

Ag Foundation – Public Comment Session – Proposed Regulations – September 23, 2015

Exhibit List

<u>Exhibit Number</u>	<u>Exhibit Description</u>
1	Proposed Regulations
2	Delaware State News Affidavit of Publication
3	News Journal Affidavit of Publication
4	Delaware Register Notice of Hearing and Proposed Regulations
5	April 17, 2015 Letter to Hon. Chris Bullock, President, New Castle County Council
6	June 17, 2015 Letter to Hon. Chris Bullock, President of New Castle County Council
7	April 17, 2015 Letter to Hon. Michael H. Vincent, President, Sussex County Council
8	June 17, 2015 Letter to Sam Wilson, Sussex County Aglands Advisory Board
9	April 17, 2015 Letter to Eric Buckson, Commissioner, Kent County Aglands Advisory Board, et. Al.
10	June 17, 2015 Letter to Eric Buckson, Commissioner, Kent County Aglands Advisory Board, et. Al.
11	June 18, 2015 Email from Eric Buckson Regarding proposed regulations
12	Undated Letter from Joseph Jackewicz, Jr., Member of Kent County Aglands Advisory Board regarding proposed regulations
13	July 16, 2015 Letter from E. Austin Short to Joseph Jackewicz, Jr.
14	September 18, 2015 Letter from Tony Domino
15	September 21, 2015 Letter from William E. Powers, Member, New Castle County Council, to Robert Garey
16	September 21, 2015 email from George Smiley, Member, New Castle County Council

17. December 2, 2014 Letter to Hon. Chris Bullock, President of New Castle County Council
18. March 11, 2015 Letter to Hon. Chris Bullock, President of New Castle County Council
19. Email chain between Anthony deFiore, Legislative Aide to New Castle County Council President, Chris Bullock, and E. Austin Short, DDA, covering the period December 3, 2014 through June 17, 2015
20. September 22, 2015 Letter from Christine Whitehead
21. September 30, 2015 email from Charles P. O'Brien
22. September 22, 2015 Letter from Karl D. Messer
23. September 23, 2015 Letter from Stewart Ramsey
24. Delaware State News Affidavit of Publication relating to publication of notice of extension of time for submitting written comments until October 12, 2015
25. News Journal Affidavit of Publication relating to publication of notice of extension of time for submitting written comments until October 12, 2015
26. Letter from Dr. Christopher A. Bullock, President of New Castle County Council, requesting an extension of the deadline for submitting written comments
27. Letter from Edwin Kee, Secretary of Department of Agriculture to Dr. Christopher A. Bullock, responding to request for extension
28. Undated Letter from Bill Powers to Edwin Kee, Secretary of Department of Agriculture
29. October 11, 2015 Memo from Christine Whitehead to William Denman
30. October 12, 2015 Letter from David B. Carter, President of Delaware Audubon Society
31. Summary of County Contributions to Delaware Aglands Preservation Program
32. Public Meeting Notice as reported on Delaware.gov on August 25, 2015

**DELAWARE
AGRICULTURAL LANDS PRESERVATION FOUNDATION**

PROPOSED REGULATIONS

AGRICULTURAL LANDS PRESERVATION PROGRAM

PREAMBLE

The Agricultural Lands Preservation Act ("Act") was enacted on July 8, 1991 and provided for the creation of the Agricultural Lands Preservation Foundation ("Foundation"). The Foundation has been charged with the authority and responsibility of establishing and administering an extensive statewide program to preserve Delaware's farmlands and forestlands. Included in its responsibilities is the adoption of criteria for the establishment of and maintenance of Agricultural Preservation Districts ("Districts") and adoption of criteria for the purchase of agricultural lands preservation easements ("Preservation Easement") 3 Del.C. §904(a) and (b). These regulations are intended to provide guidelines and simplification regarding the manner in which the Agricultural Lands Preservation Program is administered.

1.0 Criteria for District Eligibility

- 1.1 In order to qualify for the Agricultural Lands Preservation Program, the lands proposed as an Agricultural Preservation District in the application must meet the following minimum criteria:
 - 1.1.1 owner(s) shall hold fee simple title to all land to be placed in a District and must be actively using the property for "agricultural and related uses";
 - 1.1.2 must constitute at least 200 acres of contiguous farmland or lesser acreage if the farmlands are located within three (3) miles of an established District;
 - 1.1.3 shall be zoned for agricultural purposes and shall not be subject to any major subdivision plan;
 - 1.1.4 applicant(s) including all fee simple title holders, must sign a written agreement committing to District restrictions set forth in this Section and 3 Del. C. §909 and other adopted requirements;
 - 1.1.5 must be viable and productive agricultural land comprising a farm property unit and meet the minimum County Land Evaluation and Site Assessment (LESA) scoring requirements for eligibility as established by the Foundation; [3 Del. C. §908(a)(3)]
 - 1.1.6 must include all of the eligible real property located in the tax parcel or tax parcels subject to application.
- 1.2 For the purposes stated in this chapter, the phrase "viable and productive agricultural land" is defined as land that qualifies under provisions of the Farmland Assessment Act. [9 Del. C. §8329 - 8333]
- 1.3 The minimum LESA score for an eligible District or Expansion shall be 170 points out of a possible 300 points for each county in the State as computed under the currently approved LESA program of the Delaware Department of Agriculture.

- 1.4 The LESA score for agricultural lands is the primary factor in evaluating the eligibility of agricultural lands for inclusion in Districts and expansions, including the eligibility for purchase of preservation easements.

2.0 Application Procedures

- 2.1 The Foundation will provide application forms on which applicants who volunteer to place their lands into an Agricultural Preservation District will provide such information as the Foundation deems appropriate.
- 2.2 The Foundation shall provide assistance to potential applicants in completing application forms when requested.
- 2.3 Foundation staff may conduct on-site inspections and/or phone interviews with the applicants to acquire data necessary to perform LESA analyses and write a staff report.
- 2.4 In conjunction with the application, all fee simple owners shall sign a District Agreement in such form as deemed acceptable by the Foundation and which serves as a declaration in recordable form of acknowledgment of the policies and restrictions that must be followed, and benefits realized in a District.

3.0 Application Review Procedures

The Foundation has the authority to approve applications establishing Agricultural Preservation Districts and the authority to purchase preservation easements. [3 Del. C. §904]

- 3.1 The Foundation staff will review applications and determine whether or not the minimum eligibility requirements under Section 1.0 have been met.
- 3.2 If the minimum eligibility requirements have not been met, then the applicant will be notified by letter from the Foundation indicating that the application does not qualify for further review, and the reasons for ineligibility.
- 3.3 If an applicant excludes a portion of property otherwise includable in a proposed District, then the Foundation may deny the application, unless the property proposed for exclusion is not otherwise eligible for inclusion due to the use of the property at the time of the application.
- 3.4 Subject to Section 3.3 above, if the lands proposed as a District in the application (200 or more acres) meet minimum eligibility criteria, then the Foundation staff will submit to the Foundation, the County Farmland Preservation Advisory Board and the County Planning and Zoning Authority, applications and an indication that the application meets the minimum eligibility requirements.
- 3.5 If the applicant disagrees with the staff evaluation of the proposed District, then the applicant may contact the Foundation staff to discuss the application review. Foundation staff will meet with the landowner to discuss the review within thirty (30) days from receiving formal contact from the applicant.
- 3.6 If the issue is not resolved to the applicant's satisfaction, the applicant may request an

administrative review with the Foundation by submitting a letter to the Foundation within fourteen days (14) of the applicant's last meeting with Foundation staff.

- 3.7 This letter must include reasons and documentation to justify the applicant's claim(s).
- 3.8 The Foundation will schedule a meeting and notify the applicant by certified letter of the date, time, and place of the meeting.
- 3.9 At the administrative review meeting, the applicant(s) shall present information or documentation as to how the proposed District satisfies the eligibility criteria.
- 3.10 The Foundation will render a decision within thirty (30) days from the administrative review meeting and notify the applicant in writing of its decision.
- 3.11 Owners of real property who have executed a District Agreement or a preservation easement that incorporate the restrictions in effect prior to the Senate Bill No. 333 amendments and who elect to be released from the restrictions set forth in 9 Del. C. §909(a)(2)(b) pursuant to 9 Del. C. §909(a)(4)(c), shall comply with the following requirements:
 - 3.11.1 Owners who have executed a district agreement and who wish to designate up to three residential lots shall designate the allowable residential acreage in sufficient detail to enable the Foundation to determine the location of the residential acreage, and while a survey may be submitted, a survey shall not be required. The Owner shall execute an amendment to the Owner's District Agreement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in 9 Del. C. §909(a)(1), (a)(2)(a), (a)(4)(a) and (a)(4)(b).
 - 3.11.2 Owners who have executed a preservation easement and who wish to designate up to three residential lots shall designate the allowable residential acreage in sufficient detail to enable the Foundation to determine the location of the residential acreage and shall submit to the Foundation for its review and approval, at the Owner's expense, an amended survey in recordable form. The amended survey shall show the entire parcel subject to the preservation easement and the location of any residential lots. The Owner shall execute an amendment to the preservation easement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in 9 Del. C. §909(a)(1), (a)(2)(a), (a)(4)(a) and (a)(4)(b).

4.0 Creation of a District

- 4.1 To establish an Agricultural Preservation District, the application must be approved by two out of three of the entities listed under Section 3.4 of these regulations.
[3 Del. C. §907(c)]
- 4.2 After review by the Foundation, the application is subject to a review period of thirty (30) days in which the Secretary of Agriculture may reject the application. The application is officially approved at the end of the review period, if it is not rejected by the Secretary of Agriculture. [3 Del. C. §919]

- 4.3 The property legally becomes a District when the applicant and Foundation Chairperson (or designee) have signed the District Agreement and no rejection has been exercised by the Secretary of Agriculture, or the Secretary of Agriculture has waived the right of rejection.
- 4.4 Copies of the District Agreement shall be filed with the County Planning and Zoning and Tax Assessor's Offices and recorded in the Office of the Recorder of Deeds. The Foundation shall require from these Offices proof of recording and/or receipt of the District Agreement.
- 4.5 The Foundation shall endeavor to provide written notification of the date of establishment of the Agricultural Preservation District and provide a copy of the District Agreement to the applicant, however, the failure of the Foundation to satisfy any formality following execution of a District Agreement shall not affect the validity of the District Agreement.

5.0 District Restrictions

- 5.1 Any rezoning or major subdivision of real property included in an Agricultural Preservation District is prohibited. [3 Del. C. §909(a)(1)]
- 5.2 The submission of applications or preliminary rezoning or subdivision plans for any property within an Agricultural Preservation District to a county or municipality shall be considered evidence of the intent to rezone or subdivide and no action shall be taken by any county or municipality on any such application until the expiration of the District Agreement.
- 5.3 During the term of the District Agreement, the property shall be used for "agricultural and related uses" and shall be used in such a way so that the property continues to qualify as "viable and productive agricultural land" as defined under provisions of the Farmland Assessment Act. [9 Del. C. §8329 - 8333] No more than 1 acre of land for each 20 acres of usable land, subject to a maximum of 10 acres, shall be allowed for dwelling housing. For purposes of calculating the number of acres allowable for dwelling housing, fractions of any acre shall not be allowed. By way of example, if a farm consists of 45 acres of usable farmland, the number of acres allowed for dwelling housing shall be 2, and not 2.25.
- 5.4 The phrase 'agricultural and related uses' shall have the meaning set forth in 3 Del. C. §909, as the same may be amended from time to time.
- 5.5 Excavation or filling, borrow pits, extraction, processing and removal of sand, gravel, loam, rock or other minerals is prohibited unless such action is currently required by or ancillary to any preparation for, or operation of any activities including, but not limited to: aquaculture, farm ponds, cranberry operations, manure handling facilities, and other activities directly related to agricultural production.
- 5.6 Activities that would be detrimental to drainage, flood control, water conservation, erosion control or soil conservation are prohibited.

- 5.7 Any other activity that might negatively affect the continued agricultural use of the land is prohibited.
- 5.8 The term "usable land owned in the district" [3 Del. C. §909(a)(2)], shall be defined as any land meeting the requirements for agricultural, horticultural or forest land in the Farmland Assessment Act of 1968 [9 Del. C., Chapter 83] and [3 Del. C. §403] or criteria for farm definition as established by the National Agricultural Statistics Service.
- 5.9 The District Agreement and District requirements and benefits shall be binding on the heirs, successors and assigns of property owners of lands within a District. A property owner in a District shall provide written notice to the Foundation of any proposed transfer of property subject to the District Agreement at least ten (10) days in advance of the transfer, and shall give written notice to any successor or assign at least ten (10) days in advance of the date of transfer of the property that the property is subject to District restrictions. The party taking title shall execute a document as required by [3 Del. C. §909(a)(2)c.] acknowledging the acreage allowed for dwelling housing and the restrictions which apply to the property. The failure of the property owner to notify the transferee as provided herein shall not affect the transferee's obligation to comply with the terms and conditions of the District Agreement upon the transfer of title.
- 5.10 Under 3 Del. C. §909(a)(3), all restrictions shall be covenants which run with and bind the lands in the District for a minimum of ten (10) years, beginning when the District Agreement takes effect as specified in the District Agreement.

6.0 Continuation of a District

- 6.1 All properties are to remain in an Agricultural Preservation District for at least ten (10) years, subject to the allowance of hardship exceptions for exclusion of dwelling housing pursuant to 3 Del. C. §909(a)(2)(b) and Section 9 of these guidelines.
- 6.2 If a landowner wishes to withdraw from, or terminate a District, then the Foundation must receive a written notice of intent to withdraw no less than six (6) months prior to the ten (10) year anniversary date of initial establishment of the District. [3 Del. C. §909(b)]

If the Foundation does not receive a written notification of the landowner's intent to withdraw from the District six (6) months prior to the ten (10) year anniversary date of that District, then the land shall remain in the District for an additional five (5) year period unless and until notice of intent to withdraw shall be given six months prior to the end of each additional five-year period.

7.0 Expansion of a District

- 7.1 An Agricultural Preservation District can be expanded for the purpose of preserving additional lands. Lands added to a District may be under 200 acres. [3 Del. C. §907(d)]
- 7.2 Land which is less than 200 usable acres, yet meets the other criteria established by the Foundation, is eligible to be an expansion ("Expansion") of an Agricultural Preservation District if it is within three (3) miles of any portion of an established Agricultural Preservation District. [3 Del. C. §907(a)]

8.0 Inspection of Districts

The Foundation has the authority to enter upon lands as may be necessary to perform surveys, appraisals, and investigations to accomplish the purpose of the program, consistent with applicable statutes.

[3 Del. C. §904(b)(14)]

- 8.1 The Foundation or its designee reserves the right to inspect restricted land and enforce agreements on its own behalf.
- 8.2 If any violations of the terms and the conditions of the District Agreement occur, the Foundation may institute proceedings in the appropriate court to enforce the terms and seek appropriate relief. [3 Del. C. §920(a)]

9.0 Dwelling Property Hardship Exceptions

Except as set forth in Section 9.7 hereof, owners of real property who have executed a District Agreement or a preservation easement that incorporate the restrictions in effect prior to the Senate Bill No. 333 amendments are entitled to apply to the Foundation for a hardship exception allowing for the transfer of dwelling property to parties who are not otherwise entitled to residential use of the dwelling property under the District Agreement or Preservation Easement, subject to the provisions of 3 Del. C. §909(a)(2)(b) and the following requirements.

- 9.1 An applicant for a hardship exception shall submit the following information in writing to the Foundation:
 - 9.1.1. name and property interest of applicant in the dwelling property;
 - 9.1.2 acreage of the dwelling property subject to application;
 - 9.1.3 date on which the District was established;
 - 9.1.4 number of dwellings and acreage of residential use currently on the property in the District;
 - 9.1.5 the nature of the hardship condition and reasons justifying the granting of a hardship exception;
 - 9.1.6 the extent to which the hardship condition is unavoidable.
- 9.2 The Foundation shall consider hardship conditions involving the following circumstances:
 - 9.2.1 the sale or transfer of the dwelling property compelled by foreclosure, court order, or marital property division agreement;
 - 9.2.2 the sale or transfer of the dwelling property compelled by job transfer;
 - 9.2.3 the sale or transfer of the dwelling property compelled by health conditions;

- 9.2.4 the sale or transfer of the dwelling property required to avoid insolvency or bankruptcy; and
- 9.2.5 other circumstances of an unusual and extraordinary nature which pose a practical hardship to continued ownership of the dwelling property and which are unavoidable.
- 9.3 Hardship exceptions will not be granted when no real hardship exists and the primary consequence of the sale or transfer of the dwelling property is financial gain.
- 9.4 The applicant shall bear the burden of establishing the existence of hardship circumstances, and shall provide to the Foundation documentation in support of the application, and any documentation requested by the Foundation, provided however, that documentation involving privileged information may be submitted on a confidential basis.
- 9.5 The Foundation may require the applicant for a hardship exception to appear before the Foundation Board to present the application, and an applicant shall be entitled to appear before the Board to make a presentation by submitting a written request to the Foundation.
- 9.6 The granting of a hardship exception by the Foundation shall be subject to the following conditions:
 - 9.6.1 the dwelling property following transfer shall be used only for residential purposes;
 - 9.6.2 the transferred property shall not qualify for District benefits or benefits of Preservation Easements;
 - 9.6.3 if the transferred property is subject to a Preservation Easement prior to transfer, payment shall be made to the Foundation in an amount equal to twenty-five (25) percent of the current fair market value of the land subject to transfer;
 - 9.6.4 the transferee shall execute a Declaration in recordable form as prescribed by the Foundation which includes the acreage allowed for dwelling housing and the restrictions which apply to the real property;
 - 9.6.5 the Foundation may require the transferor to execute a Declaration in recordable form as prescribed by the Foundation to evidence the status of allowable dwelling housing property on lands retained by the transferor which are in the District or subject to a Preservation Easement; and
 - 9.6.6 such other terms and conditions considered necessary by Foundation to address the nature of the hardship condition.
- 9.7 The hardship provisions set forth herein shall not apply to the owners of real property who, pursuant to 3 Del. C. §909(a)(4)(c), have elected to be released from the restrictions of 3 Del. C. §909(a)(2)(b).

10.0 Delaware Farmland Preservation Fund

The Delaware Farmland Preservation Fund, hereinafter referred to as the "Fund", was enacted under 3 Del. C. §905 for the exclusive application by the Foundation to achieve the desired goals of preserving viable agricultural lands and conducting the business of the Foundation.

11.0 Sources of Funding

- 11.1 The Foundation may accept donations, property, or development rights as gifts and monetary gifts from any source, public or private.
- 11.2 Monies not needed on a current basis by the Foundation may be invested with the approval of the Board of Trustees.
- 11.3 The Fund is subject to an annual audit to be prepared by an independent, certified public accountant. The findings of all audits shall be presented to the Board.
- 11.4 The Foundation shall manage the monies appropriated to it by the General Assembly in accordance with the terms of the appropriations.

12.0 Criteria for Purchase Agricultural Lands Preservation Easements

- 12.1 The criteria for eligibility of acquisition of a Preservation Easement shall be the same as the criteria for district eligibility. In addition, offered preservation easement lands shall be in an established district and in compliance with district requirements to be eligible. The Foundation shall have the right, in its sole discretion, to acquire a Preservation Easement on only a part of the property included within the District Agreement.
- 12.2 The prioritization and selection of properties for the purchase of preservation easements shall be as set forth in Sections 13 thru 20 inclusive hereof.

13.0 Matching Contributions to the Program

The Foundation may establish a reserve or set aside of available funds for the matching of federal, county, local, or private funds for the preservation of farmland. The Foundation may allow the entity providing matching funding to select the qualified properties for purchases of easements using the matching funding notwithstanding provisions of these regulations regarding selections. The Foundation has the discretion, but is not required, to match contributions.

14.0 Schedule for Acquisition of Agricultural Lands Preservation Easements

- 14.1 Application and funding cycles will take place on schedules established by the Foundation.
- 14.2 Applications for the purchase of Preservation Easements in Rounds of Purchases shall be subject to deadlines established by the Foundation.
- 14.3 For each Round of Preservation Easement Purchases the Foundation shall arrange for the appraisal of the Preservation Easement value of those properties under consideration.

- 14.4 Upon completion, the appraisals shall be provided to the landowners, and procedures set forth herein involving offers for the sale of preservation easements under Option Agreements shall be initiated.
- 14.5 Offers received shall be held confidential until all offers are received after which the Foundation shall review the offers and announce the selections.
- 14.6 Following the selection of properties for acquisition of Preservation Easements, the Foundation shall arrange for surveys of the properties to be conducted, and proceed to settlement under the terms of the Option Agreements, subject to the availability of funding and satisfaction of regulatory, financial or other restrictions or limitations.
- 14.7 The Foundation is under no obligation to purchase a Preservation Easement which is offered for sale. [3 Del.C. §913.]

15.0 Application Procedures

- 15.1 A separate application shall be required for each farmland tract (operating farm unit) offered for Preservation Easement purchase. The Foundation shall not be obligated to process any incomplete application.
- 15.2 The Foundation shall develop, and make available to landowners or other interested parties, an application form for use in offers to sell Preservation Easements.
- 15.3 The Foundation shall review the application to determine if it is complete.

16.0 Appraisals [3 Del. C. §916]

- 16.1 An offer to purchase a Preservation Easement shall be based upon one or more appraisal reports which estimate the full market value of the land under its agricultural zoning designation and the agriculture-only value of the farmland tract. The agricultural only value shall be based on an income capitalization methodology. Any appraisal obtained by the Foundation shall constitute the property of the Foundation and may not be used by the property owner for tax or other purposes. All categories of land located in the farmland tract shall be eligible for easement purchase and shall be appraised
- 16.2 The value of buildings or other improvements on the farmland tract shall not be considered in determining the Preservation Easement value. Excluded from the value of the Preservation Easement shall be any acreage designated or eligible to be designated by the owner for residential use pursuant to 3 Del. C. §909(a)(4)(a), provided however, the landowner shall have the right to waive eligible residential usage in which case the development rights value of the waived acreage shall be included.
- 16.3 The appraiser shall be:
 - 16.3.1. An independent, licensed real estate appraiser who is qualified to appraise a property for easement purchase. An appraiser shall be selected on the basis of experience, expertise and professional designation; and

16.3.2. A member of an organization which subscribes to the "Uniform Standards of Professional Appraisal Practice" published by the Appraisal Standards Board of the Appraisal Foundation, and shall follow their ethical and professional standards.

16.4 The appraiser shall supply a narrative report which shall contain such information as required by the Foundation.

17.0 Agricultural Lands Preservation Easement Value and Purchase Price

17.1 The value of a Preservation Easement in perpetuity shall be the difference between the full market value and the agriculture-only value contained in the appraisal report.

17.2 The price paid by the Foundation for the purchase of a Preservation Easement may not exceed, but may be less than, the value of the Preservation Easement. [3 Del. C. §916(a)]

17.3 If the applicant is not satisfied with the appraisal provided by the Foundation, the applicant shall be entitled to have an independent appraisal performed at the applicant's expense by a qualified appraiser as specified in Section 16.3. The alternative appraisal shall be prepared in the same format as the Foundation's appraisal and shall be submitted to the Foundation within forty-five (45) days of the applicant's date of receipt of the appraisal provided by the Foundation. The forty-five (45) day period may be extended by the Foundation, provided the time extension does not delay the time frame established by the Foundation for making selection and acquisition decisions.

17.4 The review of the alternative appraisals by the Foundation shall be based on written submissions under such procedures as specified by the Foundation. The maximum adjusted Preservation Easement value which the Foundation will accept is the difference between the agriculture-only value and the full market value, determined as follows:

17.4.1 The agriculture-only value shall equal the sum of:

- i. The agriculture-only value determined by the applicant's appraiser; and
- ii. Up to one-half of the positive difference between the agriculture-only value determined by the Foundation's appraiser and his/her values which exceed those determined by the applicant's appraiser.

17.4.2 The full market value shall equal the sum of:

- i. The full market value determined by the Foundation's appraiser; and
- ii. Up to one-half of the positive difference between the full market value determined by the applicant's appraiser and his/her values which exceed those determined by the Foundation's appraiser.

18.0 Offer of Purchase by the Foundation

18.1 The Foundation has the authority to incorporate bidding and/or negotiation as part of the procurement process. [3 Del. C. §915]

- 18.2 In reviewing the offers of applicants to sell Preservation Easements to the Foundation, the Foundation shall, subject to consideration of any alternative criteria by the Foundation to satisfy special objectives, select those offers providing the highest level of percentage donation or percentage discount to the finally appraised value of the Preservation Easement, in accordance with the procedures and requirements of this Section. As an additional incentive, if any part of the applicant's property subject to the offer is located in whole or in part within one-half (1/2) mile completely outside of any growth zone of the County in which the Property is located, or in whole or in part within one-half (1/2) mile completely outside of the boundary of an incorporated town, municipality or city, for the sole purpose of ranking said application, the Foundation shall increase the offered percentage discount by five percent (5%). By way of example, if an applicant's offer includes a discount of sixty percent (60%), and the applicant's property is located in whole or in part within one-half (1/2) mile completely outside of the specified areas, for ranking purposes, the applicant's discount shall be deemed to be sixty-five percent (65%). If the applicant's property is selected for purchase of a preservation easement, the purchase price for the preservation easement shall incorporate a discount of only sixty percent (60%). The locations of the growth zones referenced by the Counties and the one-half (1/2) mile surrounding areas are as shown in Appendix "A" attached hereto.
- 18.3 The Foundation shall entertain offers in the form of Option Agreements from all eligible applicants who wish to submit offers, and after all offers are received, list the offers with the highest to the lowest level of percentage donation or percentage discount to the finally appraised value of the Preservation Easement with any adjustment to the offered donation or percentage discount as specified in Section 18.2 above.
- 18.4 Prior to releasing information to the public regarding the percentage of any discount or donation provided by a landowner the Foundation shall notify the landowner, identifying the requesting party, and obtain permission from the landowner prior to releasing the requested information. Otherwise, the information shall not be disclosed.
- 18.5 The Foundation may, but shall not be required to, allow a property owner in a District to submit an offer to sell a preservation easement on a portion of the real property in a District.

19.0 The Agricultural Lands Preservation Easement

- 19.1 The owners of the subject farmland tract shall execute a document conveying the Preservation Easement which document shall be in a form which contains conditions contained in Option Agreements executed by landowners.
- 19.2 The document shall be in recordable form and contain:
- 19.2.1. A legal description setting forth the metes and bounds of the farmland tract subject to the Preservation Easement.
- 19.2.2. At least one course and distance referencing a fixed marker or monument of a type commonly placed in the field by a surveyor.

19.2.3 The legal description shall not contain a closure error greater than one foot per 200 linear feet in the survey.

19.2.4 The survey of the farmland tract on which a Preservation Easement is to be purchased shall show each of the residential lots, if any, designated by the owner pursuant to 9 Del. C. §909(a)(4)(a).

20.0 Title Quality

The Preservation Easement conveyed to the Foundation shall be unencumbered except for standard exceptions and be capable of being insured as such by an established and recognized title insurance company doing business in the State of Delaware. Any title defects, liens, survey discrepancies, boundary line disputes, or similar title issues shall be resolved by the property owner, at the property owner's sole expense. If subsequent to the purchase of a Preservation Easement it is determined that the amount of acreage is less than as reflected on the survey used by the Foundation for purposes of calculating the purchase price for the Preservation Easement, the property owner shall be required to refund to the Foundation any excess funds paid in reliance upon the inaccurate survey.

21.0 Residential Lots

Senate Bill 333 imposes alternative restrictions on the limited residential use of property subject to a District Agreement or Preservation Easement by replacing the unlimited number of residential dwellings allowed for owners, relatives of owners, and farm labor, with a total limit of three dwellings which can be occupied by any person. The overriding limitation of residential use of 1 acre for 20 acres of usable farmland (subject to a maximum of 10 acres) was left unchanged. Accordingly, owners can now designate up to three residential lots on District Property or Preserved Property. With respect to the designation of the residential lots allowed under Senate Bill 333, the following additional guidelines shall apply:

21.1 The acceptance by the Foundation of the designation of a residential lot does not mean that the location of the lot and proposed residential use complies with any applicable zoning rules or regulations, or that a lot is suitable for residential use. Owners are encouraged to conduct such investigations and perform such tests as they deem appropriate to ascertain whether or not any designated lot will be suitable for residential use and complies with all applicable land use regulations, including zoning laws.

21.2 The Foundation recognizes that at times, due to circumstances beyond the control of the owner, it may be necessary for the owner to change the location of a lot. As a matter of policy, the Foundation will allow such changes subject to the following requirements:

21.2.1 No change in the location of a lot or size of a lot shall be allowed which would cause the number of lots or amount of residential acreage to be in excess of that otherwise allowed under the terms of the District Agreement or Preservation Easement.

21.2.2 With respect to property subject to a Preservation Easement, the owner shall cause to be prepared, at the owner's expense, an amended plot plan showing the entire parcel subject to the Preservation Easement and the location of each residential lot.

21.2.3 The owner shall execute an amendment to the District Agreement or Preservation Easement, which amendment shall reflect the change in the location or size of the residential lots, and which shall reference the amended plot plan.

22.0 Strategy Map

The farm lands shown on the Strategy Map attached hereto as Appendix "B" which have a LESA Score of at least 170 are targeted for inclusion in Districts, and those qualified farms located in whole or in part one-half (1/2) mile completely outside of any growth zones designated under these regulations shall be further prioritized by the donation or discount advantage for such properties provided under Section 18.2 of these regulations.

INDEPENDENT NEWSMEDIA INC. USA

110 Galaxy Drive • Dover, DE • 19901 • 1-800-282-8586

State of Delaware:

County of Kent:

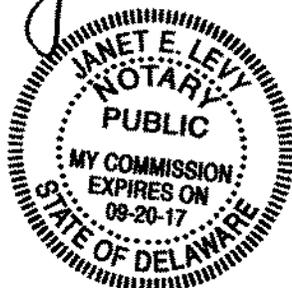
Before me, a Notary Public, for the County and State aforesaid, Edward Dulin, known to me to be such, who being sworn according to law deposes and says that he is President of Independent Newsmedia Inc. USA, the publisher of the **Delaware State News**, a daily newspaper published at Dover, County of Kent, and State of Delaware, and that the notice, a copy of which is hereto attached, as published in the **Delaware State News** in its issue of August 18, 2015.



President
Independent Newsmedia Inc. USA

Sworn to and subscribed before me this 18th

Day of August A.D. 2015



Janet Levy
Notary Public

**DELAWARE AGRICULTURAL LANDS
PRESERVATION FOUNDATION**

**STATUTORY FOUNDATION:
3 Del.C. 5904(a)(13)**

NOTICE OF PUBLIC HEARING

The Delaware Agricultural Lands Preservation Foundation (the "Foundation"), pursuant to 3 Del.C. §928, will hold a public hearing to discuss proposed regulations relating to the administration of the Delaware Agricultural Lands Preservation Program established pursuant to 3 Del.C. §901. The Foundation was established by the Delaware Legislature pursuant to 3 Del.C. §903. The Foundation is responsible for, among other things, adopting criteria for the establishment and maintenance of Agricultural Preservation Districts and Forestland Preservation Areas and establishing criteria for the purchase of Agricultural Preservation Easements and Forestland Preservation Easements. To carry out its statutory responsibilities, the Foundation has been directed to, among other things, adopt rules of practice and procedure for the acquisition of Preservation Easements, including the process and timeframe for submitting applications for the sale of Easements, the establishment of the purchase price for the easements through the use of appraisal information, the manner in which offers to sell such easements are accepted, and the basis upon which offers for sale of such easements are accepted.

Pursuant to its statutory authority, the Foundation is proposing for adoption a comprehensive set of guidelines and regulations to be used for the administration of the agricultural lands preservation program. The proposed regulations will replace all of the existing regulations set forth in 3 Delaware Administrative Code, Part 701, Sections 1.0 through and including 30.0, including Appendix A through G, and will, among other things: (a) establish eligibility criteria, (b) establish application procedures, (c) establish criteria for the purchase of Agricultural Lands Preservation Easements and methods by which the purchase price will be determined, and (d) provide for additional means of creating priority for acquisition of preservation easements in designated areas which are near or adjacent to any growth zones that may be indicated by each of the three respective counties. No changes are being proposed to the Forestland Preservation regulations set forth in 3 Delaware Administrative Code, Part 702.

The public hearing will be on Wednesday, September 23, 2015 beginning at 10:00 a.m. and ending at 12:00 p.m. at the Foundation's office located at 2320 S. DuPont Highway, Dover, Delaware 19901.

Copies of the proposed regulations are available for review by contacting:

Rebecca Vaughn
Delaware Agricultural Lands
Preservation Foundation
2320 S. DuPont Highway
Dover, DE 19901
(302) 698-4531

Email: Rebecca.Vaughn@state.de.us

Anyone wishing to present oral comments at this public hearing should contact the designated Hearing Officer, Mr. William A. Denman at (302) 678-3262 prior to the hearing. Oral comments and written comments may be presented at the hearing, and anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony, should submit such comments by October 1, 2015 to:

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904
(302) 678-3262

Email: wdenman@pgslegal.com

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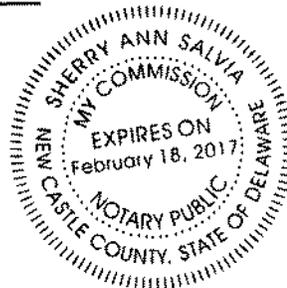
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Linda Barber

Sherry Ann Salvia
Sworn and subscribed before me, this 18 day of August,
2015

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DELAWARE AGRICULTURAL LANDS
PRESERVATION FOUNDATIONSTATUTORY FOUNDATION:
3 Del. C. §904(a)(13)

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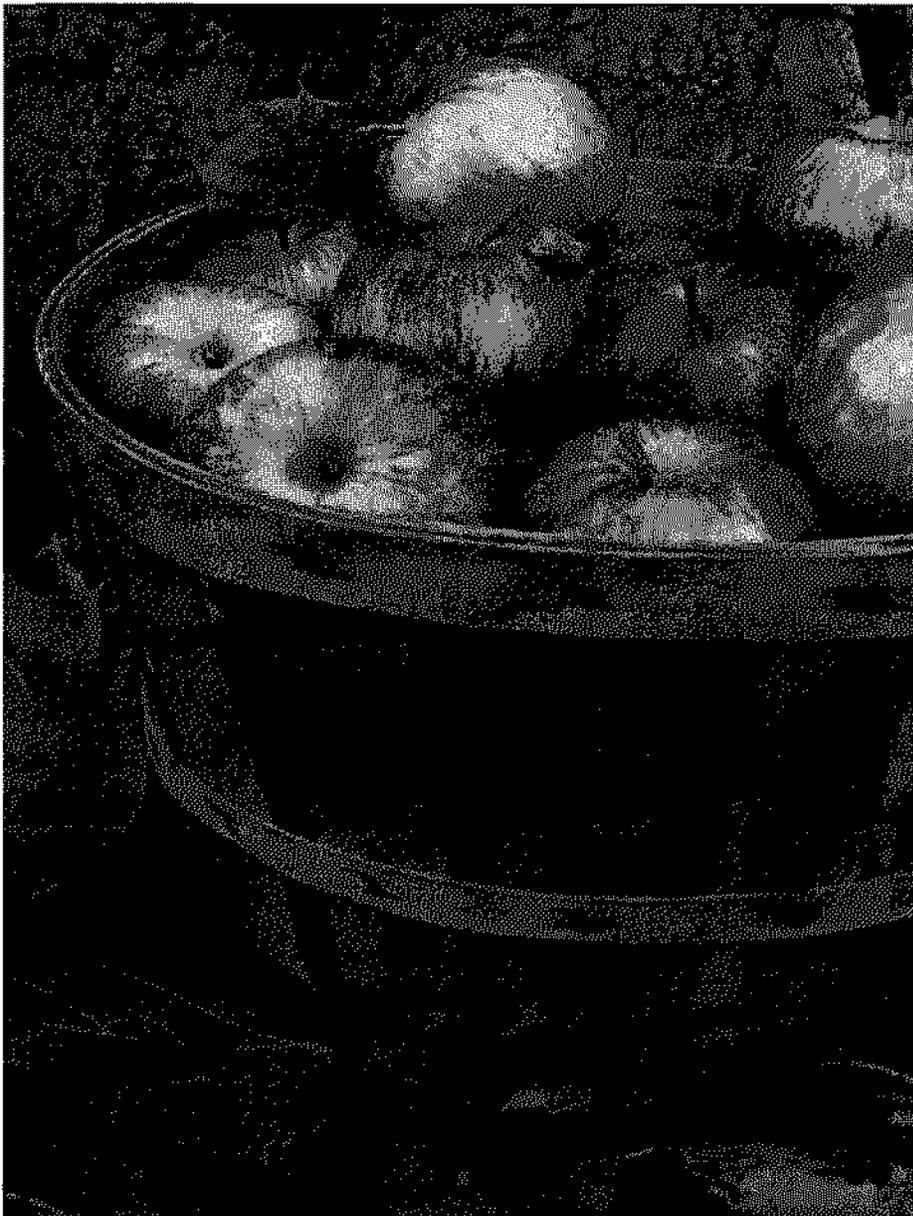
William A. Denman, Esquire
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Issue Date: September 1, 2015

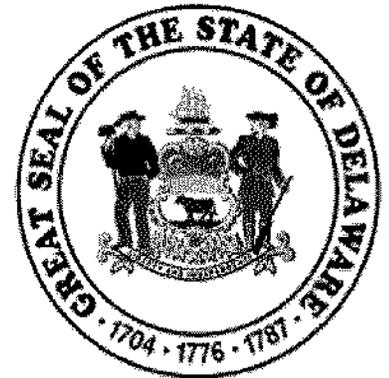
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Proposed
Final

Calendar of Events &
Hearing Notices



Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before August 17, 2015.

Photo Courtesy of
Dolores Michels

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

The *Delaware Register of Regulations* is an official State publication established by authority of 69 *Del. Laws*, c. 107 and is published on the first of each month throughout the year.

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The *Register* will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The *Delaware Register of Regulations* is cited by volume, issue, page number and date. An example would be:

16 *DE Reg.* 1227 - 1230 (06/01/13)

Refers to Volume 16, pages 1227 - 1130 of the *Delaware Register* issued on June 1, 2013.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 *Del.C.* §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 16	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

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EXECUTIVE DEPARTMENT

Office of Management and Budget

Statewide Benefits Office

2007 Disability Insurance Program Rules and Regulations..... 19 DE Reg. 78 (Final)

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken through~~ indicates text being deleted.

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DEPARTMENT OF AGRICULTURE**DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION**

Statutory Authority: 3 Delaware Code, Sections 904(a)(13) (3 Del.C. §904(a)(13))

3 DE Admin. Code 701

PUBLIC NOTICE**701 Farmland Preservation Program**

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116 W. Water Street
Dover, DE 19904
(302) 678-3262
Email: wdenman@pgslegal.com

***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

701 Farmland Preservation Program

Harness Racing Commission

DELAWARE STANDARDBRED BREEDERS' FUND

Statutory Authority: 29 Delaware Code, Section 4815(b)(4)b.2 (29 Del.C. §4815(b)(4)b.2)
3 DE Admin. Code 502

PUBLIC NOTICE

502 Delaware Standardbred Breeders' Fund Regulations

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt an amended regulation pursuant to the General Assembly's delegation of authority to do so found at 29 Del.C. §4815(b)(4)b.2 and in compliance with Delaware's Administrative Procedures Act at 29 Del.C. §10115. The proposed amended regulation under 13.0 defines and allows consolidation of consolation races to afford more racing opportunity to participants and fuller wagering fields.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are published in the Delaware *Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by October 1, 2015.

502 Delaware Standardbred Breeders' Fund Regulations
(Break in Continuity of Sections)

13.0 Races

(Break in Continuity Within Section)



DELAWARE AGRICULTURAL LANDS
Preservation Foundation

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April 17, 2015

Honorable Chris Bullock, President, New Castle County Council
New Castle County Council
87 Reads Way
New Castle, DE 19720

RE: Delaware Agricultural Lands Preservation Foundation – Preservation Advisory Boards –
Proposed Regulations

Dear President Bullock:

Recently correspondence was directed to the head of each County legislative body requesting the names of the individuals in the County appointed to the Farmland Preservation Advisory Boards pursuant to the provisions of 3 Del. C. §906, a copy of which was provided and which is enclosed. The Advisory Boards play an important role under the Agricultural Lands Preservation Act, which includes providing advice to the Foundation regarding the adoption of regulations proposed by the Foundation. The referenced statutory provisions require that the draft of the proposed regulations be provided to the Advisory Boards prior to release for public notice. The purpose of this correspondence is to provide the enclosed draft regulations seeking input from the Advisory Boards. It is noted that the Foundation Board has taken no action on the proposed regulations pending your input.

In considering the draft proposed regulations some background regarding the existing Agricultural Lands Preservation program is helpful. The statewide Agricultural Lands Preservation Act was adopted in 1991, and some of its major features include:

- (1) The establishment of the Foundation to administer the preservation program, currently through staffing provided by the Delaware Department of Agriculture;
- (2) The establishment of Agricultural Preservation Districts and expansions, under which eligible farm owners voluntarily enter into agreements to not develop their property for a period of 10 years in return for certain tax benefits and right to farm protections;
- (3) The establishment of a program under which the Foundation purchases Agricultural Lands Preservation Easements from the landowners who have entered agreements placing their farms in Agricultural Preservation Districts; and
- (4) The establishment of a Fund administered by the Foundation for purposes of receiving monies from the State, the federal government, Counties and private entities to purchase Agricultural Lands Preservation Easements, which prohibit development and permanently commit the property subject to the easements to farming and related uses.

Funding for the purchase of Agricultural Lands Preservation Easements was not provided by the State until 1995. In anticipation of the funding the Foundation in January 1995 adopted Policies, Procedures and Guidelines, the Guidelines (referenced herein as regulations) established eligibility requirements, application procedures, restrictions, and a ranking system and alternative means of selecting farms for Preservation Easement purchases. The alternative to a ranking system for the selection of easement purchases involves the use of an appraisal of development rights values under which eligible landowners are afforded the opportunity to offer

a donation or discount of the development rights value, with the selection based solely on the highest level percentage donation or discount offered until available funds are exhausted. Although initially the procedures provided for designation of priority preservation areas, later amendments to the procedures allow for the use of alternative criteria involving a minimum Land Evaluation and Site Assessment (LESA) score, in conjunction with the percentage donation or discounting system for making selections. One of the special objectives in using the donation or discounting approach was satisfaction of a requirement imposed in the initial and subsequent appropriations provided by the General Assembly that a minimum 4:1 match or 20% donation or discounting of the development rights value be provided by landowners in order to allow use of state funding to purchase preservation easements. An additional benefit achieved by the donation or discounting approach was the removal of any subjectivity or outside influence, political or otherwise, in the selection process. With farm owners voluntarily offering percentage donations or discounts to development right values, and the highest percentages being used to make selections until funds are exhausted in each round of selections, it is the participating landowners with their percentage offers who are making the selections, and not the Board members of the Foundation or others.

The openly competitive highest percentage donation or discount system adopted by the Foundation has been used to make preservation easement selections with available funding for the past 19 years. The system has been recognized nationally as a success. Based on a recent Foundation monthly report the following has been achieved statewide in preserving farmland in Delaware:

1. The Foundation has enrolled 1,076 farms in the program covering 169,977 acres, which is 34% of the remaining farmland in Delaware.

2. The Foundation has purchased preservation easements on 808 farms comprised of 116,223 acres, which is 24% of the remaining farmland in Delaware. By County, 20% of the available farmland in New Castle County, 35% of the available farmland in Kent County and 15% of the available farmland in Sussex County, have been protected by easements.
3. As a result of the highest percentage donation or discount selection system used the average cost of purchasing preservation easement statewide has been \$1,793 per acre. In New Castle County the cost has been \$2,546 per acre, in Kent County it has been \$1,499 per acre, and in Sussex County it has been \$1,985 per acre.
4. The donation or discounting has averaged 56%, and there are 321 properties comprised of 38,036 acres eligible to participate in the next yearly round of easement purchases, subject to the availability of funding.

The regulations subject to the enclosed draft proposal were last revised in June, 1999. Prior to that time the enabling legislation was revised in 1998 to provide for a priority for the establishment of preservation districts and the purchase of preservation easements in areas located near and adjacent to designated growth zones. At the time that the regulations were revised in 1999, only Kent County had mapped an identified growth zone, and New Castle County and Sussex County had not per se designated growth zone areas. In considering the prioritization of purchasing preservation easements in areas located near and adjacent to growth zones the Foundation recognized in the 1999 regulations that the appraisal methodology used to determine the value of development rights significantly favored properties located in areas prone to development, and the employment of that methodology has proven to be the case. Under the regulations the Foundation adopted an appraisal approach which determined the development rights or preservation easement value as the difference between the fair market value and the

farm only value based on income capitalization calculations. The fair market value of properties near and adjacent to development areas are higher than those in other areas, while under the income capitalization calculation the farm only value is the same no matter where the property is located. The result is that landowners near and adjacent to areas prone to development receive more money per acre for the sale of their development rights than others.

The benefits of the appraisal methodology used to encourage farmland preservation in areas prone to development are best illustrated by reviewing easement purchases within one-half (1/2) mile of designated growth zones in each County. In New Castle County 24% of the purchased preservation easement acreage was within the one-half (1/2) mile area, while 27% of the available monies was spent for preservation easements in such area. In Kent County the comparison is 17% of acreage and 20% of monies spent. In Sussex County the relative percentages are 34% of acreage and 35% of monies spent. In considering this statistical information it is important to note that the landowners within the one-half (1/2) mile area have always had the option of not participating in the program and selling their land for development at prevailing real estate prices.

The Foundation recognizes that beyond the appraisal methodology utilized, no other specific criteria has been adopted which would serve to prioritize the purchase of preservation easements near and adjacent to growth zones. Accordingly, as an added incentive, the staff of the Foundation is proposing to modify the highest donation or discount selection system for purchasing preservation easements by adding an allowance for a 5% adjustment to the percentage discount offers submitted by eligible landowners with property located in whole or in part in an area one-half (1/2) mile outside designated growth zones for each County. The adjustment would create a preference in the selection process and serve to provide a 5% increase

in the purchase price for the preservation easement, both of which would serve as a further advantage to participating landowners in such priority areas.

The Foundation has also been charged with adapting, after consultation with the Advisory Boards and others, a statewide agricultural lands preservation strategy to be used along with other considerations in purchasing preservation easements. The strategy has been influenced by legislative changes which include the referenced matching funding requirement, the allowance of expansions of Districts for farms with less than 200 acres but which are located within 3 miles of a District, and the focus on farms located near and adjacent to growth areas. Currently there are no farms which because of the size or location are not eligible to participate in the program if they have a LESA score of at least 170. A change in the strategy is proposed to reflect these developments.

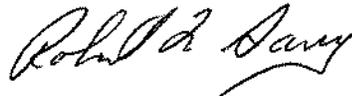
The enclosed proposed regulations also are designed to simplify the existing regulations and eliminate any confusion regarding the manner in which the Foundation has been operating the preservation easement program under the regulations. The maps of the growth zones for each County with the one-half mile preference area are attached to the draft proposed regulation and such maps also now form the basis for the statewide strategy map. The referenced current growth areas shown have been identified by the various County planning and zoning offices.

Overall the intent of these proposed revisions to the regulations and strategy is to facilitate the continued protection of Delaware's remaining farmlands through the purchase of preservation easements so as to assure the farming will continue to be a major industry in Delaware, while creating added incentives to landowners located near and adjacent to areas prone to development to voluntarily choose the alternative of preserving their farmland rather than selling it for

development. The Foundation proposes to continue to pursue these objectives in a manner which is considered to be a cost effective means of utilizing taxpayer monies.

If requested, members of the Foundation staff would be willing to meet with Advisory Board members to respond to any questions regarding the Agricultural Lands Preservation Program and the proposed regulations and strategy. Your response should be addressed to Austin Short, Deputy Secretary of the Department of Agriculture, at the above address.

Sincerely yours,



Robert F. Garey
Chairman

RFG/rv

Enclosures

cc: Members – Foundation Board
Honorable Edward Kee, Secretary
Honorable Austin Short, Deputy Secretary

**DELAWARE
AGRICULTURAL LANDS PRESERVATION FOUNDATION**

PROPOSED REGULATIONS

AGRICULTURAL LANDS PRESERVATION PROGRAM

PREAMBLE

The Agricultural Lands Preservation Act ("Act") was enacted on July 8, 1991 and provided for the creation of the Agricultural Lands Preservation Foundation ("Foundation"). The Foundation has been charged with the authority and responsibility of establishing and administering an extensive statewide program to preserve Delaware's farmlands and forestlands. Included in its responsibilities is the adoption of criteria for the establishment of and maintenance of Agricultural Preservation Districts ("Districts") and adoption of criteria for the purchase of agricultural lands preservation easements ("Preservation Easement") 3 Del.C. §904(a) and (b). These regulations are intended to provide guidelines and simplification regarding the manner in which the Agricultural Lands Preservation Program is administered.

