



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

Dear Potential Young Farmer:

The Delaware Department of Agriculture and the Delaware Agricultural Lands Preservation Foundation are pleased that you have an interest in the Young Farmers' Loan Program. As you previously requested, enclosed is information concerning this Program. Included in this packet are:

1. Copy of Senate Bill No. 117, which establishes the Young Farmers program.
2. Copy of the Young Farmers Farmland Purchase and Preservation Loan Program Procedures and Guidelines.
3. Prequalification Application (Form A).
4. Loan Application (Form B).
5. Sample Young Farmers Agricultural Lands Preservation Easement (Form C).

Also enclosed is a one-page summary of programs that are available from the USDA Farm Services Agency (FSA) and Rural Development Program that may offer additional funding for young farmers. We encourage you to contact these agencies to learn more about their programs.

Please note that you may submit a Prequalification Application (Form A) at any time; however, you only submit the Loan Application (Form B) once you have a property ready for acquisition (with a fully executed Agreement of Sale or Option Agreement) and an eligibility/commitment letter from your lender if you will use a loan to finance the remainder of the purchase. **Additionally, the Foundation Board will establish times when they will accept Loan Applications based on available funding. The Foundation Board is currently not accepting loan applications. Once the Board approves the next round, the Foundation will announce those dates.**

The Agricultural Lands Preservation Easement (Form C) provided is a sample of the easement agreement that you would sign upon the purchase of the farm and the receipt of the loan from this program. This is a sample only and you do not need to complete it at this time.

If you have any questions concerning the above, please do not hesitate to contact our office. We are here to answer your questions.

Sincerely,

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

E. Austin Short
Deputy Secretary of Agriculture

EAS:cmm
Enclosures

FARMLAND PURCHASE AND PRESERVATION LOAN PROGRAM

PROCEDURES AND GUIDELINES

The following Procedures and Guidelines are designed for use in connection with the administration of the Farmland Purchase and Preservation Loan Program (herein the "Program").

To the extent that any of the following Procedures and Guidelines are inconsistent with the statutory provisions of the Program (3 Del. Code Sections 942 through and including 948), the statute shall control.

1. **Eligibility Criteria.** In order to receive loan monies from the Foundation under the Program, the successful applicant must meet all of the following eligibility criteria:
 - a. Applicant must be at least 18 years of age and no older than 40 years of age at the time the Loan Application is submitted to the Foundation.
 - b. Applicant must be a resident of the State of Delaware and have at least three (3) years of farming experience.
 - c. Applicant must have a net worth of *no more* than \$300,000.
 - d. The farmland to be purchased must be located in Delaware and contain at least 15 tillable acres, and the Applicant must not own (or have an ownership interest in) more than twice the tillable acres subject to purchase with Program funds.
 - e. The farmland being purchased may be comprised of tillable acres, forestlands, or wetlands, provided the tillable acres comprise at least 15 acres, but must be zoned for agricultural usage.
 - f. The farmland being purchased must not be subject to an existing Preservation Easement, conservation easement, or similar limitation which restricts residential or commercial development.
 - g. Applicant must commit that he/she will remain actively engaged in agricultural usage of the farmland during the term of the Program loan.
 - h. At the time a Loan Application is submitted, the Applicant must have a fully executed Agreement of Sale or Option to Purchase the eligible property. It is not necessary to have an Agreement of Sale or Option to Purchase in order for an Applicant to submit a Prequalification Application.
2. **Prequalification.** Any individual may seek a predetermination from the Foundation Staff that he/she meets the eligibility requirements of the Program by submitting a signed Prequalification Application in the form attached hereto as **FORM A**. Upon receipt of a properly executed **FORM A**, the Foundation Staff shall review the information set forth therein, and promptly advise the Applicant, in writing, whether or not the Applicant satisfies the minimum eligibility requirements of the Program. Any such determination shall be based solely upon the accuracy of the information contained in **FORM A**, and shall not constitute a guarantee that the Applicant will be awarded any loan under the Program.
3. **Loan Application Process and Timeline.** Any individual seeking a loan under the Program must first submit a signed Loan Application in the form attached hereto as **FORM B**. The Loan Application must be accompanied by a fully executed Agreement of Sale or Option to Purchase the eligible property. Loan Applications shall be reviewed and processed as follows:

