

**BEFORE THE DELAWARE AGRICULTURAL LANDS PRESERVATION
FOUNDATION**

**IN THE MATTER OF THE ADOPTION :
OF REGULATIONS TO BE USED IN :
THE ADMINISTRATION OF THE :
DELAWARE AGRICULTURE LANDS :
PRESERVATION PROGRAM :**

ORDER

AND NOW, this 18th day of November, 2015, the Trustees of the Delaware Agricultural Lands Preservation Foundation (collectively the "Foundation" or the "Board"), issues the following Order which shall be effective ten (10) days after the publication of this Order in the Delaware Register of Regulations:

1. Pursuant to its statutory authority, the Foundation has proposed for adoption a comprehensive set of regulations (the "Proposed Regulations") to be used in the administration of the Delaware Agricultural Lands Preservation Program established pursuant to 3 Del. C. §901 (the "Program"). William A. Denman, legal counsel (the "Hearing Officer") was designated as the Hearing Officer to conduct a public hearing to entertain comments from the public on the Proposed Regulations, and thereafter organize and summarize the comments submitted, and report to the Foundation on the comments.

2. The public comment session was held at the Foundation's office on Wednesday, September 23, 2015 at 10:00AM. A verbatim transcript of the public comment session, consisting of 74 pages, was prepared and available for review by the Foundation. Notice of the public comment session, together with information as to how a copy of the Proposed Regulations could be obtained, was published in the Delaware Register on September 1, 2015. Notice of the public comment session was also (a) published in both the Delaware State News and the News Journal on August 18, 2015 and (b) posted on the Delaware.gov web site on August 25, 2015. At least 60 days prior to the publication of the Proposed Regulations, a draft of the Proposed Regulations was distributed to the Farmland Preservation Advisory Boards of Kent and Sussex County, Delaware established pursuant to 3 Del. C. §906. A copy of the Proposed Regulations was sent to the Council President of New Castle County. New Castle County did not have an established Farmland Preservation Advisory Board. The deadline for submitting written comments was October 12, 2015, nineteen (19) days after the conclusion of the public comment session.

3. On October 22, 2015, the Hearing Officer submitted his Report, a copy of which was provided to the Foundation.

4. The Foundation considered the Proposed Regulations and the Report of the Hearing Officer at its regularly scheduled Board meeting held on November 18, 2015, and has determined to issue this Order reciting the background, summary of information submitted, and its findings.

At its November 18, 2015 Board meeting, the Foundation (after taking into consideration the comments made by the public at the public comment session, as set forth in the verbatim transcript, the written comments received, and the Report of the Hearing Officer, all of which were made available to each Trustee prior to the November 18, 2015 Board Meeting) issues this Order.

5. A summary of the verbal and written public comments submitted on the Proposed Regulations is set forth in the Report of the Hearing Officer.

6. The Foundation, by this Order, adopts as Final Regulations the Regulations attached to this Order as Exhibit A. The Final Regulations, as adopted herein, shall replace the existing regulations set forth in 3 Delaware Administrative Code, Part 701, §1.0 through §30.0, including Appendix A through G.

7. Several comments were received regarding the various matters relating to the Proposed Regulations. The Foundation has considered these comments and the Report of the Hearing Officer.

8. The Foundation finds that proper notice of the Proposed Regulations and opportunity to comment was provided by the Foundation as required by law.