1.0 Criteria for District Eligibility

- 1.1 In order to qualify for the Agricultural Lands Preservation Program, the lands proposed as an Agricultural Preservation District in the application must meet the following minimum criteria:
 - 1.1.1 owner(s) shall hold fee simple title to all land to be placed in a District and must be actively using the property for "agricultural and related uses";
 - 1.1.2 must constitute at least 200 acres of contiguous farmland or lesser acreage if the farmlands are located within three (3) miles of an established District;
 - 1.1.3 shall be zoned for agricultural purposes and shall not be subject to any major subdivision plan;
 - 1.1.4 applicant(s) including all fee simple title holders, must sign a written agreement committing to District restrictions set forth in this Section and 3 Del. C. §909 and other adopted requirements;
 - 1.1.5 must be viable and productive agricultural land comprising a farm property unit and meet the minimum County Land Evaluation and Site Assessment (LESA) scoring requirements for eligibility as established by the Foundation; [3 Del. C. §908(a)(3)]
 - 1.1.6 must include all of the eligible real property located in the tax parcel or tax parcels subject to application.
- 1.2 For the purposes stated in this chapter, the phrase "viable and productive agricultural land" is defined as land that qualifies under provisions of the Farmland Assessment Act. [9 Del. C. §8329 - 8333]
- 1.3 The minimum LESA score for an eligible District or Expansion shall be 170 points out of a possible 300 points for each county in the State as computed under the currently approved LESA program of the Delaware Department of Agriculture.

- 1.4 The LESA score for agricultural lands is the primary factor in evaluating the eligibility of agricultural lands for inclusion in Districts and expansions, including the eligibility for purchase of preservation easements.

2.0 Application Procedures

- 2.1 The Foundation will provide application forms on which applicants who volunteer to place their lands into an Agricultural Preservation District will provide such information as the Foundation deems appropriate.
- 2.2 The Foundation shall provide assistance to potential applicants in completing application forms when requested.
- 2.3 Foundation staff may conduct on-site inspections and/or phone interviews with the applicants to acquire data necessary to perform LESA analyses and write a staff report.
- 2.4 In conjunction with the application, all fee simple owners shall sign a District Agreement in such form as deemed acceptable by the Foundation and which serves as a declaration in recordable form of acknowledgment of the policies and restrictions that must be followed, and benefits realized in a District.

3.0 Application Review Procedures

The Foundation has the authority to approve applications establishing Agricultural Preservation Districts and the authority to purchase preservation easements. [3 Del. C. §904]

- 3.1 The Foundation staff will review applications and determine whether or not the minimum eligibility requirements under Section 1.0 have been met.
- 3.2 If the minimum eligibility requirements have not been met, then the applicant will be notified by letter from the Foundation indicating that the application does not qualify for further review, and the reasons for ineligibility.
- 3.3 If an applicant excludes a portion of property otherwise includable in a proposed District, then the Foundation may deny the application, unless the property proposed for exclusion is not otherwise eligible for inclusion due to the use of the property at the time of the application.
- 3.4 Subject to Section 3.3 above, if the lands proposed as a District in the application (200 or more acres) meet minimum eligibility criteria, then the Foundation staff will submit to the Foundation, the County Farmland Preservation Advisory Board and the County Planning and Zoning Authority, applications and an indication that the application meets the minimum eligibility requirements.
- 3.5 If the applicant disagrees with the staff evaluation of the proposed District, then the applicant may contact the Foundation staff to discuss the application review. Foundation staff will meet with the landowner to discuss the review within thirty (30) days from receiving formal contact from the applicant.
- 3.6 If the issue is not resolved to the applicant's satisfaction, the applicant may request an

administrative review with the Foundation by submitting a letter to the Foundation within fourteen days (14) of the applicant's last meeting with Foundation staff.

- 3.7 This letter must include reasons and documentation to justify the applicant's claim(s).
- 3.8 The Foundation will schedule a meeting and notify the applicant by certified letter of the date, time, and place of the meeting.
- 3.9 At the administrative review meeting, the applicant(s) shall present information or documentation as to how the proposed District satisfies the eligibility criteria.
- 3.10 The Foundation will render a decision within thirty (30) days from the administrative review meeting and notify the applicant in writing of its decision.
- 3.11 Owners of real property who have executed a District Agreement or a preservation easement that incorporate the restrictions in effect prior to the Senate Bill No. 333 amendments and who elect to be released from the restrictions set forth in 9 Del. C. §909(a)(2)(b) pursuant to 9 Del. C. §909(a)(4)(c), shall comply with the following requirements:
 - 3.11.1 Owners who have executed a district agreement and who wish to designate up to three residential lots shall designate the allowable residential acreage in sufficient detail to enable the Foundation to determine the location of the residential acreage, and while a survey may be submitted, a survey shall not be required. The Owner shall execute an amendment to the Owner's District Agreement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in 9 Del. C. §909(a)(1), (a)(2)(a), (a)(4)(a) and (a)(4)(b).
 - 3.11.2 Owners who have executed a preservation easement and who wish to designate up to three residential lots shall designate the allowable residential acreage in sufficient detail to enable the Foundation to determine the location of the residential acreage and shall submit to the Foundation for its review and approval, at the Owner's expense, an amended survey in recordable form. The amended survey shall show the entire parcel subject to the preservation easement and the location of any residential lots. The Owner shall execute an amendment to the preservation easement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in 9 Del. C. §909(a)(1), (a)(2)(a), (a)(4)(a) and (a)(4)(b).

4.0 Creation of a District

- 4.1 To establish an Agricultural Preservation District, the application must be approved by two out of three of the entities listed under Section 3.4 of these regulations.
[3 Del. C. §907(e)]
- 4.2 After review by the Foundation, the application is subject to a review period of thirty (30) days in which the Secretary of Agriculture may reject the application. The application is officially approved at the end of the review period, if it is not rejected by the Secretary of Agriculture. [3 Del. C. §919]

- 4.3 The property legally becomes a District when the applicant and Foundation Chairperson (or designee) have signed the District Agreement and no rejection has been exercised by the Secretary of Agriculture, or the Secretary of Agriculture has waived the right of rejection.
- 4.4 Copies of the District Agreement shall be filed with the County Planning and Zoning and Tax Assessor's Offices and recorded in the Office of the Recorder of Deeds. The Foundation shall require from these Offices proof of recording and/or receipt of the District Agreement.
- 4.5 The Foundation shall endeavor to provide written notification of the date of establishment of the Agricultural Preservation District and provide a copy of the District Agreement to the applicant, however, the failure of the Foundation to satisfy any formality following execution of a District Agreement shall not affect the validity of the District Agreement.

5.0 District Restrictions

- 5.1 Any rezoning or major subdivision of real property included in an Agricultural Preservation District is prohibited. [3 Del. C. §909(a)(1)]
- 5.2 The submission of applications or preliminary rezoning or subdivision plans for any property within an Agricultural Preservation District to a county or municipality shall be considered evidence of the intent to rezone or subdivide and no action shall be taken by any county or municipality on any such application until the expiration of the District Agreement.
- 5.3 During the term of the District Agreement, the property shall be used for "agricultural and related uses" and shall be used in such a way so that the property continues to qualify as "viable and productive agricultural land" as defined under provisions of the Farmland Assessment Act. [9 Del. C. §8329 - 8333] No more than 1 acre of land for each 20 acres of usable land, subject to a maximum of 10 acres, shall be allowed for dwelling housing. For purposes of calculating the number of acres allowable for dwelling housing, fractions of any acre shall not be allowed. By way of example, if a farm consists of 45 acres of usable farmland, the number of acres allowed for dwelling housing shall be 2, and not 2.25.
- 5.4 The phrase 'agricultural and related uses' shall have the meaning set forth in 3 Del. C. §909, as the same may be amended from time to time.
- 5.5 Excavation or filling, borrow pits, extraction, processing and removal of sand, gravel, loam, rock or other minerals is prohibited unless such action is currently required by or ancillary to any preparation for, or operation of any activities including, but not limited to: aquaculture, farm ponds, cranberry operations, manure handling facilities, and other activities directly related to agricultural production.
- 5.6 Activities that would be detrimental to drainage, flood control, water conservation, erosion control or soil conservation are prohibited.

- 5.7 Any other activity that might negatively affect the continued agricultural use of the land is prohibited.
- 5.8 The term "usable land owned in the district" [3 Del. C. §909(a)(2)], shall be defined as any land meeting the requirements for agricultural, horticultural or forest land in the Farmland Assessment Act of 1968 [9 Del. C., Chapter 83] and [3 Del. C. §403] or criteria for farm definition as established by the National Agricultural Statistics Service.
- 5.9 The District Agreement and District requirements and benefits shall be binding on the heirs, successors and assigns of property owners of lands within a District. A property owner in a District shall provide written notice to the Foundation of any proposed transfer of property subject to the District Agreement at least ten (10) days in advance of the transfer, and shall give written notice to any successor or assign at least ten (10) days in advance of the date of transfer of the property that the property is subject to District restrictions. The party taking title shall execute a document as required by [3 Del. C. §909(a)(2)c.] acknowledging the acreage allowed for dwelling housing and the restrictions which apply to the property. The failure of the property owner to notify the transferee as provided herein shall not affect the transferee's obligation to comply with the terms and conditions of the District Agreement upon the transfer of title.
- 5.10 Under 3 Del. C. §909(a)(3), all restrictions shall be covenants which run with and bind the lands in the District for a minimum of ten (10) years, beginning when the District Agreement takes effect as specified in the District Agreement.

6.0 Continuation of a District

- 6.1 All properties are to remain in an Agricultural Preservation District for at least ten (10) years, subject to the allowance of hardship exceptions for exclusion of dwelling housing pursuant to 3 Del. C. §909(a)(2)(h) and Section 9 of these guidelines.
- 6.2 If a landowner wishes to withdraw from, or terminate a District, then the Foundation must receive a written notice of intent to withdraw no less than six (6) months prior to the ten (10) year anniversary date of initial establishment of the District. [3 Del. C. §909(b)]

If the Foundation does not receive a written notification of the landowner's intent to withdraw from the District six (6) months prior to the ten (10) year anniversary date of that District, then the land shall remain in the District for an additional five (5) year period unless and until notice of intent to withdraw shall be given six months prior to the end of each additional five-year period.

7.0 Expansion of a District

- 7.1 An Agricultural Preservation District can be expanded for the purpose of preserving additional lands. Lands added to a District may be under 200 acres.[3 Del. C. §907(d)]
- 7.2 Land which is less than 200 usable acres, yet meets the other criteria established by the Foundation, is eligible to be an expansion ("Expansion") of an Agricultural Preservation District if it is within three (3) miles of any portion of an established Agricultural Preservation District. [3 Del. C. §907(a)]

8.0 Inspection of Districts

The Foundation has the authority to enter upon lands as may be necessary to perform surveys, appraisals, and investigations to accomplish the purpose of the program, consistent with applicable statutes.

[3 Del. C. §904(b)(14)]

- 8.1 The Foundation or its designee reserves the right to inspect restricted land and enforce agreements on its own behalf.
- 8.2 If any violations of the terms and the conditions of the District Agreement occur, the Foundation may institute proceedings in the appropriate court to enforce the terms and seek appropriate relief. [3 Del. C. §920(a)]

9.0 Dwelling Property Hardship Exceptions

Except as set forth in Section 9.7 hereof, owners of real property who have executed a District Agreement or a preservation easement that incorporate the restrictions in effect prior to the Senate Bill No. 333 amendments are entitled to apply to the Foundation for a hardship exception allowing for the transfer of dwelling property to parties who are not otherwise entitled to residential use of the dwelling property under the District Agreement or Preservation Easement, subject to the provisions of 3 Del. C. §909(a)(2)(b) and the following requirements.

- 9.1 An applicant for a hardship exception shall submit the following information in writing to the Foundation:
 - 9.1.1 name and property interest of applicant in the dwelling property;
 - 9.1.2 acreage of the dwelling property subject to application;
 - 9.1.3 date on which the District was established;
 - 9.1.4 number of dwellings and acreage of residential use currently on the property in the District;
 - 9.1.5 the nature of the hardship condition and reasons justifying the granting of a hardship exception;
 - 9.1.6 the extent to which the hardship condition is unavoidable.
- 9.2 The Foundation shall consider hardship conditions involving the following circumstances:
 - 9.2.1 the sale or transfer of the dwelling property compelled by foreclosure, court order, or marital property division agreement;
 - 9.2.2 the sale or transfer of the dwelling property compelled by job transfer;
 - 9.2.3 the sale or transfer of the dwelling property compelled by health conditions;
 - 9.2.4 the sale or transfer of the dwelling property required to avoid insolvency or

bankruptcy; and

- 9.2.5 other circumstances of an unusual and extraordinary nature which pose a practical hardship to continued ownership of the dwelling property and which are unavoidable.
- 9.3 Hardship exceptions will not be granted when no real hardship exists and the primary consequence of the sale or transfer of the dwelling property is financial gain.
- 9.4 The applicant shall bear the burden of establishing the existence of hardship circumstances, and shall provide to the Foundation documentation in support of the application, and any documentation requested by the Foundation, provided however, that documentation involving privileged information may be submitted on a confidential basis.
- 9.5 The Foundation may require the applicant for a hardship exception to appear before the Foundation Board to present the application, and an applicant shall be entitled to appear before the Board to make a presentation by submitting a written request to the Foundation.
- 9.6 The granting of a hardship exception by the Foundation shall be subject to the following conditions:
- 9.6.1 the dwelling property following transfer shall be used only for residential purposes;
- 9.6.2 the transferred property shall not qualify for District benefits or benefits of Preservation Easements;
- 9.6.3 if the transferred property is subject to a Preservation Easement prior to transfer, payment shall be made to the Foundation in an amount equal to twenty-five (25) percent of the current fair market value of the land subject to transfer;
- 9.6.4 the transferee shall execute a Declaration in recordable form as prescribed by the Foundation which includes the acreage allowed for dwelling housing and the restrictions which apply to the real property;
- 9.6.5 the Foundation may require the transferor to execute a Declaration in recordable form as prescribed by the Foundation to evidence the status of allowable dwelling housing property on lands retained by the transferor which are in the District or subject to a Preservation Easement; and
- 9.6.6 such other terms and conditions considered necessary by Foundation to address the nature of the hardship condition.
- 9.7 The hardship provisions set forth herein shall not apply to the owners of real property who, pursuant to 3 Del. C. §909(a)(4)(c), have elected to be released from the restrictions of 3 Del. C. §909(a)(2)(b).

10.0 Delaware Farmland Preservation Fund

The Delaware Farmland Preservation Fund, hereinafter referred to as the "Fund", was enacted under 3 Del. C. §905 for the exclusive application by the Foundation to achieve the desired goals of preserving viable agricultural lands and conducting the business of the Foundation.

11.0 Sources of Funding

- 11.1 The Foundation may accept donations, property, or development rights as gifts and monetary gifts from any source, public or private.
- 11.2 Monies not needed on a current basis by the Foundation may be invested with the approval of the Board of Trustees.
- 11.3 The Fund is subject to an annual audit to be prepared by an independent, certified public accountant. The findings of all audits shall be presented to the Board.
- 11.4 The Foundation shall manage the monies appropriated to it by the General Assembly in accordance with the terms of the appropriations.

12.0 Criteria for Purchase Agricultural Lands Preservation Easements

- 12.1 The criteria for eligibility of acquisition of a Preservation Easement shall be the same as the criteria for district eligibility. In addition, offered preservation easement lands shall be in an established district and in compliance with district requirements to be eligible. The Foundation shall have the right, in its sole discretion, to acquire a Preservation Easement on only a part of the property included within the District Agreement.
- 12.2 The prioritization and selection of properties for the purchase of preservation easements shall be as set forth in Sections 13 thru 20 inclusive hereof.

13.0 Matching Contributions to the Program

The Foundation may establish a reserve or set aside of available funds for the matching of federal, county, local, or private funds for the preservation of farmland. The Foundation may allow the entity providing matching funding to select the qualified properties for purchases of easements using the matching funding notwithstanding provisions of these regulations regarding selections. The Foundation has the discretion, but is not required, to match contributions.

14.0 Schedule for Acquisition of Agricultural Lands Preservation Easements

- 14.1 Application and funding cycles will take place on schedules established by the Foundation.
- 14.2 Applications for the purchase of Preservation Easements in Rounds of Purchases shall be subject to deadlines established by the Foundation.
- 14.3 For each Round of Preservation Easement Purchases the Foundation shall arrange for the appraisal of the Preservation Easement value of those properties under consideration.
- 14.4 Upon completion, the appraisals shall be provided to the landowners, and procedures set

forth herein involving offers for the sale of preservation easements under Option Agreements shall be initiated.

- 14.5 Offers received shall be held confidential until all offers are received after which the Foundation shall review the offers and announce the selections.
- 14.6 Following the selection of properties for acquisition of Preservation Easements, the Foundation shall arrange for surveys of the properties to be conducted, and proceed to settlement under the terms of the Option Agreements, subject to the availability of funding and satisfaction of regulatory, financial or other restrictions or limitations.
- 14.7 The Foundation is under no obligation to purchase a Preservation Easement which is offered for sale. [3 Del.C. §913.]

15.0 Application Procedures

- 15.1 A separate application shall be required for each farmland tract (operating farm unit) offered for Preservation Easement purchase. The Foundation shall not be obligated to process any incomplete application.
- 15.2 The Foundation shall develop, and make available to landowners or other interested parties, an application form for use in offers to sell Preservation Easements.
- 15.3 The Foundation shall review the application to determine if it is complete.

16.0 Appraisals [3 Del. C. §916]

- 16.1 An offer to purchase a Preservation Easement shall be based upon one or more appraisal reports which estimate the full market value of the land under its agricultural zoning designation and the agriculture-only value of the farmland tract. The agricultural only value shall be based on an income capitalization methodology. Any appraisal obtained by the Foundation shall constitute the property of the Foundation and may not be used by the property owner for tax or other purposes. All categories of land located in the farmland tract shall be eligible for easement purchase and shall be appraised
- 16.2 The value of buildings or other improvements on the farmland tract shall not be considered in determining the Preservation Easement value. Excluded from the value of the Preservation Easement shall be any acreage designated or eligible to be designated by the owner for residential use pursuant to 3 Del. C. §909(a)(4)(a), provided however, the landowner shall have the right to waive eligible residential usage in which case the development rights value of the waived acreage shall be included.
- 16.3 The appraiser shall be:
 - 16.3.1. An independent, licensed real estate appraiser who is qualified to appraise a property for easement purchase. An appraiser shall be selected on the basis of experience, expertise and professional designation; and
 - 16.3.2. A member of an organization which subscribes to the "Uniform Standards of Professional Appraisal Practice" published by the Appraisal Standards Board of the Appraisal Foundation, and shall follow their ethical and professional

standards.

16.4 The appraiser shall supply a narrative report which shall contain such information as required by the Foundation.

17.0 Agricultural Lands Preservation Easement Value and Purchase Price

17.1 The value of a Preservation Easement in perpetuity shall be the difference between the full market value and the agriculture-only value contained in the appraisal report.

17.2 The price paid by the Foundation for the purchase of a Preservation Easement may not exceed, but may be less than, the value of the Preservation Easement. [3 Del. C. §916(a)]

17.3 If the applicant is not satisfied with the appraisal provided by the Foundation, the applicant shall be entitled to have an independent appraisal performed at the applicant's expense by a qualified appraiser as specified in Section 16.3. The alternative appraisal shall be prepared in the same format as the Foundation's appraisal and shall be submitted to the Foundation within forty-five (45) days of the applicant's date of receipt of the appraisal provided by the Foundation. The forty-five (45) day period may be extended by the Foundation, provided the time extension does not delay the time frame established by the Foundation for making selection and acquisition decisions.

17.4 The review of the alternative appraisals by the Foundation shall be based on written submissions under such procedures as specified by the Foundation. The maximum adjusted Preservation Easement value which the Foundation will accept is the difference between the agriculture-only value and the full market value, determined as follows:

17.4.1 The agriculture-only value shall equal the sum of:

- i. The agriculture-only value determined by the applicant's appraiser; and
- ii. Up to one-half of the positive difference between the agriculture-only value determined by the Foundation's appraiser and his/her values which exceed those determined by the applicant's appraiser.

17.4.2 The full market value shall equal the sum of:

- i. The full market value determined by the Foundation's appraiser; and
- ii. Up to one-half of the positive difference between the full market value determined by the applicant's appraiser and his/her values which exceed those determined by the Foundation's appraiser.

18.0 Offer of Purchase by the Foundation

18.1 The Foundation has the authority to incorporate bidding and/or negotiation as part of the procurement process. [3 Del. C. §915]

18.2 In reviewing the offers of applicants to sell Preservation Easements to the Foundation, the Foundation shall, subject to consideration of any alternative criteria by the Foundation to satisfy special objectives, select those offers providing the highest level of

percentage donation or percentage discount to the finally appraised value of the Preservation Easement, in accordance with the procedures and requirements of this Section. As an additional incentive, if any part of the applicant's property subject to the offer is located in whole or in part within one-half (1/2) mile completely outside of any growth zone of the County in which the Property is located, or in whole or in part within one-half (1/2) mile completely outside of the boundary of an incorporated town, municipality or city, for the sole purpose of ranking said application, the Foundation shall increase the offered percentage discount by five percent (5%). By way of example, if an applicant's offer includes a discount of sixty percent (60%), and the applicant's property is located in whole or in part within one-half (1/2) mile completely outside of the specified areas, for ranking purposes, the applicant's discount shall be deemed to be sixty-five percent (65%). If the applicant's property is selected for purchase of a preservation easement, the purchase price for the preservation easement shall incorporate a discount of only sixty percent (60%). The locations of the growth zones referenced by the Counties and the one-half (1/2) mile surrounding areas are as shown in Appendix "A" attached hereto.

- 18.3 The Foundation shall entertain offers in the form of Option Agreements from all eligible applicants who wish to submit offers, and after all offers are received, list the offers with the highest to the lowest level of percentage donation or percentage discount to the finally appraised value of the Preservation Easement with any adjustment to the offered donation or percentage discount as specified in Section 18.2 above.
- 18.4 Prior to releasing information to the public regarding the percentage of any discount or donation provided by a landowner the Foundation shall notify the landowner, identifying the requesting party, and obtain permission from the landowner prior to releasing the requested information. Otherwise, the information shall not be disclosed.
- 18.5 The Foundation may, but shall not be required to, allow a property owner in a District to submit an offer to sell a preservation easement on a portion of the real property in a District.

19.0 The Agricultural Lands Preservation Easement

- 19.1 The owners of the subject farmland tract shall execute a document conveying the Preservation Easement which document shall be in a form which contains conditions contained in Option Agreements executed by landowners.
- 19.2 The document shall be in recordable form and contain:
 - 19.2.1. A legal description setting forth the metes and bounds of the farmland tract subject to the Preservation Easement.
 - 19.2.2. At least one course and distance referencing a fixed marker or monument of a type commonly placed in the field by a surveyor.
 - 19.2.3 The legal description shall not contain a closure error greater than one foot per 200 linear feet in the survey.
 - 19.2.4 The survey of the farmland tract on which a Preservation Easement is to be

purchased shall show each of the residential lots, if any, designated by the owner pursuant to 9 Del. C. §909(a)(4)(a).

20.0 Title Quality

The Preservation Easement conveyed to the Foundation shall be unencumbered except for standard exceptions and be capable of being insured as such by an established and recognized title insurance company doing business in the State of Delaware. Any title defects, liens, survey discrepancies, boundary line disputes, or similar title issues shall be resolved by the property owner, at the property owner's sole expense. If subsequent to the purchase of a Preservation Easement it is determined that the amount of acreage is less than as reflected on the survey used by the Foundation for purposes of calculating the purchase price for the Preservation Easement, the property owner shall be required to refund to the Foundation any excess funds paid in reliance upon the inaccurate survey.

21.0 Residential Lots

Senate Bill 333 imposes alternative restrictions on the limited residential use of property subject to a District Agreement or Preservation Easement by replacing the unlimited number of residential dwellings allowed for owners, relatives of owners, and farm labor, with a total limit of three dwellings which can be occupied by any person. The overriding limitation of residential use of 1 acre for 20 acres of usable farmland (subject to a maximum of 10 acres) was left unchanged. Accordingly, owners can now designate up to three residential lots on District Property or Preserved Property. With respect to the designation of the residential lots allowed under Senate Bill 333, the following additional guidelines shall apply:

- 21.1 The acceptance by the Foundation of the designation of a residential lot does not mean that the location of the lot and proposed residential use complies with any applicable zoning rules or regulations, or that a lot is suitable for residential use. Owners are encouraged to conduct such investigations and perform such tests as they deem appropriate to ascertain whether or not any designated lot will be suitable for residential use and complies with all applicable land use regulations, including zoning laws.
- 21.2 The Foundation recognizes that at times, due to circumstances beyond the control of the owner, it may be necessary for the owner to change the location of a lot. As a matter of policy, the Foundation will allow such changes subject to the following requirements:
 - 21.2.1 No change in the location of a lot or size of a lot shall be allowed which would cause the number of lots or amount of residential acreage to be in excess of that otherwise allowed under the terms of the District Agreement or Preservation Easement.
 - 21.2.2 With respect to property subject to a Preservation Easement, the owner shall cause to be prepared, at the owner's expense, an amended plot plan showing the entire parcel subject to the Preservation Easement and the location of each residential lot.
 - 21.2.3 The owner shall execute an amendment to the District Agreement or Preservation Easement, which amendment shall reflect the change in the location or size of the residential lots, and which shall reference the amended plot plan.

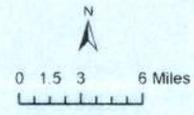
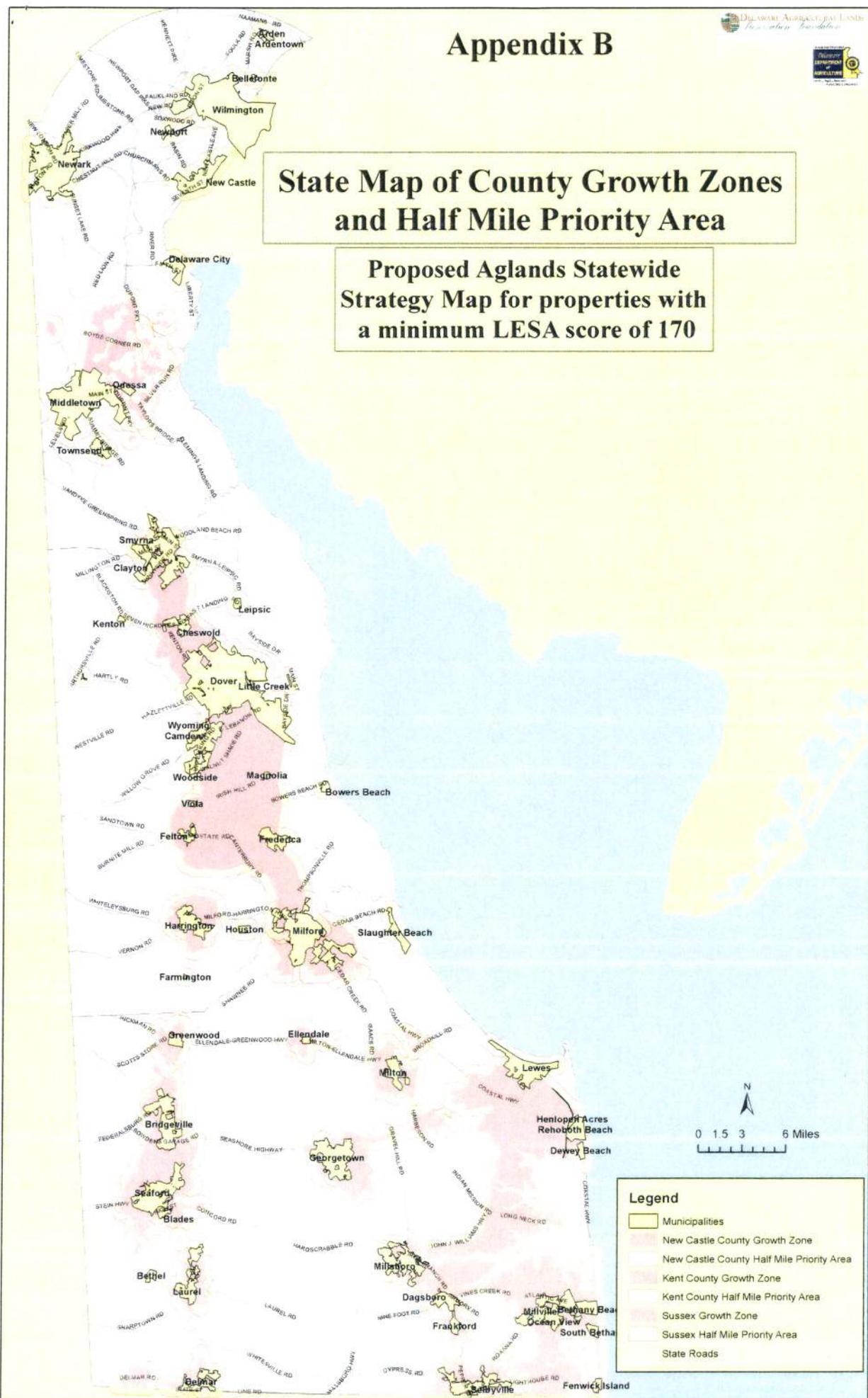
22.0 Strategy Map

The farm lands shown on the Strategy Map attached hereto as Appendix "B" which have a LESA Score of at least 170 are targeted for inclusion in Districts, and those qualified farms located in whole or in part one-half (1/2) mile completely outside of any growth zones designated under these regulations shall be further prioritized by the donation or discount advantage for such properties provided under Section 18.2 of these regulations.

Appendix B

State Map of County Growth Zones and Half Mile Priority Area

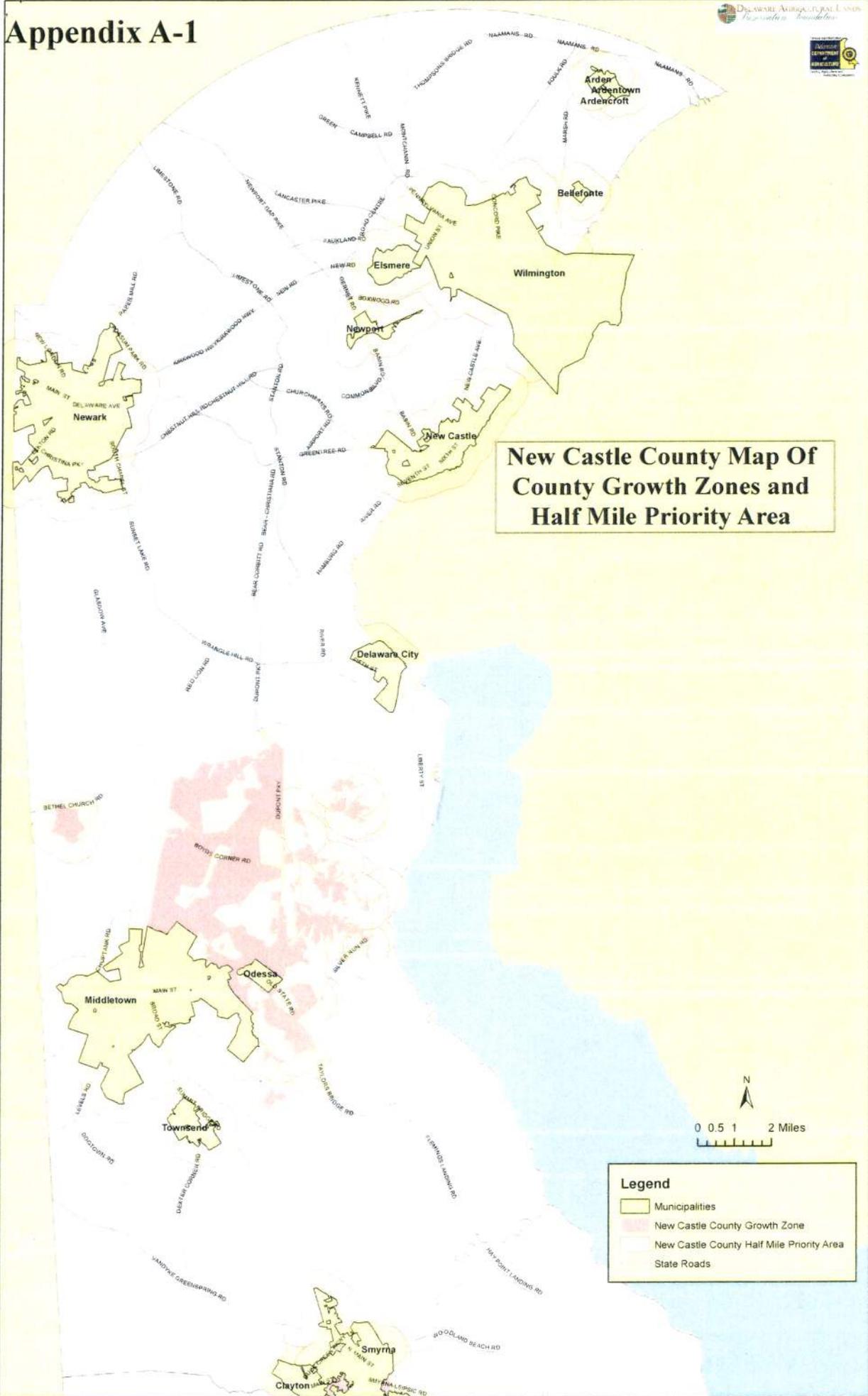
Proposed Aglands Statewide Strategy Map for properties with a minimum LESA score of 170



Legend

-  Municipalities
-  New Castle County Growth Zone
-  New Castle County Half Mile Priority Area
-  Kent County Growth Zone
-  Kent County Half Mile Priority Area
-  Sussex Growth Zone
-  Sussex Half Mile Priority Area
-  State Roads

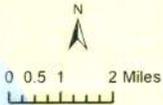
Appendix A-1



**New Castle County Map Of
County Growth Zones and
Half Mile Priority Area**

Legend

- Municipalities
- New Castle County Growth Zone
- New Castle County Half Mile Priority Area
- State Roads



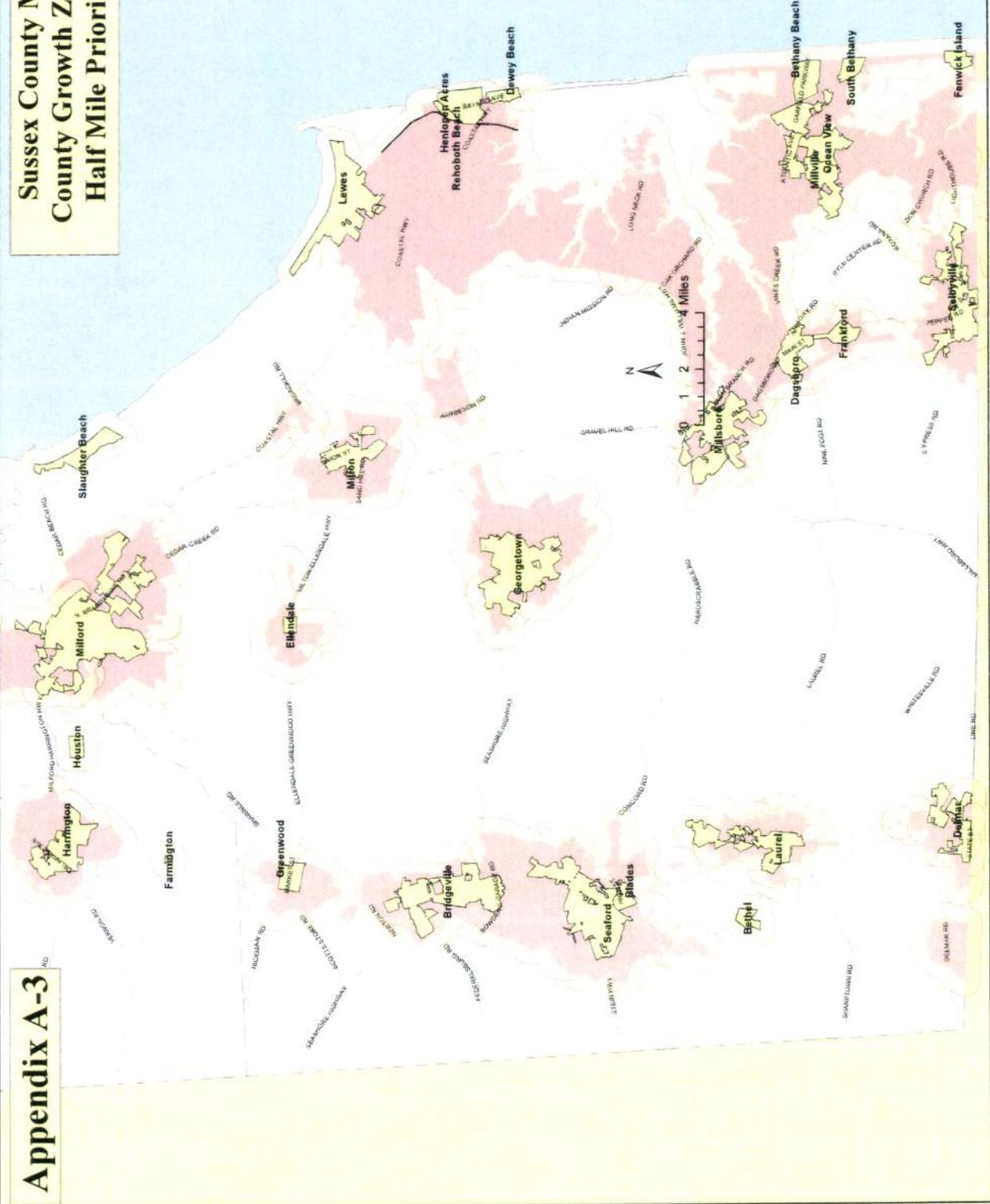


Sussex County Map Of County Growth Zones and Half Mile Priority Area

Appendix A-3

Legend

- Municipalities
- Sussex Growth Zone
- Sussex Half Mile Priority Area
- State Roads





DELAWARE AGRICULTURAL LANDS
Preservation Foundation

2320 South duPont Highway
Dover, Delaware 19901

Tel: 302-698-4530
Toll Free: 800-282-8685 (DE only)
Fax: 302-677-7093

June 17, 2015

Honorable Chris Bullock, President, New Castle County Council
New Castle County Council
87 Reads Way
New Castle, DE 19720

RE: Delaware Agricultural Lands Preservation Foundation Proposed Regulations

Dear President Bullock:

This letter is a follow-up to our April 17th letter (enclosed) regarding the Delaware Aglands Preservation Program's proposed amended regulations and the review of those regulations by the county's Farmland Preservation Advisory Board. The intent of these proposed regulation revisions is to facilitate the continued protection of Delaware's remaining farmlands through the purchase of preservation easements, while creating added incentives to landowners located near and adjacent to areas prone to development to voluntarily preserve their farmland rather than selling it for development. The Foundation proposes to continue to pursue these objectives in a cost-effective method for utilizing taxpayer monies.

To date we have not received any comments from New Castle County. We ask that you please forward this letter to the County's Agriculture Advisory Board and have them provide us with any comments by June 30. If comments are provided by June 30, the Foundation will consider them prior to the release of the proposed amended regulations for public review and comment. If no comments are received, there is still opportunity to provide input during the public review and comment period. I have enclosed the proposed regulations for your convenience.

Thank you for your assistance with this matter and your continuing support of Delaware's Aglands Preservation Program. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Austin Short", is written over a white background.

E. Austin Short
Deputy Secretary

Enclosures (2)

cc: Honorable Edward Kee, Secretary
Robert Garey, Chairman, Aglands Preservation Foundation



DELAWARE AGRICULTURAL LANDS
Preservation Foundation

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April 17, 2015

Honorable Chris Bullock, President, New Castle County Council
New Castle County Council
87 Reads Way
New Castle, DE 19720

RE: Delaware Agricultural Lands Preservation Foundation – Preservation Advisory Boards –
Proposed Regulations

Dear President Bullock:

Recently correspondence was directed to the head of each County legislative body requesting the names of the individuals in the County appointed to the Farmland Preservation Advisory Boards pursuant to the provisions of 3 Del. C. §906, a copy of which was provided and which is enclosed. The Advisory Boards play an important role under the Agricultural Lands Preservation Act, which includes providing advice to the Foundation regarding the adoption of regulations proposed by the Foundation. The referenced statutory provisions require that the draft of the proposed regulations be provided to the Advisory Boards prior to release for public notice. The purpose of this correspondence is to provide the enclosed draft regulations seeking input from the Advisory Boards. It is noted that the Foundation Board has taken no action on the proposed regulations pending your input.

In considering the draft proposed regulations some background regarding the existing Agricultural Lands Preservation program is helpful. The statewide Agricultural Lands Preservation Act was adopted in 1991, and some of its major features include:

- (1) The establishment of the Foundation to administer the preservation program, currently through staffing provided by the Delaware Department of Agriculture;
- (2) The establishment of Agricultural Preservation Districts and expansions, under which eligible farm owners voluntarily enter into agreements to not develop their property for a period of 10 years in return for certain tax benefits and right to farm protections;
- (3) The establishment of a program under which the Foundation purchases Agricultural Lands Preservation Easements from the landowners who have entered agreements placing their farms in Agricultural Preservation Districts; and
- (4) The establishment of a Fund administered by the Foundation for purposes of receiving monies from the State, the federal government, Counties and private entities to purchase Agricultural Lands Preservation Easements, which prohibit development and permanently commit the property subject to the easements to farming and related uses.

Funding for the purchase of Agricultural Lands Preservation Easements was not provided by the State until 1995. In anticipation of the funding the Foundation in January 1995 adopted Policies, Procedures and Guidelines, the Guidelines (referenced herein as regulations) established eligibility requirements, application procedures, restrictions, and a ranking system and alternative means of selecting farms for Preservation Easement purchases. The alternative to a ranking system for the selection of easement purchases involves the use of an appraisal of development rights values under which eligible landowners are afforded the opportunity to offer

a donation or discount of the development rights value, with the selection based solely on the highest level percentage donation or discount offered until available funds are exhausted. Although initially the procedures provided for designation of priority preservation areas, later amendments to the procedures allow for the use of alternative criteria involving a minimum Land Evaluation and Site Assessment (LESA) score, in conjunction with the percentage donation or discounting system for making selections. One of the special objectives in using the donation or discounting approach was satisfaction of a requirement imposed in the initial and subsequent appropriations provided by the General Assembly that a minimum 4:1 match or 20% donation or discounting of the development rights value be provided by landowners in order to allow use of state funding to purchase preservation easements. An additional benefit achieved by the donation or discounting approach was the removal of any subjectivity or outside influence, political or otherwise, in the selection process. With farm owners voluntarily offering percentage donations or discounts to development right values, and the highest percentages being used to make selections until funds are exhausted in each round of selections, it is the participating landowners with their percentage offers who are making the selections, and not the Board members of the Foundation or others.

The openly competitive highest percentage donation or discount system adopted by the Foundation has been used to make preservation easement selections with available funding for the past 19 years. The system has been recognized nationally as a success. Based on a recent Foundation monthly report the following has been achieved statewide in preserving farmland in Delaware:

1. The Foundation has enrolled 1,076 farms in the program covering 169,977 acres, which is 34% of the remaining farmland in Delaware.

2. The Foundation has purchased preservation easements on 808 farms comprised of 116,223 acres, which is 24% of the remaining farmland in Delaware. By County, 20% of the available farmland in New Castle County, 35% of the available farmland in Kent County and 15% of the available farmland in Sussex County, have been protected by easements.
3. As a result of the highest percentage donation or discount selection system used the average cost of purchasing preservation easement statewide has been \$1,793 per acre. In New Castle County the cost has been \$2,546 per acre, in Kent County it has been \$1,499 per acre, and in Sussex County it has been \$1,985 per acre.
4. The donation or discounting has averaged 56%, and there are 321 properties comprised of 38,036 acres eligible to participate in the next yearly round of easement purchases, subject to the availability of funding.

The regulations subject to the enclosed draft proposal were last revised in June, 1999. Prior to that time the enabling legislation was revised in 1998 to provide for a priority for the establishment of preservation districts and the purchase of preservation easements in areas located near and adjacent to designated growth zones. At the time that the regulations were revised in 1999, only Kent County had mapped an identified growth zone, and New Castle County and Sussex County had not per se designated growth zone areas. In considering the prioritization of purchasing preservation easements in areas located near and adjacent to growth zones the Foundation recognized in the 1999 regulations that the appraisal methodology used to determine the value of development rights significantly favored properties located in areas prone to development, and the employment of that methodology has proven to be the case. Under the regulations the Foundation adopted an appraisal approach which determined the development rights or preservation easement value as the difference between the fair market value and the

farm only value based on income capitalization calculations. The fair market value of properties near and adjacent to development areas are higher than those in other areas, while under the income capitalization calculation the farm only value is the same no matter where the property is located. The result is that landowners near and adjacent to areas prone to development receive more money per acre for the sale of their development rights than others.

The benefits of the appraisal methodology used to encourage farmland preservation in areas prone to development are best illustrated by reviewing easement purchases within one-half (1/2) mile of designated growth zones in each County. In New Castle County 24% of the purchased preservation easement acreage was within the one-half (1/2) mile area, while 27% of the available monies was spent for preservation easements in such area. In Kent County the comparison is 17% of acreage and 20% of monies spent. In Sussex County the relative percentages are 34% of acreage and 35% of monies spent. In considering this statistical information it is important to note that the landowners within the one-half (1/2) mile area have always had the option of not participating in the program and selling their land for development at prevailing real estate prices.

The Foundation recognizes that beyond the appraisal methodology utilized, no other specific criteria has been adopted which would serve to prioritize the purchase of preservation easements near and adjacent to growth zones. Accordingly, as an added incentive, the staff of the Foundation is proposing to modify the highest donation or discount selection system for purchasing preservation easements by adding an allowance for a 5% adjustment to the percentage discount offers submitted by eligible landowners with property located in whole or in part in an area one-half (1/2) mile outside designated growth zones for each County. The adjustment would create a preference in the selection process and serve to provide a 5% increase

in the purchase price for the preservation easement, both of which would serve as a further advantage to participating landowners in such priority areas.

The Foundation has also been charged with adapting, after consultation with the Advisory Boards and others, a statewide agricultural lands preservation strategy to be used along with other considerations in purchasing preservation easements. The strategy has been influenced by legislative changes which include the referenced matching funding requirement, the allowance of expansions of Districts for farms with less than 200 acres but which are located within 3 miles of a District, and the focus on farms located near and adjacent to growth areas. Currently there are no farms which because of the size or location are not eligible to participate in the program if they have a LESA score of at least 170. A change in the strategy is proposed to reflect these developments.

The enclosed proposed regulations also are designed to simplify the existing regulations and eliminate any confusion regarding the manner in which the Foundation has been operating the preservation easement program under the regulations. The maps of the growth zones for each County with the one-half mile preference area are attached to the draft proposed regulation and such maps also now form the basis for the statewide strategy map. The referenced current growth areas shown have been identified by the various County planning and zoning offices.

Overall the intent of these proposed revisions to the regulations and strategy is to facilitate the continued protection of Delaware's remaining farmlands through the purchase of preservation easements so as to assure the farming will continue to be a major industry in Delaware, while creating added incentives to landowners located near and adjacent to areas prone to development to voluntarily choose the alternative of preserving their farmland rather than selling it for

development. The Foundation proposes to continue to pursue these objectives in a manner which is considered to be a cost effective means of utilizing taxpayer monies.

If requested, members of the Foundation staff would be willing to meet with Advisory Board members to respond to any questions regarding the Agricultural Lands Preservation Program and the proposed regulations and strategy. Your response should be addressed to Austin Short, Deputy Secretary of the Department of Agriculture, at the above address.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Robert F. Garey".

Robert F. Garey
Chairman

RFG/rv

Enclosures

cc: Members – Foundation Board
Honorable Edward Kee, Secretary
Honorable Austin Short, Deputy Secretary

**DELAWARE
AGRICULTURAL LANDS PRESERVATION FOUNDATION**

PROPOSED REGULATIONS

AGRICULTURAL LANDS PRESERVATION PROGRAM

PREAMBLE

The Agricultural Lands Preservation Act ("Act") was enacted on July 8, 1991 and provided for the creation of the Agricultural Lands Preservation Foundation ("Foundation"). The Foundation has been charged with the authority and responsibility of establishing and administering an extensive statewide program to preserve Delaware's farmlands and forestlands. Included in its responsibilities is the adoption of criteria for the establishment of and maintenance of Agricultural Preservation Districts ("Districts") and adoption of criteria for the purchase of agricultural lands preservation easements ("Preservation Easement") 3 Del.C. §904(a) and (b). These regulations are intended to provide guidelines and simplification regarding the manner in which the Agricultural Lands Preservation Program is administered.

1.0 Criteria for District Eligibility

- 1.1 In order to qualify for the Agricultural Lands Preservation Program, the lands proposed as an Agricultural Preservation District in the application must meet the following minimum criteria:
 - 1.1.1 owner(s) shall hold fee simple title to all land to be placed in a District and must be actively using the property for "agricultural and related uses";
 - 1.1.2 must constitute at least 200 acres of contiguous farmland or lesser acreage if the farmlands are located within three (3) miles of an established District;
 - 1.1.3 shall be zoned for agricultural purposes and shall not be subject to any major subdivision plan;
 - 1.1.4 applicant(s) including all fee simple title holders, must sign a written agreement committing to District restrictions set forth in this Section and 3 Del. C. §909 and other adopted requirements;
 - 1.1.5 must be viable and productive agricultural land comprising a farm property unit and meet the minimum County Land Evaluation and Site Assessment (LESA) scoring requirements for eligibility as established by the Foundation; [3 Del. C. §908(a)(3)]
 - 1.1.6 must include all of the eligible real property located in the tax parcel or tax parcels subject to application.
- 1.2 For the purposes stated in this chapter, the phrase "viable and productive agricultural land" is defined as land that qualifies under provisions of the Farmland Assessment Act. [9 Del. C. §8329 - 8333]
- 1.3 The minimum LESA score for an eligible District or Expansion shall be 170 points out of a possible 300 points for each county in the State as computed under the currently approved LESA program of the Delaware Department of Agriculture.

