



**NORTHAMPTON COUNTY
FARMLAND PRESERVATION
EASEMENT PURCHASE PROGRAM**
Northampton County Farmland Preservation Board

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TABLE OF CONTENTS

	Page
Introduction	3
Statement of Purpose	4
Current List of Board of Directors	4
Understanding Farmland Preservation	5
How the Program Works	7
Overview of the Process	9
Process of Preserving Farmland	
Application	10
Ranking	10
Agricultural Security Areas	11
Soil Conservation Plan	11
Appraisal	11
Offer/Agreement	12
Survey/Title Search/Title Insurance	13
Landowner Notification	14
Approval Process	14
Settlement	14
Minimum Criteria for Applications Receiving Commonwealth Funding	16
Minimum Criteria for County-Only Funded Applications	17
Minimum Criteria for Township Partnership Program	17
Farmland Ranking System	18
Sample Application for Conservation Easement	22
Operational Procedures for Acquiring Easements	25
Responsibilities of Grantor and Grantee	44
Request and Review Procedure for a New Residence	53
Procedure for Subdivision	56
Rural Enterprise & Part-Time or Off-Season Activities	61
Permitted Acts	66
Tax Planning	67
Payment Options	68
Authorization & Public Information	69

INFORMATION CONTAINED IN THIS BOOKLET IS A SUMMARY OF THE FARMLAND PRESERVATION PROGRAM. FOR A DETAILED PROGRAM GUIDEBOOK, PLEASE CONTACT THE FARMLAND PRESERVATION OFFICE.

This program was re-certified by the State Agricultural Farmland Preservation Board in October 2019 and must be re-certified every seven years thereafter.

INTRODUCTION

Traffic congestion, fewer open spaces, and loss of rural character are some of the concerns heard in Northampton County. Among other things, the diversity of its economy has made the county a desirable place in which to live and work. The result is growth in both population and land development.

While it is a reflection of economic strength, this development has a heavy impact on the land and the natural features found on it. Farmland is often seen as very desirable for development. Because of this, the County has seen a great deal of its farmland sold for development or taken out of production. This represents the loss of a productive resource, which cannot be replaced.

However, the farming economy in Northampton County has historically been, and still is, viable. The dynamic population of the Lehigh Valley provides opportunities for farming to thrive. Conventional farms continue to produce commodities like feed corn, wheat, and beef, while newer types of farming, such as organic, have a significant place in the county as well. A Northampton County resident can find products like organic vegetables, nursery stock, apples, and more, right within the County's borders. The County's Farmland Preservation Program is an opportunity to preserve farmland by placing it in agricultural security areas and purchasing agricultural conservation easements from interested landowners. The Easement Purchase Program contained in the following pages details the policies and procedures used in that effort. The program focuses on the following objectives:

- *Encourage a long-term commitment to agriculture.**
- *Protect normal farming operations.**
- *Conserve viable agricultural lands.**
- *Purchase agricultural conservation easements.**

STATEMENT OF PURPOSE OF NORTHAMPTON COUNTY FARMLAND PRESERVATION BOARD

It is the purpose of this program to protect viable agricultural lands by acquiring agricultural conservation easements that prevent the development or improvement of the land for any purpose other than agricultural production.

Further, it is the purpose of this program to:

- Encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security of land use.
- Protect farming operations in agricultural security areas from incompatible non-farm uses that may render farming impracticable.
- Protect farming operations from complaints of public nuisance against normal farming procedures.
- Assure conservation of viable agricultural lands in order to protect the agricultural areas of this county.
- Provide compensation to landowners in exchange for their relinquishment of the right to develop their private property.
- Maximize agricultural conservation easement purchase funds and protect the investment of taxpayers in agricultural conservation easements.
- Purchase agricultural conservation easements in perpetuity.

NORTHAMPTON COUNTY FARMLAND PRESERVATION BOARD OF DIRECTORS

1. Name: Roger Unangst
Occupation: Farmer
Term Expires: 6-30-2021
Office Served: Farmer/Director
2. Name: Robert Doerr
Occupation: Builder/Developer
Term Expires: 6-30-2020
Office Served: Developer/Director
3. Name: Terry Kromer
Occupation: Farmer
Term Expires: 6-30-2020
Office Served: Farmer/Director
4. Name: Todd Gulick
Occupation: Farmer
Term Expires: 6-30-2021
Office Served: Farmer/Director
5. Name: Andy Thierry
Occupation: Retired
Term Expires: 6-30-2021
Office Served: Public/Director

Understanding Farmland Preservation

WHEN DID THIS PROGRAM BEGIN?

In mid-February of 1989, Pennsylvania entered a new phase in its efforts to preserve the Commonwealth's farmland resources. A statewide program to purchase agricultural conservation easements (also commonly referred to as "development rights"). Farmers whose land is included in an Agricultural Security Area will be eligible to sell conservation easements, on a voluntary basis to a county Farmland Preservation Board. Northampton County preserved its first farm in 1993 in Lower Mount Bethel Township.

WHAT IS AN AGRICULTURAL CONSERVATION EASEMENT?

An agricultural conservation easement is the property owner's right to prevent the development or improvement of the land for any purposes other than agricultural production. It is a legally binding contract that runs with the land. By selling the "development rights", it prevents that land from ever being developed or used for anything other than agriculture. It is a legally binding agreement the property owner makes that restricts the land to agricultural production in perpetuity while retaining private ownership.

HOW WOULD PURCHASING AGRICULTURAL CONSERVATION EASEMENTS PRESERVE AGRICULTURE?

It would provide compensation to farmers for easement values of farmland they preserve in long-term agricultural use. By selling agricultural conservation easements, the farmer would receive the easement value of the property without having to sell it for non-farm development. Purchasing agricultural conservation easements provides a long-term, permanent solution to farmland conversion.

WHO DETERMINES THE VALUE OF AGRICULTURAL EASEMENTS?

The county Farmland Preservation Board determines the market value, easement value, and the farmland value of the property by retaining independent licensed real estate appraisers.

HOW LONG ARE AGRICULTURAL CONSERVATION EASEMENTS?

Agricultural Conservation Easements are held in perpetuity, or forever. They run with the land. If the land is sold, transferred, or willed, the easement will follow the land.

WHAT ARE THE FARMER'S RIGHTS AFTER SELLING A CONSERVATION EASEMENT?

The right to develop or prevent development is only one of many rights in a property owner's "bundle of rights". Some of the rights include the right to sell, lease, mortgage, leave to heirs, mineral rights, air rights and surface rights. After selling the agricultural conservation easement, the owner retains all of the other

rights and responsibilities that go along with property ownership. Selling conservation easements would not prevent constructing buildings used for agricultural production, including one structure for housing seasonal or full-time workers.

WHAT IS THE MINIMUM CRITERIA FOR ELIGIBILITY?

Property that is eligible to be preserved through this program is contiguous acreage of 50 acres or more (25 acres for a county only purchase), or 10 acres or more contiguous to a previously preserved farm. Property must be located within an Agricultural Security Area and composed of soils available for agricultural production that are 50% classes I through IV. The property must be at least 50% cropland, grazing or pasture, and zoned in agricultural and open space use. (Criteria for properties in municipalities participating in the Township Partnership Program may differ. Contact the office for more information.)

WHO IS ON THE COUNTY FARMLAND PRESERVATION BOARD?

The county board will be composed of 5, 7, or 9 members appointed by the county governing body. On five member boards, two members are required to be farmers; seven and nine member boards must have three or four farmer members respectively. A current member of a township or borough governing body and a building contractor must also have membership status on the board.

HOW WILL THE MONEY TO PURCHASE CONSERVATION EASEMENTS BE ALLOCATED?

County contributions are determined by county government, whether that be allocated county budget funds or through other dedicated funding sources. Roll back interest from the County's Clean and Green Act (Act 319) is also utilized. The state then matches that allocation. Since July of 1993, a two-cent per pack cigarette tax has provided about \$21 million per year for the Easement Purchase Program. Also, since the introduction of Federal farm bills, millions in federal funds have been allocated toward the purchase of easements. And beginning in 2011 in Northampton County, township funding has been used towards the preservation of farms in those municipalities.

Although the primary reason to protect important parts of the community is to ensure a high quality of life, saving farmland saves money for the taxpayers. Farmland preservation is a fiscally sound activity and an investment in the community's future!

HOW THE PROGRAM WORKS

The Northampton County Farmland Preservation Program is a Commonwealth program administered at the county level. It is a **voluntary program** in which the landowner chooses to enter. Preserving farmland through this program is a two-step process. First, the property must be enrolled into the Agricultural Security Area (ASA) in the municipality where the property is located, and second is to submit an application for Farmland Preservation where we purchase the development rights or it is also known as the easement purchase. Joining an ASA does not obligate the landowner to apply for easement purchase, but any farm applying for the easement purchase program must first be in an ASA.

An ASA is acreage formally designated by the appropriate municipality for the production of crops, livestock, and livestock products. There is no fee to join an ASA, and there is no financial, zoning, or other penalty for the change of land use in an ASA. Farms in ASA's are protected from new ordinances, which would restrict normal farming operations or define farms as nuisances. In addition, an ASA farm receives another level of protection from taking by eminent domain, through additional approvals needed before condemnation. ASA's have already been established in Allen, Bushkill, East Allen, Forks, Lehigh, Lower Nazareth, Lower Mount Bethel, Moore, Plainfield, Washington, Upper Mount Bethel and Williams Townships. Land preserved through the Agricultural Conservation Easement Program must be located in an ASA containing at least 500 acres. Landowners should contact their municipality for more information.

Next, a landowner can apply to sell their development rights (a conservation easement) to the County and/or State Farmland Preservation Boards. A municipality may also participate in the purchase of a farm's development rights. Under a conservation easement, the owner maintains ownership/responsibility of the property but permanently gives up the right to use it for anything other than agriculture. Once established, the easement restrictions apply to anyone purchasing or inheriting the land in the future. Through the program, landowners are compensated financially for giving up the right to develop their property.

Landowners initiate the conservation easement process by filling out an application for the program. The Northampton County Farmland Preservation Board must evaluate all applications, which meet the program's minimum criteria. To evaluate and rank applications, the Farmland Preservation Board uses a Land Evaluation Site Assessment system. This system awards points to farms based on quality of the farmland, stewardship of the land, threat of development, and proximity to other preserved land, as well as other required criteria.

A farm containing land in more than one county may be preserved in one agricultural easement purchase application. The process for a cross-county easement is further described on page 10, “Minimum Criteria”.

Based on ranking position and available funding, the Farmland Preservation Board or its representative will conduct a consultation meeting with the landowner to explain the entire process. If the landowner chooses to move forward with the process, a deposit fee (refundable under specific conditions) will be required. They will then order a real estate appraisal for the farms scoring highest in the ranking system each year. The purpose of the appraisal is to determine the value of the land and the value of the conservation easement.

After easement values are determined, the Farmland Preservation Board votes on whether to purchase the development rights (place conservation easements) on any of the appraised farms. If the Board elects to purchase the development rights on a farm, it will make an offer to the landowner. If the landowner accepts the offer, the county and/or State and/or municipality, and landowner enter into a legally binding agreement of sale. The agreement of sale specifies that the landowner agrees to sell the development rights on the property to the county and/or state and/or municipality and forever bind the property to remain in agriculture.

When purchasing an easement with state funds, the Farmland Preservation Board will submit completed contracts of sale and other supporting documentation to the State Agricultural Land Preservation Board for its approval. Following its own review, the State Agricultural Land Preservation Board must approve or deny the purchase of development rights on each farm.

A survey and title search are required to move the farm through the process.

Upon approval, a real estate settlement is held. At the settlement, the landowner signs the deed of easement and receives payment for putting the easement in place.

A more complete description of the program can be found in the Process of Preserving Farmland section. In addition, a sample copy of the application form (page 22) and a description of the ranking system (page 18) are included in this booklet. Below is an abbreviated overview of the steps to sell an agricultural conservation easement.

The entire process generally takes approximately one to two years to complete.

A QUICK OVERVIEW OF THE PROCESS

1. Application Period

Landowners within an ASA are sent an application and are asked to complete and return it. The application window is open from November 1st to December 15th of each calendar year.

2. Ranking Period

- The farms are ranked using the state criteria (LESA system, see page 18).
- Once ranking is completed, it is presented to the NCFP Board for review and approval.

3. Consultation Appointment

The Program Administrator will meet with the land owner(s) and review the process prior to the landowner committing to the process. This is an extensive meeting, covering all aspects of the program.

4. Appraisal

A deposit for the appraisal is received from the landowner. A request for an appraisal is done and the appraisal received. The appraisal is reviewed by the NCFP Board and forwarded to the landowner for review. If the landowner accepts the offer, then the agreement of sale contract is signed.

5. Processing

Processing all information and documentation.

6. Survey

A survey on the entire tract is requested and reviewed. The landowner is given an opportunity to review and approve the final survey.

7. Title Work

A title search is completed on the property to assure the title is clear of any liens debts, judgements, mortgages, or encumbrances and any other blemishes on the title. The landowner is responsible to provide clear title to the property.

8. Submission to the State for review and approval

The application package is sent to the state for approval.

9. Fiscal Period

This time period is when all fiscal requests are processed.

10. Closing

Once all the paperwork is completed, approved and finalized, it proceeds to closing and settlement. The deed of easement is then recorded.

11. After Easement Monitoring

After the completion of the easement process, each farm is required to be inspected on a bi-annual basis to ensure compliance with the provisions of the deed of easement.

Because the process involves many different elements, there is a set guideline that must be followed. This process takes approximately 2 years to complete.

THE PROCESS OF PRESERVING FARMLAND

•APPLICATION•

*Applications are accepted from November 1 to December 15 each year. All applications **must** be received in the Farmland Preservation office by 4:00 pm on December 15, or as otherwise noted.*

•RANKING•

The time it takes the Administrator to complete the ranking process fluctuates with the number of applications that are received and the amount of follow-up required to determine eligibility. However, the goal is to complete the process as soon as possible after the submission deadline.