9. The Foundation finds that the Proposed Regulations are consistent with the Foundation's enabling legislation, and in particular, 3 Del. C. §915, and provide for a fair and uniform procedure for acquiring agricultural lands preservation easements, incorporate bidding and negotiation into that process in the form of discounting or donations, and provide additional incentives to facilitate the acquisition of preservation easements on farms located near or adjacent to growth zones. The Foundation finds that the "discount" method used in the easement selection process has worked well in the past, and recognizing the voluntary nature of the program, provides an objective method for selecting qualified farms for easement purchase. The Foundation also finds that the 5% bonus provision set forth in Proposed Regulation Section 18.2 represents an additional incentive for owners of farmland located near and adjacent to growth zones to sell a preservation easement. The Foundation will monitor the effectiveness of the 5% bonus. The Foundation also finds that the Proposed Regulations simplify the procedure for acquiring preservation easements, and will not impose additional costs or burdens upon individuals, farmers, or small business owners. The Foundation also notes that many of the commentators who submitted comments supported the adoption of the Proposed Regulations. The Delaware Audubon Society, the Delaware Nature Society, Delaware Wild Lands, and the League of Women Voters submitted comments in support of the Proposed Regulations. Tony Domino and Tom Unruh, two active farmers in New Castle County, voiced their support for the Proposed Regulations. Neither the Kent County Farmland Preservation Advisory Board nor the Sussex County Farmland Preservation Advisory Board opposed the Proposed Regulations.

10. The Foundation also believes that the Proposed Regulations provide an objective basis for determining how the Foundation's limited resources will be used to acquire preservation easements. In order for a property to qualify for the sale of a preservation easement, the property must be part of a ten year District. Prior to becoming a part of a District, the property must satisfy the eligibility requirements set forth in the Foundation's enabling legislation. Accordingly, only

those farms that satisfy the criteria for inclusion in a District are eligible to participate in the bidding process. The bidding process, which incorporates the use of voluntary “discounts” or “donations”, as noted above, provides an objective and uniform process, free of political or other intervention, for selecting those farms that will be preserved.

11. The Foundation also notes that the Proposed Regulations include several sections that are essentially procedures for obtaining information and set forth rules of practice and procedure. See Sections 2.0, 3.1-3.10, 4.0, 8.0, 10.0, 11.0, 14.0, 15.0, 19.0 and 20.0 of the Proposed Regulations. Proposed Regulation 3.11 and 21 are necessary to make the Foundations’ regulations consistent with changes in the law that took place in 2004. Proposed Regulation 6.0 and 7.0 merely set forth a restatement of the law.

12. In adopting the Proposed Regulations as Final Regulations, the Foundation notes the following:

Section 1 sets forth the statutory requirements for district eligibility and is consistent with the Foundations enabling legislation. Section 1.3, consistent with current practice, sets the minimum LESA score at 170.

Section 2 sets forth the application procedures that must be followed when a farmer requests that his/her property be included in a District. The Board notes that Section 2 does not include a specific application form. While there was a suggestion that the Proposed Regulations include a specific application form, the Board believes that the Foundation’s Staff is capable of developing appropriate forms, consistent with the law.

Section 3 sets forth procedures to be followed in reviewing Preservation District applications as well as a detailed process for handling disputes. Section 3.11 merely updates the regulations so as to conform to changes in the law relating to residential use and permitted activities, and provides a process whereby parties to district agreements and easements can elect to come in under the legislation enacted in 2004.

Section 4 sets forth the formal requirements that must be complied with in order to create a district. All of these requirements are consistent with Title 3.

Section 5 sets forth the restrictions applicable to district property, all of which are required by Title 3. Section 5 also incorporates the Foundation’s current practice in calculating the allowable residential acreage. Section 5.9 requires notice to the Foundation of any proposed transfer of a farm subject to a district agreement or easement. This notice provision is reasonable in that it will provide the Foundation’s Staff with adequate time to prepare the acknowledgement required by statute.

Section 6 incorporates the statutory provisions relating to the duration and renewal of a district agreement.

Section 7 sets forth the statutory provisions relating to expansion of a district.

Section 8 sets forth the statutory provisions relating to the Foundation's authority to inspect district property and enforce the terms of the district agreement.

Section 9 sets forth the procedural requirements for hardship exceptions. The Board concludes that these procedures are fair, reasonable, and consistent with the statutory requirements for the granting of a hardship.

Section 10 and Section 11 relate to the Delaware Farmland Preservation Fund and potential sources of funding. Consistent with Title 3, Section 11.3 requires the Fund to be audited each year by an independent certified public accountant and the findings of each audit be presented to the Board. These sections are consistent with the current regulations.

