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Introduction

Luzerne County covers an area of approximately 569,600 acres or 890 square miles. About 9.8 % of this land is pasture, 3.1% is row crops and 73.4 % is forest. According to the 2017 Census of Agriculture from the Pennsylvania Department of Agriculture, Luzerne County has 451 farms comprised of 49,087 acres. Since 2012 the number of farms has decreased by 105. As of the 2010 census, the population was 320,918, making it the most populous county in the northeastern part of Pennsylvania.

Agriculture is vital to the economy of Luzerne County. The value of agricultural production totaled \$17.7 million as reported in the 2017 Census of Agriculture from the Pennsylvania Department of Agriculture. Agriculture represents 0.6% of employment in Luzerne County. Since 2012 to 2017 there has been a 19% decrease in farm acres. Agriculture supports a solid infrastructure of related agribusinesses in Luzerne County and the availability of land for farming is imperative.

Luzerne County is a viable and varied agricultural county. Soil types here are conducive to farming. The farmland varies from flat river and creek bottomland to gently rolling slopes, to steeper hillsides. Various types of livestock are raised in the County. The crops produced range from the traditional feed and forage crops (field corn, oats, soybeans, hay, etc.) to fresh market and processing fruits and vegetables. Christmas trees, lumber and flowers (cut, potted, bedding, etc.) are additional agricultural commodities produced successfully within Luzerne County.

The inherent value of Luzerne County's farmland goes far beyond its economic value. Farmland plays a vital environmental role by providing habitat for wildlife, groundwater recharge areas and needed open space to an increasingly urbanizing region. This open or green space is aesthetically pleasing to both residents of and visitors to our area.

Farm and forest land give Luzerne County its scenic character and link the present to the County's agricultural past. As farmland is lost, the County loses a major asset that contributes to the region's quality of life.

Farmers are faced with increasing competition for land. Industrial, commercial, governmental, and residential building plans are presented to local officials almost daily. Luzerne Conservation District records show that over 3,200 acres in our County have had their land use changed to urban use since 1996. This figure does not even include single private residential lots.

Land purchased for farming is typically financed with money from non-farming enterprises or off-farm income. Not only is it becoming increasingly difficult to purchase land for farming, it is nearly as difficult to economically justify its purchase. Consequently, land is sold for non-agricultural uses that are more economically advantageous for the landowner, resulting in a decline in the number of farms in Luzerne County.

Many factors that have caused competition for land, such as good highway systems, proximity to large population centers, and a reasonable climate, are also factors that are advantageous to agriculture. Also, such agricultural diversity in Luzerne County offers proof for a stable future. Farming is a way of life here, past, present and future.

Background

In 1987, the voters of Pennsylvania passed a referendum to allow a \$100 million bond issue to preserve farmland. The Pennsylvania legislature passed Act 149 in 1988 to allow counties to utilize the \$100 million fund to purchase agricultural conservation easements. In 1993, cigarette tax money was earmarked for easement purchases. The 1996 Farm Bill included federal matching funds for state and local farmland protection programs, and this continues today.

In August of 1997, as a result of an Agriculture Issues Assessment of farmers and agriculture-related businesses performed by Luzerne County Penn State Extension, a self-appointed task force was created to study the respondents' issue of greatest concern – farmland preservation. This group organized a presentation in November 1997 at Luzerne County Community College by the State's Director of the Agricultural Land Preservation Program. The Director spoke to a standing-room-only audience of farmers and concerned citizens, explained the program and fielded questions. The self-appointed task force grew in number. In April of 1998, the task force gave a presentation to the Luzerne County Commissioners, hereinafter referred to as the Previous County Government Administration (PCGA) and urged them to adopt a resolution to establish a farmland protection program for Luzerne County. In October of 1998, the PCGA publicly committed to establishing such a program. They appointed an Agricultural Easement Purchase Program Study Commission to prepare for the program's inception on January 1, 2000.

The PCGA acknowledged the great importance of preserving and maintaining the agricultural land in the County. In 1999 per a resolution (see Appendix A, County Resolution) the PCGA appointed the Luzerne County Agricultural Land Preservation Board (The name has been changed to the "Luzerne County Farmland Preservation Board"). As a seven-member board, (see Appendix B, Luzerne County Farmland Preservation Board) their primary purpose is to preserve farmland in Luzerne County by administering a program to purchase agricultural easements from landowners in the County (see Appendix C, Bylaws of the Luzerne County Farmland Preservation Board). By doing so, the County retains productive areas for farming while promoting farming as a long-term sustainable use of the land.

Purpose

It is the purpose of the Luzerne County Farmland Preservation Program to protect and promote the continued agricultural use of valuable agricultural lands by acquiring agricultural

conservation easements, which prevent the development or improvement of the land for any purpose other than agricultural production and related agricultural activities.

Further, it is the purpose of this program:

- To protect and promote the continued agricultural use of valuable agricultural lands by acquiring agricultural conservation easements, which prevent the development or improvement of the land for any purpose other than agricultural production and related agricultural activities.
- To protect viable agricultural lands by acquiring agricultural conservation easements which prevent the development or improvement of the land for any purpose other than agricultural production.
- To encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security of land use.
- To assure conservation of viable agricultural lands to protect the agricultural economy of Luzerne County.
- To provide compensation to landowners in exchange for their relinquishment of the right to develop their private property.
- To administer a program for purchasing and receiving gifts of agricultural conservation easements on behalf of the County.
- To adopt rules and regulations for the administration of a county program for the purchase of agricultural conservation easements within agricultural security areas. The Board shall execute all agreements or other documents necessary to affect the purchase of such agricultural conservation easements within agricultural security areas in the name of Luzerne County and/or jointly, with a local government unit or the Commonwealth of Pennsylvania and the federal government.
- To encourage the use of additional farmland preservation techniques through public and private organizations in Luzerne County.
- To perform such other duties and responsibilities as may be authorized pursuant to the Agricultural Security Area Law.
- To encourage financial partnerships between state and local governments with non-profit entities in order to increase the funds available for agricultural conservation easement purchases.
- To permit commercial equine activity in compliance with Act 61 of 2005.

Public Information Program

The Luzerne County Farmland Preservation Board will publicize the County Program through the publication and dissemination of newsletters, information brochures, annual reports, press releases, and through public meetings, workshops, extension service mailings, and direct mailings to farmers participating in agricultural security areas.

All meetings of the County Board will be subject to the Act of July 3, 1986 (65 P.S. §§271-286), known as the Sunshine Act, and the Act of June 21, 1957 (P.L. 390, No. 212) (65 P.S. §§66.1-66.4), referred to as the Right-To-Know Law, relating to the inspection and copying of public records.

Agricultural Conservation Easement Purchase Program

Luzerne County, through its Farmland Preservation Board, intends to acquire perpetual agricultural conservation easements in order to preserve viable farmland in Luzerne County. Conservation easements may be acquired with State, County or local Municipality or a combination of County and State funds. The Luzerne Conservation District is responsible for monitoring and enforcing all easements purchased with public funds.

Conservation easements will be accepted only through voluntary sales from within approved and duly recorded Agricultural Security Areas. Those landowners who are interested in applying for conservation easement sales on qualified land will have their applications ranked and prioritized based on various location and site factors and the viability of the farming operation. An appraisal or appraisals of the conservation easement's value will be the determinant of the maximum compensation that can be offered.