- a. Loan Applications received before December 31, 2011 shall be processed during the period January 1, 2012 through March 31, 2012, with the goal of issuing approval letters in the form of a loan commitment issued by the Foundation on or before March 31, 2012.
 - b. For Loan Applications submitted after December 31, 2011, the Loan Application shall be processed during the calendar quarter *following* the date of receipt of the Loan Application by the Foundation, and the Foundation shall endeavor to issue loan commitments to successful applicants before the expiration of the calendar quarter following the date of receipt of the Loan Application.
 - c. Any approvals shall be subject to the availability of funding.
 - d. The Foundation shall schedule settlements on approved loans simultaneously with the purchase of the designated farmland and coinciding with the closing on any private loans utilized by the successful applicant for the purchase of the farmland. Settlements shall occur within six (6) months of approval of the Foundation loan, unless extended by the Foundation.
4. **Appraisal Process.** Upon receipt of a properly executed Loan Application, the Foundation's Staff shall review the Loan Application to determine if the Loan Application is complete and the Applicant meets the eligibility requirements of the Program. For each properly completed Loan Application by applicants meeting the eligibility requirements of the Program, the Foundation shall obtain, at its expense, an appraisal of the eligible farmland property for purposes of determining the fair market value of the proposed Preservation Easement. The appraisal methodology shall be consistent with the methodology used by the Foundation in the purchase of preservation easements pursuant to 3 Del. Code Section 913. For each Loan Application, the Staff shall determine the loan to value ratio for the amount of the loan requested, by dividing the amount of the loan by the appraised value of the Preservation Easement.
5. **Selection Process.** The approval of any loan under the Program is subject to the discretion of the Foundation. If more than one Loan Application is under review, the Board shall endeavor to give priority to the Loan Application that has the lowest loan to value ratio. If there are competing applications with equal Loan to Value ratios and all of the competing applications cannot be funded, the Foundation shall use the highest LESA score for the Preservation Easement area as the basis for making the selection. The Foundation's selection for applications under review for each quarter shall be made at the regularly scheduled Board meeting of the Foundation held during the last month of the calendar quarter following the date of receipt of the Loan Application. The Foundation is under no obligation to provide a loan to any applicant. Any loan application approved by the Foundation is nevertheless subject to veto by the Delaware Secretary of Agriculture pursuant to 3 Del. Code Section 949. If the Secretary fails to exercise his or her veto power at the meeting at which the loan is approved, the Secretary's veto power shall be deemed waived.
6. **Loan Terms and Conditions.** Any Loan approved by the Foundation must comply with the following conditions:
- a. The maximum amount of loans provided to any individual recipient (including any prior loans approved and consummated under the Program) shall not exceed \$500,000. Loan proceeds may only be used for the purchase of qualified farmland and farmland improvements, and shall not be used, or secured by a lien on, the purchase of residential dwellings.
 - b. At the loan closing, the successful applicant shall execute a Preservation Easement in the form attached hereto as **FORM C**.
 - c. The Loan amount shall not exceed seventy (70%) of the appraised value of the Preservation Easement to be placed on the farmland to be purchased.
 - d. The Preservation Easement shall not be subordinated to any liens or encumbrances.
 - e. The successful Applicant shall execute a Promissory Note (the "Note") which shall be secured by a Mortgage on the purchased farmland. The Note and Mortgage shall:
 - (i) Be subordinated to any other loans provided to the successful Applicant by a third party for use in the purchase of the farmland;
 - (ii) Not be subordinated to the Preservation Easement;

- (iii) Be without interest with a payback period not to exceed thirty (30) years, with the first payment due within thirty (30) days after any other Mortgage on the farmland has been paid and satisfied.
 - (iv) Provide that upon the sale or transfer of the farmland, the entire amount due under the Note and Mortgage shall be paid in full, unless the Foundation, in its sole discretion, consents to the assumption of the Note and Mortgage by a purchaser of the farmland who satisfies the loan eligibility requirements of the Program in effect at the time of the transfer.
- f. The farmland to be purchased, including any residential area, shall be surveyed at the expense of the Foundation. The survey shall identify the farmland and the residential areas located within the property to be purchased, and shall be used to determine the value of the Preservation Easement.
 - g. The Applicant shall be responsible for payment of all closing costs associated with any commercial or private financing required to complete the purchase.
 - h. At the time of submission of a Loan Application, the Applicant shall identify the source of any commercial or private financing needed to complete the purchase, and provide the Foundation with documentation from such source confirming that the Applicant is eligible to seek such financing.
 - i. The Applicant must take title to the farmland in Applicant's individual name.

**Potential USDA Programs for Young Farmers
September 2011**

(PLEASE NOTE: These are federal programs and are not related to Delaware's Young Farmers Program – please contact these agencies for more information)

Farm Service Agency Loan Programs for Beginning Farmers & Ranchers

The Farm Service Agency (FSA) provides direct and guaranteed loans to beginning farmers and ranchers who are unable to obtain financing from commercial credit sources. Each fiscal year, the Agency targets a portion of its direct and guaranteed farm ownership (FO) and operating loan (OL) funds to beginning farmers and ranchers.

