



HANDBOOK

Ohio County Commissioners

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CHAPTER 94

AGRICULTURAL SECURITY AREAS

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94.01 INTRODUCTION

Under legislation originally enacted by the 124th General Assembly, owners of farmland in the unincorporated area of the county may enroll their land in Agricultural Security Areas (ASA). H.B. 414, legislation sponsored by Rep. Tony Core (R-Rushsylvania), became effective on May 18, 2005. Later Representative Core amended the law with the enactment of H.B. 289 of the 127th General Assembly, which became effective on July 18, 2008.

The enactment of legislation providing for Agricultural Security Areas is the most recent attempt by the General Assembly to encourage the preservation of agricultural land in Ohio. Earlier initiatives to preserve farmland include the assessment of agricultural land under the current agricultural use value (CAUV) method; the agricultural districts law (see chapter 93 of this Handbook); and the use of agricultural easements (see chapter 95 of this Handbook).

ASA's are intended to promote the long term viability of farming operations by strengthening the farming community's sense of security in land use and the right to farm. ASA's also promote long range agricultural land retention by creating special areas where agriculture is considered the primary or preferred land use where agriculture and agribusiness are both encouraged and protected.

Agricultural security areas are created by boards of county commissioners and township trustees upon the filing of an application by an individual landowner or multiple landowners who collectively agree to place at least 500 acres of contiguous land in an agricultural security area.

The ASA program was recommended in the 1997 report of Governor Voinovich's Farmland Preservation Task Force. Numerous counties recommended the enactment of such enabling legislation when they prepared farmland preservation plans during the late 1990's.

Agricultural security area programs date from 1965 and similar legislation exists in at least 16 other states.

An agricultural security area is a voluntary land use program under which farmers place restrictions on their land for a period of time in exchange for a package of benefits. ASA programs do not impose traditional land use regulatory tools on landowners and rural communities, and their short term nature allows for reassessment of preservation goals as land use changes over time. In addition, new agricultural buildings, structures, improvements, or fixtures that are used exclusively for agricultural purposes located in ASA's may be eligible for a tax exemption.

The Director of Agriculture provides guidance and technical assistance to owners of land who want to enroll in an agricultural security area from the Office of Farmland Preservation. Likewise, the Office of Farmland Preservation also provides assistance to county commissioners and township trustees who receive applications for the establishment of ASA's.

The Director also prepares an annual report and submits it to the Governor, Speaker of the House, and President of the Senate. The annual report includes information on the number of acres of land enrolled in ASA's, their location, and any tax exemptions granted under ORC Section 5709.28.

This chapter will explain the details of establishing ASA's, including eligibility criteria; contents of the application for establishment of an ASA; enrollment processes and procedures; public meeting/hearing and notice requirements; commitments made by both the applicant and counties and townships when ASA's are established; role of county commissioners and township trustees; implications of approval of ASA's; withdrawal procedures; ASA renewal procedures; and tax exemption issues.

For additional information, the primary sections of the Ohio Revised Code dealing with ASA's and related tax issues include ORC Sections 931.01 to 931.09, 931.99, 5709.28, and 5709.85. Excellent information is also available on the Ohio Department of Agriculture's web site, including an enrollment application, sample resolution, and tax exemption application and agreement. The specific portion of the site dealing with ASA is at http://www.ohioagriculture.gov/oda3/Admn/Forms/Admn_2100-001.pdf. Additional information is available on CCAO's web site. In particular, County Advisory Bulletin 2005-05 is available on our web site at the following location: <http://www.ccao.org/LinkClick.aspx?link=CAB+MJ%2fCAB+200505A.pdf&tabid=355&mid=974&language=en-US>.

94.02 ELIGIBILITY CRITERIA FOR AGRICULTURAL SECURITY AREAS

In order to qualify for enrollment in an agricultural security area:

1. The land must be in the unincorporated area of the county. Land inside of any municipal corporation and land located in territory proposed to be annexed to a municipality can not be included in an application for an ASA. If there is an

annexation petition pending before the county commissioners or if the land is the subject of any court proceeding relating to annexation, this land may not be included in an ASA.

2. The area must consist of not less than 500 contiguous acres of farmland. This acreage threshold can be met by one owner or multiple contiguous owners who may aggregate their land and submit a single application. Contiguous farmland includes:
 - a. Geographically contiguous property used for agriculture.
 - b. Noncontiguous property used for agriculture that is owned by one person and connected by a right-of-way controlled by the owner and to which the public does not have access.
 - c. Two or more parcels used for agriculture that would be geographically contiguous except for the fact that the property is separated by a public or private right-of-way or by rivers, streams, creeks, or other bodies of water.
3. The land must be “used for agriculture” as that term is defined in ORC Section 1.61 which reads as follows:

“agriculture” includes farming; ranching; aquaculture; apiculture and related apicultural activities, production of honey, beeswax, honeycomb, and other related products; horticulture; viticulture, winemaking, and related activities; animal husbandry, including, but not limited to, the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production; and any additions or modifications to the foregoing made by the director of agriculture by rule adopted in accordance with Chapter 119 of the Revised Code.