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 respective landowner may be made in a lump sum, like-kind exchange, or in installment payments over a period up to five years, or other deferred basis.

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

The Luzerne County Farmland Preservation Board has established a deadline for submission of applications for purchase of conservation easements as outlined later in this report.

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

The definition of terms found in this document can be found in Appendix N, Definition of Terms.

Minimum Eligibility Criteria

In order for a farmland site to be considered for easement purchase, a landowner must submit a completed application form for the purchase of a conservation easement. The Luzerne County Farmland Preservation Board will accept all applications for further processing for the purchase of conservation easements if the application meets the minimum criteria listed below. Failure of the applicant to meet the minimum criteria will result in rejection of that application. Therefore, the applicant will not receive the benefit of having his/her application ranked. All applicants that have been rejected by the Board for the reason of not meeting the minimum criteria will be given written notice of the rejection along with an explanation of the reason(s) why the application was rejected, within sixty (60) days of the application deadline, the applicant will have 30 days to correct and resubmit. If a property is sold during application and/or evaluation process, the new owner(s) may request a continuance of the evaluation.

Election by County Board: The Agricultural Security Area Law (at 3 P.S. Section 914.1(d)(1)(v)(I) affords the county the option to acquire an agricultural conservation easement on farmland tracts with as few as 35 contiguous acres under certain circumstances. The Luzerne County Board does not elect to exercise this option. The minimum eligibility criteria for agricultural conservation easement purchases includes the following criteria as contained in §138e.16. Commercial equine activity (see Appendix O, Commercial Equine Activities Amendment) must meet the minimum criteria as established below.

State Minimum Eligibility Criteria

The farmland tract shall meet the following requirements:

1. The farmland tract shall be one or more of the following:
 - a. Be located in an approved and duly recorded Agricultural Security Area consisting of 500 acres or more by the time of application to the Luzerne County Agricultural Preservation Program.
 - b. Bisected by the dividing line between two local government units, having the majority of its viable agricultural land within an agricultural security area of 500 acres or more and the remainder in another local government unit outside of an agricultural security area.
 - c. Bisected by dividing line between the purchasing county and an adjoining county, having the land located in the purchasing county and an agricultural security area of 500 acres or more and the remainder in another county outside of an agricultural security area, and with respect to which one of the following applies:
 - i. A mansion house (farmhouse) is on the tract and located within the purchasing county.
 - ii. 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.
 - iii. When there is no mansion house on the farmland tract, the majority of the tract's viable agricultural land is located within the purchasing county.
2. The farmland tract shall be one or more of the following:

- a. Contiguous acreage of at least 50 acres in size.
- b. Contiguous acreage of at least 10 acres in size and utilized for a crop unique to the area.
- c. Contiguous acreage of at least 10 acres in size and 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 in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A Section 170(h)(3)).

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

3. The farmland tract shall contain at least 50% of soils which are available for agricultural production and are of land capability classes I through IV, as defined by the soil surveys published by the USDA-NRCS.
4. The farmland tract shall contain greater of 50% or 10 acres of harvested cropland, pasture or grazing land.

Conservation Reserve Program (CRP) and Conservation Reserve Enhancement Program (CREP) acreage does not qualify as harvested cropland “in current use” for minimum eligibility criteria; however, the USDA maintains the field yield cropping history for cropland on the farm.

In addition, the County minimum criteria include:

1. That the farmland tract has no pre-existing perpetual restriction against development or farming.
2. Only perpetual conservation easements will be purchased.
3. The maximum conservation easement purchase price using state and/or county funds cannot exceed \$3,500 per acre. Any farm that has an appraised easement value exceeding \$3,500 per acre will be considered for a conservation easement if the landowner is willing to accept \$3,500 or less per acre.
4. Any offer to sell a perpetual easement at a price less than the appraised easement value may qualify as a conservation contribution, resulting in a federal income tax deduction for the contributor. The Board recommends that applicants seek tax advice on their own regarding the above-mentioned deduction.
5. The farmland tract shall be used as part of an active farming operation generating annual farm receipts.

6. Farms producing crops unique to the area for commercial purposes will be considered on a case by case basis for easement purchase. Crops that may qualify include the following:
 - a. Grapes-table or wine grapes
 - b. Tobacco
 - c. Speltz- a small grain grown as an alternative to federally regulated feed grains
 - d. Orchard crops - commercial or agricultural enterprise
 - e. Mushrooms - commercial or agricultural enterprise
 - f. Tomatoes – commercially grown for fresh marketing or processing
 - g. Cantaloupes – commercially grown for fresh market
 - h. Snap beans – commercially grown for processing
 - i. Pumpkins – commercially grown for fresh market
 - j. Strawberries – commercially grown for fresh market or processing
 - k. Potatoes – commercially grown for fresh market or processing
 - l. Sweet corn - commercially grown for fresh market or processing
 - m. Christmas trees – grown as a rotation crop with a management plan for cultivation, harvesting and replacement of Christmas trees
 - n. Floriculture crops – grown as commercial agricultural enterprise
 - o. Maple syrup – commercial agricultural enterprise
 - p. Sod, nursery stock, ornamental trees and shrubs – grown for commercial agriculture enterprise with the Deed of Easement restriction that removal of excess soil is prohibited
 - q. Crown vetch – plugs or seed grown as a commercial agricultural enterprise
 - r. Hemp - commercial or agricultural enterprise

Significant Agricultural Areas in Luzerne County

The Luzerne County Farmland Preservation Board has adopted a planning map to guide easement purchases. (See Appendix I – Map of Significant Agricultural Areas). The map identifies Significant Agricultural Areas in Luzerne County. Also see Appendix G – List of Mapping Units Found in Luzerne County that Qualify as Prime Farmland and Appendix H – List of Soil Mapping Units Found in Luzerne County that Qualify as Additional Farmland of Statewide Importance. These areas will be special focus areas for farmland preservation activities.

Other viable farmland areas may exist in the County, but from a County perspective, and based on the intention of protecting larger concentrated areas of farmland, the designated areas must take priority. It should be noted, however, that the boundaries of these areas are not intended to be hard-edged or immutable. Although the areas were identified on a parcel by parcel basis on individual Township maps at a scale of 1"=2,000', it was necessary to generalize these areas on the County-wide map. The individual Township maps can be used to identify specific parcels and it is possible that additional parcels will be identified in the future.

Procedures for Easement Evaluation and Purchase

This section details the procedures for conservation easement evaluation and purchase. The majority of this text is derived directly from the regulations promulgated by the Pennsylvania Department of Agriculture.

All conservation easement applications and other documentation shall be done in accordance with the model formats included in the State guidebook and any future revisions thereto. (§14.1 (a)(3)(xv) and (b)(2)(xiv)).

I/We understand that in situations where the applicant(s) withdraws from easement sale considerations, breaches or modifies 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.

Deadline to Apply

Owners of qualified land may offer to sell a conservation easement by applying to the County Board by July 1, 2000 or thereafter by February 1st of each year. This program becomes effective on January 1, 2000. The Board may, at its discretion, modify an application deadline.

Each year's allocation of state funding may be encumbered over 2 calendar years.

