

Agricultural Security Areas

Protecting Farms from Condemnation and Unreasonably Restrictive Ordinances



Within an agricultural security area (ASA), a farm is entitled to special protection from condemnation and laws and ordinances that would unreasonably restrict farming operations. Local governments in Pennsylvania may establish ASAs but only in response to petitions from landowners interested in enrolling their land in an ASA.

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Introduction

Agricultural security areas are intended to promote viable farming operations over the long term by strengthening the rights of farmers to farm and the farming community's sense of security in their use of the land. Landowners in an ASA receive protection from local laws and ordinances that would unreasonably restrict farm practices, as well as protection from condemnation.

Landowners May Petition; Municipality Must Approve

Enrollment of land in an agricultural security area is purely voluntary under Pennsylvania law. The establishment of an ASA begins with interested landowners petitioning their local government to establish an ASA. To qualify to petition, the land actively farmed by the petitioning owners must add up to at least 250 acres. Cropland, pasture, and woodland can all be included in an ASA.

The governing body of the local municipality may approve the proposal or a modified version, or it may reject the proposal. (Occasionally, a governing body will oppose an ASA designation because the governing body is interested in promoting development of land within the proposed ASA.)

Enrollment

As of 2017, there are roughly 4 million acres of land enrolled in ASAs statewide. These areas are comprised of land from over 40,000 landowners in nearly 1,000 townships across 65 counties.

Enabling Act

The Pennsylvania General Assembly first authorized the establishment of agricultural security areas in 1981 with passage of the [Agricultural Area Security Law](#)

(Act of June 30, 1981, P.L. 128, No. 43) (3 P.S. §§ 901-915), last amended in 2013.

Benefits of ASAs

ASAs promote the continuity, growth, and viability of agriculture in a variety of ways:

- Local governments cannot enact local laws or ordinances within the ASA that would unreasonably restrict farm structures or farm practices (unless they bear a direct relationship to public health or safety).
- Municipal laws or ordinances defining or prohibiting a public nuisance must exclude normal farming operations with an ASA, preventing unreasonable restrictions on agriculture.
- Land in an ASA receives additional protections from condemnation.
- Land must be enrolled in an ASA (at least 500 acres) in order to qualify for Pennsylvania's [Agricultural Conservation Easement Purchase Program](#).
- State agencies must encourage the maintenance of viable farming in ASAs.

No Restrictions Imposed with ASA

An ASA is not zoning. There are no restrictions placed on land use as a result of being in an ASA; a landowner retains the right to subdivide, sell, or change the use of their land regardless of their participation in an ASA. There are no penalties for changing land in an ASA from agricultural use to other uses.

(Participation in an ASA, however, does not exempt the land and landowners from local land use ordinances and other laws, except for the important protections noted above. Nor does ASA participation impact deed restrictions or other real property based restrictions on the land.)

Farms in an ASA are not required to be in current operation. As long as the farms consist of viable land, are at least 10 acres in size (or have an expected \$2,000 yearly gross income from agricultural production), and have not been diverted to residential or nonagricultural commercial use, the farms do not need to be currently operating to remain in an ASA.

Protection from Condemnation

Land in an ASA receives additional protections from condemnation. No state agency may condemn land within an ASA that is being used for productive agricultural purposes (not including timber production), unless prior approval has been obtained from the Agricultural Lands Condemnation Approval Board (ALCAB).

No political subdivision, authority, public utility, or other body with powers of eminent domain may condemn any land within an ASA for any purpose, unless prior approval has been obtained from the ALCAB and from each of the following: the governing bodies of the local government units encompassing the ASA, the county governing body, and the Agricultural Security Area Advisory Committee.

However, approval is not required for:

- An underground public utility facility that does not permanently impact the tilling of soil.
- Any facility of an electric cooperative corporation.
- Any public utility facility that has been reviewed and ratified or approved by the Pennsylvania Public Utility Commission or the Federal Energy Regulatory Commission.

