the Act. Since many of the new provisions of the proposed regulation simply implement statutory requirements, though, the impact of these provisions is more the product of the underlying legislation than of the regulation itself.

### ***Fiscal Impact***

***Commonwealth:*** The proposed regulation would impose no costs and have no fiscal impact on the Commonwealth.

***Political Subdivisions:*** The proposed regulation is not expected to impose appreciable costs upon political subdivisions. Although local government units are required to absorb the costs associated with the formation and recording of an ASA, this requirement is imposed by the Act, rather than the proposed regulation.



***Private Sector:*** The proposed regulation would impose no costs and have no fiscal impact upon the private sector.

***General Public:*** The proposed regulation would impose no costs and have no fiscal impact upon the general public.

***Paperwork Requirements***

The proposed regulation would not appreciably increase the paperwork burden of the Department, local government units, county agricultural land preservation programs or other affected entities.

***Effective Date***

The proposed regulation will be effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

***Sunset Date***

There is no sunset date for the proposed regulation. The Department will review the efficacy of this regulation on an ongoing basis.

***Public Comment Period/Contact Person***

Interested persons are invited to submit written comments regarding the proposed regulations within 30 days following publication in the *Pennsylvania Bulletin*. Comments are to be submitted to the Department of Agriculture, Bureau of Farmland Preservation, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Sandra Robison.

***Regulatory Review***

The Department submitted a copy of the proposed regulation to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs on January 29, 2002, in accordance with section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). The Department also provided IRRC and the Committees a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has an objection to any portion of the proposed regulation, it must so notify the Department within 10 days of the close of the Committees' review period.

The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to the final publication of the proposed regulation.

SAMUEL E. HAYES, Jr.,  
*Secretary*

**Annex "A"**

**Title 7. Agriculture.**

**CHAPTER 138e. AGRICULTURAL CONSERVATION  
EASEMENT PURCHASE PROGRAM**

**GENERAL**

Sec.

- 138e.1. Purpose.
- 138e.2. Eligibility.
- 138e.3. Definitions.

**REQUIREMENTS FOR CERTIFICATION  
OF COUNTY PROGRAM**

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## **GENERAL**

\* \* \*

### **§ 138e.3. Definitions.**

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

\* \* \*

*Agricultural conservation easement or easement*—An interest in land, less than fee simple, which interest represents the right to prevent the development or improvement of [the land] a parcel for a purpose other than agricultural production. The easement may be granted by the owner of the fee simple to a third party or to the Commonwealth, to a county governing body or to a unit of local government. It shall be granted in perpetuity, as the equivalent of covenants running with the land. 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*—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. The term includes use of land which is devoted to and meets the requirements of and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal government.

\* \* \*

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.

\* \* \*

Local government unit--Any 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.

\* \* \*

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.

\* \* \*

## REQUIREMENTS FOR CERTIFICATION OF COUNTY PROGRAM

### § 138e.11. General requirements.

(a) A county program shall demonstrate that the county has fair, equitable, objective, nondiscriminatory procedures for determining easement purchase priorities.

(b) A county program shall contain written policies and procedures for determining easement purchase priorities and written procedures for purchasing easements. For example, a county program that would allow a farmland tract with a higher farmland ranking score (as described in § 138e.15 (relating to farmland ranking system)) to be bypassed in favor of making an offer to purchase an easement on a farmland tract with a relatively lower farmland ranking score shall set forth the priorities and procedures under which this determination is made.

(c) A county program shall address and meet the standards, criteria and requirements in §§ 138e.12—138e.21. A county program may propose additional standards, criteria and requirements for approval by the State Board. Additional provisions shall be designed to assure that selection of land for easement purchase is consistent with the purposes of the act.

(d) A county program shall contain provisions for the participation of local government units in the preservation of farmland through the purchase of agricultural conservation easements. These provisions shall address the following:

(1) Local government unit recommendations for joint county-local government unit purchases.

(2) Local government unit recommendations for joint Commonwealth-local government unit purchases.

(3) Local government unit recommendations for joint Commonwealth-county-local government unit purchases.

(4) Local government unit agricultural conservation easement purchases authorized under section 14.1(b.1)(4) of the Act (3 P.S. § 914.1(b.1)(4)).

\* \* \*

#### **§ 138e.16. Minimum criteria for applications.**

(a) The county program shall consider the quality of the farmland tract, including the USDA soil classification and productivity. The farmland tract shall:

(1) Be one or more of the following:

(i) [located] Located in an agricultural security area consisting of 500 acres or more.

(ii) Bisected by the dividing line between two local government units, having the majority of its viable agricultural land within an agricultural security area of 500 acres or more and the remainder in another local government unit outside of an agricultural security area.

(iii) Bisected by the dividing line between the purchasing county and an adjoining county, having the land located in the purchasing county within an agricultural security area of 500 acres or more and the remainder in another county outside of an agricultural security area, and with respect to which one of the following is accurate:

(A) A mansion house is on the tract and located within the purchasing county.

(B) Where the mansion house on the tract is bisected by the dividing line between the two counties, the landowner has chosen the purchasing county as the situs of assessment for tax purposes.

(C) Where there is no mansion house on the farmland tract, the majority of the tract's viable agricultural land is located within the purchasing county.

(2) Be one or more of the following:

(i) [contiguous] Contiguous acreage of at least 50 acres in size [unless the tract is].

(ii) Contiguous acreage of at least 10 acres in size and [is either] utilized for a crop unique to the area [or is].

(iii) Contiguous acreage of at least 10 acres in size and contiguous to a property which has a perpetual conservation easement in place which is held by a "qualified conservation organization," as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. § 170(h)(3)).

(3) Contain at least 50% of soils which are both available for agricultural production and of land capability classes I—IV, as defined by the USDA-NRCS.

(4) Contain the greater of 50% or 10 acres of harvested cropland, pasture or grazing land.

(b) The county program may contain additional criteria to evaluate farmland tracts if the criteria are fair, objective, equitable, nondiscriminatory and emphasize the preservation of viable agricultural land which will make a significant contribution to the agricultural economy, and are approved by the State Board. For example, a county program might require crop yields from a farmland tract to meet or exceed county crop yield averages, or might require the farmland tract to generate annual gross receipts of a particular sum, or might require that structures and their curtilages not occupy more than a certain percentage of the total acreage of the farmland tract.

\* \* \*

## **STATE BOARD REVIEW OF COUNTY PROGRAM**

### **§ 138e.41. Application for review of county program.**

A county board seeking State Board review, certification and approval of its county program shall submit one copy of its county program and its bylaws to the State Board at the following address: Director, Bureau of Farmland [Protection]



Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

**§ 138e.42. Review, certification and approval of a county program.**

\* \* \*

(c) A decision of the State Board to disapprove a county program shall be an adjudication subject to 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). An appeal from a decision of the State Board to disapprove a county program may be made by the county board to the Secretary of Agriculture and shall be filed in writing with the Secretary within 30 days of the State Board's action. An appeal from a decision of the State Board [wll] will be governed by 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

**§ 138e.43. Revision of county program.**

\* \* \*

(b) A county board seeking review of a proposed revision to its county program shall submit one copy of the proposed revision to the State Board at the following address: Director, Bureau of Farmland [Protection] Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

\* \* \*

**PROCEDURE FOR PURCHASING AN EASEMENT**

**§ 138e.61. Application.**

(a) A separate application shall be required for each farmland tract offered for easement purchase. The application shall consist of a completed application form, locational maps and a soils report form. A copy of a soils report form is in Appendix B (relating to Form C Soils Report). If the county program contains minimum criteria for easement purchase that vary from those in § 138e.16 (relating to minimum criteria for applications), the application shall also include documentation [(such as a production report form contained in a guidebook authorized by the State Board under section 14.1(a)(3)(xv) of the act (3 P. S. § 914.1(a)(3)(xv))] to demonstrate the farmland tract meets these minimum criteria.

(b) The county board shall develop and make available to a county resident an application form which requires the following information:

(1) The printed name, address, telephone number and signature of all owners of the farmland tract.