- Step 1:** *Landowner voluntarily submits application to the Northampton County Farmland Preservation Board (NCFPB) during the application period.*
- Step 2:** *NCFPB Administrator reviews application for completeness and determines if proposed farmland meets minimum eligibility criteria.*
- Step 3:** *Application is ranked in accordance with the State's Farmland Ranking System.*
- Step 4:** *NCFPB Administrator estimates the number of appraisals that can be initiated using average per acre easement values and the ranking list. Landowner is notified of eligibility status.*

PLEASE NOTE:

- 1. A separate application shall be required for each tract offered for easement purchase that is located on separate deeds.**
- 2. The application that is submitted for consideration MUST be complete. All information requested must be provided. Contact this office with any questions regarding the completion of the application.**
- 3. The number of acres submitted for easement purchase cannot be changed by more than 5%—excluding the land underneath the existing buildings—after the application has been ranked, or the application shall be withdrawn. Please contact the office for more information.**
- 4. The application period for completed applications runs from November 1st to December 15th. The deadline for application submission will be 4:00 p.m. December 15th each year or as otherwise stated. No applications will be accepted after this date and time.**

•AGRICULTURAL SECURITY AREA (ASA)•

Timeline: 180 days from Township's receipt of petition, or less depending on processing method.

Step 5: *All land submitted for preservation must be in enrolled in an ASA prior to the landowner executing the agreement of sale contract. Exceptions to this are made at the discretion of the Board. NCFPB Administrator confirms the ASA status of the land proposed for preservation. Any parcels not enrolled in an ASA at the time of preservation application will be delayed. If the land is not in an ASA, the Administrator will assist the Landowner with the process of applying to the Township (where the land is located) to add his/her land to an existing ASA in order that the landowner may be eligible for preservation in the future.*

•SOIL CONSERVATION PLAN•

Timeline: Several months depending on NRCS/TSP workload and whether an update or new plan is required.

Step 6: *NCFPB Administrator or staff confirms whether or not there is a current Conservation Plan for the land proposed for preservation and designed for use by the current farm owner/operator. If a new, or updated, plan is required, NCFPB Farmland Preservation Resources Specialist will initiate the process with the Natural Resource Conservation Service (NRCS) or a Technical Service Provider. Plans often take several months to complete and must be done prior to settlement. If a nutrient management plan (Act 38) is required, the landowner must have this plan completed prior to the completion of the easement process. Landowners will be responsible for full compliance with all practices within the conservation plan.*

•APPRAISAL & REVIEW OF APPRAISAL•

Timeline from Step 7 thru Settlement: Generally 18 - 24 months.

Step 7: *NCFPB contacts Landowner to request a \$2,200 appraisal deposit, which is refundable only upon settlement of the conservation easement. **If a landowner withdraws from the program at any time, they will forfeit this deposit and will be responsible for all costs incurred by NCFPB at time of withdrawal.***

Conditions of the deposit:

(1) The deposit will not be refundable:

- (a) If the landowner voluntarily withdraws more than 5% of the acreage submitted on their application (excluding the land under the existing buildings) for any use other than preservation.

(2) The \$2,200 deposit will be forfeited should the landowner withdraw at any point within this process and they will be responsible for the following:

- (a) Reimbursement of the appraisal cost incurred by the County (the appraisal deposit).
- (b) Reimbursement of all or any portion of the survey costs incurred up to the date of withdrawal.
- (c) Reimbursement of all or any portion of the title search and /or title insurance costs incurred up to the date of withdrawal.

Step 8: *NCFPB engages a state certified Appraiser to appraise the easement value of the land proposed for easement sale. The easement value is the difference between the market value and the agricultural value.*

Step 9: *Appraiser submits completed appraisal to NCFPB.*

Step 10: *Appraisal will be reviewed by the NCFPB Administrator and the Board.*

<p style="text-align: center;">•OFFER TO PURCHASE EASEMENT• •AGREEMENT•</p>

Step 11: *Within 30 days, after the receipt of the appraisal, the Landowner can either accept or reject the offer. The landowner may have a 2nd appraisal done at his/her own expense, for tax purposes, if they so choose. **However, the County Board's offer will not change, and shall remain open until rejected or accepted by the applicant.***

The failure of the applicant to act within 30 days of the receipt of the original written offer from the County Board shall constitute rejection of the offer.

Step 12: *NCFPB Administrator meets with the Landowner to review the appraisal, state the offer, review the easement provisions, subdivision guidelines, agreement terms and conditions, and to answer Landowner questions. The agreement of sale is considered the Board's written offer to purchase an easement.*

Step 13: *When an offer is accepted, the Landowner signs the Agreement and various required documents in the agreement package, such as a W-9 tax form, Percentage of Ownership form, etc.*

•SURVEY•
 •TITLE SEARCH ISSUES•
 •REVISED AGREEMENT•

Step 14: *Survey work is initiated by the NCFPB and must meet an error of closure, which is expressed as a ratio, greater than one foot per 200 linear feet (1':200') as plotted from the recorded legal description.*

- a. Any building structures (residential structures, agriculture buildings, out buildings, etc.) located on the property at the time of the survey will be excluded from the easement. The remaining acreage as determined by the surveyor will be the final acreage listed on the deed of easement.*
- b. A landowner who voluntarily removes more than 5% of the submitted acreage listed on their application (excluding the land underneath the existing buildings) for any use, other than preservation, will be withdrawn from the program and will forfeit their \$2,200 deposit.*
- c. Once the survey is submitted to the NCFPB, it will be considered final. The landowner is provided the opportunity to review and sign off on the survey prior to submission. No changes to exclude additional acreage will be permitted.*

Step 15: *NCFPB initiates Title Search. When Title Search is completed, NCFPB Administrator and Solicitor will work with the landowner to resolve title issues.*

- a. Subordination agreements or payoff letters are acquired when appropriate for outstanding mortgages, etc.*
- b. Miscellaneous title issues are resolved in an appropriate manner.*

Note: ***All agreements shall be subject to the ability of the applicant to provide clear title to the premises, free of any encumbrances such as liens, debts, mortgages, options, rights of others in surface mineable coal, land use restrictions, adverse ownership interest and other encumbrances that would adversely impact the County/Commonwealth interest in the farmland tract.***

Step 16: *Agreement is revised, if necessary, due to: (1) surveyed acreage, and/or (2) confirmation of payment (lump sum, installments, like-kind exchange, etc.). The Deed of Agricultural Conservation Easement is prepared.*

•ADJACENT LANDOWNER NOTIFICATION•

Step 17: *Neighboring landowners are notified by certified mail that land adjacent to theirs is in the process of being preserved.*

•APPROVAL BY COUNTY BOARD & STATE BOARD•

Step 18: *For all proposed conservation easement purchases – Review materials are presented to County Farmland Preservation Board for their review and approval, rejection, or recommendation for modification.*

Step 19: *For conservation easement purchases funded by the State, or jointly funded by the State and County only – Review materials are sent to the State Board several weeks prior to the meeting during which the proposed easement is presented for discussion and decision.*

PLEASE NOTE: *At public meetings there may be members of the Press present and the easement purchase may be publicized.*

•SETTLEMENT•

Step 20: *If the easement purchase is funded with County monies, checks are requested from Budget Administrator & settlement is scheduled upon approval. These settlements take place at the office of NCFPB's closing agents.*

If State approval is required, then settlement will be scheduled as soon as the funding is received from the Commonwealth. These settlements take place at the office of NCFPB's closing agents.

PLEASE NOTE:

- 1. Upon approval of the purchase of a conservation easement, a real estate settlement will be held. At settlement the landowners will sign the agricultural easement deed. The deed shall include the provisions of Sections 138e.67 and 138e.241 of the State Regulations.*
- 2. A legal description of the exact area under easement is needed, in accordance with § 138e.67 of the State Regulations. The survey requirements will follow the provisions of § 138e.73. The cost of preparing the legal description and the survey will be paid by the county. The deed shall be in recordable form and contain an accurate legal description setting forth the metes and bounds of the farmland tract subject to the easement.*
- 3. Grantees shall be those entities which provided funding, in the proportion that they provided the funding, as defined in the Act.*

4. *For purchases made entirely with County funds, the County shall be the sole grantee.*
5. *For purchases made using a combination of State, County, and local Municipality funds, the grantees shall be the Commonwealth, the County, and the local Municipality providing the funds under joint ownership as defined in the act.*
6. *For purchases made entirely with local Municipal funds, the Municipality shall be the sole grantee.*
7. *In the event that one application consists of more than one tax parcel, (that are not currently recorded on one deed) those parcels will need to be consolidated under a Deed of Merger, if legally feasible as determined by the County Farmland Preservation Board. The county settlement agent will draw up the Deed of Merger and it will be recorded prior to settlement of the agricultural easement. The recording fee cost for the Deed of Merger will be the sole responsibility of the landowner.*

*Updated November 2012
Revised 10/2019*

MINIMUM CRITERIA FOR APPLICATIONS RECEIVING COMMONWEALTH FUNDING

(Further details given on page 25 - VI OPERATIONAL PROCEDURES FOR ACQUIRING EASEMENTS)

Any landowners applying for easement purchase must first meet certain eligibility criteria before continuing the process. Landowners who may receive funding from the Commonwealth must meet the criteria as required by Section 138e.16 of the State regulations and described in the first section below. Easements purchased using Commonwealth funding may be acquired jointly with County funds or as multi-funded easements with State, County and Municipality funding or with State and Municipality funding. Landowners not meeting these minimum criteria may still be eligible if they meet the criteria on page 12 of this booklet.

Before a property is ranked under the numerical ranking system, it must first meet the following minimum criteria as required by Section 138e.16 of the state regulations:

As of January 1, 1998, the following criteria will apply.

The farmland tract shall:

- A. Be one or more of the following:
 - 1. Located in an agricultural security area consisting of 500 acres or more.
 - 2. Bisected by the dividing line between two local government units, having the majority of its viable agricultural land within an agricultural security area of 500 acres or more and the remainder in another local government unit outside of an agricultural security area.
 - 3. Bisected by the dividing line between the purchasing county and an adjoining county, having the land located in the purchasing county within an agricultural security area of 500 acres or more and the remainder in another county outside of an agricultural security area, and with respect to which one of the following applies:
 - a. A mansion house on the tract and located within the purchasing county.
 - b. When the mansion house on the tract is bisected by the dividing line between the two counties, the landowner has chosen the purchasing county as the situs of assessment for tax purposes.
 - c. When there is no mansion house on the farmland tract, the majority of the tract's viable agricultural land is located in the purchasing county.
- B. Contain at least 50% of soils, which are both available for agricultural production and of Land Capability Classes I through IV, as defined by the USDA-NRCS.
- C. Contain the greatest of 50% of harvested cropland, pasture, or grazing land.

- D. Be contiguous acreage of at least 50 acres in size* unless the tract is at least 10 acres in size and is either utilized for a crop unique to the area or is contiguous to a property which has a perpetual conservation easement in place held by a “qualified conservation organization” as that term is defined in Section 170h.3 of the Internal Revenue Code.

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

***25-49 acres for a County only purchase per Northampton County Guidelines.**

MINIMUM CRITERIA FOR COUNTY FUNDED APPLICATIONS

At the discretion of the Farmland Preservation Board, an easement may be purchased using County funding.

The farmland tract:

- A. Shall be located within a duly recorded ASA comprised of at least 500 acres.
- B. Must contain 50% of soils, which are both available for agricultural production and of Land Capability Classes I through IV, as defined by the USDA-NRCS.
- C. Shall contain the greater of 50% of harvested cropland, pasture, or grazing land.
- D. May contain 25-49 or more of contiguous acres of land.

An easement may be purchased on a farm situated in more than one county. The county processing the application is the county containing the farm’s mansion house. In the absence of a mansion house, the county containing the greater portion of land is the one to process the application. That County Program’s minimum eligibility criteria will apply to the entire applicant tract. Act 14 of 2001 establishes this option; the provisions of Act 14 apply to Northampton County applicants.

MINIMUM CRITERIA FOR TOWNSHIP PARTERSHIP PROGRAM

Beginning in 2011, municipalities in Northampton County can partner with the Farmland Preservation Program through our Township Partnership Program. This program enables townships to preserve farms in their community using funds raised through an earned income tax referendum. The minimum criteria for applications in the Township Partnership Program may differ from the minimum criteria for county funded applications. Contact the office for more information.

NORTHAMPTON COUNTY
FARMLAND RANKING SYSTEM
(Excerpt from Northampton County Program Guidelines)

A. INTRODUCTION

The Farmland Ranking System is to be used to rank and prioritize for the purchase of Agricultural Conservation Easements.

The system is designed to take the total accumulative points of the entire ranking system, to determine which farmland should be appraised for Agricultural Conservation Easement purchase.

The system shall address conditions at the time the application is processed.

B. CRITERIA

1. Location

The availability of utilities in relationship to the farm location and other farm locations.

The zoning of the farm, to be compatible with the land use of the municipality.

2. Resources

Soil capability, the ability of the farm to produce, plus size to make it worthwhile to sustain a farming operation.

Human resources adequate to maintain the farm at present and future status.

3. Stewardship

Soils; are they being protected to sustain maximum agricultural commodity production.

4. History

Has the farm been operated by the same family for many years. If the farm has any historic, scenic or environmental qualities that are of concern that effect the easement purchase decision.

FARMLAND RANKING SYSTEM

Soils (LE)

The farmland ranking system shall evaluate tracts being considered for appraisal on a 100-point scale, using the two-part Land Evaluation and Site Assessment (LESA) system described in this section. The weighted Land Evaluation (LE) score shall be calculated in accordance with the relative values for each soil. Relative values are included in the soil survey.

a. Land Evaluation.

(i) Source of soils data. A farmland ranking system shall designate either or both of the following as the source of the soils data used in LE:

(a) The County Soil Survey, as published by the USDA Natural Resource Conservation Service (USDA-NRCS) in cooperation with the Pennsylvania State University and the Department of Environmental Resources.