- 1.4 The LESA score for agricultural lands is the primary factor in evaluating the eligibility of agricultural lands for inclusion in Districts and expansions, including the eligibility for purchase of preservation easements.

2.0 Application Procedures

- 2.1 The Foundation will provide application forms on which applicants who volunteer to place their lands into an Agricultural Preservation District will provide such information as the Foundation deems appropriate.
- 2.2 The Foundation shall provide assistance to potential applicants in completing application forms when requested.
- 2.3 Foundation staff may conduct on-site inspections and/or phone interviews with the applicants to acquire data necessary to perform LESA analyses and write a staff report.
- 2.4 In conjunction with the application, all fee simple owners shall sign a District Agreement in such form as deemed acceptable by the Foundation and which serves as a declaration in recordable form of acknowledgment of the policies and restrictions that must be followed, and benefits realized in a District.

3.0 Application Review Procedures

The Foundation has the authority to approve applications establishing Agricultural Preservation Districts and the authority to purchase preservation easements. [3 Del. C. §904]

- 3.1 The Foundation staff will review applications and determine whether or not the minimum eligibility requirements under Section 1.0 have been met.
- 3.2 If the minimum eligibility requirements have not been met, then the applicant will be notified by letter from the Foundation indicating that the application does not qualify for further review, and the reasons for ineligibility.
- 3.3 If an applicant excludes a portion of property otherwise includable in a proposed District, then the Foundation may deny the application, unless the property proposed for exclusion is not otherwise eligible for inclusion due to the use of the property at the time of the application.
- 3.4 Subject to Section 3.3 above, if the lands proposed as a District in the application (200 or more acres) meet minimum eligibility criteria, then the Foundation staff will submit to the Foundation, the County Farmland Preservation Advisory Board and the County Planning and Zoning Authority, applications and an indication that the application meets the minimum eligibility requirements.
- 3.5 If the applicant disagrees with the staff evaluation of the proposed District, then the applicant may contact the Foundation staff to discuss the application review. Foundation staff will meet with the landowner to discuss the review within thirty (30) days from receiving formal contact from the applicant.
- 3.6 If the issue is not resolved to the applicant's satisfaction, the applicant may request an

administrative review with the Foundation by submitting a letter to the Foundation within fourteen days (14) of the applicant's last meeting with Foundation staff.

- 3.7 This letter must include reasons and documentation to justify the applicant's claim(s).
- 3.8 The Foundation will schedule a meeting and notify the applicant by certified letter of the date, time, and place of the meeting.
- 3.9 At the administrative review meeting, the applicant(s) shall present information or documentation as to how the proposed District satisfies the eligibility criteria.
- 3.10 The Foundation will render a decision within thirty (30) days from the administrative review meeting and notify the applicant in writing of its decision.
- 3.11 Owners of real property who have executed a District Agreement or a preservation easement that incorporate the restrictions in effect prior to the Senate Bill No. 333 amendments and who elect to be released from the restrictions set forth in 9 Del. C. §909(a)(2)(b) pursuant to 9 Del. C. §909(a)(4)(c), shall comply with the following requirements:
 - 3.11.1 Owners who have executed a district agreement and who wish to designate up to three residential lots shall designate the allowable residential acreage in sufficient detail to enable the Foundation to determine the location of the residential acreage, and while a survey may be submitted, a survey shall not be required. The Owner shall execute an amendment to the Owner's District Agreement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in 9 Del. C. §909(a)(1), (a)(2)(a), (a)(4)(a) and (a)(4)(b).
 - 3.11.2 Owners who have executed a preservation easement and who wish to designate up to three residential lots shall designate the allowable residential acreage in sufficient detail to enable the Foundation to determine the location of the residential acreage and shall submit to the Foundation for its review and approval, at the Owner's expense, an amended survey in recordable form. The amended survey shall show the entire parcel subject to the preservation easement and the location of any residential lots. The Owner shall execute an amendment to the preservation easement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in 9 Del. C. §909(a)(1), (a)(2)(a), (a)(4)(a) and (a)(4)(b).

4.0 Creation of a District

- 4.1 To establish an Agricultural Preservation District, the application must be approved by two out of three of the entities listed under Section 3.4 of these regulations.
[3 Del. C. §907(c)]
- 4.2 After review by the Foundation, the application is subject to a review period of thirty (30) days in which the Secretary of Agriculture may reject the application. The application is officially approved at the end of the review period, if it is not rejected by the Secretary of Agriculture. [3 Del. C. §919]

- 4.3 The property legally becomes a District when the applicant and Foundation Chairperson (or designee) have signed the District Agreement and no rejection has been exercised by the Secretary of Agriculture, or the Secretary of Agriculture has waived the right of rejection.
- 4.4 Copies of the District Agreement shall be filed with the County Planning and Zoning and Tax Assessor's Offices and recorded in the Office of the Recorder of Deeds. The Foundation shall require from these Offices proof of recording and/or receipt of the District Agreement.
- 4.5 The Foundation shall endeavor to provide written notification of the date of establishment of the Agricultural Preservation District and provide a copy of the District Agreement to the applicant, however, the failure of the Foundation to satisfy any formality following execution of a District Agreement shall not affect the validity of the District Agreement.

5.0 District Restrictions

- 5.1 Any rezoning or major subdivision of real property included in an Agricultural Preservation District is prohibited. [3 Del. C. §909(a)(1)]
- 5.2 The submission of applications or preliminary rezoning or subdivision plans for any property within an Agricultural Preservation District to a county or municipality shall be considered evidence of the intent to rezone or subdivide and no action shall be taken by any county or municipality on any such application until the expiration of the District Agreement.
- 5.3 During the term of the District Agreement, the property shall be used for "agricultural and related uses" and shall be used in such a way so that the property continues to qualify as "viable and productive agricultural land" as defined under provisions of the Farmland Assessment Act. [9 Del. C. §8329 - 8333] No more than 1 acre of land for each 20 acres of usable land, subject to a maximum of 10 acres, shall be allowed for dwelling housing. For purposes of calculating the number of acres allowable for dwelling housing, fractions of any acre shall not be allowed. By way of example, if a farm consists of 45 acres of usable farmland, the number of acres allowed for dwelling housing shall be 2, and not 2.25.
- 5.4 The phrase 'agricultural and related uses' shall have the meaning set forth in 3 Del. C. §909, as the same may be amended from time to time.
- 5.5 Excavation or filling, borrow pits, extraction, processing and removal of sand, gravel, loam, rock or other minerals is prohibited unless such action is currently required by or ancillary to any preparation for, or operation of any activities including, but not limited to: aquaculture, farm ponds, cranberry operations, manure handling facilities, and other activities directly related to agricultural production.
- 5.6 Activities that would be detrimental to drainage, flood control, water conservation, erosion control or soil conservation are prohibited.

- 5.7 Any other activity that might negatively affect the continued agricultural use of the land is prohibited.
- 5.8 The term "usable land owned in the district" [3 Del. C. §909(a)(2)], shall be defined as any land meeting the requirements for agricultural, horticultural or forest land in the Farmland Assessment Act of 1968 [9 Del. C., Chapter 83] and [3 Del. C. §403] or criteria for farm definition as established by the National Agricultural Statistics Service.
- 5.9 The District Agreement and District requirements and benefits shall be binding on the heirs, successors and assigns of property owners of lands within a District. A property owner in a District shall provide written notice to the Foundation of any proposed transfer of property subject to the District Agreement at least ten (10) days in advance of the transfer, and shall give written notice to any successor or assign at least ten (10) days in advance of the date of transfer of the property that the property is subject to District restrictions. The party taking title shall execute a document as required by [3 Del. C. §909(a)(2)c.] acknowledging the acreage allowed for dwelling housing and the restrictions which apply to the property. The failure of the property owner to notify the transferee as provided herein shall not affect the transferee's obligation to comply with the terms and conditions of the District Agreement upon the transfer of title.
- 5.10 Under 3 Del. C. §909(a)(3), all restrictions shall be covenants which run with and bind the lands in the District for a minimum of ten (10) years, beginning when the District Agreement takes effect as specified in the District Agreement.

6.0 Continuation of a District

- 6.1 All properties are to remain in an Agricultural Preservation District for at least ten (10) years, subject to the allowance of hardship exceptions for exclusion of dwelling housing pursuant to 3 Del. C. §909(a)(2)(b) and Section 9 of these guidelines.
- 6.2 If a landowner wishes to withdraw from, or terminate a District, then the Foundation must receive a written notice of intent to withdraw no less than six (6) months prior to the ten (10) year anniversary date of initial establishment of the District. [3 Del. C. §909(b)]

If the Foundation does not receive a written notification of the landowner's intent to withdraw from the District six (6) months prior to the ten (10) year anniversary date of that District, then the land shall remain in the District for an additional five (5) year period unless and until notice of intent to withdraw shall be given six months prior to the end of each additional five-year period.

7.0 Expansion of a District

- 7.1 An Agricultural Preservation District can be expanded for the purpose of preserving additional lands. Lands added to a District may be under 200 acres.[3 Del. C. §907(d)]
- 7.2 Land which is less than 200 usable acres, yet meets the other criteria established by the Foundation, is eligible to be an expansion ("Expansion") of an Agricultural Preservation District if it is within three (3) miles of any portion of an established Agricultural Preservation District. [3 Del. C. §907(a)]

8.0 Inspection of Districts

The Foundation has the authority to enter upon lands as may be necessary to perform surveys, appraisals, and investigations to accomplish the purpose of the program, consistent with applicable statutes.

[3 Del. C. §904(b)(14)]

- 8.1 The Foundation or its designee reserves the right to inspect restricted land and enforce agreements on its own behalf.
- 8.2 If any violations of the terms and the conditions of the District Agreement occur, the Foundation may institute proceedings in the appropriate court to enforce the terms and seek appropriate relief. [3 Del. C. §920(a)]

9.0 Dwelling Property Hardship Exceptions

Except as set forth in Section 9.7 hereof, owners of real property who have executed a District Agreement or a preservation easement that incorporate the restrictions in effect prior to the Senate Bill No. 333 amendments are entitled to apply to the Foundation for a hardship exception allowing for the transfer of dwelling property to parties who are not otherwise entitled to residential use of the dwelling property under the District Agreement or Preservation Easement, subject to the provisions of 3 Del. C. §909(a)(2)(b) and the following requirements.

- 9.1 An applicant for a hardship exception shall submit the following information in writing to the Foundation:
 - 9.1.1 name and property interest of applicant in the dwelling property;
 - 9.1.2 acreage of the dwelling property subject to application;
 - 9.1.3 date on which the District was established;
 - 9.1.4 number of dwellings and acreage of residential use currently on the property in the District;
 - 9.1.5 the nature of the hardship condition and reasons justifying the granting of a hardship exception;
 - 9.1.6 the extent to which the hardship condition is unavoidable.
- 9.2 The Foundation shall consider hardship conditions involving the following circumstances:
 - 9.2.1 the sale or transfer of the dwelling property compelled by foreclosure, court order, or marital property division agreement;
 - 9.2.2 the sale or transfer of the dwelling property compelled by job transfer;
 - 9.2.3 the sale or transfer of the dwelling property compelled by health conditions;
 - 9.2.4 the sale or transfer of the dwelling property required to avoid insolvency or

bankruptcy; and

9.2.5 other circumstances of an unusual and extraordinary nature which pose a practical hardship to continued ownership of the dwelling property and which are unavoidable.

9.3 Hardship exceptions will not be granted when no real hardship exists and the primary consequence of the sale or transfer of the dwelling property is financial gain.

9.4 The applicant shall bear the burden of establishing the existence of hardship circumstances, and shall provide to the Foundation documentation in support of the application, and any documentation requested by the Foundation, provided however, that documentation involving privileged information may be submitted on a confidential basis.

9.5 The Foundation may require the applicant for a hardship exception to appear before the Foundation Board to present the application, and an applicant shall be entitled to appear before the Board to make a presentation by submitting a written request to the Foundation.

9.6 The granting of a hardship exception by the Foundation shall be subject to the following conditions:

9.6.1 the dwelling property following transfer shall be used only for residential purposes;

9.6.2 the transferred property shall not qualify for District benefits or benefits of Preservation Easements;

9.6.3 if the transferred property is subject to a Preservation Easement prior to transfer, payment shall be made to the Foundation in an amount equal to twenty-five (25) percent of the current fair market value of the land subject to transfer;

9.6.4 the transferee shall execute a Declaration in recordable form as prescribed by the Foundation which includes the acreage allowed for dwelling housing and the restrictions which apply to the real property;

9.6.5 the Foundation may require the transferor to execute a Declaration in recordable form as prescribed by the Foundation to evidence the status of allowable dwelling housing property on lands retained by the transferor which are in the District or subject to a Preservation Easement; and

9.6.6 such other terms and conditions considered necessary by Foundation to address the nature of the hardship condition.

9.7 The hardship provisions set forth herein shall not apply to the owners of real property who, pursuant to 3 Del. C. §909(a)(4)(c), have elected to be released from the restrictions of 3 Del. C. §909(a)(2)(h).

10.0 Delaware Farmland Preservation Fund

The Delaware Farmland Preservation Fund, hereinafter referred to as the "Fund", was enacted under 3 Del. C. §905 for the exclusive application by the Foundation to achieve the desired goals of preserving viable agricultural lands and conducting the business of the Foundation.

11.0 Sources of Funding

- 11.1 The Foundation may accept donations, property, or development rights as gifts and monetary gifts from any source, public or private.
- 11.2 Monies not needed on a current basis by the Foundation may be invested with the approval of the Board of Trustees.
- 11.3 The Fund is subject to an annual audit to be prepared by an independent, certified public accountant. The findings of all audits shall be presented to the Board.
- 11.4 The Foundation shall manage the monies appropriated to it by the General Assembly in accordance with the terms of the appropriations.

12.0 Criteria for Purchase Agricultural Lands Preservation Easements

- 12.1 The criteria for eligibility of acquisition of a Preservation Easement shall be the same as the criteria for district eligibility. In addition, offered preservation easement lands shall be in an established district and in compliance with district requirements to be eligible. The Foundation shall have the right, in its sole discretion, to acquire a Preservation Easement on only a part of the property included within the District Agreement.
- 12.2 The prioritization and selection of properties for the purchase of preservation easements shall be as set forth in Sections 13 thru 20 inclusive hereof.

13.0 Matching Contributions to the Program

The Foundation may establish a reserve or set aside of available funds for the matching of federal, county, local, or private funds for the preservation of farmland. The Foundation may allow the entity providing matching funding to select the qualified properties for purchases of easements using the matching funding notwithstanding provisions of these regulations regarding selections. The Foundation has the discretion, but is not required, to match contributions.

14.0 Schedule for Acquisition of Agricultural Lands Preservation Easements

- 14.1 Application and funding cycles will take place on schedules established by the Foundation.
- 14.2 Applications for the purchase of Preservation Easements in Rounds of Purchases shall be subject to deadlines established by the Foundation.
- 14.3 For each Round of Preservation Easement Purchases the Foundation shall arrange for the appraisal of the Preservation Easement value of those properties under consideration.
- 14.4 Upon completion, the appraisals shall be provided to the landowners, and procedures set

forth herein involving offers for the sale of preservation easements under Option Agreements shall be initiated.

- 14.5 Offers received shall be held confidential until all offers are received after which the Foundation shall review the offers and announce the selections.
- 14.6 Following the selection of properties for acquisition of Preservation Easements, the Foundation shall arrange for surveys of the properties to be conducted, and proceed to settlement under the terms of the Option Agreements, subject to the availability of funding and satisfaction of regulatory, financial or other restrictions or limitations.
- 14.7 The Foundation is under no obligation to purchase a Preservation Easement which is offered for sale. [3 Del.C. §913.]

15.0 Application Procedures

- 15.1 A separate application shall be required for each farmland tract (operating farm unit) offered for Preservation Easement purchase. The Foundation shall not be obligated to process any incomplete application.
- 15.2 The Foundation shall develop, and make available to landowners or other interested parties, an application form for use in offers to sell Preservation Easements.
- 15.3 The Foundation shall review the application to determine if it is complete.

16.0 Appraisals [3 Del. C. §916]

- 16.1 An offer to purchase a Preservation Easement shall be based upon one or more appraisal reports which estimate the full market value of the land under its agricultural zoning designation and the agriculture-only value of the farmland tract. The agricultural only value shall be based on an income capitalization methodology. Any appraisal obtained by the Foundation shall constitute the property of the Foundation and may not be used by the property owner for tax or other purposes. All categories of land located in the farmland tract shall be eligible for easement purchase and shall be appraised
- 16.2 The value of buildings or other improvements on the farmland tract shall not be considered in determining the Preservation Easement value. Excluded from the value of the Preservation Easement shall be any acreage designated or eligible to be designated by the owner for residential use pursuant to 3 Del. C. §909(a)(4)(a), provided however, the landowner shall have the right to waive eligible residential usage in which case the development rights value of the waived acreage shall be included.
- 16.3 The appraiser shall be:
 - 16.3.1. An independent, licensed real estate appraiser who is qualified to appraise a property for easement purchase. An appraiser shall be selected on the basis of experience, expertise and professional designation; and
 - 16.3.2. A member of an organization which subscribes to the "Uniform Standards of Professional Appraisal Practice" published by the Appraisal Standards Board of the Appraisal Foundation, and shall follow their ethical and professional

standards.

16.4 The appraiser shall supply a narrative report which shall contain such information as required by the Foundation.

17.0 Agricultural Lands Preservation Easement Value and Purchase Price

17.1 The value of a Preservation Easement in perpetuity shall be the difference between the full market value and the agriculture-only value contained in the appraisal report.

17.2 The price paid by the Foundation for the purchase of a Preservation Easement may not exceed, but may be less than, the value of the Preservation Easement. [3 Del. C. §916(a)]

17.3 If the applicant is not satisfied with the appraisal provided by the Foundation, the applicant shall be entitled to have an independent appraisal performed at the applicant's expense by a qualified appraiser as specified in Section 16.3. The alternative appraisal shall be prepared in the same format as the Foundation's appraisal and shall be submitted to the Foundation within forty-five (45) days of the applicant's date of receipt of the appraisal provided by the Foundation. The forty-five (45) day period may be extended by the Foundation, provided the time extension does not delay the time frame established by the Foundation for making selection and acquisition decisions.

17.4 The review of the alternative appraisals by the Foundation shall be based on written submissions under such procedures as specified by the Foundation. The maximum adjusted Preservation Easement value which the Foundation will accept is the difference between the agriculture-only value and the full market value, determined as follows:

17.4.1 The agriculture-only value shall equal the sum of:

- i. The agriculture-only value determined by the applicant's appraiser; and
- ii. Up to one-half of the positive difference between the agriculture-only value determined by the Foundation's appraiser and his/her values which exceed those determined by the applicant's appraiser.

17.4.2 The full market value shall equal the sum of:

- i. The full market value determined by the Foundation's appraiser; and
- ii. Up to one-half of the positive difference between the full market value determined by the applicant's appraiser and his/her values which exceed those determined by the Foundation's appraiser.

18.0 Offer of Purchase by the Foundation

18.1 The Foundation has the authority to incorporate bidding and/or negotiation as part of the procurement process. [3 Del. C. §915]

18.2 In reviewing the offers of applicants to sell Preservation Easements to the Foundation, the Foundation shall, subject to consideration of any alternative criteria by the Foundation to satisfy special objectives, select those offers providing the highest level of

percentage donation or percentage discount to the finally appraised value of the Preservation Easement, in accordance with the procedures and requirements of this Section. As an additional incentive, if any part of the applicant's property subject to the offer is located in whole or in part within one-half (1/2) mile completely outside of any growth zone of the County in which the Property is located, or in whole or in part within one-half (1/2) mile completely outside of the boundary of an incorporated town, municipality or city, for the sole purpose of ranking said application, the Foundation shall increase the offered percentage discount by five percent (5%). By way of example, if an applicant's offer includes a discount of sixty percent (60%), and the applicant's property is located in whole or in part within one-half (1/2) mile completely outside of the specified areas, for ranking purposes, the applicant's discount shall be deemed to be sixty-five percent (65%). If the applicant's property is selected for purchase of a preservation easement, the purchase price for the preservation easement shall incorporate a discount of only sixty percent (60%). The locations of the growth zones referenced by the Counties and the one-half (1/2) mile surrounding areas are as shown in Appendix "A" attached hereto.

- 18.3 The Foundation shall entertain offers in the form of Option Agreements from all eligible applicants who wish to submit offers, and after all offers are received, list the offers with the highest to the lowest level of percentage donation or percentage discount to the finally appraised value of the Preservation Easement with any adjustment to the offered donation or percentage discount as specified in Section 18.2 above.
- 18.4 Prior to releasing information to the public regarding the percentage of any discount or donation provided by a landowner the Foundation shall notify the landowner, identifying the requesting party, and obtain permission from the landowner prior to releasing the requested information. Otherwise, the information shall not be disclosed.
- 18.5 The Foundation may, but shall not be required to, allow a property owner in a District to submit an offer to sell a preservation easement on a portion of the real property in a District.

19.0 The Agricultural Lands Preservation Easement

- 19.1 The owners of the subject farmland tract shall execute a document conveying the Preservation Easement which document shall be in a form which contains conditions contained in Option Agreements executed by landowners.
- 19.2 The document shall be in recordable form and contain:
 - 19.2.1. A legal description setting forth the metes and bounds of the farmland tract subject to the Preservation Easement.
 - 19.2.2. At least one course and distance referencing a fixed marker or monument of a type commonly placed in the field by a surveyor.
 - 19.2.3 The legal description shall not contain a closure error greater than one foot per 200 linear feet in the survey.
 - 19.2.4 The survey of the farmland tract on which a Preservation Easement is to be

purchased shall show each of the residential lots, if any, designated by the owner pursuant to 9 Del. C. §909(a)(4)(a).

20.0 Title Quality

The Preservation Easement conveyed to the Foundation shall be unencumbered except for standard exceptions and be capable of being insured as such by an established and recognized title insurance company doing business in the State of Delaware. Any title defects, liens, survey discrepancies, boundary line disputes, or similar title issues shall be resolved by the property owner, at the property owner's sole expense. If subsequent to the purchase of a Preservation Easement it is determined that the amount of acreage is less than as reflected on the survey used by the Foundation for purposes of calculating the purchase price for the Preservation Easement, the property owner shall be required to refund to the Foundation any excess funds paid in reliance upon the inaccurate survey.

21.0 Residential Lots

Senate Bill 333 imposes alternative restrictions on the limited residential use of property subject to a District Agreement or Preservation Easement by replacing the unlimited number of residential dwellings allowed for owners, relatives of owners, and farm labor, with a total limit of three dwellings which can be occupied by any person. The overriding limitation of residential use of 1 acre for 20 acres of usable farmland (subject to a maximum of 10 acres) was left unchanged. Accordingly, owners can now designate up to three residential lots on District Property or Preserved Property. With respect to the designation of the residential lots allowed under Senate Bill 333, the following additional guidelines shall apply:

- 21.1 The acceptance by the Foundation of the designation of a residential lot does not mean that the location of the lot and proposed residential use complies with any applicable zoning rules or regulations, or that a lot is suitable for residential use. Owners are encouraged to conduct such investigations and perform such tests as they deem appropriate to ascertain whether or not any designated lot will be suitable for residential use and complies with all applicable land use regulations, including zoning laws.
- 21.2 The Foundation recognizes that at times, due to circumstances beyond the control of the owner, it may be necessary for the owner to change the location of a lot. As a matter of policy, the Foundation will allow such changes subject to the following requirements:
 - 21.2.1 No change in the location of a lot or size of a lot shall be allowed which would cause the number of lots or amount of residential acreage to be in excess of that otherwise allowed under the terms of the District Agreement or Preservation Easement.
 - 21.2.2 With respect to property subject to a Preservation Easement, the owner shall cause to be prepared, at the owner's expense, an amended plot plan showing the entire parcel subject to the Preservation Easement and the location of each residential lot.
 - 21.2.3 The owner shall execute an amendment to the District Agreement or Preservation Easement, which amendment shall reflect the change in the location or size of the residential lots, and which shall reference the amended plot plan.

22.0 Strategy Map

The farm lands shown on the Strategy Map attached hereto as Appendix "B" which have a LESA Score of at least 170 are targeted for inclusion in Districts, and those qualified farms located in whole or in part one-half (1/2) mile completely outside of any growth zones designated under these regulations shall be further prioritized by the donation or discount advantage for such properties provided under Section 18.2 of these regulations.



DELAWARE AGRICULTURAL LANDS
Preservation Foundation

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April 17, 2015

Honorable Michael H. Vincent, President
Sussex County Council
2 The Circle, PO Box 589
Georgetown, DE 19947

RE: Delaware Agricultural Lands Preservation Foundation – Preservation Advisory Boards –
Proposed Regulations

Dear President Vincent:

Recently correspondence was directed to the head of each County legislative body requesting the names of the individuals in the County appointed to the Farmland Preservation Advisory Boards pursuant to the provisions of 3 Del. C. §906, a copy of which was provided and which is enclosed. The Advisory Boards play an important role under the Agricultural Lands Preservation Act, which includes providing advice to the Foundation regarding the adoption of regulations proposed by the Foundation. The referenced statutory provisions require that the draft of the proposed regulations be provided to the Advisory Boards prior to release for public notice. The purpose of this correspondence is to provide the enclosed draft regulations seeking input from the Advisory Boards. It is noted that the Foundation Board has taken no action on the proposed regulations pending your input.

In considering the draft proposed regulations some background regarding the existing Agricultural Lands Preservation program is helpful. The statewide Agricultural Lands Preservation Act was adopted in 1991, and some of its major features include:

- (1) The establishment of the Foundation to administer the preservation program, currently through staffing provided by the Delaware Department of Agriculture;
- (2) The establishment of Agricultural Preservation Districts and expansions, under which eligible farm owners voluntarily enter into agreements to not develop their property for a period of 10 years in return for certain tax benefits and right to farm protections;
- (3) The establishment of a program under which the Foundation purchases Agricultural Lands Preservation Easements from the landowners who have entered agreements placing their farms in Agricultural Preservation Districts; and
- (4) The establishment of a Fund administered by the Foundation for purposes of receiving monies from the State, the federal government, Counties and private entities to purchase Agricultural Lands Preservation Easements, which prohibit development and permanently commit the property subject to the easements to farming and related uses.

Funding for the purchase of Agricultural Lands Preservation Easements was not provided by the State until 1995. In anticipation of the funding the Foundation in January 1995 adopted Policies, Procedures and Guidelines, the Guidelines (referenced herein as regulations) established eligibility requirements, application procedures, restrictions, and a ranking system and alternative means of selecting farms for Preservation Easement purchases. The alternative to a ranking system for the selection of easement purchases involves the use of an appraisal of development rights values under which eligible landowners are afforded the opportunity to offer

a donation or discount of the development rights value, with the selection based solely on the highest level percentage donation or discount offered until available funds are exhausted. Although initially the procedures provided for designation of priority preservation areas, later amendments to the procedures allow for the use of alternative criteria involving a minimum Land Evaluation and Site Assessment (LESA) score, in conjunction with the percentage donation or discounting system for making selections. One of the special objectives in using the donation or discounting approach was satisfaction of a requirement imposed in the initial and subsequent appropriations provided by the General Assembly that a minimum 4:1 match or 20% donation or discounting of the development rights value be provided by landowners in order to allow use of state funding to purchase preservation easements. An additional benefit achieved by the donation or discounting approach was the removal of any subjectivity or outside influence, political or otherwise, in the selection process. With farm owners voluntarily offering percentage donations or discounts to development right values, and the highest percentages being used to make selections until funds are exhausted in each round of selections, it is the participating landowners with their percentage offers who are making the selections, and not the Board members of the Foundation or others.

The openly competitive highest percentage donation or discount system adopted by the Foundation has been used to make preservation easement selections with available funding for the past 19 years. The system has been recognized nationally as a success. Based on a recent Foundation monthly report the following has been achieved statewide in preserving farmland in Delaware:

1. The Foundation has enrolled 1,076 farms in the program covering 169,977 acres, which is 34% of the remaining farmland in Delaware.

2. The Foundation has purchased preservation easements on 808 farms comprised of 116,223 acres, which is 24% of the remaining farmland in Delaware. By County, 20% of the available farmland in New Castle County, 35% of the available farmland in Kent County and 15% of the available farmland in Sussex County, have been protected by easements.
3. As a result of the highest percentage donation or discount selection system used the average cost of purchasing preservation easement statewide has been \$1,793 per acre. In New Castle County the cost has been \$2,546 per acre, in Kent County it has been \$1,499 per acre, and in Sussex County it has been \$1,985 per acre.
4. The donation or discounting has averaged 56%, and there are 321 properties comprised of 38,036 acres eligible to participate in the next yearly round of easement purchases, subject to the availability of funding.

The regulations subject to the enclosed draft proposal were last revised in June, 1999. Prior to that time the enabling legislation was revised in 1998 to provide for a priority for the establishment of preservation districts and the purchase of preservation easements in areas located near and adjacent to designated growth zones. At the time that the regulations were revised in 1999, only Kent County had mapped an identified growth zone, and New Castle County and Sussex County had not per se designated growth zone areas. In considering the prioritization of purchasing preservation easements in areas located near and adjacent to growth zones the Foundation recognized in the 1999 regulations that the appraisal methodology used to determine the value of development rights significantly favored properties located in areas prone to development, and the employment of that methodology has proven to be the case. Under the regulations the Foundation adopted an appraisal approach which determined the development rights or preservation easement value as the difference between the fair market value and the

farm only value based on income capitalization calculations. The fair market value of properties near and adjacent to development areas are higher than those in other areas, while under the income capitalization calculation the farm only value is the same no matter where the property is located. The result is that landowners near and adjacent to areas prone to development receive more money per acre for the sale of their development rights than others.

The benefits of the appraisal methodology used to encourage farmland preservation in areas prone to development are best illustrated by reviewing easement purchases within one-half (1/2) mile of designated growth zones in each County. In New Castle County 24% of the purchased preservation easement acreage was within the one-half (1/2) mile area, while 27% of the available monies was spent for preservation easements in such area. In Kent County the comparison is 17% of acreage and 20% of monies spent. In Sussex County the relative percentages are 34% of acreage and 35% of monies spent. In considering this statistical information it is important to note that the landowners within the one-half (1/2) mile area have always had the option of not participating in the program and selling their land for development at prevailing real estate prices.

The Foundation recognizes that beyond the appraisal methodology utilized, no other specific criteria has been adopted which would serve to prioritize the purchase of preservation easements near and adjacent to growth zones. Accordingly, as an added incentive, the staff of the Foundation is proposing to modify the highest donation or discount selection system for purchasing preservation easements by adding an allowance for a 5% adjustment to the percentage discount offers submitted by eligible landowners with property located in whole or in part in an area one-half (1/2) mile outside designated growth zones for each County. The adjustment would create a preference in the selection process and serve to provide a 5% increase

in the purchase price for the preservation easement, both of which would serve as a further advantage to participating landowners in such priority areas.

The Foundation has also been charged with adapting, after consultation with the Advisory Boards and others, a statewide agricultural lands preservation strategy to be used along with other considerations in purchasing preservation easements. The strategy has been influenced by legislative changes which include the referenced matching funding requirement, the allowance of expansions of Districts for farms with less than 200 acres but which are located within 3 miles of a District, and the focus on farms located near and adjacent to growth areas. Currently there are no farms which because of the size or location are not eligible to participate in the program if they have a LESA score of at least 170. A change in the strategy is proposed to reflect these developments.

The enclosed proposed regulations also are designed to simplify the existing regulations and eliminate any confusion regarding the manner in which the Foundation has been operating the preservation easement program under the regulations. The maps of the growth zones for each County with the one-half mile preference area are attached to the draft proposed regulation and such maps also now form the basis for the statewide strategy map. The referenced current growth areas shown have been identified by the various County planning and zoning offices.

Overall the intent of these proposed revisions to the regulations and strategy is to facilitate the continued protection of Delaware's remaining farmlands through the purchase of preservation easements so as to assure the farming will continue to be a major industry in Delaware, while creating added incentives to landowners located near and adjacent to areas prone to development to voluntarily choose the alternative of preserving their farmland rather than selling it for

development. The Foundation proposes to continue to pursue these objectives in a manner which is considered to be a cost effective means of utilizing taxpayer monies.

If requested, members of the Foundation staff would be willing to meet with Advisory Board members to respond to any questions regarding the Agricultural Lands Preservation Program and the proposed regulations and strategy. Your response should be addressed to Austin Short, Deputy Secretary of the Department of Agriculture, at the above address.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Robert F. Garey".

Robert F. Garey
Chairman

RFG/rv

Enclosures

cc: Members – Foundation Board
Honorable Edward Kee, Secretary
Honorable Austin Short, Deputy Secretary

**DELAWARE
AGRICULTURAL LANDS PRESERVATION FOUNDATION**

PROPOSED REGULATIONS

AGRICULTURAL LANDS PRESERVATION PROGRAM

PREAMBLE

The Agricultural Lands Preservation Act ("Act") was enacted on July 8, 1991 and provided for the creation of the Agricultural Lands Preservation Foundation ("Foundation"). The Foundation has been charged with the authority and responsibility of establishing and administering an extensive statewide program to preserve Delaware's farmlands and forestlands. Included in its responsibilities is the adoption of criteria for the establishment of and maintenance of Agricultural Preservation Districts ("Districts") and adoption of criteria for the purchase of agricultural lands preservation easements ("Preservation Easement") 3 Del.C. §904(a) and (b). These regulations are intended to provide guidelines and simplification regarding the manner in which the Agricultural Lands Preservation Program is administered.

1.0 Criteria for District Eligibility

- 1.1 In order to qualify for the Agricultural Lands Preservation Program, the lands proposed as an Agricultural Preservation District in the application must meet the following minimum criteria:
 - 1.1.1 owner(s) shall hold fee simple title to all land to be placed in a District and must be actively using the property for "agricultural and related uses";
 - 1.1.2 must constitute at least 200 acres of contiguous farmland or lesser acreage if the farmlands are located within three (3) miles of an established District;
 - 1.1.3 shall be zoned for agricultural purposes and shall not be subject to any major subdivision plan;
 - 1.1.4 applicant(s) including all fee simple title holders, must sign a written agreement committing to District restrictions set forth in this Section and 3 Del. C. §909 and other adopted requirements;
 - 1.1.5 must be viable and productive agricultural land comprising a farm property unit and meet the minimum County Land Evaluation and Site Assessment (LESA) scoring requirements for eligibility as established by the Foundation; [3 Del. C. §908(a)(3)]
 - 1.1.6 must include all of the eligible real property located in the tax parcel or tax parcels subject to application.
- 1.2 For the purposes stated in this chapter, the phrase "viable and productive agricultural land" is defined as land that qualifies under provisions of the Farmland Assessment Act. [9 Del. C. §8329 - 8333]
- 1.3 The minimum LESA score for an eligible District or Expansion shall be 170 points out of a possible 300 points for each county in the State as computed under the currently approved LESA program of the Delaware Department of Agriculture.

- 1.4 The LESA score for agricultural lands is the primary factor in evaluating the eligibility of agricultural lands for inclusion in Districts and expansions, including the eligibility for purchase of preservation easements.

2.0 Application Procedures

- 2.1 The Foundation will provide application forms on which applicants who volunteer to place their lands into an Agricultural Preservation District will provide such information as the Foundation deems appropriate.
- 2.2 The Foundation shall provide assistance to potential applicants in completing application forms when requested.
- 2.3 Foundation staff may conduct on-site inspections and/or phone interviews with the applicants to acquire data necessary to perform LESA analyses and write a staff report.
- 2.4 In conjunction with the application, all fee simple owners shall sign a District Agreement in such form as deemed acceptable by the Foundation and which serves as a declaration in recordable form of acknowledgment of the policies and restrictions that must be followed, and benefits realized in a District.

3.0 Application Review Procedures

The Foundation has the authority to approve applications establishing Agricultural Preservation Districts and the authority to purchase preservation easements. [3 Del. C. §904]

- 3.1 The Foundation staff will review applications and determine whether or not the minimum eligibility requirements under Section 1.0 have been met.
- 3.2 If the minimum eligibility requirements have not been met, then the applicant will be notified by letter from the Foundation indicating that the application does not qualify for further review, and the reasons for ineligibility.
- 3.3 If an applicant excludes a portion of property otherwise includable in a proposed District, then the Foundation may deny the application, unless the property proposed for exclusion is not otherwise eligible for inclusion due to the use of the property at the time of the application.
- 3.4 Subject to Section 3.3 above, if the lands proposed as a District in the application (200 or more acres) meet minimum eligibility criteria, then the Foundation staff will submit to the Foundation, the County Farmland Preservation Advisory Board and the County Planning and Zoning Authority, applications and an indication that the application meets the minimum eligibility requirements.
- 3.5 If the applicant disagrees with the staff evaluation of the proposed District, then the applicant may contact the Foundation staff to discuss the application review. Foundation staff will meet with the landowner to discuss the review within thirty (30) days from receiving formal contact from the applicant.
- 3.6 If the issue is not resolved to the applicant's satisfaction, the applicant may request an

administrative review with the Foundation by submitting a letter to the Foundation within fourteen days (14) of the applicant's last meeting with Foundation staff.

- 3.7 This letter must include reasons and documentation to justify the applicant's claim(s).
- 3.8 The Foundation will schedule a meeting and notify the applicant by certified letter of the date, time, and place of the meeting.
- 3.9 At the administrative review meeting, the applicant(s) shall present information or documentation as to how the proposed District satisfies the eligibility criteria.
- 3.10 The Foundation will render a decision within thirty (30) days from the administrative review meeting and notify the applicant in writing of its decision.
- 3.11 Owners of real property who have executed a District Agreement or a preservation easement that incorporate the restrictions in effect prior to the Senate Bill No. 333 amendments and who elect to be released from the restrictions set forth in 9 Del. C. §909(a)(2)(b) pursuant to 9 Del. C. §909(a)(4)(c), shall comply with the following requirements:
 - 3.11.1 Owners who have executed a district agreement and who wish to designate up to three residential lots shall designate the allowable residential acreage in sufficient detail to enable the Foundation to determine the location of the residential acreage, and while a survey may be submitted, a survey shall not be required. The Owner shall execute an amendment to the Owner's District Agreement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in 9 Del. C. §909(a)(1), (a)(2)(a), (a)(4)(a) and (a)(4)(b).
 - 3.11.2 Owners who have executed a preservation easement and who wish to designate up to three residential lots shall designate the allowable residential acreage in sufficient detail to enable the Foundation to determine the location of the residential acreage and shall submit to the Foundation for its review and approval, at the Owner's expense, an amended survey in recordable form. The amended survey shall show the entire parcel subject to the preservation easement and the location of any residential lots. The Owner shall execute an amendment to the preservation easement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in 9 Del. C. §909(a)(1), (a)(2)(a), (a)(4)(a) and (a)(4)(b).

4.0 Creation of a District

- 4.1 To establish an Agricultural Preservation District, the application must be approved by two out of three of the entities listed under Section 3.4 of these regulations. [3 Del. C. §907(c)]
- 4.2 After review by the Foundation, the application is subject to a review period of thirty (30) days in which the Secretary of Agriculture may reject the application. The application is officially approved at the end of the review period, if it is not rejected by the Secretary of Agriculture. [3 Del. C. §919]

- 4.3 The property legally becomes a District when the applicant and Foundation Chairperson (or designee) have signed the District Agreement and no rejection has been exercised by the Secretary of Agriculture, or the Secretary of Agriculture has waived the right of rejection.
- 4.4 Copies of the District Agreement shall be filed with the County Planning and Zoning and Tax Assessor's Offices and recorded in the Office of the Recorder of Deeds. The Foundation shall require from these Offices proof of recording and/or receipt of the District Agreement.
- 4.5 The Foundation shall endeavor to provide written notification of the date of establishment of the Agricultural Preservation District and provide a copy of the District Agreement to the applicant, however, the failure of the Foundation to satisfy any formality following execution of a District Agreement shall not affect the validity of the District Agreement.

5.0 District Restrictions

- 5.1 Any rezoning or major subdivision of real property included in an Agricultural Preservation District is prohibited. [3 Del. C. §909(a)(1)]
- 5.2 The submission of applications or preliminary rezoning or subdivision plans for any property within an Agricultural Preservation District to a county or municipality shall be considered evidence of the intent to rezone or subdivide and no action shall be taken by any county or municipality on any such application until the expiration of the District Agreement.
- 5.3 During the term of the District Agreement, the property shall be used for "agricultural and related uses" and shall be used in such a way so that the property continues to qualify as "viable and productive agricultural land" as defined under provisions of the Farmland Assessment Act. [9 Del. C. §8329 - 8333] No more than 1 acre of land for each 20 acres of usable land, subject to a maximum of 10 acres, shall be allowed for dwelling housing. For purposes of calculating the number of acres allowable for dwelling housing, fractions of any acre shall not be allowed. By way of example, if a farm consists of 45 acres of usable farmland, the number of acres allowed for dwelling housing shall be 2, and not 2.25.
- 5.4 The phrase 'agricultural and related uses' shall have the meaning set forth in 3 Del. C. §909, as the same may be amended from time to time.
- 5.5 Excavation or filling, borrow pits, extraction, processing and removal of sand, gravel, loam, rock or other minerals is prohibited unless such action is currently required by or ancillary to any preparation for, or operation of any activities including, but not limited to: aquaculture, farm ponds, cranberry operations, manure handling facilities, and other activities directly related to agricultural production.
- 5.6 Activities that would be detrimental to drainage, flood control, water conservation, erosion control or soil conservation are prohibited.

- 5.7 Any other activity that might negatively affect the continued agricultural use of the land is prohibited.
- 5.8 The term "usable land owned in the district" [3 Del. C. §909(a)(2)], shall be defined as any land meeting the requirements for agricultural, horticultural or forest land in the Farmland Assessment Act of 1968 [9 Del. C., Chapter 83] and [3 Del. C. §403] or criteria for farm definition as established by the National Agricultural Statistics Service.
- 5.9 The District Agreement and District requirements and benefits shall be binding on the heirs, successors and assigns of property owners of lands within a District. A property owner in a District shall provide written notice to the Foundation of any proposed transfer of property subject to the District Agreement at least ten (10) days in advance of the transfer, and shall give written notice to any successor or assign at least ten (10) days in advance of the date of transfer of the property that the property is subject to District restrictions. The party taking title shall execute a document as required by [3 Del. C. §909(a)(2)c.] acknowledging the acreage allowed for dwelling housing and the restrictions which apply to the property. The failure of the property owner to notify the transferee as provided herein shall not affect the transferee's obligation to comply with the terms and conditions of the District Agreement upon the transfer of title.
- 5.10 Under 3 Del. C. §909(a)(3), all restrictions shall be covenants which run with and bind the lands in the District for a minimum of ten (10) years, beginning when the District Agreement takes effect as specified in the District Agreement.

6.0 Continuation of a District

- 6.1 All properties are to remain in an Agricultural Preservation District for at least ten (10) years, subject to the allowance of hardship exceptions for exclusion of dwelling housing pursuant to 3 Del. C. §909(a)(2)(b) and Section 9 of these guidelines.
- 6.2 If a landowner wishes to withdraw from, or terminate a District, then the Foundation must receive a written notice of intent to withdraw no less than six (6) months prior to the ten (10) year anniversary date of initial establishment of the District. [3 Del. C. §909(b)]

If the Foundation does not receive a written notification of the landowner's intent to withdraw from the District six (6) months prior to the ten (10) year anniversary date of that District, then the land shall remain in the District for an additional five (5) year period unless and until notice of intent to withdraw shall be given six months prior to the end of each additional five-year period.

7.0 Expansion of a District

- 7.1 An Agricultural Preservation District can be expanded for the purpose of preserving additional lands. Lands added to a District may be under 200 acres.[3 Del. C. §907(d)]
- 7.2 Land which is less than 200 usable acres, yet meets the other criteria established by the Foundation, is eligible to be an expansion ("Expansion") of an Agricultural Preservation District if it is within three (3) miles of any portion of an established Agricultural Preservation District. [3 Del. C. §907(a)]

8.0 Inspection of Districts

The Foundation has the authority to enter upon lands as may be necessary to perform surveys, appraisals, and investigations to accomplish the purpose of the program, consistent with applicable statutes.

[3 Del. C. §904(b)(14)]

- 8.1 The Foundation or its designee reserves the right to inspect restricted land and enforce agreements on its own behalf.
- 8.2 If any violations of the terms and the conditions of the District Agreement occur, the Foundation may institute proceedings in the appropriate court to enforce the terms and seek appropriate relief. [3 Del. C. §920(a)]

9.0 Dwelling Property Hardship Exceptions

Except as set forth in Section 9.7 hereof, owners of real property who have executed a District Agreement or a preservation easement that incorporate the restrictions in effect prior to the Senate Bill No. 333 amendments are entitled to apply to the Foundation for a hardship exception allowing for the transfer of dwelling property to parties who are not otherwise entitled to residential use of the dwelling property under the District Agreement or Preservation Easement, subject to the provisions of 3 Del. C. §909(a)(2)(b) and the following requirements.

- 9.1 An applicant for a hardship exception shall submit the following information in writing to the Foundation:
 - 9.1.1 name and property interest of applicant in the dwelling property;
 - 9.1.2 acreage of the dwelling property subject to application;
 - 9.1.3 date on which the District was established;
 - 9.1.4 number of dwellings and acreage of residential use currently on the property in the District;
 - 9.1.5 the nature of the hardship condition and reasons justifying the granting of a hardship exception;
 - 9.1.6 the extent to which the hardship condition is unavoidable.
- 9.2 The Foundation shall consider hardship conditions involving the following circumstances:
 - 9.2.1 the sale or transfer of the dwelling property compelled by foreclosure, court order, or marital property division agreement;
 - 9.2.2 the sale or transfer of the dwelling property compelled by job transfer;
 - 9.2.3 the sale or transfer of the dwelling property compelled by health conditions;
 - 9.2.4 the sale or transfer of the dwelling property required to avoid insolvency or

bankruptcy; and

9.2.5 other circumstances of an unusual and extraordinary nature which pose a practical hardship to continued ownership of the dwelling property and which are unavoidable.

9.3 Hardship exceptions will not be granted when no real hardship exists and the primary consequence of the sale or transfer of the dwelling property is financial gain.

9.4 The applicant shall bear the burden of establishing the existence of hardship circumstances, and shall provide to the Foundation documentation in support of the application, and any documentation requested by the Foundation, provided however, that documentation involving privileged information may be submitted on a confidential basis.

9.5 The Foundation may require the applicant for a hardship exception to appear before the Foundation Board to present the application, and an applicant shall be entitled to appear before the Board to make a presentation by submitting a written request to the Foundation.

9.6 The granting of a hardship exception by the Foundation shall be subject to the following conditions:

9.6.1 the dwelling property following transfer shall be used only for residential purposes;

9.6.2 the transferred property shall not qualify for District benefits or benefits of Preservation Easements;

9.6.3 if the transferred property is subject to a Preservation Easement prior to transfer, payment shall be made to the Foundation in an amount equal to twenty-five (25) percent of the current fair market value of the land subject to transfer;

9.6.4 the transferee shall execute a Declaration in recordable form as prescribed by the Foundation which includes the acreage allowed for dwelling housing and the restrictions which apply to the real property;

9.6.5 the Foundation may require the transferor to execute a Declaration in recordable form as prescribed by the Foundation to evidence the status of allowable dwelling housing property on lands retained by the transferor which are in the District or subject to a Preservation Easement; and

9.6.6 such other terms and conditions considered necessary by Foundation to address the nature of the hardship condition.

9.7 The hardship provisions set forth herein shall not apply to the owners of real property who, pursuant to 3 Del. C. §909(a)(4)(c), have elected to be released from the restrictions of 3 Del. C. §909(a)(2)(b).

10.0 Delaware Farmland Preservation Fund

The Delaware Farmland Preservation Fund, hereinafter referred to as the "Fund", was enacted under 3 Del. C. §905 for the exclusive application by the Foundation to achieve the desired goals of preserving viable agricultural lands and conducting the business of the Foundation.

11.0 Sources of Funding

- 11.1 The Foundation may accept donations, property, or development rights as gifts and monetary gifts from any source, public or private.
- 11.2 Monies not needed on a current basis by the Foundation may be invested with the approval of the Board of Trustees.
- 11.3 The Fund is subject to an annual audit to be prepared by an independent, certified public accountant. The findings of all audits shall be presented to the Board.
- 11.4 The Foundation shall manage the monies appropriated to it by the General Assembly in accordance with the terms of the appropriations.

12.0 Criteria for Purchase Agricultural Lands Preservation Easements

- 12.1 The criteria for eligibility of acquisition of a Preservation Easement shall be the same as the criteria for district eligibility. In addition, offered preservation easement lands shall be in an established district and in compliance with district requirements to be eligible. The Foundation shall have the right, in its sole discretion, to acquire a Preservation Easement on only a part of the property included within the District Agreement.
- 12.2 The prioritization and selection of properties for the purchase of preservation easements shall be as set forth in Sections 13 thru 20 inclusive hereof.

13.0 Matching Contributions to the Program

The Foundation may establish a reserve or set aside of available funds for the matching of federal, county, local, or private funds for the preservation of farmland. The Foundation may allow the entity providing matching funding to select the qualified properties for purchases of easements using the matching funding notwithstanding provisions of these regulations regarding selections. The Foundation has the discretion, but is not required, to match contributions.

