

SUBDIVISION REGULATIONS
FOR LAND SUBJECT TO AGRICULTURAL CONSERVATION EASEMENTS IN
CHESTER COUNTY

PURPOSE:

The purpose of these regulations is to implement the subdivision provisions of Pennsylvania's Agricultural Area Security Law (the Act), 3 P.S. § 901-915

No subdivision will be permitted which will:

- (a) Harm the economic viability of the farmland for agricultural production; or
- (b) Convert land which has been devoted primarily to agricultural use to another primary use, except that a county program shall permit one subdivision for the purpose of a residence for the landowner, an immediate family member or an employee, unless the right to the residence has been relinquished and extinguished in accordance with subsection (c)(6)(iv).

(Section (c)(6)(iv)):

(iv) Construction and use of structures on the subject land for the purpose of a residence for the landowner, an immediate family member or an employee: Provided, That only one such structure may be constructed on no more than two acres of the subject land during the term of the agricultural conservation easement: and Provided further, That the owner of the land subject to the agricultural conservation easement may relinquish and extinguish the right of construction and use of structures conferred by this clause by recording, in the office for the recording of deeds in the county in which the land subject to the agricultural conservation easement is located, an affidavit evidencing the intent to relinquish and extinguish which includes a reference to the original deed of easement.

APPLICATION OF THESE REGULATIONS:

These regulations shall apply only to easements for which an agreement of sale has been signed on or after the date that these regulations have been approved by the State Board.

These regulations apply only to subdivision of land upon which exists an easement under the Act at the time a land owner begins the process of seeking subdivision approval.

Subdivision of land between the time an application for an easement under the Act is submitted and the time said easement purchase is completed is **prohibited**. Any subdivision during this period will cause the application to be denied. The application may be resubmitted after subdivision is complete.

DEFINITIONS:

Contiguous Acreage: All portions of one operational unit as described in the deed, or deeds, whether or not the portions are divided by streams, public roads, bridges and whether or not described as multiple tax parcels, tracts, purports, or other property identifiers. It includes supportive lands such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds, and streams.

Economic viability of farmland for agricultural production: The capability of a particular tract of restricted land (other than a tract of two acres or less upon which construction and use as the landowner's principal residence or housing for seasonal or full-time farm employees is permitting pursuant to section 14.1(c) (iv) of the Act), to meet all of the criteria set forth in State Board Regulations at the time of application for subdivision.

Harm the economic viability of the farmland for agricultural production: To cause a particular tract of restricted land to fail to meet the criteria set forth in State Board Regulations at the time of application for subdivision or to create, through subdivision, a tract of restricted land that would fail to meet the aforesaid criteria set forth in State Board Regulations at the time of application for subdivision. Specifically excepted is a tract of two acres or less upon which construction and use as the landowner's principal residence or housing for seasonal or full-time farm employees is permitted pursuant to section 14.1(c) (iv) of the Act.

Land development:

Either of the following activities:

- (a) The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving a group of two or more residential buildings, whether proposed initially or cumulatively; or
- (b) A subdivision of land.

Land which has been devoted primarily to agricultural use: Acreage which is a part of restricted land and is harvested cropland, grazing or pasture land, land used for the production of timber and wood products, land containing non-residential structures used for agricultural production, or other acreage immediately available for agricultural production, and which excludes any acreage upon which immediate agricultural production is impracticable due to residential structures and their curtileges, wetlands, soil quality, topography or other natural or man-made features, and which further excludes any tract of two acres or less designated as the site upon which the landowner's principal residence or housing for seasonal or full-time employees is permitted pursuant to section 14.1(c)(iv) of the Act.

Pennsylvania Municipalities Planning Code: The Act of December 21, 1988 (P.L. 1329, No 1 170) (53 P.S. sec 10101-11201)

Subdivision: The division or re-division of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, or lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development.

