

Pennsylvania Statutory and Regulatory Measures to Protect Agricultural Land and Open Space

Pennsylvania has a variety of laws and regulations to advance agricultural land and open space protection. In addition to the following list, supplementary resources can be accessed through the Pennsylvania Department of Agriculture's website¹ and The Pennsylvania State University Dickinson School of Law's Agricultural Law Resource & Reference Center's website.²

Agricultural and Open Space Protection

Governor's Executive Order for Agricultural Land Preservation Policy applies to all agencies under the Governor's jurisdiction, and it orders and directs them to seek to mitigate and protect against the conversion of primary agricultural land.³

Agricultural Conservation Easement Purchase Program provides a mechanism, criteria and funding for the purchase or donation of development rights of farmland in order to preserve its use in agriculture, a portion of which may be used for commercial equine activity.⁴

Agricultural Security Area (ASA) must contain at least 250 acres of viable agricultural land in one local government unit or, under certain conditions, in more than one local government unit. An ASA provides protection from nuisance ordinances and requires additional levels of review for projects involving condemnation. An ASA designation helps ensure that the farmer can continue using the farmland for agricultural purposes.⁵

Conservation and Preservation Easements Act provides for uniform conservation and preservation easements. This creates certain requirements that apply to all easements throughout Pennsylvania.⁶

¹ Pennsylvania Department of Agriculture, Bureau of Farmland Preservation, https://www.agriculture.pa.gov/Plants_Land_Water/farmland/Pages/default.aspx (accessed August 18, 2020).

² The Pennsylvania State University, The Dickinson School of Law, Center for Agricultural and Shale Law, <https://pennstatelaw.psu.edu/academics/research-centers/center-agricultural-and-shale-law> (accessed August 24, 2020).

³ 33 Pa.B. 3483 (Exec. Order 2003-2, March 20, 2003); 4 Pa. Code Part I, Chapter 7, Subchapter W.

⁴ Agricultural Area Security Law, Act 43 of 1981 (3 P.S. § 901 et seq.); 7 Pa. Code Part V-C, Chapter 138e.

⁵ Agricultural Area Security Law; 7 Pa. Code Part V-C, Chapter 138l.

⁶ Conservation and Preservation Easements Act, Act 29 of 2001 (32 P.S. § 5051 et seq.).

Land Preservation for Open Space Uses Act 442 of 1968 authorizes the Commonwealth, counties and other local government units to preserve, acquire or hold land for open space uses. Specific authorization is given to local governments to impose new taxes for open space purposes, subject to voter approval.⁷

Right-to-Farm Law reduces the loss of the Commonwealth's agricultural resources by limiting the circumstances under which agricultural operations may be the subject matter of nuisance suits and ordinances.⁸

Agriculture, Communities and the Rural Environment Act (ACRE),⁹ as summarized by the Pennsylvania Department of Agriculture, Bureau of Farmland Preservation:

. . . creates a process for farmers to seek review of local ordinances believed to be more restrictive of agricultural operations than permitted under State Law. Farmers can request that the Pennsylvania Attorney General review an ordinance restricting agriculture practices. If the Attorney General determines that the local ordinance is in conflict with State Law, the municipality is notified of this finding and provided an opportunity to modify the ordinance for compliance with State Law.

If the municipality fails to modify the ordinance in question, the Attorney General may bring an action in the Commonwealth Court to require the municipality to make the modifications or to repeal the local ordinance.¹⁰

Agricultural Lands Condemnation Approval Board (ALCAB) is an agricultural land condemnations board for land enrolled in an ASA.¹¹

- Certain condemnations, such as those for widening existing highways, for underground public utility projects that do not affect the surface, for electric cooperative facilities, or for public utility projects that have received state and federal approval lie outside ALCAB's jurisdiction and do not require approval.
- In most cases, before the condemnation of land enrolled in an ASA can proceed, ALCAB must determine that the proposed condemnation would not have an unreasonably adverse effect upon the agricultural resources in the area and that there is no reasonable and prudent alternative to the condemnation.¹²

⁷ Preserving Land for Open Air Spaces (32 P.S. § 5001 et seq.).

⁸ Agricultural Operations - Protection from Suits, Act 133 of 1982 (3 P.S. § 951 et seq.).

⁹ 3 Pa.C.S. § 311 et seq.

¹⁰ "ACRE – Agriculture, Communities and Rural Environment," Office of the Attorney General, <https://www.attorneygeneral.gov/resources/acre/> (accessed August 18, 2020).

¹¹ The Administrative Code of 1929, Act 175 of 1929, § 306 (71 P.S. §106); Eminent Domain Code, 26 Pa.C.S. § 101 et seq. at 207.