4. The land included in the ASA must be in an agricultural district established under ORC Chapter 929.
5. The land included in the ASA is valued and assessed for real property tax purposes under current agricultural use value (CAUV) pursuant to ORC Sections 5713.30-5713.38.
6. Land that is a portion of a farm on which is located a dwelling house, a yard, or outbuildings such as a barn or garage counts when meeting the 500-acre requirement.

94.03 SUBMISSION OF APPLICATION TO BOARD OF COUNTY COMMISSIONERS AND TOWNSHIP TRUSTEES

In order for land to be enrolled in an ASA an application must be submitted to both the county commissioners and the township trustees. The term of the enrollment is 10 years. If the land is located in more than one township or more than one county, an application must be submitted to each board of commissioners and trustees. The application has been developed by the Ohio Department of Agriculture and is available on the Department's home page at: http://www.ohioagriculture.gov/oda3/Admn/Forms/Admn_2100-001.pdf. The application must also be provided to county auditors.

The application may be submitted by one or more persons. If all of the land sought to be enrolled in the ASA is owned by one person, then the application will be submitted by this owner. If the land consists of land owned by different owners who are aggregating their property (often to meet the minimum acreage requirement), then each owner may submit a separate application or all owners may submit one application for the aggregated property.

However, the Ohio Department of Agriculture's application is designed to be submitted as a single application whether one or multiple landowners wish to enroll in an ASA. Again, a single application is encouraged when the proposed ASA includes land owned by multiple owners.

Single applications by multiple owners, even when each owner owns more than the minimum of 500 contiguous acres, is usually advantageous to property owners because it will reduce the cost to owners of processing fees charged by counties and townships.

94.04 CONTENTS OF APPLICATION FOR ESTABLISHMENT OF AN ASA

The application, which must be signed by each applicant, is a public record once it is filed with the county and township. The law requires the following information on, or attachments to, the application:

1. The first, middle and last name of the applicant or applicants.
2. Information about any property interest in the land that is held by a person other than the applicant including:
 - a. Mineral rights.
 - b. Easements that are held by persons other than the applicant.
 - c. Any other interest in the land that may not be conducive to agriculture and held by a person other than the applicant(s).
3. A statement that the applicant will not initiate, approve, or finance any new development for nonagricultural purposes during the 10 year period of enrollment.

“New development” is defined to include, “without limitation, an applicant’s transfer to another person of the ownership of a property interest in the land that occurs during the period beginning on the date that the application is submitted and ending on the date that the 10 year period of enrollment is scheduled to expire”, except:

- a. A landowner in an ASA may transfer land in an ASA to another person during the 10 year enrollment period the land may remain in the ASA if both of the following conditions apply:
 - (1) The person to whom the land is being transferred submits a statement to county commissioners and township trustees that specifies that the new owner will not initiate, approve, or finance any new development for non agricultural purposes during the remainder of the 10 year period of enrollment. The statement must also specify the new owners first, middle and last name and a description of the transferred land.
 - (2) The land continues to be located in an agricultural district under ORC Chapter 929 and is valued for tax purposes under CAUV.

When the new owner of the land submits the statement, county commissioners and township trustees must adopt a resolution acknowledging receipt of the statement from the new owner. This is not considered a new application nor does this require notice or hearing(s) which was required for the original application.

In addition, “new development” does not include:

- a. Taking actions authorized under property rights in land such as mineral rights and easements, if transferred to another person before the date the application is submitted, and
- b. The construction, modification, or operation of wind energy producing facilities, including windmills, and wind turbines.
- c. The grant of easements for or the construction, modification, or operation of transmission or distribution lines for electricity, gas or oil or any gathering or production lines for oil or gas.
- d. The grant of new mineral leases.
- e. The drilling or operation of any oil or gas well on or in connection with the land as long as these activities do not cause the land to become ineligible for CAUV.

In addition, the applicant is authorized after the establishment of an ASA, to request approval to operate certain businesses and to establish single family residences for family members. The details of these provisions will be explained later in this chapter. These exceptions are authorized in ORC Section 931.04(A).

