

# WAYNE COUNTY AGRICULTURAL LAND PRESERVATION PROGRAM



PROTECTING AND PRESERVING WAYNE COUNTY'S FARMLAND  
SINCE 1989

## **Acknowledgments**

### **Wayne County Commissioners**

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Wendell R. Kay  
Joseph W. Adams

### **Agricultural Land Preservation Board Members**

Donald Olsommer, Chairman  
William R. Bryant  
D. Ellis Dix  
Paul Kowalczyk  
Francis Motichka  
F. Michael Nebzydoski  
Christa Odell  
John W. Rickard  
Daniel Rutledge

## **Contact Information**

### **County Administrator**

Christa Odell  
PO Box 134, Prompton PA 18456  
(570) 253-8904  
WaynePreservation.com

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**NOTE:** Information in this publication is subject to change at any time. The Commonwealth and County are not responsible for misprinted information. All information contained herein is made known in Chapter 138e of the State Regulation Guidelines.

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TEXAS TOWNSHIP, PA

DONALD E. OLSOMMER  
STERLING TOWNSHIP, PA

ROBERT V. CARMODY  
TEXAS TOWNSHIP, PA



COURT HOUSE ANNEX  
925 COURT STREET  
HONESDALE, PA 18431-1996  
717-253-3970 EXT. 173  
FAX 717-253-2943

REG WAYMAN  
CHIEF CLERK

LEE C. KRAUSE  
SOLICITOR

## Wayne County Agricultural Land Preservation Easement Purchase Program

### Resolution

WHEREAS, the County of Wayne is an important contributor to the agricultural industry in the Commonwealth; and

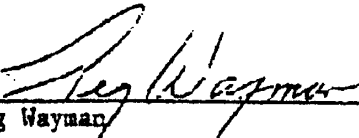
WHEREAS, our 691 farms produced nearly \$35 million in agricultural products in 1988-1989, making agriculture one of the important industries in Wayne County; and

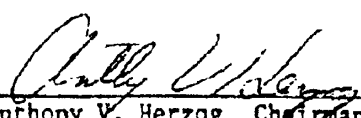
WHEREAS, Wayne County is losing many acres of productive farmland each week; and

WHEREAS, the Board of Commissioners has determined that Wayne County should participate in the Commonwealth's Agricultural Conservation Easement Program as one means to slow the unacceptably high level of farmland loss; and


WHEREAS, a requirement of Pennsylvania Act 43, P.L. 128, No. 43, the Agricultural Area Security Law, as amended December 14, 1988, P.L. 1202, No. 149, is that counties appoint a County Agricultural Land Preservation Board to administer the County Farmland Protection Program;

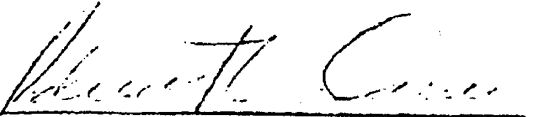
NOW, THEREFORE, be it resolved that the Wayne County Agricultural Land Preservation Easement Purchase Board is hereby appointed to administer the Agricultural Conservation Easement Program for Wayne County.

  
Reg Wayman  
Chief Clerk

  
Anthony V. Herzog, Chairman  
Board of County Commissioners

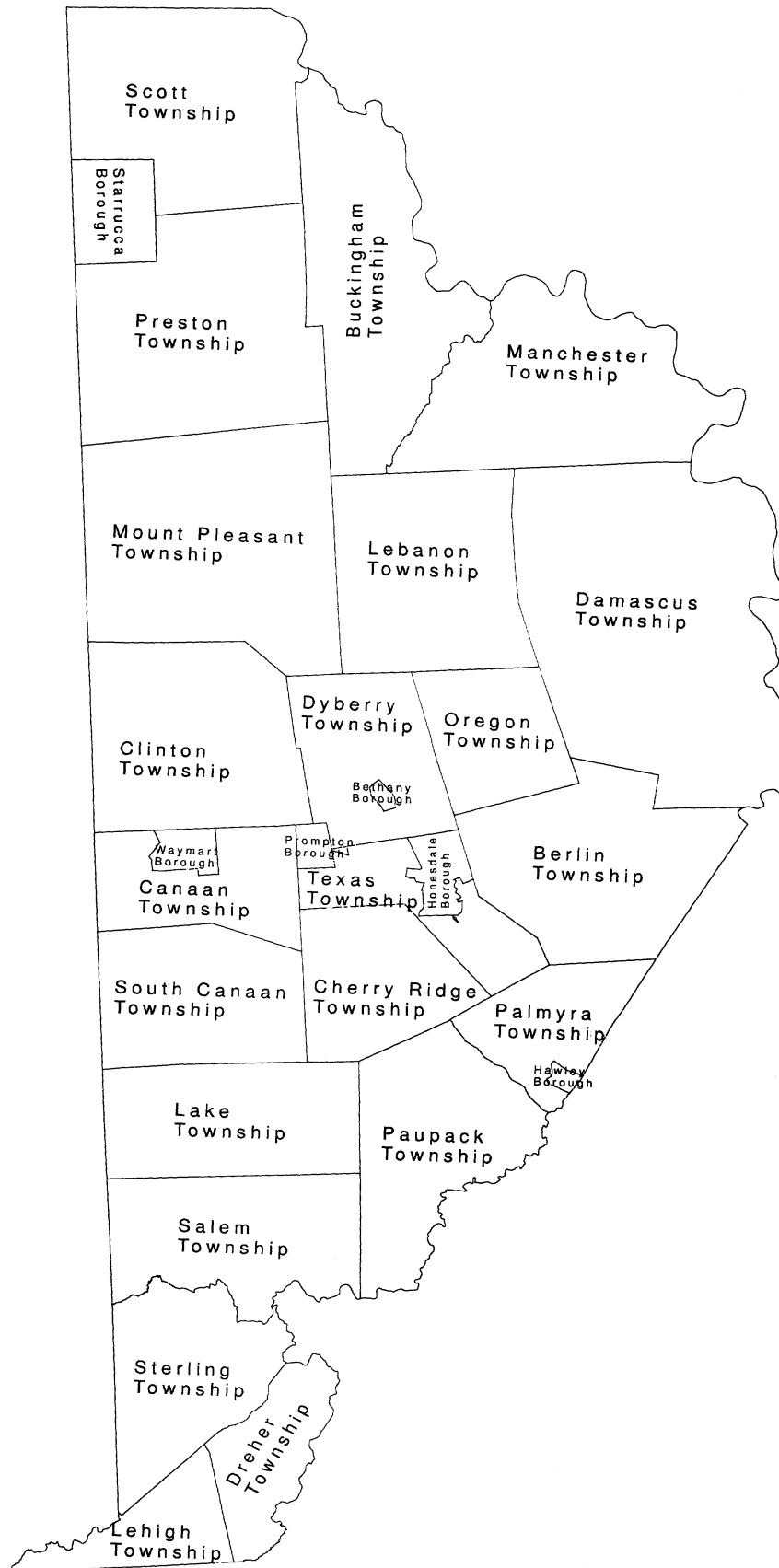
5/16/91  
Date

  
Donald E. Olsommer  
Commissioner

  
Robert V. Carmody  
Commissioner

# Wayne County Municipalities

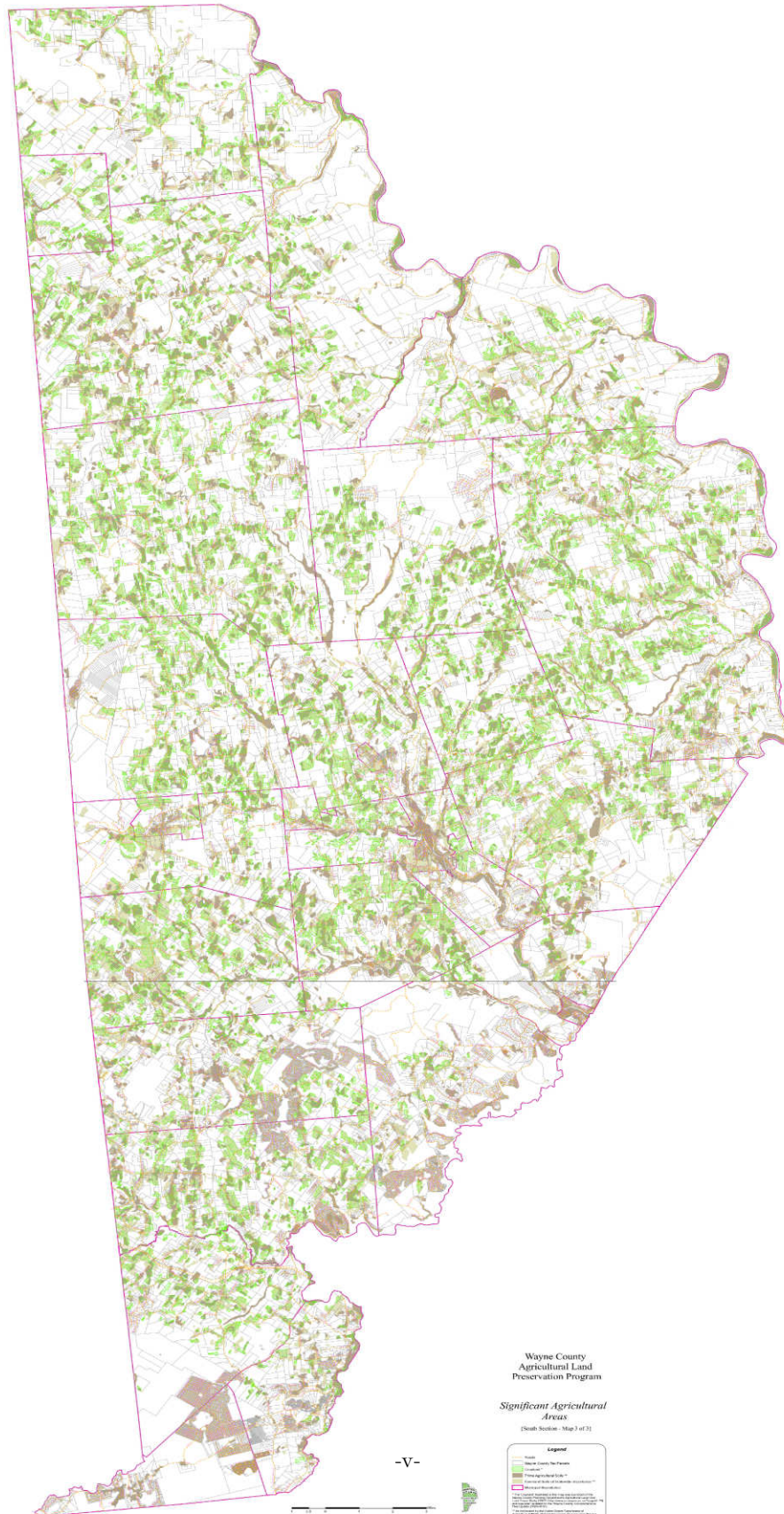
Figure 1



# Significant Agricultural Areas in Wayne County

Figure 2

These areas in Wayne County are identified as special target areas for farmland preservation activities and were chosen for their concentration of productive soils, large tracts of actively farmed land and generally limited urban infrastructure.