14.0 Schedule for Acquisition of Agricultural Lands Preservation Easements

- 14.1 Application and funding cycles will take place on schedules established by the Foundation.
- 14.2 Applications for the purchase of Preservation Easements in Rounds of Purchases shall be subject to deadlines established by the Foundation.
- 14.3 For each Round of Preservation Easement Purchases the Foundation shall arrange for the appraisal of the Preservation Easement value of those properties under consideration.
- 14.4 Upon completion, the appraisals shall be provided to the landowners, and procedures set

forth herein involving offers for the sale of preservation easements under Option Agreements shall be initiated.

- 14.5 Offers received shall be held confidential until all offers are received after which the Foundation shall review the offers and announce the selections.
- 14.6 Following the selection of properties for acquisition of Preservation Easements, the Foundation shall arrange for surveys of the properties to be conducted, and proceed to settlement under the terms of the Option Agreements, subject to the availability of funding and satisfaction of regulatory, financial or other restrictions or limitations.
- 14.7 The Foundation is under no obligation to purchase a Preservation Easement which is offered for sale. [3 Del.C. §913.]

15.0 Application Procedures

- 15.1 A separate application shall be required for each farmland tract (operating farm unit) offered for Preservation Easement purchase. The Foundation shall not be obligated to process any incomplete application.
- 15.2 The Foundation shall develop, and make available to landowners or other interested parties, an application form for use in offers to sell Preservation Easements.
- 15.3 The Foundation shall review the application to determine if it is complete.

16.0 Appraisals [3 Del. C. §916]

- 16.1 An offer to purchase a Preservation Easement shall be based upon one or more appraisal reports which estimate the full market value of the land under its agricultural zoning designation and the agriculture-only value of the farmland tract. The agricultural only value shall be based on an income capitalization methodology. Any appraisal obtained by the Foundation shall constitute the property of the Foundation and may not be used by the property owner for tax or other purposes. All categories of land located in the farmland tract shall be eligible for easement purchase and shall be appraised
- 16.2 The value of buildings or other improvements on the farmland tract shall not be considered in determining the Preservation Easement value. Excluded from the value of the Preservation Easement shall be any acreage designated or eligible to be designated by the owner for residential use pursuant to 3 Del. C. §909(a)(4)(a), provided however, the landowner shall have the right to waive eligible residential usage in which case the development rights value of the waived acreage shall be included.
- 16.3 The appraiser shall be:
 - 16.3.1. An independent, licensed real estate appraiser who is qualified to appraise a property for easement purchase. An appraiser shall be selected on the basis of experience, expertise and professional designation; and
 - 16.3.2. A member of an organization which subscribes to the "Uniform Standards of Professional Appraisal Practice" published by the Appraisal Standards Board of the Appraisal Foundation, and shall follow their ethical and professional

standards.

16.4 The appraiser shall supply a narrative report which shall contain such information as required by the Foundation.

17.0 Agricultural Lands Preservation Easement Value and Purchase Price

17.1 The value of a Preservation Easement in perpetuity shall be the difference between the full market value and the agriculture-only value contained in the appraisal report.

17.2 The price paid by the Foundation for the purchase of a Preservation Easement may not exceed, but may be less than, the value of the Preservation Easement. [3 Del. C. §916(a)]

17.3 If the applicant is not satisfied with the appraisal provided by the Foundation, the applicant shall be entitled to have an independent appraisal performed at the applicant's expense by a qualified appraiser as specified in Section 16.3. The alternative appraisal shall be prepared in the same format as the Foundation's appraisal and shall be submitted to the Foundation within forty-five (45) days of the applicant's date of receipt of the appraisal provided by the Foundation. The forty-five (45) day period may be extended by the Foundation, provided the time extension does not delay the time frame established by the Foundation for making selection and acquisition decisions.

17.4 The review of the alternative appraisals by the Foundation shall be based on written submissions under such procedures as specified by the Foundation. The maximum adjusted Preservation Easement value which the Foundation will accept is the difference between the agriculture-only value and the full market value, determined as follows:

17.4.1 The agriculture-only value shall equal the sum of:

- i. The agriculture-only value determined by the applicant's appraiser; and
- ii. Up to one-half of the positive difference between the agriculture-only value determined by the Foundation's appraiser and his/her values which exceed those determined by the applicant's appraiser.

17.4.2 The full market value shall equal the sum of:

- i. The full market value determined by the Foundation's appraiser; and
- ii. Up to one-half of the positive difference between the full market value determined by the applicant's appraiser and his/her values which exceed those determined by the Foundation's appraiser.

18.0 Offer of Purchase by the Foundation

18.1 The Foundation has the authority to incorporate bidding and/or negotiation as part of the procurement process. [3 Del. C. §915]

18.2 In reviewing the offers of applicants to sell Preservation Easements to the Foundation, the Foundation shall, subject to consideration of any alternative criteria by the Foundation to satisfy special objectives, select those offers providing the highest level of

percentage donation or percentage discount to the finally appraised value of the Preservation Easement, in accordance with the procedures and requirements of this Section. As an additional incentive, if any part of the applicant's property subject to the offer is located in whole or in part within one-half (1/2) mile completely outside of any growth zone of the County in which the Property is located, or in whole or in part within one-half (1/2) mile completely outside of the boundary of an incorporated town, municipality or city, for the sole purpose of ranking said application, the Foundation shall increase the offered percentage discount by five percent (5%). By way of example, if an applicant's offer includes a discount of sixty percent (60%), and the applicant's property is located in whole or in part within one-half (1/2) mile completely outside of the specified areas, for ranking purposes, the applicant's discount shall be deemed to be sixty-five percent (65%). If the applicant's property is selected for purchase of a preservation easement, the purchase price for the preservation easement shall incorporate a discount of only sixty percent (60%). The locations of the growth zones referenced by the Counties and the one-half (1/2) mile surrounding areas are as shown in Appendix "A" attached hereto.

- 18.3 The Foundation shall entertain offers in the form of Option Agreements from all eligible applicants who wish to submit offers, and after all offers are received, list the offers with the highest to the lowest level of percentage donation or percentage discount to the finally appraised value of the Preservation Easement with any adjustment to the offered donation or percentage discount as specified in Section 18.2 above.
- 18.4 Prior to releasing information to the public regarding the percentage of any discount or donation provided by a landowner the Foundation shall notify the landowner, identifying the requesting party, and obtain permission from the landowner prior to releasing the requested information. Otherwise, the information shall not be disclosed.
- 18.5 The Foundation may, but shall not be required to, allow a property owner in a District to submit an offer to sell a preservation easement on a portion of the real property in a District.

19.0 The Agricultural Lands Preservation Easement

- 19.1 The owners of the subject farmland tract shall execute a document conveying the Preservation Easement which document shall be in a form which contains conditions contained in Option Agreements executed by landowners.
- 19.2 The document shall be in recordable form and contain:
 - 19.2.1. A legal description setting forth the metes and bounds of the farmland tract subject to the Preservation Easement.
 - 19.2.2. At least one course and distance referencing a fixed marker or monument of a type commonly placed in the field by a surveyor.
 - 19.2.3 The legal description shall not contain a closure error greater than one foot per 200 linear feet in the survey.
 - 19.2.4 The survey of the farmland tract on which a Preservation Easement is to be

purchased shall show each of the residential lots, if any, designated by the owner pursuant to 9 Del. C. §909(a)(4)(a).

20.0 Title Quality

The Preservation Easement conveyed to the Foundation shall be unencumbered except for standard exceptions and be capable of being insured as such by an established and recognized title insurance company doing business in the State of Delaware. Any title defects, liens, survey discrepancies, boundary line disputes, or similar title issues shall be resolved by the property owner, at the property owner's sole expense. If subsequent to the purchase of a Preservation Easement it is determined that the amount of acreage is less than as reflected on the survey used by the Foundation for purposes of calculating the purchase price for the Preservation Easement, the property owner shall be required to refund to the Foundation any excess funds paid in reliance upon the inaccurate survey.

21.0 Residential Lots

Senate Bill 333 imposes alternative restrictions on the limited residential use of property subject to a District Agreement or Preservation Easement by replacing the unlimited number of residential dwellings allowed for owners, relatives of owners, and farm labor, with a total limit of three dwellings which can be occupied by any person. The overriding limitation of residential use of 1 acre for 20 acres of usable farmland (subject to a maximum of 10 acres) was left unchanged. Accordingly, owners can now designate up to three residential lots on District Property or Preserved Property. With respect to the designation of the residential lots allowed under Senate Bill 333, the following additional guidelines shall apply:

- 21.1 The acceptance by the Foundation of the designation of a residential lot does not mean that the location of the lot and proposed residential use complies with any applicable zoning rules or regulations, or that a lot is suitable for residential use. Owners are encouraged to conduct such investigations and perform such tests as they deem appropriate to ascertain whether or not any designated lot will be suitable for residential use and complies with all applicable land use regulations, including zoning laws.
- 21.2 The Foundation recognizes that at times, due to circumstances beyond the control of the owner, it may be necessary for the owner to change the location of a lot. As a matter of policy, the Foundation will allow such changes subject to the following requirements:
 - 21.2.1 No change in the location of a lot or size of a lot shall be allowed which would cause the number of lots or amount of residential acreage to be in excess of that otherwise allowed under the terms of the District Agreement or Preservation Easement.
 - 21.2.2 With respect to property subject to a Preservation Easement, the owner shall cause to be prepared, at the owner's expense, an amended plot plan showing the entire parcel subject to the Preservation Easement and the location of each residential lot.
 - 21.2.3 The owner shall execute an amendment to the District Agreement or Preservation Easement, which amendment shall reflect the change in the location or size of the residential lots, and which shall reference the amended plot plan.

22.0 Strategy Map

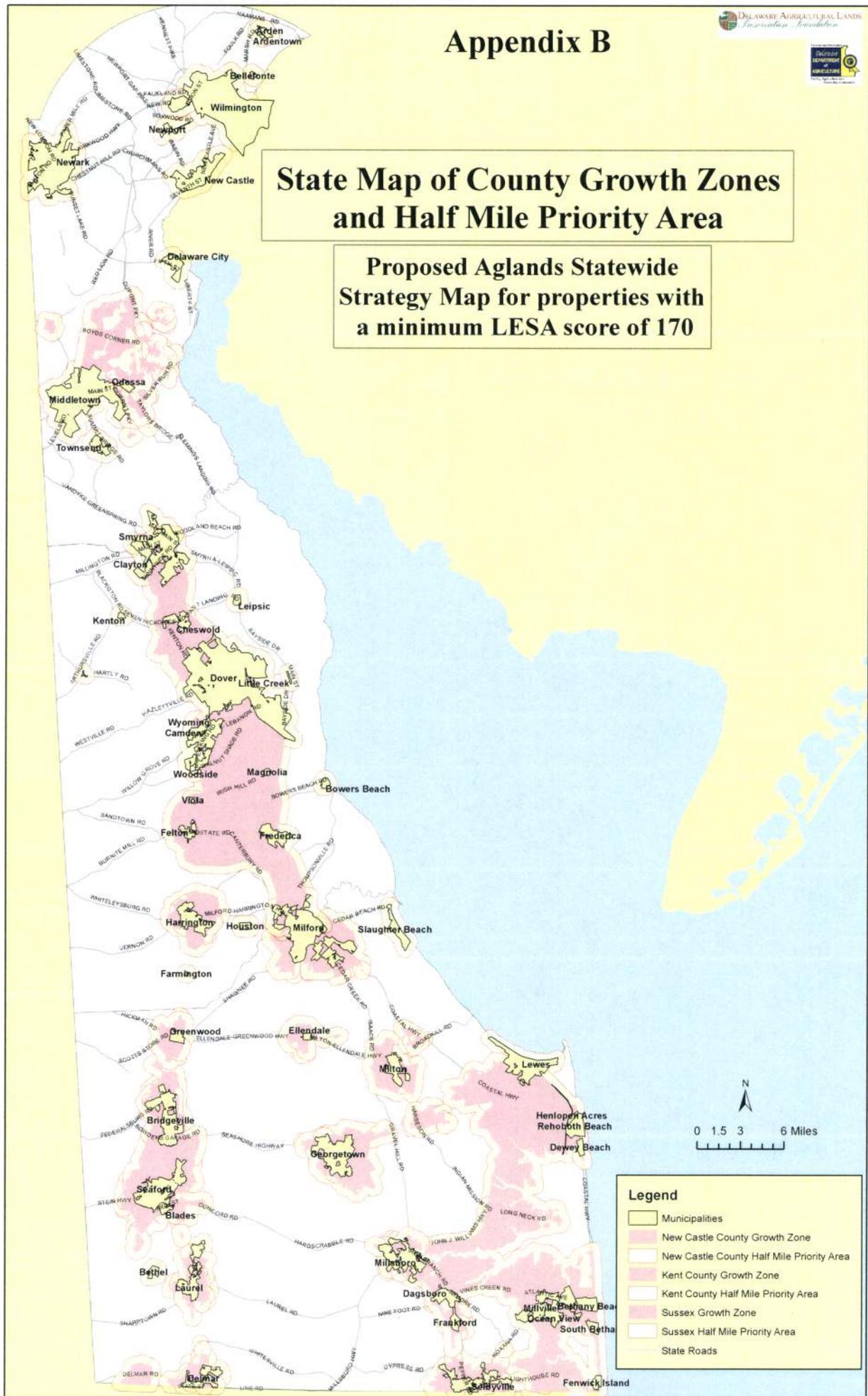
The farm lands shown on the Strategy Map attached hereto as Appendix "B" which have a LESA Score of at least 170 are targeted for inclusion in Districts, and those qualified farms located in whole or in part one-half (1/2) mile completely outside of any growth zones designated under these regulations shall be further prioritized by the donation or discount advantage for such properties provided under Section 18.2 of these regulations.



Appendix B

State Map of County Growth Zones and Half Mile Priority Area

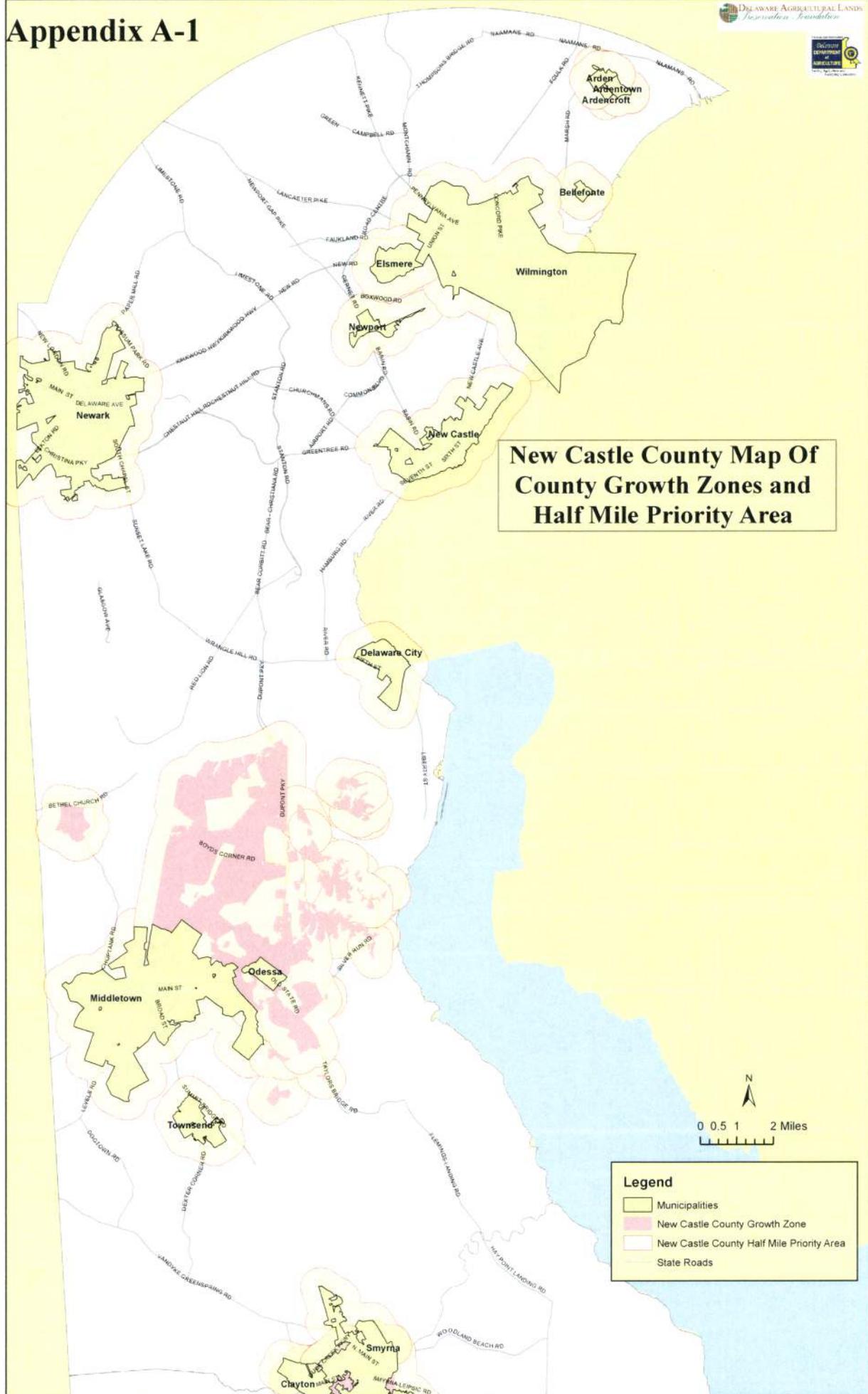
Proposed Aglands Statewide
Strategy Map for properties with
a minimum LESA score of 170



Legend

- Municipalities
- New Castle County Growth Zone
- New Castle County Half Mile Priority Area
- Kent County Growth Zone
- Kent County Half Mile Priority Area
- Sussex Growth Zone
- Sussex Half Mile Priority Area
- State Roads

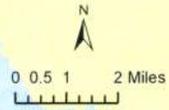
Appendix A-1



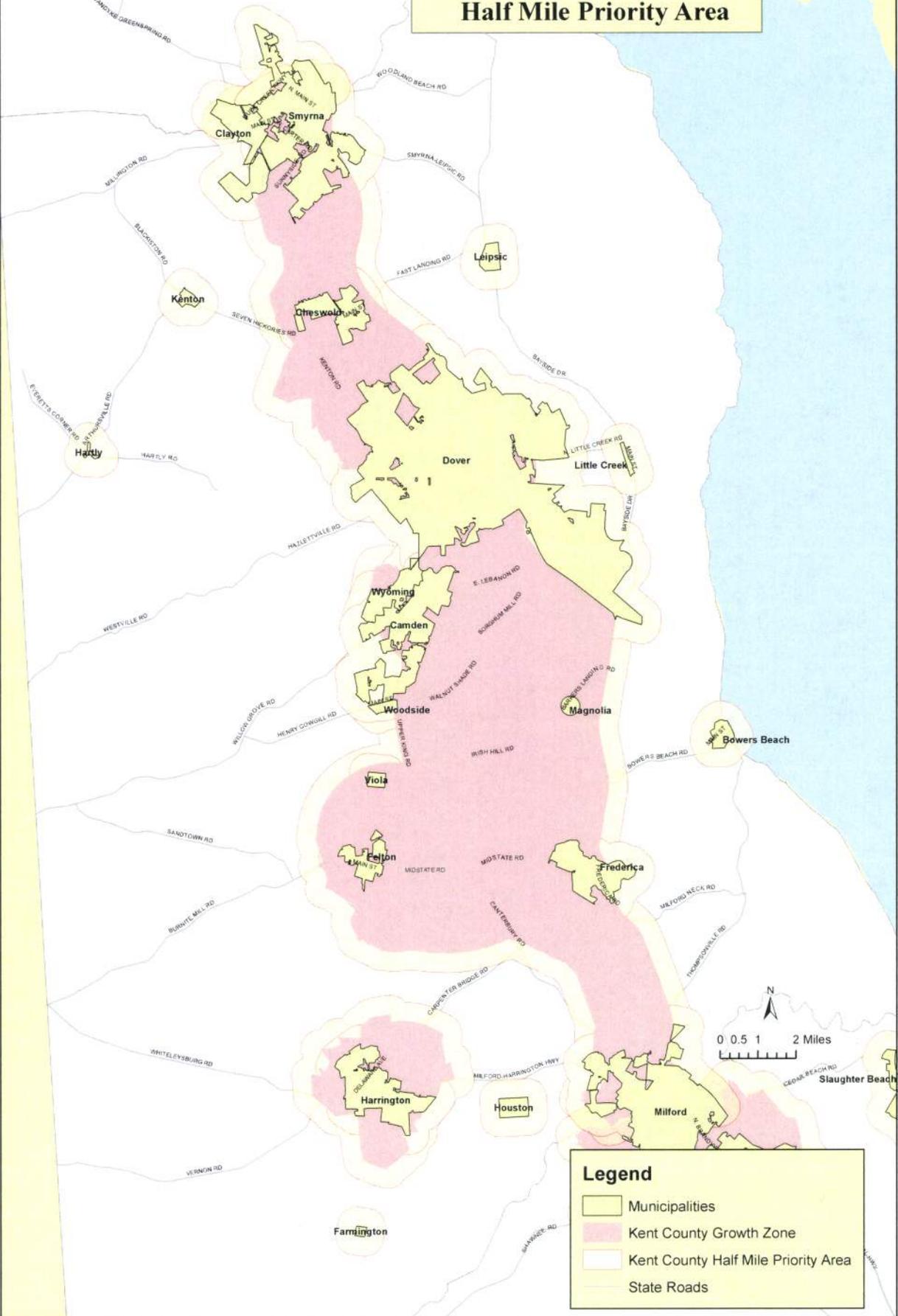
**New Castle County Map Of
County Growth Zones and
Half Mile Priority Area**

Legend

- Municipalities
- New Castle County Growth Zone
- New Castle County Half Mile Priority Area
- State Roads



**Kent County Map Of
 County Growth Zones and
 Half Mile Priority Area**



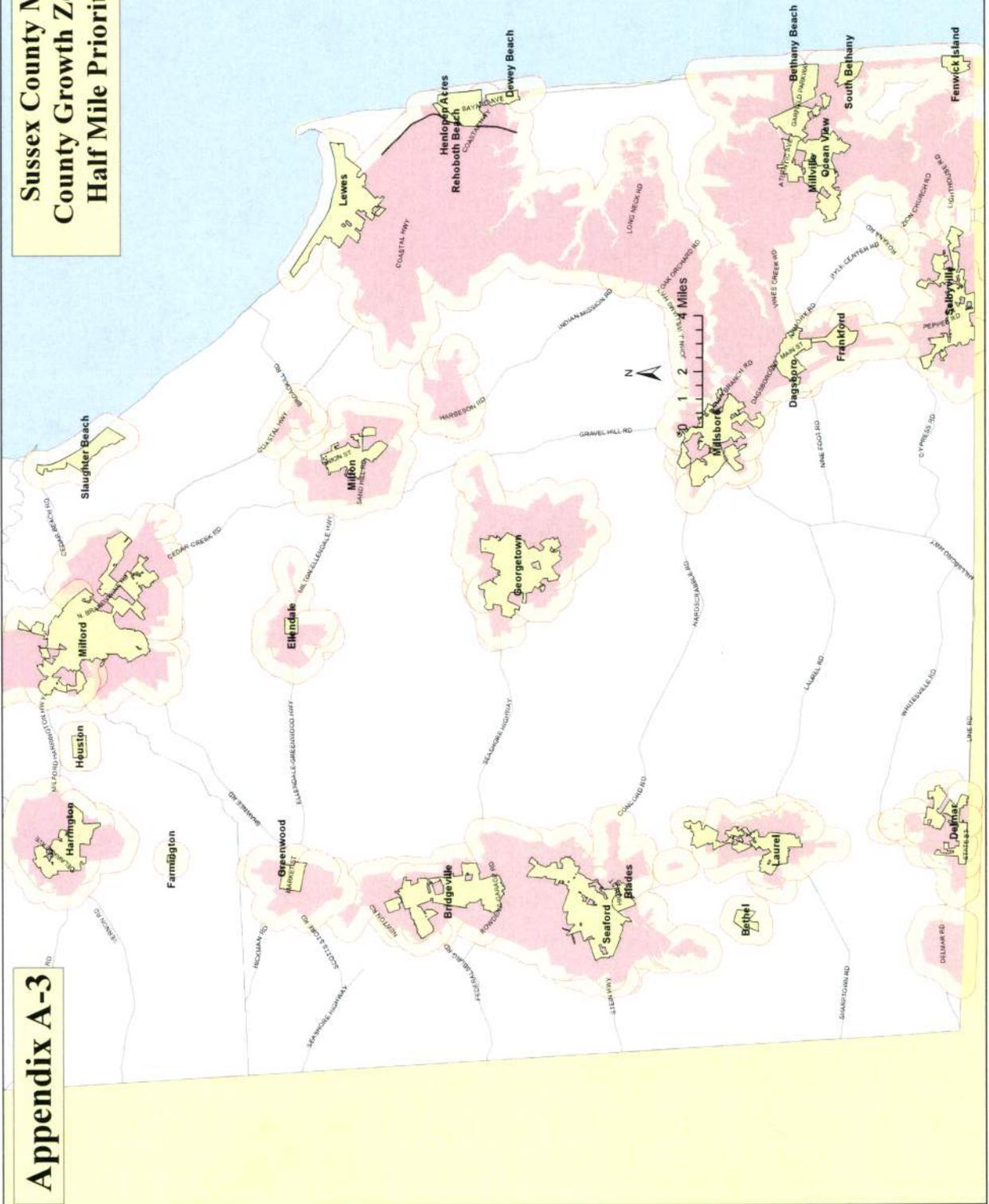


Sussex County Map Of County Growth Zones and Half Mile Priority Area

Appendix A-3

Legend

- Municipalities
- Sussex Growth Zone
- Sussex Half Mile Priority Area
- State Roads





DELAWARE AGRICULTURAL LANDS
Preservation Foundation

2320 South duPont Highway
Dover, Delaware 19901

Tel: 302-698-4530
Toll Free: 800-282-8685 (DE only)
Fax: 302-677-7093

June 17, 2015

Sam Wilson, Councilman, Sussex County Aglands Advisory Board
Sussex County Aglands Advisory Board Members
15376 Wilson Hill Road
Georgetown, DE 19947

RE: Delaware Agricultural Lands Preservation Foundation Proposed Regulations

Dear Councilman Wilson & Aglands Advisory Board Members:

This letter is a follow-up to our April 17th letter (enclosed) regarding the Delaware Aglands Preservation Program's proposed amended regulations and the review of those regulations by the county's Farmland Preservation Advisory Board. The intent of these proposed regulation revisions is to facilitate the continued protection of Delaware's remaining farmlands through the purchase of preservation easements, while creating added incentives to landowners located near and adjacent to areas prone to development to voluntarily preserve their farmland rather than selling it for development. The Foundation proposes to continue to pursue these objectives in a cost-effective method for utilizing taxpayer monies.

We ask that the members please provide us with any remaining comments regarding the regulations by June 30. The Aglands Preservation Foundation will then consider these comments and make any necessary revisions prior to issuing the amended regulations for public review and comment. I have enclosed the proposed regulations for your convenience.

Thank you for your assistance with this matter and your continuing support of Delaware's Aglands Preservation Program. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin Short".

E. Austin Short
Deputy Secretary

Enclosures (2)

cc: Honorable Edward Kee, Secretary
Robert Garey, Chairman, Aglands Preservation Foundation



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April 17, 2015

Honorable Michael H. Vincent, President
Sussex County Council
2 The Circle, PO Box 589
Georgetown, DE 19947

RE: Delaware Agricultural Lands Preservation Foundation – Preservation Advisory Boards –
Proposed Regulations

Dear President Vincent:

Recently correspondence was directed to the head of each County legislative body requesting the names of the individuals in the County appointed to the Farmland Preservation Advisory Boards pursuant to the provisions of 3 Del. C. §906, a copy of which was provided and which is enclosed. The Advisory Boards play an important role under the Agricultural Lands Preservation Act, which includes providing advice to the Foundation regarding the adoption of regulations proposed by the Foundation. The referenced statutory provisions require that the draft of the proposed regulations be provided to the Advisory Boards prior to release for public notice. The purpose of this correspondence is to provide the enclosed draft regulations seeking input from the Advisory Boards. It is noted that the Foundation Board has taken no action on the proposed regulations pending your input.

In considering the draft proposed regulations some background regarding the existing Agricultural Lands Preservation program is helpful. The statewide Agricultural Lands Preservation Act was adopted in 1991, and some of its major features include:

- (1) The establishment of the Foundation to administer the preservation program, currently through staffing provided by the Delaware Department of Agriculture;
- (2) The establishment of Agricultural Preservation Districts and expansions, under which eligible farm owners voluntarily enter into agreements to not develop their property for a period of 10 years in return for certain tax benefits and right to farm protections;
- (3) The establishment of a program under which the Foundation purchases Agricultural Lands Preservation Easements from the landowners who have entered agreements placing their farms in Agricultural Preservation Districts; and
- (4) The establishment of a Fund administered by the Foundation for purposes of receiving monies from the State, the federal government, Counties and private entities to purchase Agricultural Lands Preservation Easements, which prohibit development and permanently commit the property subject to the easements to farming and related uses.

Funding for the purchase of Agricultural Lands Preservation Easements was not provided by the State until 1995. In anticipation of the funding the Foundation in January 1995 adopted Policies, Procedures and Guidelines, the Guidelines (referenced herein as regulations) established eligibility requirements, application procedures, restrictions, and a ranking system and alternative means of selecting farms for Preservation Easement purchases. The alternative to a ranking system for the selection of easement purchases involves the use of an appraisal of development rights values under which eligible landowners are afforded the opportunity to offer

a donation or discount of the development rights value, with the selection based solely on the highest level percentage donation or discount offered until available funds are exhausted. Although initially the procedures provided for designation of priority preservation areas, later amendments to the procedures allow for the use of alternative criteria involving a minimum Land Evaluation and Site Assessment (LESA) score, in conjunction with the percentage donation or discounting system for making selections. One of the special objectives in using the donation or discounting approach was satisfaction of a requirement imposed in the initial and subsequent appropriations provided by the General Assembly that a minimum 4:1 match or 20% donation or discounting of the development rights value be provided by landowners in order to allow use of state funding to purchase preservation easements. An additional benefit achieved by the donation or discounting approach was the removal of any subjectivity or outside influence, political or otherwise, in the selection process. With farm owners voluntarily offering percentage donations or discounts to development right values, and the highest percentages being used to make selections until funds are exhausted in each round of selections, it is the participating landowners with their percentage offers who are making the selections, and not the Board members of the Foundation or others.

The openly competitive highest percentage donation or discount system adopted by the Foundation has been used to make preservation easement selections with available funding for the past 19 years. The system has been recognized nationally as a success. Based on a recent Foundation monthly report the following has been achieved statewide in preserving farmland in Delaware:

1. The Foundation has enrolled 1,076 farms in the program covering 169,977 acres, which is 34% of the remaining farmland in Delaware.

2. The Foundation has purchased preservation easements on 808 farms comprised of 116,223 acres, which is 24% of the remaining farmland in Delaware. By County, 20% of the available farmland in New Castle County, 35% of the available farmland in Kent County and 15% of the available farmland in Sussex County, have been protected by easements.
3. As a result of the highest percentage donation or discount selection system used the average cost of purchasing preservation easement statewide has been \$1,793 per acre. In New Castle County the cost has been \$2,546 per acre, in Kent County it has been \$1,499 per acre, and in Sussex County it has been \$1,985 per acre.
4. The donation or discounting has averaged 56%, and there are 321 properties comprised of 38,036 acres eligible to participate in the next yearly round of easement purchases, subject to the availability of funding.

The regulations subject to the enclosed draft proposal were last revised in June, 1999. Prior to that time the enabling legislation was revised in 1998 to provide for a priority for the establishment of preservation districts and the purchase of preservation easements in areas located near and adjacent to designated growth zones. At the time that the regulations were revised in 1999, only Kent County had mapped an identified growth zone, and New Castle County and Sussex County had not per se designated growth zone areas. In considering the prioritization of purchasing preservation easements in areas located near and adjacent to growth zones the Foundation recognized in the 1999 regulations that the appraisal methodology used to determine the value of development rights significantly favored properties located in areas prone to development, and the employment of that methodology has proven to be the case. Under the regulations the Foundation adopted an appraisal approach which determined the development rights or preservation easement value as the difference between the fair market value and the

farm only value based on income capitalization calculations. The fair market value of properties near and adjacent to development areas are higher than those in other areas, while under the income capitalization calculation the farm only value is the same no matter where the property is located. The result is that landowners near and adjacent to areas prone to development receive more money per acre for the sale of their development rights than others.

The benefits of the appraisal methodology used to encourage farmland preservation in areas prone to development are best illustrated by reviewing easement purchases within one-half (1/2) mile of designated growth zones in each County. In New Castle County 24% of the purchased preservation easement acreage was within the one-half (1/2) mile area, while 27% of the available monies was spent for preservation easements in such area. In Kent County the comparison is 17% of acreage and 20% of monies spent. In Sussex County the relative percentages are 34% of acreage and 35% of monies spent. In considering this statistical information it is important to note that the landowners within the one-half (1/2) mile area have always had the option of not participating in the program and selling their land for development at prevailing real estate prices.

The Foundation recognizes that beyond the appraisal methodology utilized, no other specific criteria has been adopted which would serve to prioritize the purchase of preservation easements near and adjacent to growth zones. Accordingly, as an added incentive, the staff of the Foundation is proposing to modify the highest donation or discount selection system for purchasing preservation easements by adding an allowance for a 5% adjustment to the percentage discount offers submitted by eligible landowners with property located in whole or in part in an area one-half (1/2) mile outside designated growth zones for each County. The adjustment would create a preference in the selection process and serve to provide a 5% increase

in the purchase price for the preservation easement, both of which would serve as a further advantage to participating landowners in such priority areas.

The Foundation has also been charged with adapting, after consultation with the Advisory Boards and others, a statewide agricultural lands preservation strategy to be used along with other considerations in purchasing preservation easements. The strategy has been influenced by legislative changes which include the referenced matching funding requirement, the allowance of expansions of Districts for farms with less than 200 acres but which are located within 3 miles of a District, and the focus on farms located near and adjacent to growth areas. Currently there are no farms which because of the size or location are not eligible to participate in the program if they have a LESA score of at least 170. A change in the strategy is proposed to reflect these developments.

The enclosed proposed regulations also are designed to simplify the existing regulations and eliminate any confusion regarding the manner in which the Foundation has been operating the preservation easement program under the regulations. The maps of the growth zones for each County with the one-half mile preference area are attached to the draft proposed regulation and such maps also now form the basis for the statewide strategy map. The referenced current growth areas shown have been identified by the various County planning and zoning offices.

Overall the intent of these proposed revisions to the regulations and strategy is to facilitate the continued protection of Delaware's remaining farmlands through the purchase of preservation easements so as to assure the farming will continue to be a major industry in Delaware, while creating added incentives to landowners located near and adjacent to areas prone to development to voluntarily choose the alternative of preserving their farmland rather than selling it for

development. The Foundation proposes to continue to pursue these objectives in a manner which is considered to be a cost effective means of utilizing taxpayer monies.

If requested, members of the Foundation staff would be willing to meet with Advisory Board members to respond to any questions regarding the Agricultural Lands Preservation Program and the proposed regulations and strategy. Your response should be addressed to Austin Short, Deputy Secretary of the Department of Agriculture, at the above address.

Sincerely yours,



Robert F. Garey
Chairman

RFG/rv

Enclosures

cc: Members – Foundation Board
Honorable Edward Kee, Secretary
Honorable Austin Short, Deputy Secretary

**DELAWARE
AGRICULTURAL LANDS PRESERVATION FOUNDATION**

PROPOSED REGULATIONS

AGRICULTURAL LANDS PRESERVATION PROGRAM

PREAMBLE

The Agricultural Lands Preservation Act ("Act") was enacted on July 8, 1991 and provided for the creation of the Agricultural Lands Preservation Foundation ("Foundation"). The Foundation has been charged with the authority and responsibility of establishing and administering an extensive statewide program to preserve Delaware's farmlands and forestlands. Included in its responsibilities is the adoption of criteria for the establishment of and maintenance of Agricultural Preservation Districts ("Districts") and adoption of criteria for the purchase of agricultural lands preservation easements ("Preservation Easement") 3 Del.C. §904(a) and (b). These regulations are intended to provide guidelines and simplification regarding the manner in which the Agricultural Lands Preservation Program is administered.

1.0 Criteria for District Eligibility

- 1.1 In order to qualify for the Agricultural Lands Preservation Program, the lands proposed as an Agricultural Preservation District in the application must meet the following minimum criteria:
 - 1.1.1 owner(s) shall hold fee simple title to all land to be placed in a District and must be actively using the property for "agricultural and related uses";
 - 1.1.2 must constitute at least 200 acres of contiguous farmland or lesser acreage if the farmlands are located within three (3) miles of an established District;
 - 1.1.3 shall be zoned for agricultural purposes and shall not be subject to any major subdivision plan;
 - 1.1.4 applicant(s) including all fee simple title holders, must sign a written agreement committing to District restrictions set forth in this Section and 3 Del. C. §909 and other adopted requirements;
 - 1.1.5 must be viable and productive agricultural land comprising a farm property unit and meet the minimum County Land Evaluation and Site Assessment (LESA) scoring requirements for eligibility as established by the Foundation; [3 Del. C. §908(a)(3)]
 - 1.1.6 must include all of the eligible real property located in the tax parcel or tax parcels subject to application.
- 1.2 For the purposes stated in this chapter, the phrase "viable and productive agricultural land" is defined as land that qualifies under provisions of the Farmland Assessment Act. [9 Del. C. §8329 - 8333]
- 1.3 The minimum LESA score for an eligible District or Expansion shall be 170 points out of a possible 300 points for each county in the State as computed under the currently approved LESA program of the Delaware Department of Agriculture.

- 1.4 The LESA score for agricultural lands is the primary factor in evaluating the eligibility of agricultural lands for inclusion in Districts and expansions, including the eligibility for purchase of preservation easements.

2.0 Application Procedures

- 2.1 The Foundation will provide application forms on which applicants who volunteer to place their lands into an Agricultural Preservation District will provide such information as the Foundation deems appropriate.
- 2.2 The Foundation shall provide assistance to potential applicants in completing application forms when requested.
- 2.3 Foundation staff may conduct on-site inspections and/or phone interviews with the applicants to acquire data necessary to perform LESA analyses and write a staff report.
- 2.4 In conjunction with the application, all fee simple owners shall sign a District Agreement in such form as deemed acceptable by the Foundation and which serves as a declaration in recordable form of acknowledgment of the policies and restrictions that must be followed, and benefits realized in a District.

3.0 Application Review Procedures

The Foundation has the authority to approve applications establishing Agricultural Preservation Districts and the authority to purchase preservation easements. [3 Del. C. §904]

- 3.1 The Foundation staff will review applications and determine whether or not the minimum eligibility requirements under Section 1.0 have been met.
- 3.2 If the minimum eligibility requirements have not been met, then the applicant will be notified by letter from the Foundation indicating that the application does not qualify for further review, and the reasons for ineligibility.
- 3.3 If an applicant excludes a portion of property otherwise includable in a proposed District, then the Foundation may deny the application, unless the property proposed for exclusion is not otherwise eligible for inclusion due to the use of the property at the time of the application.
- 3.4 Subject to Section 3.3 above, if the lands proposed as a District in the application (200 or more acres) meet minimum eligibility criteria, then the Foundation staff will submit to the Foundation, the County Farmland Preservation Advisory Board and the County Planning and Zoning Authority, applications and an indication that the application meets the minimum eligibility requirements.
- 3.5 If the applicant disagrees with the staff evaluation of the proposed District, then the applicant may contact the Foundation staff to discuss the application review. Foundation staff will meet with the landowner to discuss the review within thirty (30) days from receiving formal contact from the applicant.
- 3.6 If the issue is not resolved to the applicant's satisfaction, the applicant may request an

administrative review with the Foundation by submitting a letter to the Foundation within fourteen days (14) of the applicant's last meeting with Foundation staff.

- 3.7 This letter must include reasons and documentation to justify the applicant's claim(s).
- 3.8 The Foundation will schedule a meeting and notify the applicant by certified letter of the date, time, and place of the meeting.
- 3.9 At the administrative review meeting, the applicant(s) shall present information or documentation as to how the proposed District satisfies the eligibility criteria.
- 3.10 The Foundation will render a decision within thirty (30) days from the administrative review meeting and notify the applicant in writing of its decision.
- 3.11 Owners of real property who have executed a District Agreement or a preservation easement that incorporate the restrictions in effect prior to the Senate Bill No. 333 amendments and who elect to be released from the restrictions set forth in 9 Del. C. §909(a)(2)(b) pursuant to 9 Del. C. §909(a)(4)(c), shall comply with the following requirements:
 - 3.11.1 Owners who have executed a district agreement and who wish to designate up to three residential lots shall designate the allowable residential acreage in sufficient detail to enable the Foundation to determine the location of the residential acreage, and while a survey may be submitted, a survey shall not be required. The Owner shall execute an amendment to the Owner's District Agreement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in 9 Del. C. §909(a)(1), (a)(2)(a), (a)(4)(a) and (a)(4)(b).
 - 3.11.2 Owners who have executed a preservation easement and who wish to designate up to three residential lots shall designate the allowable residential acreage in sufficient detail to enable the Foundation to determine the location of the residential acreage and shall submit to the Foundation for its review and approval, at the Owner's expense, an amended survey in recordable form. The amended survey shall show the entire parcel subject to the preservation easement and the location of any residential lots. The Owner shall execute an amendment to the preservation easement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in 9 Del. C. §909(a)(1), (a)(2)(a), (a)(4)(a) and (a)(4)(b).

4.0 Creation of a District

- 4.1 To establish an Agricultural Preservation District, the application must be approved by two out of three of the entities listed under Section 3.4 of these regulations.
[3 Del. C. §907(c)]
- 4.2 After review by the Foundation, the application is subject to a review period of thirty (30) days in which the Secretary of Agriculture may reject the application. The application is officially approved at the end of the review period, if it is not rejected by the Secretary of Agriculture. [3 Del. C. §919]

- 4.3 The property legally becomes a District when the applicant and Foundation Chairperson (or designee) have signed the District Agreement and no rejection has been exercised by the Secretary of Agriculture, or the Secretary of Agriculture has waived the right of rejection.
- 4.4 Copies of the District Agreement shall be filed with the County Planning and Zoning and Tax Assessor's Offices and recorded in the Office of the Recorder of Deeds. The Foundation shall require from these Offices proof of recording and/or receipt of the District Agreement.
- 4.5 The Foundation shall endeavor to provide written notification of the date of establishment of the Agricultural Preservation District and provide a copy of the District Agreement to the applicant, however, the failure of the Foundation to satisfy any formality following execution of a District Agreement shall not affect the validity of the District Agreement.

5.0 District Restrictions

- 5.1 Any rezoning or major subdivision of real property included in an Agricultural Preservation District is prohibited. [3 Del. C. §909(a)(1)]
- 5.2 The submission of applications or preliminary rezoning or subdivision plans for any property within an Agricultural Preservation District to a county or municipality shall be considered evidence of the intent to rezone or subdivide and no action shall be taken by any county or municipality on any such application until the expiration of the District Agreement.
- 5.3 During the term of the District Agreement, the property shall be used for "agricultural and related uses" and shall be used in such a way so that the property continues to qualify as "viable and productive agricultural land" as defined under provisions of the Farmland Assessment Act. [9 Del. C. §8329 - 8333] No more than 1 acre of land for each 20 acres of usable land, subject to a maximum of 10 acres, shall be allowed for dwelling housing. For purposes of calculating the number of acres allowable for dwelling housing, fractions of any acre shall not be allowed. By way of example, if a farm consists of 45 acres of usable farmland, the number of acres allowed for dwelling housing shall be 2, and not 2.25.
- 5.4 The phrase 'agricultural and related uses' shall have the meaning set forth in 3 Del. C. §909, as the same may be amended from time to time.
- 5.5 Excavation or filling, borrow pits, extraction, processing and removal of sand, gravel, loam, rock or other minerals is prohibited unless such action is currently required by or ancillary to any preparation for, or operation of any activities including, but not limited to: aquaculture, farm ponds, cranberry operations, manure handling facilities, and other activities directly related to agricultural production.
- 5.6 Activities that would be detrimental to drainage, flood control, water conservation, erosion control or soil conservation are prohibited.

- 5.7 Any other activity that might negatively affect the continued agricultural use of the land is prohibited.
- 5.8 The term "usable land owned in the district" [3 Del. C. §909(a)(2)], shall be defined as any land meeting the requirements for agricultural, horticultural or forest land in the Farmland Assessment Act of 1968 [9 Del. C., Chapter 83] and [3 Del. C. §403] or criteria for farm definition as established by the National Agricultural Statistics Service.
- 5.9 The District Agreement and District requirements and benefits shall be binding on the heirs, successors and assigns of property owners of lands within a District. A property owner in a District shall provide written notice to the Foundation of any proposed transfer of property subject to the District Agreement at least ten (10) days in advance of the transfer, and shall give written notice to any successor or assign at least ten (10) days in advance of the date of transfer of the property that the property is subject to District restrictions. The party taking title shall execute a document as required by [3 Del. C. §909(a)(2)c.] acknowledging the acreage allowed for dwelling housing and the restrictions which apply to the property. The failure of the property owner to notify the transferee as provided herein shall not affect the transferee's obligation to comply with the terms and conditions of the District Agreement upon the transfer of title.
- 5.10 Under 3 Del. C. §909(a)(3), all restrictions shall be covenants which run with and bind the lands in the District for a minimum of ten (10) years, beginning when the District Agreement takes effect as specified in the District Agreement.

6.0 Continuation of a District

- 6.1 All properties are to remain in an Agricultural Preservation District for at least ten (10) years, subject to the allowance of hardship exceptions for exclusion of dwelling housing pursuant to 3 Del. C. §909(a)(2)(b) and Section 9 of these guidelines.
- 6.2 If a landowner wishes to withdraw from, or terminate a District, then the Foundation must receive a written notice of intent to withdraw no less than six (6) months prior to the ten (10) year anniversary date of initial establishment of the District. [3 Del. C. §909(b)]

If the Foundation does not receive a written notification of the landowner's intent to withdraw from the District six (6) months prior to the ten (10) year anniversary date of that District, then the land shall remain in the District for an additional five (5) year period unless and until notice of intent to withdraw shall be given six months prior to the end of each additional five-year period.

7.0 Expansion of a District

- 7.1 An Agricultural Preservation District can be expanded for the purpose of preserving additional lands. Lands added to a District may be under 200 acres.[3 Del. C. §907(d)]
- 7.2 Land which is less than 200 usable acres, yet meets the other criteria established by the Foundation, is eligible to be an expansion ("Expansion") of an Agricultural Preservation District if it is within three (3) miles of any portion of an established Agricultural Preservation District. [3 Del. C. §907(a)]

8.0 Inspection of Districts

The Foundation has the authority to enter upon lands as may be necessary to perform surveys, appraisals, and investigations to accomplish the purpose of the program, consistent with applicable statutes.

[3 Del. C. §904(b)(14)]

- 8.1 The Foundation or its designee reserves the right to inspect restricted land and enforce agreements on its own behalf.
- 8.2 If any violations of the terms and the conditions of the District Agreement occur, the Foundation may institute proceedings in the appropriate court to enforce the terms and seek appropriate relief. [3 Del. C. §920(a)]

9.0 Dwelling Property Hardship Exceptions

Except as set forth in Section 9.7 hereof, owners of real property who have executed a District Agreement or a preservation easement that incorporate the restrictions in effect prior to the Senate Bill No. 333 amendments are entitled to apply to the Foundation for a hardship exception allowing for the transfer of dwelling property to parties who are not otherwise entitled to residential use of the dwelling property under the District Agreement or Preservation Easement, subject to the provisions of 3 Del. C. §909(a)(2)(h) and the following requirements.

- 9.1 An applicant for a hardship exception shall submit the following information in writing to the Foundation:
 - 9.1.1. name and property interest of applicant in the dwelling property;
 - 9.1.2. acreage of the dwelling property subject to application;
 - 9.1.3. date on which the District was established;
 - 9.1.4. number of dwellings and acreage of residential use currently on the property in the District;
 - 9.1.5. the nature of the hardship condition and reasons justifying the granting of a hardship exception;
 - 9.1.6. the extent to which the hardship condition is unavoidable.
- 9.2 The Foundation shall consider hardship conditions involving the following circumstances:
 - 9.2.1. the sale or transfer of the dwelling property compelled by foreclosure, court order, or marital property division agreement;
 - 9.2.2. the sale or transfer of the dwelling property compelled by job transfer;
 - 9.2.3. the sale or transfer of the dwelling property compelled by health conditions;
 - 9.2.4. the sale or transfer of the dwelling property required to avoid insolvency or

bankruptcy; and

9.2.5 other circumstances of an unusual and extraordinary nature which pose a practical hardship to continued ownership of the dwelling property and which are unavoidable.

9.3 Hardship exceptions will not be granted when no real hardship exists and the primary consequence of the sale or transfer of the dwelling property is financial gain.

9.4 The applicant shall bear the burden of establishing the existence of hardship circumstances, and shall provide to the Foundation documentation in support of the application, and any documentation requested by the Foundation, provided however, that documentation involving privileged information may be submitted on a confidential basis.

9.5 The Foundation may require the applicant for a hardship exception to appear before the Foundation Board to present the application, and an applicant shall be entitled to appear before the Board to make a presentation by submitting a written request to the Foundation.