Making Application

A separate application shall be required for each farmland tract offered for easement purchase. The farmland tract may be composed of non-contiguous parcels, parcels with different property tax numbers, or separately deeded properties. The farmland tract must meet the minimum criteria for acreage. The applicant shall provide a completed application form, (a tax assessment map with the farm outlined on the map, deed(s), recorded book and page number of the ASA, and a crop and/or livestock report). The program administrator will provide a colored soils map, an uncolored soils map, a topographical map and a soils report.

A. APPLICATION FORM: The Agricultural Conservation Easement Application Form can be found in Appendix D and must be completed by the applicant.

- Printed name, address, telephone number of applicant and signature of all owners of the farmland tract. If there are multiple owners, each one must sign.
- County, municipality and agricultural security area in which the farmland tract is located.
- Total acreage of farm as shown on the deed(s) or instruments of record.

- Number of acres in the tract proposed for easement purchase.
- Street address of farm and directions from the nearest State route.
- Most current deed reference (book and page). In the case of multiple deeds, references for all the deeds shall be provided.
- Copy of the deed(s).
- Recorded book and page number of the ASA.
- County tax map numbers or PIN (Property Identification Number).
- A current copy of the USDA-NRCS conservation plan, reflecting the current agricultural practices, if any, that has been approved by the Luzerne Conservation District.
- A copy of any Nutrient Management Plan, if applicable.
- Name, address and telephone number of the person to be contacted to evaluate the farmland tract.

B. LOCATION MAP: The applicant must provide the following:

- A tax map or official map used for tax assessment purposes showing the farmland proposed for protection with all tax parcel numbers clearly indicated.

C. SOILS REPORT: The program administrator will provide a soils report and a color-coded soils map for the farmland tract proposed for easement purchase.

D. FILING FEE: Applicant must submit a nonrefundable \$25 filing fee with each application. If the same application is resubmitted in future years (for the same parcel of land), the \$25 filing fee will be waived.

E. SOIL CONSERVATION PLAN: The applicant is required to have a soil conservation plan, at or before closing of the purchase in accordance with Appendix L, Responsibility of Owner, §138e.221-227. The Conservation Plan shall, at a minimum, limit soil loss from accelerated erosion to the soil loss tolerance (T) over the planned crop rotation and address Animal Heavy Use Areas. The Conservation Plan must be current to the landowner and operator and address all areas of the current agricultural operation including harvested cropland, pasture or grazing land and headquarters if included in the application.

F. NUTRIENT MANAGEMENT PLAN: The Nutrient Management Plan shall be in accordance with Nutrient Management Act. If a Nutrient Management Plan is not required, a Manure Management Plan is required for applications where manure or agricultural process wastewater is applied to the land. A copy of the Manure Management Plan shall be submitted with the application. The Manure Management Plan shall follow the current requirements of the Manure Management for Environmental Protection manual and supplements published by Pennsylvania Department of Environmental Protection (DEP).

Evaluation and Ranking of Applications

The Luzerne County Farmland Preservation Program Administrator will review each application to determine if it is complete and meets the minimum eligibility criteria. If the application is complete and the minimum criteria are met, the County Administrator will visit the farm, gather information and discuss the County Program with the applicant. The County Administrator will evaluate all timely applications which meet the minimum eligibility criteria and then rank them according to the County's farmland ranking system. The County Administrator will meet with the Board to discuss the applications received, the evaluation scores, and available funding. The Board will propose and take action on the farms selected for preservation.

A farmland ranking system utilizing the Land Evaluation and Site Assessment (LESA) system has been devised to rank applications for conservation easement purchase. The criteria addressed within this ranking system are in addition to the minimum criteria required by the State. All qualified farms will be prioritized and ranked according to this system.

In compliance with §138e.63, the farmland ranking score shall determine the order in which farmland tracts are selected by the County Board for appraisal. The County Board shall review the results of the ranking. Selection for appraisal shall be made in descending order of farmland ranking score. All applicants (new and old) shall be notified of the ranking results subsequent to the County Board's selection of the farmland tract(s) for appraisal.

If an applicant, after his farm has been ranked, decides to alter the application from the manner in which it was ranked for that calendar year, the applicant must withdraw the application until the next round of applications are accepted. If the landowner withdraws the application, or changes the acreage to be included after an appraisal has been completed, he is then responsible for any additional costs resulting from the board's selection of the site, including appraisal costs, survey, or other incidental costs related to the acquisition process.

Farmland Ranking System Criteria

All properties considered for easement purchase will be evaluated in compliance with §14.1 (d) (1) (i-v) of the state regulations, regarding soil quality, likelihood of conversion, proximity to other eased lands, land stewardship, and fair and equitable procedures.

Applications will be ranked on a 100-point weighted scale using the two-part Land Evaluation and Site Assessment (LESA) system. The weighted Land Evaluation (LE) considers the quality of the soils and the LE score shall be calculated in accordance with the Land Evaluation section of this document. The weighted Site Assessment (SA) considers locational factors that may have an impact on current or future viability of the farm and the SA score shall be calculated in accordance with the Site Assessment section of this document.

The County Board has established and set forth the following weighted values to be given the LE score and the SA score, as well as the weighed values to be given the three general categories

(Development Potential, Farmland Potential, and Clustering Potential) of factors to be considered in calculating the SA score.

Land Evaluation (LE)

Source of Soils Data - The land evaluation portion of the LESA system is based on soils data obtained from the Luzerne County Soil Survey using the in-house Geographical Information System (GIS) soil mapping data. The Soil Survey was published by the USDA-NRCS.

Relative Value of Soil - Each soil mapping unit found in Luzerne County has been assigned a score based on its land capability classification, important farmland classification and productivity for corn. Based on these factors, each soil has been assigned a relative value with 100 being assigned to the best soils for agricultural production in the county. All the other soils in the county have been assigned relative values less than 100. **The total score for these factors accounts for fifty percent (50%) of the total farmland ranking score.**

The Luzerne County Relative Soil Values can be found in Appendix F.

Calculation of the Relative Value - Using the LESA worksheet found in Appendix E, each farm under consideration will be assigned an average relative value for the soil types making up the tract. The average relative value of the soils on a tract being considered for appraisal shall be calculated by multiplying the relative value of each soil mapping unit within the tract by the total acreage of the soil mapping unit within the tract, adding these products and dividing that sum by the total acreage of the tract.

Example: A 60 – acre tract has ten acres within soil mapping units with relative values of 95, 20 acres within soil mapping units with relative values 90, and 30 acres with relative values of 80. The sum of the relative values is calculated as follows:

10 acres x 95 =	9500
20 acres x 90 =	1800
30 acres x 80 =	2400
TOTAL	5150

The 5150 acre sum is then divided by the total acreage of the tract (60 acres) to determine the average relative value:

5,150 acres divided by 60 acres = 85.83

In this example, the relative value of the soils on the tract is 85.83.

The weighted LE score of a tract being considered for appraisal shall be the product of the average relative value of the soils on the tract multiplied by the weighted value assigned to the LE score under the county program (50%).

