

**CHAPTER 1381. AGRICULTURAL SECURITY
AREA PROGRAM**

Subchap.		Sec.
A.	PRELIMINARY PROVISIONS	1381.1
B.	FORMATION OF AN AGRICULTURAL SECURITY AREA.....	1381.11
C.	ADDING LAND TO AN EXISTING ASA	1381.31
D.	REMOVING LAND FROM AN EXISTING ASA.....	1381.41
E.	SEVEN-YEAR REVIEW AND INTERIM REVIEW	1381.51

Authority

The provisions of this Chapter 1381 issued under the Agricultural Area Security Law (3 P. S. §§ 901—915), unless otherwise noted.

Source

The provisions of this Chapter 1381 adopted April 30, 2004, effective May 1, 2004, 34 Pa.B. 2421, unless otherwise noted.

Subchapter A. PRELIMINARY PROVISIONS

Sec.	
1381.1.	Definitions.
1381.2.	Purpose.
1381.3.	Contacting the Department.
1381.4.	Benefits of having land within an ASA.

§ 1381.1. Definitions.

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

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

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

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

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agricultural land is located on the basis of criteria and procedures which predate February 12, 1989, and which was not withdrawn from the ASA by August 10, 1989, by the owner providing written notice of

withdrawal to the county governing body or governing body of the municipality in which the land is located.

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

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

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

Advisory committee—An agricultural security area advisory committee.

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

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

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

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

Agricultural production—

(i) The production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of the crops, livestock or livestock products if more than 50% of the processed or merchandised products are produced by the farm operator.

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

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

Contiguous acreage—

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

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

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

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

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

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

Crops, livestock and livestock products—The term includes:

- (i) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry-beans.
- (ii) Fruits, including apples, peaches, grapes, cherries and berries.
- (iii) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms.
- (iv) Horticultural specialties, including nursery stock and ornamental shrubs, ornamental trees and flowers.
- (v) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.
- (vi) Timber, wood and other wood products derived from trees.
- (vii) Aquatic plants and animals and their byproducts.

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

Department—The Department of Agriculture of the Commonwealth.

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

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

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

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

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

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

Grazing or pasture land—Land, other than land enrolled in the USDA Conservation Reserve Program, used primarily for the growing of grasses and legumes which are consumed by livestock in the field and at least 90% of which is clear of trees, shrubs, vines or other woody growth not consumed by livestock.

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

Harvested cropland—

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

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

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

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

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

Land which has been devoted primarily to agricultural use—

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

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

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

Local government unit—A city, borough, township or town or any home rule municipality, optional plan municipality, optional charter municipality or similar general purpose unit of government which may be created or authorized by statute.

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

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

Normal farming operation—

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

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

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

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

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

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

Planning commission—A local government planning commission or agency which has been designated by the governing body of the local government unit

to establish and foster a comprehensive plan for land management and development within the local government unit.

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

Secretary—The Secretary of Agriculture of the Commonwealth.

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

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

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

State Board—The State Agricultural Land Preservation Board.

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

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

Title report—

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

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

USDA—The United States Department of Agriculture.

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

Viable agricultural land—Land suitable for agricultural production and which will continue to be economically feasible for that use if real estate taxes, farm use restrictions and speculative activities are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of urban and related nonagricultural development.

§ 1381.2. Purpose.

This chapter provides regulatory guidance with respect to the benefits of having land in an ASA, the application and review process under which an ASA is

formed, the procedures involved in recording an ASA, the addition of land to an existing ASA and the removal of land from an existing ASA, and to otherwise further the purposes of the act.

§ 1381.3. Contacting the Department.

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

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

Cross References

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

§ 1381.4. Benefits of having land within an ASA.

