



PennState Law

Center for Agricultural
and Shale Law

AGRICULTURAL DISTRICT PROGRAMS

Past, Present & Future

National Agricultural Law Center

Webinar

Wednesday, July 15, 2020

Noon EDT

<https://bit.ly/2BUCIYS>

UofA DIVISION OF AGRICULTURE
RESEARCH & EXTENSION
University of Arkansas System





INTRODUCTION

- Perhaps the oldest tool for protecting farmland, and the viability of farming operations against development pressures, remains the local creation of “Agricultural Districts.”
- Although referred to using differing terminology and having varying attributes in the authorizing statutes of individual states, the common features that predominate state Agricultural District Programs and laws are ***the authority to locally create geographic areas within a political subdivision*** in which agricultural uses receive a package of unique benefits geared to promote the continuation of agricultural use of that property by ***minimizing threats and maximizing benefits*** to do so.
- These benefits include such things as protection from public or private ***nuisance claims***, extra ***substantive and procedural requirements as a prerequisite to the use of eminent domain***, ***preferential property tax*** provisions, and even ***mandated notifications*** at closing to new neighboring landowners inside or adjacent to the district.



AGENDA:

- A. recap the development of various forms of agricultural district programs and the benefits conferred on lands located within;
- B. outline the states which have enacted such laws and how they have been expanded, or contracted, over the years;
- C. compare the various concepts employed and benefits conferred in the sixteen states that currently have such programs; and
- D. briefly discuss the future of such programs in the changing world of the 2020s.



KEY RESOURCES:

American Farmland Trust

- **Ag District Fact Sheet (2016)***
- **Ag Districts Enabling Statutes – database**
- **Ag Districts Sample Documents**

* Leading national resource



STATES WITH AG DISTRICT PROGRAMS

1. California (1965)
2. Delaware
3. Illinois
4. Iowa
5. Kentucky
6. Massachusetts
7. Minnesota
8. New Jersey
9. New York (1971)
10. North Carolina
11. Ohio
12. Pennsylvania
13. Tennessee
14. Utah
15. Virginia
16. Wisconsin



PROVISIONS OF AGRICULTURAL

DISTRICT PROGRAMS AS OF 2016

PROVISIONS	NUMBER OF PROGRAMS WITH PROVISION	CA Agricultural Preserves & Farmland Security Zones	DE Agricultural Preservation Districts	IL Agricultural Areas	IA Agricultural Areas	KY Agricultural Districts	MA Agricultural Incentive Areas	MN State Agricultural Preserves
PROTECT AGRICULTURAL RESOURCES	Limits non-farm development	▲	▲	▲	▲	▲		▲
	Limits use of eminent domain ¹	▲				▲		▲
	Encourages coordination with local planning ²	▲			▲		▲	▲
	Assesses penalty for early withdrawal and/or non-farm development	▲	▲					▲
	Requires sound conservation practices ³			▲				▲
	Limits public investment for non-farm development ⁴							▲
	Requires agricultural impact statement for public projects							▲
	Protects from siting of public facilities or improvements (e.g., schools and solid waste management facilities)	▲						▲
	Limits local government's ability to annex land	△				▲		▲
	Provides soil and water conservation cost sharing for farmers					▲		
INCREASE VIABILITY	Allows landowners to participate in state easement purchase program		▲					
	Includes right of first refusal						▲	
	Limits special assessments	△	▲	▲	▲	▲	▲	▲
	Makes landowners automatically eligible for differential assessment ⁵	▲					▲	
	Allows landowners to receive property tax credit							▲
	Prioritizes enrolled land in water rights allocation				▲			
	Authorizes local governments to offer property tax exemptions on new or expanded farm buildings							
	Makes landowners eligible for state income tax credit							
	Limits rate of property tax increases							
	Exempts land enrolled in districts from real estate transfer, school, county property and all applicable ad valorem taxes			▲				
CREATE SECURE CLIMATE	Allows farmers to earn up to 25 percent of gross sales from non-farm products while retaining exemption from local zoning regulations							
	Calls for state agency policies to support districts or farming in districts ⁶			▲		▲		
	Requires notification for new landowners in, or adjacent to, districts		▲					
	Enables farmers to recover legal fees if he/she wins nuisance lawsuit		▲		▲			
	Gives farmers in districts extra protection from nuisance suits							
	Requires mediation for land use disputes				▲			
	Requires landowner consent prior to adoption of more restrictive zoning							
	Indemnifies landowners against claims arising from agricultural laborer housing		▲					
	Requires buffer strips for development adjacent to districts		▲					
	Initial term of enrollment (In years)		10 or 20*	10	10	3	5	2
Minimum acreage requirement ⁷		100	200	350 or 100 ^	300	250		