# Wayne County Soils and Relative Values

Figure 3

	<u>Map Symbol</u>	<u>Class</u>	<u>Name</u>	<u>Slope</u>
<b>Group 1 - Relative Value 100</b>	Ba	1	Barbour loam	0-3%
	La	1	Linden fine sandy loam	0-3%
	Bh	2	Basher silt loam	0-3%
<b>Group 2 - Relative Value 66</b>	LdB	2e	Lordstown channery loam	3-8%
	SwB	2e	Swartswood channery sandy loam	3-8%
	MaB	2w	Mardin channery loam	3-8%
	WeB	2w	Wellsboro channery loam	3-8%
<b>Group 3 - Relative Value 58</b>	OaB	2e	Oquaga channery loam	3-8%
	WyB	3s	Wyoming gravelly sandy loam	3-8%
<b>Group 4 - Relative Value 52</b>	LdC	3e	Lordstown channery loam	8-15%
	MaC	3e	Mardin channery loam	8-15%
	OaC	3e	Oquaga channery loam	8-15%
	SwC	3e	Swartswood channery loam	8-15%
	WeC	3e	Wellsboro channery loam	8-15%
<b>Group 5 - Relative Value 47</b>	MoC	3e	Morris channery loam	8-15%
	VoC	3e	Volusia channery loam	8-15%
	MoA	3w	Morris channery loam	0-3%
	MoB	3w	Morris channery loam	3-8%
	Re	3w	Rexford loam	0-3%
	VoA	3w	Volusia channery silt loam	0-3%
	VoB	3w	Volusia channery silt loam	3-8%
<b>Group 6 - Relative Value 36</b>	LdD	4e	Lordstown channery loam	5-25%
	MaD	4e	Mardin channery loam	15-25%
	OaD	4e	Oquaga channery loam	15-25%
	SwD	4e	Swartswood channery sandy loam	15-25%
	WeD	4e	Wellsboro channery loam	15-25%
	WyD	4e	Wyoming gravelly sandy loam	15-25%
	WyC	4s	Wyoming gravelly sandy loam	8-15%
<b>Group 7 - Relative Value 0</b>	Ho	5w	Holly	0-3%
	NcA	5w	Norwich	0-3%
	WyE	6e	Wyoming	25-35%
	LxB	6s	Lordstown	3-8%
	LxC	6s	Lordstown	8-25%
	MdB	6s	Mardin	3-8%
	MdD	6s	Mardin	15-25%
	MxB	6s	Morris	0-8%
	MxC	6s	Morris	8-15%
	OxB	6s	Oquaga	3-8%
	OxD	6s	Oquaga	8-25%
	SxB	6s	Swartswood	3-8%
	SxD	6s	Swartswood	15-25%
	WoB	6s	Wellsboro	3-8%
	WoD	6s	Wellsboro	15-25%
	ArC	7s	Arnot	8-15%
	ArB	7s	Arnot	3-8%
	ArD	7s	Arnot	15-25%
	FF	7s	Fluents	0-3%
	NxA	7s	Norwich	0-3%
	OyF	7s	Oquaga	35-60%
	VxB	7s	Volusia	0-8%
	VxC	7s	Volusia	8-15%
	WxF	7s	Wellsboro	35-50%
	Pt	8	Pits	
	Qu	8	Quarries	
	RoD	8	Rock Outer	
	ME	8w	Medihemist	0-3%



## Chapter I

# Introduction



The creation of the Wayne County Agricultural Land Preservation Board in December, 1989, signifies the County's full scale commitment to Pennsylvania's farmland preservation program. The Wayne County Commissioners appointed nine members to the Board<sup>1</sup> in accordance with the provisions contained within the Agricultural Area Security Law, as amended by Act 149 in 1988.

The Wayne County Agricultural Land Preservation Board's primary goals and objectives are to:

- Administer a program for purchasing agricultural conservation easements in accordance with Act 149;
- Promote efforts to support the agricultural community in Wayne County;
- Encourage the use of additional farmland preservation techniques through public and private organizations in Wayne County;
- Adopt procedures and bylaws governing the operation of the County Board;
- Purchase, in the name of the County, or jointly with the Commonwealth, agricultural conservation easements within Agricultural Security Areas; and,
- Encourage financial partnerships between State and local governments with nonprofit entities in order to increase the funds available for agricultural conservation easement purchases.

The Wayne County Agricultural Land Preservation Board faithfully submits its Agricultural Land Preservation Easement Purchase Program to the Pennsylvania State Agricultural Land Preservation Board. This program represents policies and procedures to be used in preserving farmland in Wayne County, now and for future Wayne County residents.

The County Agricultural Land Preservation Board will publicize the County Program through the publication and dissemination of newsletters, information brochures, annual reports and press releases and through public meetings, workshops and invited presentations.

The County Board will be subject to the Act of July 3, 1986 (P.L. 388, No. 84), known as the Sunshine Act, and the Act of June 21, 1957 (P.L. 390, No. 212), referred to as the Right-to-Know Law, relating to the inspection and copying of public records.

<sup>1</sup>See Appendix C - Wayne County Agricultural Land Preservation Board Members

## Chapter II

# Background and Purpose



Wayne County was formed in 1798 from Northampton County and named after General Anthony Wayne. Perched in the northeast corner of Pennsylvania, the county is located 100 miles west of New York City, 150 miles north of Philadelphia and 35 miles east of the Scranton/Wilkes-Barre corridor.

The 2000 census indicated the county's growth rate at 19.5%, making Wayne County the third fastest growing county in the state with a total population of over 47,000. Honesdale, population over 4,800, is the county seat and largest commercial center.

Wayne County consists of 763 square miles or 488,265 acres. Agriculture and its related industries have always been important to the economy of Wayne County, however, the number of farms and the number of acres devoted to farming have been decreasing. In 1949, there were 2,299 farms and farmland comprised 299,332 acres. Between 1991 and 2000, agricultural land use decreased from 161,037 acres to 149,552 acres.

Agriculture in Wayne County produces annual cash receipts totaling over \$39 million. Half of its approximate 600 remaining farms are dairy operations which account for about 75 percent of total sales.

### Section 1 - Background

The Wayne County Agricultural Land Preservation Board was formulated and approved by the Wayne County Board of Commissioners with the objective of conserving farmland in Wayne County. Formation of Agricultural Security Areas can retain the most productive areas for farming while promoting farming as a long-term sustainable land use. Additionally, performance zoning can be considered in areas of high development pressure. This approach protects farmland resources on a site-by-site basis while enabling farms to adapt to local development constraints and changing market opportunities.

Promoting soil conservation practices to sustain good crop production and reduce erosion and sedimentation is also recommended.

The County needs land use strategies which would channel growth into development districts, while limiting extensions of infrastructure into significant agricultural areas.

Preserving Wayne County's remaining farmland as an agricultural resource base will require a great effort and should be the goal of all residents living in Wayne County. While it is understood that growth and development pressures will continue to threaten farmland in Wayne County, implementation of these farmland preservation policies represent direct approaches toward achieving this goal. To conserve Wayne County's agricultural resource base as a continual source of food, and the inherent economic, environmental and agricultural qualities associated with farming in Wayne County is of utmost importance to all present and future residents of Wayne County.

### Section 2 - Purpose

It is the purpose of this program to protect and promote continued productive agricultural use on viable agricultural lands by acquiring agricultural conservation easements which prevent the development or improvement of the land for the purpose other than agricultural production and allow related agricultural activities.

Further, it is the purpose of this program to:

- Encourage land owners to make a long-term commitment to agriculture by offering them financial incentives and security of land use;
- Protect normal farming operations in agricultural security areas from incompatible non-farmland uses that may render farming impracticable;
- Protect farming operations from complaints of public nuisance against normal farming operations;
- Assure conservation of viable agricultural land in order to protect the agricultural economy;
- 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; and,
- To comply with Act 138 of 1998 regarding local government unit participation to purchase agricultural conservation easements, incorporated herein by reference.

These Program Guidelines represent policies and procedures to be used in accomplishing these tasks, enabled by Act 442, the Conservation and Land Development Act of 1968 and by Act 43, the Agricultural Area Security Law of 1981, recently amended by Act 149 of 1988, by the Act of November 23, 1994 (P.L. 621, No. 96), the Act of November 23, 1994 (P.L. 648, No. 100), Act 61 of 2005 and Act 46 of 2006, incorporated herein by reference.

This Conservation Easement Program is to complement and expand upon policies currently identified toward assuring that Wayne County agricultural land remains farmland. Implementation of this program will require a great deal of help from all Wayne County farmers, local elected officials and others living in Wayne County.

# Eligibility for Easement Purchase



Wayne County, through its Agricultural Preservation Board, intends to acquire agricultural conservation easements<sup>2</sup>. Conservation easements may be acquired with county funds, local municipal funds, joint funds or state funds. The County is responsible for monitoring and enforcing all easements purchased with public funds.

Conservation easements will be accepted only through **voluntary sale within existing Agricultural Security Areas**<sup>3</sup>. Those landowners who are interested in applying for conservation easement sales on qualified land will be ranked and prioritized based on location and site factors and the viability of the farming operation. An appraisal or appraisals of conservation easement value will be the determinant of the maximum compensable easement value.

The purchase price paid for an agricultural conservation easement in perpetuity will be equal to or less than the easement value, as determined by the appraisal process.

Payment to the prospective landowner may be made in a lump sum or in installment payments.

The objectives of this approach to farmland preservation are to ensure the continued existence and protection of farmland in Wayne County, at the same time providing just and attractive compensation to landowners who voluntarily preserve their farm.

## Section 1 - Easement Description

A conservation easement secured through acquisition is a legally binding document which is filed with the Recorder of Deeds, restricting its use to agricultural and directly related uses, for which compensation is paid. Restrictions are binding upon the owner and future owners, carrying with the land.

## Section 2 - Minimum Eligibility Criteria for Conservation Easement Applications

In order for a site to be prioritized for easement purchase, a landowner must submit a completed application for the purchase of conservation easements. Applications are accepted on an annual basis from January 1 to December 31 of the current year for ranking the following year. The Wayne County Agricultural Land Preservation Board will accept all applications for the purchase of conservation easements if the application meets the minimum criteria, the application is completed in full and all required documentation is attached. All applicants who have been rejected by the Board will be given written notice of the rejection along with an explanation of the reason(s) why the application was rejected.

### Election by County Board

The Agricultural Area Security Law (3 P.S. Section 914.1(d)(1)(v)(II)) affords the County the option to acquire an agricultural conservation easement on farmland tracts of as few as 35 contiguous acres under certain circumstances.

***The County Board elects to exercise this option.***

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 50 acres in size. Only 50% of State Funds shall be utilized to purchase agricultural conservation easements 35 to 50 acres in size.

<sup>2</sup>See Appendix A - Definitions (Agricultural Conservation Easements)

<sup>3</sup>See Appendix A - Definitions (Agricultural Security Areas)

### Minimum Criteria

When considering an application for the purchase of an agricultural conservation easement, the minimum eligibility criteria (Chapter 138e.16 of the Rules and Regulations of Act 43) for agricultural conservation easement purchases shall be as follows:

The farmland tract shall meet one or more of the following requirements:

- Be located in a duly recorded Agricultural Security Area consisting of 500 acres or more or comply with Act 46 of 2006, incorporated herein by reference.
- Bisected by the dividing line between two local government units, having the majority of its viable agricultural land within an ASA of 500 acres or more and the remainder in another local government unit outside of an ASA.
- Bisected by the dividing line between the purchasing county and an adjoining county, having the land located in the purchasing county and an ASA of 500 acres or more and the remainder in another county outside of an ASA, and with respect to which one of the following applies:
  - A mansion house is on the tract and located within the purchasing county.
  - 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.
  - 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.

The farmland tract shall be one or more of the following:

- Be contiguous acreage<sup>4</sup>, at least 35 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 which is held by a "qualified conservation organization", as that term is defined at Section 170(h) (3) of the Internal Revenue Code (26 U.S.C.A. ss 170(h) (3)).
  - Crops unique to the area must be commercially grown for fresh market or processing OR as a commercial agricultural enterprise and must utilize at least 50% of the total acres being offered for easement purchase. Farms producing crops unique to the area will be considered by the County Board on a case-by-base basis. Crops that may qualify include:
    - Grapes – table or wine grapes grown for commercial agricultural enterprise
    - Tobacco – grown for commercial agricultural enterprise
    - Speltz – a small grain grown as an alternative to federally regulated feed grains under USA programs
    - Orchard crops – grown for commercial agricultural enterprise
    - Mushrooms - grown for commercial agricultural enterprise
    - Tomatoes - grown for commercial agricultural enterprise
    - Cantaloupes – commercially grown for fresh market
    - Snap beans – commercially grown for processing
    - Pumpkins – commercially grown for fresh market
    - Strawberries – commercially grown for fresh market or processing
    - Potatoes – commercially grown for fresh market or processing
    - Sweet corn – commercially grown for fresh market or processing
    - Christmas trees – grown as a rotation crop with a management plant for cultivation, harvesting and replacement Christmas trees
    - Floriculture crops – grown for commercial agricultural enterprise

<sup>4</sup>See Appendix A - Definitions (Contiguous Acreage)

- Maple syrup – commercial agricultural enterprise
- Sod, nursery stock, ornamental trees and shrubs – grown for commercial agricultural enterprise with the Deed of Easement restriction that removal of excess soil is PROHIBITED
- Crown and hairy vetch – commercially grown for seed production
- Contain at least 50% of soils which area available for agricultural production and are of Capability Classes I-IV, as defined by the USDA - NRCS.
- Contain the greater of 50% or 10 acres of harvested cropland, pasture or grazing land.

#### Minimum Criteria for \$1 Bargain Sale Easements

It is the intent of the Wayne County Agricultural Land Preservation Board to accept voluntary \$1 Bargain Sales of conservation easements in perpetuity. The \$1 Bargain Sale Easements will be held by Wayne County and for which the County will be responsible for enforcing the deed restrictions. The Board will consider each offer on a case-by-case basis on its individual merits, considering such factors as the property's relation to adopted plans, zoning, surrounding land uses and development needs and potential.

When considering an application for the purchase of a \$1 Bargain Sale agricultural conservation easement, the minimum eligibility criteria shall be as follows:

- Be in agricultural or open space use.
- Mortgages and liens made subordinate to easement.