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

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

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

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

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

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

Subchapter B. FORMATION OF AN AGRICULTURAL SECURITY AREA

- Sec.
- 1381.11. Agricultural security area advisory committee.
 - 1381.12. Eligibility to propose the creation of an ASA.
 - 1381.13. ASA proposal form.
 - 1381.14. Fees.
 - 1381.15. ASA located in more than one local government unit.
 - 1381.16. Submitting an ASA proposal form to the local government unit.
 - 1381.17. Local government unit action upon receipt of an ASA proposal.
 - 1381.18. Public hearing by local government unit on ASA proposal.
 - 1381.19. Decision of local government unit.
 - 1381.20. Notice of decision of the local government unit.
 - 1381.21. Effective date of the creation or modification of an ASA.
 - 1381.22. Filing of ASA description by governing body; recording of the ASA description.
 - 1381.23. Notification of Secretary by governing body.
 - 1381.24. Planning commission action with respect to an ASA proposal.
 - 1381.25. Advisory committee action with respect to an ASA proposal.
 - 1381.26. Factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee.

§ 1381.11. Agricultural security area advisory committee.

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

(b) *Appointment and composition of an advisory committee.* An advisory committee shall be appointed by the chairperson of the governing body of the local government unit in which the ASA is located, or is to be located. The members of the advisory committee shall serve at the pleasure of that chairperson. An advisory committee shall be composed of five members, as follows:

- (1) A member of the governing body of the local government unit, who shall be chairperson of the advisory committee.
- (2) One citizen residing within the local government unit.
- (3) Three active farmers, each representing a different private or corporate farm situated, at least in part, within the local government unit.

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

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

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

- (1) The land described in the proposal is used for agricultural production (although a reasonable amount of nonviable farm land and nonfarm land may be included if it is not feasible to exclude it).
- (2) Some portion of the land described in the proposal lies within the local government unit to which the proposal is submitted.
- (3) The total acreage described within the proposal comprises at least 250 acres of viable agricultural land.
- (4) If tax parcel numbers or accounts reflect that a parcel is not contiguous to other land included in the proposal, that tax parcel or account is at least one of the following:
 - (i) Comprised of 10 or more acres.
 - (ii) Has anticipated yearly gross income of at least \$2,000 from agricultural production.

Cross References

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

§ 1381.13. ASA proposal form.

- (a) *Governing body has discretion.* The governing body may prescribe the manner and form of the process under which it will receive and consider proposals for the formation of an ASA, to the extent the exercise of that discretion does not violate any provision of the act or this chapter. A governing body may require the use of its own ASA proposal form meeting the requirements of subsection (b), or may use the Department's ASA proposal form as described in subsection (c).
- (b) *Minimum requirements for a proposal.* An ASA proposal shall, at a minimum, contain the following:
 - (1) The name of the township, borough, city or other local government unit to which the ASA proposal is submitted.
 - (2) The county of the local government unit to which the ASA proposal is submitted.
 - (3) A description of the boundaries of the proposed ASA.
 - (4) With respect to each farmland parcel listed on the ASA proposal:
 - (i) The printed name and address of each person owning land proposed for inclusion in the ASA.
 - (ii) The signature of each person described in subparagraph (i).
 - (iii) The county tax parcel number or account number identifying the parcel.

(iv) The acreage of the parcel.

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

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

§ 1381.14. Fees.

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

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

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

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

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

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

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

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

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

(3) A parcel of farmland that straddles the boundary line between two local government units shall be automatically included in the ASA if the majority of the parcel's viable agricultural land is already in the ASA and an agricultural

conservation easement is purchased with respect to the parcel, as described in § 1381.33 (relating to automatic inclusion of certain parcels bisected by the dividing line between local government units upon purchase of an agricultural conservation easement by certain entities).

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

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

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

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

Cross References

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

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

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

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

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

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

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

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

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

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

(i) Any local government unit having land within or adjacent to the proposed ASA.

(ii) Any landowner who owns land proposed to be included within the ASA.

(iii) Any landowner with lands adjacent to or near the proposed ASA.

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

(5) A statement that at the termination of the 15-day period described in paragraph (4), the ASA proposal and all proposed modifications will be submitted to the planning commission and the advisory committee, and that thereafter a public hearing will be held on the proposal, proposed modifications and the recommendations of the planning commission and advisory committee.