4. In connection with violations of environmental laws in Ohio or similar laws in other states, for 10 years immediately preceding the date of submission of the application, a listing of:
 - a. All administrative enforcement actions issued;
 - b. All civil actions where the applicant was determined to be liable in damages, subject to injunctive relief or another type of civil relief; and
 - c. All criminal actions where the applicant pleaded guilty or was convicted. Environmental laws include those laws as specified in ORC Section 3745.70 which reads as follows:

“Environmental laws” means Sections 1511.02 and 1531.29, Chapters 3704., 3734., 3745., 3746., 3750., 3751., 3752., 6109., and 6111. of the Revised Code, and any other sections or chapters of the Revised Code the principal purpose of which is environmental protection; any federal or local counterparts or extensions of those sections or chapters; rules adopted under any such sections, chapters, counterparts, or extensions; and terms and conditions of orders, permits, licenses, license renewals, variances, exemptions, or plan approvals issued under such sections, chapters, counterparts, or extensions.
5. A statement from the natural resources conservation service (NRCS) or the local soil and water conservation district (SWCD) that each applicant is in compliance with best management practices when the application is submitted. In addition, any other conservation professional approved by the Director of Agriculture can provide this statement on the application as it relates to organic and sustainable production methods.
6. A map that must be prepared by a county or regional planning commission, a soil and water conservation district, the natural resources conservation service, or a professional engineer (including a county engineer) or surveyor. The map must include the date it was prepared and the person who prepared the map. The map must also:
 - a. Identify the land area to which the application applies and show the boundaries of the land to be enrolled in the ASA.
 - b. Include the parcel number(s) of the land included in the application from the county auditor’s permanent parcel numbering system.
 - c. Show the names and locations of all streams, creeks, other bodies of water, roads, rights-of-way, and railroads. In addition, the map must show any existing residential, recreational, commercial, or industrial facilities that are situated on the land or within 500 feet of the perimeter of the proposed ASA.

- d. Show the location of all utility and water and sewer lines on the land and within 500 feet of the perimeter of the land to be included in the ASA, unless county commissioners and township trustees exempts the application from this requirement because the information is generally not readily available.
 - e. Identify the person who prepared it and the date it was prepared.
7. A list of the other boards of county commissioners and township trustees to which the application has been submitted.

94.05 FEES FOR PROCESSING AGRICULTURAL SECURITY AREA APPLICATIONS

County commissioners and township trustees may collect fees from applicants desiring to establish an ASA. Under the statute, a reasonable fee or schedule of fees to be paid at the time the application is submitted is specifically authorized. The purpose of fees is to pay for the costs incurred by the county and township for public notices, certified mail and other administrative matters. The commissioners' clerk must maintain an accurate and detailed accounting of all money received and expended in processing the application. If there are funds remaining at the conclusion of the proceedings, they must be returned to the applicant.

94.06 PROCEDURES REQUIRED IN PROCESSING APPLICATIONS FOR ENROLLMENT IN AN AGRICULTURAL SECURITY AREA

Once an application for an agricultural security area is filed with the county and township, there are specific procedures which must be followed. Following are the steps that must be followed by county commissioners:

1. HEAR THE APPLICATION AT A REGULAR SESSION OF THE BOARD - The commissioners must hear the application not later than 60 days after receipt of an application during a regular session.
2. NOTICE IN NEWSPAPER OF GENERAL CIRCULATION - Notice of the date and time of the regular session of the commissioners when the application for an ASA will be heard must be published in a newspaper of general circulation in the county. In addition to the date, time and place of the meeting, the notice should probably specify that the purpose of the meeting is to consider the establishment of an agricultural security area pursuant to ORC Sections 931.01 to 931.99. The notice should also provide a general description of the area proposed for inclusion in the ASA, the name of the applicant, and should state that the application is available for review during normal business hours. In addition, the notice should state that any interested party may provide written comments on the application prior to the hearing; that these comments will become part of the record; and, that persons may make comments on the application at the public hearing. The notice must be published at least 30 days before the hearing.

3. NOTICE TO CERTAIN GOVERNMENTAL OFFICIALS - Notice of the time and place of the hearing must also be sent to:
 - a. The superintendent of each school district within the proposed ASA.
 - b. The county engineer of each county in which the proposed ASA would be located.
 - c. The legislative authority of each municipality that is located within one-half mile of the proposed ASA. This notice, however, must only be sent if the municipality has requested notice of such a meeting.
 - d. The Director of the Ohio Department of Transportation.
4. HEARING ON THE APPLICATION - The hearing on the application is conducted during a regular session of the board, at the time specified in the notice.
5. APPROVAL OR REJECTION OF THE APPLICATION - The commissioners must approve or reject the application, by resolution, not later than 60 days after the meeting where the application is heard. It should be noted that the township trustees must approve or reject the application not later than 45 days after the public hearing or joint public hearing/meeting. Thus, the commissioners should know of the action taken by the trustees before they must act on the application.
6. RETURN OF INCORRECT OR INCOMPLETE APPLICATIONS - If it is determined that the application is either incorrect or incomplete at the public hearing, the commissioners must return the application by certified mail. The commissioners must enumerate the items that are incorrect or incomplete.
7. AMENDMENT OF RETURNED APPLICATION BY APPLICANT - The applicant may amend an application that is returned because it is incorrect or incomplete. This amendment must be submitted no later than 15 days after receipt of the returned application.
8. APPROVAL OR REJECTION OF AN AMENDED APPLICATION - Not later than 30 days after receipt of an amended application, the commissioners must either approve or disapprove the amended application by resolution.
9. NOTIFICATION OF APPLICANT - The commissioners must notify the applicant, by certified mail, of the approval or rejection of the application. This notice must be mailed not later than five days after action by the commissioners.
10. EFFECTIVE DATE OF ESTABLISHMENT OF ASA - The ASA is established and the land is enrolled in the ASA upon adoption of a resolution approving the same version of an application by each affected board of county commissioners and township trustees.