9.6 The granting of a hardship exception by the Foundation shall be subject to the following conditions:

9.6.1 the dwelling property following transfer shall be used only for residential purposes;

9.6.2 the transferred property shall not qualify for District benefits or benefits of Preservation Easements;

9.6.3 if the transferred property is subject to a Preservation Easement prior to transfer, payment shall be made to the Foundation in an amount equal to twenty-five (25) percent of the current fair market value of the land subject to transfer;

9.6.4 the transferee shall execute a Declaration in recordable form as prescribed by the Foundation which includes the acreage allowed for dwelling housing and the restrictions which apply to the real property;

9.6.5 the Foundation may require the transferor to execute a Declaration in recordable form as prescribed by the Foundation to evidence the status of allowable dwelling housing property on lands retained by the transferor which are in the District or subject to a Preservation Easement; and

9.6.6 such other terms and conditions considered necessary by Foundation to address the nature of the hardship condition.

9.7 The hardship provisions set forth herein shall not apply to the owners of real property who, pursuant to 3 Del. C. §909(a)(4)(c), have elected to be released from the restrictions of 3 Del. C. §909(a)(2)(b).

10.0 Delaware Farmland Preservation Fund

The Delaware Farmland Preservation Fund, hereinafter referred to as the "Fund", was enacted under 3 Del. C. §905 for the exclusive application by the Foundation to achieve the desired goals of preserving viable agricultural lands and conducting the business of the Foundation.

11.0 Sources of Funding

- 11.1 The Foundation may accept donations, property, or development rights as gifts and monetary gifts from any source, public or private.
- 11.2 Monies not needed on a current basis by the Foundation may be invested with the approval of the Board of Trustees.
- 11.3 The Fund is subject to an annual audit to be prepared by an independent, certified public accountant. The findings of all audits shall be presented to the Board.
- 11.4 The Foundation shall manage the monies appropriated to it by the General Assembly in accordance with the terms of the appropriations.

12.0 Criteria for Purchase Agricultural Lands Preservation Easements

- 12.1 The criteria for eligibility of acquisition of a Preservation Easement shall be the same as the criteria for district eligibility. In addition, offered preservation easement lands shall be in an established district and in compliance with district requirements to be eligible. The Foundation shall have the right, in its sole discretion, to acquire a Preservation Easement on only a part of the property included within the District Agreement.
- 12.2 The prioritization and selection of properties for the purchase of preservation easements shall be as set forth in Sections 13 thru 20 inclusive hereof.

13.0 Matching Contributions to the Program

The Foundation may establish a reserve or set aside of available funds for the matching of federal, county, local, or private funds for the preservation of farmland. The Foundation may allow the entity providing matching funding to select the qualified properties for purchases of easements using the matching funding notwithstanding provisions of these regulations regarding selections. The Foundation has the discretion, but is not required, to match contributions.

14.0 Schedule for Acquisition of Agricultural Lands Preservation Easements

- 14.1 Application and funding cycles will take place on schedules established by the Foundation.
- 14.2 Applications for the purchase of Preservation Easements in Rounds of Purchases shall be subject to deadlines established by the Foundation.
- 14.3 For each Round of Preservation Easement Purchases the Foundation shall arrange for the appraisal of the Preservation Easement value of those properties under consideration.
- 14.4 Upon completion, the appraisals shall be provided to the landowners, and procedures set

forth herein involving offers for the sale of preservation easements under Option Agreements shall be initiated.

14.5 Offers received shall be held confidential until all offers are received after which the Foundation shall review the offers and announce the selections.

14.6 Following the selection of properties for acquisition of Preservation Easements, the Foundation shall arrange for surveys of the properties to be conducted, and proceed to settlement under the terms of the Option Agreements, subject to the availability of funding and satisfaction of regulatory, financial or other restrictions or limitations.

14.7 The Foundation is under no obligation to purchase a Preservation Easement which is offered for sale. [3 Del.C. §913.]

15.0 Application Procedures

15.1 A separate application shall be required for each farmland tract (operating farm unit) offered for Preservation Easement purchase. The Foundation shall not be obligated to process any incomplete application.

15.2 The Foundation shall develop, and make available to landowners or other interested parties, an application form for use in offers to sell Preservation Easements.

15.3 The Foundation shall review the application to determine if it is complete.

16.0 Appraisals [3 Del. C. §916]

16.1 An offer to purchase a Preservation Easement shall be based upon one or more appraisal reports which estimate the full market value of the land under its agricultural zoning designation and the agriculture-only value of the farmland tract. The agricultural only value shall be based on an income capitalization methodology. Any appraisal obtained by the Foundation shall constitute the property of the Foundation and may not be used by the property owner for tax or other purposes. All categories of land located in the farmland tract shall be eligible for easement purchase and shall be appraised

16.2 The value of buildings or other improvements on the farmland tract shall not be considered in determining the Preservation Easement value. Excluded from the value of the Preservation Easement shall be any acreage designated or eligible to be designated by the owner for residential use pursuant to 3 Del. C. §909(a)(4)(a), provided however, the landowner shall have the right to waive eligible residential usage in which case the development rights value of the waived acreage shall be included.

16.3 The appraiser shall be:

16.3.1. An independent, licensed real estate appraiser who is qualified to appraise a property for easement purchase. An appraiser shall be selected on the basis of experience, expertise and professional designation; and

16.3.2. A member of an organization which subscribes to the "Uniform Standards of Professional Appraisal Practice" published by the Appraisal Standards Board of the Appraisal Foundation, and shall follow their ethical and professional

standards.

16.4 The appraiser shall supply a narrative report which shall contain such information as required by the Foundation.

17.0 Agricultural Lands Preservation Easement Value and Purchase Price

17.1 The value of a Preservation Easement in perpetuity shall be the difference between the full market value and the agriculture-only value contained in the appraisal report.

17.2 The price paid by the Foundation for the purchase of a Preservation Easement may not exceed, but may be less than, the value of the Preservation Easement. [3 Del. C. §916(a)]

17.3 If the applicant is not satisfied with the appraisal provided by the Foundation, the applicant shall be entitled to have an independent appraisal performed at the applicant's expense by a qualified appraiser as specified in Section 16.3. The alternative appraisal shall be prepared in the same format as the Foundation's appraisal and shall be submitted to the Foundation within forty-five (45) days of the applicant's date of receipt of the appraisal provided by the Foundation. The forty-five (45) day period may be extended by the Foundation, provided the time extension does not delay the time frame established by the Foundation for making selection and acquisition decisions.

17.4 The review of the alternative appraisals by the Foundation shall be based on written submissions under such procedures as specified by the Foundation. The maximum adjusted Preservation Easement value which the Foundation will accept is the difference between the agriculture-only value and the full market value, determined as follows:

17.4.1 The agriculture-only value shall equal the sum of:

- i. The agriculture-only value determined by the applicant's appraiser; and
- ii. Up to one-half of the positive difference between the agriculture-only value determined by the Foundation's appraiser and his/her values which exceed those determined by the applicant's appraiser.

17.4.2 The full market value shall equal the sum of:

- i. The full market value determined by the Foundation's appraiser; and
- ii. Up to one-half of the positive difference between the full market value determined by the applicant's appraiser and his/her values which exceed those determined by the Foundation's appraiser.

18.0 Offer of Purchase by the Foundation

18.1 The Foundation has the authority to incorporate bidding and/or negotiation as part of the procurement process. [3 Del. C. §915]

18.2 In reviewing the offers of applicants to sell Preservation Easements to the Foundation, the Foundation shall, subject to consideration of any alternative criteria by the Foundation to satisfy special objectives, select those offers providing the highest level of

percentage donation or percentage discount to the finally appraised value of the Preservation Easement, in accordance with the procedures and requirements of this Section. As an additional incentive, if any part of the applicant's property subject to the offer is located in whole or in part within one-half (1/2) mile completely outside of any growth zone of the County in which the Property is located, or in whole or in part within one-half (1/2) mile completely outside of the boundary of an incorporated town, municipality or city, for the sole purpose of ranking said application, the Foundation shall increase the offered percentage discount by five percent (5%). By way of example, if an applicant's offer includes a discount of sixty percent (60%), and the applicant's property is located in whole or in part within one-half (1/2) mile completely outside of the specified areas, for ranking purposes, the applicant's discount shall be deemed to be sixty-five percent (65%). If the applicant's property is selected for purchase of a preservation easement, the purchase price for the preservation easement shall incorporate a discount of only sixty percent (60%). The locations of the growth zones referenced by the Counties and the one-half (1/2) mile surrounding areas are as shown in Appendix "A" attached hereto.

- 18.3 The Foundation shall entertain offers in the form of Option Agreements from all eligible applicants who wish to submit offers, and after all offers are received, list the offers with the highest to the lowest level of percentage donation or percentage discount to the finally appraised value of the Preservation Easement with any adjustment to the offered donation or percentage discount as specified in Section 18.2 above.
- 18.4 Prior to releasing information to the public regarding the percentage of any discount or donation provided by a landowner the Foundation shall notify the landowner, identifying the requesting party, and obtain permission from the landowner prior to releasing the requested information. Otherwise, the information shall not be disclosed.
- 18.5 The Foundation may, but shall not be required to, allow a property owner in a District to submit an offer to sell a preservation easement on a portion of the real property in a District.

19.0 The Agricultural Lands Preservation Easement

- 19.1 The owners of the subject farmland tract shall execute a document conveying the Preservation Easement which document shall be in a form which contains conditions contained in Option Agreements executed by landowners.
- 19.2 The document shall be in recordable form and contain:
 - 19.2.1. A legal description setting forth the metes and bounds of the farmland tract subject to the Preservation Easement.
 - 19.2.2. At least one course and distance referencing a fixed marker or monument of a type commonly placed in the field by a surveyor.
 - 19.2.3 The legal description shall not contain a closure error greater than one foot per 200 linear feet in the survey.
 - 19.2.4 The survey of the farmland tract on which a Preservation Easement is to be

purchased shall show each of the residential lots, if any, designated by the owner pursuant to 9 Del. C. §909(a)(4)(a).

20.0 Title Quality

The Preservation Easement conveyed to the Foundation shall be unencumbered except for standard exceptions and be capable of being insured as such by an established and recognized title insurance company doing business in the State of Delaware. Any title defects, liens, survey discrepancies, boundary line disputes, or similar title issues shall be resolved by the property owner, at the property owner's sole expense. If subsequent to the purchase of a Preservation Easement it is determined that the amount of acreage is less than as reflected on the survey used by the Foundation for purposes of calculating the purchase price for the Preservation Easement, the property owner shall be required to refund to the Foundation any excess funds paid in reliance upon the inaccurate survey.

21.0 Residential Lots

Senate Bill 333 imposes alternative restrictions on the limited residential use of property subject to a District Agreement or Preservation Easement by replacing the unlimited number of residential dwellings allowed for owners, relatives of owners, and farm labor, with a total limit of three dwellings which can be occupied by any person. The overriding limitation of residential use of 1 acre for 20 acres of usable farmland (subject to a maximum of 10 acres) was left unchanged. Accordingly, owners can now designate up to three residential lots on District Property or Preserved Property. With respect to the designation of the residential lots allowed under Senate Bill 333, the following additional guidelines shall apply:

- 21.1 The acceptance by the Foundation of the designation of a residential lot does not mean that the location of the lot and proposed residential use complies with any applicable zoning rules or regulations, or that a lot is suitable for residential use. Owners are encouraged to conduct such investigations and perform such tests as they deem appropriate to ascertain whether or not any designated lot will be suitable for residential use and complies with all applicable land use regulations, including zoning laws.
- 21.2 The Foundation recognizes that at times, due to circumstances beyond the control of the owner, it may be necessary for the owner to change the location of a lot. As a matter of policy, the Foundation will allow such changes subject to the following requirements:
 - 21.2.1 No change in the location of a lot or size of a lot shall be allowed which would cause the number of lots or amount of residential acreage to be in excess of that otherwise allowed under the terms of the District Agreement or Preservation Easement.
 - 21.2.2 With respect to property subject to a Preservation Easement, the owner shall cause to be prepared, at the owner's expense, an amended plot plan showing the entire parcel subject to the Preservation Easement and the location of each residential lot.
 - 21.2.3 The owner shall execute an amendment to the District Agreement or Preservation Easement, which amendment shall reflect the change in the location or size of the residential lots, and which shall reference the amended plot plan.

22.0 Strategy Map

The farm lands shown on the Strategy Map attached hereto as Appendix "B" which have a LESA Score of at least 170 are targeted for inclusion in Districts, and those qualified farms located in whole or in part one-half (1/2) mile completely outside of any growth zones designated under these regulations shall be further prioritized by the donation or discount advantage for such properties provided under Section 18.2 of these regulations.



DELAWARE AGRICULTURAL LANDS
Preservation Foundation

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April 17, 2015

Eric Buckson, Commissioner, Kent County Aglands Advisory Board
Kent County Aglands Advisory Board Members
59 Yearling Ct
Camden-Wyoming, DE 19934

RE: Delaware Agricultural Lands Preservation Foundation – Preservation Advisory Boards –
Proposed Regulations

Dear Commissioner Buckson & Aglands Advisory Board Members:

Recently correspondence was directed to the head of each County legislative body requesting the names of the individuals in the County appointed to the Farmland Preservation Advisory Boards pursuant to the provisions of 3 Del. C. §906, a copy of which was provided and which is enclosed. The Advisory Boards play an important role under the Agricultural Lands Preservation Act, which includes providing advice to the Foundation regarding the adoption of regulations proposed by the Foundation. The referenced statutory provisions require that the draft of the proposed regulations be provided to the Advisory Boards prior to release for public notice. The purpose of this correspondence is to provide the enclosed draft regulations seeking input from the Advisory Boards. It is noted that the Foundation Board has taken no action on the proposed regulations pending your input.

In considering the draft proposed regulations some background regarding the existing Agricultural Lands Preservation program is helpful. The statewide Agricultural Lands Preservation Act was adopted in 1991, and some of its major features include:

- (1) The establishment of the Foundation to administer the preservation program, currently through staffing provided by the Delaware Department of Agriculture;
- (2) The establishment of Agricultural Preservation Districts and expansions, under which eligible farm owners voluntarily enter into agreements to not develop their property for a period of 10 years in return for certain tax benefits and right to farm protections;
- (3) The establishment of a program under which the Foundation purchases Agricultural Lands Preservation Easements from the landowners who have entered agreements placing their farms in Agricultural Preservation Districts; and
- (4) The establishment of a Fund administered by the Foundation for purposes of receiving monies from the State, the federal government, Counties and private entities to purchase Agricultural Lands Preservation Easements, which prohibit development and permanently commit the property subject to the easements to farming and related uses.

Funding for the purchase of Agricultural Lands Preservation Easements was not provided by the State until 1995. In anticipation of the funding the Foundation in January 1995 adopted Policies, Procedures and Guidelines, the Guidelines (referenced herein as regulations) established eligibility requirements, application procedures, restrictions, and a ranking system and alternative means of selecting farms for Preservation Easement purchases. The alternative to a ranking system for the selection of easement purchases involves the use of an appraisal of development rights values under which eligible landowners are afforded the opportunity to offer a donation or discount of the development rights value, with the selection based solely on the

highest level percentage donation or discount offered until available funds are exhausted.

Although initially the procedures provided for designation of priority preservation areas, later amendments to the procedures allow for the use of alternative criteria involving a minimum Land Evaluation and Site Assessment (LESA) score, in conjunction with the percentage donation or discounting system for making selections. One of the special objectives in using the donation or discounting approach was satisfaction of a requirement imposed in the initial and subsequent appropriations provided by the General Assembly that a minimum 4:1 match or 20% donation or discounting of the development rights value be provided by landowners in order to allow use of state funding to purchase preservation easements. An additional benefit achieved by the donation or discounting approach was the removal of any subjectivity or outside influence, political or otherwise, in the selection process. With farm owners voluntarily offering percentage donations or discounts to development right values, and the highest percentages being used to make selections until funds are exhausted in each round of selections, it is the participating landowners with their percentage offers who are making the selections, and not the Board members of the Foundation or others.

The openly competitive highest percentage donation or discount system adopted by the Foundation has been used to make preservation easement selections with available funding for the past 19 years. The system has been recognized nationally as a success. Based on a recent Foundation monthly report the following has been achieved statewide in preserving farmland in Delaware:

1. The Foundation has enrolled 1,076 farms in the program covering 169,977 acres, which is 34% of the remaining farmland in Delaware.
2. The Foundation has purchased preservation easements on 808 farms comprised of 116,223 acres, which is 24% of the remaining farmland in Delaware. By County,

20% of the available farmland in New Castle County, 35% of the available farmland in Kent County and 15% of the available farmland in Sussex County, have been protected by easements.

3. As a result of the highest percentage donation or discount selection system used the average cost of purchasing preservation easement statewide has been \$1,793 per acre. In New Castle County the cost has been \$2,546 per acre, in Kent County it has been \$1,499 per acre, and in Sussex County it has been \$1,985 per acre.
4. The donation or discounting has averaged 56%, and there are 321 properties comprised of 38,036 acres eligible to participate in the next yearly round of easement purchases, subject to the availability of funding.

The regulations subject to the enclosed draft proposal were last revised in June, 1999. Prior to that time the enabling legislation was revised in 1998 to provide for a priority for the establishment of preservation districts and the purchase of preservation easements in areas located near and adjacent to designated growth zones. At the time that the regulations were revised in 1999, only Kent County had mapped an identified growth zone, and New Castle County and Sussex County had not per se designated growth zone areas. In considering the prioritization of purchasing preservation easements in areas located near and adjacent to growth zones the Foundation recognized in the 1999 regulations that the appraisal methodology used to determine the value of development rights significantly favored properties located in areas prone to development, and the employment of that methodology has proven to be the case. Under the regulations the Foundation adopted an appraisal approach which determined the development rights or preservation easement value as the difference between the fair market value and the farm only value based on income capitalization calculations. The fair market value of properties near and adjacent to development areas are higher than those in other areas, while under the

income capitalization calculation the farm only value is the same no matter where the property is located. The result is that landowners near and adjacent to areas prone to development receive more money per acre for the sale of their development rights than others.

The benefits of the appraisal methodology used to encourage farmland preservation in areas prone to development are best illustrated by reviewing easement purchases within one-half (1/2) mile of designated growth zones in each County. In New Castle County 24% of the purchased preservation easement acreage was within the one-half (1/2) mile area, while 27% of the available monies was spent for preservation easements in such area. In Kent County the comparison is 17% of acreage and 20% of monies spent. In Sussex County the relative percentages are 34% of acreage and 35% of monies spent. In considering this statistical information it is important to note that the landowners within the one-half (1/2) mile area have always had the option of not participating in the program and selling their land for development at prevailing real estate prices.

The Foundation recognizes that beyond the appraisal methodology utilized, no other specific criteria has been adopted which would serve to prioritize the purchase of preservation easements near and adjacent to growth zones. Accordingly, as an added incentive, the staff of the Foundation is proposing to modify the highest donation or discount selection system for purchasing preservation easements by adding an allowance for a 5% adjustment to the percentage discount offers submitted by eligible landowners with property located in whole or in part in an area one-half (1/2) mile outside designated growth zones for each County. The adjustment would create a preference in the selection process and serve to provide a 5% increase in the purchase price for the preservation easement, both of which would serve as a further advantage to participating landowners in such priority areas.

The Foundation has also been charged with adapting, after consultation with the Advisory Boards and others, a statewide agricultural lands preservation strategy to be used along with other considerations in purchasing preservation easements. The strategy has been influenced by legislative changes which include the referenced matching funding requirement, the allowance of expansions of Districts for farms with less than 200 acres but which are located within 3 miles of a District, and the focus on farms located near and adjacent to growth areas. Currently there are no farms which because of the size or location are not eligible to participate in the program if they have a LESA score of at least 170. A change in the strategy is proposed to reflect these developments.

The enclosed proposed regulations also are designed to simplify the existing regulations and eliminate any confusion regarding the manner in which the Foundation has been operating the preservation easement program under the regulations. The maps of the growth zones for each County with the one-half mile preference area are attached to the draft proposed regulation and such maps also now form the basis for the statewide strategy map. The referenced current growth areas shown have been identified by the various County planning and zoning offices.

Overall the intent of these proposed revisions to the regulations and strategy is to facilitate the continued protection of Delaware's remaining farmlands through the purchase of preservation easements so as to assure the farming will continue to be a major industry in Delaware, while creating added incentives to landowners located near and adjacent to areas prone to development to voluntarily choose the alternative of preserving their farmland rather than selling it for

development. The Foundation proposes to continue to pursue these objectives in a manner which is considered to be a cost effective means of utilizing taxpayer monies.

If requested, members of the Foundation staff would be willing to meet with Advisory Board members to respond to any questions regarding the Agricultural Lands Preservation Program and the proposed regulations and strategy. Your response should be addressed to Austin Short, Deputy Secretary of the Department of Agriculture, at the above address.

Sincerely yours,



Robert F. Garey
Chairman

RFG/rv

Enclosures

cc: Members – Foundation Board
Honorable Edward Kee, Secretary
Honorable Austin Short, Deputy Secretary
Joseph Jackewicz, Jr., Kent Co Ag Advisory Board
John Papen, Kent Co Ag Advisory Board
Raymond Stachecki, Kent Co Ag Advisory Board
Robert C. Thompson, Kent Co Ag Advisory Board

**DELAWARE
AGRICULTURAL LANDS PRESERVATION FOUNDATION**

PROPOSED REGULATIONS

AGRICULTURAL LANDS PRESERVATION PROGRAM

PREAMBLE

The Agricultural Lands Preservation Act ("Act") was enacted on July 8, 1991 and provided for the creation of the Agricultural Lands Preservation Foundation ("Foundation"). The Foundation has been charged with the authority and responsibility of establishing and administering an extensive statewide program to preserve Delaware's farmlands and forestlands. Included in its responsibilities is the adoption of criteria for the establishment of and maintenance of Agricultural Preservation Districts ("Districts") and adoption of criteria for the purchase of agricultural lands preservation easements ("Preservation Easement") 3 Del.C. §904(a) and (b). These regulations are intended to provide guidelines and simplification regarding the manner in which the Agricultural Lands Preservation Program is administered.

1.0 Criteria for District Eligibility

- 1.1 In order to qualify for the Agricultural Lands Preservation Program, the lands proposed as an Agricultural Preservation District in the application must meet the following minimum criteria:
 - 1.1.1 owner(s) shall hold fee simple title to all land to be placed in a District and must be actively using the property for "agricultural and related uses";
 - 1.1.2 must constitute at least 200 acres of contiguous farmland or lesser acreage if the farmlands are located within three (3) miles of an established District;
 - 1.1.3 shall be zoned for agricultural purposes and shall not be subject to any major subdivision plan;
 - 1.1.4 applicant(s) including all fee simple title holders, must sign a written agreement committing to District restrictions set forth in this Section and 3 Del. C. §909 and other adopted requirements;
 - 1.1.5 must be viable and productive agricultural land comprising a farm property unit and meet the minimum County Land Evaluation and Site Assessment (LESA) scoring requirements for eligibility as established by the Foundation; [3 Del. C. §908(a)(3)]
 - 1.1.6 must include all of the eligible real property located in the tax parcel or tax parcels subject to application.
- 1.2 For the purposes stated in this chapter, the phrase "viable and productive agricultural land" is defined as land that qualifies under provisions of the Farmland Assessment Act. [9 Del. C. §8329 - 8333]
- 1.3 The minimum LESA score for an eligible District or Expansion shall be 170 points out of a possible 300 points for each county in the State as computed under the currently approved LESA program of the Delaware Department of Agriculture.

- 1.4 The LESA score for agricultural lands is the primary factor in evaluating the eligibility of agricultural lands for inclusion in Districts and expansions, including the eligibility for purchase of preservation easements.

2.0 Application Procedures

- 2.1 The Foundation will provide application forms on which applicants who volunteer to place their lands into an Agricultural Preservation District will provide such information as the Foundation deems appropriate.
- 2.2 The Foundation shall provide assistance to potential applicants in completing application forms when requested.
- 2.3 Foundation staff may conduct on-site inspections and/or phone interviews with the applicants to acquire data necessary to perform LESA analyses and write a staff report.
- 2.4 In conjunction with the application, all fee simple owners shall sign a District Agreement in such form as deemed acceptable by the Foundation and which serves as a declaration in recordable form of acknowledgment of the policies and restrictions that must be followed, and benefits realized in a District.

3.0 Application Review Procedures

The Foundation has the authority to approve applications establishing Agricultural Preservation Districts and the authority to purchase preservation easements. [3 Del. C. §904]

- 3.1 The Foundation staff will review applications and determine whether or not the minimum eligibility requirements under Section 1.0 have been met.
- 3.2 If the minimum eligibility requirements have not been met, then the applicant will be notified by letter from the Foundation indicating that the application does not qualify for further review, and the reasons for ineligibility.
- 3.3 If an applicant excludes a portion of property otherwise includable in a proposed District, then the Foundation may deny the application, unless the property proposed for exclusion is not otherwise eligible for inclusion due to the use of the property at the time of the application.
- 3.4 Subject to Section 3.3 above, if the lands proposed as a District in the application (200 or more acres) meet minimum eligibility criteria, then the Foundation staff will submit to the Foundation, the County Farmland Preservation Advisory Board and the County Planning and Zoning Authority, applications and an indication that the application meets the minimum eligibility requirements.
- 3.5 If the applicant disagrees with the staff evaluation of the proposed District, then the applicant may contact the Foundation staff to discuss the application review. Foundation staff will meet with the landowner to discuss the review within thirty (30) days from receiving formal contact from the applicant.
- 3.6 If the issue is not resolved to the applicant's satisfaction, the applicant may request an

administrative review with the Foundation by submitting a letter to the Foundation within fourteen days (14) of the applicant's last meeting with Foundation staff.

- 3.7 This letter must include reasons and documentation to justify the applicant's claim(s).
- 3.8 The Foundation will schedule a meeting and notify the applicant by certified letter of the date, time, and place of the meeting.
- 3.9 At the administrative review meeting, the applicant(s) shall present information or documentation as to how the proposed District satisfies the eligibility criteria.
- 3.10 The Foundation will render a decision within thirty (30) days from the administrative review meeting and notify the applicant in writing of its decision.
- 3.11 Owners of real property who have executed a District Agreement or a preservation easement that incorporate the restrictions in effect prior to the Senate Bill No. 333 amendments and who elect to be released from the restrictions set forth in 9 Del. C. §909(a)(2)(b) pursuant to 9 Del. C. §909(a)(4)(c), shall comply with the following requirements:
 - 3.11.1 Owners who have executed a district agreement and who wish to designate up to three residential lots shall designate the allowable residential acreage in sufficient detail to enable the Foundation to determine the location of the residential acreage, and while a survey may be submitted, a survey shall not be required. The Owner shall execute an amendment to the Owner's District Agreement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in 9 Del. C. §909(a)(1), (a)(2)(a), (a)(4)(a) and (a)(4)(b).
 - 3.11.2 Owners who have executed a preservation easement and who wish to designate up to three residential lots shall designate the allowable residential acreage in sufficient detail to enable the Foundation to determine the location of the residential acreage and shall submit to the Foundation for its review and approval, at the Owner's expense, an amended survey in recordable form. The amended survey shall show the entire parcel subject to the preservation easement and the location of any residential lots. The Owner shall execute an amendment to the preservation easement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in 9 Del. C. §909(a)(1), (a)(2)(a), (a)(4)(a) and (a)(4)(b).

4.0 Creation of a District

- 4.1 To establish an Agricultural Preservation District, the application must be approved by two out of three of the entities listed under Section 3.4 of these regulations.
[3 Del. C. §907(c)]
- 4.2 After review by the Foundation, the application is subject to a review period of thirty (30) days in which the Secretary of Agriculture may reject the application. The application is officially approved at the end of the review period, if it is not rejected by the Secretary of Agriculture. [3 Del. C. §919]

- 4.3 The property legally becomes a District when the applicant and Foundation Chairperson (or designee) have signed the District Agreement and no rejection has been exercised by the Secretary of Agriculture, or the Secretary of Agriculture has waived the right of rejection.
- 4.4 Copies of the District Agreement shall be filed with the County Planning and Zoning and Tax Assessor's Offices and recorded in the Office of the Recorder of Deeds. The Foundation shall require from these Offices proof of recording and/or receipt of the District Agreement.
- 4.5 The Foundation shall endeavor to provide written notification of the date of establishment of the Agricultural Preservation District and provide a copy of the District Agreement to the applicant, however, the failure of the Foundation to satisfy any formality following execution of a District Agreement shall not affect the validity of the District Agreement.

5.0 District Restrictions

- 5.1 Any rezoning or major subdivision of real property included in an Agricultural Preservation District is prohibited. [3 Del. C. §909(a)(1)]
- 5.2 The submission of applications or preliminary rezoning or subdivision plans for any property within an Agricultural Preservation District to a county or municipality shall be considered evidence of the intent to rezone or subdivide and no action shall be taken by any county or municipality on any such application until the expiration of the District Agreement.
- 5.3 During the term of the District Agreement, the property shall be used for "agricultural and related uses" and shall be used in such a way so that the property continues to qualify as "viable and productive agricultural land" as defined under provisions of the Farmland Assessment Act. [9 Del. C. §8329 - 8333] No more than 1 acre of land for each 20 acres of usable land, subject to a maximum of 10 acres, shall be allowed for dwelling housing. For purposes of calculating the number of acres allowable for dwelling housing, fractions of any acre shall not be allowed. By way of example, if a farm consists of 45 acres of usable farmland, the number of acres allowed for dwelling housing shall be 2, and not 2.25.
- 5.4 The phrase 'agricultural and related uses' shall have the meaning set forth in 3 Del. C. §909, as the same may be amended from time to time.
- 5.5 Excavation or filling, borrow pits, extraction, processing and removal of sand, gravel, loam, rock or other minerals is prohibited unless such action is currently required by or ancillary to any preparation for, or operation of any activities including, but not limited to: aquaculture, farm ponds, cranberry operations, manure handling facilities, and other activities directly related to agricultural production.
- 5.6 Activities that would be detrimental to drainage, flood control, water conservation, erosion control or soil conservation are prohibited.

- 5.7 Any other activity that might negatively affect the continued agricultural use of the land is prohibited.
- 5.8 The term "usable land owned in the district" [3 Del. C. §909(a)(2)], shall be defined as any land meeting the requirements for agricultural, horticultural or forest land in the Farmland Assessment Act of 1968 [9 Del. C., Chapter 83] and [3 Del. C. §403] or criteria for farm definition as established by the National Agricultural Statistics Service.
- 5.9 The District Agreement and District requirements and benefits shall be binding on the heirs, successors and assigns of property owners of lands within a District. A property owner in a District shall provide written notice to the Foundation of any proposed transfer of property subject to the District Agreement at least ten (10) days in advance of the transfer, and shall give written notice to any successor or assign at least ten (10) days in advance of the date of transfer of the property that the property is subject to District restrictions. The party taking title shall execute a document as required by [3 Del. C. §909(a)(2)c.] acknowledging the acreage allowed for dwelling housing and the restrictions which apply to the property. The failure of the property owner to notify the transferee as provided herein shall not affect the transferee's obligation to comply with the terms and conditions of the District Agreement upon the transfer of title.
- 5.10 Under 3 Del. C. §909(a)(3), all restrictions shall be covenants which run with and bind the lands in the District for a minimum of ten (10) years, beginning when the District Agreement takes effect as specified in the District Agreement.

6.0 Continuation of a District

- 6.1 All properties are to remain in an Agricultural Preservation District for at least ten (10) years, subject to the allowance of hardship exceptions for exclusion of dwelling housing pursuant to 3 Del. C. §909(a)(2)(b) and Section 9 of these guidelines.
- 6.2 If a landowner wishes to withdraw from, or terminate a District, then the Foundation must receive a written notice of intent to withdraw no less than six (6) months prior to the ten (10) year anniversary date of initial establishment of the District. [3 Del. C. §909(b)]

If the Foundation does not receive a written notification of the landowner's intent to withdraw from the District six (6) months prior to the ten (10) year anniversary date of that District, then the land shall remain in the District for an additional five (5) year period unless and until notice of intent to withdraw shall be given six months prior to the end of each additional five-year period.

7.0 Expansion of a District

- 7.1 An Agricultural Preservation District can be expanded for the purpose of preserving additional lands. Lands added to a District may be under 200 acres.[3 Del. C. §907(d)]
- 7.2 Land which is less than 200 usable acres, yet meets the other criteria established by the Foundation, is eligible to be an expansion ("Expansion") of an Agricultural Preservation District if it is within three (3) miles of any portion of an established Agricultural Preservation District. [3 Del. C. §907(a)]

8.0 Inspection of Districts

The Foundation has the authority to enter upon lands as may be necessary to perform surveys, appraisals, and investigations to accomplish the purpose of the program, consistent with applicable statutes.

[3 Del. C. §904(b)(14)]

- 8.1 The Foundation or its designee reserves the right to inspect restricted land and enforce agreements on its own behalf.
- 8.2 If any violations of the terms and the conditions of the District Agreement occur, the Foundation may institute proceedings in the appropriate court to enforce the terms and seek appropriate relief. [3 Del. C. §920(a)]

9.0 Dwelling Property Hardship Exceptions

Except as set forth in Section 9.7 hereof, owners of real property who have executed a District Agreement or a preservation easement that incorporate the restrictions in effect prior to the Senate Bill No. 333 amendments are entitled to apply to the Foundation for a hardship exception allowing for the transfer of dwelling property to parties who are not otherwise entitled to residential use of the dwelling property under the District Agreement or Preservation Easement, subject to the provisions of 3 Del. C. §909(a)(2)(b) and the following requirements.

- 9.1 An applicant for a hardship exception shall submit the following information in writing to the Foundation:
 - 9.1.1. name and property interest of applicant in the dwelling property;
 - 9.1.2 acreage of the dwelling property subject to application;
 - 9.1.3 date on which the District was established;
 - 9.1.4 number of dwellings and acreage of residential use currently on the property in the District;
 - 9.1.5 the nature of the hardship condition and reasons justifying the granting of a hardship exception;
 - 9.1.6 the extent to which the hardship condition is unavoidable.
- 9.2 The Foundation shall consider hardship conditions involving the following circumstances:
 - 9.2.1 the sale or transfer of the dwelling property compelled by foreclosure, court order, or marital property division agreement;
 - 9.2.2 the sale or transfer of the dwelling property compelled by job transfer;
 - 9.2.3 the sale or transfer of the dwelling property compelled by health conditions;
 - 9.2.4 the sale or transfer of the dwelling property required to avoid insolvency or

bankruptcy; and

9.2.5 other circumstances of an unusual and extraordinary nature which pose a practical hardship to continued ownership of the dwelling property and which are unavoidable.

9.3 Hardship exceptions will not be granted when no real hardship exists and the primary consequence of the sale or transfer of the dwelling property is financial gain.

9.4 The applicant shall bear the burden of establishing the existence of hardship circumstances, and shall provide to the Foundation documentation in support of the application, and any documentation requested by the Foundation, provided however, that documentation involving privileged information may be submitted on a confidential basis.

9.5 The Foundation may require the applicant for a hardship exception to appear before the Foundation Board to present the application, and an applicant shall be entitled to appear before the Board to make a presentation by submitting a written request to the Foundation.

9.6 The granting of a hardship exception by the Foundation shall be subject to the following conditions:

9.6.1 the dwelling property following transfer shall be used only for residential purposes;

9.6.2 the transferred property shall not qualify for District benefits or benefits of Preservation Easements;

9.6.3 if the transferred property is subject to a Preservation Easement prior to transfer, payment shall be made to the Foundation in an amount equal to twenty-five (25) percent of the current fair market value of the land subject to transfer;

9.6.4 the transferee shall execute a Declaration in recordable form as prescribed by the Foundation which includes the acreage allowed for dwelling housing and the restrictions which apply to the real property;

9.6.5 the Foundation may require the transferor to execute a Declaration in recordable form as prescribed by the Foundation to evidence the status of allowable dwelling housing property on lands retained by the transferor which are in the District or subject to a Preservation Easement; and

9.6.6 such other terms and conditions considered necessary by Foundation to address the nature of the hardship condition.

9.7 The hardship provisions set forth herein shall not apply to the owners of real property who, pursuant to 3 Del. C. §909(a)(4)(c), have elected to be released from the restrictions of 3 Del. C. §909(a)(2)(b).

10.0 Delaware Farmland Preservation Fund

The Delaware Farmland Preservation Fund, hereinafter referred to as the "Fund", was enacted under 3 Del. C. §905 for the exclusive application by the Foundation to achieve the desired goals of preserving viable agricultural lands and conducting the business of the Foundation.

11.0 Sources of Funding

- 11.1 The Foundation may accept donations, property, or development rights as gifts and monetary gifts from any source, public or private.
- 11.2 Monies not needed on a current basis by the Foundation may be invested with the approval of the Board of Trustees.
- 11.3 The Fund is subject to an annual audit to be prepared by an independent, certified public accountant. The findings of all audits shall be presented to the Board.
- 11.4 The Foundation shall manage the monies appropriated to it by the General Assembly in accordance with the terms of the appropriations.

12.0 Criteria for Purchase Agricultural Lands Preservation Easements

- 12.1 The criteria for eligibility of acquisition of a Preservation Easement shall be the same as the criteria for district eligibility. In addition, offered preservation easement lands shall be in an established district and in compliance with district requirements to be eligible. The Foundation shall have the right, in its sole discretion, to acquire a Preservation Easement on only a part of the property included within the District Agreement.
- 12.2 The prioritization and selection of properties for the purchase of preservation easements shall be as set forth in Sections 13 thru 20 inclusive hereof.

13.0 Matching Contributions to the Program

The Foundation may establish a reserve or set aside of available funds for the matching of federal, county, local, or private funds for the preservation of farmland. The Foundation may allow the entity providing matching funding to select the qualified properties for purchases of easements using the matching funding notwithstanding provisions of these regulations regarding selections. The Foundation has the discretion, but is not required, to match contributions.

14.0 Schedule for Acquisition of Agricultural Lands Preservation Easements

- 14.1 Application and funding cycles will take place on schedules established by the Foundation.
- 14.2 Applications for the purchase of Preservation Easements in Rounds of Purchases shall be subject to deadlines established by the Foundation.
- 14.3 For each Round of Preservation Easement Purchases the Foundation shall arrange for the appraisal of the Preservation Easement value of those properties under consideration.
- 14.4 Upon completion, the appraisals shall be provided to the landowners, and procedures set

forth herein involving offers for the sale of preservation easements under Option Agreements shall be initiated.

- 14.5 Offers received shall be held confidential until all offers are received after which the Foundation shall review the offers and announce the selections.
- 14.6 Following the selection of properties for acquisition of Preservation Easements, the Foundation shall arrange for surveys of the properties to be conducted, and proceed to settlement under the terms of the Option Agreements, subject to the availability of funding and satisfaction of regulatory, financial or other restrictions or limitations.
- 14.7 The Foundation is under no obligation to purchase a Preservation Easement which is offered for sale. [3 Del.C. §913.]

15.0 Application Procedures

- 15.1 A separate application shall be required for each farmland tract (operating farm unit) offered for Preservation Easement purchase. The Foundation shall not be obligated to process any incomplete application.
- 15.2 The Foundation shall develop, and make available to landowners or other interested parties, an application form for use in offers to sell Preservation Easements.
- 15.3 The Foundation shall review the application to determine if it is complete.

16.0 Appraisals [3 Del. C. §916]

- 16.1 An offer to purchase a Preservation Easement shall be based upon one or more appraisal reports which estimate the full market value of the land under its agricultural zoning designation and the agriculture-only value of the farmland tract. The agricultural only value shall be based on an income capitalization methodology. Any appraisal obtained by the Foundation shall constitute the property of the Foundation and may not be used by the property owner for tax or other purposes. All categories of land located in the farmland tract shall be eligible for easement purchase and shall be appraised
- 16.2 The value of buildings or other improvements on the farmland tract shall not be considered in determining the Preservation Easement value. Excluded from the value of the Preservation Easement shall be any acreage designated or eligible to be designated by the owner for residential use pursuant to 3 Del. C. §909(a)(4)(a), provided however, the landowner shall have the right to waive eligible residential usage in which case the development rights value of the waived acreage shall be included.
- 16.3 The appraiser shall be:
 - 16.3.1. An independent, licensed real estate appraiser who is qualified to appraise a property for easement purchase. An appraiser shall be selected on the basis of experience, expertise and professional designation; and
 - 16.3.2. A member of an organization which subscribes to the "Uniform Standards of Professional Appraisal Practice" published by the Appraisal Standards Board of the Appraisal Foundation, and shall follow their ethical and professional

standards.

16.4 The appraiser shall supply a narrative report which shall contain such information as required by the Foundation.

17.0 Agricultural Lands Preservation Easement Value and Purchase Price

17.1 The value of a Preservation Easement in perpetuity shall be the difference between the full market value and the agriculture-only value contained in the appraisal report.

17.2 The price paid by the Foundation for the purchase of a Preservation Easement may not exceed, but may be less than, the value of the Preservation Easement. [3 Del. C. §916(a)]

17.3 If the applicant is not satisfied with the appraisal provided by the Foundation, the applicant shall be entitled to have an independent appraisal performed at the applicant's expense by a qualified appraiser as specified in Section 16.3. The alternative appraisal shall be prepared in the same format as the Foundation's appraisal and shall be submitted to the Foundation within forty-five (45) days of the applicant's date of receipt of the appraisal provided by the Foundation. The forty-five (45) day period may be extended by the Foundation, provided the time extension does not delay the time frame established by the Foundation for making selection and acquisition decisions.

17.4 The review of the alternative appraisals by the Foundation shall be based on written submissions under such procedures as specified by the Foundation. The maximum adjusted Preservation Easement value which the Foundation will accept is the difference between the agriculture-only value and the full market value, determined as follows:

17.4.1 The agriculture-only value shall equal the sum of:

- i. The agriculture-only value determined by the applicant's appraiser; and
- ii. Up to one-half of the positive difference between the agriculture-only value determined by the Foundation's appraiser and his/her values which exceed those determined by the applicant's appraiser.

17.4.2 The full market value shall equal the sum of:

- i. The full market value determined by the Foundation's appraiser; and
- ii. Up to one-half of the positive difference between the full market value determined by the applicant's appraiser and his/her values which exceed those determined by the Foundation's appraiser.

18.0 Offer of Purchase by the Foundation

18.1 The Foundation has the authority to incorporate bidding and/or negotiation as part of the procurement process. [3 Del. C. §915]

18.2 In reviewing the offers of applicants to sell Preservation Easements to the Foundation, the Foundation shall, subject to consideration of any alternative criteria by the Foundation to satisfy special objectives, select those offers providing the highest level of

percentage donation or percentage discount to the finally appraised value of the Preservation Easement, in accordance with the procedures and requirements of this Section. As an additional incentive, if any part of the applicant's property subject to the offer is located in whole or in part within one-half (1/2) mile completely outside of any growth zone of the County in which the Property is located, or in whole or in part within one-half (1/2) mile completely outside of the boundary of an incorporated town, municipality or city, for the sole purpose of ranking said application, the Foundation shall increase the offered percentage discount by five percent (5%). By way of example, if an applicant's offer includes a discount of sixty percent (60%), and the applicant's property is located in whole or in part within one-half (1/2) mile completely outside of the specified areas, for ranking purposes, the applicant's discount shall be deemed to be sixty-five percent (65%). If the applicant's property is selected for purchase of a preservation easement, the purchase price for the preservation easement shall incorporate a discount of only sixty percent (60%). The locations of the growth zones referenced by the Counties and the one-half (1/2) mile surrounding areas are as shown in Appendix "A" attached hereto.

- 18.3 The Foundation shall entertain offers in the form of Option Agreements from all eligible applicants who wish to submit offers, and after all offers are received, list the offers with the highest to the lowest level of percentage donation or percentage discount to the finally appraised value of the Preservation Easement with any adjustment to the offered donation or percentage discount as specified in Section 18.2 above.
- 18.4 Prior to releasing information to the public regarding the percentage of any discount or donation provided by a landowner the Foundation shall notify the landowner, identifying the requesting party, and obtain permission from the landowner prior to releasing the requested information. Otherwise, the information shall not be disclosed.
- 18.5 The Foundation may, but shall not be required to, allow a property owner in a District to submit an offer to sell a preservation easement on a portion of the real property in a District.

19.0 The Agricultural Lands Preservation Easement

- 19.1 The owners of the subject farmland tract shall execute a document conveying the Preservation Easement which document shall be in a form which contains conditions contained in Option Agreements executed by landowners.
- 19.2 The document shall be in recordable form and contain:
 - 19.2.1. A legal description setting forth the metes and bounds of the farmland tract subject to the Preservation Easement.
 - 19.2.2. At least one course and distance referencing a fixed marker or monument of a type commonly placed in the field by a surveyor.
 - 19.2.3 The legal description shall not contain a closure error greater than one foot per 200 linear feet in the survey.
 - 19.2.4 The survey of the farmland tract on which a Preservation Easement is to be

purchased shall show each of the residential lots, if any, designated by the owner pursuant to 9 Del. C. §909(a)(4)(a).

20.0 Title Quality

The Preservation Easement conveyed to the Foundation shall be unencumbered except for standard exceptions and be capable of being insured as such by an established and recognized title insurance company doing business in the State of Delaware. Any title defects, liens, survey discrepancies, boundary line disputes, or similar title issues shall be resolved by the property owner, at the property owner's sole expense. If subsequent to the purchase of a Preservation Easement it is determined that the amount of acreage is less than as reflected on the survey used by the Foundation for purposes of calculating the purchase price for the Preservation Easement, the property owner shall be required to refund to the Foundation any excess funds paid in reliance upon the inaccurate survey.

21.0 Residential Lots

Senate Bill 333 imposes alternative restrictions on the limited residential use of property subject to a District Agreement or Preservation Easement by replacing the unlimited number of residential dwellings allowed for owners, relatives of owners, and farm labor, with a total limit of three dwellings which can be occupied by any person. The overriding limitation of residential use of 1 acre for 20 acres of usable farmland (subject to a maximum of 10 acres) was left unchanged. Accordingly, owners can now designate up to three residential lots on District Property or Preserved Property. With respect to the designation of the residential lots allowed under Senate Bill 333, the following additional guidelines shall apply:

- 21.1 The acceptance by the Foundation of the designation of a residential lot does not mean that the location of the lot and proposed residential use complies with any applicable zoning rules or regulations, or that a lot is suitable for residential use. Owners are encouraged to conduct such investigations and perform such tests as they deem appropriate to ascertain whether or not any designated lot will be suitable for residential use and complies with all applicable land use regulations, including zoning laws.
- 21.2 The Foundation recognizes that at times, due to circumstances beyond the control of the owner, it may be necessary for the owner to change the location of a lot. As a matter of policy, the Foundation will allow such changes subject to the following requirements:
 - 21.2.1 No change in the location of a lot or size of a lot shall be allowed which would cause the number of lots or amount of residential acreage to be in excess of that otherwise allowed under the terms of the District Agreement or Preservation Easement.
 - 21.2.2 With respect to property subject to a Preservation Easement, the owner shall cause to be prepared, at the owner's expense, an amended plot plan showing the entire parcel subject to the Preservation Easement and the location of each residential lot.
 - 21.2.3 The owner shall execute an amendment to the District Agreement or Preservation Easement, which amendment shall reflect the change in the location or size of the residential lots, and which shall reference the amended plot plan.

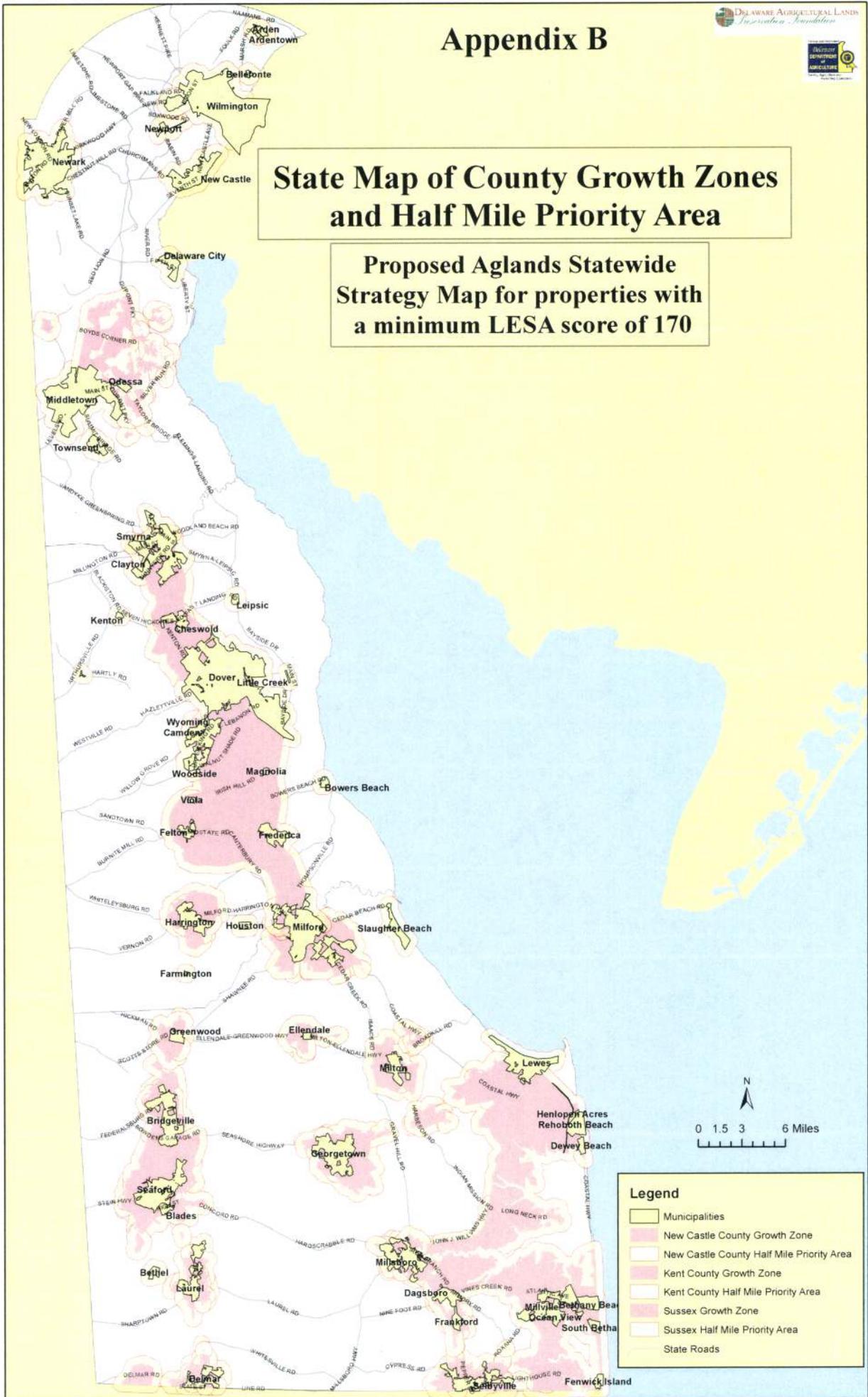
22.0 Strategy Map

The farm lands shown on the Strategy Map attached hereto as Appendix "B" which have a LESA Score of at least 170 are targeted for inclusion in Districts, and those qualified farms located in whole or in part one-half (1/2) mile completely outside of any growth zones designated under these regulations shall be further prioritized by the donation or discount advantage for such properties provided under Section 18.2 of these regulations.