- (b) The Soil and Water Conservation Technical Guide maintained and updated by the USDA-NRCS.
- (ii) Relative value of soil. The County program shall set forth a “relative value” for each soil-mapping unit in the County. The relative value shall be on a 100-point scale - with 100 points assigned to the best soils for agricultural production and all other soils assigned relative values of less than 100 points.
- (iii) Calculation of average relative value. The average relative value of the soils on a tract being considered for appraisal shall be calculated by multiplying the relative value of each soil mapping unit within the tract by the total acreage of the soil mapping unit within the tract, adding these products and dividing that sum by the total acreage of the tract.
- (iv) Calculation of weighted LE score. The weighted LE score of a tract being considered for appraisal shall be the product of the average relative value of the soils on the tract multiplied by the weighted value (40%) assigned to the LE score under the County program.

Site Assessment (SA)

- (i) General categories of factors. The County program shall require the evaluation of three general categories of factors in determining the SA score, and shall specify the individual factors to be considered under each of these general categories. These categories are as follows:
 - (a) Development Potential Factors. Factors that identify the extent to which development pressures are likely to cause conversion of agricultural land to nonagricultural uses.
 - (b) Farmland Potential factors. Factors that measure the potential agricultural productivity and farmland stewardship practiced on a tract.
 - (c) Clustering Potential factors. Factors that emphasize the importance of preserving blocks of farmland to support commercial agriculture and help to shield the agricultural community from conflicts with incompatible land uses.
- (ii) Scoring scale. The County program shall require that each of the three general categories of factors described in paragraph (i) ranks tracts on a 100-point scale. The total combined maximum score under these categories shall be 300 points.

a. Development Potential (DP)

- (i) Availability of Sewer and Public Water

Public water or sewer on farm	25
Public water or sewer within ½ mile of farm.....	15
Public water or sewer within 1 mile of farm.....	7
Public water or sewer within 2 miles of farm	0
- (ii) Development Pressure, subdivision on contiguous lots of 5 or more residences

Development adjacent to property line.....	30
Within ½ mile of property line	20
More than ½ mile from farm property line	10
- (iii) Road Frontage Available

1000 feet or more of public road frontage.....	25
400 to 999 feet of public road frontage.....	15
1 foot to 499 feet of public road frontage.....	7
No public road frontage	0

- (iv) Distance to Urban Center
The shortest distance between the tracts boundary and the boundary of the closest incorporated borough or city within Northampton County will be measured.
One mile 20
Two miles 10
Greater than two miles..... 0

** The sum of the scores for each of these four factors will be multiplied by 10% to yield the final weighted development score

b. Farmland Potential

The percent of the farm used for crop or pasture will be based on acreage's reported on the application and verified through NRCS or CFSA.

- (i) Percent of tract in harvested crop, pasture or grazing
90% to 100% of tract in harvested cropland/pasture/grazing..... 30
70% to 89% of tract in harvested cropland/pasture/grazing 20
50% to 69% of tract in harvested cropland/pasture/grazing 10
- (ii) Size of Tract on Application
100 acres or more 30
99 to 50 acre..... 15
Less than 50 acres or 10 acres or more contiguous to another
eased tract or farm..... 5
- (iii) Stewardship
NRCS Conservation Plan fully implemented or adequate
conservation practices implemented 20
NRCS Conservation Plan with at least 50% implemented
conservation practices 10
No conservation practices implemented 0
- (iv) Historic/Scenic/Environmental Qualities
Located adjacent to scenic/open space/historical or
cultural significant land 10
(flood plains, wildlife habitat, high quality watersheds)
Located adjacent to park/recreation area owned by Federal/
State/County/Local Government..... 7
(parks, forest, education centers, state gamelands)
Property not adjacent to (a) or (b)..... 0
- (v) Percentage of farm offered for Easement Purchase
100% of deeded acreage (minus homestead exclusion) 5
Additional exclusion areas being left out of easement..... 0
- (vi) Ownership
Farm owner derives majority of income from farm operation 5
Family member of farm owner derives majority of income from
farm operation 3
No family member of farm owner derives an income from farm operation..... 0

** The sum of the scores for each of these six factors will be multiplied by 20% to yield the final weighted Farmland Potential Score (FP).

c. Clustering Potential (CP)

- (i) Contiguous Farms Adjacent to Farms Preserved by Conservation Easements
 - Farmland contiguous on all sides of property to an eased property..... 40
 - Farmland contiguous on portion of property to an eased property 20
 - Farmland not contiguous to an eased property 0
- (ii) Contiguous Farms Participating in Ag Security Area Program
 - Farmland contiguous on all sides of property included in ag security area.... 20
 - Farmland contiguous on portion of property included in ag security area 10
 - Farmland not contiguous to property included in ag security area..... 0
- (iii) Contiguous Farms Participating in Purchase of Development Rights
 - Contiguous farm applied for purchase of development easements 100+ acres 10
 - Contiguous farm applied for purchase of development easements 99 to 50 acres 5
 - No contiguous farms 0
- (iv) Consistency with Regional Comprehensive Plan
 - Tract consistent within Farmland Protection Area 30
 - Tract consistent within Natural Features Area 15
 - Tract consistent within Rural Area 5
 - Tract consistent within Urban Area 0

** The sum of the scores for each of these four factors will be multiplied by 30% to yield the final weighted Clustering Potential Score (CP).

*** The sum of the three weighted scores is the weighted SA score.

C. CALCULATION OF FARMLAND RANKING SCORE

The sum of the weighted LE score and the weighted SA score equals the farmland ranking score.

D. USE OF FARMLAND RANKING SCORE

The farmland ranking score shall determine the order in which tracts are selected by the County Board for appraisal. Selection for appraisal shall be made in descending order of farmland ranking score.

Updated November 2012

Northampton County Agricultural Conservation Easement Program

Sample Application Form

For Office Use Only

App. # _____

Date Rc'd _____

Landowner Information

This application must be completed in its entirety.

Name: _____	SSN# _____
(PLEASE PRINT)	
Name: _____	SSN# _____
(PLEASE PRINT)	
Name: _____	SSN# _____
(PLEASE PRINT)	
Name: _____	SSN# _____
(PLEASE PRINT)	
Address: _____	
(Street/Rd)	(City) (State) (Zip Code)
Property Address: _____	
(If farm address is different from mailing address)	(City) (State) (Zip Code)
Telephone Number: _____	Cell # _____
Email Address: _____	
Name and phone number of person actively farming tract: _____	
	Name Phone#
Is this operation a: <input type="checkbox"/> Corporation* <input type="checkbox"/> Partnership** <input type="checkbox"/> Sole Proprietorship	
*Submit Articles of Incorporation with application	
**Submit copy of Partnership Agreement with application	

Property Information

1 Total number of parcels submitted: <input style="width: 50px;" type="text"/>	2 Municipality: _____
3 Total Acreage of farm tract: <input style="width: 50px;" type="text"/>	4 Agricultural Security Area: _____
	Township _____
5 Acreage being excluded from the easement: <input style="width: 50px;" type="text"/>	6 Deed Book & Page of ASA: _____ / _____
(If you are excluding acreage outside of the existing building envelope, you MUST attach a detailed map showing the exclusions. Applications without this map will be rejected.)	Book Page
7 Tax Parcel ID# and acreage for each:	
_____/_____/_____ Map Block Lot	Acreage: _____ Deed Book & Page: _____/_____
_____/_____/_____ Map Block Lot	Acreage: _____ Deed Book & Page: _____/_____
_____/_____/_____ Map Block Lot	Acreage: _____ Deed Book & Page: _____/_____
_____/_____/_____ Map Block Lot	Acreage: _____ Deed Book & Page: _____/_____
8 Total acreage offered for easement: <input style="width: 50px;" type="text"/>	
(Enter the amount of acreage you are preserving; this figure cannot change more than 5% after the application has been submitted.)	

Overview of Farm Operation

9	How long has the property been owned by the same family? (*Please attach copy of Century Farm Certificate)	Less than 50 yrs	51-99 years	Over 100 years*
10	How is your land zoned?	<input type="checkbox"/> Agricultural	<input type="checkbox"/> Agricultural w/Residential	<input type="checkbox"/> Commercial/Industrial
		<input type="checkbox"/> Conservation	<input type="checkbox"/> Commercial	
11	Do you have public water or sewer? If so how close?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
12	Are there any cemeteries located on this property?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
13	Are there any railroads located on your property?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
14	Are there any underground storage tanks located on the property?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
15	Are there any equine activities on the property?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
	Please describe:			
16	Is your property located adjacent to:			
	Scenic, open space, historical or cultural significant land (flood plains, wildlife habitat, high quality watershed/streams)	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
	Park/recreation area owned by Federal/State/County/Local	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
	Please describe:			
17	Are there right-of-ways or easements through this property?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
	Please describe:			
18	Based on Act 38 of 2006, are you required to have a Nutrient Management Plan?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
	Plan Date: / /			
19	How many acres of land proposed is enrolled in CRP/CREP? (Conservation Reserve Program/Cons. Reserve Enhancement Program)			
	Please circle one: CRP CREP Acreage: Contract period: / / through / / /			
20	Do you have a USDA/NRCS Soil Conservation Plan?	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
21	Conservation Plan Date: Plan # Name on plan:			
22	What percentage of the plan is currently being implemented? %			
23	List ALL conservation practices currently in use: (List only those in use on the farm being submitted for preservation.)			
24	Pasture or crops grown on land proposed for easement (past two growing seasons) List types of livestock on the farm:			
	Season 1	Season 2		
	Pasture/Crops Acreage Yield	Pasture/Crops Acreage Yield	Livestock:	Amount:

Other Important Information

25	List property owners with Preserved Easements that are contiguous to your property: _____
26	What businesses other than agricultural production are located on the farm? _____
27	Please list information regarding any current agreements to sell the property: _____ (Please note: We will not accept applications on properties that are currently under an agreement of sale.)
28	Please list any mortgages or liens held against this property: (List name of mortgage(s) or lien holder and type of lien)
29	Please give a list of buildings existing on the property: _____
30	Please specify any historic or environmental features found on the property: _____
31	Street location of farmland tract (include CLEAR directions from nearest State Route)

"I/We hereby, authorize the Conservation Plan preparer to release copies of the Conservation Plan and Nutrient Management Plan (Act 38, if applicable), to the Northampton County Farmland Preservation Board and the Bureau of Farmland Preservation as required under Act 43 criteria for easement purchase.

I/We acknowledge that I am fully aware if there is a deviation from the original amount of submitted acreage listed on this application, The Northampton County Farmland Preservation Board or their designee has the right to disqualify my application and it will be withdrawn.

I/We, authorize Northampton County Farmland Preservation to release and forward a copy of this application to officials in my municipality for possible consideration of an easement purchase at the municipal level.

I/We, do hereby verify that I/We have reviewed the application. I/We further verify that the application correctly and accurately depicts the condition of the land and that such statements are true and correct to the best of my/our knowledge, information and belief. These statements are being given by me/us to induce official action on the part of the Northampton County Farmland Preservation Board, its agents, officers, servants, and employees. I/We understand that any false statements made herein are being made subject to the penalties of 18 P.A.C.S Section 4904 relating to unsworn falsification to authorities."

Thank you for taking the time to complete this application as accurately as possible.

Print Name:	Signature:	Date:
Print Name:	Signature:	Date:
Print Name:	Signature:	Date:
Print Name:	Signature:	Date:

(If additional signatures are needed, please copy this page)

Updated 9/13

Application round is open from November 1st to December 15th of each calendar year. The application is due back in the office no later than 4:00 PM December 15th.

VI. OPERATIONAL PROCEDURES FOR ACQUIRING EASEMENTS

A. Application

Landowner(s) voluntarily submit an easement application(s). Multiple parcels on the same deed can be submitted on the same application. A separate application shall be required for each farmland tract offered for easement purchase that are listed on a separate deed of ownership. To apply for multiple parcels on separate deeds, a deed of merger will be required. Noncontiguous tracts shall require a separate application.

1. State Criteria (§138e.16)

(a.)The County program shall consider the quality of the farmland tract, including the USDA soil classification and productivity. When considering application for purchase of agricultural conservation easement, the minimum criteria for applications, the farmland tract shall:

(1) Be one or more of the following:

- (i) Located in an agricultural security area consisting of 500 acres or more.
- (ii) Bisected by the dividing line between two local government units, having the majority of its viable agricultural land within an agricultural security area of 500 acres or more and the remainder in another local government unit outside of an agricultural security area.
- (iii) Bisecting by the dividing line between the purchasing county and an adjoining county, having the land located in the purchasing county within an agricultural security area of 500 acres or more land the remainder in another county outside of an agricultural security area, and with respect to which one of the following applies:

- (A) A mansion house is on the tract and located within the purchasing county.
- (B) When the mansion house on the tract is bisected by the dividing line between the two counties, the landowner has chosen the purchasing county as the situs of assessment for tax purposes.
- (C) When there is no mansion house on the farmland tract, the majority of the tract's viable agricultural land is located within the purchasing county.

(2) Be one or more of the following:

- (i) Contiguous acreage of at least 35 acres or more in size.
- (ii) Contiguous acreage of at least 10 acres in size and utilized for a crop unique to the area.

- (iii) Contiguous acreage of at least 10 acres in size and contiguous to a property which has perpetual conservation easement in place which is held by a “qualified conservation organization,” as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. section 170 (h)(3)).
- (iv) A minimum weighted value of 20% shall be required when prioritizing applications for agricultural conservation easement purchase when implementing the provisions of 914.1(d)(ii.1) for easements 35 to 49.9 acres in size.
- (v) Only 50% of state funds shall be utilized to purchase agricultural conservation easements 35 to 49.9 acres in size.
- (vi) Contain at least 50% of soils which are available for agricultural production and area of capability Classes I-IV as defined by the USDA-Natural Resource Conservation Service.
- (vii) Contain the greater of 50% or 10 acres of harvested cropland, pasture or grazing land.
- (viii) The State Board approved and authorized on July 13, 2000 that land enrolled in CRP/CREP on an applicant’s property will not be included in the calculation of tillable land or pasture for the purpose of meeting State Minimum Criteria.