Review by the Agricultural Lands Condemnation Approval Board

All state-funded development projects that might affect land in established ASAs will be reviewed by the appropriate local agricultural advisory committee and by the ALCAB. Each reviewing body may suggest project modifications to ensure the integrity of the ASAs against non-farm encroachment.

- In the case of condemnation for highway purposes or for the disposal of solid or liquid waste, the ALCAB will only approve the proposed condemnation if there is no reasonable alternative to using the land within the ASA for the project. Activities relating to existing highways, such as (but not limited to) widening roadways, eliminating curves, or road reconstruction, do not require approval.

- In the case of condemnation for other purposes, the ALCAB will approve the condemnation only if (a) the project will not adversely affect the preservation and enhancement of agriculture or municipal resources within the area, or the environmental and comprehensive plans, policies, and goals of the county, municipality, and the state; or (b) there is no reasonable alternative to using the land within the ASA for the project.

Agricultural Conservation Easements

The Agricultural Area Security Law also authorizes the [Pennsylvania Agricultural Conservation Easement Purchase Program](#), a voluntary program that enables owners of qualifying farms to permanently prevent non-agricultural development of their farms by selling agricultural conservation easements to state and local government. To qualify for the program, the farm must be within an ASA of at least 500 acres.

Creating an ASA in One Local Government Unit

The owners of qualifying farmland initiate the process of establishing an ASA by submitting a proposal to the governing body of the municipality. (Act 43 defines a local government as 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.) The governing body reviews and subsequently approves, modifies, or rejects the proposals.

Proposal for Creation

Any landowner(s) can submit a proposal, provided that they own at least 250 acres of viable agricultural land within in the proposed ASA. The proposed Area may consist of any number of noncontiguous tax parcels or accounts, as long as each is at least ten acres or has an anticipated yearly gross income of \$2,000 or more from agricultural production. Landowners are not required to survey their parcels to join an ASA, except for when an individual puts a portion of their entire acreage into an ASA.

Participation

Participation in the ASA is voluntary for landowners within the jurisdiction of the governing body, including those not among the original petitioners. The removal of land from an ASA can only occur after seven years or whenever the ASA is subject to review by the governing body.

Submitting the Proposal

Proposals for the creation of an ASA should be submitted in the manner prescribed by the governing body of the local government unit where the proposed Area is situated. They should include a description of the proposed Area, including its boundaries. Proposals must be submitted by certified mail with return receipt requested. The return receipt serves as official notice that the governing body has received the proposal and verify the official submission date.

Modifying the Proposal

Proposals may be modified up to 15 days before the advertisement of the required public hearing.

Fees

There are no fees for submitting an application. However, a local governing body may, by resolution, impose reasonable filing fees for an application that proposes to include substantially the same lands as proposed in a previously submitted application that the governing body has rejected within the last 36 months.

Notice

The local governing body must acknowledge receipt of a proposal at its next meeting and must provide public notice of the proposal in a newspaper with circulation in the ASA. The body must also post the notice in five conspicuous places within or near the proposed ASA.

If the local governing body fails to provide notice within 15 days of receiving the proposal, an adversely affected party may get a court order forcing the body to comply.

The notice must contain the following information:

1. A statement that a proposal for an ASA has been filed with the governing body.

2. A statement that the proposal will be on file and open to public inspection at the municipality office.
3. A statement that any local government unit encompassing or adjacent to the proposed ASA, or anyone who owns land that would be included in or near the ASA who wishes that their land be included or not included, may propose modifications of the proposed Area in a manner prescribed by the governing body. The statement must indicate that they have 15 days from the date of the notice to file objections and/or modifications.
4. A statement that at the end of the 15-day period, the proposal and proposed modifications will be submitted to the planning commission and the ASA Advisory Committee. A public hearing will then be held on the proposal, modifications, and recommendations of the planning commission and advisory committee.

ASA Advisory Committee

When the ASA proposal is received by the local government, that body must establish an ASA Advisory Committee. This committee consists of three active farmers (each representing a different farm), one citizen who lives in the municipality, and one member of the governing body of the local government, who serves as the chairperson of the committee. The members will not receive a salary, but may be reimbursed for costs incurred for the work of the committee.