Section 12 provides that the eligibility criteria for the acquisition of a preservation easement shall be the same as the criteria for district eligibility, and makes it clear that only district property qualifies for easement purchase. Section 12, consistent with Title 3, makes it clear that the purchase of a preservation easement is subject to the discretion of the Foundation. To facilitate the purchase of an easement where funds are limited, Section 12 authorizes the Foundation to purchase an easement on part of a farm included within a district agreement. The Board finds this approach reasonable. At times, the purchase of a preservation easement on all of the property subject to a district agreement may be cost prohibitive.

Section 13.0 relates to matching contributions and is consistent with the Foundation's current practice. In this Order, the Foundation confirms that if any county or municipality is willing to contribute all of the funds to purchase a preservation easement on a farm subject to a district agreement, the Foundation will allow the county or municipality to designate the farm. The county's or municipality's decision can be based on any criteria that the county or municipality deems appropriate.

Section 14 is consistent with the Foundation's current procedures for the selection of properties for easement purchase. The Board finds these procedures to be fair and reasonable.

Section 15 requires the submission of an application for each farmland tract offered for preservation easement purchase, and consistent with the district agreement application process, delegates to the Foundation Staff the authority to develop application forms. The Board concludes that this process is reasonable.

Section 16 sets forth guidelines to be followed in appraising farms, including the qualifications of any appraiser. The Board concludes that the qualification requirements set forth in Section 16 are reasonable, and provide adequate guidance to the Foundation's Staff when selecting an appraiser. Appraisers must be "qualified" and "independent." The Board notes that Section 16 would continue the existing practice of determining the "agriculture-only value" of a farm unit based on an "income capitalization methodology." Some of the commentators objected to this approach, arguing that this method was not reliable. The Foundation understands that the valuation of property is subjective, but notes that under Section 16, the "income capitalization methodology" would be used on a consistent basis and applicable to all farms. Accordingly, no farmer seeking to sell a preservation easement will be at a disadvantage. The Foundation would

also note that the use of this method will not have any adverse impact on the procurement of federal funding, as suggested by one commentator.

Section 17 sets forth the process for determination of the preservation easement value, and is consistent with the Foundation's current practice. Section 17 also provides a basis for determining value when a farmer disagrees with the Foundation's appraisal, and provides the farmer with the right to have an alternative appraisal performed. Section 17.4 provides for a method of determining the "maximum adjusted Preservation Easement value" which the Foundation will accept under such circumstances. Some commentators objected to Section 17.4 and recommended that the Foundation make a determination on a case by case basis and select one of the appraisals. The Board finds that Section 17 is consistent with the current practice, and provides an objective method for arriving at value when there is a dispute. Rule 17.4 does not dictate what the value will be. The use of the phrase "up to" in Sections 17.4.1(ii) and 17.4.2(ii) confirms that. The Board would note that if a farmer is not happy with the result, the farmer does not have to sell a preservation easement. Section 17 provides a reasonable road map for the negotiation process when a farmer disagrees with the Foundation's appraisal.

Section 18 incorporates a bidding process into the easement procurement process, consistent with the current practice. The Board, by this Order, reaffirms its belief that selecting those offers providing the highest discount is fair and objective, and authorized by law. The record shows that this approach has been successful, and insures that all farmers are treated the same, free of political or subjective influences. The 5% bonus available to farms located near and adjacent to "growth zones" provides an additional incentive for easement purchases on farms located near growth zones. Some of the commentators do not consider this adequate. The Board disagrees at this time, but as noted herein, will require the Foundation's Staff to monitor the impact of the 5% bonus on future easement purchases. The Board also notes that some of the commentators objected to any confidential treatment afforded to any discount offered by a landowner. Section 18.4 addresses that issue, and would require the permission of the landowner prior to releasing the information.

Sections 19 sets forth in general terms the procedural requirements relating to the documentation required when purchasing an easement. The Board considers these procedural requirements reasonable, and consistent with the law.