(3) Crops unique to the area.

The following crops are generally considered to be crops unique to the region in order for a farm to qualify for application per Section 138e.3 of the State Regulations. Any application for easement purchase meeting these criteria will be reviewed and approved on a case-by-case basis by the County Board.

It is understood that to meet this criteria these crops are being commercially grown for fresh market or processing *or* as a commercial agricultural enterprise. It is also understood that at least 50% of the total acres being offered for easement purchase must be utilized for such crops as defined below:

Tree Fruits	Asparagus	Cucumbers
Small Fruits	Rhubarb	Eggplant
Grapes	All edible beans	Peppers
Tobacco	Pumpkins & Squash	Garlic
Mushrooms	Sweet Corn	Peas
Tomatoes	Floriculture Crops	Cole Crops (broccoli, cabbage, etc.)
Melons	Maple Syrup	
All Nuts	Hemp (industrial)*	(Approved BFP 12/12/19)

Christmas trees – grown as a rotation crop with a management plan for cultivation, harvesting, and replacement of Christmas trees.

Sod, nursery stock, ornamental trees and shrubs – grown for commercial agriculture enterprise with the Deed of Easement restriction that removal of excess soil is prohibited.

2. County Minimum Criteria

- (a) The County program shall consider the quality of the farmland tract, including the USDA soil classification and productivity. When considering application for purchase of agricultural conservation easement, the minimum criteria for applications, the farmland tract shall be:
 - (1) Contiguous acreage of at least 25 acres or more in size or,
 - (2) Contiguous acreage of at least 10 acres in size and utilized for a crop unique to the Area or,
 - (3) Contiguous acreage of at least 10 acres in size and contiguous to a property which has perpetual conservation easement in place which is held by a “qualified conservation organization,” as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. section 170(h)(3)) or,
 - (4) Contiguous acreage of at least 35 acres in size for joint purchases (county and state).
 - (5) The Northampton County Farmland Preservation Board may consider farmland tracts for 100% county funded agricultural conservation easement purchase, which does not meet all of the above stated State minimum criteria on a case by case basis.

(Amended 10/10/2013)
- (b) Easement must meet county criteria for \$1.00 easement purchase.
- (c) Easement must meet county criteria for 100% donation of easement purchase.
 - (1) Contiguous acreage of at least 25 acres or more in size
 - (2) Contiguous acreage of at least 10 acres in size and contiguous to a property which has perpetual conservation easement in place which is held by a “qualified conservation organization,” as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. section 170(h)(3))
 - (3) Contiguous acreage of at least 35 acres in size for joint purchases (county and state).
- (d) Contain at least 50% of soils which are available for agricultural production and area of capability Classes I-IV as defined by the USDA-Natural Resource Conservation Service.

- (e) Contain the greater of 50% or 10 acres of harvested cropland, pasture or grazing land.
- (f) The gross receipts of crops, livestock and livestock product sales from the farmland tract.
- (g) The total acres of cropland and percentage of the total farm cropland offered for purchase.
- (h) The total acreage in the application, and the percentage of the total acreage that is prime and important farmland as defined by the U.S.D.A. – N.R.C.S.
- (i) The proximity of the farmland tract to other land subject to limitations on development as a result of public regulation, such as zoning, land use restrictions or permanently protected open space.
- (j) The importance of the farmland tract to the agricultural security area.
- (k) The proximity of the farmland tract to other agricultural security areas.
- (l) The county program will consider the likelihood that a farmland tract will be converted to nonagricultural use. In determining the likelihood of nonagricultural use, consideration shall be given to the following factors:
 - (1) The developmental pressures in the area.
 - (2) Suitability of the farmland tract for development because of soil capabilities, location and configuration.
 - (3) Preexisting perpetual restrictions against development.
 - (4) Location in an area identified by the county board of the county or township comprehensive plan as desirable for agricultural use.

3. Application Process

- (a) The County Board will receive applications annually (between November 1st and December 15th of each year). Applications must be received by 4:00 PM on December 15th (or as otherwise noted). No applications received after that date and time will be accepted for that application year.
- (b) Applications are mailed out to those properties in a recorded Agricultural Security Area. Applications will also be available at the Farmland Preservation office.
- (c) All landowners participating in the agricultural security area program, which are recorded, will be notified of the sign up period.

- (d) The County will follow the application procedures outlined in Appendix A for processing, evaluating, and purchasing easements.

4. Evaluation Of Application

- (a) The Farmland Preservation Program Administrator shall review the application to determine if it is complete and meets the minimum criteria in Chapter 138e. of PA Department of Agricultural Title 7, Chapter 138e Agricultural Conservation Easement Purchase Program.
- (b) The County Board shall evaluate timely applications, which meet the minimum criteria and rank them according to the county numerical ranking system. (Refer to Appendix B) The County Board shall then determine whether to appraise the farmland tract.
- (c) Northampton County will not consider a conservation easement for purchase that is not perpetual in nature.
- (d) All properties considered for conservation easement purchase must be included as part of a duly recorded Agricultural Security Area that has at least 500 acres enrolled.
- (e) Northampton County will process conservation easement applications and other documents in accordance with the model formats included in the state guidebook and any future revisions thereto.
- (f) A letter informing the applicant of ranking status will be sent. The ranking of applications will be forwarded to applicants along with an appraisal request form.
- (g) A landowner is permitted to apply for preservation each calendar year.

B. Deposit

1. Applicants who qualify and wish to proceed will submit the request form and post an appraisal deposit of \$2,200 per application with the Northampton County Farmland Preservation Board. This \$2,200 deposit will be held in an escrow account.

This \$2,200 deposit **is** refundable under either of the following-conditions:

- (a) The landowner completes the preservation process and the conservation easement is purchased and duly recorded.
- (b) The county withdraws their offer or decides not to make an offer to preserve the land submitted on the landowner's application.

The deposit will not be refundable:

- (a) If the landowner voluntarily withdraws more than 5% of the acreage submitted on their application (excluding the land under the existing buildings) for any use other than preservation.
- (b) If the applicant withdraws from the program at any time during the process.

2. The \$2,200 deposit will be forfeited should the landowner withdraw at any point within this process and they will be responsible for the following:

- (a) Reimbursement of the appraisal cost incurred by the County.
- (b) Reimbursement of all or any portion of the survey costs incurred up to the date of withdrawal.
- (c) Reimbursement of all or any portion of the title search and /or title insurance costs incurred up to the date of withdrawal.

C. Appraisal

(Subject to requirements of Chapter 138e.63, 64, 66; Section 2.1 – 2.7)

- 1. Appraisals shall be based on the entire application as one farm unit.
- 2. An offer to purchase an easement shall be based upon an appraisal report, which estimates the market value and the farmland value of the farmland tract. Useful life of these appraisals should not exceed two years, unless market conditions warrant; a maximum of three years will be permitted.
- 3. An appraisal shall be based on an analysis of comparable sales in accordance with standards in most recent Uniform Standards of Professional Appraisal Practice (USPAP) that are compatible to the total acreage of the farm unit in the application.
- 4. The appraiser shall be:
 - (a) A Pennsylvania State Certified General Real Estate Appraiser who is qualified to appraise a property for easement purchase in accordance with the standards set forth in Act 43. An appraiser shall be selected on the basis of experience, expertise, and professional designation.
- 5. The value of buildings or improvements on the subject tract will not be considered in determining the easement value.
- 6. The appraiser shall supply a narrative report, which contains the following information and is in the following format.
 - (a) Introduction

- (1) Letter of Transmittal or Appraiser's Certificate
- (2) Appraiser's Certificate of Value as to market value, farmland value, and easement value
- (3) Table of Contents
- (4) Summary of Salient Facts and Conclusions
- (5) Purpose of the Appraisal
- (6) Definitions including market value, farmland value, and easement value

(b) Description of Property

- (1) Area of Neighborhood Description
- (2) Description of Appraised Property
 - (i) Legal Description
 - (ii) Property Date and Zoning
 - (iii) Description of Improvements
 - (iv) Color Photos of Subject Property's fields and improvements
 - (v) Tax Map of Subject Property. Acreages of properties adjoining the subject property and the names of all adjoining property owners.
 - (vi) Sketch or aerial photograph of Subject Property with boundaries, roads, driveway, building locations, ROW(s) and land use
 - (vii) Location Map with subject boundaries
 - (viii) Soils Map with subject boundaries

(c) Appraisal Analyses

- (1) Analysis of Highest and Best Use
- (2) Valuation Methodology: Market Value
 - (i) Comparable Sales Data
 - (ii) Adjustment Grid with explanation of adjustments
 - (iii) Locational Map of Comparable Sales
- (3) Market Value Estimate
- (4) Valuation Methodology: Farmland Value
 - (i) Comparable Sales Date
 - (ii) Location Map of Comparable Sales
 - (iii) Adjustment Grid with explanation of adjustments
- (5) Farmland Value Estimate
- (6) Easement Value
- (7) Professional Qualifications of the Appraiser
 - (i) Copy of Appraisers current certification

7. The Appraiser shall supply information concerning comparable sales as follows;

- (a) At least three comparable sales shall be used for estimating market value and at least three comparable sales shall be used for estimating farmland value in an appraisal. The appraiser cannot obtain sufficient comparable sales data within the same county as the subject farmland tract, the appraiser may use comparable sales from other counties with approval of

the County Board. The use of comparable sales, which require adjustment of 50% or more, is permitted only with the approval of the Board.

- (b) Pertinent data for each comparable sale used in the preparation of the appraisal shall be stated in the appraisal report, including date of sale, purchase price, zoning, road frontage in feet (for determining market value), soil mapping units (for determining farmland value). The appraisal shall include an analysis comparing the pertinent data for each comparable sale to the subject farmland tract. This analysis shall be in the form of a narrative statement of the information considered and the reasoning that supports the analyses, opinions and conclusions, and an adjustment grid assigning, when practicable and within the Uniform Standards of Professional Appraisal Practice, approximate dollar values to adjustment shown on the adjustment grid.
- (c) The location of each market value comparable sale used in the appraisal report shall be shown accurately on the comparable sales map depicting the entire county in which the comparable sale is located, and shall be sufficiently identified and described so it may be located easily. If the comparable sales map depicts the county in which the property that is the subject of the appraisal is located, that property shall also be sufficiently identified and described so it may be located easily.
- (d) For comparable sales used to estimate the farmland value, the appraiser may use sales of land that are confined to agricultural use because of agricultural conservation easements or other legal restricts or physical impairments that make the land valuable only for agricultural use. Comparable sales shall be in primarily agricultural use. Data may also be gathered from farm real estate markets when farms have no apparent development value.
- (e) The appraiser shall report whether the farmland tract has public or private land use restrictions, is within a flood plain or has other physical attributes, which limit it to agricultural use.
- (f) The appraiser shall provide at least one original and two copies of each report to the County Board. The original of each report and all copies shall be bound with rigid covers.
- (g) The appraisal shall include the entire acreage offered for easement sale. If, following completion of the appraisal, acreage is added or deleted from the proposed easement sale for any reason, the appraisal shall be revised accordingly or the appraiser shall agree in writing to the use of a per acre value to account for the change in easement value resulting from such a change in acreage.

- (h) If acreage is voluntarily withheld from the easement sale by the landowner through subdivision accomplished in accordance with the Pennsylvania Municipalities Planning Code, the appraiser shall, in making the estimate of agricultural conservation easement value, take into account any increase in the value of the subdivided acreage because the placement of the easement on the remaining farmland.

D. Easement Value And Purchase Price

1. An easement shall be purchased in perpetuity.
 - (a) The value of an easement in perpetuity for purposes of making an offer to purchase an easement under Section D, shall be the difference between the market value and the farmland value, contained in the County Appraisal Report.
 - (b) The purchase price offered for the purchase of the easement under 7PA Code Chapter § 138e.66(b) shall not exceed, but may be less than, the value of the easement.

E. Offer Of Purchase By County Board

1. In determining whether to offer to purchase an easement, following receipt of the county appraisal report, the County Board shall consider the following:
 - (a) Evaluation according to the numerical ranking system.
 - (b) Cost relative to total allocations and appropriations.
 - (c) Consideration of conditions under which an offer to purchase would be other than descending order of the farmland ranking score.
2. If the County Board determines to offer to purchase an easement on the farmland tract, the County Board, or a representative of the County Board, shall meet with the applicant to review the County appraisal reports. An offer to purchase an easement shall be submitted to the applicant in writing and be accompanied by the County appraisal report.
3. Within 30 days of receipt of the written offer from the County Board an applicant may do one of the following:
 - (a) Accept the offer, in which case the County Board and the applicant shall enter into an agreement of sale, which shall be in a form provided by the State Board. The agreement shall be conditioned upon the approval of the State Board and be subject to the ability of the applicant to provide good title to the premises, free of any encumbrances such as liens, mortgages, options, rights of others in surface mineable coal, land use restrictions,

adverse ownership interest, and other encumbrances which would adversely impact the County and Commonwealth's interest in the farmland tract. OR,

(b) Reject the offer, in writing, submitted to the Farmland Preservation Office and advise the County Board that the application is withdrawn.

4. The failure of the applicant to act within 30 days of the offer, shall constitute a rejection of the County Board's offer. An extension may be granted at the discretion of the County Board for a maximum of 30 days.
5. The applicant may obtain a second appraisal at their own cost. However choosing to obtain a second appraisal will not result in an increased offer from the County Board. There may be favorable tax consequences and the landowner is responsible for consulting a licensed financial planner or tax attorney for more information.

F. Agreement of Sale

1. The Agreement of Sale shall be conditioned upon the approval of the State Bureau of Farmland Preservation Board, and shall be subject to the ability of the Applicant to provide good, marketable and insurable title to the premises, free of any encumbrances such as liens, mortgages, options, rights of others in surface mineable coal, land use restrictions, adverse ownership interests and other encumbrances, which would adversely impact the County and Commonwealth's interest in the farmland tract.