(2) One of the following, as applicable:

(i) [The] If the farmland tract is eligible to be considered for easement purchase under subparagraph 138e.16(a)(1)(i) (relating to minimum criteria for applications), the county, [municipality] local government unit and agricultural security area in which the farmland tract is located.

(ii) If the farmland tract is bisected by a dividing line between two units of local government and is eligible to be considered for easement purchase under subparagraph 138e.16(a)(1)(ii) (relating to minimum criteria for applications), the county and local government units in which the farmland tract is located, the agricultural security area in which a portion of that farmland tract is located, a breakdown of the acreage proposed for easement purchase in each local government unit and a breakdown of the number of acres of viable agricultural land in the acreage proposed for easement purchase in each local government unit.

(iii) If the farmland tract is bisected by the dividing line between two or more counties and is eligible to be considered for easement purchase under subparagraph 138e.16(a)(1)(iii) (relating to minimum criteria for applications), the counties and local government units in which the farmland tract is located, the agricultural security area in which a portion of that farmland tract is located, and one of the following:

(A) If there is a mansion house on the farmland tract, an acknowledgement of this fact and a designation of the county in which the mansion house is located.

(B) If there is a mansion house on the farmland tract, and the mansion house is bisected by the dividing line between two or more counties, an acknowledgement of this fact and a designation of the county the landowner has chosen as the situs of assessment for tax purposes.

(C) If there is no mansion house on the farmland tract, an acknowledgement of this fact and a breakdown of the acreage proposed for easement purchase in each county and a breakdown of the number of acres of viable agricultural land in the acreage proposed for easement purchase in each county.

(3) The total acreage of the farm as shown on the deed or instruments of record.

(4) The number of acres in the farmland tract proposed for easement purchase.

(5) The street address of the farm, and directions from the nearest State route.

(6) The most current deed reference—book, volume and page—or other reference to the place of record of the deed. In the case of multiple deeds, numbers for all the deeds shall be provided.

(7) County tax map numbers, including tax parcel number, or account number of each parcel.

(8) The date of the conservation plan, if any, which has been approved by the county conservation district or county board.

(9) The date of any nutrient management plan.

(10) The name, address and telephone number of the person to be contacted to view the farmland tract.

\* \* \*

#### **§ 138e.65. Easement value and purchase price.**

\* \* \*

(b) *Maximum purchase price.* The purchase price offered for the purchase of an easement under § 138e.66(b) may not exceed, but may be less than, the value of the easement. [Regardless of the easement value, the State funds paid toward the purchase price of an easement will not exceed \$10,000 per acre.]

#### **§ 138e.66. Offer of purchase by county board.**

\* \* \*

(c) Within 30 days of receipt of the written offer from the county board, an applicant may do one of the following:

(1) Accept the offer, in which case the county board and the applicant shall enter into an agreement of sale. The agreement of sale shall be conditioned upon the approval of the State Board and be subject to the ability of the applicant to provide good title to the premises, free of encumbrances such as liens, mortgages, options, rights of others in surface mineable coal, land use restrictions, adverse ownership interest and other encumbrances which would adversely impact the county and Commonwealth's interest in the farmland tract.

(2) Reject the offer and advise the county board that the application is withdrawn.

(3) Advise the county board that the applicant is retaining, at the applicant's expense, an independent State-certified general real estate appraiser to determine the easement value. The appraiser shall be qualified, and the appraisal shall be completed in accordance with the procedure in § 138e.64 (relating to appraisal). The appraisal shall be submitted to the county board within 120 days of receipt of the county board's offer to purchase. The county board may extend the time within which this appraisal shall be submitted. This extension shall be in writing and shall extend the 120-day deadline by no more than 60 days. Upon completion, three copies of the applicant's appraisal shall be submitted to the county board. The applicant's decision to obtain an independent appraisal under this paragraph does not constitute a rejection of the county board's offer. The county board's offer shall remain open unless increased by the county board under subparagraph [(ii)] (iv) or rejected by the applicant under subparagraph [(iii) or (iv)] (v).

(i) If the applicant retains an independent appraiser, the easement value shall be the difference between the agricultural value and the nonagricultural value, determined as follows:

(A) The agricultural value shall equal the sum of:

(I) The farmland value determined by the applicant's appraiser.

(II) One-half of the difference between the farmland value determined by the county board's appraiser and the farmland value determined by the applicant's appraiser, if the farmland value determined by the county board's appraiser exceeds the farmland value determined by the applicant's appraiser.

(B) The nonagricultural value shall equal the sum of:

(I) The market value determined by the county board's appraiser.

(II) One-half of the difference between the market value determined by the applicant's appraiser and the market value determined by the county board's appraiser, if the market value determined by the applicant's appraiser exceeds the market value determined by the county board's appraiser.

(ii) If the easement value determined under subparagraph (i) is less than the easement value determined by the county appraiser, the county board may offer a purchase price equal to the county's offer

under subsection (b).

(iii) Regardless of the easement value, the purchase price may not exceed [\$10,000 per acre of State funds] any overall purchase price limits established by the county in its county program .

(iv) Within 30 days of receipt of the applicant's appraisal, the county board shall do one of the following:

(A) Submit a written offer to purchase in an amount in excess of the amount offered under subsection (b) to the applicant.

(B) Notify the applicant, in writing, that the offer made under subsection (b) remains open and will not be modified.

(v) The applicant shall, within 15 days of receipt of the county board's written offer under subparagraph [(ii)(A)] (iv)(A) or receipt of the county board's written notice under subparagraph [(ii)(B)] (iv)(B), notify the county board in writing that the applicant does one of the following:

(A) Accepts or rejects the offer made under subparagraph (iv)(A).

(B) Accepts or rejects the offer made under subsection (b).

(vi) The failure of the applicant to act as set forth in subparagraph (v) shall constitute a rejection of the county board's offer.

(vii) If the offer of purchase is accepted, the county board and the applicant shall enter into an agreement of sale containing the same requirements and subject to the same conditions in subsection (c)(1).

(4) The failure by the applicant to act within 30 days of receipt of a written offer under subsection (b) shall constitute rejection of the offer.

(d) An agreement of sale shall be in a form provided by the State Board.

#### **§ 138e.67. Requirements of the agricultural conservation easement deed.**

\* \* \*

(d) The farmland tract on which an easement is to be purchased shall be surveyed unless the legal description contained in the deed recorded in the land records of the county in which the farmland tract is located satisfies the requirements of subsections (b) and (c). A survey required by this paragraph shall [comply with the boundary survey measurement standards for a Class A-2 survey as published by the Pennsylvania Society of Land Surveyors] meet the requirements of § 138e.73 (relating to survey requirements).

\* \* \*

(g) [A copy of the proposed deed shall be submitted to the State Board for approval prior to execution and delivery.] For purchases made using a combination of State, county and local municipality funds, the grantees shall be the Commonwealth, the county and the local municipality providing the funds under joint ownership as defined in the Act.

(h) For purchases made entirely with county funds, the county shall be the sole grantee.

(i) For purchases made entirely with local municipal funds, the municipality shall be the sole grantee.

### **§ 138e.68. Title insurance.**

(a) The county board shall provide [a title report] the following to the State Board upon submission of its recommendation for the purchase of an easement:

(1) A title insurance commitment.

(2) Copies of all recorded or unrecorded documents listed on the title insurance commitment as exceptions to the title insurance policy. \_

\* \* \*

### **§ 138e.71. Notification of owners of land adjoining proposed easement purchase.**

\* \* \*

(d) Correction of notice. If the date or time of the meeting at which an easement purchase recommendation is to be considered changes after the adjoining landowners receive the notice described in this section, the county board shall provide these landowners a corrective notice, providing notice of the changes, in the manner described in subsection (b) or (c).

\* \* \*

### **§ 138e.73. Survey requirements.**

(a) General requirement. If a survey of land being considered for agricultural conservation easement purchase is required under § 138e.67(d) (relating to requirements of the agricultural conservation easement deed) or is otherwise required to determine metes and bounds of any right-of-way or other interests in the land, the

survey shall indicate that it has a closure error of not greater than 1 foot per 10,000 linear feet in the survey, and shall otherwise comply with the most current boundary survey measurement standards published by the Pennsylvania Society of Land Surveyors.