The committee will advise the governing body and work with the planning commission in relation to the proposed establishment, modification, and termination of ASAs. In particular, the committee is designed to offer expert advice regarding the desirability of such actions, including advice about the nature of farming and farm resources within the proposed Area and the general impacts of farming on the municipality.

Report by Planning Commissions and the ASA Advisory Committee

At the end of the 15-day comment period, the local and county planning commissions and the ASA Advisory Committee have up to 45 days to review the

proposal and proposed modifications and report their recommendations to the governing body. The local planning commission must specifically report on the potential effect the proposal and proposed modifications would have on the municipality's planning policies and objectives. The failure of these groups to submit their reports within 45 days will constitute their approval of the ASA.

Public Hearing

Once the planning commission and advisory committee have reported back to the local governing body, or after 45 days have elapsed, a properly noticed public hearing must be held in a place within the proposed Area or otherwise readily accessible to the proposed Area, such as a municipal building. Notification of the hearing must be published in a newspaper with a general circulation in the proposed Area and in five conspicuous places within, adjacent, or near to the proposed area. Additionally, written notification must be given to landowners whose land is included in the ASA or proposed modifications.

The notice shall contain the following information:

1. The time, date, and place of the public hearing.
2. A description of the proposed area, any proposed amendments, and any recommendations of the planning commissions or advisory committee.
3. A statement that the public hearing will be held concerning the proposal, amendments, and recommendations.

Evaluation Criteria

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

1. Land proposed for inclusion in an ASA must have soils conducive to agriculture. This factor is automatically satisfied if at least 50% of the land falls into one of the following categories: land whose soils are classified in NRCS Classes I-IV; land that meets the NRCS classification of "unique farm land"; or land whose soils do not meet Classes I-IV but which is currently in active farm use and is being maintained in accordance

with the soil erosion and sedimentation plan applicable to such land.

2. Use of land proposed for inclusion must be compatible with municipal comprehensive plans. Any zoning must permit agricultural use, but does not need to exclude other uses.
3. The land proposed for inclusion must be viable agricultural land.
4. Additional factors to be considered are the extent and nature of farm improvements, anticipated trends in agricultural economic and technological conditions, and any other relevant information.

Decision on the Proposal

After completing these procedures and considerations, the governing body may adopt or modify the proposal. (Common modifications are the inclusion of adjacent viable farmland and the exclusion of nonviable farm land and nonfarm land.) Regardless of what action is taken, the body must adopt or reject the proposal, or any modification, no later than 180 days from the date the proposal was originally submitted. If the body fails to act within this period, the proposal will be deemed adopted without modification. An ASA becomes effective upon its adoption or upon expiration of the 180-days.

Within 10 days of the governing body's decision to reject or modify the proposal, it must submit a written decision to the landowner(s). This must include a finding of fact, review of the prescribed evaluation criteria, and a discussion of reasons for rejection or modification of the proposal.

If the governing body accepts the proposal and creates an ASA, it has 10 days to file a description of the Area, including tax parcel identifiers, with:

1. The county recorder of deeds, who must record the description in a manner which is sufficient to give notice to all persons who have, may acquire, or may seek to acquire an interest in land in or adjacent to the created ASA.
2. The planning commission of the county.
3. The planning commission of the municipality.

If the governing body fails to file a description or the recorder of deeds fails to record the created ASA in

accordance with these provisions, any person adversely affected may file a petition with the court of common pleas to compel immediate compliance with the provisions.

Once the description has been recorded, the local governing body has 10 days to provide written notification to the Secretary of Agriculture that includes: the number of landowners in the ASA, total acreage of the ASA, approval date, recording date, and a copy of the recorded document, which indicates the location of recording (book and page or instrument number).

Creating an ASA Located in More than One Local Governmental Unit

If a proposed ASA lies in more than one municipality, a proposal must be submitted to each local governing body; joint or multi-municipal ASAs are not permitted. Each of the local governing bodies must follow the procedures described above to create an ASA located in a single local government unit.