A beginning farmer or rancher is an individual or entity who (1) has not operated a farm or ranch for more than 10 years; (2) meets the loan eligibility requirements of the program to which he/she is applying; (3) substantially participates in the operation; and, (4) for FO loan purposes, does not own a farm greater than 30 percent of the median size farm in the county. (Note: all applicants for direct FO loans must have participated in business operation of a farm for at least 3 years.) If the applicant is an entity, all members must be related by blood or marriage, and all stockholders in a corporation must be eligible beginning farmers.

Beginning farmers may choose to participate in a joint financing arrangement. With this arrangement, FSA lends up to 50 percent of the amount financed, and another lender provides 50 percent or more. The interest rates can be obtained from your local FSA office and the term of the loan will not exceed 40 years or the useful life of the security

Where to Apply

Applications for FSA direct loan assistance in Delaware may be submitted to the FSA Farm Loan team based in the USDA Service Center at 21315 Berlin Rd, Georgetown, De. For guaranteed loans, applicants must apply to a commercial lender who participates in the Guaranteed Loan Program. Contact the FSA office for a list of participating lenders.

For More Information

In Delaware for further information, or to make an appointment to learn more about FSA Farm Loan Programs call 302-856-3990 extension 2. Additional information is also available on the FSA website at: www.fsa.usda.gov.

USDA Rural Development - Rural Housing Service

Section 502 Single Family Housing Direct Loan Program

The Rural Housing Service (RHS) Direct Homeownership Loan program is available to lower income individuals and families who wish to live in rural areas or rural cities or towns. You must be unable to obtain a homeownership loan from a bank or other conventional sources. Under the program, individuals or families with incomes below 80 percent of the median income level of the community in which they intend to live may receive a loan directly from Rural Development. Loans may be made for the purchase of an existing home or to build a new home. Payments are based on income and no down payment is required. The standard term for a loan is 33 years for most borrowers. The interest rate is set by Rural Development, and is based on your current income.

Single Family Housing Guaranteed Loan Program

The Guaranteed Housing Loan Program is available to low and moderate income individuals and families to assist them to become eligible homeowners in rural areas or rural cities or towns with the help of a USDA guaranteed home loan. Loans may be made for the purchase of an existing or new construction home or new manufactured home. Loans may be guaranteed up to 100 percent of the appraised value; the one-time guarantee fee may be included; and no down payment is required. The applicant must be able to show they have the ability to repay the guaranteed home loan based on qualifying ratios. The standard term for a loan is 30 years fixed. The interest rate is agreed upon by the lender and applicant.

For further information on the Section 502 Single Family Housing Direct Loan Program or Single Family Housing Guaranteed Loan Program, please contact the USDA Rural Development office servicing the area where the home is or will be located.

Kent County:

Rural Development – Area Office
1221 College Park Drive
Suite 200
Dover, DE 19904
(302) 857-3595 (voice)
(302) 678-2863 (fax)

Sussex County:

Rural Development – Georgetown Local Office
Agricultural Service Center
21315 Berlin Road, Unit 2
Georgetown, DE 19947-3990
(302) 856-3990, ext 4 (voice)
(302) 856-4381 (fax)

(302) 857-3585 (TTY) for both Counties

Delaware Agricultural Lands Preservation Foundation **FORM A**
Young Farmer Loan Program
Prequalification Application

Purpose of FORM A: Any person interested in purchasing farmland in Delaware and who wishes to apply for a loan under the Delaware Farmland Purchase and Preservation Loan Program (“Program”) may complete the Application below in order to obtain, in advance of any future offer to purchase farmland, a determination by the Delaware Agricultural Lands Preservation Foundation (“Foundation”) that he or she satisfies all of the eligibility requirements of the Program. In order to apply for this determination, you do not have to have an existing agreement in place to purchase a specific parcel of farmland, nor designate any farmland. *A determination by the Foundation that you meet all of the eligibility requirements under the Program does not constitute the approval of any loan or other benefit, nor guarantee the award or approval of any loan or benefit in the future.*

I. APPLICANT INFORMATION:

Name (First, MI, Last) _____

Mailing Address _____

City _____ State ____ Zip _____ County _____

Telephone _____ Email _____

Date of Birth _____ (At the time of any Loan Application, you must be at least 18 and no older than 40)

What is your current net worth (assets minus liabilities)? \$ _____ (cannot exceed \$300,000)

Please describe any relevant education (i.e. identify degree program, college or university and year of graduation) or other formal agricultural-related training that provided certification:

- High School
- Some college, no degree
- College degree, identify degree program
- Advanced degree, identify degree program
- Certifications, name each
- Other (describe)

How many years of farming or agriculturally related activity experience do you have? _____

Please list your agricultural experience below:

Operation or business	Position	Description of experience	Dates of experience (from / to)	

Please provide below the name of at least one person who can verify your years of agricultural experience:

Reference Name: _____ **Phone #:** _____

Do you presently own or have an ownership or other beneficial interest in any tillable acres of farmland?
Yes _____ **No** _____

If so, please list the tax parcel identification numbers for each parcel: _____,
_____, _____, _____

How many acres of tillable farmland do you own? _____ **acres** (Please note that prior to the receipt of any loan monies under the Program, you may not own or have an ownership interest in more than twice the tillable acres of farmland that you intend to purchase with loan monies).