# Evaluation of Applications



The Wayne County Agricultural Land Preservation Board will review each application to determine if it is complete and meets the minimum eligibility criteria. A one-time, non-refundable application fee of \$100.00 is due with the submission of the easement application. A designate will visit the farm, gather information and discuss the program with the applicant. All timely applications, which meet the minimum criteria, will be ranked according to the County numerical ranking system. The County Board will then make a determination whether to appraise the farmland tract that is the subject of an application. The easement cost can be determined only after a property has been appraised.

## Section 1 - Numerical Ranking System

The two-part Numerical Ranking System<sup>5</sup> (effective 1/1/10), which consists of land evaluation (40% of total score) and site assessment (60% of total score), is to be used to rank and prioritize applications to be selected by the Wayne County Agricultural Land Preservation Board for appraisal. Selection for appraisal will be made in a descending order of the farmland ranking score. ***The County Board may exercise the option to select an application out of descending order if County funding is not available to purchase easements of at least 35 acres, but less than 50 acres.*** Each ranking will be conducted after the 1st of the year. Typically, the Wayne County application deadline is December 31<sup>st</sup> of the previous year, however, the Board may allow an extension of that deadline in order to accumulate more applications for ranking, if necessary.

## Section 2 - Land Evaluation

Soil Score - the sum of each soil mapping unit's relative value, times the acreage in each soil mapping unit, divided by the total farm acreage. The maximum score is 100. The total score for soils is multiplied by 0.40 to represent 40% of the overall Land Evaluation Site Assessment score. Soil mapping units and their relative values are included in Figure 3 of the Wayne County Agricultural Land Preservation Plan, as determined by the Land Evaluation Site Assessment system of the USDA - NRCS. The source of soil data includes:

- The Wayne County Soil Survey, as published by the USDA - NRCS, in cooperation with the Pennsylvania State University and Pennsylvania Department of Agriculture.
- The Soil and Water Conservation Technical Guide maintained by the USDA - NRCS.

## Section 3 - Site Assessment

Development Potential - factors which identify the extent to which development pressures are likely to cause conversion of agricultural land to non-agricultural uses. Maximum score -100 points (10% weighted percentage value).

Farmland Potential - factors which measure the potential agricultural productivity and farmland stewardship practiced on a tract. Maximum score -100 points (30% weighted percentage value).

Clustering Potential - factors which measure the importance of preserving blocks of farmland which support normal farming operations and help to shield the agricultural community against conflicts with incompatible land uses. Maximum score -100 points (20% weighted percentage value).

## Section 4 - Planning Map to Guide Easement Purchases

The Wayne County Agricultural Land Preservation Board has adopted a planning map to guide easement purchases. The map identifies Significant Agricultural Areas<sup>6</sup> within the County. Parcels located within existing Significant Agricultural Areas will be afforded higher priority than parcels located outside these areas.

<sup>5</sup>See Appendix B - Numerical Farmland Ranking System

<sup>6</sup>See Figure 2 - Significant Agricultural Areas

## Easement Value and Purchase Price



### **Easement Value**

Offers to purchase easements will be based upon one or more appraisal reports which estimate both the market value and the farmland value of the tract - the difference being the easement value.

### **Choosing an Appraiser**

The appraiser will be a state certified general real estate appraiser who is qualified to appraise properties for easement purchase. Appraisers shall be selected by the County Board on the basis of experience, expertise and professional designation.

### **Purchase Price**

The purchase price offered for the purchase of an easement may not exceed, but may be less than, the per acre value of the easement according to Section 138e.65 of the Rules and Regulations of Act 43.

The applicant may, at applicant's expense, retain another state certified general real estate appraiser to determine the easement value. This appraisal must be completed in accordance with the guidelines set forth in Section 138e.64 of the Rules and Regulations of Act 43.

If the applicant secures an independent appraisal, the easement value will be determined according to Section 138e.66 of the Rules and Regulations of Act 43.

The price paid for purchase of an easement in perpetuity will be equal to or less than the easement value, as determined above.



# Approval of Easement Purchase



## Section 1 - Easement Purchase Considerations

The Wayne County Agricultural Land Preservation Board, when determining whether to purchase an easement, will consider the following:

- Evaluation according to the numerical ranking system;
- Cost relative to total allocations and appropriations; and,
- The factors or considerations set forth in the County program as those factors or conditions under which an offer to purchase would be made in something other than descending order of farmland ranking score (see Chapter IV - Evaluation of Applications, Section 1 - Numerical Ranking System).

## Section 2 - Approval of Purchase

If the farmland tract is approved for easement purchase, the County Board, or a representative of the County Board, shall meet with the applicant to review the appraisal report. Any offer to purchase an easement must be submitted to the applicant in writing and accompanied by the appraisal report. The offer may be less than or equal to the appraised value of the easement.

Within 30 days of receipt of the written offer from the County Board, an applicant may either:

- Accept the offer;
- Reject the offer; or,
- Secure and independent appraisal as set forth in Section 138e.66 of the Agricultural Area Security Law.

Failure by the applicant to act within 30 days will constitute rejection of the offer.

If the offer of purchase is accepted, the County Board will prepare an agreement of sale<sup>7</sup>. The contract will 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, right of others in surface mineable coal, land use restrictions, adverse ownership interests, and other encumbrances which would adversely impact the County and State interests in the property).

If circumstances prohibit settlement within six months of acceptance, the Wayne County Agricultural Land Preservation Board reserves the right to make null and void the original offer.

## Section 3 - The Agricultural Easement Deed

### Deed Requirements and Restrictions

All owners of the subject real estate must execute a deed conveying the easement. The deed shall contain the requirements set forth in Section 138e.67 of the Rules and Regulations of Act 43.

A copy of the deed will be submitted to the State Board for approval. All instruments and documents for the purchase of easements must be approved by the State Board prior to execution and delivery.

### Requirements of the Agricultural Easement Deed

The owners of the subject farmland tract shall execute a deed conveying the easement, in which the deed shall include the provisions of Section 138e.241 of the Rules and Regulations of Act 43.

<sup>7</sup>See Appendix A - Definitions (Agreement or Agreement of Sale)

## **Section 4 - Permitted Acts**

An agricultural easement will not prevent the following:

- The granting of leases, assignments or other conveyances or the issuing of permits, licenses or other authorization for the exploration, development, storage or removal of coal by underground mining methods, oil and gas, by the owner of the subject land or the owner of the underlying coal, by underground mining methods, oil and gas, or the owner of the rights to develop the underlying coal by underground mining methods, oil and gas, or the development of appurtenant facilities related to the removal of coal by underground mining methods, oil or gas development or activities incident to the removal or development of such minerals;
- The granting of rights-of-way by the owner of the subject land in and through the land for the installation of, transportation of, or use of water, sewage, electric, telephone, coal by underground mining methods, gas, oil or oil product lines;
- Construction and use of structures on the subject land necessary for agricultural production or commercial equine activity;
- Construction and use of structures on the subject land for the landowner's principal residence or for the purpose of providing necessary housing for seasonal or full-time employees, provided that only one such structure may be constructed on no more than two acres of the subject land during the term of the easement;
- Customary part-time or off-season minor or rural enterprises<sup>8</sup> and activities; and,
- Commercial equine activity<sup>9</sup> on the subject land.

## **Section 5 - Title Insurance**

The County Board will provide a title insurance commitment to the State Board upon submission of its recommendation for a purchase of an easement. At settlement, the County Board will provide a title insurance policy issued by a title insurance company authorized to conduct business in the Commonwealth of Pennsylvania by the Pennsylvania Department of Insurance. The cost of such title insurance will be a cost incident to the easement purchase payable or reimbursable from the County's allocation under the Act.

## **Section 6 - Summary Report**

Each recommendation by the County Board for the purchase of an easement will be accompanied by a summary report as outlined in Section 138e.70 of the Rules and Regulations of Act 43.

## **Section 7 - Notification of Adjoining Landowners**

The County Board shall provided the owners of land adjoining a proposed easement with "notice and opportunity to be heard" as outlined in Section 138e.71 of the Act.

## **Section 8 - Survey Requirements**

If a survey of the land being considered for agricultural conservation easement purchase is required, the survey will be completed as outlined in Section 138e.73 of Act.

## **Section 9 - State Board Review for Approval of Easement Purchase**

Application for State Board review of a proposed purchase of an easement is made by submitting the required documents and other pertinent information as outlined in Section 138e.91 of the Rules and Regulations of Act 43.

<sup>8</sup>See Chapter IX- County Board Policies and Procedures

<sup>9</sup>See Appendix A - Definitions (Commercial Equine Activity)

## Responsibilities of Owner



### Section 1 - Responsibilities

#### Permitted Acts (Section 138e.221 of the Rules and Regulations of Act 43)

During the term of the easement, the restricted land shall be used solely for agricultural production or other uses permitted by the Act.

#### Conservation Plan (Section 138e.222 of the Rules and Regulations of Act 43)

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<sup>10</sup> approved by the County Conservation District or the County Board. ***A copy of this plan shall be required prior to closing*** and it is the responsibility of the landowner(s) to obtain this plan. In addition to the requirements established by the County Conservation District, or the County Board, the conservation plan shall require that:

- The use of the land for growing sod, nursery stock, ornamental trees and shrubs does not remove excessive soil from the restricted land.
- The excavation of 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.
- The mining of minerals is conducted only by methods authorized in the Act.

#### Change in Ownership (Section 138e.227 of the Rules and Regulations of Act 43)

Within 30 days of a change in ownership of the restricted land, the prior owner shall notify the County Board of the name and address of the new owner, provide a copy of the deed, provide a statement of the price per acre or portion thereof involved in the transfer, and a reference to the volume and page in which the transfer has been recorded by the County Recorder of Deeds.

A deed conveying an interest in the restricted land shall set forth the language of the easement restrictions verbatim. ***The County Board requires that a copy of the entire original easement deed be attached to the transferred deed. The County Board also requires that the landowner(s), prior to recording the new deed, forward a copy to the County Board for review and approval.*** If the deed is recorded contrary to County regulations, the landowner(s) shall be responsible for all fees associated in correcting and recording a new deed.

### Section 2 - Restrictions

#### Construction of Buildings; Changes in Use (Section 138e.223 of the Rules and Regulations of Act 43)

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:

- The erection of fences for agricultural production and protection of watercourses, such as lakes, streams, springs and reservoirs, is permitted.
- The construction of one additional residential structure is permitted under Section 138e.224 (relating to construction of one additional residential structure).
- The construction or use of a building(s), or other structure, for agricultural production or commercial equine activity is permitted.
- 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 structure is razed or removed and the replacement residential structure is erected within the curtilage of the structure it replaced.
- A renovation or modification of an existing residential structure, or an addition to an existing residential structure, is permitted if it would not increase the curtilage of the residential structure.
- A renovation or modification of an existing agricultural building or structure, or an addition to an existing agricultural building or structure, is permitted.

<sup>10</sup> See Appendix A - Definitions (Conservation Plan)

Construction of Additional Residential Structure (Section 138e.224 of the Rules and Regulations of Act 43)

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:

- The residential structure is constructed and used as the landowner's principal residence or for the purpose of providing housing for seasonal or full-time farm employees.
- No other residential structure has been constructed on the restricted land after the date of the granting of the easement.
- The residential structure and its curtilage occupy no more than two (2) acres of the restricted land.
- The location of the residential structure and its driveway will not significantly harm the economic viability of the restricted land for agricultural production.

# Inspection and Enforcement Procedures



## Responsibility (Section 138e.201 of the Rules and Regulations of Act 43)

- The County Board shall have the primary responsibility for inspecting restricted land and enforcing an easement.
- 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.

## Inspections (Section 138e.202 of the Rules and Regulations of Act 43)

- The County Board shall inspect all restricted land within the county at least annually to determine compliance with the applicable deed of easement.
- Written notice of an inspection shall be mailed by certified mail to the owner at least 10 days prior to the inspection.
- Any inspection shall be performed between the hours of 8am and 5pm on a weekday that is not a legal holiday recognized by the Commonwealth, or a date and time agreeable to the County and landowner.
- Within 10 days of conducting an inspection the County Board shall prepare a written inspection report.
- A copy of the inspection report shall be mailed by certified mail to the owner.
- 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 provisions of the easement has been or is being violated.

## Annual Report (Section 138e.203 of the Rules and Regulations of Act 43)

- The County Board shall enforce the terms of each easement purchased within the County under the Act, whether it be a County, State or joint purchase.
- The State Board may enforce the terms of state or jointly purchased easements.
- 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.

## Notification to Owner (Section 138e.205 of the Rules and Regulations of Act 43)

- Within 10 days of the discovery of a violation of the terms of an easement, either through an inspection or otherwise, the County Board shall send written notice of the violation to the owner of the restricted land, the County governing body and the State Board.
- The written notice required by this section shall be sent by certified mail and shall include a copy of the inspection report, a copy of the deed of easement, a description of the action or condition which constitutes the alleged violation and a statement of the measures necessary to correct the alleged violation.