An Agreement of Sale shall be in a form provided by the State Board and may be structured as:

1. An individual purchase by the State or County
2. A joint purchase by the State and the County
3. A joint purchase by the State, the County, and a Municipality
4. A joint purchase by the County and a Municipality
5. A joint purchase by the State and a Municipality

The Board reserves the right to determine the manner in which the Agreement of Sale will be structured, in terms of the nature of the purchase, as outlined above.

G. Exclusion Area Policy

It is the policy of the Northampton County Farmland Preservation Board to exclude any and all buildings, access or rights of way that exist at the time the easement is placed on the property. Compensation will not be paid for these areas.

If an Applicant wishes to exclude a portion or portions of a tract of land from the coverage of the agricultural conservation easement, any and all proposed exclusion area(s) must be clearly noted **at the time of the application** and a sketch of such exclusion request must be attached to the submitted application. The Board will

evaluate the proposed exclusion to determine whether the exclusion will harm the economic viability of the land to be covered by the easement for agricultural production (Section 138e.225 of the State Regulation) or is otherwise inconsistent with the purpose of the easement program. The Board shall also review and determine what the effect of constructing a dwelling unit on the excluded land may have upon the probability of the restricted land remaining in viable agricultural use.

A landowner who voluntarily removes more than 5% of the submitted acreage listed on their application (excluding the land underneath the existing buildings) for any use, other than preservation, will be withdrawn from the program and will forfeit their \$2,200.00 deposit.

1. Exclusion of future building lots: With regard to the exclusion from the proposed preserved land of a building lot or lots (for example, for children of the applicant), the Board will encourage the applicant to ensure that the lot(s) proposed for such exclusion meets, for example, all applicable subdivision, sewage disposal and water supply requirements.

2. Post Application Exclusion/Changes: Additional exclusions of land and/or changes in the property being offered for an easement purchase (for example, the granting of an additional right-of-way) subsequent to the submission of the application (hereinafter collectively referred to as “post-application changes”) are discouraged, and the Board reserves the right, in its discretion to deny requests for the same.

(a) The Board will consider requests for post-application changes, on a case-by-case basis, if and only if the applicant demonstrates, to the satisfaction of the Board, that the proposed post-application change(s):

- (1) Will not harm the economic viability of the use of the land for agricultural production; and
- (2) Will not substantially adversely impact the appraised value of the proposed conservation easement; and
- (3) Will not adversely affect the LESA ranking of the subject property or the LESA ranking of other pending applications; and
- (4) Will not delay the processing of the application, the appraisal of the farm, or the eventual purchase of the conservation easement.

H. Unique Purchase Situations

The Board may consider preserving a farm sooner than its ranking would otherwise indicate if the farm is subject to a unique funding situation and is the subject of a current application round (a “priority purchase”). In order to be considered for a priority purchase, the ranking of the property must fall within the range of applications that have been designated by the Board for possible easement purchase in the current round of applications. The Board has the discretionary authority to preserve a farm out of ranking order if there is potential to leverage

additional funding, such as, but not limited to, Federal, Municipal, or a private contribution. Other circumstances where a property may be considered are:

1. Imminent threat of development
2. Signed Agreement of Sale (with a developer)
3. Recorded Subdivision Plan on file with the Township and/or County

I. Requirements Of The Agricultural Easement Deed

1. The owners of the subject farmland shall execute a deed conveying the easement, this deed shall include the provisions of Appendix G (relating to deed clauses).
 - (a) This provision will be monitored by the County Farmland Preservation Board, or their designee, County Recorder of Deeds office and Assessment office.
2. The deed shall be in a recordable form and contain:
 - (a) A legal description setting forth the metes and bounds of the farmland tract subject to the easement.
 - (b) At least one course and distance referencing a fixed marker or monument of a type commonly placed in the field by a surveyor. (Chapter 138.e, 67 (b)(2))
3. The legal description shall not contain a closure error greater than one foot per 200 linear feet in the survey.
4. The farmland tract on which an easement is to be purchased must be surveyed unless that legal description contained in the deed recorded in the land records of the County in which the farmland tract is located satisfies the requirements of paragraphs 2 and 3. A survey required by the provisions of this paragraph must comply with the boundary survey measurement standards set forth in Chapter 138e.73 (relating to survey requirements).
5. For purchases made entirely with State funds, the Commonwealth shall be the sole grantee.
6. For purchases made using a combination of State, County, and Municipal funds, the grantees shall be the Commonwealth, County, and the local government unit, providing the funds under joint ownership as defined in the Act.
7. A copy of the deed shall be submitted to the State Board for approval prior to execution and delivery.

J. Survey Requirements

Northampton County Farmland Preservation has a policy that any buildings or access (driveway, right of way) that exist at the time of the easement purchase are excluded from the conservation easement area. These areas will be delineated out by the contracted surveyor at the time of the survey.

When the survey of land is being considered for agricultural conservation easement purchase is required (because the existing deed's legal description contains a closure error greater than 1 foot per 200 linear feet) or is otherwise required to determine metes and bounds of any right-of-way or other interests in the land, the survey shall indicate that it has a closure error of not greater than 1 foot per 10,000 linear feet in the survey, and shall otherwise comply with the boundary survey measurements standards published by the Pennsylvania Society of Land Surveyors in its "Manual of Practice for Professional Land Surveyors in the Commonwealth of Pennsylvania," adopted July 10, 1998, or its most current successor document.

The survey shall contain the following:

1. A recordable legal description setting forth the metes, bounds, monumentation, exceptions, easements and rights-of-way with respect to the farmland tract or other subject of the survey.
2. A copy of the final boundary survey in digital electronic format that complies with the conservation easement Geographic Information System (GIS) technical standards maintained in the guidebook prepared by the Pennsylvania Dept. of Agriculture (the "Department") in accordance with Section 14.1 (a)(3)(xv) of the Act [3 P.S. § 914.1 (a)(3)(xv)]. The digital format shall show the bearings and distances between each monument and contain the northing and easting of each monument.
3. Coordinates of at least two (2) ground control points located sequentially along the boundary survey, with latitude and longitude expressed in decimal degrees with an accuracy of 6 recorded decimal places. These coordinates shall be based on the "North American Datum of 1983", or its most current successor document, and shall be obtained through field observation or verification of datum.
4. A paper copy of the plotted final survey map from the digital file showing the course bearings and distances and other annotations and symbols as maintained in the guidebook prepared by the Department in accordance with section 14.1(a)(3)(xv) of the Act.
5. Monumentation: The Surveyor shall establish monumentation for at least two (2) ground control points required under the subsection (b)(3). This monumentation shall consist of permanent, concrete markers of substantial length and width containing ferrous or other materials detectable by an electromagnetic locator. The identity of the surveyor who places a monument shall be affixed or marked upon the monument so that it can be ascertained by inspection of the monument in the field.
6. Setting of pins on the excluded areas as determined by Northampton County Farmland Preservation office (for example: homestead area, existing building

envelope and access) shall be done at the time of the easement survey and included in the legal description.

***Any additional marker/pin or plot plan requested by the Applicant for his/her own use or purpose is done at the cost of the Applicant. In addition, when an exclusion is requested by the Applicant, that survey cost shall be borne by the Applicant.**

K. Title Insurance

1. The County Board shall provide a title insurance commitment to the State Board upon submission of its recommendation for a purchase of an easement.
2. Copies of all recorded or unrecorded documents listed on the title insurance commitment as exceptions to the title insurance policy.
3. At settlement, the County Board shall provide a title insurance policy issued by a title insurance company authorized to conduct business in the Commonwealth of Pennsylvania by the Pennsylvania Insurance Department. The cost of such title insurance shall be a cost incident to the easement purchase payable or reimbursable from a County's allocation under the Act.
 - (a) The difference between the appraised market value and the appraised farmland value, as described in § 138e.66(a) (relating to the easement value and purchase price).
 - (b) The difference between the agricultural value and the nonagricultural value, as described in § 138e.66(c)(3) (relating to the offer of purchase by county board), if the values are used to calculate the easement value.
4. **The costs related to clearing any blemish from the title, i.e. payment of lien, subordination of mortgage and its recording or payment of any existing recorded debt will be the sole responsibility of the landowner.**

L. Statement Of Costs

1. For purposes of Section 14.1(h)(6) of the act (3 P.S. Section 914.1(h)(6)), the County Board shall submit a statement of the costs incident to the purchase of the easement to the State Board, which may include:
 - (a) The easement purchase price.
 - (b) The County appraisal costs.
 - (c) The necessary legal fees for title search, preparation of documents, and attendance at closing.

- (d) The recording fees.
- (e) The survey costs, including a class A-2 survey.
- (f) Costs of providing adjoining landowners with required notices and of providing necessary advertisements.
- (g) The Northampton County Farmland Preservation Board, upon formal approval of a motion by its members, may secure the services of a nonprofit land conservation organization (qualified under IRS regulations 501(c)(3)) for the purposes of purchasing easements on farmland within the county that meets minimum criteria for easement sale application as outlined in Section A, subsection 1 and 2, Applicant Criteria section of this document. Costs, including the easement purchase price, reasonable costs of financing the purchase, appraisal costs, necessary legal costs, recording fees, and survey costs, may be reimbursable by the County or the State or both.
- (h) The cost of the Title Insurance.

- 2. The statement of costs shall specify the amount of funding requested from the Commonwealth for the purchase, and the amount of County funds allocated for the purchase.
- 3. After settlement, the County Board shall submit a revised statement of costs in the event that actual costs were greater or less than the costs estimated in the initial statement of costs.
- 4. If the actual costs are less than the estimated costs, the County Board shall promptly refund the difference to the Department by check made payable to "Commonwealth of Pennsylvania".

M. State Board Review for Approval for Purchase Of Easement

Application for State Board review of proposed purchase of an easement is made submitting the following documents to the Director, Bureau of Farmland Preservation, and Department of Agriculture:

- 1. Electronic submissions to the State shall include the following information: (Hard copies are required for the appraisal, survey map and description, Agreement of Sale. These documents must be forwarded to the Department. Other required documentation can be uploaded to the State's system.)
 - (a) Copy of Exhibit B, from the Agreement of Sale, modified to include interest, total acres and per acre easement cost.

- (b) Narrative Summary facts.
 - (c) Legible United States Geological Survey (USGS) topographic map showing the subject property location and boundaries, location of neighboring easements, and exclusions withheld from the subject property.
 - (d) Soil Report Form C information and data.
 - (e) List of soil mapping unit names, symbols and Land Capability Classes on the subject property.
 - (f) Legible, uncolored soil map of subject property.
 - (g) Tax map showing the subject property location and boundaries, exclusions withheld from the subject property, utility, rights-of-way, and access road rights-of-way.
 - (h) Summary table showing the individual ranking scores by category for applications selected for county appraisal, including an indication of the easement purchase status of higher-ranking applicants.
2. The appraisal report or reports.
 3. The signed agreement of sale, including the proposed legal description, a statement of cost, the proposed deed of agricultural conservation easement, a contractor integrity clause, and a nondiscrimination clause.
 4. The title insurance report or commitment.
 5. A letter certifying that all adjoining landowners were provided with notice and opportunity to be heard in a manner consistent with administrative agency law with respect to the proposed easement purchase, including one (1) copy of the notification letter and a list of all adjoining landowners.
 6. A completed and signed IRS form W-9, Request for Taxpayer Identification Number and Certification for individual grantors.
 7. A letter from the grantors stating the percent (%) of ownership of each grantor for the purpose of issuing IRS Form 1099.
 8. Copy of the approved Soil Conservation Plan that is required to be in place with respect to the land under § 138e.241(2).
 9. Copy of the approved Nutrient Management Plan (Act 38) that if required to be in place with respect to the land under § 138e.241(2).

N. Processing Timeline

1. The timeline for processing a conservation easement can vary. The average easement process can take **up to** two years. If unique circumstances arise, the process can exceed two years. The Northampton County Farmland Preservation Board and staff will make every effort to complete this lengthy process in the shortest amount of time possible.

O. Inspection and Enforcement Procedures

The Northampton County Farmland Preservation Board shall exercise primary enforcement authority with respect to the following:

1. Agricultural Conservation Easements that were acquired under authority of the act and are located within the county.
2. Agricultural Conservation Easements acquired pursuant to the criteria set forth for the purchase of agricultural conservation easements that cross local government unit boundaries and cross county boundaries, including any portion of an agricultural conservation easement extending into an adjoining county.

The County Board will adhere to the regulations of the Commonwealth in inspecting and enforcing all agricultural conservation easements (Chapter 138e.201 – 207)

The Northampton County Farmland Preservation Board will conduct biennially inspections of the properties on which they hold conservation easements to verify if any violations of the easement have occurred.

Landowners subject to these inspections will be notified 10 days in advance of the proposed inspection via certified mail. An inspection conducted under subsection (a) shall be performed between the hours of 8:00 AM and 4:00 PM on a weekday that is not a legally recognized holiday.

If violations of the easement are found, the County Board will request that the landowner correct the violation. If the landowner does not comply, the County Board will seek a court order requiring the landowner to correct any easement violation.

P. Conservation Plans

1. To preserve the agricultural viability of the restricted land, the County Board shall require, and the owner of the restricted land shall implement, a conservation plan approved by the County Conservation District and the USDA-Natural Resource Conservation Service (NRCS) or the County Board.

2. In addition to the requirements established by the County Conservation District and NRCS, or the County Board, the conservation plan shall require that:

- (a) The use of the land for growing sod, nursery stock, ornamental trees and shrubs does not remove excessive soil from the restricted land.
- (b) The excavation of the soil, sand, gravel, stone or other materials for use in agricultural production on the restricted land is conducted in a location and manner that preserves the viability of the restricted land for agricultural production.
- (c) The mining of materials is conducted only through the use of methods authorized in the act.

The farm practices must be in accordance with the established practices in the conservation plan. If any changes within the farming operation occur or there is a change in the ownership of the property, the conservation plan must be updated.

In cases where Pennsylvania law (Act 38) requires that a farm operation develop and follow a nutrient management plan, a nutrient management plan shall be a required component of the conservation plan for the property.