PROCEDURE:

- (a) An application for subdivision shall be submitted on a form prescribed by the Chester County Agricultural Land Preservation Board (CCALPB). The Forms may be obtained from the administrator of the CCALPB.
- (b) Upon receipt of the completed application, the administrator for the CCALPB shall note the date upon which the application is received and forward written notification to the county planning office and county farmland preservation office. The CCALPB shall note the date upon which each reviewing agency receives said notice. These agencies (reviewing agencies) shall have 60 days from the receipt (receipt presumed to be within 3 days of mailing) to review, comment and make recommendations on the proposed application to the CCALPB. The CCALPB will only consider comments and recommendations received beyond said deadline if the landowner agrees in writing.
- (c) Upon receipt of the application the CCALPB shall review it to determine whether subdivision complies with these regulations, the Act and State Regulations. Within 120 days of receipt of the application, the CCALPB shall decide whether to approve or deny the application. This deadline may be extended with the written approval of the landowner and the reviewing agencies. Failure of the CCALPB to approve or reject an application for subdivision before said 120 day period will result in the deemed approval of the application. Approval shall be conditioned upon approval by the State Board. Notice of the decision shall be mailed to the applicant on the next business day following the decision.
- (d) If the application to subdivide land is approved, the CCALPB administrator shall forward to the State Board on the next business day: a copy of the application, the comments and recommendations of the reviewing agencies.
- (e) If the application to subdivide land is rejected, the application shall be returned to the landowner with a written statement of the reasons for the rejection. Within 30 days after the receipt (receipt presumed to be within 3 days of mailing) of the statement of rejection, the landowner may appeal the rejection in accordance with 2 PA.C.S. CH. 5 Subch B (relating to practice and procedure of local agencies) and CH. 7 Subch. B (relating to judicial review of local agency action).
- (f) At all times, the burden of proof is upon the landowner.

CRITERIA FOR SUBDIVISION:

A landowner may subdivide a tract of land subject to an Agricultural Conservation Easement (the easement) per the Act if the CCALPB finds the conservation plan is up to date and the landowner has completed or is on schedule to complete its implementation, that such subdivision does not harm the economic viability of the farmland for agricultural production, does not convert land

devoted primarily to agricultural use to another primary use, or violate any one or more of the following criteria:

- (a) Subdivision is not inconsistent with any provision of the Act, State Regulations, County regulations, The Municipalities Planning Code or local land use law or regulations;
- (b) The size of the parcels of land after subdivision is not inconsistent with the agricultural use of the property as it existed prior to subdivision. However, no subdivision will be allowed if it results in a tract of land which is less than 50 acres in size unless the tract is at least 10 acres in size and is either utilized for a crop unique to the area or is contiguous to a property which has a perpetual conservation easement in place which is held by a "qualified conservation organization" as that term is defined at section 170(h)(3) of the Internal Revenue Code or an IRS 501 (c) (3) non-profit land trust or by a qualified public entity.
- (c) The soil types of the parcels of land after subdivision is not inconsistent with the agricultural use of the property as it existed prior to subdivision;
- (d) The location of any structures to be built (which are permitted by the Act) is not inconsistent with the agricultural use of the property as it existed prior to subdivision;
- (e) The subdivision is not inconsistent with any Soil conservation plan in existence prior to the subdivision;
- (f) The subdivision is not inconsistent with the easy administration and enforcement of the laws and regulations pertaining to the easement;
- (g) Subdivision is not inconsistent with or detrimental to any conservation easement of adjoining property;
- (h) The shape and location of the subdivided tracts are not inconsistent with the agricultural use of the property as it existed prior to subdivision;
- (i) The land to be subdivided is not (as of the time of the vote on the application) in violation of the easement or any soil conservation plan; and law or regulation Federal, State or local.

RESERVATION OF RIGHT TO CONSTRUCT AFTER SUBDIVISION:

If the restricted land is subdivided prior to the construction of a residential structure under authority of the Act, the landowner shall do the following:

- (a) Inform the county board, at the time an application for subdivision under these regulations is submitted, of the specific subdivided tract where said residential structure is to be built; and
- (b) Ensure that the deed to the subdivided tract where said residential structure is to be built clearly sets forth the reservation of this right to build said residential structure; and
- (c) Ensure that the deeds to any remaining subdivided tracts recite that no residential structure may be constructed on said subdivided tracts.

NOTICE OF SUBDIVISION REGULATIONS:

The CCALPB shall file these regulations at the Office of the Recorder of Deeds for Chester County and reference the place of filing of these regulations in the deed of agricultural conservation easement. These regulations will be recited verbatim in the deed of agricultural conservation easement.