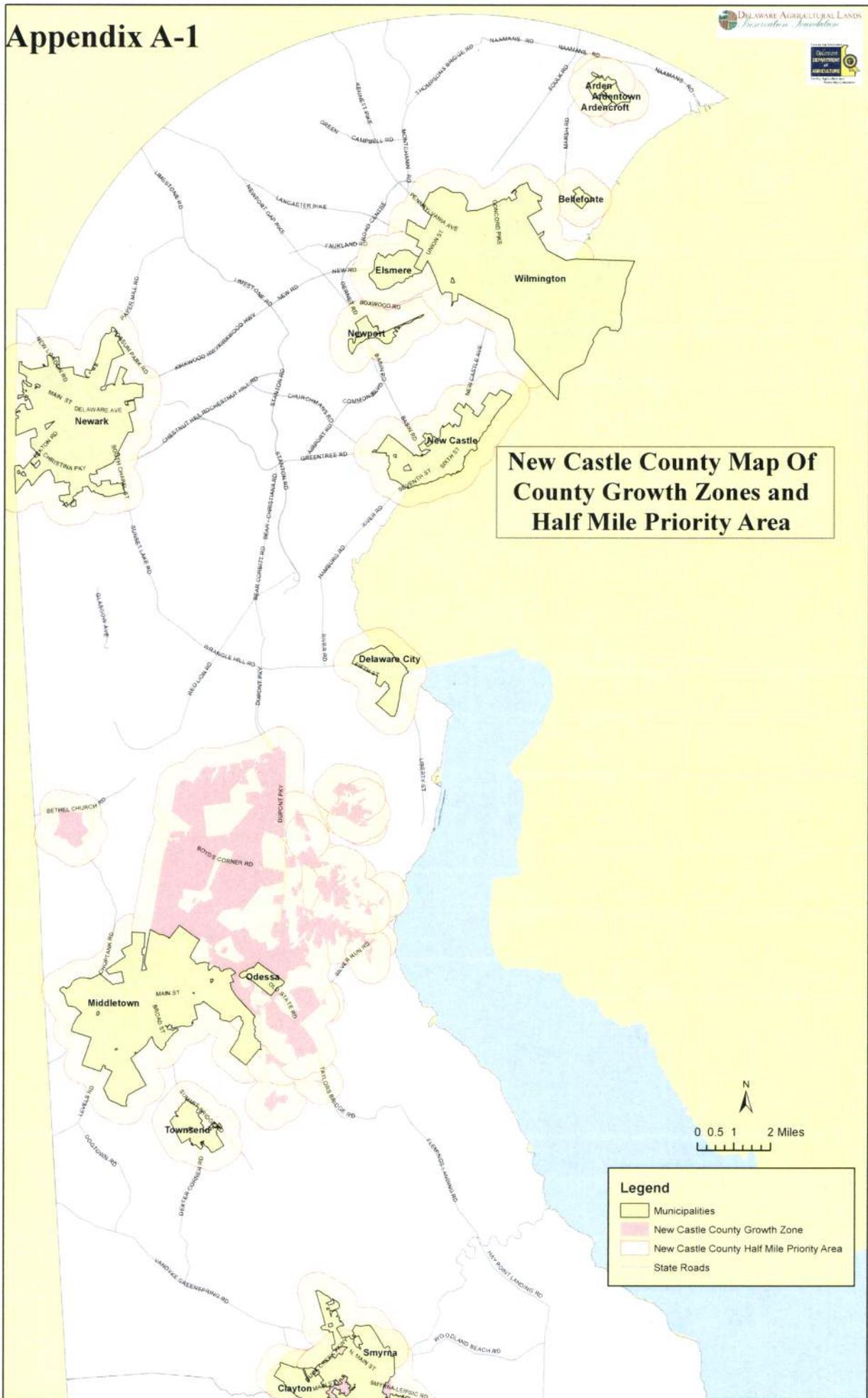
Appendix B

State Map of County Growth Zones and Half Mile Priority Area

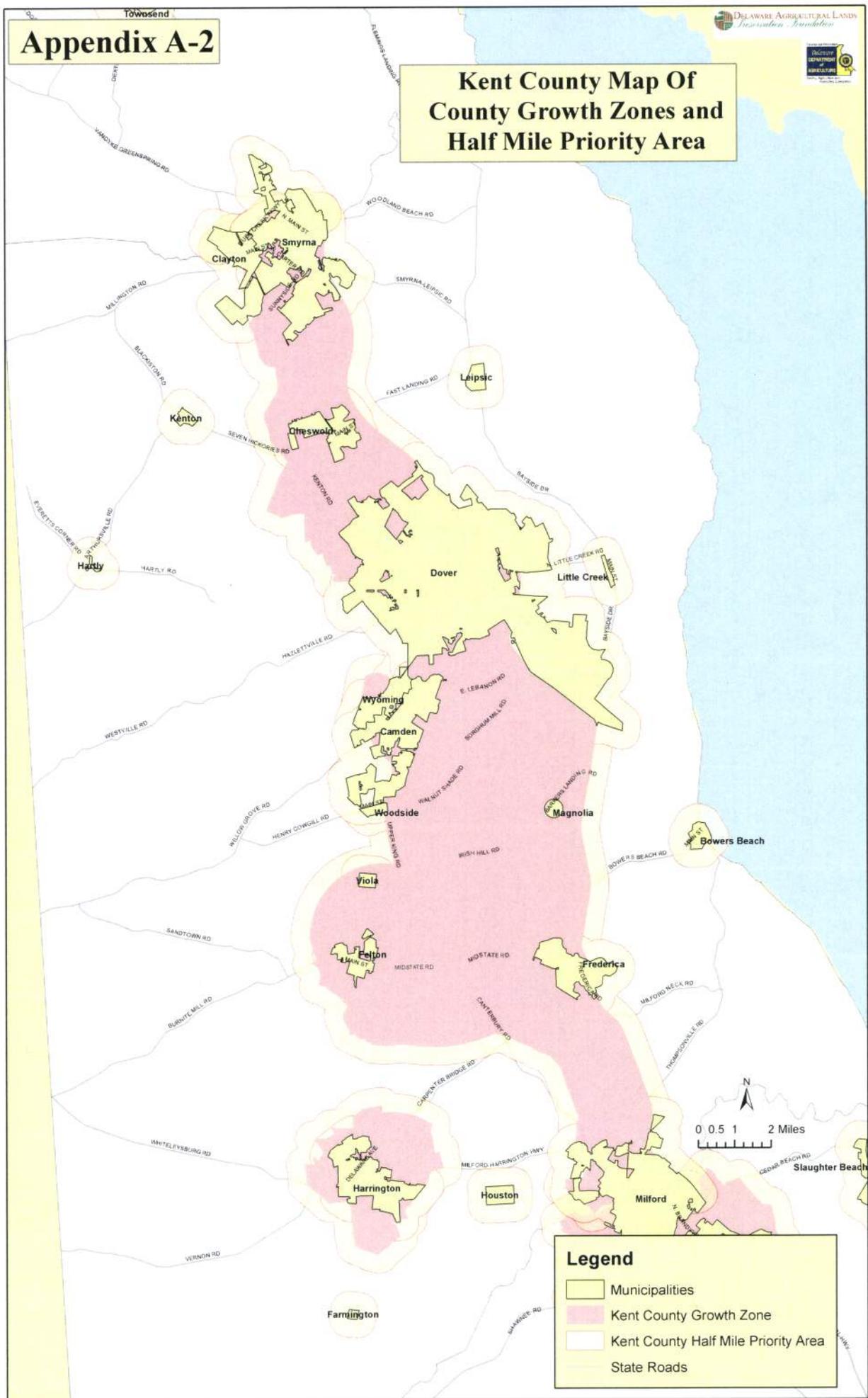
Proposed Aglands Statewide
Strategy Map for properties with
a minimum LESA score of 170



Appendix A-1



**Kent County Map Of
 County Growth Zones and
 Half Mile Priority Area**



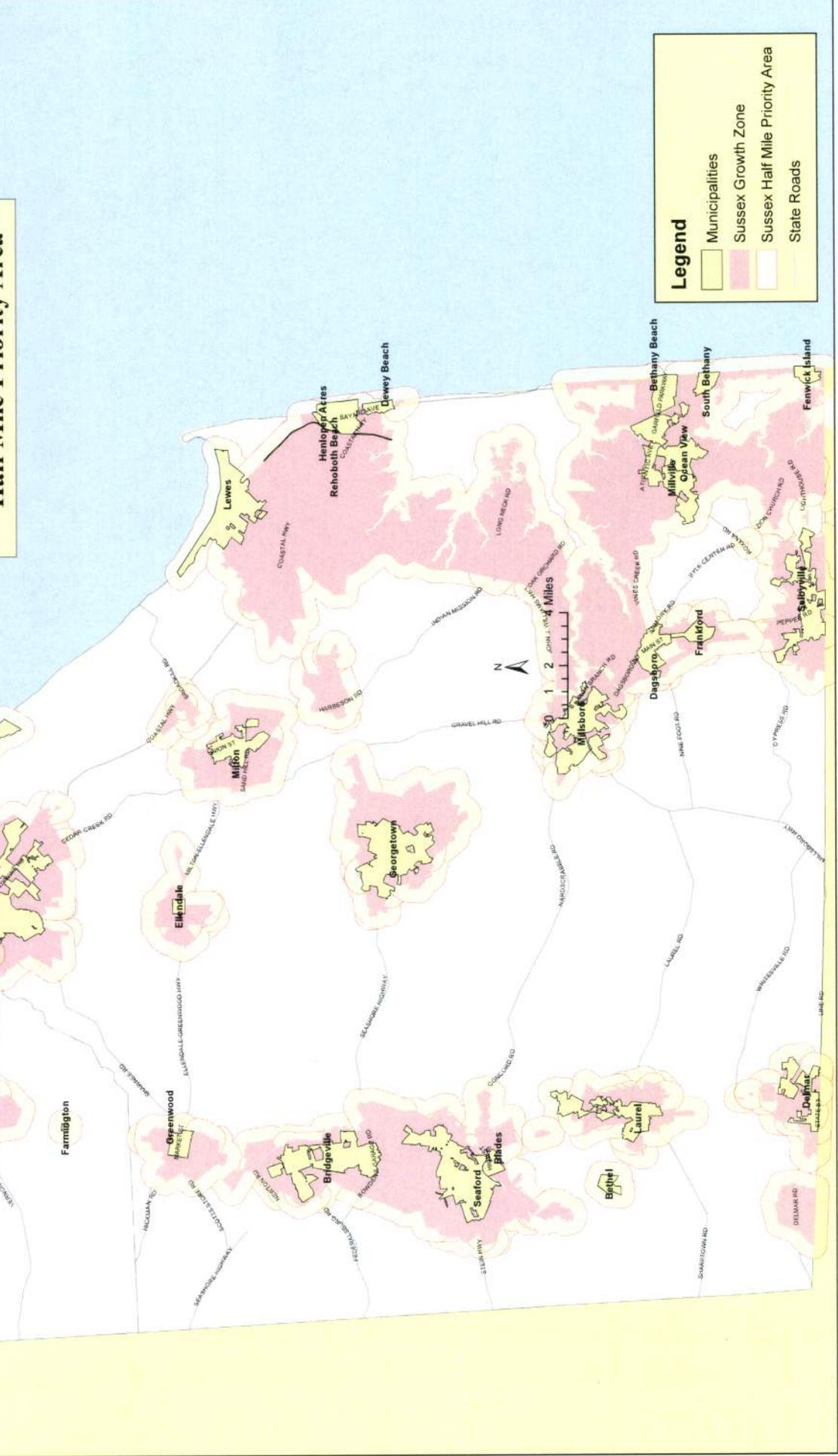
Legend

- Municipalities
- Kent County Growth Zone
- Kent County Half Mile Priority Area
- State Roads



Sussex County Map Of County Growth Zones and Half Mile Priority Area

Appendix A-3





DELAWARE AGRICULTURAL LANDS
Preservation Foundation

2320 South duPont Highway
Dover, Delaware 19901

Tel: 302-698-4530
Toll Free: 800-282-8685 (DE only)
Fax: 302-677-7093

June 17, 2015

Eric Buckson, Commissioner, Kent County Aglands Advisory Board
Kent County Aglands Advisory Board Members
59 Yearling Ct
Camden-Wyoming, DE 19934

RE: Delaware Agricultural Lands Preservation Foundation Proposed Regulations

Dear Commissioner Buckson & Aglands Advisory Board Members:

This letter is a follow-up to our April 17th letter (enclosed) regarding the Delaware Aglands Preservation Program's proposed amended regulations and the review of those regulations by the county's Farmland Preservation Advisory Board. The intent of these proposed regulation revisions is to facilitate the continued protection of Delaware's remaining farmlands through the purchase of preservation easements, while creating added incentives to landowners located near and adjacent to areas prone to development to voluntarily preserve their farmland rather than selling it for development. The Foundation proposes to continue to pursue these objectives in a cost-effective method for utilizing taxpayer monies.

We ask that the members please provide us with any remaining comments regarding the regulations by June 30. The Aglands Preservation Foundation will then consider these comments and make any necessary revisions prior to issuing the amended regulations for public review and comment. I have enclosed the proposed regulations for your convenience.

Thank you for your assistance with this matter and your continuing support of Delaware's Aglands Preservation Program. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Austin Short".

E. Austin Short
Deputy Secretary

Enclosures (2)

cc: Honorable Edward Kee, Secretary
Robert Garey, Chairman, Aglands Preservation Foundation



DELAWARE AGRICULTURAL LANDS
Preservation Foundation

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April 17, 2015

Eric Buckson, Commissioner, Kent County Aglands Advisory Board
Kent County Aglands Advisory Board Members
59 Yearling Ct
Camden-Wyoming, DE 19934

RE: Delaware Agricultural Lands Preservation Foundation – Preservation Advisory Boards –
Proposed Regulations

Dear Commissioner Buckson & Aglands Advisory Board Members:

Recently correspondence was directed to the head of each County legislative body requesting the names of the individuals in the County appointed to the Farmland Preservation Advisory Boards pursuant to the provisions of 3 Del. C. §906, a copy of which was provided and which is enclosed. The Advisory Boards play an important role under the Agricultural Lands Preservation Act, which includes providing advice to the Foundation regarding the adoption of regulations proposed by the Foundation. The referenced statutory provisions require that the draft of the proposed regulations be provided to the Advisory Boards prior to release for public notice. The purpose of this correspondence is to provide the enclosed draft regulations seeking input from the Advisory Boards. It is noted that the Foundation Board has taken no action on the proposed regulations pending your input.

In considering the draft proposed regulations some background regarding the existing Agricultural Lands Preservation program is helpful. The statewide Agricultural Lands Preservation Act was adopted in 1991, and some of its major features include:

- (1) The establishment of the Foundation to administer the preservation program, currently through staffing provided by the Delaware Department of Agriculture;
- (2) The establishment of Agricultural Preservation Districts and expansions, under which eligible farm owners voluntarily enter into agreements to not develop their property for a period of 10 years in return for certain tax benefits and right to farm protections;
- (3) The establishment of a program under which the Foundation purchases Agricultural Lands Preservation Easements from the landowners who have entered agreements placing their farms in Agricultural Preservation Districts; and
- (4) The establishment of a Fund administered by the Foundation for purposes of receiving monies from the State, the federal government, Counties and private entities to purchase Agricultural Lands Preservation Easements, which prohibit development and permanently commit the property subject to the easements to farming and related uses.

Funding for the purchase of Agricultural Lands Preservation Easements was not provided by the State until 1995. In anticipation of the funding the Foundation in January 1995 adopted Policies, Procedures and Guidelines, the Guidelines (referenced herein as regulations) established eligibility requirements, application procedures, restrictions, and a ranking system and alternative means of selecting farms for Preservation Easement purchases. The alternative to a ranking system for the selection of easement purchases involves the use of an appraisal of development rights values under which eligible landowners are afforded the opportunity to offer a donation or discount of the development rights value, with the selection based solely on the

highest level percentage donation or discount offered until available funds are exhausted.

Although initially the procedures provided for designation of priority preservation areas, later amendments to the procedures allow for the use of alternative criteria involving a minimum Land Evaluation and Site Assessment (LESA) score, in conjunction with the percentage donation or discounting system for making selections. One of the special objectives in using the donation or discounting approach was satisfaction of a requirement imposed in the initial and subsequent appropriations provided by the General Assembly that a minimum 4:1 match or 20% donation or discounting of the development rights value be provided by landowners in order to allow use of state funding to purchase preservation easements. An additional benefit achieved by the donation or discounting approach was the removal of any subjectivity or outside influence, political or otherwise, in the selection process. With farm owners voluntarily offering percentage donations or discounts to development right values, and the highest percentages being used to make selections until funds are exhausted in each round of selections, it is the participating landowners with their percentage offers who are making the selections, and not the Board members of the Foundation or others.

The openly competitive highest percentage donation or discount system adopted by the Foundation has been used to make preservation easement selections with available funding for the past 19 years. The system has been recognized nationally as a success. Based on a recent Foundation monthly report the following has been achieved statewide in preserving farmland in Delaware:

1. The Foundation has enrolled 1,076 farms in the program covering 169,977 acres, which is 34% of the remaining farmland in Delaware.
2. The Foundation has purchased preservation easements on 808 farms comprised of 116,223 acres, which is 24% of the remaining farmland in Delaware. By County,

20% of the available farmland in New Castle County, 35% of the available farmland in Kent County and 15% of the available farmland in Sussex County, have been protected by easements.

3. As a result of the highest percentage donation or discount selection system used the average cost of purchasing preservation easement statewide has been \$1,793 per acre. In New Castle County the cost has been \$2,546 per acre, in Kent County it has been \$1,499 per acre, and in Sussex County it has been \$1,985 per acre.
4. The donation or discounting has averaged 56%, and there are 321 properties comprised of 38,036 acres eligible to participate in the next yearly round of easement purchases, subject to the availability of funding.

The regulations subject to the enclosed draft proposal were last revised in June, 1999. Prior to that time the enabling legislation was revised in 1998 to provide for a priority for the establishment of preservation districts and the purchase of preservation easements in areas located near and adjacent to designated growth zones. At the time that the regulations were revised in 1999, only Kent County had mapped an identified growth zone, and New Castle County and Sussex County had not per se designated growth zone areas. In considering the prioritization of purchasing preservation easements in areas located near and adjacent to growth zones the Foundation recognized in the 1999 regulations that the appraisal methodology used to determine the value of development rights significantly favored properties located in areas prone to development, and the employment of that methodology has proven to be the case. Under the regulations the Foundation adopted an appraisal approach which determined the development rights or preservation easement value as the difference between the fair market value and the farm only value based on income capitalization calculations. The fair market value of properties near and adjacent to development areas are higher than those in other areas, while under the

income capitalization calculation the farm only value is the same no matter where the property is located. The result is that landowners near and adjacent to areas prone to development receive more money per acre for the sale of their development rights than others.

The benefits of the appraisal methodology used to encourage farmland preservation in areas prone to development are best illustrated by reviewing easement purchases within one-half (1/2) mile of designated growth zones in each County. In New Castle County 24% of the purchased preservation easement acreage was within the one-half (1/2) mile area, while 27% of the available monies was spent for preservation easements in such area. In Kent County the comparison is 17% of acreage and 20% of monies spent. In Sussex County the relative percentages are 34% of acreage and 35% of monies spent. In considering this statistical information it is important to note that the landowners within the one-half (1/2) mile area have always had the option of not participating in the program and selling their land for development at prevailing real estate prices.

The Foundation recognizes that beyond the appraisal methodology utilized, no other specific criteria has been adopted which would serve to prioritize the purchase of preservation easements near and adjacent to growth zones. Accordingly, as an added incentive, the staff of the Foundation is proposing to modify the highest donation or discount selection system for purchasing preservation easements by adding an allowance for a 5% adjustment to the percentage discount offers submitted by eligible landowners with property located in whole or in part in an area one-half (1/2) mile outside designated growth zones for each County. The adjustment would create a preference in the selection process and serve to provide a 5% increase in the purchase price for the preservation easement, both of which would serve as a further advantage to participating landowners in such priority areas.

The Foundation has also been charged with adapting, after consultation with the Advisory Boards and others, a statewide agricultural lands preservation strategy to be used along with other considerations in purchasing preservation easements. The strategy has been influenced by legislative changes which include the referenced matching funding requirement, the allowance of expansions of Districts for farms with less than 200 acres but which are located within 3 miles of a District, and the focus on farms located near and adjacent to growth areas. Currently there are no farms which because of the size or location are not eligible to participate in the program if they have a LESA score of at least 170. A change in the strategy is proposed to reflect these developments.

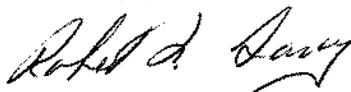
The enclosed proposed regulations also are designed to simplify the existing regulations and eliminate any confusion regarding the manner in which the Foundation has been operating the preservation easement program under the regulations. The maps of the growth zones for each County with the one-half mile preference area are attached to the draft proposed regulation and such maps also now form the basis for the statewide strategy map. The referenced current growth areas shown have been identified by the various County planning and zoning offices.

Overall the intent of these proposed revisions to the regulations and strategy is to facilitate the continued protection of Delaware's remaining farmlands through the purchase of preservation easements so as to assure the farming will continue to be a major industry in Delaware, while creating added incentives to landowners located near and adjacent to areas prone to development to voluntarily choose the alternative of preserving their farmland rather than selling it for

development. The Foundation proposes to continue to pursue these objectives in a manner which is considered to be a cost effective means of utilizing taxpayer monies.

If requested, members of the Foundation staff would be willing to meet with Advisory Board members to respond to any questions regarding the Agricultural Lands Preservation Program and the proposed regulations and strategy. Your response should be addressed to Austin Short, Deputy Secretary of the Department of Agriculture, at the above address.

Sincerely yours,



Robert F. Garey
Chairman

RFG/rv

Enclosures

cc: Members – Foundation Board
Honorable Edward Kee, Secretary
Honorable Austin Short, Deputy Secretary
Joseph Jackewicz, Jr., Kent Co Ag Advisory Board
John Papen, Kent Co Ag Advisory Board
Raymond Stachecki, Kent Co Ag Advisory Board
Robert C. Thompson, Kent Co Ag Advisory Board

**DELAWARE
AGRICULTURAL LANDS PRESERVATION FOUNDATION**

PROPOSED REGULATIONS

AGRICULTURAL LANDS PRESERVATION PROGRAM

PREAMBLE

The Agricultural Lands Preservation Act ("Act") was enacted on July 8, 1991 and provided for the creation of the Agricultural Lands Preservation Foundation ("Foundation"). The Foundation has been charged with the authority and responsibility of establishing and administering an extensive statewide program to preserve Delaware's farmlands and forestlands. Included in its responsibilities is the adoption of criteria for the establishment of and maintenance of Agricultural Preservation Districts ("Districts") and adoption of criteria for the purchase of agricultural lands preservation easements ("Preservation Easement") 3 Del.C. §904(a) and (b). These regulations are intended to provide guidelines and simplification regarding the manner in which the Agricultural Lands Preservation Program is administered.

1.0 Criteria for District Eligibility

- 1.1 In order to qualify for the Agricultural Lands Preservation Program, the lands proposed as an Agricultural Preservation District in the application must meet the following minimum criteria:
 - 1.1.1 owner(s) shall hold fee simple title to all land to be placed in a District and must be actively using the property for "agricultural and related uses";
 - 1.1.2 must constitute at least 200 acres of contiguous farmland or lesser acreage if the farmlands are located within three (3) miles of an established District;
 - 1.1.3 shall be zoned for agricultural purposes and shall not be subject to any major subdivision plan;
 - 1.1.4 applicant(s) including all fee simple title holders, must sign a written agreement committing to District restrictions set forth in this Section and 3 Del. C. §909 and other adopted requirements;
 - 1.1.5 must be viable and productive agricultural land comprising a farm property unit and meet the minimum County Land Evaluation and Site Assessment (LESA) scoring requirements for eligibility as established by the Foundation; [3 Del. C. §908(a)(3)]
 - 1.1.6 must include all of the eligible real property located in the tax parcel or tax parcels subject to application.
- 1.2 For the purposes stated in this chapter, the phrase "viable and productive agricultural land" is defined as land that qualifies under provisions of the Farmland Assessment Act. [9 Del. C. §8329 - 8333]
- 1.3 The minimum LESA score for an eligible District or Expansion shall be 170 points out of a possible 300 points for each county in the State as computed under the currently approved LESA program of the Delaware Department of Agriculture.

- 1.4 The LESA score for agricultural lands is the primary factor in evaluating the eligibility of agricultural lands for inclusion in Districts and expansions, including the eligibility for purchase of preservation easements.

2.0 Application Procedures

- 2.1 The Foundation will provide application forms on which applicants who volunteer to place their lands into an Agricultural Preservation District will provide such information as the Foundation deems appropriate.
- 2.2 The Foundation shall provide assistance to potential applicants in completing application forms when requested.
- 2.3 Foundation staff may conduct on-site inspections and/or phone interviews with the applicants to acquire data necessary to perform LESA analyses and write a staff report.
- 2.4 In conjunction with the application, all fee simple owners shall sign a District Agreement in such form as deemed acceptable by the Foundation and which serves as a declaration in recordable form of acknowledgment of the policies and restrictions that must be followed, and benefits realized in a District.

3.0 Application Review Procedures

The Foundation has the authority to approve applications establishing Agricultural Preservation Districts and the authority to purchase preservation easements. [3 Del. C. §904]

- 3.1 The Foundation staff will review applications and determine whether or not the minimum eligibility requirements under Section 1.0 have been met.
- 3.2 If the minimum eligibility requirements have not been met, then the applicant will be notified by letter from the Foundation indicating that the application does not qualify for further review, and the reasons for ineligibility.
- 3.3 If an applicant excludes a portion of property otherwise includable in a proposed District, then the Foundation may deny the application, unless the property proposed for exclusion is not otherwise eligible for inclusion due to the use of the property at the time of the application.
- 3.4 Subject to Section 3.3 above, if the lands proposed as a District in the application (200 or more acres) meet minimum eligibility criteria, then the Foundation staff will submit to the Foundation, the County Farmland Preservation Advisory Board and the County Planning and Zoning Authority, applications and an indication that the application meets the minimum eligibility requirements.
- 3.5 If the applicant disagrees with the staff evaluation of the proposed District, then the applicant may contact the Foundation staff to discuss the application review. Foundation staff will meet with the landowner to discuss the review within thirty (30) days from receiving formal contact from the applicant.
- 3.6 If the issue is not resolved to the applicant's satisfaction, the applicant may request an

administrative review with the Foundation by submitting a letter to the Foundation within fourteen days (14) of the applicant's last meeting with Foundation staff.

- 3.7 This letter must include reasons and documentation to justify the applicant's claim(s).
- 3.8 The Foundation will schedule a meeting and notify the applicant by certified letter of the date, time, and place of the meeting.
- 3.9 At the administrative review meeting, the applicant(s) shall present information or documentation as to how the proposed District satisfies the eligibility criteria.
- 3.10 The Foundation will render a decision within thirty (30) days from the administrative review meeting and notify the applicant in writing of its decision.
- 3.11 Owners of real property who have executed a District Agreement or a preservation easement that incorporate the restrictions in effect prior to the Senate Bill No. 333 amendments and who elect to be released from the restrictions set forth in 9 Del. C. §909(a)(2)(b) pursuant to 9 Del. C. §909(a)(4)(c), shall comply with the following requirements:
 - 3.11.1 Owners who have executed a district agreement and who wish to designate up to three residential lots shall designate the allowable residential acreage in sufficient detail to enable the Foundation to determine the location of the residential acreage, and while a survey may be submitted, a survey shall not be required. The Owner shall execute an amendment to the Owner's District Agreement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in 9 Del. C. §909(a)(1), (a)(2)(a), (a)(4)(a) and (a)(4)(b).
 - 3.11.2 Owners who have executed a preservation easement and who wish to designate up to three residential lots shall designate the allowable residential acreage in sufficient detail to enable the Foundation to determine the location of the residential acreage and shall submit to the Foundation for its review and approval, at the Owner's expense, an amended survey in recordable form. The amended survey shall show the entire parcel subject to the preservation easement and the location of any residential lots. The Owner shall execute an amendment to the preservation easement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in 9 Del. C. §909(a)(1), (a)(2)(a), (a)(4)(a) and (a)(4)(b).

4.0 Creation of a District

- 4.1 To establish an Agricultural Preservation District, the application must be approved by two out of three of the entities listed under Section 3.4 of these regulations.
[3 Del. C. §907(c)]
- 4.2 After review by the Foundation, the application is subject to a review period of thirty (30) days in which the Secretary of Agriculture may reject the application. The application is officially approved at the end of the review period, if it is not rejected by the Secretary of Agriculture. [3 Del. C. §919]

- 4.3 The property legally becomes a District when the applicant and Foundation Chairperson (or designee) have signed the District Agreement and no rejection has been exercised by the Secretary of Agriculture, or the Secretary of Agriculture has waived the right of rejection.
- 4.4 Copies of the District Agreement shall be filed with the County Planning and Zoning and Tax Assessor's Offices and recorded in the Office of the Recorder of Deeds. The Foundation shall require from these Offices proof of recording and/or receipt of the District Agreement.
- 4.5 The Foundation shall endeavor to provide written notification of the date of establishment of the Agricultural Preservation District and provide a copy of the District Agreement to the applicant, however, the failure of the Foundation to satisfy any formality following execution of a District Agreement shall not affect the validity of the District Agreement.

5.0 District Restrictions

- 5.1 Any rezoning or major subdivision of real property included in an Agricultural Preservation District is prohibited. [3 Del. C. §909(a)(1)]
- 5.2 The submission of applications or preliminary rezoning or subdivision plans for any property within an Agricultural Preservation District to a county or municipality shall be considered evidence of the intent to rezone or subdivide and no action shall be taken by any county or municipality on any such application until the expiration of the District Agreement.
- 5.3 During the term of the District Agreement, the property shall be used for "agricultural and related uses" and shall be used in such a way so that the property continues to qualify as "viable and productive agricultural land" as defined under provisions of the Farmland Assessment Act. [9 Del. C. §8329 - 8333] No more than 1 acre of land for each 20 acres of usable land, subject to a maximum of 10 acres, shall be allowed for dwelling housing. For purposes of calculating the number of acres allowable for dwelling housing, fractions of any acre shall not be allowed. By way of example, if a farm consists of 45 acres of usable farmland, the number of acres allowed for dwelling housing shall be 2, and not 2.25.
- 5.4 The phrase 'agricultural and related uses' shall have the meaning set forth in 3 Del. C. §909, as the same may be amended from time to time.
- 5.5 Excavation or filling, borrow pits, extraction, processing and removal of sand, gravel, loam, rock or other minerals is prohibited unless such action is currently required by or ancillary to any preparation for, or operation of any activities including, but not limited to: aquaculture, farm ponds, cranberry operations, manure handling facilities, and other activities directly related to agricultural production.
- 5.6 Activities that would be detrimental to drainage, flood control, water conservation, erosion control or soil conservation are prohibited.

- 5.7 Any other activity that might negatively affect the continued agricultural use of the land is prohibited.
- 5.8 The term "usable land owned in the district" [3 Del. C. §909(a)(2)], shall be defined as any land meeting the requirements for agricultural, horticultural or forest land in the Farmland Assessment Act of 1968 [9 Del. C., Chapter 83] and [3 Del. C. §403] or criteria for farm definition as established by the National Agricultural Statistics Service.
- 5.9 The District Agreement and District requirements and benefits shall be binding on the heirs, successors and assigns of property owners of lands within a District. A property owner in a District shall provide written notice to the Foundation of any proposed transfer of property subject to the District Agreement at least ten (10) days in advance of the transfer, and shall give written notice to any successor or assign at least ten (10) days in advance of the date of transfer of the property that the property is subject to District restrictions. The party taking title shall execute a document as required by [3 Del. C. §909(a)(2)c.] acknowledging the acreage allowed for dwelling housing and the restrictions which apply to the property. The failure of the property owner to notify the transferee as provided herein shall not affect the transferee's obligation to comply with the terms and conditions of the District Agreement upon the transfer of title.
- 5.10 Under 3 Del. C. §909(a)(3), all restrictions shall be covenants which run with and bind the lands in the District for a minimum of ten (10) years, beginning when the District Agreement takes effect as specified in the District Agreement.

6.0 Continuation of a District

- 6.1 All properties are to remain in an Agricultural Preservation District for at least ten (10) years, subject to the allowance of hardship exceptions for exclusion of dwelling housing pursuant to 3 Del. C. §909(a)(2)(b) and Section 9 of these guidelines.
- 6.2 If a landowner wishes to withdraw from, or terminate a District, then the Foundation must receive a written notice of intent to withdraw no less than six (6) months prior to the ten (10) year anniversary date of initial establishment of the District. [3 Del. C. §909(b)]

If the Foundation does not receive a written notification of the landowner's intent to withdraw from the District six (6) months prior to the ten (10) year anniversary date of that District, then the land shall remain in the District for an additional five (5) year period unless and until notice of intent to withdraw shall be given six months prior to the end of each additional five-year period.

7.0 Expansion of a District

- 7.1 An Agricultural Preservation District can be expanded for the purpose of preserving additional lands. Lands added to a District may be under 200 acres.[3 Del. C. §907(d)]
- 7.2 Land which is less than 200 usable acres, yet meets the other criteria established by the Foundation, is eligible to be an expansion ("Expansion") of an Agricultural Preservation District if it is within three (3) miles of any portion of an established Agricultural Preservation District. [3 Del. C. §907(a)]

8.0 Inspection of Districts

The Foundation has the authority to enter upon lands as may be necessary to perform surveys, appraisals, and investigations to accomplish the purpose of the program, consistent with applicable statutes.

[3 Del. C. §904(b)(14)]

- 8.1 The Foundation or its designee reserves the right to inspect restricted land and enforce agreements on its own behalf.
- 8.2 If any violations of the terms and the conditions of the District Agreement occur, the Foundation may institute proceedings in the appropriate court to enforce the terms and seek appropriate relief. [3 Del. C. §920(a)]

9.0 Dwelling Property Hardship Exceptions

Except as set forth in Section 9.7 hereof, owners of real property who have executed a District Agreement or a preservation easement that incorporate the restrictions in effect prior to the Senate Bill No. 333 amendments are entitled to apply to the Foundation for a hardship exception allowing for the transfer of dwelling property to parties who are not otherwise entitled to residential use of the dwelling property under the District Agreement or Preservation Easement, subject to the provisions of 3 Del. C. §909(a)(2)(b) and the following requirements.

- 9.1 An applicant for a hardship exception shall submit the following information in writing to the Foundation:
 - 9.1.1 name and property interest of applicant in the dwelling property;
 - 9.1.2 acreage of the dwelling property subject to application;
 - 9.1.3 date on which the District was established;
 - 9.1.4 number of dwellings and acreage of residential use currently on the property in the District;
 - 9.1.5 the nature of the hardship condition and reasons justifying the granting of a hardship exception;
 - 9.1.6 the extent to which the hardship condition is unavoidable.
- 9.2 The Foundation shall consider hardship conditions involving the following circumstances:
 - 9.2.1 the sale or transfer of the dwelling property compelled by foreclosure, court order, or marital property division agreement;
 - 9.2.2 the sale or transfer of the dwelling property compelled by job transfer;
 - 9.2.3 the sale or transfer of the dwelling property compelled by health conditions;
 - 9.2.4 the sale or transfer of the dwelling property required to avoid insolvency or

bankruptcy; and

- 9.2.5 other circumstances of an unusual and extraordinary nature which pose a practical hardship to continued ownership of the dwelling property and which are unavoidable.
- 9.3 Hardship exceptions will not be granted when no real hardship exists and the primary consequence of the sale or transfer of the dwelling property is financial gain.
- 9.4 The applicant shall bear the burden of establishing the existence of hardship circumstances, and shall provide to the Foundation documentation in support of the application, and any documentation requested by the Foundation, provided however, that documentation involving privileged information may be submitted on a confidential basis.
- 9.5 The Foundation may require the applicant for a hardship exception to appear before the Foundation Board to present the application, and an applicant shall be entitled to appear before the Board to make a presentation by submitting a written request to the Foundation.
- 9.6 The granting of a hardship exception by the Foundation shall be subject to the following conditions:
 - 9.6.1 the dwelling property following transfer shall be used only for residential purposes;
 - 9.6.2 the transferred property shall not qualify for District benefits or benefits of Preservation Easements;
 - 9.6.3 if the transferred property is subject to a Preservation Easement prior to transfer, payment shall be made to the Foundation in an amount equal to twenty-five (25) percent of the current fair market value of the land subject to transfer;
 - 9.6.4 the transferee shall execute a Declaration in recordable form as prescribed by the Foundation which includes the acreage allowed for dwelling housing and the restrictions which apply to the real property;
 - 9.6.5 the Foundation may require the transferor to execute a Declaration in recordable form as prescribed by the Foundation to evidence the status of allowable dwelling housing property on lands retained by the transferor which are in the District or subject to a Preservation Easement; and
 - 9.6.6 such other terms and conditions considered necessary by Foundation to address the nature of the hardship condition.
- 9.7 The hardship provisions set forth herein shall not apply to the owners of real property who, pursuant to 3 Del. C. §909(a)(4)(c), have elected to be released from the restrictions of 3 Del. C. §909(a)(2)(h).

10.0 Delaware Farmland Preservation Fund

The Delaware Farmland Preservation Fund, hereinafter referred to as the "Fund", was enacted under 3 Del. C. §905 for the exclusive application by the Foundation to achieve the desired goals of preserving viable agricultural lands and conducting the business of the Foundation.

11.0 Sources of Funding

- 11.1 The Foundation may accept donations, property, or development rights as gifts and monetary gifts from any source, public or private.
- 11.2 Monies not needed on a current basis by the Foundation may be invested with the approval of the Board of Trustees.
- 11.3 The Fund is subject to an annual audit to be prepared by an independent, certified public accountant. The findings of all audits shall be presented to the Board.
- 11.4 The Foundation shall manage the monies appropriated to it by the General Assembly in accordance with the terms of the appropriations.

12.0 Criteria for Purchase Agricultural Lands Preservation Easements

- 12.1 The criteria for eligibility of acquisition of a Preservation Easement shall be the same as the criteria for district eligibility. In addition, offered preservation easement lands shall be in an established district and in compliance with district requirements to be eligible. The Foundation shall have the right, in its sole discretion, to acquire a Preservation Easement on only a part of the property included within the District Agreement.
- 12.2 The prioritization and selection of properties for the purchase of preservation easements shall be as set forth in Sections 13 thru 20 inclusive hereof.

13.0 Matching Contributions to the Program

The Foundation may establish a reserve or set aside of available funds for the matching of federal, county, local, or private funds for the preservation of farmland. The Foundation may allow the entity providing matching funding to select the qualified properties for purchases of easements using the matching funding notwithstanding provisions of these regulations regarding selections. The Foundation has the discretion, but is not required, to match contributions.

14.0 Schedule for Acquisition of Agricultural Lands Preservation Easements

- 14.1 Application and funding cycles will take place on schedules established by the Foundation.
- 14.2 Applications for the purchase of Preservation Easements in Rounds of Purchases shall be subject to deadlines established by the Foundation.
- 14.3 For each Round of Preservation Easement Purchases the Foundation shall arrange for the appraisal of the Preservation Easement value of those properties under consideration.
- 14.4 Upon completion, the appraisals shall be provided to the landowners, and procedures set

forth herein involving offers for the sale of preservation easements under Option Agreements shall be initiated.

14.5 Offers received shall be held confidential until all offers are received after which the Foundation shall review the offers and announce the selections.

14.6 Following the selection of properties for acquisition of Preservation Easements, the Foundation shall arrange for surveys of the properties to be conducted, and proceed to settlement under the terms of the Option Agreements, subject to the availability of funding and satisfaction of regulatory, financial or other restrictions or limitations.

14.7 The Foundation is under no obligation to purchase a Preservation Easement which is offered for sale. [3 Del.C. §913.]

15.0 Application Procedures

15.1 A separate application shall be required for each farmland tract (operating farm unit) offered for Preservation Easement purchase. The Foundation shall not be obligated to process any incomplete application.

15.2 The Foundation shall develop, and make available to landowners or other interested parties, an application form for use in offers to sell Preservation Easements.

15.3 The Foundation shall review the application to determine if it is complete.

16.0 Appraisals [3 Del. C. §916]

16.1 An offer to purchase a Preservation Easement shall be based upon one or more appraisal reports which estimate the full market value of the land under its agricultural zoning designation and the agriculture-only value of the farmland tract. The agricultural only value shall be based on an income capitalization methodology. Any appraisal obtained by the Foundation shall constitute the property of the Foundation and may not be used by the property owner for tax or other purposes. All categories of land located in the farmland tract shall be eligible for easement purchase and shall be appraised

16.2 The value of buildings or other improvements on the farmland tract shall not be considered in determining the Preservation Easement value. Excluded from the value of the Preservation Easement shall be any acreage designated or eligible to be designated by the owner for residential use pursuant to 3 Del. C. §909(a)(4)(a), provided however, the landowner shall have the right to waive eligible residential usage in which case the development rights value of the waived acreage shall be included.

16.3 The appraiser shall be:

16.3.1. An independent, licensed real estate appraiser who is qualified to appraise a property for easement purchase. An appraiser shall be selected on the basis of experience, expertise and professional designation; and

16.3.2. A member of an organization which subscribes to the "Uniform Standards of Professional Appraisal Practice" published by the Appraisal Standards Board of the Appraisal Foundation, and shall follow their ethical and professional

standards.

16.4 The appraiser shall supply a narrative report which shall contain such information as required by the Foundation.

17.0 Agricultural Lands Preservation Easement Value and Purchase Price

17.1 The value of a Preservation Easement in perpetuity shall be the difference between the full market value and the agriculture-only value contained in the appraisal report.

17.2 The price paid by the Foundation for the purchase of a Preservation Easement may not exceed, but may be less than, the value of the Preservation Easement. [3 Del. C. §916(a)]

17.3 If the applicant is not satisfied with the appraisal provided by the Foundation, the applicant shall be entitled to have an independent appraisal performed at the applicant's expense by a qualified appraiser as specified in Section 16.3. The alternative appraisal shall be prepared in the same format as the Foundation's appraisal and shall be submitted to the Foundation within forty-five (45) days of the applicant's date of receipt of the appraisal provided by the Foundation. The forty-five (45) day period may be extended by the Foundation, provided the time extension does not delay the time frame established by the Foundation for making selection and acquisition decisions.

17.4 The review of the alternative appraisals by the Foundation shall be based on written submissions under such procedures as specified by the Foundation. The maximum adjusted Preservation Easement value which the Foundation will accept is the difference between the agriculture-only value and the full market value, determined as follows:

17.4.1 The agriculture-only value shall equal the sum of:

- i. The agriculture-only value determined by the applicant's appraiser; and
- ii. Up to one-half of the positive difference between the agriculture-only value determined by the Foundation's appraiser and his/her values which exceed those determined by the applicant's appraiser.

17.4.2 The full market value shall equal the sum of:

- i. The full market value determined by the Foundation's appraiser; and
- ii. Up to one-half of the positive difference between the full market value determined by the applicant's appraiser and his/her values which exceed those determined by the Foundation's appraiser.

18.0 Offer of Purchase by the Foundation

18.1 The Foundation has the authority to incorporate bidding and/or negotiation as part of the procurement process. [3 Del. C. §915]

18.2 In reviewing the offers of applicants to sell Preservation Easements to the Foundation, the Foundation shall, subject to consideration of any alternative criteria by the Foundation to satisfy special objectives, select those offers providing the highest level of

percentage donation or percentage discount to the finally appraised value of the Preservation Easement, in accordance with the procedures and requirements of this Section. As an additional incentive, if any part of the applicant's property subject to the offer is located in whole or in part within one-half (1/2) mile completely outside of any growth zone of the County in which the Property is located, or in whole or in part within one-half (1/2) mile completely outside of the boundary of an incorporated town, municipality or city, for the sole purpose of ranking said application, the Foundation shall increase the offered percentage discount by five percent (5%). By way of example, if an applicant's offer includes a discount of sixty percent (60%), and the applicant's property is located in whole or in part within one-half (1/2) mile completely outside of the specified areas, for ranking purposes, the applicant's discount shall be deemed to be sixty-five percent (65%). If the applicant's property is selected for purchase of a preservation easement, the purchase price for the preservation easement shall incorporate a discount of only sixty percent (60%). The locations of the growth zones referenced by the Counties and the one-half (1/2) mile surrounding areas are as shown in Appendix "A" attached hereto.

- 18.3 The Foundation shall entertain offers in the form of Option Agreements from all eligible applicants who wish to submit offers, and after all offers are received, list the offers with the highest to the lowest level of percentage donation or percentage discount to the finally appraised value of the Preservation Easement with any adjustment to the offered donation or percentage discount as specified in Section 18.2 above.
- 18.4 Prior to releasing information to the public regarding the percentage of any discount or donation provided by a landowner the Foundation shall notify the landowner, identifying the requesting party, and obtain permission from the landowner prior to releasing the requested information. Otherwise, the information shall not be disclosed.
- 18.5 The Foundation may, but shall not be required to, allow a property owner in a District to submit an offer to sell a preservation easement on a portion of the real property in a District.

19.0 The Agricultural Lands Preservation Easement

- 19.1 The owners of the subject farmland tract shall execute a document conveying the Preservation Easement which document shall be in a form which contains conditions contained in Option Agreements executed by landowners.
- 19.2 The document shall be in recordable form and contain:
 - 19.2.1. A legal description setting forth the metes and bounds of the farmland tract subject to the Preservation Easement.
 - 19.2.2. At least one course and distance referencing a fixed marker or monument of a type commonly placed in the field by a surveyor.
 - 19.2.3 The legal description shall not contain a closure error greater than one foot per 200 linear feet in the survey.
 - 19.2.4 The survey of the farmland tract on which a Preservation Easement is to be

purchased shall show each of the residential lots, if any, designated by the owner pursuant to 9 Del. C. §909(a)(4)(a).

20.0 Title Quality

The Preservation Easement conveyed to the Foundation shall be unencumbered except for standard exceptions and be capable of being insured as such by an established and recognized title insurance company doing business in the State of Delaware. Any title defects, liens, survey discrepancies, boundary line disputes, or similar title issues shall be resolved by the property owner, at the property owner's sole expense. If subsequent to the purchase of a Preservation Easement it is determined that the amount of acreage is less than as reflected on the survey used by the Foundation for purposes of calculating the purchase price for the Preservation Easement, the property owner shall be required to refund to the Foundation any excess funds paid in reliance upon the inaccurate survey.

21.0 Residential Lots

Senate Bill 333 imposes alternative restrictions on the limited residential use of property subject to a District Agreement or Preservation Easement by replacing the unlimited number of residential dwellings allowed for owners, relatives of owners, and farm labor, with a total limit of three dwellings which can be occupied by any person. The overriding limitation of residential use of 1 acre for 20 acres of usable farmland (subject to a maximum of 10 acres) was left unchanged. Accordingly, owners can now designate up to three residential lots on District Property or Preserved Property. With respect to the designation of the residential lots allowed under Senate Bill 333, the following additional guidelines shall apply:

- 21.1 The acceptance by the Foundation of the designation of a residential lot does not mean that the location of the lot and proposed residential use complies with any applicable zoning rules or regulations, or that a lot is suitable for residential use. Owners are encouraged to conduct such investigations and perform such tests as they deem appropriate to ascertain whether or not any designated lot will be suitable for residential use and complies with all applicable land use regulations, including zoning laws.
- 21.2 The Foundation recognizes that at times, due to circumstances beyond the control of the owner, it may be necessary for the owner to change the location of a lot. As a matter of policy, the Foundation will allow such changes subject to the following requirements:
 - 21.2.1 No change in the location of a lot or size of a lot shall be allowed which would cause the number of lots or amount of residential acreage to be in excess of that otherwise allowed under the terms of the District Agreement or Preservation Easement.
 - 21.2.2 With respect to property subject to a Preservation Easement, the owner shall cause to be prepared, at the owner's expense, an amended plot plan showing the entire parcel subject to the Preservation Easement and the location of each residential lot.
 - 21.2.3 The owner shall execute an amendment to the District Agreement or Preservation Easement, which amendment shall reflect the change in the location or size of the residential lots, and which shall reference the amended plot plan.