11. REQUIRED NOTIFICATION OF OTHER PARTIES - After the adoption of a resolution approving the establishment of an ASA, the commissioners must send a copy of the resolution to:

- a. Director of Agriculture.
- b. Director of Transportation.
- c. Superintendent of each school district within the ASA.
- d. County Engineer.
- e. County Auditor.

94.07 PUBLIC MEETING/HEARING ON APPLICATION TO ESTABLISH AN AGRICULTURAL SECURITY AREA

The law provides that the commissioners hear the application for the establishment of an ASA at a regular meeting of the board. The hearing must take place within 60 days after receipt of the application. The hearing should probably include:

- 1. An opportunity for the applicant or his or her agent to make a presentation about the application.
- 2. A report from the commissioner's clerk or other staff as to whether the application as submitted is incorrect or incomplete.
- 3. A report from the clerk of any comments received on the proposed ASA prior to the hearing.
- 4. A report from the planning director on the relationship of the proposed application to the county or regional comprehensive plan.
- 5. An opportunity for the county engineer and ODOT to make a report on planned improvements to existing or proposed roads during the next 10 years that are within the proposed ASA.
- 6. An opportunity for the public to make comments on the application.

As a part of the hearing, the commissioners are directed to review any information it possesses concerning improvements that are planned to be made during the next 10 years to existing or proposed roads which are located or are to be located within the proposed ASA.

A proposed road means "any future roadway project that is on a new alignment or relocation of an existing alignment and for which state or federal funding has been allocated for, but not limited to, a planning level roadway improvement study, an

interchange justification or bypass study, environmental review, design, right-of-way acquisition, or construction.”

Likewise, the term improvement includes “any action taken with respect to an existing or proposed road that would cause the road to cover a portion of land that it does not cover or is not proposed to cover at the time of the hearing.” Any portion of land covered by a planned improvement can not be included in an agricultural security area.

In addition, as a part of the hearing, commissioners must also consider any comprehensive plan that is in place. In this regard, the commissioners may approve or reject the application on the basis of the ASA’s compliance with the plan.

94.08 JOINT MEETING/HEARING OF COUNTY COMMISSIONERS AND TOWNSHIP TRUSTEES

In order for an agricultural security area to be established, all boards of county commissioners and all boards of township trustees with land in the proposed ASA must approve the application. The outline above anticipates that the township and the county will each hold its own hearing.

The statute, however, allows for joint meetings by all townships and counties involved in the application. In this case, however, the joint meeting must be held not later than 45 days after the receipt of the application. If a joint meeting is used, then only a single public notice must be published and served upon the parties entitled to personal notice. Also, in this case, the cost of public notices (and certified mail notices) is shared equally by all counties and townships participating in the public meeting.

In the case of a joint meeting, the clerk of the board of county commissioners of the county with the greatest acreage in the proposed ASA serves as the clerk of all boards of commissioners and boards of trustees that participate in the joint meeting. This clerk must provide required public notices and maintain minutes and a record of proceedings of the joint meeting.

94.09 CONTENTS OF A RESOLUTION APPROVING THE ESTABLISHMENT OF AN AGRICULTURAL SECURITY AREA

In order to approve an application for the establishment of an ASA, the county commissioners must adopt a resolution approving the application. This resolution should include the following:

1. A statement that the approval is of an agricultural security area as submitted in an application (number the application) and that the application meets all requirements specified in ORC Section 931.02(A).
2. A statement that a public hearing or joint public hearing was held on the application and the date of the hearing.

3. A statement that all notices required by ORC Section 931.03 have been provided.
4. A statement of the actions taken on the application by any board of township trustees that includes land in the proposed ASA.
5. A statement that the commissioners commit to not initiate, approve, or finance for 10 years within the proposed ASA any development for residential, commercial, or industrial purposes. This includes the construction of new roads and water and sewer lines..." A subsequent section of this chapter will discuss this in greater detail.
6. A statement that the applicant has agreed to not initiate, approve, or finance any new development for non-agricultural purposes on the land during the 10 year enrollment period.
7. A requirement that the owner of the land in the ASA will use best management practices. A subsequent section will discuss BMP's as defined in the law.
8. A statement that the ASA will become effective on the date all resolutions are approved by all required boards of county commissioners and township trustees; and the ASA may continue in existence for a period of 10 years unless it is terminated pursuant to law.

