

# CAB COUNTY ADVISORY BULLETIN

---

*published by the County Commissioners Association of Ohio  
37 West Broad Street, Suite 650, Columbus, Ohio 43215-4132  
Phone 614/221-5627 Fax 614/221-6986 E-mail webmaster@ccao.org*

**Bulletin 2005-05**

**June 2005**

## **HOUSE BILL 414 of the 125<sup>th</sup> GENERAL ASSEMBLY PROVIDES FOR THE ESTABLISHMENT OF AGRICULTURAL SECURITY AREAS**

**Lead Sponsor:** Representative Tony Core (R-Rushsylvania).

**House Co-Sponsors:** Wolpert (R-Hilliard), Setzer (R-Vandalia), Jerse (D-Euclid), Allen (D-Dayton), Ujvagi (D-Toledo), Webster (R-Hamilton), Aslanides (R-Coshocton), Gibbs (R-Lakeville), Carmichael (R-Wooster, Distel (D-Conneaut), Domenick (D-Smithfield), C. Evans (R- Rio Grande), Faber (R-Celina), Niehaus (R-New Richmond), Reinhard (R-Bucyrus), Schlichter (R-Washington Court House), Calvert (R-Medina), Carano (D-Youngstown), Cates (R-West Chester), Chandler (D-Kent), Collier (R-Mt. Vernon), Daniels (R-Greenfield), D. Evans (R-Newark), Gilb (R-Findlay), Grendell (R-Chesterland), Hartnett (D-Mansfield), Hollister (R-Marietta), Latta (R-Bowling Green), Otterman (D-Akron), Perry (D-Toledo), Redfern (D-Port Clinton), Schmidt (R-Loveland), Seaver (R-Minster), Sferra (D-Warren), Strahorn (D-Dayton), Yates (D-Cincinnati).

**Senate Co-Sponsors:** Mumper (R-Marion).

**Revised Code Sections Affected:** 931.01 to 931.09, 931.99, 5709.28 (Enacted), 5709.85 (Amended).

**Effective Date:** May 18, 2005.

### **Introduction**

Sub. H.B. 414 allows farmland owners in the unincorporated area of the county to enroll their land in Agricultural Security Areas (ASA's). The Act was sponsored by Rep. Tony Core (R-Rushsylvania) who worked with the Ohio Department of Agriculture and other interested parties in the development and passage of the legislation. Governor Taft signed the bill on February 15, 2005, and the Act became effective on May 18, 2005.

Agricultural Security Areas are intended to promote more permanent and viable farming operations over the long term by strengthening the farming community's sense of security in land use and the right to farm. ASA's also promote agricultural retention by creating special areas where agriculture is 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 is on the books in 16 other states.

It is clear there is general support for agricultural preservation initiatives in Ohio. In 1999 counties were authorized to acquire agricultural easements with the enactment of S.B. 223. County Advisory Bulletin 99-05, June, 1999, explains this law in greater detail. Since the enactment of this legislation authorizing the purchase of agricultural easements, over 1,000 applications have been submitted for funding under Ohio Agricultural Easement Purchase Program, but due to financial constraints, only 50 of these applications have been funded.

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 tax exemption.

The Act specifies that, upon request, the Director of Agriculture will provide guidance and technical assistance to owners of land who want to enroll in an Agricultural Security Area. Likewise, the Director, or his authorized representative, will also provide assistance and guidance to Boards of County Commissioners and Township Trustees who receive applications requesting the establishment of ASA's. The Director is also required to prepare and submit to the Governor, Speaker of the House and President of the Senate an annual report. The annual report must include information about the number of acres of land enrolled in ASA's, their location, and any tax exemptions granted under ORC Section 5709.28.

The purpose of this County Advisory Bulletin is to explain the details of implementing the new law, 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.

## **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 by multiple contiguous owners who may aggregate their land and submit a single application. Contiguous farmland, for the purposes of the Act, includes:
  - Geographically contiguous property used for agriculture.
  - 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.
  - 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.

It should be noted that in order to be eligible for inclusion in an ASA 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.

### **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 Board of County Commissioners and the Board of Township Trustees. The term of the enrollment is ten 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 Act requires the Ohio Department of Agriculture to create an ASA application. The application has been prepared and is available on the Department's home page at: [www.ohioagriculture.gov](http://www.ohioagriculture.gov). The application must also be provided to County Auditors, and is attached to this County Advisory Bulletin.