MN-Metro Metropolitan Agricultural Preserves	NJ Eight-Year Program Non-Municipal & Municipally Approved	NY Agricultural Districts	NC Voluntary Agricultural Districts & Enhanced Voluntary Agricultural Districts	OH Agricultural Districts	OH Agricultural Security Areas	PA Agricultural Security Areas	TN Agricultural Districts	UT Agriculture Protection Area	VA Agricultural Districts	VA Local Agricultural Districts	WI Farmland Preservation Agreements in Agricultural Enterprise Areas
▲			▲		▲			▲	▲	▲	▲
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40	■	250	■	10	500	250	250	■	200	20	



	Program Feature	# of states
PROTECT AGRICULTURAL RESOURCES	Limits non-farm development	14
	Limits use of eminent domain ¹	12
	Encourages coordination with local planning ²	12
	Assesses penalty for early withdrawal and/or non-farm development	10
	Requires sound conservation practices ³	7
	Limits public investment for non-farm development ⁴	5
	Requires agricultural impact statement for public projects	5
	Protects from siting of public facilities or improvements (e.g., schools and solid waste management facilities)	4
	Limits local government's ability to annex land	4
	Provides soil and water conservation cost sharing for farmers	3
	Allows landowners to participate in state easement purchase program	2
Includes right of first refusal	2	



Program Feature

of states

	Program Feature	# of states
INCREASE VIABILITY	Limits special assessments	12
	Makes landowners automatically eligible for differential assessment ⁵	4
	Allows landowners to receive property tax credit	2
	Prioritizes enrolled land in water rights allocation	2
	Authorizes local governments to offer property tax exemptions on new or expanded farm buildings	2
	Makes landowners eligible for state income tax credit	1
	Limits rate of property tax increases	1
	Exempts land enrolled in districts from real estate transfer, school, county property and all applicable ad valorem taxes	1
	Allows farmers to earn up to 25 percent of gross sales from non-farm products while retaining exemption from local zoning regulations	1



Program Feature # of states

Program Feature	# of states
CREATE SECURE CLIMATE Calls for state agency policies to support districts or farming in districts ⁶	6
Requires notification for new landowners in, or adjacent to, districts	3
Enables farmers to recover legal fees if he/she wins nuisance lawsuit	3
Gives farmers in districts extra protection from nuisance suits	3
Requires mediation for land use disputes	2
Requires landowner consent prior to adoption of more restrictive zoning	2
Indemnifies landowners against claims arising from agricultural laborer housing	1
Requires buffer strips for development adjacent to districts	1