If awarded a loan, are you willing to remain actively engaged in agricultural usage of the purchased farmland during the term of the Foundation loan? **Yes** _____ **No** _____

If awarded a loan, are you willing to grant the Foundation a permanent Preservation Easement limiting the activity on the farmland to agricultural and related uses? **Yes** _____ **No** _____

If awarded a loan, are you willing to agree to and comply with the Guidelines attached hereto as Exhibit 1?
Yes _____ **No** _____

II. CERTIFICATIONS: IMPORTANT – PLEASE READ CAREFULLY BEFORE SIGNING

By signing below, the undersigned certifies that all information provided in connection with this Prequalification Application is true and correct to the best of Applicant's knowledge. Applicant acknowledges that a determination by the Foundation that the Applicant currently meets all of the eligibility requirements of the Program (a) is based solely on the accuracy of the information provided above, (b) is subject to change should *any* of the above information change, and (c) does not constitute an award of any loan benefit nor a guarantee of any such award in the future.

SIGNATURE:

X _____

Date: _____

FORM B

Delaware Agricultural Lands Preservation Foundation

Young Farmer Loan Program Loan Application

I. APPLICANT INFORMATION			
Name (First, MI, Last)			
Mailing Address			
City	State	Zip	County
Telephone	Email		
Date of Birth			
Have you been involved in farming or an agriculturally related activity for at least three (3) years? (Check one) <input type="checkbox"/> Yes <input type="checkbox"/> No			
What is your current net worth (assets minus liabilities)? (check one) <input type="checkbox"/> \$0-\$300,000 <input type="checkbox"/> Over \$300,000			
<u>PLEASE INCLUDE A CURRENT BALANCE SHEET LISTING YOUR ASSETS AND LIABILITIES</u>			
(check one) <input type="checkbox"/> Schedule F for Farm Income is attached. <input type="checkbox"/> Did not file a Schedule F			
Please state your Adjusted Gross Income (AGI) from Line 37 of the 1040 Form from most recent U.S. tax return: Amount: \$ _____ Tax Return Year: _____			
State your principal occupation _____			

II. EDUCATION OR EXPERIENCE

Please describe any relevant education (i.e. identify degree program, college or university and year of graduation) or other formal agricultural-related training that provided certification.

- High School
- Some college, no degree
- College degree, identify degree program
- Advanced degree, identify degree program
- Certifications, name each
- Other (describe)

How many years experience do you have farming? _____ years. Please provide below the name and phone number of at least one person who can verify your years of agricultural experience

Reference Name: _____ Phone number: _____

Reference Address: _____

Additionally, please list your agricultural experience below:

Operation or business	Position	Description of experience	Dates of experience (from / to)	

III. PROPOSED FARMLAND TO BE PURCHASED

Please identify the farmland that you intend to purchase by responding to the following questions:

1. Tax Parcel Number: _____
2. Number of tillable acres: _____ (Must be at least 15 acres)
3. Attach a fully executed copy of the Agreement of Sale relating to the farm land you intend to acquire, and a copy of any existing lease relating to said land. If the farm is currently subject to a verbal lease, provide the name and address of the tenant, and the terms and conditions of the lease.
4. Is the farmland you intend to purchase zoned for agricultural usage? Yes No
5. Is the farmland you intend to purchase subject to any existing agricultural lands preservation easement, conservation easement, or similar limitation which restricts residential or commercial development?
Yes No
6. Do you currently own or have an ownership interest in any other farmland? Yes No
7. If your answer to question # 6 above is Yes, state the total number of tillable acres of farmland that you currently own or have an ownership interest in _____

Proposed use of farmland to be acquired

- Crop operation
- Livestock operation
- Crop and livestock
- Aquaculture
- Horticulture
- Forestry
- Other (*describe*) _____

Have you been the recipient of a prior loan administered under the Young Farmers Farmland Purchase and Preservation Loan Program?

Yes No

If Yes, please provide the specifics regarding the amount of the loan(s), dates, and farmland purchased.

Do you intend to take title to the farmland in your individual name? _____

IV. SOURCE OF FUNDS

Please indicate the source of funding for your proposed purchase of the farmland.