Finally, and as will be explained later in this chapter, if the applicant for an ASA has also submitted a request for a tax exemption for qualifying agricultural real property it may be necessary to include another statement in the resolution approving an ASA.

If the commissioners and trustees have "consulted" on the issue of tax exemption as the statute directs, and if the boards have reached an agreement, then the resolution must include such a statement. The statement must include the percentage of taxable value that will be exempted from taxation and the number of years the tax exemption will apply.

94.10 APPLICANT'S COMMITMENT TO NOT INITIATE, APPROVE OR FINANCE ANY NEW DEVELOPMENT

The law requires a commitment from the applicant to not initiate, approve, or finance any new development for non-agricultural purposes on the land, with certain specified exceptions. "New development" does not include an applicant's transfer to another person of the ownership of a property interest in the land as previously explained in section 94.04. New development also does not include such things as mineral rights, the construction of windmills and wind turbines, easements, and construction of transmission or distribution lines for electricity, gas, or oil, as long as these actions do not make the land ineligible for CAUV. Refer to section 94.04 for more exact information. In addition, ORC Section 931.08 provides that no owner of land in an ASA shall fail to comply with this statement. A landowner who violates this provision is subject to a fine of \$500.

94.11 COMMITMENT OF BOARD OF COUNTY COMMISSIONERS TO NOT INITIATE, APPROVE OR FINANCE DEVELOPMENT

When the county commissioners approve the establishment of an ASA, in the resolution approving its establishment, they must commit “not to initiate, approve, or finance any development for residential, commercial, or industrial purposes, including construction of new roads and water and sewer lines within the area for a period of 10 years.” When making this commitment in the resolution approving the ASA, development does not include the following:

1. The improvement of existing roads if the county engineer of each county in which a portion of the area affected by the improvement is located makes a determination that the improvement is:
 - a. Necessary for traffic safety and,
 - b. Is as consistent as possible with the agricultural use of land in the ASA.
2. The construction, modification, or operation of transmission or distribution lines for electricity, gas, or oil or of any gathering or production lines for oil or gas provided that the construction, modification or operation of the lines does not cause the land to lose its eligibility for CAUV.
3. The construction, modification, or operation of water or sewer lines if an official or employee of Ohio EPA orders the construction, modification or operation of the lines so that water and sewer service to areas outside of the ASA can be connected. In addition, in this case, the lines can not provide service connections to any land within the ASA.

Counties should take great care in analyzing anticipated development in the area before they make this commitment. The statute requires the commissioners to review any information it possesses concerning improvements that are planned during the next 10 years to existing and proposed roads. Likewise, as a part of the hearing process on the application, the commissioners may consider any comprehensive plan, and may use the plan as a basis for approval or rejection of the application.

Under the law, a proposed road has a very exact meaning. It means “any future roadway project that is on a new alignment or relocation of an existing alignment and for which state or federal funding has been allocated for, but not limited to, an interchange justification or bypass study, environmental review, design, and right-of-way acquisition.” Likewise, improvement has a specific definition. An improvement includes “any action taken with respect to an existing or proposed road that would cause the road to cover a portion of land that it does not cover or is not proposed to cover at the time of the hearing.”

Finally, the law provides that any portion of land that would be covered by a planned improvement is ineligible for enrollment in an agricultural security area. In this case, it is unclear if the application must be rejected or if it can be amended to remove such land

from the area proposed in the application. It does not appear that commissioners have the authority to modify the boundaries of the proposed ASA for this or any other reason.

94.12 OWNERS REQUIREMENT TO USE BEST MANAGEMENT PRACTICES IN AN ASA

One of the requirements for the establishment of an ASA is that the owners of property enrolled in the ASA will use best management practices (BMP). BMP's are defined to mean "the engagement of agricultural production and management, including practices such as manure handling, tillage, forestry management, and similar practices in a manner that is generally accepted in the agricultural industry and that is approved by any of the following":

1. United State Department of Agriculture (USDA).
2. Natural Resources Conservation Service (NRCS).
3. Ohio Department of Natural Resources (DNR).
4. A Soil and Water Conservation District (SWCD).
5. A conservation professional approved by the Director of Agriculture as having expertise in organic or sustainable production methods.

94.13 CONTENTS OF A RESOLUTION REJECTING THE ESTABLISHMENT OF AN AGRICULTURAL SECURITY AREA

The law is silent on the contents of a resolution rejecting the establishment of an ASA. CCAO, however, suggests that counties include the following items in a resolution rejecting the establishment of an ASA:

1. A statement that a public hearing or joint public hearing was held on the application and the date of the public hearing.
2. A statement that all notices as required by ORC Section 931.03 have been provided.
3. A statement of the actions that have been taken on the application by any board of township trustees that has land within the proposed ASA.
4. A statement that the ASA as submitted in the application does not meet one or more of the requirements specified in ORC Section 931.01(A).
5. A listing of other reasons that an application has been rejected.