Q. Notification of Contiguous Property Owners

When utilizing funds certified by the State for easement purchases, the Board shall provide the owners of land adjoining a farmland tract with respect to which an easement purchase is proposed with notice of the proposed purchase and notice of an opportunity to be heard at the State Board meeting at which the easement purchase is recommendation is to be considered. This notification requirement will be accomplished as outlined in Section 138e.71 of the State Regulations.

R. Withdrawal Policy & Procedure (Approved 10/2/18)

1. POLICY - It is the policy of the Northampton County Farmland Preservation Division to seek reimbursement from an applicant in the event they choose to withdrawal from the Farmland Preservation process, once they have advanced into the Agreement of Sale portion of the preservation procedure.

2. PROCEDURE - In the event a landowner who has applied for, been chosen and has entered into an agreement of sale with the Commonwealth of Pennsylvania, Northampton County, a local municipality or any and all combinations, the following procedures must be completed:

- a) The applicant (and all signature parties) must submit a formal dated letter of withdrawal to the Northampton County Farmland Preservation Office.
- b) The program administrator will then mark the file as withdrawn as of the date the letter was received.
- c) The program administrator will notify the appraiser (if applicable), contracted surveyor and title agent to request a final invoice for services rendered.
- d) The program administrator will submit those invoices for payment and issue a final invoice to the landowner describing each of the services requiring reimbursement.
- e) The landowner will be sent a letter notifying them of the final required invoice payment due to the County of Northampton.
- f) The County will issue the landowner an invoice and the landowner is required to make payment within 60 days of the issuance of the county invoice.
- g) If payment is not made or received within 60 days, notice will be submitted to the county solicitor for further action, including but not limited to, taking legal action permitted by law to enforce the terms of this agreement.

Program excerpt: Operational Procedures for Acquiring Easements

RESPONSIBILITIES OF GRANTOR AND GRANTEE

A. Responsibility of Grantor (Owner)

1. Permitted Acts

- (a) During the term of the easement the restricted land shall be used solely for agricultural production or other uses permitted by the act. (See Appendix G, as taken from the Deed of Easement.)
- (b) If, for any reason, the agricultural land under the conservation easement is not being cultivated or harvested within a time frame of one year, that land must be maintained by the owner of record.
 - (1) Fields may be allowed to go fallow for rotation purposes for a period determined only by the current conservation plan. Unless otherwise determined by the Conservation Plan, the fields or tracts must be mowed twice a year to control noxious weeds, invasive species, and for vector control
 - (2) If no crops are planted in a particular growing season, the land must be mowed once by June 1st and again by September 15th in that given year to avoid the spread of noxious weeds and invasive plants. (Revised 2008)
 - (3) Any and all municipal regulations still apply.

2. Conservation Plan

- (a) To preserve the agricultural viability of the restricted land, the County Board shall require, and the owner of the restricted land shall implement, a conservation plan approved by the County Conservation District and the USDA-Natural Resource Conservation Service (NRCS) or the County Board.
- (b) In addition to the requirements established by the County Conservation District and NRCS, or the County Board, the conservation plan shall require that:
 - (1) The use of the land for growing sod, nursery stock, ornamental trees and shrubs does not remove excessive soil from the restricted land.
 - (2) The excavation of the soil, sand, gravel, stone or other materials for use in agricultural production on the restricted land is conducted in a location and manner that preserves the viability of the restricted land for agricultural production.
- (c) The mining of materials is conducted only through the use of methods authorized in the act.

In cases where Pennsylvania law requires that a farm operation develop and follow a nutrient management plan, a nutrient management plan shall be a required component of the conservation plan for the property. It is the responsibility of the landowner to obtain a nutrient management plan if required.

3. Construction Of Buildings; Changes In Use

(a) The construction or use of a building or other structure on the restricted land other than a building or structure existing on the date of the granting of the easement is prohibited, except that:

- (1) The erection of fences for agricultural production and protection of watercourses such as lakes, streams, springs and reservoirs is permitted.
- (2) The construction of one additional residential structure is permitted under Chapter 138e.224 (relating to construction of one additional residential structure).
- (3) The construction or use of a building or other structure for agricultural production is permitted.
- (4) The replacement of a residential structure existing on the restricted land on the date of the granting of the easement is permitted, if the preexisting residential structure is razed or removed and the replacement residential structure is erected within the cartilage of the residential structure it replaces.

4. Construction Of One Additional Residential Structure

(a) In addition to the structures existing on the restricted land at the date of the granting of the easement, one additional residential structure may be constructed on the restricted land, if the following apply: (Chapter 138e.224)

- (1) The residential structure is constructed and used as the landowner's principal residence, an immediate family member, or for the purpose of providing necessary housing for seasonal or full time farm employees.
- (2) No other residential structure has been constructed on the restricted land after the date of the granting of the easement.
- (3) The residential structure and its curtilage, including its driveway and/or access, occupy no more than two acres of the restricted land, and is located in such a manner that will not negatively impact the use of the

remainder of the restricted land for agricultural production. The location of the additional residential structure is subject to County Board review and approval.

- (4) Inform the county board of the specific (subdivided) tract with respect to which the right to construct and use such a residential structure is reserved.
- (5) Ensure that the deeds to the remaining (subdivided) tracts recite that no residential structure may be constructed on the remaining subdivided tracts.
- (6) The right to the additional residential structure has not been relinquished and extinguished by current or previous owner in accordance with subsection (c)(6)(iv) of the Act.
- (7) The location of the residential structure shall be sited in a manner that protects the prime, unique, and important soils to the greatest extent practicable.
- (8) The location of the residential structure and its driveway will not significantly harm the economic viability of the restricted land for agricultural production.

(b) The replacement of a residential structure constructed under this section is permitted.

5. Subdivision for the purpose of constructing residence.

- (a) Subdivision of restricted land shall be permitted if subdivision is for a residence for the landowner, an immediate family member, or an employee, unless the right to the residence has been relinquished and extinguished in accordance with Section (c) (6) (iv) of the Act.

6. Subdivision

- (a) The restricted land may be subdivided, if subdividing will not harm the economic viability of the restricted land for agricultural production. (Chapter 138e.225 of the state guidelines)
- (b) If no residential structure other than that existing on the date of the granting of the easement has been constructed, the owner shall indicate on which subdivided parcel the residential structure may be constructed.
Deeds to other parcels shall recite that no additional residential structure is permitted.

- **All costs associated with subdivision shall be the responsibility of the landowner.**
- **Nothing in this section shall relieve the landowner of any municipal, county or state regulations, procedures or requirements necessary for the subdivision of land.**

Refer to subdivision guidelines Appendix F-1.

7. Change In Ownership

- (a) A deed conveying an interest in the restricted land shall set forth the language of the easement restrictions verbatim.
- (b) Within 30 days of a change of ownership of the restricted land, the prior owner shall notify the County Board and the department of the name and address of the new owner (or estate), together with the volume and page number in which the transfer has been recorded by the County Recorder of Deeds, the price per acre or portion thereof received by the landowner from such person* and shall provide each a copy of the new deed to this office.
- (c) The landowner must provide a copy of the newly recorded deed to the Northampton County Farmland Preservation office.
- (d) Notwithstanding any other provisions of law to the contrary, the restrictions set forth in a deed executed in connection with the purchase of an agricultural conservation easement shall be binding on any person to whom subsequent ownership of the land subject to the easement is conveyed or transferred.

B. Responsibility Of Grantee (Buyer)

The following are the responsibilities of the Farmland Preservation Board (or designated staff):

1. The County Board (or designated staff) shall have the primary responsibility for inspecting restricted land and enforcing an easement.
2. The State Board or its designee will have the right to inspect restricted land and enforce an easement on its own behalf or in conjunction with the County Board.

3. Inspections

* The landowner MUST notify Farmland Preservation of the transfer of ownership.

- (a) The Farmland Preservation Administrator, designated office staff or personnel, shall inspect all restricted land within the County on a biennial basis to determine compliance with the applicable deed of easement. In the event a violation has been determined or reported, the County has the responsibility to visit the easement location to determine if such a violation exists and can do so without prior notification of the landowner.
- (b) Landowner will be notified via certified letter and contacted by phone to schedule an appointment, prior to inspection.
- (c) Any inspection conducted under subsection 3 shall be performed between the hours of 8 A.M. and 4 P.M. on a weekday that is not a legal holiday recognized by the Commonwealth, on a date and time agreeable to the County and the landowner.
- (d) Within 10 days of conducting an inspection under subsection 3, the Administrator, designated office staff or personnel, shall prepare a written inspection report setting forth the following information:
 - (1) Date of inspection.
 - (2) The identification of the land inspected.
 - (3) The name of the owner at the time the easement was originally acquired and the name of the current owner of the land inspected.
 - (4) Names and title of participants in the inspection.
 - (5) A description of modifications in the number, type, location or use of any structures on the land since the date of the filing of the deed of easement.
 - (6) A description of the deviations from the conservation practices being observed on the restricted land.
 - (7) A statement of whether the provisions of the deed of easement are being observed.
 - (8) A copy of the inspection report shall be mailed by certified mail to the owner.
 - (9) The County Board and the State Board may inspect the restricted land, jointly or severally, without prior notice if they have reasonable cause to believe that any provision of the easement has been or is being violated.

(10) A statement indicating whether a structure permitted under section 14.1 (c)(6)(v) of the Act (3P.S. §914.1(c)(6)(iv)) has been constructed on the restricted land and if such a structure has been constructed, the month and year construction was completed and a description of the structure and its location on the land. (Chapter 138e.202(d)(6)).

(11) A statement indicating whether the residential subdivision permitted under Section 14.1(c)(6)(iv) has been exercised.

4. Annual Report

(a) The Administrator shall file with the State Board a copy of inspection reports for inspections conducted during the prior year, and compile an annual report which summarizes the number of inspections, violations detected, violations resolved and the circumstances surrounding any unresolved violations by March 1 of each year.

5. Enforcement

(a) The County Board shall enforce the terms of each easement purchased within the county under the act, whether it be a County, State, local government unit, non-profit entity or joint purchase.

(b) The State Board may enforce the terms of State or jointly purchased easements.

(c) The right of the State Board to enforce the terms of an easement may be exercised either jointly with the County Board or by the State Board acting on its own behalf.

6. Notification To Owner

(a) Within 10 days of the discovery of a violation of the terms of an easement, either through an inspection or otherwise, the Administrator on behalf of the NCFPB shall send written notice via certified mail of the violation to the owner of the restricted land, the County governing body and the State Board.

(b) The written notice required by this section shall be sent by certified mail and shall set forth the following information:

(1) A copy of the inspection report.

(2) Copy of the Deed of Easement.

(3) A description of the action or conditions which constitutes the alleged violation.

(4) A statement of the measures necessary to correct the alleged violation.

7. Enforcement Action

(a) The Northampton County Farmland Preservation Board has adopted a policy to work with the landowner to achieve “voluntary compliance”. Voluntary compliance allows the Board, or their designee at their discretion to work with the landowner to achieve compliance to rectify the violation, within an established amount of time, determined on a case by case basis, before notifying the state officially of a violation.

(b) Notification of violation will proceed as follows:

1. Upon discovery of the violation, a certified letter will be sent to the landowner notifying the landowner of the violation, instructing them they have 60 days to take corrective action. At the end of the 60 days, the violation issue will be revisited/reinspected.
2. If no corrective action has been taken, a second certified letter will be issued notifying the landowner of the violation, instructing them they have 30 days to take corrective action. At the end of the 30 days, the violation issue will be revisited/reinspected.
3. If no corrective action has been taken, a third and final certified letter will be issued notifying the landowner of the violation, instructing them they have 15 days to take corrective action. At the end of the 15 days, the violation issue will be revisited/reinspected for a final time.
4. If voluntary compliance is not achieved, the County Board shall notify the Bureau of Farmland Preservation and commence and prosecute an action in the Northampton County Court of Common Pleas seeking an order requiring correction of the violation, enjoining further violation of the terms of the easement, and other appropriate relief, unless the County Board does one of the following:

(1) Determines with the State Board that the violation has been corrected.

(2) Completes the following requirements:

- (i) Determines that the owner of the restricted land has commenced the necessary corrective measures, or determines that the necessary corrective measures cannot reasonably be completed within the 60 day period described in subsection 7a.
- (ii) Established a period not to exceed 1 year within which the corrective measures shall be completed.

- (c) The County Board shall commence and prosecute the enforcement action described in subsection 5 if the violation is not corrected within the time established under subsection 7.
- (c) The owner of the restricted land shall bear all costs associated with the correction of a violation of the easement, including:
 - (1) Costs of work required and materials used to correct the violation.
 - (2) Administrative costs incurred by the County Board and the State Board.
 - (3) Court costs and reasonable attorney's fees incurred by the County Board and the State Board in enforcing the easement.
- (e) If the County Board fails to institute and prosecute a timely enforcement action, the State Board may institute the action and recover costs incurred, including reasonable attorney's fees, from the County Board or the owner of the restricted land, or both.

8. Capital Gains Tax

All agricultural conservation easement purchases are potentially subject to capital gains tax. The amount of such income tax due, if any, will depend upon the applicant's gain derived from the sale of the agricultural conservation easement and the applicant's individual tax situation. It is strongly suggested that the applicant consult with the applicant's tax preparer and/or financial advisor prior to accepting the Board's offer.

9. Tax Planning

Short and long term financial considerations, family estate planning, retirement needs, and tax consequences are very important issues that need to be addressed when considering the sale of an agricultural conservation easement.

It is imperative that the applicant understand any and all tax implications associated with the sale of an agricultural conservation easement, and all applicants are strongly encouraged to consult with the applicant's tax preparer and/or financial advisor prior to accepting the Board's offer. Neither the Board nor the County staff is qualified to provide the applicant with any tax advice.

Program excerpt: Responsibilities of Grantor & Grantee

*** SUBDIVISION**

Not all properties with an agriculture easement are eligible for subdivision. When a landowner wishes to subdivide a farm property which is under agricultural conservation easement, the County Farmland Preservation Board must first determine whether the land will remain economically viable for agriculture after subdivision, with the exception of a tract for the construction of the one permitted residence, not to exceed two acres, which includes the residence, curtilage and access.