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 sought to be enrolled 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 of the 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.

### **Contents Of The Application For Establishment Of An ASA**

The application, as prescribed by the Director of Agriculture, must be signed by each applicant. The application 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(s).
2. Information about any property interest in the land that is held by a person other than the applicant(s) including:
  - Mineral rights.
  - Easements that are held by persons other than the applicant(s).
  - Any other interest in the land that may not be conducive to agriculture that is held by a person other than the applicant(s).
3. A statement that the applicant(s) will not initiate, approve, or finance any **new development** for nonagricultural purposes during the ten year period of enrollment. "New development" is defined in the Act to include the transfer to another person of the ownership of a property interest in the land in an ASA from the time the application is submitted until the end of the ten-year enrollment period of the ASA, however, the application of this language is unclear and may need to be clarified.

On the other hand, "new development" clearly does not include:

- 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
- Construction, modification, or operation of transmission lines for electricity, gas, or oil or any gathering or production lines for oil or gas

provided such lines do not cause the land to become ineligible for CAUV valuation and assessment.

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 CAB. These exceptions are authorized under Division (A) of ORC 931.04.

3. In connection with violations of environmental laws in Ohio or similar laws in other states, during the ten years immediately preceding the date of submission of the application, a listing of:
  - All administrative enforcement actions issued;
  - All civil actions where the applicant was determined to be liable in damages, subject to injunctive relief or another type of civil relief; and
  - All criminal actions where the applicant(s) pleaded guilty or was convicted.

Environmental laws include those laws as specified in ORC Section 3745.70 which read 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.

4. A statement from the Natural Resources Conservation Service (NRCS) or the local Soil and Water Conservation District that each applicant is in compliance with best management practices at the time the application is submitted. In addition, any other conservation professional approved by the Director of Agriculture can make this statement on the application as it relates to organic and sustainable production methods.

5. A map that must be prepared and certified by a county or regional planning commission or a professional engineer or surveyor. The map must include the date it was prepared and the person(s) who prepared the map. The map must also:
  - Identify the land area to which the application applies and show the boundaries of the land to be enrolled in the ASA.
  - Include the parcel number(s) of the land included in the application from the County Auditor's permanent parcel numbering system.
  - Show the names and locations of all streams, creeks, other bodies of water, roads, rights-of-way, railroads, utility lines, and water and sewer lines. 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 boundary of the proposed ASA.
4. A list of the other Boards of County Commissioners and Boards of Township Trustees to which the application has been submitted.

### **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 they may establish a reasonable fee or schedule of fees to be paid at the time the application is submitted. The purpose of the fees is to pay for the costs incurred by the county and township for public notices and certified mail. The Clerk of the County Commissioners and Township Trustees must maintain an accurate and detailed accounting of all money received and expended in processing the application. If there are moneys left at the conclusion of the proceedings, any unused fees must be returned to the applicant(s).

### **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 a series of steps that must be followed in making a determination of whether the application will be approved. Following are the steps that must be followed by the Board of County Commissioners:

- 1. HEAR THE APPLICATION AT A REGULAR SESSION OF THE BOARD—The Board of County Commissioners must hear the application not later than 60 days after receipt of an application at a regular session of the Board.**

2. **NOTICE IN NEWSPAPER OF GENERAL CIRCULATION**—Notice of the date and time of the regular session of the Board 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 Sections 931.01 to 931.99 of the Revised Code. The notice should also provide a general description of the area proposed for inclusion in the Agricultural Security Area, the name of the applicant(s), and should state that the application is available for review during normal business hours. In addition, the notice should state that any interested parties 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 date of the regular session of the Board where the application will be heard.
  
3. **NOTICE TO CERTAIN GOVERNMENTAL OFFICIALS**—Notice of the time and place of the regular session of the Board where the application will be heard must also be sent to:
  - The superintendent of each school district within the proposed ASA.
  - The County Engineer of each county in which the proposed ASA would be located.
  - The legislative authority of each municipality that is located within one-half mile of the boundaries of the proposed ASA. This notice, however, must only be sent if the municipality has requested notice of such a meeting.
  - 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 Board of County Commissioners must approve or reject the application for an ASA, by resolution, not later than 60 days after the public meeting where the Board hears the application. It should be noted that a Board of 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 Township Trustees prior to the time they must act on the application.