Section 20 sets forth the title requirements and addresses post-closing adjustments that will be required when and if the survey used for determination of the purchase price turns out to be inaccurate. Section 20 is consistent with current practice.

Section 21 relates to the designation of residential lots as contemplated by changes in the law that took place in 2004. Section 21 is consistent with those changes, as well as the current practice. In the Board's view, Section 21 provides a reasonable process for designating residential areas.

Section 22 refers to the Strategy Map attached as Appendix B to the Proposed Regulations. Some commentators criticized the value of this Map. The Board disagrees. The Strategy Map

identifies those farms with a LESA Score of 170 or more, as well as those farms located in areas that are eligible for the 5% bonus.

NOW THEREFORE, after deliberation, for the reasons set forth above and herein, it is the Foundation adopts this Order, as follows:

1. That the "Delaware Agricultural Lands Preservation Program" regulations (the "Regulations") attached hereto as Exhibit A are adopted pursuant to 3 Del. C. §901, et. seq. The Regulations adopted herein which constitute rules for the administration of the Delaware Agricultural Lands Preservation Program shall become effective ten (10) days after their publication in the Delaware Register of Regulations. The Foundation Board finds and determines that the adoption of the Proposed Regulations is just and reasonable, and in the public interest, and will foster the preservation of farmland in Delaware.

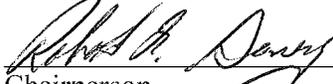
2. That pursuant to 29 Del. C. §1134, the Foundation shall as soon as possible transmit a copy of this Order and the Regulations to the Delaware Registrar of Regulations for publication in the next issue of the Delaware Register of Regulations.

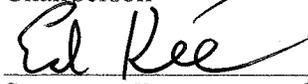
3. That a copy of this Order and the Regulations shall be mailed to each entity or persons that previously filed comments to the Proposed Regulations and to each person who has made a timely request for advance notice of the Foundation's regulation making proceedings.

4. That the Proposed Regulations shall supersede all prior versions of the Foundation's regulations relating to the administration of the Delaware Agricultural Lands Preservation Program. The Foundation reserves the right to hereafter alter, amend, or waive the Regulations adopted herein to the extent that the same may be allowed by law.

5. That the Foundation reserves the jurisdiction and power to enter such further orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE FOUNDATION:

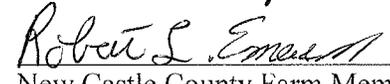

Chairperson

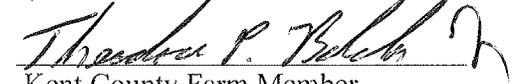

Secretary, Department of Agriculture or Designee

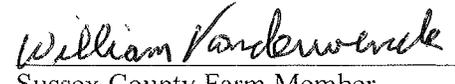

Secretary, Department of Natural Resources And Environmental Control, or Designee

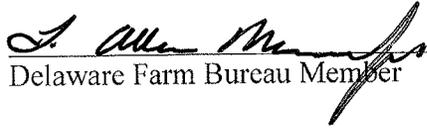

State Treasurer or Designee


Delaware State Grange Member


New Castle County Farm Member
I VOTED NO


Kent County Farm Member


Sussex County Farm Member


Delaware Farm Bureau Member


Chair, Council on Forestry or
Designee

Dated: November 18, 2015

DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION

PROPOSED REGULATIONS

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. Information relating to the Foundation and questions regarding the Foundation’s operations may be obtained by contacting the Foundation by telephone at 302- 698-4530 or Toll Free in DE Only at 800-282-8685, or by visiting the office of the Foundation located at 2320 South DuPont Highway, Dover, DE 19901. 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