¹² Agricultural Area Security Law, Act 43 of 1981, § 13 (3 P.S. § 913).

Growing Greener, enacted in 1999, initially invested hundreds of millions of dollars to preserve farmland and protect open space, eliminate the maintenance backlog in State parks, clean up abandoned mines and restore watersheds, and provide new and upgraded water and sewer systems. Growing Greener II, enacted in 2005, continued to invest hundreds of millions of dollars to clean up rivers and streams, take on serious environmental problems at abandoned mines and contaminated industrial sites, and finance the development and deployment of advanced energy projects; preserve natural areas and open spaces, improve state parks and enhance local recreational needs; protect working farms; revitalize communities through investments in housing and mixed-use redevelopment projects; repair fish hatcheries and aging dams; and upgrade and repair habitat-related facilities.¹³ Growing Greener/Environmental Stewardship Fund dollars allocated to the Department of Agriculture are deposited in the Agricultural Conservation Easement Purchase Fund and are subject to the provisions of the Agricultural Area Security Law.^{14,15}

Pennsylvania Municipalities Planning Code (MPC) contains both mandatory and enabling provisions for municipalities to protect natural resources and agricultural land, operations and activities through their comprehensive plan and zoning ordinance. It also contains a provision for municipalities, through their zoning ordinances, to encourage the viability of agricultural operations. In addition, the MPC enables municipalities to institute a municipal or multi-municipal transfer of development rights program.

If a landowner alleges that the municipality's zoning ordinance is deficient and proposes a curative amendment, the governing body must consider the impact of the proposed amendment on the preservation of agriculture.

The MPC further mandates that zoning ordinances cannot unreasonably restrict forestry activities and mineral development in a municipality, and requires that all zoning districts permit forestry by right. Finally, the MPC specifies that various state laws regulating agriculture and mining may preempt local regulations under the MPC.¹⁶

¹³ Environmental Stewardship and Watershed Protection Act, 27 Pa.C.S. § 6101 et seq.; Disposal Fee, 27 Pa.C.S. § 6301 et seq.; *see also* Pennsylvania Department of Environmental Protection, Growing Greener, <http://www.dep.pa.gov/Citizens/GrantsLoansRebates/Growing-Greener/Pages/default.aspx> (accessed August 24, 2020).

¹⁴ 27 Pa.C.S. § 6105.

¹⁵ *See also* <http://pagrowinggreener.org/issues/growing-greener/> (accessed August 24, 2020).

¹⁶ Pennsylvania Municipalities Planning Code, Act 247 of 1968 (53 P.S. § 10101 et seq.).

Century and Bicentennial Farm Program recognizes families who have been farming the same land for 100 and 200 years, respectively. The same family must own the farm for at least 100 or 200 consecutive years; a family member must live on the farm on a permanent basis; and the farm must consist of at least 10 acres of the original holding *or* gross more than \$1,000 annually from the sale of farm products.¹⁷

Preferential Assessments or Exemptions

Clean and Green Law allows owners of agricultural use, agricultural reserve, or forest reserve land to apply for preferential assessment of their land. If the application is approved, the land receives an assessment based upon its use value rather than its market value. The intent of the law is to encourage the keeping of land in one of the three categories of uses.¹⁸

Covenants to Preserve Land Use Under Act 515 – Property Tax Assessments. When an adopted municipal, county or regional plan designates land for farm, forest, water supply or open space purposes, counties are authorized to enter into covenants with the owner(s) of such land for the purpose of preserving it as open space for a period of 10 years. The real property tax assessment, for the period of the covenant, will reflect the fair market value of the land as restricted by the covenant.¹⁹

Sewer and Water Line Assessment Exemptions Under Act 71 for the cost of installation are provided to farmers who do not use newly constructed lines and continue to use the land for agriculture. The land must have been used for agricultural production for three years prior to the installation of water or sewer lines.²⁰

Pennsylvania Construction Code Act,²¹ and its regulations known as the Uniform Construction Code (UCC), excludes any “agricultural building,” which is defined as a structure utilized to store farm implements, hay, feed, grain or other agricultural or horticultural products, to house poultry, livestock or other farm animals, or to serve as a milk house and a structure used to grow mushrooms, agricultural or horticultural products. The term includes a carriage house owned and used by members of a recognized religious sect for the purposes of housing horses and storing buggies. The term includes a structure that is less than 1,000 square feet in size which is utilized to process maple sap. The term shall not include habitable space or spaces in which agricultural products are

¹⁷ Pennsylvania Department of Agriculture, Century and Bicentennial Farm Program, https://www.agriculture.pa.gov/Plants_Land_Water/farmland/cbfp/Pages/default.aspx (accessed August 18, 2020).