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

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

Cross References

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

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

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

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

- (2) The expiration of the 45-day review periods afforded the planning commission under § 1381.24(b) and the advisory committee under § 1381.25(b).
- (b) *Hearing notice required.* The governing body shall provide notice of the public hearing described in subsection (a) by doing the following:
- (1) Publishing a hearing notice in a newspaper having general circulation in the proposed ASA.
 - (2) Providing a written hearing notice to the following:
 - (i) Any landowner who proposed a modification to the ASA.
 - (ii) Any person owning land included in the proposed modifications to an existing ASA.
 - (iii) Any person owning land included within the proposed ASA.
 - (3) Posting a written hearing notice in at least five conspicuous places within, adjacent to or near the proposed ASA or the proposed modifications.
- (c) *Contents of hearing notice.* The hearing notice described in subsection (b) shall contain the following:
- (1) A statement of the time, date and location of the public hearing.
 - (2) A description of the proposed ASA, and any proposed additions or deletions.
 - (3) A summary of the recommendations contained in the reports of the planning commission and the advisory committee. If the planning commission did not render its report within the 45-day period described in § 1381.24(b), or the advisory committee did not render its report within the 45-day period described in § 1381.25(b), the notice shall report this fact and indicate that the reviewing body is deemed to have given its approval to the proposed ASA or proposed modifications.
 - (4) A statement that the public hearing will be held concerning the following:
 - (i) The original ASA proposal.
 - (ii) Any written amendments proposed during the review period.
 - (iii) Any recommendations proposed by the planning commission or the advisory committee.
- (d) *Location of public hearing.* The public hearing described in subsection (a) shall be held at a place either within the proposed ASA or at a location readily accessible to the proposed ASA—such as a nearby municipal building.

Cross References

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

§ 1381.19. Decision of local government unit.

- (a) *180-day deadline.* A governing body shall act to adopt or reject an ASA proposal, or any modification of a proposal, within 180 days of the official date

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

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

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

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

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

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

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

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

Cross References

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

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

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

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

- (c) *Contents of written decision.* The written decision described in subsection (a) shall contain the following:
- (1) Findings of fact.
 - (2) A review of the evaluation criteria in § 1381.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee).
 - (3) A discussion of the reasons for rejection or modification of the proposal.

Cross References

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

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

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

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

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

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

inclusion of certain parcels bisected by the dividing line between local government units). The ASA shall become effective upon the date the governing body of the adjoining local government unit approves the ASA.

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

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

Cross References

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

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

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

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

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

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

Cross References

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

§ 1381.23. Notification of Secretary by governing body.

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

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

- (1) The number of landowners whose land is in the ASA. The notification shall include only one landowner when land is under multiple ownership or is comprised of multiple parcels or accounts.
- (2) The total acreage of the ASA.
- (3) The effective date of the approval, modification or termination.
- (4) The date upon which the approval, modification or termination was recorded in accordance with § 1381.22.

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

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

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

(c) *Factors to be considered.* The planning commission shall consider the factors in § 1381.26 (relating to factors to be considered by the governing body

of the local government unit, the planning commission and the advisory committee) in reaching its recommendation concerning the ASA proposal and proposed modifications.

(d) *Contents of report.*

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

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

Cross References

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

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

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

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

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

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

Cross References

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Soil surveys of the Pennsylvania State University.

- (2) Soil surveys and other information provided by the National Cooperative Soil Survey.
- (3) Soil survey maps prepared by USDA-NRCS.
- (4) The United States census of agricultural categories of land use classes.
- (5) Any other relevant published data, maps, charts, or results of soil or land use surveys made by any county, State or Federal agency.

Cross References

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

Subchapter C. ADDING LAND TO AN EXISTING ASA

- Sec.
- 1381.31. Adding land to an existing ASA.
- 1381.32. Automatic inclusion of certain parcels bisected by the dividing line between local government units.
- 1381.33. 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.
- 1381.34. 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.

§ 1381.31. 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 the following apply:

(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 § 1381.51 (relating to 7-year review) or an interim review as described in § 1381.52 (relating to interim review).