## Enforcement Actions (Section 138e.206 of the Rules and Regulations of Act 43)

- Sixty (60) days after the mailing of a notice of violation under Section 138e.205 the County Board shall commence and prosecute an action in the Court of Common Pleas of the county in which the restricted land is located, 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. 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 this subsection. If the correction cannot be completed within the 60 day period, the County Board shall establish a period not to exceed one year within which the corrective measures shall be completed.
- The County Board shall commence and prosecute the enforcement action described if the violation is not corrected within the time established.

- The owner of the restricted land shall bear all costs associated with the correction of a violation of the easement, including costs of work required and materials used to correct the violation, administrative costs incurred by the County Board and the State Board and court costs and reasonable attorney's fees incurred by the County Board and the State Board in enforcing the easement.
- 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.

Chapter IX

# County Board Policies and Procedures



## Section 1 - Subdivision for Additional Residence

The Wayne County Agricultural Land Preservation Board may allow the subdivision<sup>11</sup> of no more than two (2) acres for the construction of one additional residence, if the following apply:

- the additional residence is for use as the landowner's principal residence or housing for seasonal or full-time farm employees.
- the construction of the additional residence cannot be accomplished by land development.
- the County Board deems that the subdivision will not harm the economic viability of the land.
- the subdivision will not convert the land that has been devoted primarily to agricultural use to another primary use, other than the use for the additional residence.

A landowner may obtain review of a request for approval to subdivide a tract of restricted land for one additional residence by submitting the following:

1. A written request and application to the County Board asking for review and approval of the subdivision.
2. An aerial soils map delineating the subdivision boundaries.
3. A sketch of the proposed residential structure and the parcel upon which it will be located, showing distances to the closest property line or lines.

The County Board shall follow the guidelines as set forth Section 138e.226 of the Rules and Regulations of Act 43 after the subdivision request is received. If the County Board approves the application, the County Board shall forward a copy of the application and any comments and recommendations of the reviewing agencies to the State Board for review and approval or disapproval. The subdivision request must be approved by both the County and State Boards.

The landowner is hereby notified that they must also follow all township and county guidelines regarding residential subdivision. The landowner is advised to contact the respective township and county planning commissions regarding residential subdivision regulations. The Wayne County Agricultural Land Preservation Board is not responsible for any subdivision applications other than listed above.

## Section 2 - Guidelines for Subdivision of Eased Land

### Purposes

The purposes of these Subdivision Guidelines (hereinafter the “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, found at 7 PA.Code. Section 138.e.1 et seq. (the “Regulations”), for farm properties that are subject to an Agricultural Conservation Easement (hereinafter referred to as “Eased Land”) and to provide for the administration of such Act and Regulations, as appropriate for Wayne County, Pennsylvania. Section 225 of the Regulations provides that County programs may allow subdivisions and place restrictions on subdivision, as long as the subdivision is not in conflict with the Act and the Regulations.

### General Provisions

These Subdivision Guidelines are intended to preserve as much farmland as possible in integral parcels and to promote viable agricultural enterprises. The Wayne County Agricultural Land Preservation Board (the “County Board”), on a case-by-case basis, will consider all impacting factors when making a decision to subdivide land subject to an Agricultural Conservation Easement (the “Easement”), and approval will be at the discretion of the County Board, 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).

<sup>11</sup>See Appendix A - Definitions (Subdivision)

The burden of proof that any proposed subdivision of land subject to an 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 Wayne may attach reasonable and appropriate conditions upon any subdivision approval of land subject to an Easement as may be necessary to insure perpetual compliance with the Act, the Regulations and the Deed of Agricultural Conservation Easement and the present Subdivision Guidelines.

### Definitions

The Definitions set forth Section 3 of the Regulations, 7 Pa. Code 138e.3, as well as those definitions set forth in the Wayne County Easement Purchase Program, are hereby incorporated by reference into these Subdivision Guidelines.

### General Subdivision Guidelines

The owner(s) of a tract of land subject to an Easement, whether held solely by the State of Pennsylvania, the County of Wayne or held jointly by the State and County, may subdivide the property, provided the following conditions apply:

1. The prohibitions, restrictions and conditions of subdivision of eased land as set forth in Subsection V of these Guidelines shall be recited verbatim in the deed for all subdivided and remaining parcels.
2. No restriction, prohibition or condition of this Section shall prevent the landowner from subdividing an Easement for the purpose of construction one additional residential structure as authorized by Section 14.1 (c)(6)(iv) of the Act (3 P.S. Section 914.1 (c)(6)(iv), provided that such a subdivision complies with the conditions of Subsection 224 of the Regulations, 7 PA.Code Section 138e.224.
3. All costs associated with subdivision shall be the sole responsibility of the landowner(s).
4. Nothing in this section shall relieve the landowner(s) of any municipal, county or state regulations, procedures or requirements necessary for the subdivision of land and any subdivision must be approved in accordance with PA Municipalities Planning Code (Act 170).
5. 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.
6. The subdivision shall be consistent with the Statement Purpose of the Wayne County Agricultural Conservation Easement Program and to ensure long-term viability of preserved land for agricultural use.
7. No subdivision of land subject to an Easement shall become final until the landowner(s) has secured the approval from the County 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. The burden of proof that any proposed subdivision of eased land conforms to and complies with the Act, the Regulations and the County Board's Subdivision Guidelines shall rest with the applicant(s)/landowner(s).

### Specific Subdivision Guidelines

Except as provided for in Subsection IV.2 hereinabove, no subdivision of eased land shall be permitted unless all of the following conditions are met:

1. Approval of a subdivision shall be requested, in writing, of and granted by the County Board and by the State Board.
2. Subdivision shall not harm the economic viability, as defined in Section 3 of the Regulations, of any parcel created by or remaining after subdivision.
3. Each parcel created or remaining as a result of subdivision shall have the following:
  - a. Fifty percent (50%) of its soils in USDA Soil Capability Classes I-IV.
  - b. Fifty percent (50%) of its area utilized for crop, pasture or grazing land.
4. No parcel of less than Thirty (30) acres may be created by subdivision or shall remain after subdivision of the original Eased Land.

### Landowner Requirements for Subdivision

A landowner(s) proposing to subdivide eased land shall be subject to the following procedures and requirements:

1. The landowner(s) must submit a written request and application for subdivision to the County Board. The application submission shall include the following:
  - a. A completed Subdivision Application (which may be obtained from the County Administrator).



- b. An aerial soils map, at a scale sufficient to clearly delineate the following:
  - i. Delineation of proposed subdivision.
  - ii. Roads, streets, driveways, utility rights-of-way
  - iii. Location of existing buildings, dwellings and other structures.
  - iv. Indication of which parcel, either created by subdivision or remaining after subdivision, on where the additional residential structure, permitted by Section 14.1 (c)(6)(iv) of the Act (3 P.S. Section 914.1 (c)(6)(iv) and this section, may be constructed.
- c. Soils reports and maps for each new tract confirming that the minimum criteria as set forth in Section 138e.16 of the Rules and Regulations of the Act has been met.
- d. Written confirmation with respect to which tract of land is reserved for the construction of the additional residential structure, if no such structure has been constructed prior to the subdivision.
- e. An application fee in the amount of \$250.00, plus reimbursement of any attorney fees incurred by the County Board, to be paid at closing.

#### County Board Procedures for Subdivision Request

1. Upon receipt of the above submission, the County Board shall:
  - a. Note the date upon which the application to subdivide was received.
  - b. Forward copies of the above submission to the Bureau of Farmland Preservation, the Township where the property is located and the County Planning Office (the "Reviewing Agencies"). Each agency shall have up to sixty (60) days from receipt of such notification to review, comment and make recommendations on the proposed application to the County Board. The County Board may not consider comments and recommendations received beyond this deadline unless the landowner agrees in writing.
  - c. The County Board shall review the application, comments and recommendations submitted by the reviewing agencies and approve or reject the application to subdivide within one hundred twenty (120) days after the date that the subdivision application was initially filed, unless the time is extended by mutual agreement of the landowner(s) and reviewing agencies. If the County Board fails to approve or reject the application to subdivide within the one hundred twenty (120) day deadline or extension thereof, the application shall be deemed approved, provided that the parcels created by and remaining after subdivision comply with Section V of these Guidelines set forth above.
  - d. The review times set forth in this Subsection VII.A shall not begin to run until the full application package, as set forth in Section VI hereinabove, has been received by the County Administrator.
2. If the application to subdivide is approved by the County Board, the application, along with the comments and recommendations of the reviewing agencies shall be forwarded to the State Board for review and approval or disapproval. The State Board will provide the County Board and landowner(s) with written notice of the date, time and location of the meeting at which the State Board shall review and consider the application. When reviewing an application to subdivide eased land, the State Board shall consider only whether the application complies with the conditions under which the Wayne County Agricultural Land Preservation Board permits subdivision. The State Board shall notify the County Board and the landowner(s) of its decision regarding the application.
3. If the application to subdivide is rejected by the County Board, the application shall be returned to the landowner(s) with a written statement of the reason(s) for such rejection. Within 30 days of the receipt of the statement of rejection, the landowner may appeal the rejection in accordance with 2 PA C.S. Chapter 5, Subchapter B (relating to judicial review of local agency action) and Chapter 7, Subchapter B (relating to judicial review of local agency action).
4. Approval of the application, by the County Board, shall not be construed to provide approval of the State Board or any other Governmental Unit with authority to approve or disapprove subdivisions.

### Landowner Procedures for Approved Subdivisions

If the County Board and State Board approval is granted for the subdivision of eased land, the landowner shall do the following:

1. If no additional residential structure, other than those existing on the date of the granting of the easement, has been constructed on the eased land, the landowner shall:
  - a. Ensure that either:
    - i. The deed for the parcel created by the subdivision; or
    - ii. The deed for the remainder parcel after subdivision, upon which the additional residential structure may be constructed, clearly reserves the right to construct this residential structure.
  - b. Ensure that the deed(s) to all other parcels created by subdivision or remaining after subdivision, clearly state that no residential structures of any kind may be constructed on the eased parcels.
  - c. Attach a copy of the entire original easement deed to the deeds to all parcels created by subdivision or remaining after subdivision to ensure the language of the easement restrictions are set forth verbatim.
  - d. 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 lands.
  - e. Prior to recording the above deeds, the landowner(s) shall forward copies of the deeds to the County Board for review and approval.
  - f. Within 15 days of recording the deeds to the tracts created by subdivision or remaining after subdivision, the landowner(s) shall forward a copy of all recorded deeds to the County Board.
  - g. If the language of the above requirements are not included in the deed(s) to the parcel(s) created by subdivision or remaining after subdivision, the landowner will be required to re-record the deed(s) with the appropriate language.
  - h. The landowner(s) shall bear all legal and recording costs associated with a transfer or conveyance of land subject to an agricultural conservation easement.

### Recording of Guidelines

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

All deeds conveying an agricultural conservation easement to the County of Wayne, the State of Pennsylvania or to both the County and State jointly shall incorporate, by referencing the location of such filing, the provisions of this section into the deed.

### Applicability

These Guidelines are intended to replace all prior Guidelines adopted by the County Board since the inception of the Wayne County Agricultural Land Preservation Program and all prior Guidelines are hereby repealed. These Guidelines shall apply to all future Easements and shall also apply to all existing Easements accepted by Wayne County, regardless of whether such prior Easements set forth the prior Guideline policy prohibiting the subdivision of Eased Land.

## **Section 3 - Parcel Conveyance Requirements**

A landowner conveying a parcel to another individual(s) shall do the following:

1. Submit to the County Board, an aerial soils map delineating the specific parcel(s) that are being conveyed.
2. Submit a written confirmation with respect to the specific parcel(s) that is reserved for the construction of the additional residential structure, if no such structure has been constructed prior to the parcel conveyance.

3. Ensure that the deed to the parcel(s) with respect to which the right to construct and use the residential structure is reserved clearly sets forth the reservation of this right.
4. Ensure that the deeds to the remaining parcel(s) recite that no residential structure may be constructed on the remaining parcel(s).
5. Ensure that the new deeds to the conveyed parcels follow the county regulations as set forth in Chapter VII, Section 1, Change of Ownership of the county program.
6. Within 30 days of a change in ownership of the restricted land, the prior owner shall notify the county board of the name and address of the new owner, provide each a copy of the deed(s), provide a statement of the price per acre or portion thereof involved in the transfer and a reference to the volume and page in which the transfer has been recorded by the county recorder of deeds.

Landowners are hereby notified that they must also follow all township and county guidelines regarding parcel conveyances. The landowner is advised to contact the respective township and county planning commissions regarding parcel conveyances. The Wayne County Agricultural Land Preservation Board is not responsible for any parcel conveyance applications other than listed above.