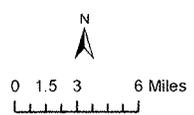
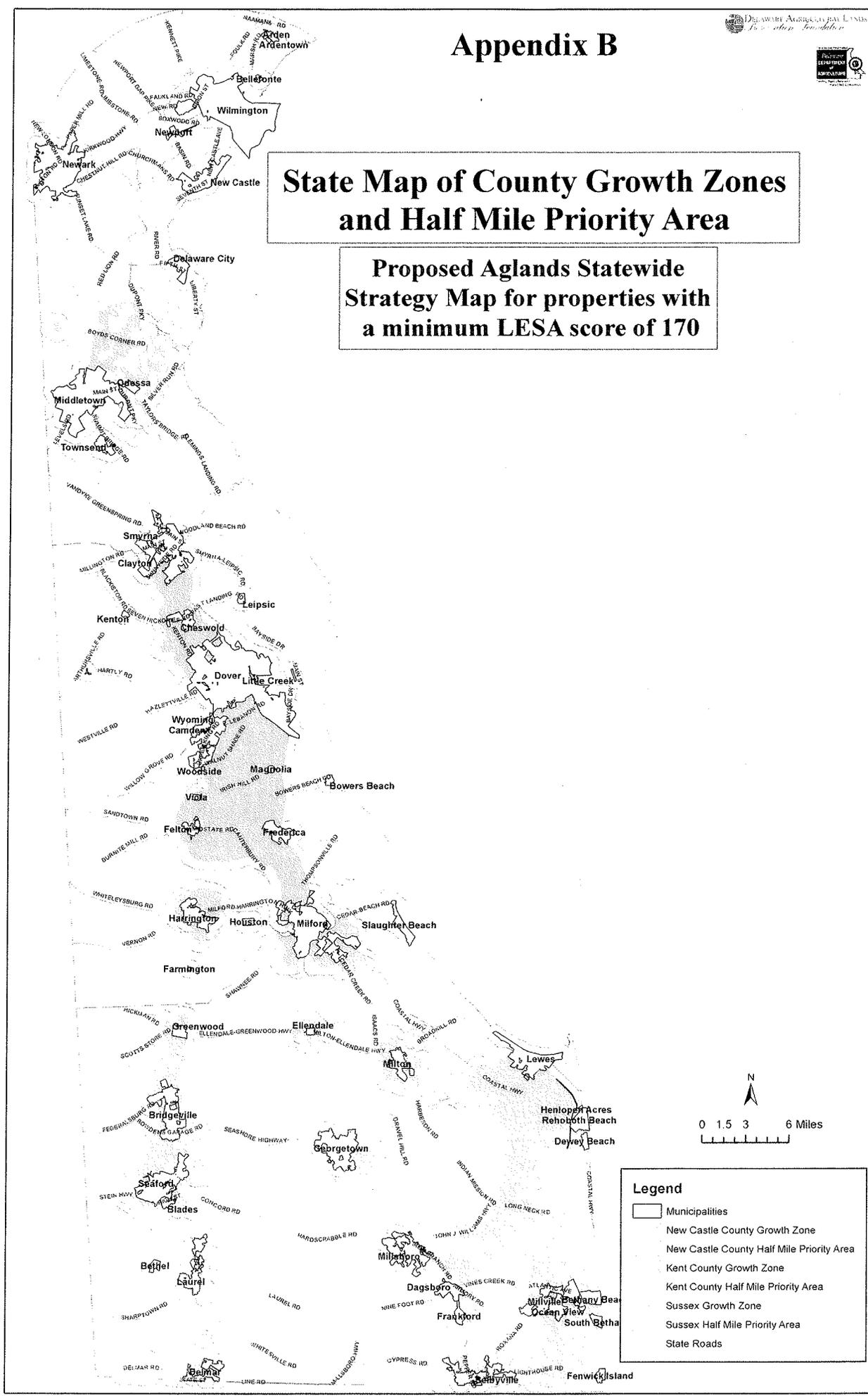
The farm lands shown on the Strategy Map attached hereto as Appendix "B" which have a LESA Score of at least 170 are targeted for inclusion in Districts, and those qualified farms located in whole or in part one-half (1/2) mile completely outside of any growth zones designated under these regulations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