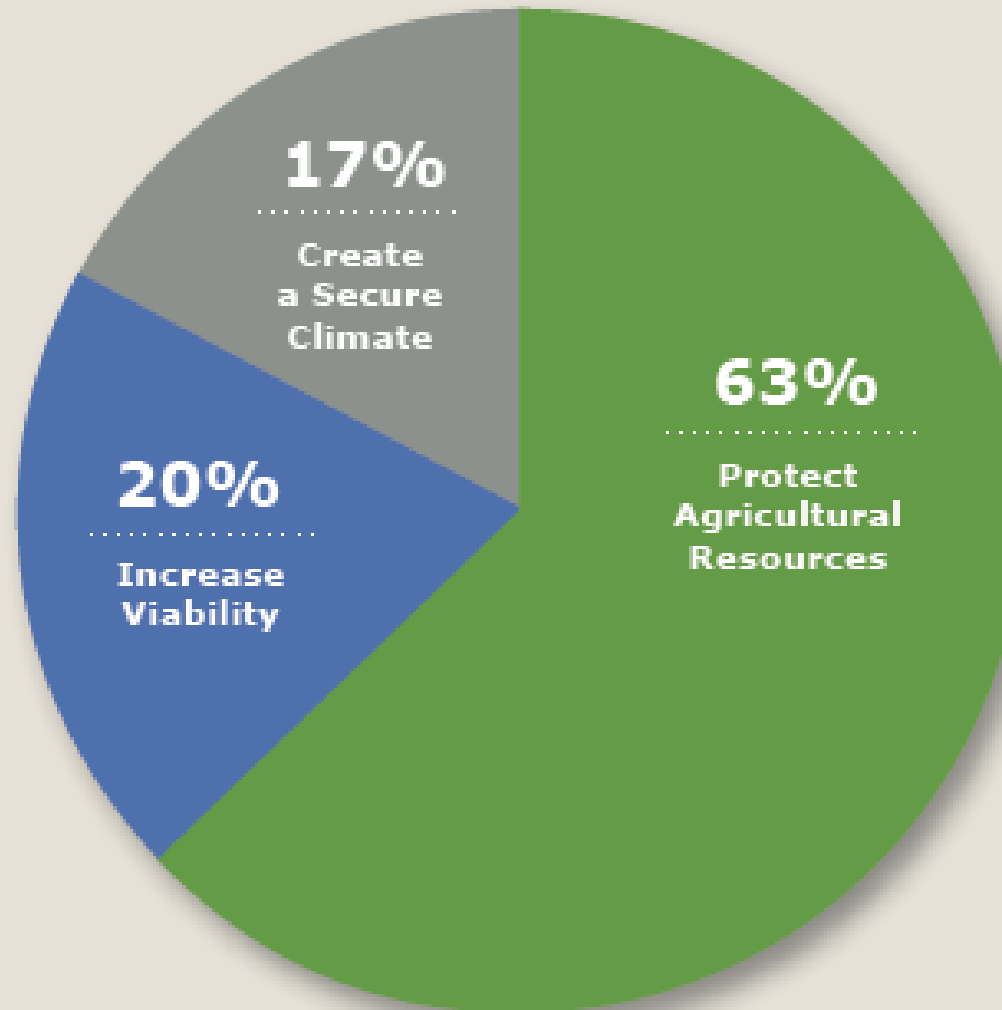
Also lists:

Initial term of enrollment:

Minimum acreage requirement:



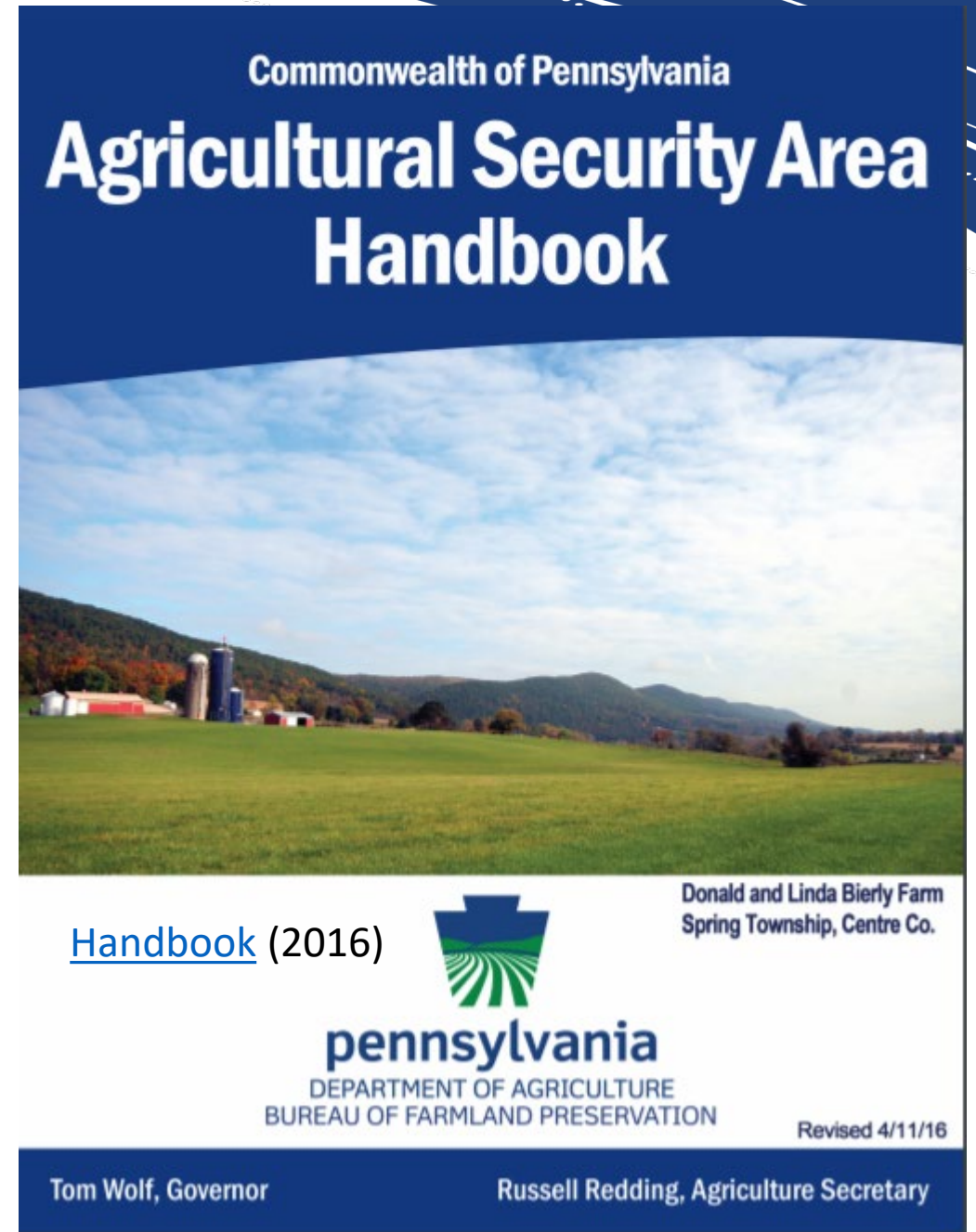
AGRICULTURAL DISTRICT PROVISIONS BY OUTCOME





PA 's Agricultural Area Security Law (1981)

- *Ag Security Areas (ASA)*
- **1006 ASAs in 65 of 67 counties; 4,041,438 acres**
- Enabling legislation for PA's nation-leading Agricultural Conservation Easement (ACE) Purchase Program – first purchase in 1989 (added by 1988 amendment)
- 5675 Farms subject to an ACE as of 1/1/20
- 579,940 acres subject to an ACE as of 1/1/20
- \$56 M in 2019 funding to purchase ACEs
- 58 of 67 counties have programs (1500 farm waitlist)
- **Eligible acreage must be in an ASA with \geq 500 acres**





PA Ag Security Area Creation

- ASA must be \geq 250 acres (can be non-contiguous and span >1 township)
- ***Establish by landowners' petition*** to township(s) representing at least 250 acres (each parcel at least 10 acres or \$2000 annual farm income) of viable ag/wood lands; 50% Classes I-IV soils or actively farmed; ag zoned
- Ag Security Area Advisory Committee – each township; advises township supervisors
- After public hearing; adopted by township; recorded; can be modified; additions by landowner petition; 7-year review; ***no obligations to maintain ag use and no penalty for changed use***
- Primary Feature: Entirely voluntary creation and once enrolled there are no strings attached