6. **RETURN OF INCORRECT OR INCOMPLETE APPLICATIONS**—If the Board determines that the application is either incorrect or incomplete at the public hearing, the Board must return the application to the applicant by certified mail. The Board 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 to the Board by the applicant not 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 Board of County Commissioners must either approve or disapprove the amended application by resolution.
9. **NOTIFICATION OF APPLICANT**—The Board of County 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 the action by the Board.
10. **EFFECTIVE DATE OF ESTABLISHMENT OF ASA**—The ASA is established and the land proposed to be included in the area 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 Board of Township Trustees.
11. **REQUIRED NOTIFICATION OF OTHER PARTIES**—After the adoption of a resolution approving the establishment of an ASA, the Board of County Commissioners must send a copy of the resolution to:
  - The Director of Agriculture.
  - The Director of the Ohio Department of Transportation.
  - The superintendent of each school district within the ASA.
  - The County Engineer.
  - The County Auditor.

## Public Meeting/Hearing On Application To Establish An Agricultural Security Area

The law provides that the Board of County Commissioners hears 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 Clerk or other staff as to whether the application as submitted is incorrect or incomplete.
3. A report from the Clerk of any comments that have been received on the proposed ASA prior to the hearing.
4. A report from the County Planning Director on the relationship of the proposed application to the county or regional comprehensive plan.
5. An opportunity for the County Engineer and the Ohio Department of Transportation to make a report concerning planned improvements to existing or proposed roads during the next ten years that are within the area proposed to be included in the ASA.
6. An opportunity for the public in attendance to make comments on the application.

As a part of the hearing on the application, the Commissioners are directed to review any information it possesses concerning **improvements** that are planned to be made (during the next ten years) to **existing or proposed roads** that are located or are to be located within the area proposed to be enrolled in an ASA.

In this case 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, **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 that would be covered by a planned improvement can not be included in an Agricultural Security Area.

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

plan.

### **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.

### **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 Board of County Commissioners must adopt a resolution approving the application. This resolution should include the following:

1. A statement that the approval is 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 public hearing.
3. A statement that all notices as required by ORC Section 931.03 have been provided.
4. 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.
5. A statement that the Board of County Commissioners commits 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 proposed to be an ASA for 10 years. A subsequent section of this CAB will discuss this issue in greater detail.
6. A statement that the applicant(s) has agreed not to initiate, approve, or finance any new development for non-agricultural purposes on the land included in the application during the ten-year enrollment period.

7. A requirement that the owner(s) of the land in the proposed ASA will use best management practices. A subsequent section will discuss BMP's as defined in the Act.
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 that the ASA may continue in existence for a period of ten years unless it is otherwise terminated pursuant to law.

Finally, and as will be explained later in this CAB, 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 Board of County Commissioners and Township 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.

### **Applicants Commitment To Not Initiate, Approve Or Finance Any New Development**

One of the requirements of the application is for the owner/applicant to commit not to initiate, approve, or finance any new development for non-agricultural purposes on the land to be enrolled in an ASA, with certain specified exceptions. "New development" currently includes "transfer to another person of the ownership of a property interest in the land. . . .", however, CCAO anticipates that this provision of law may be changed in the near future. New development does not include such things as mineral rights, easements, and construction of transmission lines for electricity, gas, or oil, as long as these actions do not make the land ineligible for CAUV taxation. 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.

### **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, the Commissioners 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 ten 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 makes a determination that the improvement is (a) necessary for traffic safety and, (b) is consistent with the agricultural use of land in the ASA.
2. The construction, modification, or operation of transmission 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 Board to review any information it possesses concerning **improvements** that are planned during the next ten years to **existing and proposed roads**. Likewise, as a part of the hearing process on the application, the Board may consider any comprehensive plan, and may use the plan as a basis for approval or rejection of the application.

Under the Act, 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 for the purposes of the Act. 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 has to be rejected or if it can be amended to remove such land from the area proposed in the application to be an ASA. It does not appear that the Board of County Commissioners has the authority to modify the boundaries of the proposed ASA for this or for any other reason.

### **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's are defined in the Act 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.

### **Contents Of A Resolution Rejecting The Establishment Of An Agricultural Security Area**

The Act is silent about 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 931.01(A).
5. A listing of other reasons that an application has been rejected.