94.14 APPEALS OF REJECTION OF AN APPLICATION TO ESTABLISH AN ASA

Under the law, there is no specific provision allowing for the appeal of the rejection of an application to establish an ASA. The statute specifically states that both the “approval or disapproval of an application under this section (ORC 931.03) is not a final order, adjudication, or decision under Section 2506.01 of the Revised Code and is not appealable under Chapter 2506 of the Revised Code.”

94.15 LANDOWNER’S REQUEST TO OPERATE A BUSINESS AFTER ESTABLISHMENT OF AN ASA

After the establishment of an ASA, an owner of land enrolled in the ASA may request permission to operate a business if it does not impair the owner’s ability to engage in agriculture and disqualify the land from CAUV. In order to obtain permission to operate the business, the request must be approved by “each appropriate” board of county commissioners and township trustees with land located within the ASA. While the statute is not entirely clear in defining exactly what constitutes “each appropriate” board of county commissioners and township trustees, CCAO believes the intent was to require approval by the county and township where the business will be physically located, not other counties and townships that include land in the ASA.

The owner must send a written request, by certified mail, to the appropriate boards of county commissioners and township trustees. The request must contain the following:

1. A description of the proposed business.
2. A description of the intended location of the business.
3. A description of the intended size of the business.
4. A detailed description of any construction, renovation, or excavation that will occur for purposes of the proposed business, if applicable.

Not later than 30 days after receipt of the request to operate a business, the commissioners and trustees must adopt a resolution either approving or rejecting the request. If the request is approved a copy of the resolution approving the request must be sent within 30 days of approving the request to:

1. Director of Agriculture.
2. County Auditor of each county with land in the ASA.
3. The owner requesting permission to operate the business.

The statute does not require any notices or a public hearing on the request to operate a business. In the resolution approving the request, it is suggested that the resolution specify

that the approval is only for the purposes of the ASA, and that other approvals may be required pursuant to zoning, subdivision regulations, and other local approvals. In addition, any land used for an approved business in an ASA is still included as eligible acreage to meet the requirement that the ASA be comprised of at least 500 contiguous acres.

94.16 AUTHORITY FOR LANDOWNER TO USE LAND IN AN ASA FOR SINGLE FAMILY RESIDENCES UNDER CERTAIN CIRCUMSTANCES

In addition to the right of a landowner located in an ASA to request approval for the operation of a business, landowners also have a statutory right to locate single family residences in the ASA under some circumstances. The owner of land within an ASA may “develop, authorize the development of, or, for the purpose of developing, transfer ownership of a portion of the owner’s land within an agricultural security area for constructing or otherwise establishing a single-family residence.”

To qualify, the residence must be for an individual who is related to the owner by consanguinity (blood) or by affinity (marriage). In addition, not more than one such residence can be constructed for each 40 acres of land the owner has in an ASA.

Unlike the provisions of the law requiring approval to operate a business, the provisions related to single-family residences require no approvals or notice to any governmental body, although zoning, subdivision and other similar approvals are required. As is the case for businesses, any land used for single family residences that meet the above requirements in an ASA is still included as eligible acreage to meet the requirement that the ASA be comprised of at least 500 contiguous acres.

94.17 WITHDRAWAL OF ALL OR A PORTION OF LAND IN AN AGRICULTURAL SECURITY AREA

Generally, once an agricultural security area is established it may continue in existence for a period of 10 years unless an owner withdraws the land from the ASA or the area fails to satisfy any of the three major eligibility criteria for an ASA:

1. The area must consist of not less than 500 contiguous acres of farmland. This includes the site of a dwelling, house, barn, and other similar buildings.
2. The land included in the ASA must be in an agricultural district established under ORC Chapter 929.
3. The land included in the ASA is valued and assessed for real property tax purposes under current agricultural use value (CAUV) pursuant to ORC Sections 5713.30-5713.38.

If an owner of land that is enrolled in an ASA wants to withdraw, a written notice of withdrawal must be sent by certified mail to the county auditor and the boards of county commissioners and township trustees of each county and township that has land located in the ASA.

In addition, the owner of land in an ASA is required to send a certified mail notice to the same parties specified above when all or a portion of the land becomes ineligible for enrollment in the ASA because of the occurrence of any of the following:

1. The owner withdraws all or a portion of the land from an agricultural district established under ORC Chapter 929.
2. The land is removed from the agricultural district because of termination of the district; a renewal application has not been filed within the time period prescribed in the agricultural district law for renewal applications (ORC 929.02(A)(2)); or renewal has not been approved by the county auditor.
3. All or a portion of the land in the ASA is converted from being land “devoted exclusively to agricultural use” within the meaning of the CAUV law (ORC 5713.30). If the conversion is related to the appropriation of land by eminent domain by the state, a political subdivision, or an agency as defined in ORC Section 163.01, then this provision does not apply.

The owner of land in an ASA who does not give the required notice is subject to a fine of \$500.