(b) Other requirements. A survey described in subsection (a) shall also contain the following:

(1) A recordable legal description setting forth the metes and bounds of the farmland tract or other subject of the survey.

(2) A copy of the survey for each traverse in digital electronic format that complies with the conservation easement Geographic Information System (GIS) technical standards maintained in the Guidebook prepared by the Department in accordance with § 14.1(a)(3)(xv) of the Act (3 P.S. § 914.1(a)(3)(xv)).

(3) Geographic coordinates of at least two ground control points located sequentially along a traverse, with latitude and longitude expressed in decimal degrees. These geographic coordinates shall be based on the North American Datum of 1983 and shall be accurate to within 2 meters horizontally.

(4) A hardcopy of the plotted survey map from the digital file showing the course bearings and distances and other annotations and symbols as maintained in the Guidebook prepared by the Department in accordance with § 14.1(a)(3)(xv) of the Act (3 P.S. § 914.1(a)(3)(xv)).

(c) Monumentation. If a survey of land being considered for agricultural conservation easement purchase is required under § 138e.67(d) (relating to requirements of the agricultural conservation easement deed) or is otherwise required to determine metes and bounds of any right-of-way or other interests in the land, the surveyor shall establish monumentation for at least the two ground control points referenced in paragraph (b)(3). One point shall be a permanent, unmovable monument established with a concrete shaft, 5/8 inch steel reinforcing bar as a core with an alloy disk embedded with a stamped identification number. The second ground control point shall be a standard 5/8 inch rebar or similar concrete monument.

## **STATE BOARD REVIEW OF A PURCHASE RECOMMENDATION**

### **§ 138e.91. Recommendation for purchase.**

A county board shall make its recommendation for purchase of an easement by submitting the following documents to the Director, Bureau of Farmland [Protection] Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg,

Pennsylvania 17110-9408:

(1) [Twenty-two] Twenty-five copies of the summary report prepared in accordance with § 138e.70 (relating to summary report), including the following items:

(i) A cover letter from the county (optional).

(ii) A narrative summary.

(iii) A current United States Geological Survey (USGS) topographical map that clearly and legibly shows the subject property location and boundaries, location of neighboring easements and exclusions withheld from the subject property.

(iv) The Soil Report Form "C" (a form provided by the Department), both pages. See Appendix B (relating to Form C Soils Report).

(v) The list of soil mapping unit names, symbols and land capability classes on the subject property.

(vi) A legible, uncolored soil map of the subject property.

(vii) A tax map showing the subject property location and boundaries, exclusions withheld from the subject property, utility rights-of-way and access road rights-of-way.

(viii) A summary table showing the individual farmland ranking scores by category for applications selected for county appraisal, including an indication of the easement purchase status of higher-ranking applicants.

(ix) A copy of Exhibit B from the agreement of sale, modified to include interest, total acres and per acre easement cost.

(x) The [22] 25 copies submitted shall be individually collated and three-hole punched, but not stapled.

(2) The appraisal reports.

(3) The signed agreement of sale, including the proposed legal description, a statement of cost, the proposed deed of agricultural conservation easement, a contractor integrity clause and a nondiscrimination clause.

(4) The title insurance report or commitment.

(5) A letter certifying that the adjoining landowners were provided with notice and opportunity to be heard in a manner consistent with administrative agency law with respect to the proposed easement purchase, including one copy of the notification letter required under § 138e.71 (relating to notification of owners of land adjoining proposed easement purchase) and a list of the adjoining landowners.

(6) A completed and signed IRS Form W-9, Request for Taxpayer Identification



Number and Certification for individual grantors.

(7) A letter from the grantors stating the percent of ownership of each grantor for the purpose of issuing IRS Form 1099.

(8) A copy of the approved soil conservation plan that is required to be in place with respect to the land under § 138e.241(2) (relating to deed clauses), and a fully-executed conservation plan agreement form as described in § 138e.222(a) (relating to conservation plan).

(9) A copy of the nutrient management plan that has been developed, certified, reviewed and approved in accordance with the Nutrient Management Act (3 P. S. §§ 1701—1718), if the nutrient management plan is required under the Nutrient Management Act for any portion of the property that is the subject of the recommendation for purchase.

\* \* \*

#### **§ 138e.93 Post-settlement recording and reporting procedures.**

(a) Retaining copies of essential documents. The county board shall make and retain photocopies of the following documents *after* settlement is held with respect to an agricultural conservation easement purchase, and *prior* to the recording of the deed of agricultural conservation easement in the appropriate recorder of deeds' office:

(1) The complete and fully-executed deed of agricultural conservation easement, including the complete legal description of the land subject to the agricultural conservation easement.

(2) A marked-up title insurance commitment document, reflecting that all listed title insurance exceptions have been addressed and resolved prior to the purchase of the agricultural conservation easement.

(3) Mortgage satisfaction pieces, subordination agreements and other documents to be recorded in connection with the agricultural conservation easement purchase.

(b) Prompt recording of the deed of agricultural conservation easement and other documents. The county board shall record the deed of agricultural conservation easement and any other documents (such as subordination documents, satisfaction pieces and releases) at the appropriate recorder of deeds' office promptly after settlement is held with respect to the easement purchase.

(c) Prompt recording of agricultural security area; reporting to the State Board. If the settlement triggers the automatic inclusion into an agricultural security area of some portion of the land subject to the agricultural conservation easement under section

14.1(b)(2)(i)(B) or (C) of the Act (3 P.S. § 914.1(b)(2)(i)(B) or (C)), the governing body that created the agricultural security area into which the land is automatically included shall promptly record the addition of this land into the agricultural security area in accordance with the filing, recording and notification procedures set forth in section 8(d) and (g) of the Act. The governing body shall then promptly transmit to the county board written confirmation that this recording, filing and notification has been accomplished. The county board shall mail or deliver a copy of that written confirmation to the State Board within 10 days of receipt.

(d) Reporting the agricultural conservation easement purchase to the State Board.

(1) General. The county board shall mail or deliver the following documents to the Department within 10 days following the date upon which settlement is held with respect to an agricultural conservation easement purchase:

(i) A complete Notification of Settlement, on a form available from the Department upon request, containing the following:

(A) The name of the landowner or landowners.

(B) The county in which the land is located.

(C) The date of settlement.

(D) A statement identifying any additional incidental costs.

(E) An indication (by check-off or other designation) of the other documents the Department is submitting to the Department along with the Notification of Settlement Form.

(F) The signature of the administrator or chief executive of the county board.

(ii) Copies of all of the documents described in subsection (b).

(iii) A copy of the settlement sheet.

(iv) A marked-up title insurance commitment document, reflecting that all listed title insurance exceptions have been addressed and resolved prior to the purchase of the agricultural conservation easement.

(v) A complete Verification, executed by the Settlement Agent at settlement, on a form available from the Department upon request, containing the following:

(A) A statement reading substantively as follows:

As Settlement Agent for \_\_\_\_\_ County, I hereby verify that I have submitted (or will take responsibility for submitting) the appropriate IRS 1099-S form(s) for the agricultural conservation easement identified below in accordance with the Internal Revenue Code, section 6045. I further verify that I have reported (or will report) the gross proceeds in the case of a joint purchase by the Commonwealth and the county. If this verification is not submitted to the Commonwealth within 30 days of closing, I further verify that the 1099-S form(s) will be sent to the IRS and the transferor by the deadline established by the IRS.

(B) The name and Federal taxpayer I.D. number of each person who sold an interest in the agricultural conservation easement.

(vi) An invoice from the county for any additional incidental costs related to the agricultural conservation easement purchase, on a form available from the Department upon request, containing the following:

(A) The name, address and Federal taxpayer I.D. number of the county.

(B) The date of the application.

(C) The name, address and telephone number of the person designated by the county to act as a contact person in the event the Department requires further information.

(D) The name of the farm owner, address of the farm and the number of acres under agricultural conservation easement.

(E) A breakdown of the purposes for which reimbursement of additional incidental expenses is requested, and the amount of each expense.