Example: The average relative value of the soils on the tract described in the example set forth in the paragraph above. The county program assigns a weighted value to the LE score of 50% (.50) of the farmland ranking score. The weighted LE score for this tract would be 34.33, calculated as follows: $85.83 \times .50 = 42.92$

Site Assessment (SA)

The site assessment portion of the LESA system consists of factors that relate to the viability of the site for present and future agricultural use. These factors consider development pressures in the area and the likelihood of future development impacting farm operations. These factors are grouped into three categories for evaluation and rating:

1. Development Potential (DP) Factors (**10%**) - Factors that identify the extent to which development pressures are likely to cause the conversion of agricultural land to non-agricultural uses.
2. Farmland Potential (FP) Factors (**20%**) - Factors that measure the potential agricultural productivity and the farmland stewardship practiced on a tract.
3. Clustering Potential (CP) Factors (**20%**) - Factors that emphasize the importance of preserving blocks of farmland to support normal farming operations and help shield the agricultural community from conflicts with incompatible land uses.

The sub-categories of each factor is assigned points using an objective, data-based evaluation. The sum of the points under each factor is multiplied by the assigned percentage for that factor. The sum of these three weighted values is the weighted Site Assessment score.

To determine the Total Point Value of a given farm, the point values for Site Assessment and Land Evaluation are added together to produce a Total Score, as shown in Appendix E.

Site Assessment Factors

Development Potential Factors

(Weighted Value = 10%)

These factors are intended to identify the extent to which development pressures from urban areas cause conversion of agricultural land to non-agricultural uses. The greater a farm's likelihood of conversion to a non-farm use, the higher its score will be in this category.

1a. Distance from public sanitary sewer system.

- (25) Sewer line adjacent to site.
- (20) Sewer line within 1,000 feet.
- (15) Sewer line within 1,001 and 1,320 feet.
- (10) Sewer line within 1,321 and 2,640 feet.
- (5) Sewer line within 2,641 and 5,280 feet.
- (0) Sewer line within 5,281 feet and above.

1b. For municipalities without a public sanitary sewer system (Alternative Factor)

Percent of soils that would have slight to moderate limitations for on-lot sewage disposal. A tract of land that has a higher percentage of soils that are suitable for on-lot sewage disposal (Class I and II Soils) shall receive a higher score.

- (25) 61% to 100%
- (20) 41 % to 60%
- (10) 21 % to 40%
- (0) 0% to 20%

2. Distance from Public Water Distribution System

- (25) Water lines adjacent to site.
- (20) Water line within 1,000 feet.
- (15) Water lines within 1,001 and 1,320 feet.
- (10) Water lines within 1,321 and 2,640 feet.
- (5) Water lines within 2,641 and 5,280 feet.
- (0) Water lines within 5,281 feet and above.

3. Amount of state and municipal road frontage with the tract.

- (25) Over 2,000 feet of road frontage
- (20) 1,000 – 1,999 feet of road frontage
- (15) 500 - 999 feet of road frontage
- (0) Less than 500 feet of road frontage

Farms with a large amount of road frontage can be quickly developed without installation of improved roads. These farms are more desirable for development than farms with poor or limited access to public roads.

4. Extent of non-agricultural use in area - Proximity of farm to 10 or more developed lots.

- (25) Adjacent to 10 or more developed lots.
- (20) within 1/4 mile of 10 or more developed lots.
- (15) within 1/2 mile of 10 or more developed lots.
- (10) within 3/4 mile of 10 or more developed lots.
- (5) within 1 mile of 10 or more developed lots.
- (0) over 1 mile from 10 or more developed lots.

Farmland Potential Factors

(Weighted value = 20%)

These factors measure the potential agricultural productivity or farming practices on the site.

1. Percent of tract used for harvested cropland, pasture, or grazing.

- (17) 92-100%
- (12) 84-91%
- (9) 76-83%
- (6) 68-75%
- (3) 60-67%
- (0) less than 60%

Explanation: The purpose of this program is to protect viable farmland. If a large percentage of a tract is devoted to other land uses, the tract will receive a lower score.

2. Soil and water conservation practices used on the tract.

- (20) NRCS Soil Conservation plan fully implemented
- (15) NRCS Soil Conservation plan 75% < 100% implemented
- (5) NRCS Soil Conservation plan 50% < 74% implemented
- (0) NRCS Soil Conservation plan <50% implemented

Conservation planning assistance from the Natural Resource Conservation Service (NRCS) and the Luzerne Conservation District is available free of charge to any farmer in the Luzerne County. At least 50% of the tract must have sound soil and water conservation practices in place in order to receive a score.

Explanation: Conservation practices and planning are important for maintaining productive soils and viable farmland.

3. Amount of acreage offered for easement purchase.

- (12) 125 acres or more
- (10) 100-124 acres

- (6) 75-99 acres
- (3) 50-74 acres
- (1) 30-49 acres
- (0) 10-29 acres
- (+5) **if entire parcel is being offered for easement purchase**

4. Buffering of Parks, Environmentally Sensitive Areas, Historic Structures or Districts.

- (12) The farm is adjacent to a tract declared or listed by local, state or federal agencies as historic, scenic, open space, or culturally-significant; AND/OR the farm adjoins designated protected areas such as flood plains, wildlife habitats, parks, forests, and educational sites.
- (0) The farm is not adjacent to the aforementioned areas.

Explanation: Farmland can buffer environmentally sensitive and historical areas from non-compatible land uses. The following areas will be considered environmentally sensitive.

- Lakes, ponds, reservoirs, rivers, streams, floodplains, marshes, swamps and other wetlands.
- Forests, game lands and wildlife preserves.
- Areas with unique geological, botanical or wildlife features as determined by the Pennsylvania Natural Diversity Index (PNDI), Luzerne County Natural Areas Inventory, and other local, state or federal agencies.

Important historical areas and buildings adjacent to a farmland tract must be officially documented.

5. Acreage of Prime Farmland and/or State Important Soils on tract. See Appendices G & H.

- (17) 80 acres or more
- (12) 60-79 acres
- (9) 40-59 acres
- (6) 20-39 acres
- (3) 5-19 acres
- (0) 0-4 acres

6. Accepting Less Than The Appraised Easement Value. (It should be noted that the Board has the option of offering *less* than the appraised easement value of the County's appraisal or the formula value, if an independent appraisal is done.)

- (17) Accepting 50% or less than the appraised easement value
- (12) Accepting 51-70% of the appraised easement value
- (9) Accepting 71-80% of the appraised easement value
- (6) Accepting 81-90% of the appraised easement value
- (0) Accepting 91-100% of the appraised easement value

Accepting less than the appraised easement value offer is referred to as a **bargain sale**. The difference between the Board's final offer and the appraised easement amount may be viewed as a charitable contribution on federal income tax which may lower the capital gains tax obligation. (Landowners should consult their tax consultant about this option.)

Clustering Potential Factors

(Weighted value = 20%)

These factors measure the importance of preserving blocks of farmland which support commercial agriculture and help to shield the agricultural community against conflicts with incompatible land-uses.

1. Proximity of farm to Significant Agricultural Area (as shown on Luzerne County Significant Agricultural Area Map in Appendix I)

- (25) Farm is in a significant agricultural area
- (20) Farm is within 1/4 mile of a significant agricultural area
- (15) Farm is within 1/2 mile of a significant agricultural area
- (10) Farm is within 3/4 mile of a significant agricultural area
- (5) Farm is within 1 mile of a significant agricultural area
- (0) Farm is over 1 mile from a significant agricultural area

Explanation: A tract that is within an identified significant agricultural area is more viable for agricultural use and is more likely to be compatible with county and local comprehensive plans.