- Loan (**Required:** furnish a letter from the lender confirming funds will be available).
- Personal Savings
- Gift
- Inheritance
- Other (describe) _____

V. CERTIFICATIONS IMPORTANT – PLEASE READ CAREFULLY BEFORE SIGNING

By signing below, Applicant:

- (1) Certifies all information provided in connection with this application is true and correct to the best of Applicant's knowledge;
- (2) Acknowledges that any misrepresentation or false statement made by Applicant, or an authorized agent of Applicant, in connection with this application, whether intentional or not, will constitute grounds for denial of this application;
- (3) Acknowledges that acceptance of funds in connection with this application acts as an acceptance of the authority of the Delaware Agricultural Land Preservation Foundation (the "Foundation") or any successor agency to conduct an investigation in connection with those funds, and Applicant further agrees to cooperate fully with the Foundation or its successor in the conduct of such audit or investigation, including providing all requested records, cooperating with and providing interviews, and allowing the Foundation to inspect Applicant's premises;
- (4) Acknowledges that this application and any funds awarded to Applicant as a result of this application may be reduced or denied for any reason or because Applicant fails to satisfy any of the requirements for such funding under the Delaware Farmland Purchase and Preservation Loan Program;
- (5) Acknowledges that Applicant will be required to execute an Agricultural Lands Preservation Easement in favor of the Foundation at the time of the purchase of the farmland, that no dwellings shall be allowed on any part of the farmland subject to the Easement, that any mortgage on said farmlands must be subordinate to the Easement, and that failure to timely execute the Easement will result in denial of the application and withdrawal of any loan funds awarded;
- (6) Certifies that no state or federal tax liens have been filed against Applicant or Applicant's property;
- (7) Certifies that Applicant understands that the approval of loans hereunder is purely discretionary and that the Foundation is under no obligation to provide a loan to any applicant.
- (8) Acknowledges that Applicant will be required to be actively engaged in the agricultural usage of the purchased farmland during the term of any loan approved hereunder.
- (9) Acknowledges receipt of a copy of 3 Delaware Code Section 943 through and including Section 948, and that any loan approved hereunder shall be subject to the terms and conditions set forth therein.

Notice of Penalties: The penalty for knowingly making false statements or false entries, or attempts to secure money through fraudulent means, may include fines and/or incarceration and/or forfeiture of funds under applicable state law.

SIGNATURE

X _____

Date: _____

**Please see the Attachment Checklist on the following page, and attach to this Application the documents listed on the Checklist.*

ATTACHMENT CHECKLIST

In order to be eligible for funding, the following items **must** be included with the signed application, **please check if attached:**

- Copy of Applicant's Delaware Driver's License or other form of identification (U.S.Passport, State of Delaware I.D., or birth certificate)
- The fully executed Agreement of Sale or Option Agreement relied upon in connection with your proposed purchase **and** a copy of any farm leases in effect regarding the property.
- IRS form Schedule F to verify income from most recent tax return
- Current balance sheet listing all of your assets and liabilities to verify your net worth
- The name and phone number of at least one individual who can verify your years of agricultural experience.
- Lender eligibility or commitment letter if a loan from a third party is used to fund your proposed project
- Copy of Farm Plan setting forth how the proposed financing for the purchase of the farmland, including the Young Farmers Program loan, will be paid. While no specific format is required, the Farm Plan should show the projected income and expenses for the operation of the farmland and anticipated cash flow from farming operations.

Return application and supporting documentation to Delaware Department of Agriculture. All eligible applications must be received by the Delaware Department of Agriculture no later than 4:30 p.m. EST on the applicable deadline date.

Physical address: Delaware Department of Agriculture
Delaware Agricultural Lands Preservation Foundation
Young Farmer Loan Program
2320 South DuPont Highway
Dover, DE 19901

FORM C

Tax Map No(s):

Prepared By: Delaware Agricultural Lands
Preservation Foundation
2320 S. DuPont Highway
Dover, DE 19901

Return To: Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904

AGRICULTURAL LANDS PRESERVATION EASEMENT GRANTED PURSUANT TO THE DELAWARE FARMLAND PURCHASE AND PRESERVATION LOAN PROGRAM

THIS PRESERVATION EASEMENT, made, granted, assigned and conveyed this _____ day of _____, A.D. 20__, by @, whose address is @, and who are hereinafter referred to as "Grantor", and the **DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION**, a body politic and corporate constituting a public instrumentality of the State of Delaware, and which is hereinafter referred to as "Grantee" and/or "Foundation."