PA Ag Security Area Benefits

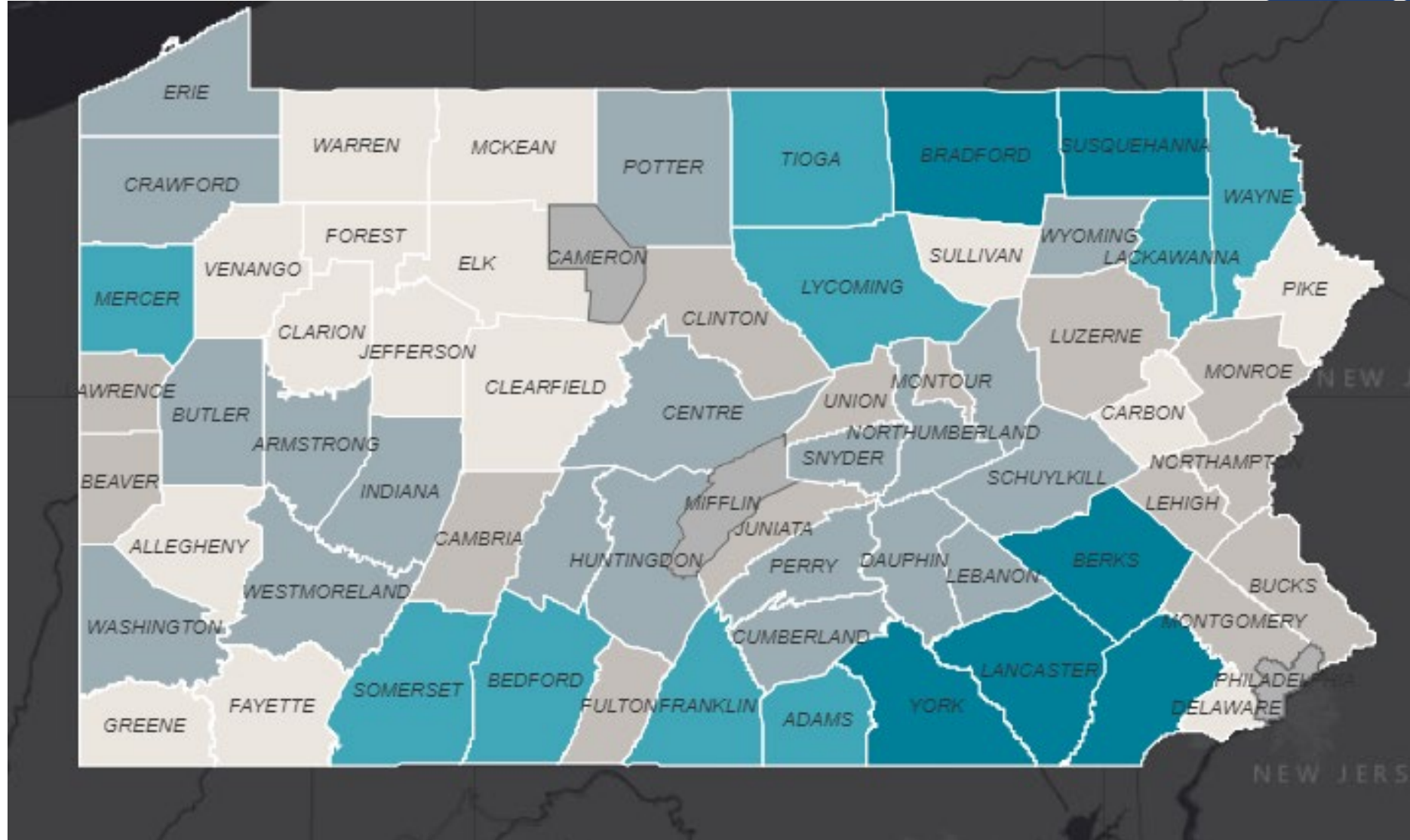
- Eligible for ACE purchase if area is \geq 500 acres
- ***“Limitations on local regulations” (No Public Nuisance)***
 - “not enacting local laws or ordinances which would unreasonably restrict farm structures or farm practices . . . ” (what does that mean? – no teeth)
 - **“a public nuisance shall exclude from the definition of such nuisance any agricultural activity or operation conducted using normal farming operations within an agricultural security area . . . if such agricultural activity or operation does not bear a direct relationship to the public health and safety.”**
- ***Agricultural Lands Condemnation Approval Board*** must approve all exercise of eminent domain powers (or any state government project that “might affect land”) in an ASA. Some utility and minor highway project exceptions.
 - Review standard is: “No reasonable and prudent alternative,” plus no “unreasonably adverse affect” upon the “preservation and enhancement of agriculture.”