For an ASA with properties located in more than one municipality, the minimum acreage requirements of the proposal must be based upon the entire proposal and not the land within individual municipalities. The governing bodies may cooperate in the review of a proposed ASA and may provide joint public notices, a joint ASA Advisory Committee, and a joint public hearing on the ASA. If a joint ASA Advisory Committee is established, its membership must reflect the requirements for each individual municipality. For example, a joint ASA Advisory Committee consisting of two local government units would have 10 members, and one with 3 municipalities would have 15. Each local government unit must approve the proposed ASA at a properly advertised meeting of that body. Each local government unit must independently approve the proposal.

A rejection by one governing body excludes only the portion of the proposal that is situated within that local government unit. The remaining portions of the proposed ASA may be approved by the other local governments if the total acreage approved is at least 250 acres and meets all other requirements.

Automatic Inclusion of Property in an ASA

When a parcel of farmland is transected by the dividing line of two local governments, if the majority of the viable agricultural land lies within an approved ASA, all land of that parcel will automatically become part of the ASA. This will be true even if the local government unit in which the minority of the parcel is located has not approved an ASA.

Additions to ASAs During the Seven-Year Period

The addition of land to an ASA may occur at any time. If a local government has an existing ASA, new properties wishing to become part of an ASA will be considered to be additions to the original ASA, rather than comprising a new ASA.

Proposals For Addition

Any owner or owners of land used for agricultural production may submit a proposal to the governing body for the addition of the land to an ASA. The proposed addition may consist of any number of noncontiguous tax parcels or accounts, if each is at least ten acres or has an anticipated yearly gross income of at least \$2,000 from agricultural production.

A proposal for an addition to an existing ASA is submitted and reviewed using the same procedures used for creating a new ASA.

Addition of Land Beyond ASA's Municipal Boundaries

If a municipality has not established an ASA, a landowner may petition the governing body of another municipality to include eligible land in its established ASA, even if the land is located entirely outside the municipality's boundaries. This may only occur if:

- The municipality in which the proposed land, prior to the request, adopts an ordinance or resolution allowing land within their municipality to be included in as ASA outside its jurisdiction;

AND

- Each municipality included in the existing ASA has, prior to the request, adopted an ordinance or resolution allowing for land outside its municipal

boundaries to be considered within its established ASA.

The submission, approval, and evaluation processes for these proposed properties follows all the procedures and requirements as described in the section **Steps to Create an Agricultural Security Area Within a Single Local Government**, as well as what has been specified in the previous paragraph; however, such additions will not be subject to the minimum requirement of 250 acres of viable agricultural land, as is required for the establishment of an ASA.

If the proposed land could be considered for inclusion by more than one existing ASA, or the land lies within more than one municipality, the proposal shall be considered as an addition to the ASA that was first approved.

Review of Added Land

During each review period, all land in an ASA—whether it was originally part of the ASA or was added later—must be reviewed.

7-Year Review of Area

The local governing body must review the ASA every 7 years from the date of its creation. Also, the ASA may be reviewed at any time if 10% of the land is converted to non-agricultural uses. The review process uses the same steps as the initial designation process. The public hearing is arranged the same way as the first hearing, except that it is held in a 60-day period starting 180 days before the end of every seven years. Landowners who want their land excluded from an ASA must notify the local government unit of their intent at least 120 days before the end of the seven-year review process. If the governing body does not act, or if a modification of an area is rejected, the area shall be deemed to be readopted without modification for another seven years.

Appeals

Anyone aggrieved by a decision or action of the governing body relating to the creation, composition, modification, rejection, or termination of an ASA may

appeal to the county court of common pleas within 30 days of a decision or action.

Resources at ConservationTools.org

To find experts and other information on the topics covered by this guide, see the right column of the online edition at

<http://conservationtools.org/guides/49>

Related Guides

[Agricultural Conservation Easement Purchase Program](#)

[Agricultural Protection Zoning](#)

Submit Comments

Help improve this guide. Email your suggestions to the Pennsylvania Land Trust Association at aloza@conserveland.org. Thank you.

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