2. Proximity to permanently protected farmland

- (25) Two or more farms within 2 miles of the tract have perpetual conservation easements.
- (15) One farm within 2 miles of the tract has an easement.
- (0) No farms within 2 miles of the tract have easements.

Explanation: Grouping agricultural conservation easement purchases in an area will help to develop a nucleus of farms which can support each other and reduce conflicts with incompatible land uses. As farms are protected with easements through the farmland protection program, protected farms will be mapped to maintain a current record of all permanently protected farmland in the county.

The county program shall require that the proximity of a tract of land already under agricultural conservation easement (whether held by a county, the state, jointly by the county and the state, a unit of local government, or by a non-profit land conservation organization) be considered in scoring the clustering potential of tract. The Luzerne County Farmland Preservation Board has adopted a map of Restricted Land in Luzerne County, which includes all land held under permanent easement by known land trusts (such as North Branch Land Trust, Wildlands Conservancy and Natural Lands Trust). This map is subject to change as new easement are

placed, or new land is acquired or sold by eligible entities. Current preserved land can be found at:

<https://palta.maps.arcgis.com/apps/webappviewer/index.html?id=989d032b768c4bcebf0824b2fb79cc89>

3. Percentage of adjoining land in Agricultural Security Area (ASA)

- (25) 100%
- (20) 75% - 99%
- (15) 50% - 74%
- (10) 25% -49%
- (5) 1%-24%
- (0) less than 1%

This factor will be determined using the county's Agricultural Security Areas map, compiled from information on Agricultural Security Areas filed with the Luzerne County Recorder of Deeds. Calculate the percentage of a tract's boundary that adjoins land in an ASA.

Explanation: Areas where agriculture has been given protection by municipalities and where landowners are committed to agriculture and are provided supportive environments for farming.

4. Proximity to a farm with an easement sale application submitted in the same round

- (25) Two or more farms within 2 miles have submitted an easement sale application.
- (15) One farm within 2 miles has submitted an easement sale application.
- (0) No farms within 2 miles have submitted application

Appraisal of Easements

Owners of farms selected for preservation will be forwarded an Appraisal Deposit Form, as shown in Appendix J indicating the current appraisal cost which will be held in escrow and refunded if the purchase is completed or if the county elects to back out of the easement purchase or if the landowner refuses to accept less than the full easement value per acre which is the current amount approved by the Board (see County Minimum Criteria). The current appraisal cost is \$1,500.00. This amount is subject to market increases.

Applicants who wish to proceed with selling a farmland conservation easement will complete the Appraisal Deposit Form and submit the same to the Luzerne County Farmland Preservation Board, along with a \$1500.00 deposit. The deposit that is held in escrow by the Board, will be refunded at closing under the following conditions:

1. The applicant does not sever the Agreement of Sale and proceeds to closing;
2. The Board decides not to make an offer to purchase an easement from the applicant; and

3. The Board and landowner cannot come to an agreement on a purchase price for an agricultural conservation easement.

Determining an easement value may involve a second appraisal paid for by the applicant. (Details on this option can be found on pages 22 and 23.) Determining an easement value may involve an appraiser using comparable sales outside the Luzerne County lines in order to complete the initial appraisal report.

Easement Value

Offers to purchase easements will be based upon one or more appraisal reports. The appraisal report will estimate both the market value and farmland value of the farmland tract. The difference between these two values is the easement value.

The market value and farmland value will be based on an analysis of comparable sales and will be conducted in accordance with standards in the most recent edition of the *Uniform Standards of Professional Appraisal Practice*, published by the Appraisal Standards Board of the Appraisal Foundation. If an appraiser cannot practicably conduct an appraisal based on an analysis of comparable sales, the appraiser may conduct an appraisal using another methodology, only if that methodology is an acceptable methodology under the *Uniform Standards of Professional Appraisal Practice*, and the appraisal report clearly describes the information considered, the appraisal procedures followed and the reasoning that supports the analyses, opinions and conclusions.

The value of a building or other improvement on the farmland tract will not be considered in determining the easement value.

Choosing an Appraiser

The appraiser shall be a Pennsylvania State Certified General real estate appraiser who is qualified to appraise a property for easement purchase. Appraisers shall be selected by the County Board on the basis of experience, expertise, and professional qualifications. The appraiser shall be a member or candidate member of an organization which subscribes to the "Uniform Standards of Professional Appraisal Practice", as amended and revised, published by the Appraisal Standards Board of the Appraisal Foundation, and shall follow such ethical and professional standards.

The Appraisal Report

The appraiser will supply a minimum of three copies of a narrative report that contains the following information and is in the following format:

Introduction

- Letter of transmittal

- Appraiser's certificate of value as to market value, farmland value and easement value
- Table of contents
- Summary of salient facts and conclusions
- Purpose of the appraisal
- The definitions, including market value, farmland value and easement value

Description of Property

- Area or neighborhood description
- Description of appraised property
 - Legal description
 - Property data and zoning
 - Description of improvements
 - Color photos of subject property including fields and improvements
 - Tax map or official map used for tax assessment purposes showing subject property and its relationship to neighboring properties.
 - Sketch or aerial photograph of subject property showing boundaries, roads, driveways, building locations, rights-of-way, and land use.
 - Location map showing location of subject farmland tract the county and municipality.
 - Soils map showing property boundaries.

Analyses and Conclusions

- Analysis of highest and best use
- Valuation methodology: market value
 - Comparable sales data
 - Adjustment grid
 - Locational map of comparable sales showing the location of the subject farmland tract with respect to the comparables. A single locational map shall be submitted with respect to each county from which comparable sales are drawn.
- Market value estimate
- Valuation methodology: farmland value
 - Comparable sales data
 - Adjustment grid
 - Locational map of comparable sales showing the location of the subject farmland tract with respect to the comparables. A single locational map shall be submitted with respect to each county from which comparable sales are drawn.
- Farmland value estimate
- Easement value
- An appendix containing a brief statement of the appraiser's Professional Qualifications of the Appraiser and a copy of the appraiser's current certification issued in accordance with the Real Estate Appraisers Certification Act (63 P.S. §§457.1-457.19).

Comparable Sales

Appraisers will supply information concerning comparable sales as follows:

1. At least three comparable sales will be used for estimating market value and at least three comparable sales will be used for estimating farmland value in an appraisal. If the appraiser cannot obtain sufficient comparable sales data within the same county as the subject farmland tract, the appraiser may use comparable sales from other counties, with approval of the County Board. The use of comparable sales that require adjustment of 50% or more is permitted only with the approval of the County Board.
2. Pertinent data for each comparable sale used in the preparation of the appraisal shall be stated in the appraisal report, including date of sale, purchase price, zoning, road frontage in feet, topographical information, and soil mapping units and any other relevant information. The appraisal must include an analysis comparing the pertinent data for each comparable sale to the subject property to include approximate dollar values of adjustment shown on the adjustment grid or the percentage used.
3. The location of each market value comparable sale used in the appraisal report must be shown accurately on the comparable sales map depicting the entire county in which the comparable sale is located and be sufficiently identified and described so that it may be located easily.
4. The location of each farmland value comparable sale used in the appraisal report will be shown accurately on a comparable sales map depicting the entire county in which the comparable sale is located and will be sufficiently identified and described so it may be located easily. If the comparable sales map depicts the county in which the property that is the subject of the appraisal is located, that property will also be sufficiently identified and described so it may be located easily. If a farmland value comparable sales map and a market value comparable sales map would depict the same county, they may be combined in a single map.
5. For comparable sales used to estimate the farmland value, the appraiser may use sales of land that are confined to agricultural use because of agricultural conservation easements or other legal restrictions or physical impairments that make the land valuable only for agricultural use. Comparable sales will be in primarily agricultural use. Data may also be gathered from farm real estate markets when farms have no apparent developmental value.
6. The appraiser will set forth the reasons the farmland comparable sales are confined primarily to agricultural use. Examples of these reasons include:
 - a. The farmland tract has public or private land use restrictions.
 - b. The farmland tract is within a flood plain or a wetland (in whole or in part).