ASA Acres

-  > 120,000 to 260,000
-  > 90,000 to 120,000
-  > 50,000 to 90,000
-  > 20,000 To 50,000
-  > 0 to 20,000
-  None

Map is symbolized to show total ASA acreage per county. Click on a county to learn more about total participating parcels and land owners.



Interactive
PA Map



California's Williamson Act (1965)

- California Land Conservation Act is solely a property tax reduction program
- 10-year rolling contracts voluntarily restrict development
- Original Concept failed: restricted development would drive down property tax escalation and lessen development pressure, but assessors did not respond as hoped (only 200,000 acres enrolled in 2 years)
- CA Constitution authorized “actual use” valuation, preferential assessment commenced and state appropriations to counties replaced lost tax revenue
 - “Open Space Subvention Payments” based on # of acreage enrolled locally ended in 2010
- Enrollees must be located in “ag preserve areas”
- *Non-Renewal* starts a nine-year escalation of taxes back to non-program rate
- *Cancellation* requires lump sum payment of 12.5% of full market value



Minnesota's Agricultural Preserves

- [Agricultural Land Preservation Program](#) - for counties outside the Twin Cities metro area. Currently, Winona, Waseca, and Wright Counties participate.
- [Metropolitan Agricultural Preserves Program](#) - includes the seven county Twin Cities metro area (“long term ag. land” = residential limited to 1 unit/40 acres)
- Both are primarily [preferential tax assessment](#) programs (8 year withdrawal)
- Counties choose to participate; if so, landowners can then apply to create an ***agricultural preserve*** consisting of their acreage.
- “Local governments may not enact ordinances or regulations that may restrict or regulate normal agricultural practices within an agricultural preserve unless the restriction or regulation has a direct relationship to public health and safety. This section applies to the operation of vehicles and machinery for planting, maintaining, and harvesting crops and timber and for caring and feeding farm animals, to the type of farming, and to the design of farm structures, except for residences.”
- “annexation” approval only after hearing; soil conservation requirements established by county;
- Notwithstanding any other law, construction projects for public sanitary sewer systems, public water systems, and public drainage systems are prohibited in exclusive agricultural use zones. New connections between land or buildings in a zone and public projects are prohibited. Land in a zone may not be assessed for public projects built in the vicinity of the zone. Subdivision 1 does not apply to public projects necessary to serve land primarily in agricultural use or if the owner of land in an agricultural preserve elects to use and benefit from a public project.



Wisconsin Agricultural Enterprise Area (AEA)

- Enacted in 2009
- 15 year contract in exchange for tax credit
- WI's DATCP establishes the AEA in response to municipality/landowner petition
- Farmland Preservation Tax Credit Landowners who own land within an AEA, and who sign a farmland preservation agreement are eligible for either:
 - \$5/acre for landowners with a farmland preservation agreement signed or modified after July 1, 2009
 - \$10/acre for landowners with lands located in a certified farmland preservation zoning district and in an AEA with a farmland preservation agreement signed or modified after July 1, 2009
- [Statewide map](#)



ON THE HORIZON

- The **growing gap** between agriculture and those in expanding suburban areas could pose a threat to protections.
- Since agricultural districts were first enacted in the 1970s, many of those areas have **shifted from rural to suburban**.
- In the face of suburban development, there are some areas where ag districts ***may not be fully understood or even be supported*** by that local electorate at this point.
- While the character of the community has changed in these areas, **agriculture also has changed**.
- Agriculture has changed in both directions – both in farms getting ***larger*** but also in farms getting ***smaller*** to take advantage of value added and the local market.
- **Ag district programs paint with a uniform brush in treating all agriculture the same**. The reality is that a growing out 3000 hogs on 200+ acres is not the same thing as a 5 acre CSA
- From a policy standpoint, both may be entitled to protection but neighbors, however, might have completely **different viewpoints on these different types of agriculture**.



THANK YOU!

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