(vii) A revised statement of costs, as described in § 138e.69 (relating to statement of costs), if the incidental costs are higher or lower than originally reported.

(2) Exception for agricultural conservation easements purchased by a local government unit solely. Paragraph (1) notwithstanding, if an agricultural conservation easement is purchased by a local government unit solely, the county board shall mail or deliver the following documents to the Department within 30 days after recording the deed of agricultural conservation easement:

(i) A copy of the complete and fully-executed deed of agricultural conservation easement, including the complete legal description of the land subject to the agricultural conservation easement.

(ii) A current United States Geological Survey (USGS) topographical map that clearly and legibly shows the subject property location and boundaries, location of neighboring easements and exclusions withheld from the subject property.

(iii) An invoice as described in subparagraph (d)(1)(vi).

(e) Certified copies of filed documents. The county board shall mail or deliver certified copies of the recorded documents described in subsection (b) to the Department within 30 days following the date upon which these documents are recorded at the appropriate recorder of deeds' office. The appropriate recorder of deeds' office shall issue this certification.

(f) Title insurance policy. The title insurance policy should be mailed or delivered to the State Board within in a reasonable time after settlement - preferably within sixty (60) days of settlement.

## ALLOCATION OF FUNDS

\* \* \*

### § 138e.102. Allocation of funds to counties.

\* \* \*

(g.1) If an eligible county seeks to encumber State matching funds for an agricultural conservation easement purchase to be made by the county alone, the State matching funds shall be considered encumbered when the county board has submitted to the Department a signed agreement of sale and the written certification of the county governing body that the specific amount of county matching funds necessary for the purchase of the agricultural conservation easement by the county is available and intended for this purchase.

\* \* \*

**§ 138e.103. Expenditure of matching funds.**

\* \* \*

(d) An easement purchased using solely county funds will be considered an expenditure of county matching funds under sections 14.1(h)(3), (4) and (5)(i) of the act (3 P. S. §§ 914.1(h)(3), (4) and (5)(i)) if:

(1) The easement document recorded in the land records of the county in which the farmland tract is located contains the provisions in § 138e.241 (relating to deed clauses) and any more restrictive provisions required under the county program.

(2) Upon settlement of the purchase of an easement, the county board submits the following to the State Board:

(i) A copy of the [signed] complete and fully-executed deed of agricultural conservation easement, including the complete legal description of the land subject to the agricultural conservation easement.

(ii) A copy of the production report with respect to the farmland tract, if the report is required under § 138e.61(e) (relating to application).

(iii) A statement describing the nature and scope of compliance with the conservation plan for the farmland tract.

(iv) The date of approval of the conservation plan, a copy of conservation plan and a copy of the executed conservation plan agreement as described in § 138e.222 (relating to conservation plan).

(v) A completed Soil Report Form "C" (a form provided by the Department), both pages. See Appendix B (relating to Form C Soils Report).

(vi) A current United States Geological Survey (USGS) topographical map that clearly and legibly shows the subject property location and boundaries, location of neighboring easements and exclusions withheld from the subject property.

(vii) A statement of costs, as described in § 138e.69 (relating to statement of costs).

(viii) An invoice as described in § 138e.93(d)(1)(vi) (relating to post-settlement recording and reporting procedures).

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**§ 138e.104. Installment sales.**

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(c) *Installment sales with a payment period of more than 5 years.* Installment sales, other than those installment sales described in subsection (d), in which the final payment for the easement purchase is to be made more than 5 years from the date the contract of sale is fully executed are subject to the following provisions:

- (1) Purchases may be made in the name of the Commonwealth, an eligible county or jointly by the Commonwealth and an eligible county.
- (2) Notwithstanding the requirement of § 138e.66(d) (relating to offer of purchase by county board), the county board may, subject to approval by the Department, provide the agreement of sale for purchases made under this subsection.
- (3) The agreement of sale and the deed of easement shall meet the same requirements and be subject to the same conditions as set forth in § 138e.66(c) and § 138e.67 (relating to requirements of the agricultural conservation easement deed).
- (4) The installment payment terms, including the dates of payments, payment amounts and interest rate on the outstanding balance shall be negotiated between the landowner and the county board.
- (5) The interest rate paid on the outstanding balance will be established by the county board and shall be stated in the agreement of sale.
- (6) The State's share of the easement purchase price, exclusive of interest, shall be transferred to the county board for deposit into an irrevocable escrow account or deposit in another manner provided by law.
- (7) Transfer of the Commonwealth's share of the easement purchase price, exclusive of interest, according to the terms of this paragraph shall relieve the Commonwealth of any obligation to pay or assure the payment of the easement purchase price and interest.

(d) *Installment sales deferring the payment of principal for up to 30 years.* Installment sales in which payment of principal is deferred to the end of a specific period of up to 30 years from the date the contract of sale is fully executed are subject to the following provisions: \_\_

- (1) Purchases may be made in the name of the Commonwealth, an eligible county or jointly by the Commonwealth and an eligible county.
- (2) Notwithstanding the requirement of § 138e.66(d) (relating to offer of purchase by county board), the county board may, subject to approval by the Department, provide the agreement of sale for purchases made under this subsection.

(3) The agreement of sale and the deed of easement shall meet the same requirements and be subject to the same conditions as set forth in § 138e.66(c) and § 138e.67 (relating to requirements of the agricultural conservation easement deed).

(4) The installment payment terms shall be negotiated between the landowner and the county board. These terms shall include the amount of cash (if any) to be received at closing, the interest rate, the period over which interest is to be paid and the point at which principal is to be paid.

(5) If landowner shall be responsible for the transaction costs associated with the type of purchase described in this subsection unless the county program provides otherwise.

## **PROCEDURE FOR INSPECTING AND ENFORCING AN EASEMENT**

### **§ 138e.201. Responsibility.**

(a) The county board shall have the primary responsibility for inspecting restricted land and enforcing the following:

(1) [an easement] Agricultural conservation easements within the county.

(2) Agricultural conservation easements which were acquired under authority of section 14.1(b)(2)(i) (3 P.S. § 914.1(b)(2)(i)) of the Act, including any portion extending into an adjoining county.

(b) The State Board or its designee will have the right to inspect restricted land and enforce an easement on its own behalf or in conjunction with the county board.

### **§ 138e.202. Inspections.**

(a) The county board shall inspect all restricted land within the county at least annually to determine compliance with the applicable deed of easement. The first inspection shall be completed within 1 year of the date of easement sale, and in sufficient time to be included in the annual report described in § 138e.203 (relating to annual report).

(b) Written notice of an inspection to be conducted under subsection (a) shall be mailed by certified mail to the owner at least 10 days prior to the inspection.

(c) An inspection conducted under subsection (a) shall be performed between the hours of 8 a.m. and 5 p.m. on a weekday that is not a legal holiday recognized by the Commonwealth, or a date and time agreeable to the county and the landowner.

(d) Within 10 days of conducting an inspection under subsection (a), the county board shall prepare a written inspection report setting forth the following information:

- (1) The identification of the land inspected.
- (2) The name of the owner of the farmland at the time the easement was originally acquired and the name of the current owner of the land inspected.
- (3) A description of modifications in the number, type, location or use of any structures on the land since the date of the filing of the deed of easement.
- (4) A description of deviations from the conservation plan observed on the restricted land.
- (5) A statement of whether the provisions of the deed of easement are being observed.
- (6) A statement indicating whether a structure permitted under § 14.1(c)(6)(iv) of the Act (3 P.S. § 914.1(c)(6)(iv)) has been constructed on the restricted land and, if such a structure has been constructed, the month and year construction was completed and a description of the structure and its location on the land.

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### **§ 138e.203. Annual report.**

The county board shall file the following with the State [board] Board by March 1 of each year:

- (1) [a] A copy of inspection reports for inspections conducted during the prior year.
- (2) [, and compile an] An annual report which summarizes the number of inspections, violations detected, violations resolved and the circumstances surrounding unresolved violations.