Also, if the county auditor discovers that any of the above three events have occurred and the owner of the land has not given the required notice, then the auditor must give the required notice to the parties who are required to receive the notice as specified above.

If the commissioners receive any of the three notices above, it must immediately send a certified copy of the notice to the Director of Agriculture.

If an owner of land within an ASA that involves multiple owners withdraws from the ASA or the land of one of the owners no longer qualifies to be in the ASA as a result of the land not being in an agricultural district or not qualifying for CAUV, the statute specifies how these remaining owners are treated. For those remaining owners who do not withdraw and whose land satisfies the agricultural district and CAUV eligibility criteria, they may continue to have their land enrolled in the ASA until the enrollment expires under the following circumstances:

1. If, within the first five years of a 10 year enrollment period, enrollment may continue if the number of acres remaining in the ASA equals 500 or more.
2. If, within the first five years of a 10 year enrollment period, and if the number of acres remaining in the ASA drops below 500, then the land can only continue to be enrolled in the ASA if additional contiguous land is enrolled in the area so that the number of acres in the ASA again equals at least 500 acres.

The addition of the new land can be from current owners in the ASA or from another owner. In order for this new land to be enrolled in the ASA, the landowner must

submit an application within 60 days of the date the ASA fell to below 500 acres. The new application then must be approved under the same procedures as the original application. The time period or term for the land that has been added to the ASA is not for a full 10 years, but is only for the number of years remaining of the 10 year period for the original ASA.

3. If within the last five years of the 10 year enrollment period, enrollment may continue even if the number of acres remaining in the ASA is less than 500.

In addition, if the acreage of an ASA falls below 500 because the state or a municipality takes land in the ASA by eminent domain, the owners of land enrolled in the area may continue to have their land enrolled in the ASA for the remainder of the 10 year period if the land is still located in an agricultural district and qualifies for CAUV.

Finally if, at any time after the establishment of an ASA, land that was enrolled ceases to be enrolled, then the commitments made by the applicant, the township, and the county relating to not to initiating, approving, or financing development in the ASA no longer apply.

94.18 ADDITION OF LAND TO AN ASA AFTER INITIAL ESTABLISHMENT

After the initial establishment of an Agricultural Security Area (ASA), or after the renewal of an ASA, additional land may be added. The following standards apply to the addition of land to a previously established agricultural security area:

1. The land can be added by either a landowner who currently has land enrolled or by a landowner who does not currently have land enrolled.
2. The landowner who wants to add land to a current agricultural security area must obtain permission from each landowner with land in the existing agricultural security area. It is suggested that letters from current landowners be included with the application to verify that permission has been granted.
3. The new landowner must submit a regular application for the additional land.
4. The application for the additional land must be approved by all appropriate boards of township trustees and county commissioners.
5. If the additional land is approved for inclusion in the existing agricultural security area, it is approved for the number of years remaining in the enrollment period under the approval for the original agricultural security area.

For example, if the original agricultural security area was approved four years ago, the additional land is approved only for a six year period so that all land in the expanded agricultural security area will expire and become eligible for renewal at the same time when a renewal application is filed after the expiration of the original 10 year period.

94.19 RENEWAL OF APPLICATIONS

An agricultural security area may be renewed by filing a new application by an owner of land enrolled in a current ASA. The renewal application must be filed at least 180 days prior to the expiration of the original enrollment. The procedures and requirements used to renew an ASA are the same as for the original application (ORC 931.06).

94.20 DISTRIBUTION OF FINES

The statute provides for fines to be levied in two instances. First, if a landowner is required to give notice that the land does not meet the eligibility criteria for an ASA pursuant to ORC Section 931.07(A)(2), the owner is subject to a fine of \$500. Second, if an owner violates the statement in the application that the owner will not “initiate, approve, or finance any new development for nonagricultural purposes on the land that is proposed to be enrolled in an agricultural security area during the 10 year period of enrollment” except for certain authorized exceptions, a fine of \$500 is levied.

The clerk of courts that receives fine money as a result of either violation first equally divides the money into a county share and a township share. If only one township and one county have land in the ASA, the money is then distributed to that county and township. If there are multiple counties and townships that have land in the ASA, then the county share and the township share is divided equally among all counties and townships from their respective shares.

The fine monies received by commissioners and trustees may be used for farmland preservation purposes, but this is not required.

94.21 TAX EXEMPTION FOR QUALIFYING AGRICULTURAL REAL PROPERTY

A major new benefit to farmers is that owners of land in an ASA may be eligible for a tax exemption. The tax exemption is for “qualifying agricultural real property” which is defined as follows:

1. A building, structure, improvement, or fixture that is used exclusively for agricultural purposes.
2. It is located on land enrolled in an ASA.
3. The aggregate new investment has a true value of \$25,000, or more.