#### **Section 4 - Modification to Submitted Acreage**

**All parcels of land to be withheld from easement application shall be delineated on all submitted maps.**

Applications may be modified after the submission deadline if the modification consists of increased acreage that, in turn, equals or exceeds the applicant's score prior to modification. The modification shall have no affect on the ranking order. The applicant will be asked to withdraw the application and apply the following year if a modification reduces the original submitted acreage, applicant's score or significantly alters the delineated lines.

#### **Section 5 - Withdrawal from Consideration**

In situations where the applicant(s) withdraws from easement sale consideration or breaches the agreement of sale prior to closing, it shall be the applicant's responsibility to reimburse the County for all incidental costs incurred. These may include, but are not limited to, appraisal, survey and title insurance fees.

#### **Section 6 - Rural Enterprise**

The following customary part-time or off-season minor or rural enterprises and activities have been approved by the Wayne County Agricultural Land Preservation Board and by the State Board. The agricultural conservation easement does allow these enterprises and activities on the subject land:

- 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.
- Any and all structures contributing to the production, primary processing, direct marketing and storage of agricultural products produced principally on the farm.
- Structures and facilities associated with irrigation, farm pond improvement, 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 resources management systems used for erosion and sediment control and water quality improvement.\*
- Structures associated with the production of energy for use principally on the farm including wind, solar, hydroelectric, methane, wood, alcohol fuel and fossil fuel systems and structures and facilities for the storage and treatment of animal wastes.
- The provision of services or production and sale, by persons in residence, of incidental agricultural

goods, services, supplies and repairs and/or the conduct of traditional trades and the production and sale of home occupation goods, arts and crafts, so long as these uses remain incidental to the agricultural and open space character of the farm and are limited to occupying residential and/or principally agricultural structures of the property; limited in site coverage to one-half of one percent of the area of the property.

- The accommodation of tourists and visitors within principally family residential and/or agricultural structures otherwise permitted under the law, so long as the accommodations of tourists and visitors in 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.

\*The State Agricultural Land Preservation Board approved and authorized on June 13, 2000, the use of any conservation practice under CRP/CREP as not violating the deed of agricultural conservation easement with respect to the restricted land, provided the conservation plan as revised, allows for implementation of any such practices.

### **Section 7 - Local Government Unit Participation**

Any local government unit that has created an agricultural security area may participate along with Wayne County and the Commonwealth, and an eligible nonprofit entity in the preservation of farmland through the purchase of agricultural conservation easements.

- The local government unit, in conjunction with the County Board, may participate with the State Board in the purchase of agricultural conservation easements.
- The local government unit shall recommend to the County Board the purchase of agricultural conservation easements by the eligible county and local government unit as joint ownership.
- The local government unit shall recommend to the County Board the purchase of agricultural conservation easements by the local government unit and the Commonwealth as joint ownership.
- The local government unit may purchase an agricultural conservation easement, provided that all of the following apply:
  1. The agricultural conservation easement is located within an agricultural security area of at least 500 acres or the easement purchased is a joint purchase with either the County or both the County and Commonwealth, pursuant to the criteria set forth for the purchase of agricultural conservation easements crossing local government unit boundaries and crossing county boundaries including any portion of an agricultural conservation easement extending into an adjoining county.
  2. The deed of agricultural conservation easement is at least as restrictive as the deed of agricultural conservation easement prescribed by the State Board for agricultural conservation easements purchased by the Commonwealth.
  3. The local government unit shall participate with the County Board in complying with regulations for recording any agricultural conservation easement purchased by the local government unit.
- The County Board shall be responsible to record agricultural conservation easements where a local government unit is a party to the purchase of the easement. The easement shall be recorded by the County Board in the Office of Recorder of Deeds of Wayne County. The County Board shall submit to the State Board a certified copy of the agricultural conservation easement within 30 days after recording. The County Board shall attach to all certified copies of the easements submitted to the State Board a description of the farmland subject to the agricultural conservation easement.

## **Section 8 - Eligible Nonprofit Entity Participation**

An eligible nonprofit entity<sup>12</sup> may participate along with Wayne County, the Commonwealth and a local government unit eligible to participate under Section 5 - Local Government Unit Participation, in the preservation of farmland through the purchase of agricultural conservation easements.

The eligible nonprofit entity may purchase an agricultural conservation easement if all of the following apply:

- The easement is a joint purchase with the County and may include the Commonwealth or a local government unit, or both, and;
- The deed of agricultural conservation easement is as prescribed by the State Board for agricultural conservation easements purchased by the Commonwealth.

The County Board shall be responsible to record easements where an eligible nonprofit entity is a party to the purchase of the easement. The easement shall be recorded by the County Board in the Office of the Recorder of Deeds. The County Board shall submit to the State Board a certified copy of the easement within 30 days of recording. The County Board shall attach to the certified copy a description of the farmland subject to the agricultural conservation easement.

## **Section 9 - Land Trust Reimbursement Program**

Act 46 of 2006 re-establishes the Land Trust Reimbursement Grant Program (Section 138e.251 of the Rules and Regulations of Act 43) under the Agricultural Area Security Law (Section 14.6).

- An individual grant will reimburse a qualified land trust up to \$5,000 of the expenses it has incurred in acquiring a perpetual agricultural conservation easement, as that term is defined in the Agricultural Area Security Law (3 P.S. § 901-915). These expenses include appraisal costs, legal services, title searches, document preparation, title insurance, closing fees and survey costs.
- To be qualified for reimbursement, a land trust shall:
  1. Be an eligible non-profit entity;
  2. Coordinate agricultural conservation easement purchase activities with the eligible county in which the activity occurs or coordinate such activities with the State Board (if the activity does not occur within an eligible county), and;
  3. Submit an application to the State Board with a statement of costs incidental to the acquisition, a true and correct copy of the recorded deed of easement and any other documentation required by the State Board within 60 days of closing on the easement.

## **Section 10 - Permitted Uses for Rollback Tax Interest**

Section 914.1(b)(2) of Act 43 allows for the County Board to use any portion of accrued interest from the PA Farmland and Forest Land Assessment Act of 1974 (P.L. 973, No. 319) for the following:

- To monitor and enforce agricultural conservation easements, including the payment of legal costs associated with the defending of an easement.

<sup>12</sup>See Appendix A - Definitions (Eligible non-profit entity)

## **Section 11 - Legal Counsel**

All applicants are advised to obtain legal counsel prior to entering into any binding legal contract.

***The Wayne County Land Preservation Board requires that the applicant have legal counsel present at the time of the closing. All fees for applicant's legal representation are the responsibility of the applicant.***

## **Section 12 - Public Information**

It is not the intention or the practice of the County Board to publicize the names of easement applicants or information pertaining to the applicants' easement purchases in any newspaper publications. However, all information associated with the easement purchase is a matter of public record and any citizen of Pennsylvania has the right to examine and inspect any public record, under certain conditions, of a public agency under the authority of the Right to Know Law. The County Board may use the names and acreages of established easements on its website.

## APPENDICES

## Appendix A

# Definitions



The following words and terms, when used in this handbook, have the following meanings, unless the context clearly indicates otherwise:

- **Act** - The Agricultural Security Law (3 P.S. § 901-915).
- **Agreement or agreement of sale** - A document executed by a landowner and the county board to purchase a specific agricultural conservation easement as part of the county board's recommendation for purchase in accordance with Section 14.1(h)(8.2) of the Act (3 P.S. § 914.1 (h)(82)).
- **Agricultural conservation easement or easement** - An interest in land, less than fee simple, which interest represents that right to prevent the development or improvement of the land for a purpose other than agricultural production. The easement may be granted by the owner of the fee simple to a third part or to the Commonwealth, to a county governing body or to a unit of local government. It shall be granted in perpetuity, as the equivalent of covenants running with the land.
- **Agricultural Security Area** - A unit of 250 or more acres of land used for the agricultural production of crops, livestock and livestock products or of viable agricultural land a portion of which is used for commercial equine activity, under the ownership of one or more persons and designated as such by the procedures in the Act.
- **Commercial equine activity** - Includes the following activities where a fee is collected: the boarding of equines; training of equines; the instruction of people in handling, driving or riding equines; the use of equines for riding or driving purposes and the pasturing of equines. This 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."
- **Conservation plan** - A plan describing land management practices which, when completely implemented, will improve and maintain the soil, water and related plant and animal resources of the land.
- **Contiguous acreage** - All portions of one operational unit as described in the deed whether or not the portions are divided by streams, public roads, bridges and whether or not described as multiple tax parcels, tracts, purparts or other property identifiers.
- **Contract of sale** - A legally enforceable agreement in a form provided by the State Board obligating the landowner to sell, and the Commonwealth or County, or both, to purchase an agricultural conservation easement on a specified farmland tract.
- **Curtilage** - The area surrounding a residential structure used for a yard, driveway, on-lot sewage system or other non-agricultural purposes.
- **Economic viability of farmland for agricultural production** - The capability of a particular tract of restricted land, other than a tract of two (2) acres or less upon which construction and use of the landowner's principal residence or housing for seasonal or full-time farm employees is permitted under Section 14.1(c)(6)(iv) of the Act, to meet the criteria in Section 138e.16(a) of the Rules and Regulations of Act 43 (relating to minimum criteria for applications), 7 Pa Code Section 138.e.16(a).



- **Eligible nonprofit entity** - an entity that provides the State Board or an eligible county satisfactory proof of all the following:
  - 1) That the entity is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501 (c)(3)).
  - 2) That the entity has experience acquiring, whether through purchase, donation or other transfer, an agricultural or other conservation easement.
- **Harm the economic viability of the farmland for agricultural production** - To cause a particular tract of restricted land to fail to meet the criteria set forth at Section 138e.16(a)(2)(3)(4) and (5) (relating to minimum criteria for applications) of this chapter, or to create, through subdivision, a tract of restricted land, other than a tract of two acres or less upon which construction and use of the landowner's principal residence or housing for seasonal or full-time farm employees is permitted pursuant to Section 14.1(c)(6)(iv) of the Act (3 P.S. Section 914.1(c)(6)(iv) of the Act (3 P.S. Section 914.1(c)(6)(i) that would fail to meet the aforescribed criteria.
- **Land development** - The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving a group of two or more residential buildings, whether proposed initially or cumulatively, or, a subdivision of land.
- **Local government unit** - any city, borough, township or town or any home rule municipality, optional plan municipality, optional charter municipality or similar general purpose unit of government which may be created or authorized by statute.
- **Mansion house** - The primary residential structure located upon a parcel.
- **Significant Agricultural Areas** - Areas identified as special target areas for farmland preservation activities. These areas were chosen for their concentration of productive soils, large tracts of actively farmed land and generally unlimited urban infrastructure.
- **Soils report** - A report which identifies and sets forth the amount of each land capability class found on a farm land tract.
- **Subdivision** - The division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development.

Appendix B

# Numerical Farmland Ranking System

## Site Assessment Worksheet

<b>Development Potential</b> Factors which identify the extent to which development pressures are likely to cause conversion of agricultural land to non-agricultural uses.		
<b>Public Sanitary Sewer System</b> Distance of tract from public sanitary sewer line.		Tract Score
25 points	Adjacent or on tract Within ½ mile Over ½ mile but less than 1 mile Over 1 mile	
15 points		
10 points		
00 points		
<b>Municipalities Without Public Sewer System (Alternate)</b> Percentage of Classes I and II soils suitable for on-lot sewage disposal.		Tract Score
25 points	100% - 61% 60% - 41% 40% - 15% 14% or less	
15 points		
10 points		
00 points		
<b>Public Water System</b> Distance of tract from public water system.		Tract Score
25 points	Adjacent or on tract Within ¼ mile Over ½ mile but less than 1 mile Over 1 mile	
20 points		
10 points		
00 points		
<b>Road Frontage</b> Amount of road frontage on tract along public road.		Tract Score
25 points	Over 1,000 feet 500 -1,000 feet 499 feet or less	
15 points		
05 points		
<b>Non-agricultural Use</b> Extent of non-agricultural use within area of tract.		Tract Score
25 points	Intensive development adjacent to tract or in the immediate vicinity (10 lots or more -commercial, industrial or residential) Intensive or extensive scattered development within ½ mile radius (20 lots or more - commercial, industrial or residential) Scattered development within 1 mile radius (20 lots or more - commercial, industrial or residential) No significant non-agricultural development	
15 points		
10 points		
00 points		
Subtotal Development Potential Score		
Weighted Percentage		<b>0.10</b>
Total Weighted Score		