WHEREAS, Grantor is fee simple title holder of certain lands situated in @, @County, Delaware, being of record in Deed Book @, Page @, at the Office of the Recorder of Deeds, in and for @ County, Delaware, hereinafter referred to as the "Parcel" and more particularly described in Exhibit "A" (annexed hereto); and as shown on a plot entitled "Delaware Agricultural Lands Preservation Foundation – Lands of @" (hereinafter the "Plot") as prepared by @, dated @ and recorded in the aforesaid Office of the Recorder of Deeds in Plot Book _____, Page _____.

WHEREAS, the General Assembly of the State of Delaware has declared that the preservation of the State's farmlands and forest lands is considered essential to maintaining agriculture as a viable industry and as an important contributor to Delaware's economy; and

WHEREAS, the General Assembly of the State of Delaware has recognized that a need exists to create sufficient economic incentives and benefits to encourage agricultural landowners to voluntarily place viable agricultural lands under protective restrictions through the creation of and participation in agricultural preservation districts and sale and/or donation of development rights;

WHEREAS, the Grantor desires to grant and convey to the Foundation an agricultural lands preservation easement as provided in Chapter 9, Title 3 of the Delaware Code Annotated.

NOW, THEREFORE, the Grantor, for and in consideration of the sum of One Dollar (\$1.00) and the loan provided under the Delaware Farmland Purchase and Preservation Loan Program, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the benefits conferred under 3 Del. C. Ch. 9, hereby grants and conveys to the Foundation, its successors and assigns, an agricultural lands preservation easement on and over the Parcel, and covenants and promises that the Parcel will be owned, used and conveyed subject to, and not in violation of, the following restrictions:

1. No rezoning or major subdivision of the real property shall be allowed.
2. Except as otherwise provided for herein, activities conducted on the real property shall be limited to agricultural and related uses as defined in 3 Del. C. Sections 902 and 909(a)(5). "Agricultural and related uses" does not include, among other things, such activities as:
 - (a) excavation, filling, borrow pits, extraction, processing and removal of sand, gravel, loam, rock or other minerals, unless such activities are currently required by or ancillary to any preparation for, or operation of any activities involving aquaculture, farm ponds, cranberry operations, manure handling facilities, and other activities directly related to agricultural production on the Parcel;
 - (b) acts, actions and neglect which are detrimental to drainage, flood control, water conservation, erosion control or soil conservation;
 - (c) acts, actions and neglect that negatively affect the continued agricultural use of the land.
 - (d) uses that are not directly and functionally related to the farming activities conducted on the Parcel, except as otherwise provided for in 3 Del. C. Section 909(a)(5).
3. The allowability of a general use, conditional use, special use or other use under any zoning law or ordinance shall not have any effect on the restrictions imposed on the Parcel under this easement.
4. The Parcel consists of @ acres. The area allowed for residential use shall be limited to @ (@) acres. No more than three (3) dwelling houses for residential use are permitted on the Parcel and must be located within the area shown on the Plot and identified as the "Proposed Residential". The Residential Area identified on the Plot is identified solely for the purpose of subjecting said Residential Area to the restrictions set forth in 9 Del. C. Section 909(a)(4)(a) and 909(a)(4)(b). The balance of the Parcel shall be subject to this Agricultural Lands Preservation Easement.
5. This easement shall be deemed a covenant which runs with and binds the Parcel permanently and in perpetuity as set forth in 3 Del.C. §909(c), the terms and conditions of which shall be subject to specific performance and other action allowed under 3 Del.C. §920. Pursuant to the Farmland Purchase and Preservation Loan Program, this easement shall **not** be subject to release under 3 Del.C. §917. This easement shall be binding upon the heirs, executors, administrators, successors and assigns of the Grantor. This easement may be managed, administered and enforced by the Grantee or the State of Delaware.
6. The provisions of Title 3, Chapter 9 of the Delaware Code Annotated and duly adopted regulations there under as such provisions relate to the Parcel shall govern this easement, except as otherwise provided for herein.

7. Notwithstanding anything stated herein to the contrary, the rights afforded Grantee under this Preservation Easement may only be assigned by Grantee to a “qualified organization” within the meaning of Section 170(h) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code and only with assurances that the purposes of this Preservation Easement, as described herein, will be maintained in perpetuity by such Assignee. If any such Assignee shall be dissolved or shall abandon this Preservation Easement or the rights and duties of enforcement herein set forth, the Preservation Easement and the rights of enforcement shall revert to the Grantee, and if the Grantee shall be dissolved and if the terms of the dissolution fail to provide a successor, then the State of Delaware, or its successors or assigns, shall appoint an appropriate successor as Grantee, and any such successor shall be a “qualified organization” within the meaning of Section 170(h) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code. No assignment may be made by the Grantee of its rights under this Preservation Easement unless the Grantee, as a condition of such Assignment, requires the Assignee to carry out the conservation purposes of this Preservation Easement, as described herein. Grantee agrees to hold this Preservation Easement exclusively for conservation purposes as defined in Section 170(h)(4)(A) of the Internal Revenue Code.