### **§ 138e.204. Enforcement.**

- (a) The county board shall enforce the terms of each easement purchased within the county under the act, whether it be a local government unit, county, State or joint purchase.
- (b) The State Board may enforce the terms of State or jointly purchased easements.
- (c) The right of the State Board to enforce the terms of an easement may be exercised either jointly with the county board or by the State Board acting on its own behalf.



\* \* \*

## RESPONSIBILITY OF OWNER

\* \* \*

### § 138e.222. Conservation plan.

(a) [To preserve the agricultural viability of the restricted land, the county board shall require, and the owner of the restricted land shall implement, a conservation plan approved by the county conservation district or the county board.] The county board shall require the owner of land being considered for agricultural conservation easement purchase to do the following before the county board recommends approval of the easement purchase to the State Board:

(1) Obtain a conservation plan approved by the county conservation district or the county board for the land that would be subject to the agricultural conservation easement.

(2) Execute a conservation plan agreement containing the following:

(i) The name, address and telephone number of the landowner(s).

(ii) The location of the land.

(iii) The acreage of the land.

(iv) An acknowledgement that the deed of agricultural conservation easement requires that all agricultural production on the subject land be conducted in accordance with the conservation plan.

(v) An acknowledgement that a conservation plan exists with respect to the land, together with the following:

(A) The source of the conservation plan (typically, the county conservation district).

(B) An identifying number given the conservation plan.

(C) The date of the conservation plan.

(vi) An acknowledgement that the landowner(s) agrees to comply with the conservation practices and implementation schedule set forth in the conservation plan, and an acknowledgement that failure to so comply would be a violation of the terms of the deed of agricultural conservation easement.

(vii) The signature of the landowner(s).

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## LAND TRUST REIMBURSEMENT GRANT PROGRAM

### § 138e.251. Program in general.

Section 14.5(a)(3) of the Act (3 P.S. § 914.5(a)(3) authorizes the expenditure of up to \$500,000 from the Supplemental Agricultural Conservation Easement Purchase Account to reimburse eligible land trusts for expenses incurred in the acquisition of agricultural conservation easements in the Commonwealth. Sections 138e.252 (relating to eligibility of a land trust to register for reimbursement grants) through 138e.256 (relating to decision of State Board) describe the procedures and standards pursuant to which this reimbursement shall occur under the Land Trust Reimbursement Grant Program.

### § 138e.252. Eligibility of a land trust to register for reimbursement grants.

In order to be eligible to register with State Board in accordance with § 138e.253 (relating to registration of eligible land trust) and to receive reimbursement grants under the Land Trust Reimbursement Grant Program, a land trust must be a tax-exempt institution under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) and include the acquisition of agricultural conservation easements or other conservation easements in its stated purpose.

### § 138e.253. Registration of eligible land trust.

(a) Registration required. An eligible land trust seeking reimbursement grants under the Land Trust Reimbursement Grant Program shall register with the State Board. Registration shall be accomplished by delivering a registration letter to the following address: Pennsylvania Department of Agriculture, ATTN: Bureau of Farmland Preservation, 2301 North Cameron Street, Harrisburg, PA 17110-9408.

(b) Contents of registration letter. A registration letter shall:

(1) Set forth a request that the eligible land trust be registered with the State Board for the purpose of receiving reimbursement grants under the Land Trust Reimbursement Grant Program.

(2) Be signed by the president or other appropriate authorized officer of the eligible land trust.

(3) Have the following documentation enclosed:

(i) A copy of the section 501(c)(3) tax-exempt certification issued to the land trust by the Internal Revenue Service, or any other documentation demonstrating the section 501(c)(3) tax-exempt status of the land trust.

(ii) Documentation, such as a certified copy of the corporate by-laws, demonstrating that the land trust has the acquisition of agricultural conservation easements or other conservation easements as its stated purpose.

(4) If the eligible land trust seeks to be registered to receive reimbursement grants with respect to agricultural conservation easements it acquires in a county that is an eligible county (as that term is defined in § 138e.3 (relating to definitions)), have enclosed a letter from either the Director or the Chairman of the county board of the eligible county, verifying that the land trust coordinates its farmland preservation activities with the farmland preservation activities of the county.

(5) If an eligible land trust seeks to be registered to receive reimbursement grants with respect to agricultural conservation easements it acquires in an county that is *not* an eligible county (as that term is defined in § 138e.3), have enclosed a written explanation of the procedures it will follow in order to coordinate with the State Board on such easement acquisitions.

(c) Acknowledgement of registration. The Department will promptly provide an eligible land trust that delivers a complete registration letter as described in subsection (b) with written confirmation that the eligible land trust is registered to receive reimbursement grants under the Land Trust Reimbursement Grant Program, together with an application for reimbursement grant form as described in § 138e.254 (relating to applying for a reimbursement grant).

#### **§ 138e.254. Applying for a reimbursement grant.**

(a) Application for reimbursement grant; timing. If an eligible land trust is registered in accordance with § 138e.253 (relating to registration of eligible land trust), and seeks a reimbursement grant with respect to the acquisition of an agricultural conservation easement, it must do the following:

(1) Complete an application for reimbursement grant form as described in subsection (b).

(2) Deliver the completed application to the State Board, at the address set forth in § 138e.253(a), within 60 days of closing on the acquisition of the agricultural conservation easement with respect to which the reimbursement grant is sought.

(b) Obtaining an application for reimbursement grant form. Reimbursement grant application forms may be downloaded from the Department's website address: www.pda.state.pa.us. The Department will also provide reimbursement grant application forms upon written request to the address set forth in § 138e.253(a), or upon requests telephoned to the Department, at (717) 783-3167. The Department will also enclose a reimbursement grant application form with any acknowledgement of registration it issues under § 138e.253(c).

(c) Content of a complete application for a reimbursement grant. A complete application for a reimbursement grant shall contain the following:

(1) A request a reimbursement of costs incidental to the acquisition of an agricultural conservation easement.

(2) A statement of the costs (such as costs of appraisals, legal services, title searches, document preparation, title insurance, closing fees and surveys) incidental to the acquisition of the agricultural conservation easement.

(3) A true and correct copy of the recorded deed of agricultural conservation easement.

(4) The Soil Report Form "C" (a form provided by the Department), both pages. See Appendix B (relating to Form C Soils Report).

#### **§ 138e.255. State Board review of applications.**

(a) Department's responsibility. The Department shall stamp or otherwise identify every complete reimbursement grant application form to record the date it is received and the relative order in which these applications are received.

(b) State Board review. The State Board will consider reimbursement grant applications in the order in which the Department received them. The State Board will review any complete, timely application within 60 days of receipt. The State Board may not approve a reimbursement grant application unless all of the following criteria are met:

(1) The application meets the requirements of section 14.5(a)(3) of the Act (3 P.S. § 914.5(a)(3)).

(2) The land use restrictions imposed under the deed of agricultural conservation easement are comparable to restrictions imposed under a deed of agricultural conservation easement acquired in accordance with the Act, as described in § 138e.241 (relating to deed clauses).

(3) Either of the following is accurate:

(i) The land subject to the agricultural conservation easement meets the following criteria:

(A) The land is in an agricultural security area consisting of 500 acres or more.

(B) The land is contiguous acreage of at least 25 acres in size unless the tract is at least 10 acres in size and is either utilized for a crop unique to the area or is contiguous to a property which has a perpetual conservation easement in place which is held by a "qualified conservation organization," as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. § 170(h)(3)).

(C) The land contains at least 50% of soils which are both available for agricultural production and of land capability classes I-IV, as defined by the USDA-NRCS.

(D) The land contains the greater of 50% or 10 acres of harvested cropland, pasture or grazing land.

(ii) The land subject to the agricultural conservation easement meets the following criteria:

(A) The land is in an agricultural security area consisting of 500 acres or more.

(B) The land is of any acreage but *adjoins* land that is either currently subject to an agricultural conservation easement purchased under authority of the Act or adjoins land that has been approved by the State Board for agricultural conservation easement purchase under authority of the Act, such that - in the aggregate - the land and the restricted land it adjoins comprise at least 50 contiguous acres.

(4) There are sufficient unencumbered funds available to fund the reimbursement grant amount sought in the reimbursement grant application.