To subdivide a farm, a landowner completes a subdivision application form and submits it to the County Farmland Preservation Board. To obtain a subdivision application form, contact the Northampton County Farmland Preservation office. An outline of the subdivision guidelines can be found on page 54.

REQUEST & REVIEW PROCEDURE FOR A NEW RESIDENCE/OR ADDITIONAL RESIDENTIAL STRUCTURE

As a requisite to review a proposal for a new residential structure by the County Board, an applicant shall submit an application as prescribed in the procedure to follow. Applicant must also submit the residential structure proposal to the appropriate local governing body for review in accordance with the Pennsylvania's Municipalities Planning Code (Act 170) and its local ("SALDO") and Zoning Regulations. Landowner(s) or the owner(s) in equity must follow the procedures below to request the construction of a new residential structure.

1. The landowner shall ask the municipality to make a determination as to whether or not a subdivision is required to build the proposed residence. If a subdivision is required, the procedure in the existing Northampton County Farmland Preservation Subdivision Guidelines and local SALDO shall be followed and approval is required from the local municipality and both the County Board and the State Board.

2. Whether or not a subdivision is required, the following information shall be submitted to make a request to build a new residential structure on property protected with an agricultural conservation easement:

A. Landowner(s) shall submit a written request and application for the construction of a new residence to the Northampton County Farmland Preservation Board. This application shall include the following information:

- (1) A map or sketch, at a scale sufficient to clearly show the following:
 - (a) Location of cropland, pasture, woodland and other lands.
 - (b) Roads, streets, driveways, utility rights-of-ways, streams, and ponds.
 - (c) Location of existing buildings, sheds, barns, dwellings, and other structures as well as septic systems and well(s).
 - (d) Location of the proposed new residence, curtilage or yard area, access and or driveway.
- (2) Soil map showing the current property boundary and the location of the proposed new residence, yard area, and driveway.
- (3) Aerial photograph indicating the current property boundary and the proposed location of the new residence, yard area and driveway.

- (4) Applicant's name, address, and phone number.
 - (5) Tax parcel number and the deed reference for the tract of land where the new residence is proposed.
 - (6) Narrative describing who will be housed in the new residence. This narrative shall include evidence that the agricultural economic viability of the farm tract will not be diminished as a result of the construction of a new residence. Specifically, the narrative should address the following:
 - (a) Impact of the proposed residence on prime and statewide importance soils.
 - (b) Impact of the proposed residence on existing soil and water conservation practices and structures.
 - (c) Impact of the proposed residence on water rights and water access points.
 - (d) Impact of the proposed residence on the utilization and availability of farm structures, barns and infrastructure.
 - (e) Impact of the proposed residence on the existing layout of crop fields and pastures.
 - (f) If the applicant proposes to construct a new residence and also proposes to significantly change the existing agricultural enterprise or operation, the landowner shall provide a viable business plan for the new agricultural enterprise or operation and show how the location of the proposed new residence is compatible with the business plan.
3. Upon receipt of the application, the Northampton County Farmland Preservation Board shall forward a copy of the application to the municipal planning commission requesting review and comment on the proposal. The Northampton County Farmland Preservation Office and the municipal planning commission shall have **60 days** from the receipt of the application to review, provide comment and make recommendations on the residential structure proposal to the County Board.
4. The Northampton County Farmland Preservation Board shall review the application, comments, and recommendations submitted by the Farmland Preservation Office and the municipal planning commission. A determination shall be made as to whether or not the construction of the residence, as proposed, would significantly harm the economic viability of the subject land for agricultural production. The County Board shall

approve or reject the proposed residence application within **120 days** after the date that the application was initially filed with the County Board.

5. The County Board shall notify the applicant in writing of its decision. If a residential structure proposal is rejected, a written explanation for the rejection shall be provided to the applicant.

The County Board shall also notify the municipality in writing of its decision regarding the residential structure request.

Program excerpt: Appendix F-2, Request & Review Procedure for a New Residence/or Additional Residential Structure

PROCEDURE FOR SUBDIVISION
NORTHAMPTON COUNTY AGRICULTURAL CONSERVATION EASEMENT
PROGRAM

Purposes

The purposes of these Subdivision Guidelines are to implement the subdivision provisions of Pennsylvania's "Agricultural Security Law" (the "Act") (3 P.S. Sections 901-915), as amended, and the Regulations promulgated thereunder by the Pennsylvania Department of Agriculture (the "Regulations"), and to provide for the administration of such Act and Regulations, in conjunction with the present Subdivision Guidelines, as appropriate for Northampton County, Pennsylvania.

General Provisions

Land subject to an Agricultural Conservation Easement may be subdivided, provided the owner(s) meet(s) the criteria listed herein. Subdivisions contrary to these criteria will not be permitted. Liability for all expenses incurred for such subdivision shall be the sole responsibility of the landowner(s). The burden of proof that any proposed subdivision of land subject to an Agricultural Conservation Easement conforms to and complies with the Act, the Regulations and the present Subdivision Guidelines shall be upon the applicant(s)/landowner(s). The County of Northampton may attach reasonable and appropriate conditions upon any subdivision approval of land subject to an Agricultural Conservation Easement as may be necessary to insure perpetual compliance with the Act, the Regulations, the Deed of Agricultural Conservation Easement, and the present Subdivision Guidelines.

Definitions

See Section I-B of the Northampton County Farmland Preservation Program Guidelines located at the Northampton County Farmland Preservation Office.

General Subdivision Criteria

The owner(s) of a tract of land subject to an agricultural conservation easement may subdivide the property, provided that the subdivision is for one of the following purposes:

1. Fifty percent (50%) of the land subject to an easement may be subdivided, provided that no tract created after subdivision is less than 52 acres in size and the remaining parcels must meet the minimum criteria as stated in the Specific Subdivision Criteria.
 - a. The new deeds must state that no further subdivision is permitted on the created or remaining tracts.

Specific Subdivision Criteria

1. All tracts created by the subdivision shall be appropriately shaped and located in such a fashion that they are economically viable for agricultural production, and such subdivision shall not render agricultural production on any of the resulting farm tracts less efficient.
2. The subdivision shall be consistent with the Statement of Purpose of the Northampton County Agricultural Conservation Easement Program and to ensure the long-term viability of preserved land for agricultural use.
3. Fifty percent (50%) of the soils in each parcel resulting from the subdivision must be harvested cropland, orchard, pasture or grazing land.
4. Fifty percent (50%) of the soils in each parcel resulting from the subdivision must be in USDA Soil Classes I-IV.
5. The Northampton County Farmland Preservation Office has been afforded the opportunity to review, comment and make recommendations on the proposed application for subdivision in accordance with Section 14.1(i)(2) of the Act [3 P.S. Section 914.1 (i)(2)].
6. All costs associated with subdivision shall be the sole responsibility of the landowner.
7. No subdivision of land subject to an agricultural conservation easement shall become final until the owner has secured the approval from the Northampton County Farmland Preservation Board and the State Agricultural Land Preservation Board as being in compliance with the terms and conditions set forth herein. In addition, the proposed subdivision of land may require the approval of other reviewing agencies applying standards other than those set forth herein or in the Act [such as those allowed under the authority of Pennsylvania's Municipalities Planning Code (Act 170)]. Nothing in these subdivision guidelines shall be construed to relieve the landowner of any municipal, county, or State regulations, procedures or requirements necessary for the subdivision of land.

Subdivision Procedure

As a prerequisite for a review of a subdivision plan by the County Board, an applicant shall submit an application in accordance with the procedures set forth herein. Applicants should be mindful that he/she must also submit the subdivision plan to the appropriate local governing body for review in accordance with Pennsylvania's Municipalities Planning Code (Act 170). Landowner(s) must follow the procedure below to request subdivision approval of land subject to an agricultural conservation easement:

1. Landowner(s) shall submit a written request and application for subdivision to the Northampton County Farmland Preservation Board. This application submission shall include the following information:
 - A. A completed Subdivision Application which may be obtained from the Northampton County Farmland Preservation office.
 - B. A map prepared by a professional surveyor or engineer, at a scale sufficient to clearly show the following:
 - (1) Location of cropland, pasture, woodland and other lands,
 - (2) Roads, Streets. Driveways, utility rights-of-ways, streams,
 - (3) Location of existing buildings, sheds, barns, dwellings and other structures, as well as septic system locations and wells,
 - (4) Delineation of proposed subdivision,
 - (5) If the additional residential structure permitted by Section 14.1 (c) (6) (iv) of the Act [3 P.S. Section 914.1 (c)(6)(iv)] has not been constructed, the map or sketch should clearly indicate on which of the proposed subdivided tracts this residential structure may be constructed.
 - C. Soil map showing the current property boundary and the proposed division of the property.
 1. Aerial photograph indicating the current property boundary and proposed division of the property.
 2. Applicant's name, address and phone number.
 3. Tax parcel numbers and deed reference for the land proposed for subdivision.
 4. Narrative describing the proposed subdivision and the purpose of the proposed subdivision. This narrative should include evidence that the agricultural economic viability of the resulting parcels will not be diminished as a result of the proposed subdivision. Specifically, the narrative should also address the following:
 - (a) Impact of subdivision on existing soil and water conservation practices and structures.
 - (b) Impact of subdivision on water rights and water access points.
 - (c) Impact of subdivision on the utilization and availability of farm structures, barns and infrastructure.

- (d) Impact of the shapes and arrangement of the proposed new farm tracts on the future agricultural production on these tracts.
- 2. Upon receipt of 3 copies of the above submission, the Northampton County Farmland Preservation Board will forward a copy of this application to the following review agencies:
 - a. Pa Department of Agriculture, Bureau of Farmland Preservation
 - b. Northampton County Farmland Preservation Office
- 3. The reviewing agency(s) have 60 days from the receipt of the subdivision application to review, comment and make recommendations on the proposed subdivision to the County Board.
- 4. The County Board shall review the application, comments, and recommendations submitted by the reviewing agency(s) and approve or reject the application to subdivide within 120 days after the date that the subdivision application was initially filed. The review time can be extended by mutual agreement of the landowner and the reviewing agency(s).
- 5. If the application to subdivide is approved by the County Board, the application, along with the comments and recommendations of the reviewing agency(s) shall be forwarded to the State Board for review and approval or disapproval. When reviewing an application to subdivide land subject to an agricultural conservation easement, the State Board shall consider only whether the application complies with the conditions under which the Northampton County Farmland Preservation Board permits subdivisions. The State Board shall notify the County Board of its decision regarding the application.
- 6. If the application to subdivide is rejected by the County Board, the application shall be returned to the landowner with a written statement of the reasons for such rejection. Within 30 days after the receipt of the statement of rejection, the landowner may appeal the rejection in accordance with 2 Pa. C.S.A. § 501 Subchapter B (relating to practice and procedure of local agencies) and 2 Pa. C.S.A. § 701 Subchapter B (relating to judicial review of local agency action).
- 7. If no residential structure other than that existing on the date of the granting of the easement has been constructed on the land subject to the easement, the landowner shall include in one of the new property deeds language indicating that this one subdivided tract retains the right for the construction of the additional residential structure. The deeds to the other parcel(s) shall state that no additional residential structures are permitted.
- 8. Within 15 days of recording deeds to tracts created by, or remaining after subdivision, the landowner must forward a copy of all recorded deeds to all parcels created by, or remaining after subdivision to the Northampton County Farmland Preservation Office.

The prohibitions, restrictions and conditions of subdivision of eased land as set forth in these guidelines shall be recited verbatim in the deeds for all subdivided and remaining parcels.

The subdivision guidelines shall be recorded in the Northampton County Office of the Recorder of Deeds. The Northampton County Farmland Preservation Board shall incorporate reference to the recording of these Subdivision Guidelines in all future Deeds of Agricultural Conservation Easement.

The County Board will take into consideration all impacting factors when making this decision and the approval will be at the discretion of the County Board.

The subdivision guidelines are intended to preserve as much farmland as possible in integral parcels and to promote viable agricultural enterprises. The County Board, on a case-by-case basis, will consider special exceptions to these subdivision guidelines.

Program excerpt (partial): Appendix F
Contact Farmland Preservation Office for Requests

RURAL ENTERPRISE & PART TIME OR OFF-SEASON ACTIVITIES

A. Statutory Authority

The Agricultural Area Security Law, 3 P.S. § 901 et seq., requires an Agricultural Conservation Easement shall not prevent customary part-time or off season minor or rural enterprises and activities which are provided for in the county Agricultural Conservation Easement Purchase Program approved by the State Board, 3 P.S. § 914 (c)(6)(v). The following guidelines are applicable to all Agricultural Conservation Easements acquired under the Agricultural Area Security law.

B. Purpose

It is the intent of this section to establish guidelines in conformance with statutory authority to permit certain Rural Enterprises. Permitted Rural Enterprises are intended to supplement farm incomes in a manner which will not adversely affect the use of the preserved farmland for agricultural production and to create a healthy environment for the long-term sustainability of the agricultural economy and farming as a way of life.

C. General Provisions

1. In all cases, a Rural Enterprise shall not detract from the required primary use of the restricted/preserved land, which primary use is agricultural production and agricultural use as otherwise defined by the Agricultural Area Security Law ("Act") and in a given Agricultural Conservation Easement ("ACE").
2. The primary use of the restricted/preserved land shall be agricultural production, as defined by the Act as the production for commercial purpose of crops, livestock and livestock products, including the processing or retail marketing of such crops, livestock and livestock products, if more than 50% of such processed or merchandised products are produced by the farm operator principally from the farm.
3. In all cases, the Rural Enterprise shall be owned or operated by the owner of the restricted/preserved land or farmer in residence on the restricted/preserved land. The owner is ultimately responsible for any rural enterprise activity occurring on the restricted/preserved land.
4. In all cases, the burden of proof shall be with the landowner of the restricted/preserved land to prove their proposed Rural Enterprise meets all applicable Rural Enterprise criteria, including that set forth herein and in the Act, its regulations, the governing ACE, zoning ordinance

requirements, and other applicable law. If a landowner does not offer sufficient credible evidence of meeting such criteria and otherwise persuade the County Board that all such requirements have been met, the County board has the right to reject the request.