8. The Preservation Easement granted hereunder shall be perpetual.

SIGNATURE LINES APPEAR ON FOLLOWING PAGES

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seal the day and year first above written.

SIGNED AND DELIVERED
IN THE PRESENCE OF:

_____ (SEAL)

_____ (SEAL)

STATE OF DELAWARE)
) SS:
COUNTY OF KENT)

BE IT REMEMBERED that on this _____ day of _____, A.D. 20____, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, _____, parties to this Indenture, known to me personally to be such, and they acknowledged this Indenture to be their act and deed.

GIVEN under my hand and seal of office the day and year aforesaid.

Notary Public Signature

Notary Name – Typed or Printed
My Commission Expires: _____

DELAWARE STATE SENATE
146th GENERAL ASSEMBLY

SENATE BILL NO. 117

AN ACT TO FACILITATE THE ACQUISITION AND PRESERVATION OF AGRICULTURAL LANDS
BY YOUNG FARMERS

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 9, Title 3 of the Delaware Code by providing a new Subchapter VI to read as follows:

“Subchapter VI. Farmland Purchase and Preservation Loan Program

§942. Purpose, policy and intent.

In furtherance of the declared policy of the State to conserve, protect and encourage use and improvement of agricultural lands and to encourage, promote and protect farming as a valued occupation it is important to provide a means of facilitating the acquisition of farmland by young farmers, while furthering the goal of permanently protecting the farmland which is acquired through the placement of permanent Preservation easements on the acquired farmland property. To accomplish this objective it is desirable to establish a farmland purchase and preservation loan program in accordance with the provisions of this subchapter.

§943. Loan Program.

There is hereby established a farmland purchase and preservation loan program to be administered by the Foundation.

§944. Loan Program Eligibility.

(a) In order to receive loan monies from the Foundation for the purchase and preservation of farmlands the following eligibility criteria shall apply:

1. The loan recipient shall be at least 18 years of age and no older than 40 years of age at the time a loan application is submitted to the Foundation.

2. The loan recipient at the time of loan application shall have at least three (3) years of farming or agriculturally related activity experience.

3. The loan recipient at the time of loan application shall have a net worth of no more than \$300,000.

4. The loan recipient shall be required to take title to the farmland in an individual name.

5. The farmland subject to purchase shall contain at least fifteen (15) tillable acres.

6. The loan recipient prior to the receipt of loan monies shall not own or have an ownership interest in more than twice the tillable acres of farmland than the amount of tillable acres subject to purchases with loan monies.

7. The farmland shall be located in the State of Delaware.

8. Loan applicants shall be residents of the State of Delaware.

9. The farmland subject to purchase may be comprised of a combination of tillable acres, forestlands or wetlands; provided however, that the farmland property is zoned for agricultural usage.

10. The farmlands being purchased shall not be subject to an existing Preservation easement, conservation easement or similar limitation which restricts residential or commercial development.

11. Loan applicants shall contractually commit that they will be actively engaged in agricultural usage of the purchased farmland during the term of the Foundation loan.

(b) The Foundation shall be entitled to adopt a loan application form requesting information from the loan applicant which includes, but is not limited to, information regarding loan eligibility.

§945. Loan Requirements and Approval.

(a) The following requirements and conditions shall apply to loans provided by the Foundation:

- (1) The maximum total amount of loans provided to an individual recipient shall not exceed \$500,000.
- (2) The maximum loan amount for any loan shall not exceed seventy percent (70%) of the appraised Preservation easement value of the farmland property which is being purchased and subject to perpetual Preservation easement.
- (3) A condition of the loan is that the eligible farmland being acquired is to be subjected at closing to a permanent Preservation easement in the form determined by the Foundation, such easement to have priority status and not be subject to subordination.
- (4) The loans provided by the Foundation shall be secured by Notes and Mortgages which allow for the following conditions:
 - a. Notes and Mortgages will be subordinated to other loans provided for the purchase, in whole or in part, of the eligible farmlands; provided however, that the perpetual Preservation easement placed on the eligible farmland property at the time of settlement shall not be subordinated.
 - b. The Notes and Mortgages shall bear no interest and the payback may be structured for final payback within thirty (30) years, with initial payments to begin after the primary commercial or other financing for the purchase of the farmland property is satisfied or released.
 - c. The Notes and Mortgages shall contain a requirement for payment in full of the balance of the loan upon the sale or transfer of the secured farmland property; provided however, the Foundation shall have the discretion to allow for assumption of the loan by the transferee under such terms and conditions deemed advisable, provided the transferee satisfies the loan eligibility requirements set forth in Section 945(a) above.
- (5) Loans shall be limited to the purchase of farmland and farmland improvements only.