#### **§ 138e.256. Decision of the State Board.**

The State Board will, within 10 days of completing its review, mail a reimbursement grant applicant written notice as to whether the reimbursement grant application is approved. If the application is *not* approved, the written notice will specify the basis for disapproval.

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## **CHAPTER 138I. AGRICULTURAL SECURITY AREA PROGRAM**

### **Subchapter A. PRELIMINARY PROVISIONS**

- Sec.  
138I.1. Definitions.  
138I.2. Purpose.  
138I.3. Contacting the Department.

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

- 138I.10. Agricultural security area advisory committee.  
138I.11. Eligibility to propose the creation of an ASA.  
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138I.13. Fees.  
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138I.15. Submitting an ASA proposal form to the local government unit.  
138I.16. Local government unit action upon receipt of an ASA proposal.  
138I.17. Public hearing by local government unit on ASA proposal.  
138I.18. Decision of local government unit.  
138I.19. Notice of the decision of the local government unit.  
138I.20. Effective date of the creation or modification of an ASA.  
138I.21. Filing of ASA description by governing body; recording of the ASA description.  
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138I.25. Factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee.

### **Subchapter C. ADDING LAND TO AN EXISTING ASA**

- 138I.30. Adding land to an existing ASA.  
138I.31. Automatic inclusion of certain parcels bisected by the dividing line between local government units.  
138I.32. 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.  
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the dividing line between counties upon the purchase of an agricultural conservation easement by certain parties.

#### **Subchapter D. REMOVING LAND FROM AN EXISTING ASA**

- 1381.40. Removing land that has been in an ASA for seven years or more.  
1381.41. Removing land in the course of the 7-year review or an interim review.

#### **Subchapter E. 7-YEAR REVIEW AND INTERIM REVIEW**

- 1381.50. 7-Year review.  
1381.51. Interim review.

### **Subchapter A. PRELIMINARY PROVISIONS**

#### **§ 1381.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless otherwise defined in the Act:

*7-year review*--The periodic review of an existing ASA in accordance with the requirements of section 9(a) of the Act (3 P.S. § 909(a)).

*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 (1) designated as such by the procedures set forth in the Act; or (2) designated as such pursuant to the act of January 19, 1968 (1967 P.L. 992, No. 442)(32 P.S. § 5001 *et seq.*), 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 such 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 such 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. 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. It shall be granted in perpetuity as the equivalent of covenants running with the land. The exercise or failure to exercise any right granted by the easement shall not be deemed to be management or control of activities at the site for purposes of enforcement of the act of October 18, 1988 (P.L. 756, No. 108), known as the "Hazardous Sites Cleanup Act" (35 P.S. § 6020.101 *et seq.*).

*Agricultural production*—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. The term includes use of land which is devoted to and meets the requirements of and qualifications for payments or other compensation pursuant to 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*—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. 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 section 138e.3 of this Title (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*—Include but are not limited to:



- (1) Field crops, including corn, wheat, oats rye, barley, hay, potatoes and dry-beans.
- (2) Fruits, including apples, peaches, grapes, cherries and berries.
- (3) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms.
- (4) Horticultural specialties, including nursery stock and ornamental shrubs, ornamental trees and flowers.
- (5) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.
- (6) Timber, wood and other wood products derived from trees.
- (7) 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 name or names of the owner or 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. Such 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, to meet the criteria in § 138e.16(a) (relating to minimum criteria for applications).

*Eligible counties*—Counties whose county programs have been approved by the State Board. For the purpose of annual allocations, an eligible county shall have its county program approved by the State 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) (relating to minimum criteria for applications) 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) (relating to minimum criteria for applications).

*Harvested cropland*—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. The term does not include land devoted to production of timber and wood products.

*Interim review*-- The interim 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.

*Land which has been devoted primarily to agricultural use*—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, and which excludes 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, and which further excludes 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.

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

*Local government unit*--Any 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 (26 U.S.C.A. §§ 1—7872).

*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).

*Normal farming operation*—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. 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.

*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 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.

*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 of this Title (relating to definitions).

*Title report*—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. 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 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.

### **§ 138l.2. Purpose.**

The purpose of this chapter is to provide regulatory guidance with respect to the benefits of having land in an ASA, the application and review process pursuant to 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.

### **§ 138l.3. Contacting the Department.**

Any forms referenced in this chapter may be obtained from the Department, by contacting the following:

Director, Bureau of Farmland Preservation  
Pennsylvania Department of Agriculture  
2301 North Cameron Street  
Harrisburg, PA 17110-9408:

Telephone: (717) 783-3167

These forms shall also be available to be downloaded from the Department's website, at the following internet website address:

[www.pda.state.pa.us](http://www.pda.state.pa.us)

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

### **§ 138L.10. 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 chairman 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 chairman. 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 chairman 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.

### **§ 138L.11. 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.

#### **§ 138l.12. The ASA proposal form.**

(a) *Governing body has discretion.* The governing body may prescribe the manner and form of the process pursuant to 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) Such other information as might be reasonably required in order to establish the boundaries of the proposed ASA, the owners of the parcels of farmland described in the ASA and compliance with the requirements of 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.

#### **§ 1381.13. Fees.**

(a) *General prohibition.* Except as provided in subsection (b), the governing body shall 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 occur:

(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.

#### **§ 1381.14. 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:

(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 §§ 1381.30(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 § 1381.31 (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 § 1381.32 (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 § 1381.33 (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).

**§ 1381.15. Submitting an ASA proposal form to the local government unit.**

(a) *Form must be 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.

**§ 1381.16. 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 pursuant to 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 must 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 paragraph (3) until no more than seven days prior to the advertisement of the public hearing described in § 1381.17 (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 paragraphs (c)(4) and (c)(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.

**§ 1381.17. 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 promptly after the *earlier* of the following:

(1) Receipt of the both the report of the planning commission, as described in § 1381.23 (relating to relating to planning commission action with respect to an ASA proposal) and the report of the advisory committee, as described in § 1381.24 (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 § 1381.23(b) and the advisory committee under § 1381.24(b).

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

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

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

(A) Any person who proposed a modification to the ASA.

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

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

(iii) 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:

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

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

(iii) 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 § 1381.23(b), or the advisory committee did not render its report within the 45-day period described in § 1381.24(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.

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

(A) The original ASA proposal.

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

(C) 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.

#### **§ 1381.18. 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 official date of receipt of the ASA proposal, as this date is described in § 1381.15(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 set forth in § 1381.25(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 made application 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. This nonviable farm land or nonfarm land might include hedgerows, driveways and farm roads, lands containing soils in Land Capability Classes V through VIII, and land upon which farm buildings or residential structures and their curtilages are located. 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.

**§ 1381.19. Notice of the 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 set forth in § 1381.25 (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.

**§ 1381.20. 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 set forth in § 1381.11 (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 §§ 1381.15(b) (relating to submitting an ASA proposal form to the local government unit) and 1381.18(a) (relating to 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 § 1381.31 (relating to automatic inclusion of certain parcels transected 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 § 1381.32 (relating to automatic inclusion of portions of certain parcels bisected by the dividing line between local government units upon the purchase of an agricultural conservation easement), 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 § 1381.33 (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.

**§ 1381.21. 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 of an ASA, as described in § 1381.20 (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) *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.

**§ 1381.22. Notification of secretary by governing body.**

(a) *Responsibility of the governing body.* Within 10 days of the recording of the ASA, as described in § 1381.21 (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 set forth 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 § 1381.21.

**§ 1381.23. 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 § 1381.16(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 set forth in § 1381.25 (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.*

(i) *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.

(ii) *Report by a planning commission that is not a county planning commission.* If the planning commission described in subsection (b) is a *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.

#### **§ 1381.24. 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 § 1381.16(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 set forth in § 1381.25 (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.

**§ 1381.25. 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 through 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 through 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.

### **Subchapter C. ADDING LAND TO AN EXISTING ASA**

#### **§ 138L.30. Adding land to an existing ASA.**

(a) *Adding land to an ASA located entirely within the same local government unit as the land proposed for inclusion.* If an ASA is entirely contained within a single local government unit, land that is located within that same local government unit may be added to the ASA at any time, using the same process and procedure that is followed for the initial creation of an ASA, as set forth in this chapter.