¹⁸ See Pennsylvania Department of Agriculture, *supra*, note 1; Pennsylvania Farmland and Forest Land Assessment Act of 1974, Act 319 of 1974 (72 P.S. § 5490.1 et seq.); 7 Pa. Code Part V-C, Chapter 137b. See also *Deskbook* article “Clean and Green.”

¹⁹ Covenants to Preserve Land Use – Property Tax Assessments, Act 515 of 1965 (16 P.S. § 11941 et seq.).

²⁰ Agricultural Land – Exemption from Water and Sewer Assessments, Act 71 of 1976 (53 P.S. § 1241 et seq.); 7 Pa. Code Part V-C, Chapter 136.

²¹ Pennsylvania Construction Code Act, Act 45 of 1999 (35 P.S. § 7210.101 et seq.).

processed, treated or packaged and shall not be construed to mean a place of occupancy by the general public.²² The UCC also exempts pole barns at agricultural fairs, except for electrical inspections and permits if there is electrical service,²³ recreational cabins meeting specified criteria,²⁴ and shade cloth structures constructed for nursery or agricultural purposes that do not include service systems.^{25,26}

Death or Realty Transfer Taxes

Valuation of Land in Agricultural Use, Agricultural Reserve or Forest Reserve for Commonwealth Inheritance and Estate Taxes. The 2012 amendments to the Tax Reform Code of 1971 provide that, with certain qualifications, real estate devoted to the business of agriculture is exempt from inheritance taxes if the farm is passed to members of the decedent's family. In addition, the amendments make it easier for farm families to transfer property into a family-owned limited liability corporation or limited partnership without the burden of paying realty transfer taxes.²⁷ Act 13 of 2019 exempts from the Realty Transfer Tax the transfer of property subject to an agricultural conservation easement, to a qualified beginning farmer.²⁸

Grants and Loans²⁹

Land Trust Reimbursement Program provides for allocation of up to \$200,000 annually from the Agricultural Conservation Easement Purchase Fund by the Pennsylvania Agricultural Land Preservation Board to reimburse land trusts for up to \$5,000 in specified expenses incurred in

²² *Id.* at §§ 103, 104(b)(4); 34 Pa. Code §§ 401.1, 403.1(b)(4).

²³ *Id.* at § 901(e); 34 Pa. Code § 403.1(b)(13).

²⁴ *Id.* at §§ 103, 104 (b) (7); 34 Pa.Code § 403.1 (b) (11).

²⁵ 34 Pa. Code § 403.42(c)(1)(ix).

²⁶ *See also* 34 Pa. Code § 403.1 (b), *generally*.

²⁷ ; Tax Reform Code of 1971, Act 2 of 1971, §§ 1102-C.3, 1102-C.5., 2111 (72 P.S. §§ 8102-C.3, 8102-C.5, 9111).

²⁸ "Qualified beginner farmer." A person that:

- (1) Has demonstrated experience in the agriculture industry or related field or has transferable skills as determined by the Department of Agriculture.
- (2) Has not received Federal gross income from agricultural production for more than the ten most recent taxable years.
- (3) Intends to engage in agricultural production within the borders of this Commonwealth and to provide the majority of the labor and management involved in that agricultural production.
- (4) Has obtained written certification from the Department of Agriculture confirming qualified beginner farmer status.

Tax Reform Code of 1971, § 1101-C.

²⁹ *See also* PAGrows, Pennsylvania Department of Agriculture, n.d., <http://www.pagrows.com/> (accessed August 24, 2020).

acquiring an agricultural conservation easement. Eligible expenses include those for appraisals, legal services, title searches, document preparation, title insurance, closing fees and survey costs.³⁰

Agricultural Technology Loan Program is a matching loan program that allows farmers in the Commonwealth to compete annually for low-cost loans. Farmers demonstrating the greatest need and proposing the most innovative use of technology are awarded low-cost loans for projects that increase productivity or provide entrance into new product markets.³¹

Next Generation Farmer Loan Program provides an effective means for federal-state-industry partnerships whereby the public sector can assist beginning and first-time farmers to purchase land, farm equipment, farm buildings, and livestock for breeding. The program uses federal tax-exempt mortgage financing to reduce a farmer's interest rate for capital purchases.³²

³⁰ Agricultural Area Security Law, § 14.6; 7 Pa. Code § 138e.251 et seq.

³¹ 7 Pa. Code Part V-C, Chapter 138d.

³² 73 P.S. § 371 et seq. ("Economic Development Financing Law"); 26 U.S.C.A. §§ 144(a)(11), (12) and 147(c)(1), (2).