<b>Farmland Potential</b> Factors which measure the potential agricultural productivity and farmland stewardship practiced on tract.		
<b>Total Acres Offered for Easement</b>		<b>Tract Score</b>
20 points	150 acres or more	
15 points	149 - 100 acres	
10 points	99 - 50 acres	
05 points	50 acres or less, but 10 acres or more contiguous to another perpetually eased tract or farm.	
<b>Harvested Cropland, Pasture or Grazing Land</b>		<b>Tract Score</b>
20 points	100% - 85% utilized	
15 points	84% - 70% utilized	
10 points	69% - 50% utilized	
00 points	49% or less	
<b>Conservation and Best Management Practices</b> The implementation of soil erosion control, sedimentation control, nutrient management and other practices demonstrating good stewardship of the tract.		<b>Tract Score</b>
20 points	Meets current USDA / NRCS Conservation Plan requirements and practices implemented	
10 points	Partially implemented practices	
00 points	No current plan	
<b>Operating Tract</b>		<b>Tract Score</b>
15 points	Owner / Operator	
10 points	Farmland leased / rented three of five previous years	
05 points	Farmland leased / rented less than three years	
<b>Farm Product Sales</b>		<b>Tract Score</b>
15 points	Gross annual receipts of \$100,000 or more	
10 points	\$99,999 - \$75,000	
05 points	\$74,999 - \$25,000	
00 points	\$24,999 or less	
<b>Sensitive Qualities</b> Area(s) must be a recorded federal, state or local designated location.		<b>Tract Score</b>
05 points	Contains designated area(s) which is a historically or culturally significant location, or, a scenic area or open space	
05 points	Adjoins protected flood plains, wildlife habitats, parks, forests and/or educational sites	
Subtotal Farmland Potential Score		
Weighted Percentage		<b>0.30</b>
<b>Total Weighted Score</b>		

Clustering Potential		
Factors which emphasize the importance of preserving blocks of farmland which support normal farming operations and help to shield the agricultural community from conflicts with incompatible land uses.		
Proximity to Agricultural Conservation Easements		Tract Score
Location of tract with respect to land already under conservation easement, whether held by County and/or State, unit of local government or a non-profit land conservation organization		
45 points	Adjacent or adjoining	
30 points	½ - 1 mile	
20 points	1.1 - 1.5 miles	
15 points	1.51 - 2.5 miles	
00 points	2.6 miles or more	
Adjoining Land in an Agricultural Security Area (ASA)		Tract Score
Percentage of tract's boundary that adjoins land in an ASA where agriculture has been given protection by the municipality, at the request of the landowners, which provides an environment conducive to farming.		
30 points	100% - 75% adjoining boundary	
20 points	74% - 40% adjoining boundary	
10 points	39% - 25% adjoining boundary	
05 points	24% or less adjoining boundary	
Consistency with Planning Map		
Tracts located within designated important agricultural areas are more viable for agricultural uses and are more likely to be compatible with county and local comprehensive plans.		
25 points	76% - 100% of easement acres within identified important agricultural area	
20 points	51% - 75% of easement acres within identified important agricultural area	
15 points	26% - 50% of easement acres within identified important agricultural area	
10 points	1% - 25% of easement acres within identified important agricultural area	
00 points	0% of easement acres within identified important agricultural area	
Subtotal Farmland Potential Score		
Weighted Percentage		0.20
Total Weighted Score		

### Land Evaluation - Soils Worksheet

Soil Mapping Unit	Unit Acreage	Relative Value	Unit Total	Soil Mapping Unit	Unit Acreage	Relative Value	Unit Total
Total of Soils Relative Values				Total of Soils Relative Value			

Total of Soils Relative Value	÷	Total Acreage of Farm	=	Average Relative Value of Farm	x	Weighted Factor 0.40	=	Land Evaluation Rating

# Agricultural Land Preservation Board Members



Board Member Name	Status
Donald Olsommer Chairman	At-Large Representative
William R. Bryant	Active Resident Farmer
D. Ellis Dix	Active Resident Farmer
Paul Kowalczyk	At-Large Representative
Francis Motichka	Active Resident Farmer
F. Michael Nebzydoski	Active Resident Farmer
Christa Odell	At-Large Representative
John W. Rickard	Township Official
Daniel Rutledge	Contractor

# Agricultural Land Preservation Board Bylaws



## Name

The name of this non-profit organization shall be the Wayne County Agricultural Land Preservation Board, hereinafter referred to as the "Board."

## Purpose

- Administer a program for purchasing and receiving gifts of agricultural conservation easements on behalf of the County.
- Adopt rules and regulations for the administration of a County program for the purchase of agricultural conservation easements within Agricultural Security Areas.
- Encourage the use of additional farmland preservation techniques through public and private organizations in the County.
- Promote efforts to support the agricultural industry in the County.
- Perform such other duties and responsibilities as may be authorized pursuant to the Agricultural Area Security Law.

## Authorization

The Board was authorized to administer the County program by resolution of the County Governing Body on May 16, 1991<sup>13</sup>.

## Membership

- Board members shall be appointed by the County Governing Body.
- The Board shall be composed of nine members appointed from the following groups:
  1. One less than a majority, shall be active resident farmers in Wayne County, and shall serve initial terms of three years after establishment of this Board.
  2. One shall be a current member of a borough or township governing body which is located in the County, and shall serve an initial term of two years after establishment of this Board.
  3. One shall be a commercial, industrial or residential building contractor who resides in the County and shall serve an initial term of one year after establishment of this Board.
  4. Remaining members shall be appointed at the pleasure of the County Governing Body and shall serve initial terms of one year after establishment of this Board.

## Term of Office

Upon expiration of the initial terms of office as set under Membership, all terms of office shall be three years.

## Removal from County Board

Any Board member may be removed from the Board for malfeasance, misfeasance or nonfeasance in office or for other just cause, by the majority vote of the County Governing Body, after the member has received fifteen days advance notice of the intent to take such vote. A hearing shall be held in connection with the vote, if the member shall request it in writing.

## Vacancies

Any appointment to fill any vacancy created by removal, resignation or otherwise, shall be only for the unexpired term of the vacant position.

## Board Member Attendance

The Board members shall attend a minimum of sixty percent of all Board meetings, whether regular or special. Any member who is unable to attend a meeting should notify the Chairman prior to the meeting.

<sup>13</sup>See page iii (Wayne County Agricultural Land Preservation Program Resolution)

### Officers

The Board will be directed by a Chairman. Additional officers shall be vice-chairman, secretary and treasurer. A staff person may serve as Secretary, but shall have no vote.

### Election of Officers

The Chairman shall be appointed annually by the Chairman of the County Governing Body, as required by Act 149. Other officers shall be elected annually by members of the Board.

### Duties of Officers

- The Chairman shall preside at all meetings of the Board, call special meetings, establish committees, appoint committee chairmen and delegate other tasks and assignments as may be appropriate.
- The Vice-Chairman shall preside at all meetings of the Board in the absence of the Chairman.
- The Secretary shall be responsible for seeing that all meetings are recorded, and for sending and receiving correspondence of the Board.
- The Treasurer shall pay all bills authorized by the Board, maintain a record of all funds designated for easement purchase and for administration of the County Program.

### Removal of Officers

- The Chairman can be removed from his position by the County Governing Body.
- Other officers can be removed from office, at any time for just cause, by a majority vote of all members of the Board.

### Meetings

- Regular meetings shall be held every other month starting in February on the 1<sup>st</sup> Wednesday of the month at 8pm in the Agricultural Extension Office of Wayne County , Honesdale, Pennsylvania, as designated by the Chairman of the Board and subject to change.
- Special meetings shall be held at the call of the Chairman, or at the request of five members of the Board and shall require written notice of at least five days.

### Conduct of Meetings

All Board meetings shall be open to the public in accordance with the Sunshine Act of July 3,1986 (P.L. 388, No. 84) and with the Right-To-Know Law of June 21,1957 (P.L. 390. No. 212). Robert's Rules of Order shall apply to all events not otherwise covered by the Bylaws.

### Quorum

- A majority of the total Board membership shall constitute a quorum for the conduct of business.
- A quorum of members is required to vote on any motion before the Board.

### Voting

- Each member of the Board shall be allowed to cast one vote.
- Board members must be present at meetings in order to vote.
- Motions shall be passed by a majority vote of members present at a meeting, except as specified elsewhere in the Bylaws.

### Committees

- The Chairman may appoint such committees as are desirable for accomplishing the purpose of the Board.
- Committees may include persons other than Board members.



#### Agricultural Security Area Advisory Committees

The Board may consult with and seek the advice of Agricultural Security Area Advisory Committees with respect to the prospective purchase of easements within their respective municipalities and with respect to such other matters as the Board deems appropriate.

#### Staff

The Board may use monies appropriated by the County Governing Body to hire staff and administer Act 149 in the County.

#### Staff Assistance from Other Agencies

The Board may receive assistance from the staffs of the County Planning Commission, County Conservation District, other County departments or from other sources as are available.

#### Finances

- All monies received from State, County or other sources shall be used for the purpose of protecting viable agricultural land in the County.
- The Board shall operate within a budget as approved annually by the County Governing Body. Board members shall not receive a salary or payment for their services, but may be reimbursed for expenses incurred in the course of their service on the Board.
- No member of the Board shall be liable for debts of the Board.

#### Public Official and Employee Ethics Law

All members and employees of the County Board shall comply with the Public Official and Employee Ethics Law of October 4, 1978 (P.L. 883, No. 170; 65 P.S., Sections 401-413).

#### Amendments

The Bylaws may be amended at a Board meeting by a majority vote of the entire membership of the Board, subject to approval of the County Governing Body, provided such amendments, along with a notice of the date of the meeting, shall have been circulated to all members of the Board and County Governing Body at least 10 days prior to the meeting.

## **EXHIBITS**

# Easement Sales Agreement



## AGREEMENT FOR THE SALE AND PURCHASE OF AN AGRICULTURAL CONSERVATION EASEMENT TO THE COMMONWEALTH OF PENNSYLVANIA AND A COUNTY JOINTLY IN PERPETUITY

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ by and among \_\_\_\_\_ residing at \_\_\_\_\_

\_\_\_\_\_ (“Grantor(s)”) and the Commonwealth of Pennsylvania (Commonwealth) acting through the Department of Agriculture, State Agricultural Land Preservation Board (“State Board”) 2301 North Cameron Street, Harrisburg, PA 17110-9408 and \_\_\_\_\_ County, Pennsylvania, (“County”) acting through its County Agricultural Land Preservation Board, \_\_\_\_\_, Pennsylvania, (“County Board”) (all the parties hereinafter are collectively referred to as Grantees) is an Agreement for the Sale and Purchase of an Agricultural Conservation Easement.

### WITNESSETH

WHEREAS; Grantor(s) is/are the sole owner(s) of all that certain land situate in \_\_\_\_\_ Township, \_\_\_\_\_ County, Pennsylvania consisting of \_\_\_\_\_ acres of land together with the buildings and improvements erected thereon and more particularly described in Exhibit “A” hereto (“the subject land”); and

WHEREAS; Grantor(s) intend(s) to convey an agricultural conservation easement in the subject land to the Grantees pursuant to the Agricultural Area Security Law P.L. 128, No. 43, June 30, 1981 (3 P.S. Section 901-915) as amended (hereinafter “the Act”); and

WHEREAS; the State Board, a departmental board within the Pennsylvania Department of Agriculture, is authorized under the Act to execute agreements for the purchase of agricultural conservation easements and to purchase agricultural conservation easements jointly in the names of the Commonwealth and the County; and

WHEREAS; the Commonwealth acting through the State Board, has approved the purchase of an agricultural conservation easement in the subject land jointly with the County; and

WHEREAS; the County has adopted a program for purchasing agricultural conservation easements which program has been certified by the State Board pursuant to the Act; and WHEREAS; the County acting through the County Board has recommended that the Commonwealth and the County jointly purchase an agricultural conservation easement in the subject land; and

WHEREAS; the County Board is authorized under the Act to execute agreements for the purchase of agricultural conservation easements and to purchase agricultural conservation easements jointly in the names of the County and the Commonwealth; and

WHEREAS; the State Board and the County Board wish to provide for payment of the purchase price and the costs incident to the purchase of an agricultural conservation easement in the subject land; and

WHEREAS; the State Board and the County Board wish to provide for the enforcement of an agricultural conservation easement in the subject land.

NOW THEREFORE; in consideration of the mutual covenants herein contained, and other good and valuable consideration, the parties agree as follows:

### ARTICLE I

1. Upon acceptance and execution as set forth in Article XII, this Agreement shall constitute an Agreement For The Sale And Purchase Of An Agricultural Conservation Easement between the Grantor(s) and the Grantees.
2. The provisions of the Agricultural Area Security Law, P.L. 128, No. 43, June 30, 1981 (3 P.S.

Sections 901-915) as amended and the provisions of the Regulations adopted at 7 Pa. Code Ch. 138e are incorporated herein by reference and made a part thereof.