- c. The farmland tract is landlocked, subject to additional easements, subject to restrictive zoning or has other physical attributes, which limit its developmental capability.
7. The appraiser will provide at least one original and two copies of each report to the County Board. Each original report and all copies will be bound with rigid covers.
8. The appraisal will include the entire acreage offered for easement sale. If, following completion of the appraisal, acreage is added to or deleted from the proposed easement sale for any reason, the appraisal will be revised accordingly or the appraiser will agree in writing to the use of a per acre value to account for the change in easement value resulting from such a change in acreage.
9. If acreage is voluntarily withheld from the easement sale by the landowner through subdivision accomplished in accordance with the Pennsylvania Municipalities Planning Code, the appraiser will, in making the estimate of agricultural conservation easement value, take into account any increase in the value of the subdivided acreage because of the placement of the easement on the remaining farmland.

Easement Value and Purchase Price

Easements shall only be purchased in perpetuity.

The appraisal report provides the County Board with an estimate of the value of the easement purchased in perpetuity, which is the difference between the market value and the farmland value. The purchase price offered for the purchase of an easement in perpetuity will be equal to or less than the easement value.

The maximum easement purchase price for an easement that the County Board will pay is \$3,500 per acre.

The applicant may, at applicant's expense, retain another independent real estate appraiser to determine the easement value. This appraisal must be completed in accordance with these guidelines.

Conservation Easements – County Only

1. In order to effectively preserve agricultural land within agricultural security areas, it is the intent of the Luzerne County Farmland Preservation Board and the Current County Administration (CGA), to accept voluntary \$1 bargain sales or bequests of conservation easements on a perpetual term basis only. Such grants of easements constituting restrictions on the use of land are designed to preserve and protect the agricultural and open space character of the land. Acceptance and approval of conservation easements will be determined by the Luzerne County Farmland Preservation Board and the CGA through minimum eligibility criteria.

2. A conservation easement is a legally-binding document, which is filed with the Office of Judicial Records restricting use to agriculture and directly associated uses. As an easement in gross, the restrictions are binding upon the owner and future owners of the conservation easement and carries with the land. \$1 bargain sale conservation easements will be held solely by Luzerne County in perpetuity and the county is responsible for enforcing the deed restrictions contained in the conservation easement.
3. Prerequisite to acceptance of a \$1 bargain sale agricultural conservation easement, agricultural land must meet the following criteria:
 - a. Be part of an agricultural security area.
 - b. Be an active farm.
 - c. Consist of at least 50% productive agricultural soils of Pennsylvania soils capability classes I, II, III, and IV.
 - d. Any liens or mortgages against the land must be made subordinate to the easement.
 - e. Title to the land must be clear.
 - f. Must have acceptable undisputed metes and bounds description of property.

Offer of Easement Purchase by County Board §138e.66

1. The Luzerne County Farmland Preservation Board, when determining whether to purchase an easement, shall evaluate each application in accordance with the standards, criteria and requirements currently or hereafter established by the State Agricultural Land Preservation Board addressing soil quality, likelihood of conversion, proximity to other land under agricultural conservation easement, land stewardship and fair, equitable, objective and nondiscriminatory procedures for determining purchase priorities in accordance with § 14.1 (d) (1) (i) - (iv) of the Act (3 P.S. § 914.1 (d) (1) (i)-(iv)). Factors and considerations under which an offer to purchase would be made in something other than descending order of farmland ranking score (Section 138e.66(a)(3)).
 - a. Selections for purchasing an easement outside of the ranking order shall be made for specific circumstances where the use of funding from a third party is essential to the purchase of an easement that would otherwise result in the loss of funding to the county easement program. Such circumstances require at least 50% funding from the third party.
2. If a farmland tract is approved for easement purchase, the Program Administrator shall meet with the applicant to review the appraisal reports. Any offer to purchase an easement shall be submitted to the applicant in writing and accompanied by the County appraisal report. The offer may be less than or equal to the appraised value of the easement.

3. Within 30 days of receipt of the written offer from the County Board, an applicant may do one of the following and should provide their response in writing, letter or email accepted:
 - a. Accept the offer, in which case the County Board and the applicant shall enter into an agreement of sale. The agreement 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 encumbrances such as liens, mortgages, options, rights of others in surface mineable coal, land use restrictions, adverse ownership interest, and other encumbrances which would adversely impact the County and Commonwealth's interest in the farmland tract.
 - b. Reject the offer and advise the County Board that the application is withdrawn; or
 - c. Advise the County Board that the applicant is retaining, at applicant's expense, an independent State Certified General real estate appraiser to determine the easement value. The appraiser shall be qualified and the appraisal shall be completed in accordance with the procedure in §138e.64 (relating to appraisal). Upon completion, three copies of the applicant's appraisal shall be submitted to the County Board within 120 days of receipt of the County Board's offer to purchase. The applicant's decision to obtain an independent appraisal under this paragraph shall not constitute a rejection of the County Board's offer. The County Board's offer shall remain open unless increased by the County Board under subparagraph (2) below or rejected by the applicant.
 - (1) If the applicant secures an independent appraisal, the easement value will be the difference between the agricultural value and the non-agricultural value, determined as follows:
 - (a) The agricultural value will equal the sum of:
 - The farmland value determined by the applicant's appraiser; and
 - one-half of the difference between the farmland value determined by the County Board's appraiser and the farmland value determined by the applicant's appraiser, if the farmland value determined by the County Board's appraiser exceeds the farmland value determined by the applicant's appraiser.
 - (b) The non-agricultural value will equal the sum of:
 - The market value determined by the County Board's appraiser; and
 - one-half of the difference between the market value determined by the seller's appraiser and the market value determined by the County Board's appraiser, if the market value determined by the seller's appraiser exceeds the market value determined by the County Board's appraiser.

- (2) Within 30 days of receipt of the applicant's appraisal, the County Board shall submit a written offer to purchase in an amount in excess of the amount offered under paragraph 2 above to the applicant; or notify the applicant, in writing, that the offer made under paragraph 2 above remains open and will not be modified.
- (3) The applicant shall, within 15 days of receipt of the County Board's second written offering, notify the County Board in writing that the applicant either accepts or rejects the offer made under paragraph 2 above or accepts or rejects the offer made under subsection 3.c.(2) above.
- (4) The failure of the applicant to act as set forth in subsection 3.c.(3) above shall constitute a rejection of the County Board's offer.
- (5) If the offer of purchase is accepted, the County Board will prepare an agreement of sale. The agreement shall be conditioned upon approval of the State Board and be subject to the ability of the applicant to provide good title to the premises, free of encumbrances such as liens, mortgages, options, rights of others in surface mineable coal, land use restrictions, adverse ownership interest, and other encumbrances which would adversely impact the County and Commonwealth's interest in the farmland tract.