### **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 as ASA. The statute specifically states that both the “approval or disapproval of an application under this section (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.

## **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 taxation. 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 Board must adopt a resolution either approving or rejecting the request. If the request is approved, the Board must send a copy of the resolution approving the request within 30 days of approving the request to:

1. The Director of the Ohio Department of Agriculture.
2. The 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 for the requirement that the ASA be comprised of at least 500 contiguous acres.

## **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.” 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 for the requirement that the ASA be comprised of at least 500 contiguous acres.

## **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 ten years unless an owner withdraws his or her land from the ASA or the area fails to satisfy any of the three major criteria for eligibility for ASA status, which are:

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, and 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 Board of County Commissioners receives any of the three notices above, it must immediately send a certified copy of the notice to the Director of the Ohio Department 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 ten 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 ten 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 ten years, but is only for the period remaining of the ten-year period for the original ASA.

3. If within the last five years of the ten-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 appropriates 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 ten-year period, assuming 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 statements made by the applicant, the township, and the county where each commits not to initiate, approve, or finance development in the ASA are no longer applicable.

### **Renewal Of Applications**

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

### **Distribution Of Fines**

The statute provides for fines to be levied in two instances. First, if a landowner is required to give notice that his or her 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 ten 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 the number of counties and number of township out of their respective shares.

The fine monies received by County Commissioners and Township Trustees may be used for farmland preservation purposes, but this is not required.

### **Tax Exemption For Qualifying Agricultural Real Property**

A major new benefit to farmers under the Agricultural Security law is that owners of land in an ASA may be eligible for a tax exemption. The new tax exemption is for “qualifying agricultural real property.” Under the Act, qualifying agricultural real property is defined as follows:

1. A building, structure, improvement, or fixture that is used exclusively for agricultural purposes.
2. It is located on land that is enrolled in an ASA.
3. The true value of the property must be \$25,000 or more.

In order for the tax exemption to be granted, both the Board of County Commissioners and the Board of Township Trustees must enter into an agreement with the landowner who requests 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 believes that this may not be the intent of the law, and understands that there may be an initiative to have this provision clarified by the General Assembly.

The statute provides that County Commissioners and Township Trustees may grant the authorized tax exemption at three specific times:

4. At the time of the establishment of an ASA.
5. At the time of renewal of an ASA.
6. 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 the formal approval of the establishment of an ASA.

### **Contents Of Tax Exemption Agreement And Resolution**

A tax exemption for qualifying agricultural real property involves the execution of an agreement between the Board of County Commissioners and Township Trustees and the property owner. The agreement must:

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

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, but 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 Boards' to alter the agreement and increase the maximum dollar limit of the property 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 the execution of the tax exemption agreement, the Board of County 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 authorize the execution of the agreement if it has been prepared.

### **Approval Of Tax Exemption By Board Of County Commissioners And Township Trustees And Action By County Auditor**

The new law provides that the Board of County Commissioners and Township 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 the tax exemption, that it be done at a public meeting of all of the 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 that has land within 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 Exempted Property Tax List specified by ORC Section 5713.07. Likewise, no Application for Exemption as usually required by ORC Section 5715.27 need be filed.

### **Removal Of Exempted Land From The Exempted Property Tax List**

The County Auditor is directed by the statute 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 taken place in a way that makes the property 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 County 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 County Auditor delivers the duplicate to the County Treasurer under ORC 319.28 (October 1), the increase occurs in the same tax year as the discovery or notification occurred. On the other hand, if discovery or notification occurs after the delivery of the duplicate, the increase occurs the next year.

### **Review By Tax Incentive Review Council (TIRC)**

The tax exemption agreement that is executed between the owner and the Board of County Commissioners and Township Trustees undergoes an annual review by the Tax Incentive Review Council. 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 Division (A)(2) of ORC Section 5709.85 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 Board of County Commissioners and Township Trustees on the continuation, modification, or cancellation of the tax exemption agreement.

### **Acknowledgments**

CCAO thanks the following individuals who assisted in the preparation of this County Advisory Bulletin: Howard Wise, Acting Assistant Director, Ohio Department of Agriculture; Larry Gearhardt, Director of Local Affairs, Ohio Farm Bureau Federation; and, Sara Nikolic, Ohio Director, American Farmland Trust.