5. In all cases, the landowner of the restricted/preserved land shall provide written confirmation that the proposed Rural Enterprise is permitted according to applicable local municipal zoning ordinance requirements, for example: zoning permit, Zoning Hearing Board decision, or letter from Zoning Officer.
6. Any Rural Enterprise activity that occurs within the detailed and recorded exclusion area of the easement property (refer to your formal survey map), is not subject to the regulation or easement restrictions and therefore not subject to the easement rules, regulations or law. However, that does not exonerate the landowner from any responsibility to abide by local laws, zoning regulations, and other municipal restrictions.
7. In all cases, those landowners requesting to implement rural enterprise activities, must complete a Rural Enterprise application for consideration by the Northampton County Farmland Preservation Board prior to commencing any rural enterprise activities (see Appendix D-1). Those farms preserved prior to 2019 which have rural enterprise activities already in place are exempt from this regulation. However, any change or expansion of such rural activities will be subject to board review.

D. Permitted Rural Enterprise Activities

1. The direct sale to the public of agricultural products produced principally on the farm, provided that at least 50% of such products are produced by the farm operator (which may be the farm owner(s) or tenant(s) from the farm).
2. Structures associated with the production of energy for use principally on the farm, including wind, solar, hydropower, geothermal, hydroelectric, methane, wood, alcohol, biomass or animal waste, fuel and fossil fuel systems and structures and facilities for the storage and treatment of animal waste. These are permitted provided the landowner complies with all of the following:
 - a. The Energy Rural Enterprise is located within the exclusion curtilage area as designated on the easement survey. The construction of any permanent equipment of structures associated with the production of energy shall be located within the curtilage of the existing farm buildings or exclusion area.
 - b. Rural Energy Enterprises located on existing agricultural structures (buildings constructed on eased ground) shall remain incidental to the agricultural use and character of the farm.

- c. Energy Rural Enterprises located on existing agricultural structures (buildings constructed on eased ground) shall be available principally for use on the farm. No retail sale of excess energy will be permitted for sale off of the farm, unless used as credits sold back to the operation.
3. The provision of services or production and sale, principally by persons in residence, of agricultural goods, services, supplies and repairs and/or the conduct of traditional trades and the production and sale of home occupation goods and arts and crafts. These uses must remain incidental to the agricultural and open space character of the farm and are limited to occupying or adjoining residential and/or principally agricultural structures of the property. A limit of 1% of usage of the land under the easement is imposed (this does not include the exclusion area).
4. Structures and facilities associated with irrigation, farm pond improvements, and soil and water conservation practices including but not limited to wetland development or restoration, wildlife wetland habitat management, wildlife upland habitat management and riparian forest buffer resource management systems used for erosion and sediment control and water quality improvement.
5. The State Agricultural Land Preservation Board approved and authorized on 7/13/00 the use of any conservation practices under CRP/CREP as not violating the deed of agricultural conservation easement with respect to the restricted/preserved land provided the conservation plan as revised allows for the implementation of any such conservation practices. (Amended 12/10/09) CRP and CREP practices are permitted on a preserved farm, provided these practices do not harm the economic viability of the subject tract for the term of the Easement, and provided further, upon the termination of the CRP and CREP contract, the subject land's use for the production for commercial purposes of crops, livestock and livestock products (See: §138e.241) is restored. Such changes must be contained or updated in the approved/required conservation plan and the revised plan must be provided to the Farmland Preservation Office. It is the responsibility of the landowner to provide a copy of the CRP or CREP contract and notify the Farmland Preservation Office if any tract of land encumbered by the agricultural easement is enrolled in CRP or CREP within 30 days of enrollment.
6. The accommodation of tourists and visitors within principally family residential and/or agricultural structures otherwise permitted under the law as long as the accommodation of tourists and visitors is undertaken as a part-time or off-season minor or rural enterprise and is incidental to the agricultural and open space character of the property.

7. Any and all structures contributing to the production, primary processing, direct marketing and storage of agricultural products produced principally on the farm. Other similar uses upon written approval of the Northampton County Farmland Preservation Board and State Farmland Preservation Board.
8. Agriculture-related services or activities associated with customary part-time or off-season minor rural enterprises and activities incidental to agricultural production. These services and activities are permissible as long as they remain incidental to the agricultural and open space character of the farm. No excavating, paving, gravelling, construction of permanent structures or other activities that would diminish the productive capacity of the soils are permitted in connection with such activities. The County Board reserves the right to review and approve these activities on a case-by-case basis.
9. The installation of communication antennae along with associated equipment and structures shall be permitted, provided that the installation or construction of any permanent non-agricultural equipment or structures associated with the communication antennae shall be located within the existing excluded curtilage and such associated equipment or structures shall remain incidental to the agricultural and open space character of the property. If they exist prior to the agricultural easement, they will be excluded from the easement area. The location of any new infrastructure associated with the construction of any communication antenna which was not in existence at the time the easement was placed, shall be confined to the defined/recorded exclusion area as indicated on the easement survey map. The County board reserves the right to give final approval as to the location of access roads. (Amended 12/10/09)
10. Regulated hunting operations and the production and stocking of game birds so long as these uses remain incidental to the agricultural character of the property. (Amended 12/10/09)
11. Billboards existing at the time of the Easement purchase are permitted. New billboards are not permitted, and easements and rights-of-way agreements may not be granted for this purpose. Signs, seasonal or permanent, used specifically for a permitted act or approved rural enterprise, must not have any adverse impact on the preserved property's viability for agricultural production, as determined by the county board on a case-by-case basis.
12. Agricultural composting operations where at least 50% of the composted material is generated from on-farm agricultural activities associated with the farm operation. All composting activities should be in accordance with the approved conservation plan for the subject land. No more than 1%, not to exceed one acre of the area covered by the agricultural conservation easement shall be used for agricultural composting.

E. Agritourism and Agritainment Enterprises

1. Farm-related tourism or farm-related entertainment activities, which are permitted or authorized by a landowner for recreational or educational purposes and which are incidental to agricultural production, with ongoing agricultural production at all times required on the restricted/preserved land. The Agritourism and Agritainment Enterprises set forth below are permissible so long as the landowner demonstrates compliance with all of the requirements herein, including all of the following:
 - a. The Agritourism and Agritainment Enterprises shall remain incidental to the agricultural use and character of the farm;
 - b. The Agritourism and Agritainment Enterprises does not render any portion of the land incapable of being immediately converted to agricultural use;
 - c. The Agritourism and Agritainment Enterprises shall, unless the nature of the proposed Agritourism and Agritainment Enterprises is such that this criteria does not apply, be located within the curtilage of the existing residential or agricultural structures; and
 - d. No excavation, paving, graveling, construction of permanent nonagricultural structures or other activity that would diminish the productive capacity of the soils is permitted in connection with such activities.
2. All activities may be permitted on a case by case basis and must be approved by the Farmland Preservation Board.

F. General

1. No activities are permitted that will harm the economic viability of the land, that which does not degrade, negatively influence, the agricultural nature of the production ground.
2. Other similar uses that support the local agricultural economy and the economic viability of preserved farms, upon approval on a case-by-case basis by the Board and the State Board, which may make the approval conditional in order to protect farmland and as otherwise allowed under applicable law, including, without limitation, the Agricultural Security Area Law, its regulations, the provisions of the Easement, Zoning Ordinance requirements, and other applicable laws, rules and or regulations.

*The County Farmland Preservation Board reserves the right to review and approve these activities on a case-by-case basis.

Please note: The above provisions shall also be in accordance with all local and or municipal ordinances.

Updated 10/2019
Program excerpt: Rural Enterprises

PERMITTED ACTS

During the term of the agricultural conservation easement conveyed herein, the subject land shall be used solely for the production for commercial purposes of crops, equine, livestock and livestock products, including the processing or retail marketing of such crops, equine, livestock or livestock products if more than fifty percent of such processed or merchandised products are produced on the subject land (hereinafter “agricultural production”). For purposes of this program, “crops, equine, livestock and livestock products” include, but are not limited to:

- (i) Field crops, including corn, wheat, oats, rye, barley, soybeans, speltz, buckwheat, hay, potatoes and dry beans;
- (ii) Fruits, including apples, peaches, grapes, cherries, pears, and berries;
- (iii) Vegetables, including tomatoes, pumpkins, snap beans, cabbage, carrots, beets, onions, sweet corn and mushrooms;
- (iv) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers;
- (v) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, fur-bearing animals, milk, eggs and furs;
- (vi) Timber, wood and other wood products derived from trees; and
- (vii) Aquatic plants and animals and their byproducts.
- (viii) Commercial equine activity including boarding of equine, training of equine, instruction of people in handling, driving or riding equines, use of equines for riding or driving purposes, pasturing equines all of where a fee is collected. THE TERM DOES NOT INCLUDE ACTIVITY LICENSED UNDER THE ACT OF DECEMBER 17, 1981 (P.L. 435, NO. 135), KNOWN AS THE “RACE HORSE INDUSTRY REFORM ACT.”

Program excerpt: Permitted Acts (Appendix G)

TAX PLANNING

When planning to sell the agricultural easement, make sure you know how it will fit into your estate planning, business succession plan and tax planning. This is an investment and you want to make sure all possible implications have been considered prior to making the sale of the easement.

This is not tax advice. These are items to consider and discuss with your tax consultant and/or attorney prior to agreeing to sell the agricultural easement.

- 1. Capital gain tax** – All agricultural conservation easement purchases are subject to capital gain tax. The amount of tax you will pay will depend upon your gain and your tax rate. Currently, the estimated maximum capital gain tax is 20%. If you're in the 15% bracket, the rate is 10% (subject to IRS law and regulation).
- 2. Installment Sale** – Agricultural conservation easement purchases may be made in installments with annual payments of principal. Installment purchases can be done in 3 and 5 year increments.
- 3. Like Kind Exchange** – If you use the proceeds from the sale of the conservation easement to purchase additional real estate, the tax law allows for the deferment of the capital gains tax. This is also known as a 1031 exchange. You can purchase investment real estate outside agriculture and create a positive cash flow. The real estate purchased does not have to be farmland. The real estate cannot be used for a personal residence for 2 years after purchase and it must be for either business or investment purposes. There are several time frames and qualifications that need to be followed for this exchange. County must add appropriate clause in the Agreement of Sale (subject to IRS law and regulation).
- 4. Bargain Sale** – If you accept less than 100% of the agricultural conservation easement value, it is considered a bargain sale. The difference may qualify as a charitable contribution (subject to IRS law and regulation).

WHAT TO DO WITH YOUR PAYMENT? – FOOD FOR THOUGHT

1. Pay down your debt. Debt reduction is a very good way to improve your future profits. Also most lenders may re-amortize a debt after pay down which can reduce your payments.
2. Add new enterprise to your operation or increase your current operation.
3. Do basic building maintenance, remodel the farmhouse kitchen, add a larger bath or mud room. Any improvements increasing the value of the farm may lower tax gain.
4. Set up your own retirement plan to reduce the market value for the next generation.
5. Consider gift investments for non-farm children. Remember fair may not always be equal.
6. Catch up on tithing or gifting at church or in the community.

Prepared by the Bureau of Farmland Preservation, Harrisburg, PA

PAYMENT OPTIONS

- 1) Lump Sum - Easement payment received as a lump sum payment.
- 2) Traditional Installment Sale - You can elect installment sale treatment, which allows you to pay tax on the sale proceeds as you receive them over a period of years. If you elect this method, you will get a promissory note for the balance of the principal not received at settlement.
- 3) Long Term Installment Sale: - Under a new pilot program initiated by the state (in 2000), the seller can defer all or part of the easement purchase price for up to 30 years, and in the meantime receive semi-annual interest payments on the outstanding principal. Those interest payments are exempt from federal and state income taxes. This is only possible when the easement is purchased using State funds.
- 4) Like-Kind Exchange: - The tax law allows for the deferral of capital gain if you take the proceeds from the sale of the conservation easement and roll the proceeds into other real estate. This is called a “like-kind exchange” or “1031 exchange.” To qualify: (1) the proceeds must be used to buy other real estate, but not necessarily farmland; and (2) the replacement property must be used for business or investment purposes and cannot be a residential property that you live in. If the farm from which the easement is being sold is owned by a partnership, then the replacement property must be bought by the partnership. Any portion of proceeds from the easement sale that is not used to purchase other real estate is taxable.
- 5) Deferred Like-Kind Exchange: - A “deferred like-kind exchange” is an exchange in which the sale of the easement and the purchase of the replacement property do not occur on the same day. The proper process is to use a qualified intermediary (QI), who will receive the proceeds for you and use the funds to purchase the replacement property. There is a 45-day identification period and a 180-day replacement period.
- 6) Reverse Like-Kind Exchange: - The I.R.S. recently released guidelines to allow taxpayers to accomplish a “reverse like-kind exchange.” This is an exchange in which the replacement property must be acquired prior to the sale of the agricultural conservation easement. Consult with a qualified intermediary who has experience in like-kind exchanges.

AUTHORIZATION AND PUBLIC INFORMATION

Authorization

The Northampton County Farmland Preservation Board was officially appointed and authorized by County Council Resolution Number 34-89, adopted on the 6th day of July, 1989 as authorized under Pennsylvania Act 43 of 1981, as amended by Act 149 of 1988.

Public Information

The County Board will publicize the County Program through the dissemination of information, press releases, presentations, and through publicly held meetings.

The County Board will be subject to the Sunshine Act and the Act of June 21, 1957 known as the Right-To-Know-Law, relating to the inspection and copying of public records.

Northampton County Farmland Preservation Program is subject to the regulation promulgated under authority of the Agricultural Area Security Law (Act of June 30, 1981, P.L. 128, No. 43) (3 P.S. §§ 901-915) at 7 PA. Code Chapter 138e.