(b) *Adding land to an ASA located within two or more local government units, where the land proposed for inclusion lies entirely within the local government units in which the existing ASA is located.* If an ASA is contained within two or more local government units, land that is located entirely within the local government units in which the ASA is located may be added to the ASA at any time, using the same process and procedure that is followed for the initial creation of an ASA, as set forth in this chapter.

(c) *Adding land to an ASA where the land proposed for inclusion lies entirely outside the local government units in which the ASA is located.* If an ASA is contained within

one or more local government units, land that is located in a local government unit outside of a local government unit within which the ASA is located may be added to an ASA at any time, if both of the following occur:

(1) Prior to the submission of the proposal, the local government unit in which the land proposed for inclusion is located and each local government unit in which the existing ASA is located have adopted an ordinance or resolution allowing all of the land (including, at a minimum, both the land in the existing ASA and the land proposed for inclusion) to be part of a single ASA located within all of the local government units.

(2) The addition is made using the same process and procedure that is followed for the initial creation of an ASA, as set forth in this chapter.

(d) *Minimum acreage requirement is inapplicable.* Where land is proposed for inclusion into an existing ASA, it need not meet the minimum 250-acres-of-viable-agricultural-land requirement that is applicable to the initial formation of an ASA.

*Example:* Three parcels of farmland, totaling 120 acres of viable agricultural land, are proposed for inclusion into an existing ASA. The total acreage of the parcels proposed for inclusion does not have to meet the same 250-acres-of-viable-agricultural-land standard that was applicable to the initial formation of the ASA.

(e) *Effect of addition of land to an existing ASA on the required 7-year review of the ASA.* If land is added to an existing ASA, the added land shall be reviewed at the same time the original land undergoes its 7-year review as described in § 1381.50 (relating to 7-year review) or an interim review as described in § 1381.51 (relating to interim review).

**§ 1381.31. Automatic inclusion of certain parcels bisected by the dividing line between local government units.**

If a parcel of farmland is bisected by the dividing line between two local government units, the entire parcel shall be automatically included in an ASA - whether in the initial creation of the ASA or by modification of an existing ASA - if all of the following occur:

(1) The two local government units are in the same county.

(2) The parcel meets the eligibility requirements for inclusion in an ASA.

(3) A proposal for creation or modification of an ASA has been submitted to the governing body of one of the local government units in which the parcel is located, as set forth in this chapter seeking the following:

(i) In the case of a proposal for the *creation* of an ASA: the inclusion of the entire parcel in the ASA.

(ii) In the case of a proposal for the *modification* of an existing ASA, where no portion of the parcel is within that existing ASA: the inclusion of the entire parcel within the ASA.

(iii) In the case of a proposal for the *modification* of an existing ASA, where a portion of the parcel is part of the existing ASA: the inclusion of the remainder of the parcel within the ASA.

(4) A majority of the parcel's viable agricultural land lies within the local government unit to which the proposal for creation or modification of an ASA has been submitted.

(5) The local government unit in which the minority of the parcel's viable agricultural land is located has not approved the creation of an ASA within its borders.

(6) The governing body of the local government unit adopts a proposal for creation or modification of an ASA that includes - at a minimum - that portion of the parcel located within that government unit.

**§ 1381.32. 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.**

(a) *General.* If a parcel of farmland is bisected by the dividing line between two local government units, and the portion of the parcel in one local government unit is within an ASA and the portion of the parcel in the other local government unit is not, the portion of the parcel that is not within an ASA shall be automatically included in the ASA if all of the following occur:

(1) A majority of the parcel's viable agricultural land lies within the local government unit in which the ASA is located.

(2) An agricultural conservation easement is purchased by any of the following with respect to the parcel:

(i) The county.

(ii) The county and the Commonwealth, jointly.

(iii) The County and a local government unit, jointly.

(iv) The county, the Commonwealth and a local government unit, jointly.

*Example 1:* A 100-acre parcel of farmland is comprised of 80 acres in Township A and 20 acres in Township B. The 80-acre portion of the parcel is within an ASA established by Township A. The majority of the parcel's viable agricultural land is in Township A. The county purchases an agricultural conservation easement with respect to the parcel. Under these facts, as of the purchase of the agricultural conservation easement the 20-acre portion of the parcel located in Township B becomes part of the ASA covering the 80-acre portion of the parcel.

(b) *Caveat.* Subsection (a) is not applicable with respect to agricultural conservation easement purchases made solely by the Commonwealth.

**§ 1381.33. Automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain parties.**

(a) *General.* If a parcel of farmland is bisected by the dividing line between two counties, and the portion of the parcel in one county is within an ASA and the portion of the parcel in the other county is not, the portion of the parcel that is not within an ASA shall be automatically included in the ASA if all of the following occur:

(1) One of the following occurs:

(i) There is a mansion house on the parcel of farmland, and it is located in the county within which the existing ASA is located.

(ii) There is a mansion house on the parcel of farmland, and the mansion house is bisected by the dividing line between the two counties. The landowner has designated the county within which the ASA is located as the situs of assessment for tax purposes.

(iii) There is no mansion house on the parcel of farmland, but the majority of the parcel's viable agricultural land lies within the existing ASA.

(2) An agricultural conservation easement is purchased by any of the following with respect to the parcel:

(i) The county.

(ii) The county and the Commonwealth, jointly.

(iii) The County and a local government unit, jointly.

(iv) The county, the Commonwealth and a local government unit, jointly.

*Example 1:* A parcel of farmland straddles the boundary line between County A and County B. The portion of the parcel in County A is in an ASA. There is no mansion house on the parcel. The majority of the parcel's viable agricultural land is in County A. County A purchases an agricultural conservation easement with respect to the entire parcel. Under these facts, as of the purchase of the agricultural conservation easement the portion of the parcel in County B becomes part of the ASA in which the remainder of the parcel is located.

*Example 2:* A parcel of farmland straddles the boundary line between County A and County B. There is a mansion house on the parcel, and it is located in County A. County A purchases an agricultural conservation easement with respect to the entire parcel. Under these facts, as of the purchase of the agricultural conservation easement the portion of the parcel in County B becomes part of the ASA in which the remainder of the parcel is located.

*Example 3:* A parcel of farmland straddles the boundary line between County A and County B. There is a mansion house on the parcel, and it straddles the dividing line between County A and County B. County A is the situs of the mansion house for tax purposes. County A purchases an agricultural conservation easement with respect to the entire parcel. Under these facts, as of the purchase of the agricultural conservation easement the portion of the parcel in County B becomes part of the ASA in which the remainder of the parcel is located.

(b) *Caveat.* Subsection (a) is not applicable with respect to agricultural conservation easement purchases made solely by the Commonwealth.

## **Subchapter D. REMOVING LAND FROM AN EXISTING ASA**

### **§ 1381.40. Removing land that has been in an ASA for seven years or more.**

(a) *Removal permitted.* If land has been in an ASA for seven years or more, it may be removed from the ASA at the landowner's discretion, if both of the following occur:

(1) The landowner submits to the governing body of the local government unit in which the ASA is situated a written notification to have the land deleted from the ASA. The written notification shall contain information sufficient to identify the land to be removed, and shall include the acreage of the land to be removed.

(2) The written notification is submitted by certified mail, with return receipt requested.

(b) *Limitation on authority.* The governing body does not have the authority to deny a landowner's notification to remove land from an ASA.

(c) *Effective date of removal.* The removal of land from an ASA shall take effect upon receipt of this written notification by the governing body in accordance with paragraph (a)(2).

(d) *Recording the removal of land from an ASA.* The governing body may wait until the next 7-year review or interim review to record deletions of land from the ASA accomplished by the written notification described in this section.

(e) *Failure of remaining land to meet ASA eligibility requirements.* If the removal of land from an ASA in response to a landowner's written notification causes the remaining lands of the ASA to fail to meet the minimum standards for an ASA, as set forth in § 1381.11 (relating to eligibility to propose the creation of an ASA), the ASA shall terminate. The governing body shall be responsible to record this termination with the offices or entities described in § 1381.21(a)(1)-(3) (relating to filing of ASA description by governing body; recording of the ASA description).