In order for the tax exemption to be granted, both the county commissioners and township trustees must enter into an agreement with the landowner requesting the exemption. In the case where an ASA includes land in more than one county and more than one township, it appears the law may require approval of all townships and counties that include land in the ASA, even though the physical location of the property for which the tax exemption has

been requested is located only in one township and one county. CCAO urges counties to check with their prosecutor on this issue until the law is changed to clarify this issue.

The statute provides that commissioners and trustees may grant the authorized tax exemption at three specific times:

1. At the time of the establishment of an ASA.
2. At the time of renewal of an ASA.
3. At any time during which land is enrolled in an ASA.

It should be noted that it appears that the request for a tax exemption is not a part of the application for the establishment of an ASA. While the request for a tax exemption is separate from the application for an ASA, the statute clearly anticipates that tax exemption can be granted shortly after an ASA is established.

94.22 CONTENTS OF TAX EXEMPTION AGREEMENT AND RESOLUTION

A tax exemption for qualifying agricultural real property involves the execution of an agreement between the county commissioners, township trustees, and property owner. The agreement must:

1. Establish the percentage of the taxable value of the property to be exempted from taxation. This percentage can not exceed 75%.
2. Specify the number of years the exemption will apply to the property, not to exceed 10 years.

In addition, there are some permissive topics that may be included in the tax exemption agreement. First, the agreement may specify the tax years to which the exemption will apply to the property. Second, the agreement may also extend the exemption beyond the expiration date of the ASA. In this case, the enrollment in the ASA must be renewed and continue during all tax years to which the exemption applies.

Finally, the agreement may establish a maximum dollar limit to which the exemption will apply. In addition, after the execution of an agreement establishing a maximum dollar limit, the owner of the property may request the commissioners and trustees to alter the agreement and increase the maximum dollar limit to which the exemption applies.

If the agreement is reached at the time of the establishment of an ASA, the resolution approving the ASA must include a statement that describes the agreement. Prior to signing a tax exemption agreement, the commissioners should adopt a resolution approving the tax exemption. The resolution could include a summary of the major provisions that will be in the agreement or the resolution could simply authorize the execution of the agreement.

94.23 APPROVAL OF TAX EXEMPTION BY BOARD OF COUNTY COMMISSIONERS AND TOWNSHIP TRUSTEES AND ACTION BY COUNTY AUDITOR

The new law provides that the commissioners and trustees of each county and township with land in the ASA “shall confer with each other and reach an agreement on the tax exemption.” While the statute is silent on this issue, CCAO recommends that when counties and townships “confer” on the issue of a tax exemption, that it be done at a public meeting of all boards involved. Great care should be taken to comply with the open meetings law. Once the agreement is reached, the boards must send written notice of the agreement to each school superintendent with land in the ASA.

After the agreement is reached and the tax exemption is granted, the property becomes exempt in the tax year following the year in which the construction of the property is completed. The county auditor is directed to enter the exempted property on the exempted property tax list specified in ORC Section 5713.07. Likewise, no application for exemption, as normally required by ORC Section 5715.27, need be filed.

94.24 REMOVAL OF EXEMPTED LAND FROM THE EXEMPTED PROPERTY TAX LIST

The county auditor is directed to remove qualifying agricultural real property from the exempted property list at the time the auditor discovers or is notified that withdrawal, removal or conversion of land from an ASA has occurred so that the property is no longer eligible to be exempted.

If the auditor removes the property from the list, and the owner claimed a tax exemption for the prior year, the amount of tax otherwise imposed on the property that was subject to the exemption must be increased. The amount of the increase will equal the aggregate multi-year value of the tax exemption that was received by the owner since the ASA was originally established or renewed. In addition, the auditor must charge interest on this amount at the average bank prime rate as specified by ORC Section 929.02 at the time the property is removed from the exempt list.

The tax year in which the increase occurs depends on when the auditor discovers or is notified that the land in the ASA has been withdrawn, removed, or converted. If the discovery or notification occurs prior to the date when the auditor delivers the duplicate to the county treasurer under ORC Section 319.28 (October 1), the increase occurs in the same tax year as the discovery or notification occurred. If discovery or notification occurs after the delivery of the duplicate, the increase occurs the next year.

94.25 REVIEW BY TAX INCENTIVE REVIEW COUNCIL (TIRC)

The tax exemption agreement which is executed between the owner and the boards of commissioners and trustees undergoes an annual review by the tax incentive review council (TIRC). It appears that it is not necessary for both the county and the township to have separate tax incentive review councils for the purposes of conducting the annual

review of the tax exemption granted to qualifying agricultural real property. The tax incentive review council established under ORC Section 5709.85(A)(2) has jurisdiction for the annual review.

The TIRC is directed to determine if the agreement complies with the law (ORC 5709.28) and whether a withdrawal, removal or conversion of land from an ASA has occurred in a way that makes the exempted property no longer eligible for the exemption. On the basis of this review, the TIRC must make a recommendation to the commissioners and trustees on the continuation, modification, or cancellation of the tax exemption agreement.