Settlement will be scheduled at a time and place convenient to both buyer and seller. If circumstances prohibit settlement within six (6) months of acceptance, the Luzerne County Farmland Preservation Board reserves the right to make null and void the original offer.

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

4. An agreement of sale shall be in a form provided by the State Board.
5. If applicant breaks the sales agreement with the County Board and the Commonwealth of Pennsylvania, all costs incurred by the County will be reimbursed by the applicant. This includes but is not limited to: Appraisal, Survey, Legal/Title Fees, Recording costs, Notifications.
6. Acceptance by the County Board will be contingent upon the availability of county and/or state funds available to make the purchase. Funds available to the County Board may be utilized over a period of two consecutive county fiscal years, described in §14.1(h)(8.2) of the Act (3P.S §914.1(h)(8.2))

Requirements of the Agricultural Conservation Easement Deed

1. The owners of the subject farmland tract shall execute a deed conveying the easement. This deed shall include the provisions of Appendix M (this appendix will be §138e.24 of the state guide) (relating to deed clauses).
2. The deed shall be in recordable form and contain:
 - a. A legal description setting forth the metes and bounds of the farmland tract subject to the easement.
 - b. At least one course and distance referencing a fixed marker or monument of a type commonly placed in the field by a surveyor.
3. The legal description shall not contain a closure error greater than one foot per 200 linear feet in the survey.
4. The farmland tract on which an easement is to be purchased must be surveyed unless the legal description contained in the deed recorded in the land records of the county in which the farmland tract is located satisfies the requirement of paragraphs 2 and 3 above. A survey required by the provisions of this paragraph must comply with the boundary survey measurement standards of §138e.73 (relating to survey requirements.).
5. For purchases made entirely with State funds, the Commonwealth shall be the sole grantee.
6. For purchases made using a combination of State and County funds, the grantees shall be the Commonwealth and the County providing the funds under joint ownership as defined in the act.
7. For purchases made using a combination of State, County, and local municipality funds, the grantees shall be the Commonwealth, the County and the local municipality providing the funds under joint ownership as defined in the act.
8. For purchases made entirely with County funds, the County shall be the sole grantee.
9. For purchase made entirely with local municipal funds, the municipality shall be the sole grantee.
10. Neither the Commonwealth, the County nor the municipality may sell, convey, extinguish, lease, encumber, restrict or otherwise dispose of its interest in the easement without the consent of the other.
11. Upon the sale, conveyance, extinguishment, lease, encumbrance or other disposition of the easement, the Commonwealth, the County and municipality shall receive a pro rata share of the proceeds based upon their respective contributions to the purchase price.

12. Any person conveying or transferring land subject to an agricultural conservation easement shall, within 30 days of the change in ownership, notify the County Board and the Commonwealth of the name and address of the person to whom the subject land was conveyed or transferred, provide each a copy of the deed, provide a statement of the price per acre or portion thereof received by the landowner from such person, and a reference to the volume and page in which the transfer has been recorded by the county recorder of deeds.
13. Whenever interest in land subject to an agricultural conservation easement is conveyed or transferred to another person it is the responsibility of the Grantor to ensure that the deed conveying or transferring such interest **shall recite verbatim** the language of the easement restrictions as set forth in the Deed of Easement executed in connection with the purchase of the agricultural conservation easement.
14. A copy of the deed shall be submitted to the State Board for approval prior to execution and delivery. All instruments and documents for the purchase of easements must be approved by the State Board prior to execution and delivery. A copy of the Deed of Easement can be provided upon request to the County Administrator.

Additional Program Procedures

Title Insurance §138e.68

The County Board will provide a title insurance commitment and copies of all recorded or unrecorded documents listed on the title insurance commitment as exceptions to the title insurance policy 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 Insurance Department. A marked-up title commitment may serve as a policy until the policy is issued. The amount of title insurance coverage shall equal or exceed the higher of the following amounts:

1. The difference between the appraised market value and the appraised farmland value as described in § 138e.65(a) (relating to easement value and purchase price).
2. The difference between the agricultural value and the nonagricultural value, as described in § 138e.66 (c) (3) (relating to offer of purchase by county board), if the values are used to calculate the easement value).

Statement of Costs §138e.69

The County Board will submit a statement of the costs incidental to the purchase of the easement to the State Board, which shall include:

1. Easement purchase price.
2. County appraisal costs.
3. Necessary legal fees for title search, preparation of documents, and attendance at closing.
4. Recording fees.
5. The costs of providing adjoining landowners with required notices and of providing necessary advertisements.
6. Survey costs.
7. Reimbursements to a nonprofit land conservation organization that has acquired an easement at the request of the County Board, for the purpose of transferring the easement to the county or the state or both. These costs include the easement purchase price, reasonable costs of financing the purchase, appraisal costs, necessary legal costs, recording fees, and survey costs.
8. The cost of the title insurance.

The statement of costs must specify the amount of state funding requested from the Commonwealth for the purchase, and the amount of County funds allocated for the purchase.

After settlement, the County Board shall submit a revised statement of cost in the event that actual costs were greater or less than the costs estimated in the initial statement of costs.

If the actual costs are less than the estimated costs the County Board shall promptly refund the difference to the Department by check payable to “Commonwealth of Pennsylvania.”

Summary Report §138e.70

Each recommendation to the State Board by the County Board for the purchase of an easement will be accompanied by a Summary Report consisting of a narrative report and appendix stating the following:

1. Description of the farm, including names of all landowners, location in relation to nearest town, number of acres proposed for purchase, and type of agricultural production on the farm.

2. Description of the quality of the farmland tract, including soil capability classes of the soils available for agricultural production.
3. The farmland ranking score, including a statement of the relative ranking of the farmland tract among other tracts considered by the county in the same round of applications.
4. A description of the likelihood of conversion to other uses if the easement is not purchased.
5. A description of the nature and scope of developmental pressure in the municipality or area.
6. A description of the nature and scope of conservation practices and best land management practices, including soil erosion and sedimentation control and nutrient management.
7. A discussion of the purchase price, summarizing the appraisals, including the agricultural and non-agricultural value, negotiations for purchase and the percentage of the appraised easement value accepted by the landowner.
8. A statement of costs as described above.
9. Certification. The County Board will certify that the information presented to the State Board is true and correct.
10. Appendix. This shall include the:
 - Application form
 - Locational maps, including tax, topographic, and soil maps
 - Soils report
 - Any crop and livestock reports required by the County program
 - Evaluation of the application (ranking worksheet), showing how the farm scored in comparison to other farms
 - A quitclaim deed, or a subordination, release or letter approving the purchase from a mortgagee, lien holder or owner of rights in surface mineable coal
 - Other relevant documents and information

Notification of Owners of Land Adjoining Proposed Easement Purchase §138e.71

A county board will provide the owners of land adjoining a farmland tract with respect to which an easement purchase is proposed with notice of the proposed purchase and notice of an opportunity to be heard at the State Board meeting at which the easement purchase recommendation is to be considered. The notice will comply with §138e.71 (relating to notification of owners of land adjoining proposed easement purchase).