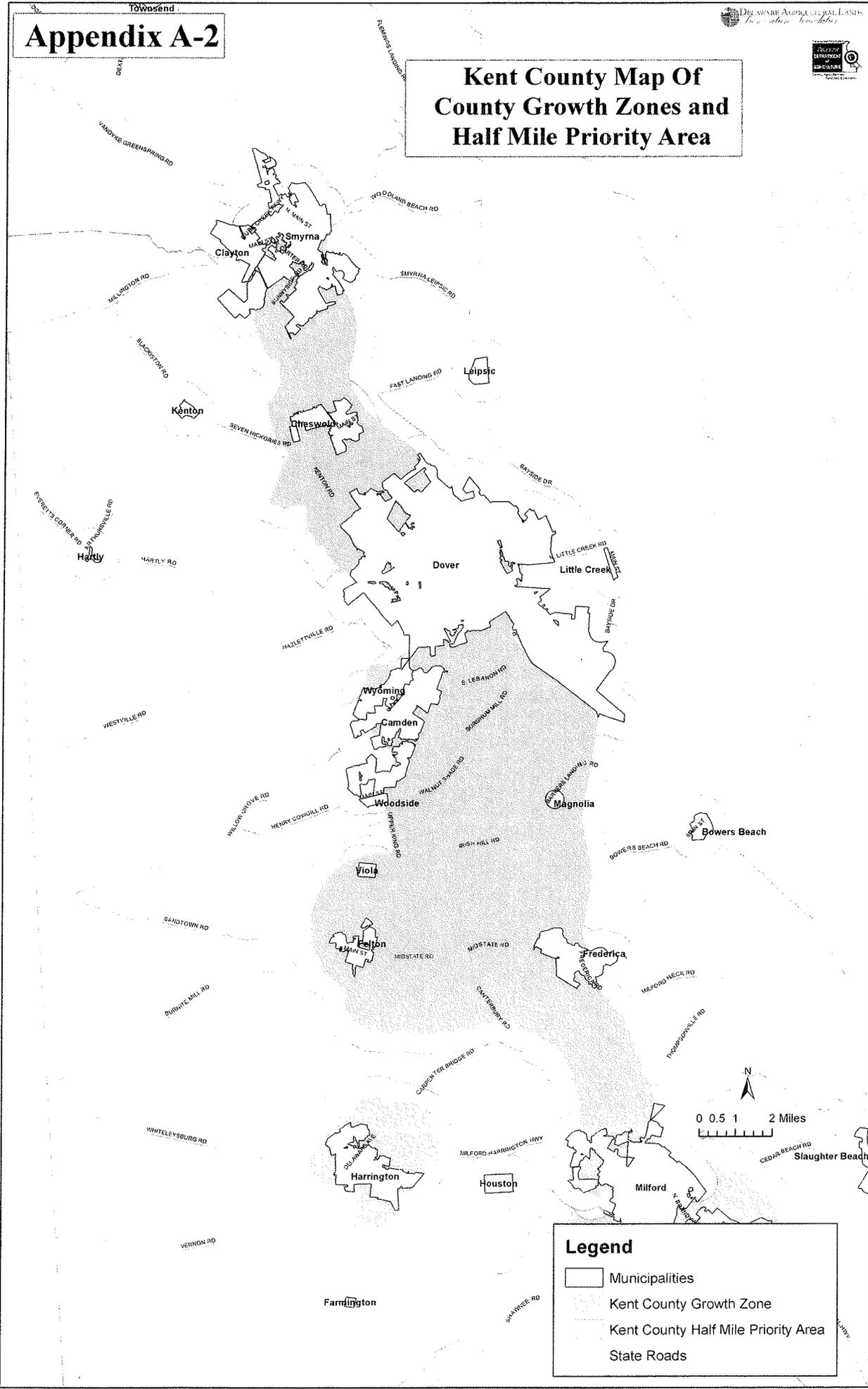
Legend

- 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-2



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



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



Legend

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