## ARTICLE II

1. Grantor(s) agree(s) to sell and convey to the Grantees their successors and assigns, and Grantees agree to purchase from Grantor(s) an interest in the subject land consisting of an agricultural conservation easement as defined in the Act and this Agreement (hereinafter "agricultural conservation easement"). The agricultural conservation easement shall be conveyed to the Grantees as joint tenants under the Act with the Commonwealth being a \_\_\_\_\_ percent joint owner and the County being a \_\_\_\_\_ percent joint owner.
2. The parties agree that the purchase price of \$\_\_\_\_\_ for the agricultural conservation easement to be purchased pursuant to this Agreement shall be paid at the time of the closing as set forth in Article VIII. The Commonwealth shall pay \$\_\_\_\_\_ and the County shall pay \$\_\_\_\_\_.
3. Upon payment of the purchase price and any reimbursement for costs incident to the purchase of the agricultural conservation easement as set forth in Article III, the allocation made to the County from the Agricultural Conservation Easement Purchase Fund shall be reduced by the amount paid by the Commonwealth.

## ARTICLE III

1. The State Board and the County Board agree that the costs set forth in the Statement of Costs submitted to the State Board by the County Board and attached as Exhibit "B" hereto are costs incident to the purchase of the agricultural conservation easement.
2. At closing, the Commonwealth shall deliver a check in the amount of \$\_\_\_\_\_ to the Grantor(s) as payment for the Commonwealth's portion of the purchase price. At closing, the Commonwealth shall also deliver a check in the amount of \$\_\_\_\_\_ to the County as payment for the costs incident to the purchase of the agricultural conservation easement so long as these costs actually have been incurred and approved by the State Board as part of the Statement of Costs.
3. Within 10 days after the closing of the purchase of the agricultural conservation easement, the County Board shall submit to the State Board a settlement statement, including an accounting for all funds received from the Commonwealth in connection with the purchase and a copy of the executed Deed of Agricultural Conservation Easement.
4. Within 10 days after the closing of the purchase of the agricultural conservation easement, the County Board may submit a request for payment of its unreimbursed costs incident to the purchase of the agricultural conservation easement to the State Board. Payment of such costs will be approved by the State Board at its next regularly scheduled meeting so long as such costs are reasonable, within the scope of the Statement of Costs, and the allocation of funds from the Agricultural Conservation Easement Purchase Fund to the County is sufficient to pay for such costs.
5. If the closing of the purchase of the agricultural conservation easement is not held within the time established pursuant to this Agreement, the County shall return immediately all funds received from the Commonwealth in connection with this Agreement.

## ARTICLE IV

Grantor(s) represent(s), warrant(s) to, and covenant(s) with the Grantees that:

1. Grantor(s) are adult individuals having the full power, capacity and authority to enter into this Agreement.
2. Grantor(s) have been advised and encouraged to have legal counsel review this Agreement on their behalf prior to signing it.

3. Grantor(s) have read this Agreement and understand its contents and that it restricts the use of the subject land to agricultural production and, knowing this, voluntarily enter into this Agreement.
4. The information and statements set forth in the Application Form, Locational Map, Soils Report and Crop Report furnished by the Grantor(s) to the County Board pursuant to 7 Pa. Code Section 138e.61 is true and correct and that all facts necessary to prevent the information and statements from being misleading have been disclosed.
5. Grantor(s) acknowledges that any violation of the terms of this Agreement or the Deed of Agricultural Conservation Easement, when delivered, shall entitle Grantees, their successors, assigns or designees to obtain an injunction against such violation from a court of competent jurisdiction along with an order requiring Grantor(s), his heirs, executors, administrators, successors or assigns to restore the subject land to the condition it was in prior to the violation, and recover any costs or damages incurred including reasonable attorney's fees. Such relief may be sought jointly, severally, or serially.

#### ARTICLE V

The County Board represents, warrants to, and covenants with the Grantor(s) and the State Board that:

1. The County Board has been duly established by the County and is validly existing under the laws of the Commonwealth of Pennsylvania.
2. The County Board has adopted rules and regulation for the administration of a countywide program for the purchase of agricultural conservation easements within agricultural security areas.
3. The County Board is in compliance with the Constitution and laws of the Commonwealth, including the Act and the Regulations issued pursuant to the Act and has full power and authority to consummate all transactions, execute all documents, including this Agreement, and perform all acts contemplated in this Agreement in the name of the County.
4. The County Board has reviewed the information and statements set forth by the Grantor(s) in the Application Form, Locational Maps, Soils Report, and Crop Report furnished to the County Board by the Grantor(s) pursuant to 7 Pa. Code Section 138e.61 and has found that the subject land is in an agricultural security area and qualifies for the purchase of an agricultural conservation easement under the Act and Regulations.
5. The County Board has furnished a Summary Report, Title Report and proposed legal description for the subject land to the State Board pursuant to 7 Pa. Code Section 138e.91 and has recommended the Commonwealth purchase an agricultural conservation easement in the subject land.
6. The County Board has complied with all provisions of the Act and Regulations in reviewing and recommending that the Commonwealth purchase an agricultural conservation easement in the subject land.
7. The information and statements contained in the Summary Report, Title Report and Proposed Legal Description furnished to the State Board by the County Board pursuant to 7 Pa. Code Section 138e.91 are true and correct and that all facts necessary to prevent the information and statements from being misleading have been disclosed.

#### ARTICLE VI

The State Board represents, warrants to, and covenants with the Grantor(s) and the County Board that:

1. The State Board is a departmental board within the Pennsylvania Department of Agriculture.
2. The State Board is in compliance with the Constitution and laws of the Commonwealth, including the Act and the Regulations, and has full power and authority to consummate all transactions, execute all documents, and perform all acts contemplated by this Agreement in the name of the Commonwealth.

## ARTICLE VII

1. Grantor(s) shall not develop or use the subject land for any purpose other than agricultural production.
2. Grantees or their designees or either of them jointly or severally, shall have the right to prevent the development or use of the subject land for any purpose other than agricultural production.
3. Agricultural production consists of, and is limited to, the production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of the crops, livestock or livestock products if more than 50% of the processed or merchandised products are produced on the subject land.

Crops, equine, livestock and livestock products include, but are not limited to:

- (a) Field crops, including corn, wheat, oats, rye, barley, soybeans, speltz, buckwheat, hay, potatoes and dry beans;
  - (b) Fruits, including apples, peaches, grapes, cherries, pears and berries;
  - (c) Vegetables, including tomatoes, pumpkins, snap beans, cabbage, carrots, beets, onions, sweet corn and mushrooms;
  - (d) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers;
  - (e) Livestock and livestock products, cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs, and furs;
  - (f) Timber, wood and wood products derived from trees; and
  - (g) Aquatic plants and animals and their by-products.
  - (h) 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."
4. This agricultural conservation easement shall not prevent the actions permitted under Section 14.1(c)(6)(i)-(v) of the Act.
  5. This agricultural conservation easement shall be perpetual in duration.
  6. Grantees' exercise or failure to exercise any right conferred by the agricultural conservation easement shall not be deemed to be management or control of activities on the subject land for purposes of enforcement of the Act of October 18, 1988, (P.L. 756, No. 108), known as the Hazardous Sites Cleanup Act.
  7. Grantor(s), his heirs, executors, administrators, successors or assigns agree to hold harmless, indemnify and defend Grantees, their successors or assigns from and against all liabilities and expenses arising from or in any way connected with all claims, damages, losses, costs or expenses, including reasonable attorneys fees, resulting from a violation or alleged violation of any State or Federal environmental statute or regulation, including but not limited to, statutes or regulations concerning the storage or disposal of hazardous or toxic chemicals or materials. The obligation imposed by this paragraph shall not merge with the Deed of Agricultural Conservation Easement, but shall survive the closing.

## ARTICLE VIII

1. The closing of the sale and purchase set forth in this Agreement shall occur on a date to be established by the parties which date shall be no more than 120 days from the date of complete execution of this Agreement by the Commonwealth. Closing shall be held at \_\_\_\_\_ or in another location in \_\_\_\_\_ County, Pennsylvania as agreed among the parties in writing.

2. At closing, Grantor(s) shall deliver to Grantees a fully executed Deed of Agricultural Conservation Easement in the form attached as Exhibit “C” hereto. Grantor(s) further agrees to execute and deliver to Grantees any other documents necessary to record such Deed of Agricultural Conservation Easement. The County Board shall record the Deed of Agricultural Easement immediately following the closing.

#### ARTICLE IX

1. At the time of the closing as set forth in Article VIII of this Agreement, the agricultural conservation easement shall be free and clear of all liens, mortgages, options, rights of others in surface mineable coal, land use restrictions, and other encumbrances except as set forth below:
2. Grantees’ obligation to purchase this agricultural conservation easement set forth in this Agreement is conditioned upon Grantor(s) being able to convey the agricultural conservation easement free and clear of all encumbrances except as set forth in this Article IX. Should Grantor(s) be unable to convey the agricultural conservation easement as set forth in this Agreement, Grantees may, at Grantees’ sole option and discretion terminate this Agreement or extend the time for closing by a period of up to thirty days. Should Grantor(s) be unable to convey the agricultural conservation easement as set forth in this Agreement at the expiration of such thirty days extension, this Agreement shall terminate and Grantees shall have no further obligation to proceed to closing.
3. At closing, the County Board shall provide a title insurance policy naming the grantees as the insured and issued by a Title Insurance Company that is authorized to issue title insurance in the Commonwealth of Pennsylvania. Such title insurance policy shall fully insure Grantees’ interest in the subject land. All exceptions to such title insurance policy, except as noted in paragraph 1, shall be removed prior to closing. The cost of such title insurance policy shall be paid by the County Board and shall be considered a cost incident to the purchase of the agricultural conservation easement set forth in this Agreement.

#### ARTICLE X

The information and statements set forth in the Application Form, Locational Map, Soils Report, and Crop Report, furnished by the Grantor(s) to the County Board pursuant to 7 Pa. Code Section 138e.61, and the Summary Report, Title Report, and Proposed Legal Description furnished to the State Board by the County Board pursuant to 7 Pa. Code Section 138e.91 are incorporated in and made a part of this Agreement by reference thereto. Should any of the information set forth in the documents referenced in this Article X be other than as represented in such documents, the State Board may, at the State Board’s sole option and discretion, terminate this Agreement, waive such nonconformity, or extend the time for the closing of the sale and purchase set forth in this Agreement for thirty days. A waiver of a nonconformity pursuant to this Article X must be in writing and signed by an authorized official of the State Board. Should the State Board choose to extend the time for the closing of the sale and purchase pursuant to this Article X, the State Board shall provide Grantor(s) and the County Board with a written statement of the nonconformity which must be corrected prior to closing. Should Grantor(s) fail to correct such nonconformity within such thirty day period, the Grantees’ obligation to purchase the agriculture conservation easement set forth in this Agreement shall terminate.

#### ARTICLE XI

1. All taxes imposed upon this sale and purchase of an agricultural conservation easement or the recording of the Deed of Agricultural Conservation Easement by any taxing authority shall be paid by the Grantor(s) at the time of closing.
2. All fees levied for the recording of the Deed of Agricultural Conservation Easement shall be paid by the County at the time of the closing. The obligations imposed on the respective parties by this Article XI shall not merge with the Deed of Agricultural Conservation Easement, but shall survive the closing.

## ARTICLE XII

Upon execution by the Grantor(s) this document shall constitute an offer by the Grantor(s) to sell and convey an agricultural conservation easement to the Grantees. This offer shall be deemed to be accepted by the Grantees at such time as the State Board approves the recommendation of the County Board to purchase an agricultural conservation easement in the subject land. This Agreement shall become effective only upon acceptance by the Grantees and approval and execution by all persons designated on the signature page or pages of this Agreement. The failure of the Grantees to accept and execute this Agreement shall terminate the obligations of all parties to this Agreement.

## ARTICLE XIII

1. The time set for the closing and all other times set forth in this Agreement, shall be considered to be of the essence of this Agreement. The failure of a party to perform an action within the time required in this Agreement shall be considered to be a material breach of this Agreement.
2. This Agreement is expressly conditioned upon the availability of funds for the purpose of funding the purchase of the agricultural conservation easement provided for herein. In the event that such funds are not available, Grantees' obligations under this Agreement shall terminate.
3. Any amendment or modification of the terms of this Agreement shall have no force or effect unless it is in writing and signed by all parties hereto.
4. This agreement and all other agreements executed pursuant hereto shall be deemed to be contracts made under the laws of the Commonwealth of Pennsylvania and for all purposes, shall be construed in accordance with the laws of such Commonwealth.
5. The Grantor(s) and the County Board shall comply with the provisions of the Contractor Integrity Clause, Exhibit D and the Nondiscrimination Clause, Exhibit E, attached hereto and incorporated herein.
6. No terms or provisions of this Agreement shall be deemed waived, and no breach excused, unless such waiver or consent to a breach shall be in writing and signed by an authorized official of the Commonwealth. Any waiver of a provision or consent to a breach, whether expressed or implied, shall not constitute a waiver of, or consent to, any other subsequent breach.
7. This Agreement may be assigned by Grantor(s) without the prior consent of Grantees (if applicable).