Cross References

This section cited in 7 Pa. Code § 1381.15 (relating to ASA located in more than one local government unit).

§ 1381.32. 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 the following apply:

- (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.

Cross References

This section cited in 7 Pa. Code § 1381.15 (relating to ASA located in more than one local government unit); and 7 Pa. Code § 1381.21 (relating to effective date of the creation or modification of an ASA).

§ 1381.33. 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 the following apply:

(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: 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) *Exception.* Subsection (a) does not apply with respect to agricultural conservation easement purchases made solely by the Commonwealth.

Cross References

This section cited in 7 Pa. Code § 1381.15 (relating to ASA located in more than one local government unit); and 7 Pa. Code § 1381.21 (relating to effective date of the creation or modification of an ASA).

§ 1381.34. 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 the following apply:

(1) One of the following applies:

(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) *Exception.* Subsection (a) does not apply with respect to agricultural conservation easement purchases made solely by the Commonwealth.

Cross References

This section cited in 7 Pa. Code § 1381.15 (relating to ASA located in more than one local government unit); and 7 Pa. Code § 1381.21 (relating to effective date of the creation or modification of an ASA).

Subchapter D. REMOVING LAND FROM AN EXISTING ASA

Sec.

1381.41. Removing land that has been in an ASA for 7 years or more.

1381.42. Removing land in the course of the 7-year review or an interim review.

§ 1381.41. Removing land that has been in an ASA for 7 years or more.

(a) *Removal permitted.* If land has been in an ASA for 7 years or more, it may be removed from the ASA at the landowner's discretion, if both of the following apply:

(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 subsection (a)(2).

(d) *Recording the removal of land from an ASA.* The governing body shall record the description of an ASA from which land has been removed within 10 days of the effective date of the removal. This recording shall be in accordance with § 1381.22 (relating to filing an ASA description by governing body; recording of the ASA description).

(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 § 1381.12 (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 § 1381.22(a)(1)—(3).

§ 1381.42. 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 § 1381.51 (relating to 7-year review), or the interim review process described in § 1381.52 (relating to interim review), and the following apply:

(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 subsection (a)(2).

(d) *Recording the removal of land from an ASA.* The governing body shall record the description of an ASA from which land has been removed within 10 days of the effective date of the removal. This recording shall be in accordance with § 1381.22 (relating to filing an ASA description by governing body; recording of the ASA description).

(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 § 1381.12 (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 § 1381.22(a)(1)—(3) (relating to filing of ASA description by governing body; recording of the ASA description).

Subchapter E. SEVEN-YEAR REVIEW AND INTERIM REVIEW

Sec.

1381.51. Seven-year review.

1381.52. Interim review.

§ 1381.51. Seven-year review.

(a) *General.* The governing body of the local government unit shall review an ASA 7 years from the date of its creation and every 7 years thereafter, in accordance with the procedure 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 7th year to allow a summary of the recommendations of these advisory bodies to be included in the notice described in subsections (c)—(e).

(c) *Notice required 30 days or more before commencement of review.* The governing body conducting a 7-year review shall, at least 30 days prior to the commencement of a 7-year review, 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 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 7th year.* The governing body conducting a 7-year review shall, at least 120 days prior to the end of the 7th year and no more than 180 days prior to the end of the 7th 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 in § 1381.19(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 § 1381.20 (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 in subsections (a)—(i) prior to the end of the 7th year, or if a proposed modification to the ASA is rejected, the ASA shall be deemed to be readopted without modification for another 7 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 10 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.

Cross References

This section cited in 7 Pa. Code § 1381.31 (relating to adding land to an existing ASA); and 7 Pa. Code § 1381.42 (relating to removing land in the course of the 7-year review or an interim review).

§ 1381.52. 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 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 § 1381.18(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.

Cross References

This section cited in 7 Pa. Code § 1381.31 (relating to adding land to an existing ASA); and 7 Pa. Code § 1381.42 (relating to removing land in the course of the 7-year review or an interim review).

[Next page is 139-1.]