22.0 Strategy Map

The farm lands shown on the Strategy Map attached hereto as Appendix "B" which have a LESA Score of at least 170 are targeted for inclusion in Districts, and those qualified farms located in whole or in part one-half (1/2) mile completely outside of any growth zones designated under these regulations shall be further prioritized by the donation or discount advantage for such properties provided under Section 18.2 of these regulations.

Vaughn, Rebecca (DDA)

From: Eric Buckson <Eric.Buckson@CO.KENT.DE.US>
Sent: Thursday, June 18, 2015 12:03 PM
To: bthompson671@comcast.net; tatogrwr@gmail.com; jjackew@msn.com; Vaughn, Rebecca (DDA)
Cc: Short, Austin (DDA)
Subject: Re: Follow Up: Delaware Agricultural Lands Preservation Foundation Proposed Regulations

Hi Rebecca- I had the opportunity to speak with Robert Gorey last month regarding the proposed changes. He indicated that unless I had concerns no response was required. My apologies if I held up the process up in any way. Based on my understanding of the request for revisions I would support it.
Sincerely, Eric Buckson

>>> "Vaughn, Rebecca (DDA)" <Rebecca.Vaughn@stote.de.us> 06/17/15 15:40 PM >>>
Good afternoon,

Attached please find a letter dated today following up from a mailing that was sent to you on or after April 17, 2015. The letter is regarding the proposed regulations for the DE Agricultural Lands Preservation Foundation. I also attached the contents of the April 17th packet..

A hard copy of this correspondence is being mailed to your home address.

Mr. Jackewicz, please note that we did receive your feedback - thank you!

Regards,

Rebecca L. Vaughn
Admin Specialist II - DALPF
DE Department of Agriculture
302-698-4531
rebecca.vaughn@stote.de.us<<mailto:rebecca.vaughn@stote.de.us>>

Joseph Jackewicz, Jr., member, Kent County Ag Advisory Board
156 Crescent Drive
Dover, Delaware

Mr. Austin Short, Deputy Secretary, Delaware Department of Agriculture
2320 South DuPont Highway
Dover, Delaware 19901

Dear Mr. Short,

At the direction of Chairman Robert F. Garey, Delaware Ag Lands Preservation Foundation, a few comments are being submitted by me as a member of the Ag Lands Foundation Kent County Advisory Board concerning the proposed regulation changes in the Foundation's criteria for selecting Preservation Easements.

In the information provided by Chairman Garey, it is a stated objective of the Foundation to require landowners to offer at least a 20 percent discount in their bids in order to qualify for state funding, a major source of money for the Foundation's program. A stated benefit of this donation or discounting approach has been described as "removing any subjectivity or outside influence, political or otherwise, in the selection process." This method of "openly competitive highest percentage donation or discount system" for the "past 19 years" is "recognized nationally as a success."

Now with the county and state planning offices releasing new periodic updated maps showing anticipated growth zones for development, attention is given to a proposed 5% increase adjustment award by the Foundation to chosen applicants with parcels or parts of parcels of land within a half mile area outside a county designated growth zone. There are some concerns with this proposal.

First, the stated benefit of the current approach is the removal of subjectivity in the selection process. The new proposal alters that benefit by putting a dollar value on the location of fluid lines on a map that has been required by the state to be updated every 5 years. The determination of land within or near the half-mile zone will not be absolute since lines on the map do not follow natural or other boundaries. Greater subjectivity in the selection process will result. The future locations of the zone itself is subject to influence on county and/or state planners.

Second, in measuring the difference between development value of land versus farming value, the housing market will determine the scale of difference more than agricultural income. Choosing a number of 5 percent seems an insufficient and inflexible number considering how fast the housing market changed in recent years, both up and down. In the future, the Foundation Board may need to rely more on appraisals and comparable sales as an indicator of relative market value near growth zones.

Granted, during the most recent boom and bust cycle of the housing market, appraisals over six months old were considered stale information by home loan lenders. So with the next coming era of development pressure on farmland, as those designated growth zone boundaries magnify the opposite sides of land use, the Foundation may have little choice but to decide, subjectively and with the most current information, which parcels to award easements next to a growth zone.

An alternative solution is to leave the program guidelines (regulations) as they are, presently. The Foundation, however, may ultimately be forced to leave this "comfort zone" of objectivity if it wants to seriously consider preserving land close to development areas.

Sincerely,



Joseph Jackewicz, Jr.

Kent County Aglands Advisory Board member

cc: Robert F. Garey, Chairman

Delaware Agricultural Lands Preservation Foundation



DELAWARE AGRICULTURAL LANDS
Preservation Foundation

2320 South duPont Highway
Dover, Delaware 19904

TEL: 302-698-4530
Toll Free: 800-282-8685 (DE only)
FAX: 302-677-7093

July 16, 2015

Mr. Joseph Jackewicz, Jr.
156 Crescent Drive
Dover, DE 19904

RE: Kent County Farmland Preservation Advisory Board – Advisory Board Comments -
Agricultural Lands Preservation Board Response

Dear Mr. Jackewicz:

Thank you for the comments you provided as a member of the Kent County Farmland Preservation Advisory Board regarding the proposed changes to the Foundation's regulations. In accordance with the provisions of 3 Del.C. §906(c), the following response is provided on behalf of the Foundation Board.

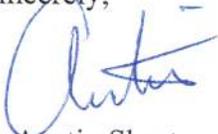
One of your comments was whether the Foundation could maintain the objectivity of the selection process if the proposed five percent adjustment is added to competitive offers made by landowners located within the one-half mile areas adjacent to the county designated growth zones. We recognize that growth zone designations made by counties can change over time, which may prompt further changes to the regulations. However, the process of selecting properties for easement purchases will remain objective to the extent that, after the adjustment to offers within the one-half mile areas, the Foundation will continue to use the highest percentage discounts (donations) as the sole criteria for making easement purchases using state and federal matching monies until the available funds are exhausted. If counties contribute monies to the state program, they are allowed to select which easement properties they will fund using their own criteria. Likewise, the Foundation has not been subjective in designating growth zones since the Foundation has accepted growth zone designations made by the counties.

You also indicated that the five percent adjustment seemed insufficient to encourage easement sales for properties near growth zones with high market values. We recognize that landowners voluntarily participate in the Aglands Preservation Program and therefore an individual landowner's decision to preserve or develop a property will involve many factors and personal considerations. It is not the intent of the program to compete with development as that approach would require a level of funding which is unavailable, but instead to strike a balance that protects agriculture as a viable industry to Delaware's economy both now and in the future. The Foundation is required to establish a priority for lands near and adjacent to growth zones but there is no specific stipulation as to how to implement that priority. As indicated in our letter to you with the proposed regulations, the priority to date has been the appraisal methodology which favors farm properties which are prone to development. For example, of the 61,292 acres of

farmland in Ag land preservation easements in Kent County, 17 percent of these lands are located within one-half mile outside of the Kent County designated growth zone. Adopting a five percent adjustment to the current competitive proposal process will serve as an additional incentive to prioritize selections in the subject one-half mile areas.

We very much appreciate your observations and thoughtful comments. The Foundation intends to proceed to public hearing with the proposed changes to the regulations. Your letter and this response will be made part of the record. Also please remember that you can also participate in the public hearing process regarding review of the proposed regulation changes.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin Short", written over the word "Sincerely,".

E. Austin Short

cc: Robert Garey, Chairman
Ed Kee, Secretary

Tony Domino
1065 Port Penn Road
Middletown, DE 19709



September 18, 2015

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904

Mr. Hearing Officer,

My name is Tony Domino and I live at 1065 Port Penn Road, Middletown, DE 19709, in New Castle County. I cannot attend the hearing because I will be out of state but I want my comments in this letter to be part of the record. The notice in the newspaper indicated I should send this letter to you at your address.

I own 2 farms in the Port Penn area and one of them is under a District Agreement with the state farmland preservation foundation. I fully support the state program and what it has accomplished over the past 20 years and have said so at a foundation meeting.

I believe the proposed regulations are fair. Using a bidding process to select farms for preservation is the best way to use taxpayer monies when the money for preservation easements is limited. Choosing the farms based on percentage discounts offered by all interested farm owners is the right way to do it, not selection based on a few high priced farms owned by some handpicked individuals based on politics as is the case with the New Castle County program.

I also believe the state appraised values of the preservation easements in New Castle County are fair and give farmers who really want to preserve their farms an opportunity to do so on a voluntary basis. Preserving as much farmland acreage as possible with available money should be the goal, not spending all the money on a few farms with little acreage. There will never be enough money to use farm preservation to stop development when the program is voluntary and there are so many farms that could be developed. The state program, contrary to some self-serving political comments coming out of the New Castle County government, has been successful in New Castle County. The numbers I have read in the paper indicate that 20% of the available farmland in New Castle County has been protected under the state program. I believe the new regulations and revised bidding process will increase that amount at an affordable cost.

I appreciate the opportunity to comment.

Tony Domino
Tony Domino
Date: 9-18-15

September 21, 2015

Robert Garey, Chairman
Delaware Agricultural Lands Preservation Foundation
Delaware Department of Agriculture
2320 South DuPont Highway
Dover, DE 19901

Re: Proposed changes to Foundation By-Laws

Dear Bob:

While reviewing material in preparation for the hearing on September 23rd about changing the By-Laws, I learned that I should have received notice of these changes sixty days in advance. I did not. I received no notice at all.

Considering how extensive the changes to the By-Laws are, the County Advisory Boards should have been given the opportunity to study them and make suggestions. Therefore, I request that you keep the record open for fifty days following the hearing so that I may convene my board members to study them. We are in the midst of changing members for this county and it is harvest time. I would have preferred to do this in advance, but since the person in charge did not do what is required, I will settle for this solution.

This oversight is not the first State law the Foundation has ignored. Reviewing Title 3, Chapter 9, is a reminder of the choice made by the Foundation Board to ignore mandates in the law and operating procedures that would have been more in line with the requirement for federal sources of funding. Furthermore, initial compliance with the mandate to give priority to the threatened farmland 25 year ago might have prevented the loss of valuable and highly productive farms in New Castle County. Changing the By-Laws in an attempt to hide what you have been doing wrong for decades versus what the law has always stated "SHALL" be done, does not make up for past practices that have sometimes wasted money on poor choices. I hope it signals that the Board is now prepared to reform its system and make improvements in its choices in the future. It is your idea of how to reform that the local advisory boards need to study.

Yours truly,

William E. Powers, Jr., Chairman
New Castle Co. Farmland Preservation Advisory Board

cc: William A. Denman, Esq.
Edward Kee, Secretary, Department of Agriculture

Robert Garey

- 2 -

September 21, 2015

cc con't:

The Hon. John Carney, Member of Congress
The Hon. Thomas P. Gordon, County Executive
The Hon. Rev. Christopher Bullock, President of Council
The Hon. Members of County Council
Stewart Ramsey, President, New Castle County Farm Bureau
The Hon. Bruce Ennis, Senator
The Hon. Bethany Hall-Long, Senator
The Hon. Nicole Poore, Senator
The Hon. Quinton Johnson, Representative
The Hon. Kevin Hensley, Representative
Jeff Montgomery, News Journal
Matt Bittle, Delaware State News

Bill Denman

From: Smiley, George <GSmiley@nccde.org>
Sent: Monday, September 21, 2015 6:18 PM
To: Dillmore, Ruby; Bill Denman; 'Edwin.Kee@state.de.us'; 'Kristy.huxhold@mail.house.gov'; Gordon, Thomas
Cc: Bullock, Christopher; Reda, Joseph; Weiner, Robert; Kilpatrick, Janet; Hollins, Penrose; Diller, Elisa; Cartier, John; Sheldon, Timothy; Street, Jea; Tackett, David; Bell, James; 'Ramsey, Stewart'; Hall-Long Bethany (LegHall) (Bethany.Hall-Long@state.de.us); 'Ennis Bruce (LegHall)' (Bruce.Ennis@state.de.us); nicole.poore@state.de.us; Johnson, Quinton (LegHall) (Quinton.Johnson@state.de.us); Kevin.Hensley@state.de.us; 'jmontgomery@delawareonline.com'; 'mbittle@newszap.com'; 'Vaughn, Rebecca (DDA)'; Powers Jr., William
Subject: RE: Proposed changes to Foundation By-Laws
Attachments: image001.gif

As this is not being sent on behalf of Council and I am not familiar with the referenced Bylaws or changes I have no productive input.

Thank you for asking

George Smiley

New Castle County Council

Seventh District

395-8347 - Office

463-4250 - Cell

395-8385 - Fax

From: Dillmore, Ruby
Sent: Monday, September 21, 2015 3:49 PM
To: 'wdenman@pgslegal.com'; 'Edwin.Kee@state.de.us'; 'Kristy.huxhold@mail.house.gov'; Gordon, Thomas
Cc: Bullock, Christopher; Reda, Joseph; Weiner, Robert; Kilpatrick, Janet; Hollins, Penrose; Diller, Elisa; Smiley, George; Cartier, John; Sheldon, Timothy; Street, Jea; Tackett, David; Bell, James; 'Ramsey, Stewart'; Hall-Long Bethany (LegHall) (Bethany.Hall-Long@state.de.us); 'Ennis Bruce (LegHall)' (Bruce.Ennis@state.de.us); nicole.poore@state.de.us; Johnson, Quinton (LegHall) (Quinton.Johnson@state.de.us); Kevin.Hensley@state.de.us; 'jmontgomery@delawareonline.com'; 'mbittle@newszap.com'; 'Vaughn, Rebecca (DDA)'; Powers Jr., William
Subject: Proposed changes to Foundation By-Laws

Attached is a letter regarding proposed changes to the Foundation By-Laws. Please feel free to contact Councilman Powers if you have any questions or concerns.

Thank you.

Ruby Dillmore

Legislative Aide To Councilman William E. Powers, Jr.
[cid:image001.gif@01CDE752.A1AE9480]
New Castle County Council, 6th District
Louis L. Redding City-County Building
800 North French Street, 8th Floor
Wilmington, Delaware 19801-3590
Phone: (302) 395-8366
Fax: (302) 395-8385
Email: rdillmore@nccde.org<<mailto:rdillmore@nccde.org>>



DELAWARE AGRICULTURAL LANDS
Preservation Foundation

2320 South duPont Highway
Dover, Delaware 19901

Tel: 302-698-4530
Toll Free: 800-282-8685 (DE only)
Fax: 302-677-7093

December 2, 2014

Honorable Chris Bullock, President, New Castle County Council
New Castle County Council
87 Reads Way
New Castle, DE 19720

Dear President Bullock:

Under the provisions of 3 Del C § 906 (copy enclosed) each county legislative body establishes a Farmland Preservation Advisory Board to consider applications for establishment of Agricultural Preservation Districts in their respective counties and to advise the Agricultural Lands Preservation Foundation ("Foundation") on any regulations proposed for adoption by the Foundation. Some time ago an Advisory Board was established in your county; however, our Foundation staff is unsure of the current membership of your Advisory Board, including the existence of any vacancies. We ask that you please advise the Foundation of the status of your Advisory Board and take action to fill any vacancies which may exist. The requirements for Advisory Board membership subject to your appointment powers are set forth in the enclosure to this letter.

The county Farmland Preservation Advisory Boards play an important part in Delaware's statewide effort to permanently protect its remaining farmland to assure that agriculture continues to be a major contributor to Delaware's economy. Since funding was first provided to the statewide program in 1995, the Foundation, through a competitive bidding process involving discounting, has purchased preservation easements on 115,000 acres statewide at an average cost of \$1,797 per acre. The farms protected comprise 23% of the available farmland remaining in Delaware and 35% of the available farmland in Kent County, 20% in New Castle County and 15% in Sussex County. As a result of these efforts Delaware is a leader in preserving farmland in the country.

Your assistance in providing updated information on the status of your county's Farmland Preservation Advisory Board is most appreciated. Should you or any of your staff members have any questions, please do not hesitate to contact me.

Sincerely yours,

E. Austin Short

EAS/kps

cc: Honorable Edward Kee, Secretary, Delaware Department of Agriculture
Robert Garey, Chairman, Delaware Agricultural Lands Preservation Foundation
Honorable Thomas P. Gordon, County Executive



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Preservation Foundation

2320 South duPont Highway
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Fax: 302-677-7093

March 11, 2015

Honorable Chris Bullock, President
New Castle County Council
87 Reads Way
New Castle, DE 19720

Dear President Bullock:

This letter is a follow-up to our December 2nd letter (enclosed) regarding the county's Farmland Preservation Advisory Board. As you may recall, this advisory board is specified in Title 3 of the Delaware Code and each county's legislative body establishes this board to consider Agricultural Preservation District applications in their county and to advise the Agricultural Lands Preservation Foundation ("Foundation") on any regulations proposed for adoption by the Foundation. To date, we have not received a response as to the status of New Castle County's Advisory Board, including its membership.

We ask that you please provide us with the Board's membership list by March 31. If we do not receive the list of members by March 31, then we will forward any information for the Advisory Board to your attention so that you can forward it to the appropriate individuals for review. I have enclosed the section of the Delaware Code that references the Advisory Board for your information.

Thank you for your assistance in this matter and your continuing support of Delaware's Aglands Preservation Program. Please do not hesitate to contact me if you have any questions.

Sincerely,

E. Austin Short
EAS/rv
Enclosures (2)

cc: Honorable Thomas P. Gordon, County Executive
Edwin Kee, Secretary, Delaware Department of Agriculture

Bill Denman

From: Short, Austin (DDA) <Austin.Short@state.de.us>
Sent: Wednesday, June 17, 2015 3:50 PM
To: 'deFiore, Anthony'
Cc: Vaughn, Rebecca (DDA)
Subject: RE: NCCo Farmland Preservation Advisory Board
Attachments: New Castle Co Regs Ltr 2.pdf; New Castle Co - President Bullock Aglands Regulations letter (April 2015).pdf; Revised Regs Draft AgLand 4-16-15.pdf

Anthony,

Good afternoon.

Just wanted to let you know that we mailed the attached letter to President Bullock today regarding any comments from the County's Ag Advisory Board on the state Aglands Preservation Foundation's proposed regulations. We ask that the Advisory Board provide any comments by June 30 to give our Foundation Board time to consider the comments and make any necessary revisions before they issue regulations for public review and comment.

Please note that if the County Board does not make any comments by June 30 that there will still be opportunity to provide comments during the public review and hearing process later this summer.

Also attached to this e-mail is the previous letter that was mailed to President Bullock along with the proposed regulations.

Thank you again for your assistance and please do not hesitate to contact me if you have any questions.

Austin
698-4505

From: Short, Austin (DDA)
Sent: Tuesday, April 28, 2015 12:18 PM
To: 'deFiore, Anthony'
Subject: RE: NCCo Farmland Preservation Advisory Board

Anthony,

Thank you for the update.

Sorry I forgot to email you the letter when we sent it..

Austin

From: deFiore, Anthony [<mailto:AJdeFiore@nccde.org>]
Sent: Tuesday, April 28, 2015 11:46 AM
To: Short, Austin (DDA)
Subject: RE: NCCo Farmland Preservation Advisory Board

Hi Austin,

Just wanted to let you know that we have received the most recent letter. We are planning a meeting in the near future to discuss the board. I'll certainly keep you up to date.

Thanks,

Anthony

From: Short, Austin (DDA) [<mailto:Austin.Short@state.de.us>]
Sent: Thursday, March 12, 2015 3:23 PM
To: deFiore, Anthony
Subject: RE: NCCo Farmland Preservation Advisory Board

Anthony,

Good afternoon.

I wanted to let you know that we mailed the attached letter today to President Bullock. It is a follow-up to our December letter regarding the County Ag Advisory Boards. I know you have been working on the filling the board and we appreciate it. We are hoping to distribute some information to these advisory boards within the next few weeks for their review so we are checking to see how the process to fill them is progressing.

Anyway, just wanted to let you know as an FYI and I certainly understand that this is not the most pressing issue on the Council's plate...

Thank you,

Austin

From: deFiore, Anthony [<mailto:AJdeFiore@nccde.org>]
Sent: Monday, December 08, 2014 8:42 AM
To: Short, Austin (DDA)
Subject: RE: NCCo Farmland Preservation Advisory Board

Thanks Austin. I received your letter as well. Our office is responsible for all Council board appointments and we had no idea this board even existed until last week. With the recent media coverage of the preservation program, we'd like to find out where this board stands. I'll do some more research and let you know what I come up with.

Thanks again for your assistance.

From: Short, Austin (DDA) [<mailto:Austin.Short@state.de.us>]
Sent: Monday, December 08, 2014 8:38 AM
To: deFiore, Anthony
Subject: RE: NCCo Farmland Preservation Advisory Board

Anthony,

Good morning.

Thank you for helping to identify the current members of the Farmland Advisory Board.

I am afraid that I may not be too much help. These boards (one in each county) were established in the law (Title 3, Chapter 9 of the DE Code) that created Delaware's Aglands Preservation Foundation (I have attached the pertinent section of the law just in case you have not seen it); however, the law leaves it up to each County's Council to appoint the members. I believe when the Aglands program was first enacted in 1991 that each of the county's advisory boards were active but as time went on and the state's Aglands program became more understood/utilized, then the use/meetings of these boards waned somewhat.

The most recent records we have (which are a couple years old, at least) showed that Councilman Powers was the Council's representative and the other members were David Blendt, Kenneth Lester, H. Wallace Cook, Jr. and James Correll. But again, we believe this list (if accurate) is at least a couple years old.

Thank you again for your help with this and let me know if you have any other questions.

Austin

From: deFiore, Anthony [<mailto:AJdeFiore@nccde.org>]
Sent: Wednesday, December 03, 2014 9:09 AM
To: Short, Austin (DDA)
Subject: NCCo Farmland Preservation Advisory Board

Hi Austin,

I hope all is well. I am trying to identify the current members of the New Castle County Farmland Preservation Advisory Board. If you could point me in the right direction, it would be very help.

Thanks!

Anthony J. deFiore
Legislative Aide to Council President Bullock
New Castle County Council
800 French Street
Wilmington, DE 19801
Phone: 302-395-8360
Fax: 302-395-8385

Christine Whitehead
5510-34 Limeric Circle, Wilmington, Delaware 19808-3412

September 22, 2015

Robert Garey, Chair, and William A. Denman, Esq., Hearing Officer
Members of the Board, Agricultural Lands Preservation Foundation
c/o Parkowski, Noble, and Guerke (by email)
and Department of Agriculture (by email)
Dover, DE 19901

Dear Chairman Garey and Mr. Denman:

This is a follow-up to my statement at the hearing on the 23rd. One never knows if they have fully expressed themselves as intended when giving a spontaneous verbal statement, so I am sending this to be sure my points are clear and complete.

While I admire efficiency in drafting, you seem to have repealed so much in these proposed regulations that I fear they may be insufficient with regard to the Board's defined duties. 3 Del. Administrative Code, 701, was drafted in accordance with 3 Del. Code, Chapter 9. That set of regulations contained responses to the directions the General Assembly set forth that the new one does not. This repeal of so much material is the kind of thing the local Advisory Committees to the Foundation should study.

In the process of a hurried review of the current regulations, I noticed that the local boards were to be given sixty days to study any amendments to them, and I heard Bill Powers say that he did not receive notice. To me, that is a mandatory prelude to any legal decision the Board can make with regard to them. We have an unusual situation in New Castle County in that new people took office after the former Council President who moved up to County Executive left in a rush. During his departure, he had his staff destroy computer records and remove garbage bags of records from his office. That may be why the current President of Council has no idea who the original appointees to the local Advisory Board to the Foundation were. I have had personal knowledge for years that Councilman Powers was the Member of Council appointed to be Chair of the Board as he stated at the hearing. He was never removed, therefore, he still is the Chair. If he wants to convene the members or have the Council appoint new ones to review these proposed regulations, I think he should be given a chance. The fact that this was considered by the General Assembly to be an important part of any rewrite of regulations is quite clear, and you must have known that he has been the only farmer on the New Castle County Council for many years. He should have been contacted directly by the Foundation staff, as recent newspaper articles made that obvious.

With regard to the fiduciary responsibilities of the members of the Board of the Foundation, there is no mention in these Regulations of the Annual Audit. I have read recent past audits that were incomplete. The Board should tell the auditors not to stop until they look at all the paperwork involved in all your financial transactions. Any incomplete report should not have been accepted. The members who serve by virtue of their positions in other agencies certainly know how an audit is to be done. That knowledge makes failures in oversight all the more serious. Secretary Kee has a lot of responsibility with regard to the Foundation, and he should have demanded a complete audit when the Board did not. You deal with so much State and federal money that everything should be done perfectly.

Which brings me to Rule 18.4 regarding withholding information from the public, these applicants must realize they are accepting large amounts of State and federal money. That makes the transaction subject to auditing and thus the public's right to know how the Foundation is run. I have a great deal of sympathy

in this age of information being hacked and spread all over the world for an applicant's wish that the general public not know where he or she lives and that he or she came into a large amount of money recently. But that is already the case when the rounds are published. Why withhold the discount? Apparently, some of these applicant's are extremely generous people giving back quite a bit of money to the program. If you are being "FOIAed," for example by a newspaper, there are some things you can do. You could have a list of applicants by number. By that I mean assign an applicant the same number for all transactions with the Foundation. Reply to the FOIA with the discounts listed by amounts and percentages. Since there is a way to protect privacy, I believe you should delete this regulation which looks so suspicious.

Comparing the law and the current regulations, I found wording in new Rule 23.3 that seems to be designed to avoid doing what the General Assembly ordered the Foundation to do. Perhaps I am cynical or it's the fact I read the past Order that overrode what the Legislature told the Foundation to do with great specificity that makes me believe the Board might be determined to continue the program the way they have been running it. I notice the people singing praises for the program were mostly organizations who have no real stake in the outcome of a single round. The General Assembly sets policy. Administrators should follow their directives or we become a nation of petty rulers and not a nation of laws. Federal mandates set the same priorities I think this Foundation virtually ignored for such a long time. There is a reason for the federal determination. It is a recognized planning tool to create blockages to sprawl by having a solid wall of farms preserved on the perimeter of a growing town. I was a member of the New Castle Planning Board in the mid-90s. Thus, I understand the need to try to avoid sprawl and save the most threatened farmland first. That might not look so good in reports as what you have done, because many easements would cost more money close to towns than outlying farms. But if you had developed a strategy with that goal in the beginning, it might have succeeded in corralling some of the sprawl that has swallowed up the most productive farming area around Middletown. However, you would have had to start doing that in 1992—not 1999 or 2015—to be successful. Still, one can hope that the change in the Regulations will this time lead to an actual change in practice. If you really develop a strategic plan rather than randomly acquiring property through the bidding process, it could still be effective in aiding New Castle County to save areas considered to be extremely important from both an agricultural and environmental standpoint. Plus, it could help to build up large safe farming regions where developers will not go because they will know they cannot get a sewer line to build lots of houses.

Having now read 3 Del.C. Sec. 913 very carefully in conjunction with Sections 908 and 904, I know that acquiring easements lawfully was subject to compliance with the requirements of giving priority to lands near growth zones. Certainly many purchases of easements for years were far from growth zones and that was not part of your selection priorities. Therefore, they could be said to be void. Unlike other government agency decisions, this program cannot go back and undo anything that was not done right because the consequences for the farmers involved would be too awful. That has been a protection for administrators when they ignored the mandate for so long, but that did not make it acceptable. I know the person in charge of the program was a powerful personality, so I do not blame the farmers who served on the Board. Every word must be read carefully when you follow laws and adopt regulations that are supposed to have the effect of law. Some on the Board must know that and certainly the attorney for the Board should have advised them of the requirements. Perhaps the only good to come out of David Carter's mistaken, but well-publicized harangues over the legal settlement New Castle County must pay two farmers is that more attention has now been given to what the Foundation has been doing. I do not know if the publicity and the County's reaction or the federal Department of Agriculture is the motivation behind these changes, but I would like to see the regulations free of loopholes to continue to avoid following the initial mandate. The Foundation should find the original intent and mandate and make it absolutely clear what they intend to do.

I am curious as to why you wrote that any entity that makes a contribution of funds "may" be allowed to

select the properties on which the funding is used. Is this to persuade New Castle County not to go off on its own and start a program? If you are trying that, you should use the word "shall," but you did not. Would the farm the entity chooses have to be in a district already? Also, would the entity be allowed to bypass all the criteria, etc. in making a selection or would it be limited to choosing from several properties vetted for being included in a round of bidding? The point of choice should be stated in the regulations so that the methodology would not be questioned later. Rule 13.0

With regard to appraisers, to know the building limitations under the environmental formula in our Unified Development Code is to understand the real value of farmland in New Castle County. Land which is not over a water resources protection area or full of trees, for example, can produce many more units for the developer. Even those units can be doubled if one decides to build workforce housing. So even though Rule 16.3 is good, it could be better by adding the requirement that the appraiser be familiar with the land use law of the jurisdiction in which the land he or she is appraising is located. Also, adding a sentence that no contract professional working for the Foundation may be related to the farmers applying for preservation or the staff of the Department of Agriculture or the Members of the Board might help restore some of the public's trust in the Foundation. I hope you do not want to become a glaring example of "the Delaware Way."

Rule 3.3 forbids an owner from holding back any portion of his land in a District from a final preservation easement, but 12.1 allows the Foundation to purchase an easement on only part of a District. If a District is made up of only one large farm, is that the best thing to do? Shouldn't it be the choice of the owner?

Rule 9.6.3 Could this statement cause a person to pay back more than they received for an easement if the passing of time increased the market value of their land substantially? That would not be fair.

I have been concerned about the lack of funding of the Foundation's work during the Recession. I hope if you had many farms sell their easement with an installment purchase agreement, you were able to keep up payments. Perhaps these regulations should define what will happen during future appropriation deficits.

Rule 14.4 is good.

Why did you eliminate a choice in Rule 16.1 about how the agricultural value is calculated? How does using "income capitalization methodology" benefit the Foundation or the applicants? This is the kind of thing I think the local Advisory Boards would want to know.

Rule 16.2 seems unclear to me. At what point does the dwelling area (s) go from excluded to eligible to get a waiver and be included? After the sale?

Rule 17.4.1 seems to be a refusal to weigh which appraisal is better. That may be unfair to the applicant. Why cannot the Board use its judgment rather than a fixed formula that treats the farmer's appraiser less respectfully. He might be the better qualified or more thorough appraiser, and his opinion should be accepted. Again, this is something on which your Advisory Boards should comment.

Rule 18.2 Isn't a 5% addition to the percentage discount too little to be a real incentive? A 60% discount is hard to understand. Everyone is capable of underestimating their financial future, so why should the State put these farms at higher risk of that by driving up the discounts? Even Tom Unruh who was praising the program said he probably let his land go (into preservation) for too little. To me, this selection method has always favored the farmers who have inherited their lands versus the ones who had to purchase theirs. When land is used to finance putting in crops every year and it already has a mortgage on it, it is much harder to make a lot of money. Therefore, the owners do not need a big tax deduction and more recently purchased farms may not get preserved. One must be pretty well off and paying a lot of taxes to offer to discount the value of their easement at more than 40% and now you have routine offers of a 60% discount and some higher. What are the less wealthy farmers to do? Having the final decision based on this bidding is a form of discrimination in my opinion. Some will never be able to take advantage of such a preservation program. How do you intend to save them absent giving them some break for a good reason. They may be the more dedicated farmers or sitting on rich land. Looking at the maps of how

scattered the districts are, my suggestion would be to consider a break based on a farm being both adjacent to an existing agricultural preservation district as well as in 1 ½ miles or less from the border of a Growth Zone. A discount for that circumstance could be waived, or reduced substantially by adding on 20% as you were ordered to do in 1998.

My remarks are my own opinions, and I am not representing any group. I think Delaware has an important role to play in feeding people in the climate change crisis ahead. I also believe we must not develop the Peninsula too much or we will not be able to stave off the rising waters. Maryland understands that and a private farmland preservation group across the line has been very successful as a result.

I believe that the farmers who entered the program early have to realize that the value of land changes with time and circumstances, and what worked well for this program at first, may have to be adjusted in order to get more federal funding in 2016 and beyond. Not all of the farmers have sold their easements at the average. What did you say it was? \$2,000 per acre? I wonder if two of the people who testified at the hearing and who live very close to each other know that one received \$4,100 an acre and the other \$7,000 an acre? I have seen one ten-acre parcel average \$10,000 an acre. That one must contain several huge chicken houses. The Farm Bureau was about to study this program last year but was side-tracked. Based on my independent research and what they learned already, I think you need to prepare downstate farmers for changes. Striving to run this program in accordance with all federal guidelines and State laws going forward, with improved regulations and a fully developed strategy plan, would be a good goal for the Foundation. It is my hope that you will enjoy great future success with this effort.

Thank you for your attention.

Yours truly,

/Christine Whitehead/

Christine Whitehead

Retired Member of the Delaware Bar

Board Member, Delaware Coalition for Open Government

former member of Preservation Council of Del.

V.P., Civic League for New Castle County

former member of Livable Delaware's

Green Infrastructure Committee

former member of Delaware APA

and the American Planning Association

c Edwin Kee
Austin Short

Bill Denman

From: Charles P. O'Brien <cobrien@gfmlaw.com>
Sent: Wednesday, September 30, 2015 4:57 PM
To: Bill Denman
Cc: Emmanuel Fournaris
Subject: Ag. Preservation

Hi Bill:

I hope all is well. The proposed regulations in connection with the Agricultural Lands Preservation Act (the "Act") just came across my desk, and a client of GFM asked me to reach out with respect to the proposed regulations. I do not believe the proposed regulations deal with terminating ag preservation easements/districts, so my email may simply be an effort to open a dialog. Our client owns a couple of properties in Dover town limits that are encumbered by Ag. Preservation easement/district agreement. In the interest of full disclosure – our client is Rodney Mitchell –you or your firm may have had dealings with Rodney in the past.

What we would like to see regarding the Ag preservation act relates to termination of the easements/districts. We would like to see a mechanism whereby property can be taken out of ag preservation, of course, to the extent the Foundation is made whole, or more than whole, whether it be by substitute acres or repayment, or both. The Act is certainly well intended, but we think the Foundation should have limited discretion in growth areas to permit early termination in light of the fact that development in certain areas would be more beneficial to the municipality/county/state, in the form of stimulating the local economy and promoting job growth, than preservation, especially to the extent the Foundation is made whole. The Act does not adequately account for changing times, and we believe the Act is inconsistent with certain current state policies. Specifically, the Strategies for State Policies and Spending, approved by Governor Jack Markel pursuant to Executive Order No. 26 signed on April 1, 2011, provides that State spending policies and goals in and about "Investment Level 1 areas", which are more urban in nature, like Dover, should be aimed at promoting higher density and mixed use type development as opposed to preservation (which is reserved for more rural Investment Level 4 areas).

My question is: Is now/when would be a good time to raise/address possible revisions to the termination provisions and is there anyone in particular you think it would be helpful for us to have a conversation with related this matter?

Thank you for the consideration.

Many thanks,
Chip

Charles (Chip) P. O'Brien, Esquire
cobrien@gfmlaw.com

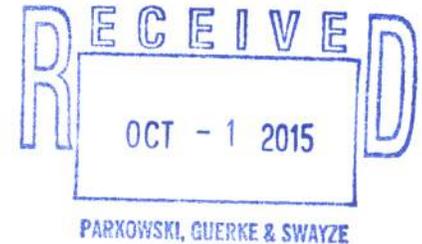


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302-652-2900 (telephone)
302-652-1142 (telefax)

Attention: This electronic message and all contents contain information from the law firm of Gordon, Fournaris & Mammarella, P.A. which may be privileged, confidential or otherwise protected from disclosure. The information is intended to be for the addressee only. If you are not the addressee, any disclosure, copy,

September 28, 2015

Mr. William Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904



Dear Mr. Denman:

I am writing to you in support of the proposed regulations from the Delaware Agricultural Land Preservation Foundation (DALPF). DALPF is an innovative program with a long history of success. **DALPF is a case study of excellence that has been shared with audiences of conservation professionals in the region, in the nation, and internationally.** DALPF has a tremendous history of working with landowners who voluntarily accept payments in exchange for agreeing to preserve their agricultural lands. This is a good deal for farmers and a good deal for the taxpayers of Delaware. Do not let the voices of a few motivated by self-interest undermine the benefits secured to the many in a cost-effective manner.

As co-Director of the USDA-funded national Center for Behavioral and Experimental Agri-Environmental Research (CBEAR), I have conducted research that has been published in peer reviewed journals that document DALPF's success.¹ DALPF's use of voluntary 'discounts' in a competitive 'reverse auction' setting is innovative and a model for conservation everywhere. DALPF's success is readily apparent and easily measurable: the large number of acres protected, the amount of State funding needed per acre of land purchased, and the level of matching funds leveraged per dollar of State funding. Impressively, for every dollar of State money invested in this program has yielded an additional investment of three dollars from supplemental and non-State sources.

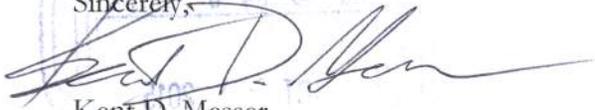
I have spoken about DALPF's exceptional success to thousands of conservation professionals throughout the world and it is considered a model worth replication. This program has protected 24% of the available farmland in the State of Delaware and more acres of agricultural land per capita than any other state in the country. DALPF also has done a reasonable job at distributing the money throughout the state as it has protected 20% of the available farmland in New Castle County and 15% of the available farmland in Sussex County.

Finally, DALPF is a national leader in being good stewards of the taxpayers' money. **Protecting farmland at a cost of \$2,000/acre using a voluntary program, demonstrates the wise design of this program.** Studies of Delaware's public has shown that there is strong public support for agricultural land preservation and DALPF's efforts; however, this public faith in agricultural preservation efforts is in danger of being lost if changes are enacted to enable to allow a few

landowners to personally gain at the expense of the taxpayer. Thus, DALPF's future political support is being jeopardized.

If you have questions or need further clarification about my comments, please contact me by phone (302-831-1316) or by email (messer@udel.edu). Thank you for your consideration.

Sincerely,



Kent D. Messer
Unidel Howard Cosgrove Chair the Environment
Department of Applied & Statistics
College of Agriculture and Natural Resources
University of Delaware

-
- ⁱ Messer, K.D. and W.L. Allen. 2010. "Applying Optimization and the Analytic Hierarchy Process to Enhance Agricultural Preservation Strategies in the State of Delaware." *Agricultural and Resource Economics Review* 39(3): 442-456.
- Allen, W.L., O.M. Amundsen, J. Dujmović, and K.D. Messer. 2011. "Identifying and Selecting Strategic Mitigation Opportunities: Criteria Design and Project Evaluation using Logic Scoring of Preference and Optimization." *Journal of Conservation Planning*. 7: 61-68.
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Stewart Ramsey
President, New Castle County Farm Bureau
330 Ramsey Road
Wilmington, DE 19803

September 23, 2015

Board Members, Delaware Agriculture Lands Preservation Foundation
Delaware Department of Agriculture
2320 South DuPont Highway
Dover, DE 19901

Re: Proposed changes to Foundation By-Laws

Dear Foundation Board

I'd like to express my concern with respect to the proposed By-Law changes. From my review of both the Foundation By-Laws and the Farmland Preservation Program code it appears that the goals of the law and the regulations are mostly consistent with one another, i.e. the Foundation By-Laws support the current language of the law. I feel the proposed changes give the Foundation considerable latitude in how they administer the program/law but do not provide the guidance originally intended.

Among my more specific concerns is the removal of language around setting priorities for preservation. I see a replacement of detailed guidance around setting priorities for threatened land with a 5% bonus on the discount rate. If you look at the changes in the average discount rate over time and the lack of success in preserving farmland in New Castle County in the more recent signups, this indicates to me that 5% is not nearly enough to entice truly threatened land into the program.

Again I'd like to express my concern with the proposed changes to the Foundation By-Laws and suggest if changes as significant as those proposed are needed then the Law itself needs to be addressed. Thank you for allowing me to express my concerns.

Sincerely

Stewart Ramsey
President, New Castle County Farm Bureau

INDEPENDENT NEWSMEDIA INC. USA

110 Galaxy Drive • Dover, DE • 19901 • 1-800-282-8586

State of Delaware:

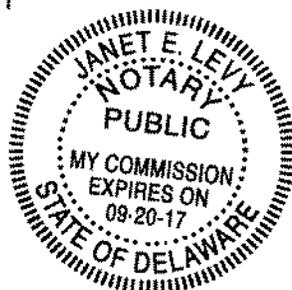
County of Kent:

Before me, a Notary Public, for the County and State aforesaid, Edward Dulin, known to me to be such, who being sworn according to law deposes and says that he is President of Independent Newsmedia Inc. USA, the publisher of the **Delaware State News**, a daily newspaper published at Dover, County of Kent, and State of Delaware, and that the notice, a copy of which is hereto attached, as published in the **Delaware State News** in its issue of September 29, 2015.



President
Independent Newsmedia Inc. USA

Sworn to and subscribed before me this 29th
Day of September A.D. 2015




Notary Public

**DELAWARE AGRICULTURAL LANDS
PRESERVATION FOUNDATION**

**STATUTORY FOUNDATION:
3 Del.C. §904(a)(13)**

**NOTICE OF DEADLINE FOR
SUBMITTING WRITTEN
COMMENTS ON
PROPOSED REGULATIONS**

The Delaware Agricultural Lands Preservation Foundation (the "Foundation"), pursuant to 3 Del.C. §928, held a public hearing on September 23, 2015 to discuss proposed regulations relating to the administration of the Delaware Agricultural Lands Preservation Program established pursuant to 3 Del.C. §901. At the public hearing, and in prior notices, the public was informed that the deadline for submitting written comments was October 1, 2015. The Foundation is extending the deadline to submit written comments from October 1, 2015 to Monday, October 12, 2015.

Copies of the proposed regulations are available for review by contacting:

Rebecca Vaughn
Delaware Agricultural Lands
Preservation Foundation
2320 S. DuPont Highway
Dover, DE 19901
(302) 698-4531
Email: Rebecca.Vaughn@state.de.us

Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony, should submit such comments by Monday, October 12, 2015 to:

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904
(302) 678-3262
Email: wdenman@pgslegal.com
72890 DSN 9/29/2015



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09/28/15 A.D 2015

Linda Barber

Sherry Ann Salvia
 Sworn and subscribed before me, this 28 day of
 September, 2015

Ad Number: 0000754208



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DELAWARE AGRICULTURAL LANDS
PRESERVATION FOUNDATION
STATUTORY FOUNDATION: 3 Del. C.
§904(a)(13)
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9/28-NJ

CHRISTOPHER A. BULLOCK
PRESIDENT
NEW CASTLE COUNTY COUNCIL
Office: (302) 395-8340
Fax: (302) 395-8385



LOUIS L. REDDING CITY COUNTY BUILDING
800 N. French Street
Wilmington, DE 19801
www.nccde.org

October 2, 2015

The Honorable Edward Kee, Secretary
Delaware Department of Agriculture
2320 South DuPont Highway
Dover, Delaware 19901

RE: Delaware Agriculture Lands Preservation Foundation – Proposed Regulations

Dear Secretary Kee,

This letter is to request an extension of the time period for comment on the proposed regulatory changes to the Agricultural Lands Preservation Foundation.

On September 29th, during New Castle County Council's Executive Committee meeting, Council passed a motion to request the Delaware Department of Agriculture to extend the period for submitting comments on the proposed regulations until November 1, 2015.

We are in the process of reestablishing the New Castle County Farmland Preservation Advisory Board. In the meantime, we would like the opportunity to provide some input on these proposed changes.

Thank you for your thoughtful consideration of our request.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Bullock'.

Dr. Christopher A. Bullock
President, New Castle County Council



DELAWARE AGRICULTURAL LANDS
Preservation Foundation

2320 South duPont Highway
Dover, Delaware 19901

Tel: 302-698-4530
Toll Free: 800-282-8685 (DE only)
Fax: 302-677-7093

October 6, 2015

Dr. Christopher A. Bullock
President, New Castle County Council
Louis L. Redding City County Bldg.
800 N. French Street
Wilmington, DE 19801

RE: Delaware Agricultural Lands Preservation Foundation – Proposed Regulations

Dear Dr. Bullock:

This letter is in response to your request for an extension of time until November 1, 2015 for submission of comments to the above referenced proposed regulations. We understand that your Council responded to the request for an extension as presented by Councilmen Powers and Bell, as well as New Castle County citizens Stewart Ramsey and Christine Whitehead.

In responding to your request some background is helpful. On August 18, 2015 the statewide public notice of the hearing on the proposed regulations was published in the Delaware State News and the News Journal. The public hearing was held on September 23, 2015 and at such time Councilman Powers, Stewart Ramsey and Christine Whitehead provided testimony along with a number of other interested parties. The record of the public hearing was held open for written comments until October 1, 2015. Christine Whitehead took advantage of the opportunity to submit written comments, and Councilman Powers' letter of September 21, 2015, which prompted a response from me, was also made part of the record. More recently a request for an extension to the comment period was made by the Delaware Farm Bureau through its President. We understand that this request was prompted by Stewart Ramsey. To accommodate the Delaware Farm Bureau request the comment period has been extended to Monday, October 12, 2015. A copy of the newspaper notice published on September 28-29, 2015 is enclosed. Accordingly, anyone wishing to provide any further comments is entitled to do so under the extension provided.

In my response to Councilman Powers' letter of September 21, 2015 which was provided to all the parties he copied, including you, it was mentioned that the state farmland preservation program is considered one of the best, if not the best, in the country and statistics to support such claim were presented. What was not mentioned is that the state program has been funded for the twentieth (20th) straight year and farmland preservation easements are purchased on an annual basis from a pool of pre-qualified applicants who

voluntarily submit competitive discounted offers to sell preservation easements on their farms. Currently for this Round 20 of the purchases, there are 175 such applicants awaiting the opportunity to submit offers, including residents of New Castle County. It is important to consider these farm owners in addressing any request for delays in the regulatory review process. We wish to note that none of those individuals mentioned who have requested the extension are enrolled in the state preservation program, and in any event there is ample time for them or anyone else to provide comments before the October 12, 2015 date.

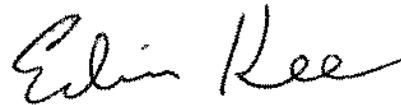
In your correspondence you indicated that you are in the process of reestablishing the New Castle County Farmland Preservation Advisory Board, and we commend you and your colleagues on such effort. However, it is important to set the record straight in light of Councilman Powers' claim in his letter of September 21, 2015 that he and the County Advisory Board were not provided notification of the proposed regulatory changes. The fact of the matter is that every attempt was made by the Foundation to obtain the names of New Castle County Advisory Board members and their input. The following is a reflection of those efforts:

1. On December 2, 2014 a letter was directed to you, with copy to the County Executive, requesting the status of the Advisory Board and its membership. A copy of the legislation indicating the role of the Advisory Boards was included. (See attached copy) A timely Council staff response indicated there was an unawareness that the Farmland Advisory Board existed.
2. A review of the New Castle County website under Boards and Commissions does not list a Farmland Preservation Advisory Board. (See attached copy)
3. On March 11, 2015 a follow up letter to the December 2, 2014 letter was directed to you, with copy to the County Executive. A request was made in that letter that you provide a list of Advisory Board members by March 31. It was also indicated that any information for the Advisory Board would be directed to you so that it could be forwarded to the appropriate individuals for review. (See attached copy) A timely Council staff response indicated that there was an intent to discuss the Board.
4. On April 17, 2015 a fairly extensive letter was directed to you that included the proposed draft regulations and a description of the state program and significant changes to the regulations. An offer was made to have the Foundation staff available to answer any questions. (See attached copy with proposed regulations) A timely Council staff response indicated there was planning for a meeting to discuss the Board.
5. On June 17, 2015 a follow up to the April 17, 2015 letter was directed to you. It was indicated that no comments to the proposed regulations were received and it was requested that any Advisory Board comments be provided by June 30, 2015. No comments were provided, and as indicated the proposed regulations were advertised on August 18, 2015. The proposed regulations were again provided to you and it was

indicated that opportunity for comment was also available during the public review and comment period. (See attached copy) As indicated, Councilman Powers has taken the opportunity to participate in the public review process.

In respectfully declining any further extensions of the comment period on the proposed regulations, it is important for us to balance the interests of those farm owners who are participating in the state program. We do appreciate that dating back to at least December of last year New Castle County has been attempting to adopt its own farmland preservation program which is significantly different than the acclaimed state program. There should not be competition between the state program and the New Castle County proposals, and we are hopeful that the efforts in New Castle County will not serve as a distraction to efforts to make improvements in the state program.

Sincerely yours,



EDWIN KEE
Secretary
Delaware Department of Agriculture

Enclosures

cc: Tom Gordon, County Executive
New Castle County Council Members
Robert F. Garey, Chair – Delaware Agricultural Lands Preservation Foundation

William E. Powers, Jr.
324 VanDyke - Maryland Line Road
Townsend, DE 19934

Edwin Kee, Secretary
Delaware Department of Agriculture
2320 South DuPont Highway
Dover, DE 19901

Dear Ed:

Thank you for meeting with us on Saturday, October 10, 2015, to discuss the proposed Delaware Aglands Preservation Foundation bylaws changes. For the record, I strongly urge you to reject the proposed regulation changes in their entirety.