# Deed of Agricultural Conservation Easement



## DEED OF AGRICULTURAL CONSERVATION EASEMENT TO THE COMMONWEALTH OF PENNSYLVANIA AND A COUNTY JOINTLY IN PERPETUITY

THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT, made this \_\_\_\_ day of 20 \_\_\_\_ by and between \_\_\_\_\_ hereinafter, “Grantor”) and the Commonwealth of Pennsylvania and the County of Wayne, Pennsylvania (hereinafter collectively referred to as “Grantees”) in joint ownership pursuant to the Agricultural Area Security Law (P.L. 128, No. 43) as amended (hereinafter “Act”) is made pursuant to the Act.

WHEREAS, Grantor is the sole owner of all that certain land situate in \_\_\_\_\_ Township, \_\_\_\_\_ County, Pennsylvania more particularly described in Exhibit “A” attached hereto consisting of \_\_\_\_\_ acres and all buildings and improvements erected thereon (“the subject land”);

AND WHEREAS, the State Agricultural Land Preservation Board has determined to purchase an agricultural conservation easement in the subject land pursuant to the Act;

AND WHEREAS, the Agricultural Land Preservation Board of \_\_\_\_\_ County, Pennsylvania has determined to purchase an agricultural conservation easement in the subject land pursuant to the Act;

AND WHEREAS, all holders of liens or other encumbrances upon the subject land have agreed to release or subordinate their interests in the subject land to this Deed of Agricultural Conservation Easement and to refrain from any action inconsistent with its purpose;

NOW THEREFORE, in consideration of the sum of \$ \_\_\_\_\_ dollars, the receipt and sufficiency of which is hereby acknowledged, Grantor does voluntarily grant, bargain and sell, and convey to the Commonwealth of Pennsylvania as \_\_\_\_\_ percent joint owner and the County of \_\_\_\_\_, Pennsylvania as \_\_\_\_\_ percent joint owner, their successors and assigns, (hereinafter “Grantees”) and the Grantees voluntarily accept, an agricultural conservation easement in the subject land, under and subject to the Act and the following terms and conditions:

1. 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 purpose of this Deed, “crops, equine, livestock and livestock products” include, but are not limited to:

- (a) Field crops, including corn, wheat, oats, rye, barley, soybeans, speltz, buckwheat, hay, potatoes and dry beans;
- (b) Fruits, including apples, peaches, grapes, cherries, pears and berries;
- (c) Vegetables, including tomatoes, pumpkins, snap beans, cabbage, carrots, beets, onions, sweet corn and mushrooms;
- (d) Horticultural specialties, including nursery stock ornamental shrubs, ornamental trees and flowers;
- (e) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs, and furs;
- (f) Timber, wood and other wood products derived from trees; and
- (g) Aquatic plants and animals and their byproducts.

- (h) 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."

Except as permitted in this Deed, neither Grantor nor his agents, heirs, executors, administrators, successors and assigns, nor any person, partnership, corporation or other entity claiming title under or through Grantor, or their agents, shall suffer, permit, or perform an activity on the subject land other than agricultural production or commercial equine activities.

2. Construction of Buildings and Other Structures - The construction or use of any building or other structure on the subject land other than as existing on the date of the delivery of this Deed is prohibited except that:

- (a) The erection of fences for agricultural production or a commercial equine activity and protection of watercourses such as lakes, streams, springs and reservoirs is permitted.
- (b) The construction of one additional residential structure is permitted if:
  - (i) The construction and use of the residential structure is limited for the landowner's principal residence or for the purpose of providing necessary housing for persons employed in farming the subject land on a seasonal or full-time basis.
  - (ii) No other residential structure has been constructed on the restricted land at any time since the delivery of the Deed,
  - (iii) The residential structure and its curtilage occupy no more than two acres of the restricted land, and
  - (iv) The location of the residential structure and its driveway will not significantly harm the economic viability of the subject land for agricultural production or a commercial equine activity.
- (c) The construction or use of any building or other structure for agricultural production or a commercial equine activity is permitted. The maximum building coverage may be restricted if the County Agricultural Conservation Easement Purchase Program approved by the State Board imposes such a restriction.
- (d) 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 curtilage of the residential structure it replaces.
- (e) The renovation or modification of an existing residential structure, or an addition to an existing residential structure, is permitted if it would not increase the curtilage of the residential structure.
- (f) The renovation or modification of an existing agricultural building or structure, or an addition to an existing agricultural building or structure, is permitted. The maximum building coverage may be restricted if the County Agricultural Conservation Easement Purchase Program approved by the State Board imposes such a restriction.

3. Subdivision - The land under the Agricultural Conservation Easement is subject to the Subdivision Guidelines of the County of Wayne, Agricultural Land Preservation Program, approved by the State Agricultural Land Preservation Board on February 19, 2014, as may be attached hereto. If the subject land is subdivided, the Deeds to all of the subdivided parcels shall state on which of the subdivided parcels the residential structure permitted by this Deed may be constructed. Deeds to all other parcels shall recite that no additional residential structure is permitted.

4. Utilities - The granting of rights-of-way by the Grantor, his heirs, executors, administrators, successors and assigns, or any person, partnership, corporation or other entity claiming title under or through Grantor in and through the subject land for the installation, transportation, or use of, lines for water, sewage, electric, telephone, coal by underground mining methods, gas, oil or oil products is permitted. The term "granting of rights-of-way" includes the right to construct or install such lines. The construction or installation of utility lines other than of the type stated in this paragraph is prohibited on the subject land.

5. Mining - The granting of leases, assignments or other conveyances or the issuing of permits, licenses or other authorization for the exploration, development, storage or removal of coal by underground mining methods, oil and gas by the owner of the subject land or the owner of the underlying coal by underground mining methods, oil and gas or the owner of the rights to develop the underlying coal by underground mining methods, oil and gas, or the development of appurtenant facilities related to the removal of coal by underground mining methods, oil or gas development or activities incident to the removal or development of such minerals is permitted.

6. Rural Enterprises - Customary part-time or off-season minor or rural enterprises and activities which are provided for in the County Agricultural Easement Purchase Program approved by the State Board are permitted.

7. Soil and Water Conservation - All agricultural production or commercial equine activity on the subject land shall be conducted in accordance with a conservation plan approved by the County Conservation District or the County Board. Such plan shall be updated upon any change in the basic type of agricultural production or commercial equine activity being conducted on the subject land. In addition to the requirements established by the County Conservation District or the County Board, the conservation plan shall include an installation schedule and maintenance program and a nutrient management component which, when completely implemented, will improve and maintain the soil, water and related plant and animal resources of the land and shall require that:

- (i) The use of the land for growing sod, nursery stock ornamental trees, and shrubs does not remove excessive soil from the subject land, and
- (ii) The excavation of soil, sand, gravel, stone or other materials for use in agricultural production or commercial equine activities on the land is conducted in a location and manner that preserves the viability of the subject land for agricultural production or commercial equine activity.

As part of the settlement documents, the executed Conservation Plan Agreement shall be recorded with the Deed of Easement at the County Recorder of Deeds.

8. Responsibilities of Grantor Not Affected - Except as specified herein, this Deed does not impose any legal or other responsibility on the Grantee, its successors or assigns. Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the subject land and all improvements erected thereon. Grantor shall continue to be solely responsible for the maintenance of the subject land and all improvements erected thereon. Grantor acknowledges that Grantee has no knowledge or notice of any hazardous waste stored on or under the subject land. Grantee's exercise or failure to exercise any right conferred by the agricultural conservation easement shall not be deemed to be management or control of activities on the subject land for purposes of enforcement of the Act of October 18, 1988, (P.L. 756, No. 108), known as the Hazardous Sites Cleanup Act.

Grantor, his heirs, executors, administrators, successors or assigns agree to hold harmless, indemnify and defend Grantee, its successors or assigns from and against all liabilities and expenses arising from or in any way connected with all claims, damages, losses, costs or expenses, including reasonable attorneys fees, resulting from a violation or alleged violation of any State or Federal environmental statute or regulation including, but not limited to, statutes or regulations concerning the storage or disposal of hazardous or toxic chemicals or materials.

9. Enforcement - Annually, Grantee, its successors, assigns or designees shall have the right to enter the subject land for the purpose of inspecting to determine whether the provisions of this Deed are being observed. Written notice of such annual inspection shall be mailed to Grantor, his heirs, executors, administrators, successors or assigns at least ten days prior to such inspection. The annual inspection shall be conducted between the hours of 8 a.m. and 5 p.m. on a weekday that is not a legal

holiday recognized by the Commonwealth of Pennsylvania or at a date and time agreeable to the county and the landowner.

Grantee, its successors, assigns or designees shall also have the right to inspect the subject land at any time, without prior notice, if Grantee has reasonable cause to believe the provisions of this Deed have been or are being violated.

Grantor acknowledges that any violation of the terms of this Deed shall entitle Grantee, its successors, assigns or designees to obtain an injunction against such violation from a court of competent jurisdiction along with an order requiring Grantor, his heirs, executors, administrators, successors or assigns to restore the subject land to the condition it was in prior to the violation, and recover any costs or damages incurred including reasonable attorney's fees. Such relief may be sought jointly, severally, or serially.

10. Duration of Easement – The agricultural conservation easement created by this Deed shall be a covenant running with the land and shall be effective in perpetuity. Every provision of this Deed applicable to Grantor shall apply to Grantor's heirs, executors, administrators, successors, assigns, agents, and any person, partnership, corporation or other entity claiming title under or through Grantor.

11. Conveyance or Transfer of the Subject Land – Grantor, his heirs, executors, administrators, successors or assigns, and any person, partnership, corporation, or other entity claiming title under or through Grantor, shall, within thirty (30) days of a change in ownership or within any lesser period prescribed in the county program, notify the county agricultural land preservation board and the Pennsylvania Department of Agriculture in writing of any conveyance or transfer of ownership of the subject land. Such notification shall set forth the name, address and telephone number of the Grantor and the party or parties to whom ownership of the subject land has been conveyed or transferred, and the price per acre or any portion thereof and a reference to the volume and page in which the transfer has been recorded by the County Recorder of Deeds.

This obligation shall apply to any change in ownership of the subject land. Whenever interest in the subject land is conveyed or transferred to another person, the deed conveying or transferring such land shall recite in verbatim the language of the easement as set forth in this deed.

12. Applicability - Every provision of this Deed applicable to Grantor shall apply to Grantor's heirs, executors, administrators, successors, assigns, agents, and any person, partnership, corporation or other entity claiming title under or through Grantor.

13. Interpretation – This Deed shall be interpreted under the laws of the Commonwealth of Pennsylvania. For purposes of interpretation, no party to this Deed shall be considered to be the drafter of the Deed. All provisions of this Deed are intended, and shall be interpreted, to effectuate the intent of the General Assembly of the Commonwealth of Pennsylvania as expressed in Section 2 of the Act.

To have and to hold this Deed of Agricultural Conservation Easement unto the Grantee, its successors and assigns in perpetuity.

AND the Grantor, for himself, his heirs, executors, administrators, successors and assigns does specially warrant the agricultural conservation easement hereby granted.

IN WITNESS WHEREOF, the undersigned have duly executed this Deed on the day first written above.

# DEED ADDENDUM A

## Agricultural Area Security Law Section 138e.225

### Subdivision of Restricted Land

The Wayne County Agricultural Land Preservation Board regulations allow for **limited subdivision**<sup>1</sup> (except as outlined below) in accordance with the Subdivision Guidelines of the County of Wayne Agricultural Land Preservation Program adopted on October 17, 2013 by the Wayne County Agricultural Land Preservation Program.

The Wayne County Agricultural Land Preservation Board may also allow the subdivision of not more than two (2) acres for the construction of one additional residence, for the use of a principal residence or housing for seasonal or full-time farm employees, if the construction cannot be accomplished by land development.

<sup>1</sup>**Subdivision** - The division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development.

## Agricultural Area Security Law Section 138e.227

### Landowner's Duties with Respect to Change of Ownership

(a) A deed conveying an interest in the restricted land shall set forth the language of the easement restrictions verbatim. Wayne County Agricultural Land Preservation Board requires a **copy of the original easement deed**, along with this deed attachment, to be attached to any and all deeds conveying a change in easement ownership.

(b) Within 30 days of a change in ownership of the restricted land, the prior owner shall notify the County Board of the name and address of the new owner, provide a copy of the deed, provide a statement of the price per acre and a reference to the volume and page in which the transfer has been recorded by the County Recorder of Deeds.

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Landowner Signature

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Date

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Landowner Signature

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Date