**§ 1381.41. Removing land in the course of the 7-year review or an interim review.**

(a) *Removal permitted.* The landowner shall have the discretion to remove the land from the ASA in which it is located, if this removal is done in the course of the 7-year review process described in § 1381.50 (relating to 7-year review), or the interim review process described in § 1381.51 (relating to interim review), and both of the following occur:

(1) The landowner submits to the governing body of the local government unit in which the ASA is situated a written notification to have the land deleted from the ASA. The written notification shall contain information sufficient to identify the land to be removed, and shall include the acreage of the land to be removed.

(2) The written notification is submitted by certified mail, with return receipt requested.

(b) *Limitation on authority.* The governing body does not have the authority to deny a landowner's notification to remove land from an ASA.

(c) *Effective date of removal.* The removal of land from an ASA shall take effect upon receipt of this written notification by the governing body in accordance with paragraph (a)(2).

(d) *Recording the removal of land from an ASA.* The governing body shall record the removal of land from an ASA under this section as it would any other addition or deletion of land in the course of the 7-year review or interim review.

(e) *Failure of remaining land to meet ASA eligibility requirements.* If the removal of land from an ASA in response to a landowner's written notification causes the remaining lands of the ASA to fail to meet the minimum standards for an ASA, as set forth in § 1381.11 (relating to eligibility to propose the creation of an ASA), the ASA shall terminate. The governing body shall be responsible to record this termination with the offices or entities described in § 1381.21(a)(1)-(3) (relating to filing of ASA description by governing body; recording of the ASA description).

## **Subchapter E. 7-YEAR REVIEW AND INTERIM REVIEW**

### **§ 1381.50. 7-Year review.**

(a) *General.* The governing body of the local government unit shall review an ASA seven years from the date of its creation and every seven years thereafter, in accordance with the procedure set forth in this section.

(b) *Advisory bodies to be consulted.* The governing body conducting a 7-year review shall request the recommendations of the planning commission, the county planning commission and the advisory committee with respect to the ASA that is being reviewed. The governing body shall seek and obtain these recommendations on its own timetable, but sufficiently in advance of the end of the seventh year so as to allow a summary of the recommendations of these advisory bodies to be included in the notice described in subsections (c), (d) and (e).

(c) *Notice required 210 days or more before the end of the seventh year.* The governing body conducting a 7-year review shall, at least 210 days prior to the end of the seventh year, provide notice of the 7-year review of the ASA and the public hearing to be held as part of that review.

(d) *Notice procedure.* The notice described in subsection (c) shall be accomplished by doing all of the following:

(1) Publishing a hearing notice in a newspaper having general circulation in the area in which the ASA is located.

(2) Providing a written hearing notice to any person owning land within the ASA.

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

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

- (1) A statement of the time, date and location of the public hearing.
- (2) A general description of the ASA being reviewed.
- (3) A general description of the recommendations of the planning commission, the county planning commission and the advisory committee.
- (4) Notification that interested persons may, within 30 days of the date of the notice, submit proposed modifications to the ASA to the governing body.

(f) *Public hearing required between 120 and 180 days before the end of the seventh year.* The governing body conducting a 7-year review shall, at least 120 days prior to the end of the seventh year and no more than 180 days prior to the end of the seventh year, conduct a public hearing to review the ASA.

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

(h) *Factors to be considered by governing body.* The governing body shall consider the factors set forth in § 1381.18(b) (relating to decision of local government unit) in reaching its decision to approve the ASA without change, modify the ASA or terminate the ASA.

(i) *Decision of governing body.* The governing body conducting a 7-year review shall, following the public hearing, approve the ASA without change, modify the ASA or terminate the ASA.

(j) *Notice of decision.* The governing body conducting a 7-year review shall provide notice of its decision in accordance with the requirements of § 1381.19 (relating to notice of decision of local government unit).

(k) *Failure to act is deemed to be approval of the ASA without modification.* If the governing body fails to complete the steps set forth in subsections (a) through (i) prior to the end of the seventh year, or if a proposed modification to the ASA is rejected, the ASA shall be deemed to be readopted without modification for another seven years.

(l) *Recording a modification of an ASA or a termination of an ASA.* If the governing body modifies an ASA or terminates an ASA it shall, within ten days of its decision, file a notice of termination or modification 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.

(m) *Responsibility of the recorder.* A recorder of deeds receiving a notice of termination or modification of an ASA from a governing body as described in subsection (l) 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.

**§ 1381.51. Interim review.**

(a) *Discretion.* If 10% or more of the land within an ASA is diverted to residential or nonagricultural commercial development at any time prior to a 7-year review of the ASA, the governing body may review the ASA and consider modifying or terminating the ASA, in accordance with the procedure set forth in this section.

(b) *Advisory bodies to be consulted.* If the governing body elects to pursue the interim review described in subsection (a), it shall request, in writing, that the planning commission, the county planning commission and the advisory committee review the ASA and make recommendations with respect to modification or termination of the ASA within 30 days of receiving the written request.

(c) *Responsibility of advisory bodies.* The advisory bodies referenced in subsection (b) shall issue written recommendations within 30 days of receiving a request for recommendations from the governing body.

(d) *Public hearing requirements.* . If the governing body elects to pursue the interim review described in subsection (a), it shall conduct a public hearing no sooner than 45 days after it submits its request for recommendations to the planning commission, the county planning commission and the advisory committee. The governing body shall provide the same notice for the public hearing as is described in §§ 1381.17(b) and (c) (relating to public hearing by local government unit on ASA proposal).

(e) *Location of public hearing.* The public hearing described in subsection (d) 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.

COMMONWEALTH OF PENNSYLVANIA



GOVERNOR'S OFFICE OF GENERAL COUNSEL  
DEPARTMENT OF AGRICULTURE

2301 N. Cameron Street • Room 201  
Harrisburg, Pennsylvania 17110-9408

January 29, 2002

OFFICE OF CHIEF COUNSEL

Tel: 717-787-8744  
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The Independent Regulatory Review Commission  
14<sup>th</sup> Floor  
333 Market Street  
Harristown #2  
Harrisburg, PA 17120

**Re: NOTICE OF PROPOSED RULEMAKING**  
**Department of Agriculture**  
**7 Pa. Code Chapters 138, 138e and 138l**  
**Agricultural Area Security Program; Agricultural Conservation**  
**Easement Purchase Program; Agricultural Security Area Program**  
**I.D. No. 2-138**

Dear Sirs:

Please find enclosed copies of the Face Sheet, Preamble, Annex "A" and Regulatory Analysis Form with respect to the above proposed regulation.

Copies of these documents have been submitted to the majority and minority chairpersons of the House and Senate Agriculture and Rural Affairs Committees and to the Legislative Reference Bureau on this date.

The proposed regulation will be published in the February 9, 2002 edition of the *Pennsylvania Bulletin*. If I may be of further information, please advise.

Sincerely,

A handwritten signature in black ink, appearing to read "Dwight Jared Smith".

Dwight Jared Smith  
Assistant Counsel

Enclosures

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 2-138

SUBJECT: Agricultural Area Security Program; Agricultural Conservation Easement Purchase Program; Agricultural Security Area Program

AGENCY: DEPARTMENT OF AGRICULTURE

**TYPE OF REGULATION**

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

RECEIVED 11/29/02

**FILING OF REGULATION**

DATE	SIGNATURE		DESIGNATION
<u>1/29/02</u>	<u>[Signature]</u>	Bunt	HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
<u>1/29/02</u>	<u>[Signature]</u>	Daley	<u>1/29/02</u>
<u>1/29/02</u>	<u>[Signature]</u>	Waugh	SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
<u>1/29/02</u>	<u>[Signature]</u>	O'Pake	INDEPENDENT REGULATORY REVIEW COMMISSION
<u>1/29/02</u>	<u>[Signature]</u>		ATTORNEY GENERAL
<u>1/29/02</u>	<u>[Signature]</u>		LEGISLATIVE REFERENCE BUREAU

January 28, 2002