Anything less than total rejection is a violation of law, as per Title 29 of the Delaware State Code under Section 8103 -- powers, duties and functions of the Secretary, paragraph 8 which states your duty to "Establish and promulgate such rules and regulation of the department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of the State."

The existing Title 3-701 is consistent with the law (Title 3-901).

The newly-proposed 701 is not!

By removing one-third of the existing bylaws (Sec. 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 16.0, 18.0, parts of 19.0, 22.0, 23.0, 24.0, most of 25.0, 26.0, 28.0 and Appendix A through G), you are "gutting" the document that was crafted to effectively govern the foundation in its endeavor to follow the law and to preserve viable productive farmland! Again, the proposed document does not reflect the original intent of the law or the will of the legislature at that time and, in all likelihood, the will of the current legislature. By removing all of the easement purchases criteria (Sec. 18.0) that coincides with (3 Del.C. Sec.904(A)(2), Section 19,4 and the ranking criteria included in section 24.0, it becomes obvious that the new proposal is not consistent with the standards set forth in Title 3 - 901 of the Delaware Code.

Title 3, Chapter 9, Section 904 titled "Duties and Authority of Foundation" states as follows:

paragraph (a) The Foundation shall be responsible for the following:

(11) The development of an effective program to "fully implement" the provisions of this chapter;

paragraph (b) The Foundation shall have the authority to do the following:

(21) Adopt, after notice and public hearing, rules and regulations to fulfill the Foundation's responsibilities and fully effectuate the authority, purposes, intent and activities contemplated under this chapter.

Existing Bylaws 28.0 Offer of Purchase by the Foundation

The proposal to remove Section 28 of the existing bylaws demonstrates an ongoing willful and deliberate intent to ignore the Final Order, as adopted effective August 10, 1999, after hearing evidence and testimony at six public meeting/hearings held in all three counties.

d, 28.3 states as follows: "The applications for sale of Preservation Easements selected for appraisal shall be divided into two categories; (1) priority preservation area application for those properties located in whole or in part in a priority preservation area as show on the Priority Preservation Area Map, and (2) non-priority preservation applications.

28.5 States; "Of the monies available to the Foundation in a round of Purchases of Preservation Easements, up to seventy-five (75) percent of the monies shall be committed for Preservation Easements on properties located in priority preservation areas and up to twenty-five (25) percent of the monies shall be committed for Preservation Easements on properties in non-priority areas."

There is no mention of the 75%, 25% division of funds in the newly-proposed 701.

Existing Bylaws 25.0 Appraisals

The language contained in the newly-proposed regulation in section 16.0 (Appraisals) does not comply with the language as specified under 3 Del.C.sect.916. The agriculture only value based on an income capitalization methodology does not reflect (a) "what a vendor or seller is willing to sell for and what a vendor or buyer is willing to buy for." The income capitalization approach is antiquated, inaccurate, and it reflects a highly over-inflated easement value. I have seen a few of these appraisals and it is ludicrous to think that a 36 acre farmette in New Castle County would have an after easement value of only \$67,941. One acre building lots recently have sold for more than double that amount. Another farm consisting of 115 acres of Class I soils of which more than 100 acres are tillable, using the DALPF methodology, was assigned an ag only value of \$240,179. No tillable farmland in New Castle County has sold that cheap since the early 1980s. The after easement value of the 115 acres was \$922,408 using the NRCS/FRPP methodology.

The DALPF methodology is not accepted by the Federal Government for matching funds and discriminates against those farms whose property qualifies under the Federal program and deflates their easement value when compared to the others in competition for State bidding.

At the very least, appraisals should all be conducted under one of the two methods as specified and required by the Federal Government, either the USPAP or the UASFLA, and be conducted by qualified and certified competent Delaware appraisers who are familiar with both methodologies, and are qualified to meet the required Federal standards and are familiar with local land use rules.

Synopsis of HB 200 - April 30, 1991

According to the Synopsis of the original bill, "The legislation is designed to allow the State of Delaware to qualify for future funding under the Federal Farms for the Future Act of 1990." The DALP methodology does not comply under the latest federal Agriculture Lands Easement component of the Agricultural Conservation Easement Program.

The synopsis also states, "The Foundation would be subject to the Delaware Freedom of Information Act."

I am not sure that the proposed language in section 18.4 allowing a landowner to grant or deny permission to release information requested under the FOIA would stand in a court of law since public funds are used to purchase the easements. Transparency is the utmost importance.

Again, I strongly urge you, as per your fiduciary duty as Secretary of Agriculture, to reject these proposed bylaws changes and insist that the existing bylaws (Title 3 701) that are in compliance with the existing law (Title 3 Chapter 9) be adhered to.

The law leaves no room for misguided noncompliance.

I look forward to working with you to improve the State's preservation program, along with the New Castle County program. I agree with you that we should cooperate in these endeavors and work towards the mutual goal of qualifying for and obtaining maximum allowable federal funding, as well as funding from additional sources, to ensure a viable future for Delaware's agriculture communities.

Sincerely,

Bill Powers

MEMO

RE: COMMENTS ON THE AGRICULTURAL LANDS PRESERVATION
FOUNDATION'S 2015 PROPOSED REGULATIONS

TO: WILLIAM DENMAN, ESQ., HEARING OFFICER

FROM: CHRISTINE WHITEHEAD, J.D.

DATE: OCTOBER 11, 2015

The started goal of these Proposed Regulations is to simplify the manner in which the program is administered. Oversimplification has removed sections of the current Regulations that protect the interests of the public and the farm families who are participating and will seek to participate in the program. The original law required the Board to write guidelines for the program and criteria for the preservation of easements; therefore, everything needed was not put in the Delaware Code. Without regulations or guidelines to follow, a great deal will be left to the judgment of the Board and its staff in the selection process. This results in arbitrary decisions not made according to even the limited standards the General Assembly put in the law. Just because someone is willing to give away 73% of the value of their farm does not insure that the program is preserving the farmland with the potential the current regulations require for long term viability. In fact the very opposite may be the case.

Few farmers appeared to give their opinions on the Proposed Regulations either for lack of notice or the fact that the hearing was held in the daytime at the height of the harvest season. The failure to get sufficient commentary from those parties most affected by these is of concern to anyone who expects government to operate in a democratic way in Delaware. Outreach only to the President of Council in Delaware was just not enough especially when the normal contact was through the Department of Land Use or a Council member who was known to the staff and yet never contacted. Therefore, this set of proposed regulations should not be adopted. The Foundation can continue to use the current Regulations until they can proceed as called for in the Act that created it or have a new law passed.

In evaluating the Proposed Regulations, one must consider that the Foundation is under criticism in the farming community in New Castle County for ignoring the directives of the General Assembly and manipulating the system to favor special people and certainly favor Kent County lands over New Castle County. If there is any truth to the rumors and investigations continue, removing many requirements specifying how farms are evaluated makes the Board and staff appear to be trying to hide something.

Having farms selected on the basis of any kind of written system all can see is certainly preferable to having nothing in writing the public can see. The one now used was worked out with a lot of public participation and effort. However, no

matter how high a LESA score a farm makes on the current system, when the farms in the a round compete to see who can give back to the Foundation the highest percentage of the value of their easement, all strategy and criteria give way to what is essentially a random selection. Surely, reform is needed so that the directions of the General Assembly are implemented properly after 24 years or they delete some of them. Furthermore, Delaware's unique discount system-- which this document is intent on preserving--favors wealthy farmers over those struggling with mortgages for purchase of their land and liens borrowed for planting crops each year.

These Regulations skip three and a half pages of the current By-Laws which govern the operation of the Foundation and the Board's procedures. Since the By-Laws appear in the Administrative Code and the Notice of the hearing indicated everything in 701 would be part of the change, failing to have them at the beginning of this document seems to indicate an intent to delete them. If that was not the intent, it must be so stated. Much of the content of the By-Laws is in 3 Del.Code, Ch.9, but a couple of things would make a difference if left out of the By-Laws. For example, the duty of the Treasurer to issue monthly reports is not mentioned elsewhere. Article V sets a deadline for the Annual Report. The language saying that the Board is empowered to select the Executive Director is not specifically set out elsewhere and I think they have always had a person from the Department serve in that capacity. A time may come when the Board would like to exercise its right to select an outside choice. The Department staffing the Foundation was supposed to be a temporary measure.

The new "Guidelines" or Proposed Regulations begin with Section 6.0 of the current Regulations. Only two additions are made to Sec.6. **Subsection 1.1.1** adds that to be placed in a District, the owners must be "actively using the Property for agricultural purposes." That is in the Del. Code.

Section 1.1.5 adds that the farmland must "comprise a farm property unit." Consistent with 3 Del.C. 908, it makes the LESA score the "primary" factor in evaluating land for inclusion in a District. The Preservation Easement will only have the criteria going forward that is required for a District if this document is adopted, so that is important. The weighing system for arriving at the LESA score has been deleted, however, and that is not acceptable. New **Sections 18 and 22** make it clear that the determining factor in selecting easements to purchase remains the percentage offered as a discount. Thus the more viable and productive farms would not necessarily be those moving from District to Easement status without being rated in the first instance. Since the LESA score is so critical, the way it is determined should continue to be in the Regulations!

Section 2.1.4 – The information required on an Application Form in current Section 7.1 -4 is deleted and the form in the Appendix is also removed. The proposed section will say the Foundation will provide forms asking for "information it deems appropriate." Perhaps this is being done only because the form is online,

but there is a pattern in this rewrite of removing material that provides any detail about the Foundation's selection of farms. Similar treatment is given to the District Agreement Form. How could those be unnecessary? Even if online, they should be retained.

Those are two of several changes that seem to be related to each other, such as the following:

Section 3.0 (current 8.0) has a very subtle change in the wording so that the necessity of filling out an application before a preservation easement can be purchased is eliminated. Perhaps that is only related to removing the application from the Regulations, but that is certainly a curiosity.

Section 3.5 – Language requiring that the Foundation send the criteria they used in creating a District to the local Advisory Boards and the planning and zoning authorities was deleted. Instead, all they have to send is “an indication” that the District they wish to establish meets the minimum eligibility requirements.” Where is there any assurance that the Districts contain viable and productive farmland as the law requires? That leaves the two bodies with inadequate means to judge the merits of a district and so it should not be deleted.

Section 4.0 (current 9.0) also deals with creation of a District. **4.1** allows the local Advisory Board and the Planning Board to approve a District without the Foundation's approval. There is a theme here. If the Foundation and the County were working together on the basis of a Strategic Plan as the law directed, this could be an orderly process, but a genuine, workable Strategic Plan to contain sprawl was never actually prepared. What the Foundation put forward years ago was insufficient. That working together could achieve the goals initially set out by the General Assembly would be a good thing is true, but these changes do not necessarily advance that goal. Leaving the existing language is better.

Section 5.2 (current 10.2) clarifies that if a property within a District puts in an application for a development plan or rezoning, the county or municipality must not act on it until the owner's District Agreement expires. Clarification is always good.

There are several sections in the Proposed Regulations that are drafted to elaborate on changes to the law regarding dwellings on preserved land. I think the Legislature agreed to them, so any criticism is pointless.

Section 6.0 emphasizes the harsh penalties for any owner failing to send 6-month notice of his or her intent to withdraw from a District at the end of the Agreement. It automatically continues for 5 years. This seems overly harsh if the owner wants to withdraw. No one would carelessly tie up their land for 10 years without forethought, and unexpected problems do crop up that might make it impossible for an owner to send notice at the 6-month point. Farming can be dangerous and accidents happen, illnesses occur, and non-resident relatives may seriously need some help from a son, daughter, or sibling. A waiver should be allowed due to impossible circumstances. That may happen now, but it should be in the regs.

Section 9.0 adds language to current 14.0 based on changes to the law in SB 333. **Sections 9.7** (current 26.0) is also new regarding dwelling lots. **Section 9.4** indicates information on hardships may be submitted on a confidential basis. That is fine right up until an auditor needs to see it. That should be explained. Auditors have to be able to follow all money trails or a Audit Report is not complete. The FOIA does permit confidential financial information to be protected, but some types of financial information can be shared by redacting names and addresses.

Section 11.0 (currently 17.0) has an important change in **Subsection 11.3**. It deleted that the findings of all audits have to be a part of the Annual Report, and only requires that one be "presented to the Board." This is an important Board-protective change, but 3 Del.C. Sec. 904 (8) says that audits must be in the Annual Report! No regulation can be drafted contrary to the law, so this must be returned to the proper requirement.

Section 12.0 is a significant change from current Section 21.0. It is a substitution for current Sections 18.1-.4 containing criteria for a Preservation Easement. Subsections 18.1-.4 required that priority be given to farms near Growth Zones. The new statement makes the criteria for an Easement the same as a District which is consistent with the law. The statement is consistent with Section 6.0. However, the Foundation was repeatedly instructed in the original law to go further in developing criteria and developing a Strategic Plan based on county and municipal planning with regard to Growth Zones. This is getting rid of the evidence that the Board knew what they were to do and did not do it properly. Is the Board or its counsel worried because the Open Space Council was sued for its failure? Even so, removing all criteria from the Regulations is not the right thing to do. It does not evaporate and it has been noticed.

Subsection 12.2 is added to inform the reader that prioritization and selection for easements will be determined by Sections 13-20. So examining those for what remains of the process now set forth by the current regulations we find the new **Section 13.0** permitting contributing entities to select farms. No priority detailed there. But see current Section 28.6. It says as long as farmlands are properly restricted as in this program, the Foundation can participate in any preservation easement purchase that has different requirements for obtaining funds. So this is not exactly the same but not exactly new. It is good to write down an informal practice.

Section 14 tracks current Section 19, but eliminates language that mentions criteria deleted. **Subsection 14.4** (currently 19.3) eliminates ranking, but current Section 23.3 caused that effort to be useless anyway. Nothing in the Code requires it.

Subsection 15.2 is based on current Subsection 22.2, but information required in Subsections 22.2.1 - .8; 22.3.1 - .2; and 22.4 - .6 are deleted. That is material that is needed on the Application Form. This appears to mean that major farm assets will not be required to be considered in evaluating farms for preservation

easements except through the LESA. With a description of the LESA parts and how they are scored deleted, it can be changed by the Department or ignored by the Board without anyone being aware of that. That is just not acceptable.

These Proposed Regulations are not going to inspire any trust in the Board as the decisions can be left to the will of the Trustees. That may be in fact illegal. When authority is delegated by the Legislature, it is to be used by applying standards they enact. Leaving the Board to make selections with only the minimal standards found in Section 1 is not adequate. That may not be enough to preserve viable and productive farmland as the law mandated. Tax money appropriated for preserving cropland and pastures should not be spent on preserving unproductive land. Where the law seeks to accomplish secondary goals at the same time, they should not be ignored.

Current Section 23 has been deleted. Current 23.1 on minimum criteria is deleted, but Proposed **Section 15.3**, which is the closest to it, now says only that the application will be reviewed. Current Section 24.0 has been deleted, but 24.3 is now **Proposed Section 22.0** in a changed wording. What is eliminated is the scoring system for the Strategy Map and the LESA scoring system and weight given to its factors. **Cutting Section 24.4 means the guarantee that cropland and forestland are rated higher than wetlands in the LESA scoring has been removed.** It is unavoidable that some wetlands will be saved on farms, but making them of equal priority does not belong in a farmland preservation program. Had the original priorities been adhered to more closely, we might not have paid to preserve so much land in the 100 year flood plains in New Castle County. In this County they are unbuildable and, therefore, not threatened with development. Had the law been followed, they would not have been made a priority.

Deleting Subsection 24.6 cuts out consideration of whether a proposed farm is a good choice because it is likely to be preserved for a very long time as it is

- consistent with State and County plans or
- has contiguity with protected open space,
- is near existing agricultural preservation districts or easements,
- is near historic or cultural, etc, assets,
- will aid in reducing development pressures on adjacent & nearby farmlands and is a high priority for the County,
- and the owner has implemented resource protection measures.

These criteria should not be eliminated because most of them are not in 3 Del.C, Sec.908, and even if some are, they are too important to chance their being overlooked. Adopting the ones not in the law was a good decision on the part of the Board. Grouping large areas of protected farmland is important. This furthers that goal. That has been happening with the selections in the lower eastern part of the County below the Canal, but continuing that is impeded by the presence of so many small and large wetlands all around Blackbird Creek and to the west side down there. Nevertheless, to make wetlands of equal priority is not rational from

the point of view of saving land that will be needed for crops and livestock in our predictably flood prone future. Open space gets its funding for those and they are ranked high in terms of biodiversity, therefore, a high priority for those funds.

Section 16.0 (current 25.0) deletes material on appraisals. Subsection 25.2 is deleted requiring appraisals to be based on comparable sales. That is not permitted by the law. Comparable sales is another term for the phrase of what a willing buyer would offer and a willing seller would accept, etc., so they must be used. If the U.S.P.A. appraisal method were made the only acceptable one to be used in this program, all appraisals would be uniform and that should be the goal of the Board. That would go a long way toward helping members make rational decisions. The Synopsis of HB 200 of 1991 said that the Act which created this program was designed to allow Delaware to qualify for future funding under the Federal Farms for the Future Act, so appraisals should measure up to federal standards.

Subsection 16.3 is related to current Subsection 25.4, but not enough of the original remains in it. **Subsection 16.4** is a version of current Subsection 25.4, but it eliminates all the specifics about what should be in an appraisal. Why? Is it because they have allowed or used appraisals without all these elements in the past? You should have a requirement that appraisals for the Foundation be done by an appraiser who is familiar with the laws of the jurisdiction in which an appraisal is done. New Castle County is very different from Kent and Sussex. With an environmental formula that reduced the number of units that can be built on a property for various natural features, developers base their prices on the lack of impediments to their use of a parcel. They seek larger cleared parcels to build faster and with greater efficiency, so heavily treed parcels and those without streams are the most desirable. A downstate appraiser who does not know the formula or the yield of a piece of land cannot judge the value in this County. When the Foundation sends someone up here who does not know all this, the owner just has to hire another appraiser and go through this unfair formula that is retained in these regulations.

All of 26.0 was cut as it dealt with comparable sales. As I stated, this is not acceptable because it does not comply with the law. You could tighten up what is comparable, but not do away with the concept. For example, you could require that comparables for comparison must be based not only on propinquity to the farm being appraised, but have an equal number of viable and productive acres and a close LESA score, be equally close to a Growth Zone, be capable of producing an equal number of units or gross floor area for development without the removal of trees or creation of riparian buffers, be equidistant to freeway entrances or a federal highway—all as nearly as possible given sales in the past two years. If the goal is to compare like properties, that would help.

Subsection 17.1 (current 27.1) Value can be manipulated by how they arrive at "full market value" and "agriculture only value." The income capitalization method should not be the only method.

Subsection 17.4 (current Subsection 27.5.1) is a scheme for dealing with the applicant's getting a second appraisal that may be better than the Board's. The Board should choose one or the other. That recognizes reality when the applicant's appraiser is better credentialed and more knowledgeable or thorough. In that case his appraisal should be used and it would make more sense and surely benefit the applicant. No one is going to enter the program when they are giving up too much of the value of their farm to be rational, so why make what may be a bad disagreement worse.

Section 18 offers a new concept which is supposed to be an incentive for owners with farms near Growth Zones to put their farms into the preservation program. If anyone thinks adding a 5% advantage will help in the bidding, they have not seen the 73% discounts already on the record for rounds a year or two back. Having to offer an outrageous percentage reduction in the price they will be paid for a preservation easement is just a huge disincentive. Too huge for owners who know the real value of their land and who are not so wealthy that money does not matter. Therefore, it will take far more to get them to participate in the program than the Board has ever offered. With so little money available from the State due to the General Assembly ignoring the real estate transfer tax law that provides so much to the Foundation, the situation going forward is not good. This does nothing to improve it.

Subsection 18.2 states that the Board shall select the farm of the owner offering the highest discount. The Legislature wanted 3 factors considered together. This flies in the face of the law.

Section 22. The Foundation would argue that they have a Strategic Plan, but they do not. They have a map of soil quality which prioritizes parcels by that, and in some places they gave the area around a town a medium priority as opposed to a low one, but that does more harm than good. It did not create an adequate strategic plan. The proposed language in this is certainly not going to help either. The purpose of a real Strategic Plan would have been to create blocks of farmland where they could stop the progress of development beyond the edges of municipalities and sewer areas. This is a well-known strategy that the federal government wants farmland preservation programs to use because it serves three purposes. Three purposes makes justification of the millions used to preserve private farms more acceptable to many people. They realize that (1) our air quality is being wrecked by the use of too many automobiles. (2) Sprawl is also costly to governments as infrastructure and services must follow it. Also, (3) biodiverse areas need the support of farmland in the food chain which supports waterfowl and birds and in our case, life in the oceans. So this is not just a program to support farmers. It is a plan to do our part to reduce the impact of

climate changes and be ready for the food production problems of the future. Are we going to do our share to preserve our farms as mandated or make decisions that are not guided by a broader knowledge of what is needed?

Removing criteria ignores the environment-friendly guidelines in the law and the planning of counties. These Proposed Regulations reinforce an intention to keep running the program the way they want to. No one can check a LESA score if they do not know the factors involved or how they are weighted numerically. Even "viable and productive" is not defined anywhere except in practice in LESA scoring or the way appraisals are done. That is not an acceptable way to manage millions of dollars!

What these Proposed Regulations represent is not an improvement in the program, nor do they seem to be necessary. Quite the contrary, so I oppose their adoption.

Copy: Deputy Secretary of Agriculture Austin Short



Delaware Audubon

Delaware Audubon Society
56 W. Main Street, Suite 212A
Christiana, DE 19702

October 12, 2015

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904

Subject: Comments on the proposed regulations related to the Delaware Agricultural Lands Preservation Foundation

Dear Mr. Denman,

Attached please find a digital copy of our written comments submitted during the September 23, 2015 Public Hearing on the proposed regulations related to the Delaware Agricultural Lands Preservation Foundation pursuant to 3 Del. Code, Section 901.

We would like to supplement our comments made on Sept. 23, 2015 with additional documentation to clarify erroneous claims made by Mr. William Powers during the hearing, and to provide additional information regarding the proposed 5% incentive for farmland within ½ mile of a growth zone.

Rebuttal of Wrongful and Erroneous Claims & Information from Mr. Powers

Mr. Powers, who stated he was appointed by County Executives Chris Coons and Paul Clark to New Castle County's Farmland Preservation Advisory Board, claimed that these proposed regulations were not being handled procedurally in accordance with the law because, in his view, they did not go to the New Castle County Agricultural Preservation Advisory Board 60 days in advance. We believe this information to be incorrect.

Instead, §906(a) of the Delaware Agricultural Lands Preservation Act specifically requires that "[e]ach county legislative body shall establish a Farmland Preservation Advisory Board" and that "[t]he members of such Board shall be appointed by the county legislative body". Moreover, §906(d) contends that "if the Board is not duly established or constituted, the decision required of the Board under the Agricultural Preservation District application process as specified hereunder shall be deemed an approval."

We contend New Castle County's Farmland Preservation Advisory Board does not currently exist as a public body, and therefore the stipulation by Mr. Powers that this board should have been consulted in the development of these regulations is incorrect.

Despite Mr. Powers' assertion that he is currently the chair of the New Castle County Farm Preservation Advisory Board, New Castle County Council's Executive Committee has acknowledged that the County has been operating without a duly established Farmland Preservation Advisory Board and has been working to correct this problem. We have attached a copy of our comments to New Castle County Council President Bullock and Members of Council on January 14, 2015 on the issue of properly establishing a New Castle County Farmland Preservation Advisory Board.

During the February 3, 2015 NCC Council Executive Committee Meeting, an extensive discussion took place on this issue, resulting in the Council's unanimous approval as part of the official public record of Council to adopt a process for duly establishing a Farmland Preservation Advisory Board. At this meeting Councilman Weiner moved to include the addition of an Ethics Commission review to the Farmland Preservation Advisory Board appointment process, which was unanimously approved by NCC Council. Councilman Powers was present at this meeting and part of the unanimous vote on both the need to establish an Advisory Board and the inclusion of an Ethics Commission review. Attached please find a copy of the official meeting minutes from the February 3, 2015 Council meeting for your review.

As a result, Mr. Powers' knew full well that New Castle County's Farmland Preservation Advisory Board was not "duly established" when making his comments during the public hearing on Sept. 23, 2015. Therefore, there is no need for a 60 day review period, as the New Castle County Farmland Preservation Advisory Board has yet to be duly established to provide for this review.

If the New Castle County Farmland Preservation Advisory Board were already duly established, and Councilman Powers' appointment was still in effect, he would be the Chairman of the Board, according to §906(a) of the Delaware Agricultural Lands Preservation Act: "(a) Each county legislative body shall establish a Farmland Preservation Advisory Board which shall consist of 4 active farmers or agribusinessmen residing within the county and 1 member of the county legislative body, who shall serve as the Chairperson of the Board."

If this were indeed the case, then Mr. Powers has failed to convene the Farmland Preservation Advisory Board for approximately nine years and would be derelict in his duty to carry-out the functions of this Advisory Board.

Additionally, Mr. Powers, in his official elected position as a member of New Castle County, informed the members of the Executive Committee of County Council on September 29, 2015 as part of the Council's Executive Committee that having just recently read the law and "knowing the law now", he recognizes that the County has never properly established the Farmland Preservation Advisory Board. This is in direct contradiction to his statement on the record at the hearing. The official record of Councilman Powers statement may be heard on the recorded

NCC Council Executive Committee that is downloadable from
<http://www.ncede.org/AgendaCenter/County-Council-1/?#09292015-884>.

We request that the hearing officer consider this information and its bearing on the credibility of Mr. Powers' testimony. We ask the hearing officer to disregard Mr. Powers' statements due to their factual inaccuracy and lack of substantive value for the administrative process of regulatory development.

Similarly, considerable misinformation was wrongly posited by Mr. Power's regarding the proposed regulations to New Castle County Council's Executive Committee at September 29, 2005 meeting, leading the council to request an extension of the public hearing (beyond the extension in place). We request that the hearing officer evaluate the misguided and inaccurate statements and advocacy by Councilman Powers leading to this request, and disregard any request from New Castle County Council based on this inaccurate information.

Caution Advised on the 5% Bonus Incentive for a Small Minority of Farmers

During the hearing, and then a few days later during the New Castle County Council's Executive Committee Meeting, Councilman Powers and several other land owners made undocumented claims about inequities to farmers and a need to increase the incentive for a small fraction of the agricultural community with land within ½ mile of the growth zone. We will provide an analysis of the actual outcomes of the State Aglands Preservation Program that refute these statements.

As part of the update of the Agricultural Lands Preservation Act Regulations it is critical to consider the statistical data documenting the extent of land protection under the program in each county and the fairness and equity of the approach to all interested farmers. Participating farmers have entered into the program voluntarily and in good faith that the program is fair, equitable, and transparent. We must be careful not to let the special interest of a few landowners come at the cost of the vast majority of farmers interested in protecting their land from development. To do this we must consider the metrics of the outcomes from the existing program to date, and debunk the misleading rhetoric of a few self-serving landowners seeking to modify the program for their personal profit at the expense of the majority of farmers enrolled in the program.

If you evaluate the distribution of farm and agricultural lands, you will find that the vast majority is outside the ½ mile zone. An initial analysis indicates that over 90% of the land is outside the proposed ½ mile buffer around growth zones, meaning that any preference is only for a small fraction (<10%) of the farmland. Also, it appears that 90% of the farmers voluntarily enrolled are outside the 1/2 mile zone around the growth zones. Yet this small minority of farmers near growth zones has done considerably better than those not near or adjacent to growth zones as a statistical fact. These are our initial estimates without the benefit of having the actual GIS land coverages for more detailed analysis. We encourage the Farmland Preservation Program to request a more detailed quantitative GIS analysis be conducted by the Department of Agriculture to get a more accurate accounting of the impact on farmers. This is critical, as those with land inside the ½ mile growth zone appear to have fared considerably better than those outside this zone, already leading to a structural inequity among participants.

In NCC 20% of farms have been protected county wide, yet within the small 1/2 mile buffer around growth zones that geographically includes a small fraction of available agricultural land, 24% of the total acreage has been protected with PDRs; consuming 27% of the State ag funds expended in NCC. The small minority in the growth zone has fared much better at the expense and inequity burden of those farms not adjacent to the growth zone.

Sussex is even more lopsided in favor of those near the growth zone, with 15% of farms protected countywide, and 35% of the farm acres protected within the 1/2 mile buffer consuming 37% of the funds spent. Kent is a bit less lopsided, but still statistically skewed to benefit those farms within the 1/2 mile growth zone buffer with 35% protected county wide, and 19% of them in the growth zone expending 21% of the funds.

This inequity benefiting those within 1/2 mile of the growth zone appears to be due to the structure of the program based on a percentage of appraised value bidding. Land values are higher adjacent to growth zones, leading to larger payouts. Those farms within 1/2 mile have experienced elevated land values in direct response to County land use decisions associated with and growth zone delineation. The increased bid preference in the new regulations can be viewed as providing double dipping by a small minority (about 10%) of farmers at the expense of the majority of farmers (about 90%) not in the 1/2 mile zone. It is being added in addition to the already existing preferences provided by market forces artificially stimulated by the decisions of local governments to establish growth zones in a manner that increases their property values.

This data should prompt any policy maker to ask if we can truly meet the legislative intent of the Farmland Preservation Act by allowing a skewing and inequity to our farmers. Do we really want a program that caters to a small minority at the expense of the vast majority? We must also ask about the fairness and equity based on the statistical facts of the policy outcomes, not based on the uninformed claims of a few landowners and a misguided member of New Castle County Council. While the 5% incentive may be pursued based on a goal of further giving preferential treatment to those adjacent to growth zones, it should be closely monitored to ensure it does not unduly burden the vast majority of farmers outside this 1/2 mile zone. Any effort to increase this amount above 5% should be strongly opposed.

Protecting the area adjacent to the growth zone is a discretionary action under the Delaware Agricultural Lands Preservation Act, not a mandate. The statistical data documents that the goal to prioritize land protection near the growth zone has been met based on the higher percentage of actual protected farmland acreage in the 1/2 mile zone as compared to that protected outside this zone in each county. While some may argue it should be a higher difference than that statistically shown, the fact remains that farmland acreage protection rates within the 1/2 mile zone are significantly higher than that outside the 1/2 mile buffer around the growth zone as a matter of statistical fact. Most importantly, it has occurred without excessive inequity to our farmers inside and outside this zone.

While Audubon has testified that the 5% bonus added to the bid only is "reasonable", we would like to request that the Agricultural Preservation Foundation exercise caution should this change be made. The impact must be closely monitoring to ensure it does not create a lopsided

structural inequality that penalizes the many farmers outside of the growth zone buffer area. We also strongly advise against any increase in incentives beyond this 5%.

Ultimately, since growth zones are set by County Government in accordance with home rule legal land use traditions in Delaware, any added protection should be the legal responsibility of the counties that set the growth boundaries and zoning. Growth zones change based on County decisions beyond the control of the Aglands Preservation Foundation, and we should question the extent to which the Agricultural Preservation Program should be used as a tool to correct the lack of political will by local government to effectively manage land use.

The State Farmland Preservation Program should not under any circumstance be used as a de facto tool to buy out the unintended consequences of local government land use decisions, especially those that are now seen as having been made in serious error, such as the initial plan to sewer the Port Penn Area of New Castle County.

If the County Government's feel that the State should play a larger role in land use, they should relinquish the authority delegated to them by the State for making zoning laws. They should as support State legislation to return more of the local share of the transfer tax to the State for the specific purpose of protecting these growth zone buffer areas.

Thank you for your consideration and the opportunity to add these supplemental comments to our comments made during the hearing on this regulatory issue.

Sincerely,



David B. Carter, President
Delaware Audubon Society

Cc: DAS Board of Directors

Attachments:

- 1) Delaware Audubon Written Comments Submitted at Hearing Sept. 23, 2015
- 2) Letter to NCC Council regarding Farmland Advisory Committee; Jan. 14, 2015
- 3) Meeting Minutes of NCC Council Executive Committee – Feb. 3, 2015



Delaware Audubon

DELAWARE AUDUBON SOCIETY

Chapter of National Audubon

56 W. Main Street, Suite 212A

Christiana, DE 19702

www.delawareaudubon.org

302-292-3970

Delaware Agricultural Lands Preservation Foundation Hearing of Proposed Regulations Comments by David Carter, President of the Board of Directors September 23, 2015

Delaware Audubon Society would like to express our strong support for the proposed regulations relating to the administration of the Delaware Agricultural Lands Preservation Program established pursuant to 3 Del.C. §901.

The minor administrative changes are necessary to clarify outdated sections and to ensure the program continues its efficient administration. We also support the one significant change that provides an added incentive to farms within ½ mile of a county growth zone. By increasing the offered percentage bid by 5% for the sole purpose of ranking, the proposed regulation will provide a reasonable advantage to those farms likely to have elevated development pressure due to locational proximity to a growth zone. Simultaneously, it ensures the cost effective approach to land protection is retained in a manner that is transparent, fair, and equitable to all landowners in the state. We believe this change will help provide better greenbelts between developing areas and rural areas that support Delaware's agricultural industry and help maintain the rural landscape that so many Delawareans' enjoy. In addition to its benefits to our agricultural industry, it also protects open space and habitat vitally important to maintaining healthy bird populations in our State.

Audubon is aware that a select group of landowners, several elected officials, and special interests from New Castle County have made erroneous claims about the implementation of the program, falsely claiming that it is not effective in New Castle County. This claim is based on an inaccurate assumption that the current state program places New Castle County farms at a disadvantage due to the discounting methods. We would like to provide a more accurate basis for clarifying this misinformation for the public record.

Since 1995, Delaware's State Farmland Preservation program has been highly successful statewide. To date, 34% of the available farmland in Delaware has enrolled in the program,

while 24% is protected by preservation easement that prohibits development. Under the State program, 20% of the available farmland in New Castle County is covered by a preservation easement, a considerably higher rate than the 15% in Sussex County.

As written, the regulations maintain a critical component of the approach to agricultural preservation in Delaware. It remains competitive and is voluntary on the part of the landowner. The properties included in the program must go through a transparent screening process and are assigned a score to insure that they are eligible. The pool of eligible farms during any one round all compete against each other and are then selected based upon the single criterion of the level of discount offered. This has provided landowner confidence and trust in the program concerning the integrity and fairness of land protection decisions. It eliminates gaming of the process by special interests. Delaware's government is now facing unprecedented fiscal challenges that will impact funding decisions. As a result, programs proven to be cost effective, fair, and transparent are those that will be most deserving of funding as our elected officials make very difficult choices. Maintaining these exemplary characteristics in the current program are absolutely imperative to ensuring funding is allocated to protect our diminishing farmland.

One of the important positive side benefits of the Delaware Agricultural Lands Preservation Program is that it selects those farmers and landowners most devoted to the future of Delaware Agriculture and our land resources. Each has made a deep commitment rooted in difficult choices impacting the land they love, the families they care for, and the agricultural business so important to our state. As such, they represent the best Delaware has to offer for the future of our working lands and continuation of our agricultural heritage. The program should continue to support these leaders in our agricultural community. Their commitment holds the greatest potential for a strong and viable future of agriculture in Delaware.

We urge you to adopt the regulations as proposed, and in doing so preserve the integrity of our nationally recognized Delaware Agricultural Preservation Program, the future of agriculture in Delaware, and the future of our bird populations that depend on the habitat stewardship that is so often associated with the private lands management of these farms.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "David B. Carter". The signature is fluid and cursive, with a long horizontal stroke at the end.

David B. Carter, President
Delaware Audubon Society

IMPORTANT FACTS ABOUT FARMLAND PRESERVATION IN DELAWARE

Delaware Agricultural Lands Protection-Statewide Program

- Since 1991, 115,116 acres have been placed under permanent farmland preservation easements at an average cost of \$1,797 per acre. This is 23% of all the available farmland in Delaware.
- The breakdown by county is New Castle County with 13,077 acres, which is 20% of the available farmland in New Castle County. New Castle County is second in percent of protected farmland behind Kent County in permanently protecting farmland through the statewide program. (NCC=20%, Kent=35%, Sussex=15%)
- The average cost of permanently protecting farmland in New Castle County under the State program has been \$2,556 per acre. (An exceptionally good deal for tax payers and farmers truly interested in preserving their farmland.)
- There are currently 17 farms comprised of 2,088 acres in New Castle County which are eligible to sell farmland preservation easements to DALPF.
- The method of selecting properties for easement purchases under the State program involves a competitive bidding process under which those offering the highest discounts are chosen first until the funds made available annually have been exhausted. It is simple, equitable, and transparent. There is not room for political manipulation of the selection process.
- When counties provide monies to the State fund for easement purchases the counties get to select the farms in their respective counties and can make those selections on any basis. New Castle County has in the past 5 years provided \$1,567,800 to the State program which allowed for the purchase of easements on 1,617 acres of farmland in New Castle County at an average cost of \$3,691 per acre. (This was done a decade ago, so matching funds from NCC now would provide highly competitive incentives for this program without any increase in government bureaucracy at the NCC level of government).
- The Statewide program is strictly based on voluntary participation.

NCC Administered Farmland Program

- In 2004 NCC purchased 4 farmland preservation easements on 719 acres at a cost of \$4,040,000 or \$5,612.27 per acre.
- The NCC preservation easements were purchased at no discounts.
- The selection process for the selection of properties for purchase of easements was subjective. For example, a preservation easement was purchased on Councilman Bill Powers 39.61 acre farm at \$4,364 per acre, and his farm is at a remote location in lower NCC along the Maryland boundary line.
- The NCC preservation easements allow for 4 additional residential parcels and there is no reduction in the preservation easement purchase price for the residential area. Under the State program payment is not allowed for any residential use area.
- The NCC preservation easements, in addition to paying the full value for the development rights, also provide the landowners with transferable development rights. The landowner is getting paid twice under the NCC program. This is commonly referred to as "double dipping".
- NCC currently has \$3 Million available to purchase farmland preservation easements in NCC. If less than \$2 Million of that funding were transferred to the State wide program NCC could select all of the 5 NCC properties submitting bids in the most recent purchase round under the state program. A total of 479 acres would be protected at an average cost of less than \$4,000 per acre.



Delaware Audubon

Delaware Audubon Society
56 W. Main Street, Suite 212A
Christiana, DE 19702

January 14, 2015

The Honorable President Bullock and Members of Council
New Castle County Council
Louis L. Redding City/County Building 8th Floor
800 North French St.
Wilmington, Delaware, 19802

***Subject: New Castle County's Farmland Preservation Initiative, Farmland Advisory Board,
and follow-up to Audubon's January 5, 2015 Letter to Council***

Dear Honorable President Bullock and NCC Council Members,

Thank you for the opportunity to provide comments on New Castle County's Farmland Preservation Initiative during your Executive Committee meeting. This is a revision to the draft letter I shared with Council after my public comments that I hope will clarify some discussion points and provide some additional insights the Council may wish to consider.

It was helpful to learn that the Farmland Advisory Board is related to the State Program and requirements in accordance with 9 Del. Code, Subchapter I, § 906 Farmland Preservation Advisory Boards. I believe this is a critical step in helping to ensure that the deliberations over a new NCC effort are coordinated with and most effectively leverage the resources and expertise available from the highly successful State Agricultural Land Preservation Program. By code, the lack of an established County Committee has made the Delaware Agricultural Foundations decisions on Agriculture Preservation to be conclusive presumed, without the benefit of input from the County. According to the Code,

"In the event that the Board fails to make its recommendation within the specified 60-day period, or if the Board is not duly established or constituted, the decision required of the Board under the Agricultural Preservation District application process as specified hereunder shall be deemed an approval."

We would like to share our thoughts on the possible role of the Advisory Board, as well as follow-up with supplemental information related to several issues outlined in our January 5, 2015 letter presented to you during Council's Land Use Committee Meeting.

Farmland Preservation Advisory Board

We believe a fully transparent, inclusive, qualified, and open board will be of great service to the citizens of New Castle County. If fairly and thoughtfully selected, the Board Members could provide an independent body to sort through the conflicting and possibly misleading information now being used to guide New Castle County's efforts to develop an effective Farmland Preservation Program.

We also recommend that this board be supported by an expanded group of individuals with knowledge and expertise about farmland preservation and administration of a program to most effectively protect farmland in New Castle County. This would include an expansion of the specific duties outlined under the code, which would supplement and complement the Board's legal duties, not conflict with it. This could be accomplished through a specific committee established under the board, through an interim task force that includes the appointed Farmland Preservation Advisory Board Members plus some additional experts, or with other organizational structures established with a shorter term period to conduct many of the actions outlined below. We believe the actions outlined below are needed to ensure New Castle County Council's decisions on Farmland preservation are fully informed and guided by the most accurate and useful information and analysis.

To this end, we believe the charge for the expanded members of the Farmland Preservation Advisory Board committee should be to conduct a policy analysis of the program as proposed, raise and clarify questions, confirm or refute the validity of information currently being used to justify the current stand along program design, and to make recommendations for the most efficient and cost-effective administrative methods and structure for the development of a Farmland Preservation Program in New Castle County. This should include benchmarking and a comparative analysis of the cost and benefits of any new program with the opportunity to simply provide matching funds to the existing highly successful State Agricultural Preservation Foundation.

Undertaking this effort will provide a useful knowledge base to the longer-standing New Castle County Farmland Preservation Advisory Board and to all members of New Castle County. It will provide a sound framework and foundation for a much-needed effort to protect more farmland in New Castle County in a fair and equitable manner for both landowners and the taxpayers that will fund the program.

Follow-up to Our January 5, 2014 Letter

We would also like to follow-up on our previous letter by sharing the results of my FOIA request to the Delaware Department of Agriculture regarding the missed opportunity to protect 280.2 Acres at the cost of \$1.436K. The documents from DDA are attached. This is a per-acre cost of \$5,127/Acre, which is approximately 1/6th the cost of the properties that the NCC Farmland Preservation program is being developed to capture, due to their exceptional circumstances of being encumbered by a legal settlement with an uncooperative Farmer. I have an identical FOIA in to the New Castle County Government Administration, which has been forwarded to the legal department and not yet fulfilled.

The public records include the specific correspondences with County Executive Tom Gordon and the specifics of the properties that could have been protected through a cooperative effort with the State Program at a bargain price to County taxpayers.

In addition to this missed opportunity to protect NCC farmland at a much reduced cost, we also challenged the willingness to except the settlement terms due to a variety of legal uncertainties and inconsistencies in the interpretation of these documents. While we still recommend the settlement be challenged; I would also like to provide an additional alternative to consider that may allow the separation of this unfortunate and poorly advised legal settlement from the County's developing efforts to protect more farmland.

Specifically, If NCC Council does choose to accept the extraordinary assumption that they are bound by a poorly advised settlement with Toll Brothers/Warren and it is the policy intent and goal of County Council to protecting farmland in the Port Penn Area and other areas outside the central sewer core area, it is possible to require that the sewer system developed to serve the Warren/Lester Property be designed and engineered to only provide capacity for the specific property covered by the settlement. The question to ask of the Department of Special Services is:

Why not allow only the construction of a very small 2"-3" forced main to carry only the capacity of the Warren & Lester properties?

Wouldn't this approach of only allowing the very minimal size forced main restrict capacity needed to allow rampant development in the region?

Wouldn't this approach allow NCC to develop a fair and equitable Farmland Preservation program that successfully serves many farmers and protects more land at a more reasonable cost while fulfilling its settlement responsibilities, rather than continue to develop a Farmland program design to address the extraordinary exception of a non-cooperative landowner?

We believe it is imperative that New Castle County sever all connections between resolving this poorly advised legal settlement and the development of an effective Farmland Preservation Programs if we hope to develop an effective preservation program. This engineering design solution is an additional alternative to consider for achieving this needed action of uncoupling the incompatible issues inherent in the legal proceeding and the development of an effective Farmland Preservation Program. While it will not result in the protection of the Warren Farm, it will allow the development of a program resulting in far more Farmland Protection at a much lower cost, best serving all farmers and tax paying county residents.

I spoke this week with several landowners that were once part of the Port Penn Assemblage who assured me the project will not be revived. As such, there is only a need for capacity for the 200 or so units on the Warren property, not the over 600 claimed by the County administration during last week's Council Land Use Committee. A careful reading of the settlement, and the fact that the settlement is only with Mr. Warren, clearly indicates that the grandiose claims are at best an extreme exaggeration, and perhaps a deliberately misleading argument.

Finally, this capacity constraining engineering solution for sewer is being used in several small towns in Kent County Delaware, providing a documented example of how it can be accomplished. It is our understanding that this engineering solution using a smaller forced main design has been successfully implemented in at least the Town of Kenton, Town of Leipsic, Community of Kitts Hummock, and is currently being implemented in the Community of Pickering Beach. In these cases, Kent County has installed these limited capacity forced mains to meet the needs of existing communities without promoting expended growth and development in the areas. Any argument over the cost effectiveness of these smaller conveyance systems should be disregarded by Council, since NCC will not pay the cost for these systems. The settlement specifically places the cost of this system on Toll/Warren, not the county taxpayers.

We also thank you for your work and continued efforts to protect Farmland and Open Space in New Castle County, and are confident that with increased oversight by New Castle County Council, our citizens will benefit from the results.

Sincerely,



Conservation Chair
Delaware Audubon Society

Attachment: FOIA Information Received from DDA
Public Notice examples to confirm the limited capacity force main approach.

CO-CHAIR, CHRISTOPHER A. BULLOCK
PRESIDENT
CO-CHAIR, PENROSE HOLLINS
PRESIDENT PRO TEMPORE



LOUIS L. REDDING CITY COUNTY BUILDING
800 N. French Street
Wilmington, DE 19801
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NEW CASTLE COUNTY COUNCIL EXECUTIVE COMMITTEE MEETING

Tuesday

February 3, 2015

4:00 p.m.

Council Conference Room – 8th Floor
City/County Building
800 N. French Street
Wilmington, DE

Minutes

- **Call to Order**
Meeting was called to order at 4:00 p.m.
- Council Members Present: Bell, Bullock, Cartier, Diller, Hollins, Kilpatrick, Powers, Reda, Sheldon, Smiley, Street, Tackett, Weiner
- Approval of Minutes of the January 13, 2015 meeting
A motion was made to approve the minutes from the January 13, 2015 Executive Committee meeting. The motion was seconded and approved unanimously.
- **°15-001: TO AMEND THE PAY PLANS AND RATES OF PAY FOR UNCLASSIFIED EMPLOYEES OF COUNTY COUNCIL.** Introduced by: Mr. Smiley, Mr. Bullock
- **°15-002: AMEND THE PAY PLAN AND RATES OF PAY FOR NON-UNION UNCLASSIFIED SERVICE ROW OFFICE EMPLOYEES AND ADOPT THE CLASS SPECIFICATION FOR CHIEF DEPUTY REGISTER OF WILLS.** Introduced by: Mr. Bullock
 - Christine Dunning, Chief Human Resources Officer, spoke regarding this ordinance
- Discussion regarding Farmland Preservation Advisory Board
 - Carol Dulin, Counsel to Council, spoke regarding this topic
 - David Carter spoke regarding this topic
 - Mr. Weiner moved to adopt a process for Farmland Preservation Advisory Board appointments. It was seconded by Mr. Bell and approved unanimously.

- Mr. Weiner moved to include the addition of an Ethics Commission review to the appointment process. It was seconded by Mr. Tackett and approved unanimously.

- Other/Public Comment

- Adjournment
It was moved and seconded to adjourn the meeting.
The meeting was adjourned at 5:05 p.m.

A recording of the meeting is available upon request.

Respectfully submitted by Anthony deFiore, Legislative Aide to Council President Christopher A. Bullock

Summary of County Contributions to Delaware Aglands Preservation Program

County	# Easements	Acres	County Funding	Total Landowner Payment
Kent	57	3942	\$ 2,232,642.61	\$ 7,205,975.10
New Castle	37	4033	\$ 6,138,988.70	\$ 18,329,286.91
Sussex	27	2682	\$ 3,137,947.74	\$ 10,974,363.63
TOTAL	121	10657	\$ 11,509,579.05	\$ 36,509,625.64

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VERSION 2.1.3
GOVERNMENT INFORMATION CENTER



Farmland Preservation Program

September 23, 2015

10:00 AM to 12:00 PM

Delaware Agricultural Lands Preservation Foundation Hearing of Proposed Regulations

Department
Agriculture

Host Agency
Farmland Preservation Program

Meeting Location
Delaware Department of Agriculture
Conference Room 1
2320 S. DuPont Highway
Dover, DE, 19901
Kent County

Contact
Rebecca Vaughn
302-698-4531
2320 S. DuPont hwy
Dover, DE 19901

Purpose

To discuss proposed regulations relating to the administration of the Delaware Agricultural Lands Preservation Program established pursuant to 3 Del.C. §901. Full-color maps are available at http://dda.delaware.gov/aglands/Aglands_news.shtml
***UPDATE TO PUBLIC COMMENT FOR PROPOSED REGULATION HEARING HAS BEEN EXTENDED FROM OCTOBER 1, 2015 TO OCTOBER 12, 2015.

Agenda

- Download Agenda

Minutes

Minutes have not yet been published for this meeting

Additional Information

NOTICE IS HEREBY GIVEN THAT THE DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION PROPOSED REGULATIONS PUBLIC COMMENT PERIOD HAS BEEN EXTENDED FROM THURSDAY OCTOBER 1, 2015 TO MONDAY OCTOBER 12, 2015.

Minutes will be taken
Wheelchair accessible
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Change Date	Change Reason
8/25/2015	New
8/25/2015	Agenda Change
9/22/2015	Agenda Change

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