Portions of the property subject to purchase which are used or proposed for use for residential purposes shall not be eligible for loans, provided further nonetheless, that those lands used or intended for use for

residential purposes shall be subject to the limitations set forth in Section 904(a)(4) a. and b. of this Chapter.

(b) The approval of loans by the Foundation under this subchapter is purely a discretionary function and the Foundation shall be under no obligation to provide a loan to any applicant.

§946. Preservation Easements.

(a) The Preservation easements provided as a condition for receiving a loan under this subchapter shall include, but not be limited to, the following conditions:

(1) The Preservation easement binds and runs with the farmland in perpetuity, and is not subject to the termination provisions of Section 917 of this Chapter.

(2) No residential use is allowed on the farmland subject to the Preservation easement.

(3) The farming and related uses as specified under Section 909(a)(5)a. through h. inclusive of this Chapter shall be allowed.

(4) Except as expressly provided otherwise, the farmland subject to a Preservation easement under this subchapter shall have the same benefits, controls and restrictions as those Preservation easements otherwise acquired pursuant to the provisions of this Chapter, and provided further the Foundation shall be entitled to take enforcement action as provided in Section 920 of this Chapter.

(b) The Preservation easements acquired under this subchapter shall not be affected by the payment status of the loan.

§947. Preservation Loan Fund.

There is hereby established a preservation loan fund to be maintained, operated, supervised and administered by the Foundation, and used for making loan payments and related transaction costs and expenses for the loans provided under this subchapter. Monies for the preservation loan fund may be derived from specific appropriations provided by the General Assembly, federal grants, county and municipal grants and

private funding. The fund shall be operated as a revolving fund, with monies paid to the Foundation as repayment of loans or condemnation related compensation deposited in the fund and used to make additional loans.

§948. Administration.

(a) In carrying out the responsibilities of administering the loan program the Foundation shall be entitled to:

- (1) Adopt an application and other forms for processing applications and closing loan transactions.
- (2) Establish a prequalification system for potential loan applicants.
- (3) Establish schedules and timelines for processing applications and making loan decisions.
- (4) Require the submission by applicants of a farm plan which includes a loan repayment plan.
- (5) Provide assurances to commercial or other lenders regarding willingness to subordinate Foundation loans to commercial or other loans needed to acquire farmland.
- (6) Structure and restructure the payment provisions of loans, provided however, that payments due the Foundation under any loan shall not be forgiven in whole or in part.
- (7) Have appraisals performed under an appraisal methodology approved by the Foundation to determine the fair market value and Preservation easement value of loan eligible farmland property.
- (8) Develop selection criteria for approving loans involving competing applicants, with emphasis on selecting on a priority basis the loan applicant or applicants who request a loan with the lowest percentage value of the appraised Preservation easement value of the eligible farmland.
- (9) subordinate Foundation loans to commercial financing provided to support farming operations conducted on the purchased farmlands.

(10) Cooperate with commercial lenders and others providing financing for the purchase of eligible farmlands to facilitate the successful completion of purchase transactions.

(11) Establish a system for annual reporting by loan recipients to assure that the loan recipients are actively engaged in agricultural usage of the acquired farmlands.

(b) The Foundation shall be entitled to advertise and promote the loan program, and create public awareness of the agricultural land preservation, open space and environmental benefits which the program provides.

(c) The Foundation shall be entitled to adopt rules of practice and procedure for administering the loan program.

§949. Secretary's Veto.

With respect to any loan application approved by the Foundation under this subchapter, the Secretary shall be entitled to veto any such approval at the time that the approval is granted. In the event the Secretary fails to exercise the veto power at the meeting at which the approval is granted, the veto power shall be deemed waived.”

SYNOPSIS

Delaware has implemented a successful agricultural lands preservation program under which Preservation easements have been acquired to permanently protect over 100,000 acres or approximately 20% of Delaware's available farmland. To carry on Delaware's agricultural legacy and maintain agriculture as a leading component of Delaware's economy there is a need to facilitate the acquisition of farmlands by Delaware's younger generation of farmers. The loan program established by this legislation serves the dual purpose of permanently protecting farmland through Preservation easements and providing to younger farmers the much needed equity basis for obtaining commercial loans by providing favorable subordinated loans from the Foundation to make the farmland purchases.

The value of the Preservation easement obtained by the Foundation in return for the program loan would be greater than the program loan amount, thus protecting the interests of the State even if a default in repayment of the program loan occurs. When the program loans are repaid at the end of the loan term or sooner, the monies are reinvested in the program to provide further loans and permanently preserve additional farmland.