Application for State Board Review

Recommendation for Purchase §138e.91

Application for State Board review of a proposed purchase of an easement is made by submitting the following documents via the PA Farmland web site:

1. Land Owner Application
2. Production Report (if applicable)
3. Location Map
4. Topographic Map
5. Tax Map with Parcel Numbers, showing the subject property location and boundaries, exclusions withheld from the subject property, utility rights-of-way, and access road rights-of-way.
6. Soils Map Labeled / Color Coded
7. Individual Ranking Worksheet
8. Status Table Farm Ranking Worksheet
9. Title Commitment with Exceptions, includes a copy of the ASA resolution indicating the landowners and/or uniform parcel identifier (UPI) or parcel number.
10. Subordination Agreement
11. Lien Agreement
12. Deed with applicable Traverse Calculations
13. Signed Agreement of Sale including the proposed legal description (Exhibit A), a statement of cost (Exhibit B), the proposed deed of agricultural conservation easement (Exhibit C), a contractor integrity clause (Exhibit D), and a nondiscrimination clause (Exhibit E). (Original signature pages to be sent via hard copy)
14. W-9 Tax Form, completed and signed
15. Signature Authority Letter (Trust, Partnership, or Corporation Agreement)
16. Like-Kind Exchange Agreement (if applicable)
17. Federal Agreement - Document Requirements under FRPP
18. Disbursement of Funds Letter
19. A copy of the approved soil conservation plan that is required to be in place with respect to the land under §138e.241(2) (relating to deed clauses), and the Conservation Plan Agreement (see Appendix P, Conservation Plan Agreement).
20. A copy of the nutrient management plan that has been developed, certified, reviewed and approved in accordance with the Nutrient Management Act (3 P.S. §§ 1701-1718), if the nutrient management plan is required under the Nutrient Management Act for any portion of the property that is the subject of the recommendation for purchase.
21. Notifications to Adjoining Land Owner(s), certifying that all adjoining landowners were provided with notice and opportunity to be heard in a manner consistent with administrative agency law with respect to the proposed easement purchase
22. Adjoining Land Owner List

23. Request for Incidentals Costs Form
24. Deed Of Conveyance
25. Deed Of Correction
26. Other Transfer Document

Submitted Hard Copy Only

1. The Agreement of Sale signature pages
2. Appraisal report
3. The survey report (if needed)

Review and Decision by State Board §138e.92

The State Board will acknowledge receipt of the recommendation for purchase of an easement. The State Board will notify the county board if the recommendation for purchase is incomplete or incorrect and request that additional necessary clarification, information or documentation be supplied. Within 60 days of receipt of a complete recommendation for purchase, the State Board may approve, disapprove or table the purchase. The State Board may delay its action on a recommendation for purchase beyond this 60-day deadline if any of the conditions excusing the delay, as set forth in section 14.1 (e) (2) of the act (3 P.S. § 914.1 (e) (2)), occur. If State Board action is delayed as a result of any of these conditions, the 60-day period shall be extended until applicable issues in section 14.1 (e) (2) of the act are resolved to the satisfaction of the State Board, whereupon the State Board will act on the recommendation of the county board at its next scheduled meeting. If the recommendation for purchase is approved, the State Board will execute the agreement of sale. Other actions by the State Board will comply with §138e.92 (relating to review and decision).

Post Settlement Recording and Reporting Procedures §138e.93

All recording and reporting procedures to be followed by the County Board will comply with §138e.93 (relating to post settlement recording and reporting procedures).

Installment Sales §138e.104

Payment for an agricultural conservation easement may be made in a lump sum, in installments or in another lawful manner of payment. Installment sales may have a payment period of 5 years or less or may exceed 5 years with each period having set guidelines as found in §138e.104(b) and (c). The installment payment terms, including the dates of payments and payment amounts shall be negotiated between the landowner and the County Board. The interest rate to be paid on the outstanding balance shall be established by the County Board and shall be stated in the Agreement of Sale.

Easement Inspection and Enforcement Procedures §138e.201-207

The Luzerne County Farmland Preservation Program County Administrator shall have the primary responsibility for inspecting restricted land to determine compliance with the applicable deed of easement and enforcing the following:

1. Agricultural conservation easements that were acquired under authority of the act and are located within the county.
2. Agricultural conservation easements which were acquired under the authority of section 14.1 (b) (2) of the act (3 P. S. § 914.1 (b) (2) (i), including any portion extending into an adjoining county.

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.

Landowners subject to these inspections will be notified by certified mail 10 days in advance of the proposed inspection. The first inspection will be completed within one year of the date of easement sale and shall be included in the annual report described in § 138e.203 (relating to annual report) no later than the first annual report following the 1-year period. Subsequently the Administrator shall inspect restricted land within the County at least biennially. An inspection conducted under subsection (a) shall be performed between the hours of 8:00 AM and 5:00 PM on a weekday that is not a legal holiday recognized by the Commonwealth, or a date and time agreeable to the county and the landowner.

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

The County Board will adhere to regulations of the Commonwealth in inspecting and enforcing all agricultural conservation easements. See the enforcement clause required in the easement deed in Appendix M, Deed of Agricultural Conservation Easement. The complete state regulations for inspecting and enforcing agricultural conservation easements, §138e.201-207, are listed in Appendix K.

Responsibility of Owner (see §138e.221-227)

Rural Enterprise

Pursuant to State Regulations found in Appendix L, Responsibility of Owner, the County Board intends that agricultural conservation easements shall not prevent "customary part-time or off-season minor or rural enterprises and activities." For purposes of definition, these are limited to the following:

1. 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;

2. Any and all structures contributing to the production, primary processing, direct marketing and storage of agricultural products produced principally on the farm;
3. Structures and facilities 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 State Agricultural Farmland Preservation Board approved and authorized on 7/13/00 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 the implementation of any such conservation practices);
4. Structures and facilities associated with irrigation, farm pond improvements, and soils and water conservation practices including but not limited to Wetland Development or Restoration, Wildlife Wetland Habitat Management, Wildlife Upland Habitat Management, and Riparian Forest Buffer Resource Management Systems used for erosion and sediment control and water quality improvement.
5. The 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;
6. 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 is undertaken as a part-time or off-season minor or rural enterprise and is incidental to the agricultural and open space character of the property.
7. Other similar uses, such as, but not limited to, fee and non-fee hunting and fishing activities are allowed, upon review and approval by the Luzerne County Farmland Preservation Board and the State Farmland Preservation Board.

Expanded Use of PA Farmland and Forest Land Assessment/Rollback Tax Interest

The Luzerne County Farmland Preservation Board will use 100% of the Rollback Tax Interest to purchase conservation easements.

Local Government Unit Participation

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

1. The local government unit, in conjunction with a county board, may participate with the State Board in the purchase of an agricultural conservation easements.
2. The local government unit shall recommend to the county board the purchase of agricultural conservation easements by the eligible county and the local government unit as joint ownership.
3. 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.
4. The local government unit may purchase an agricultural conservation easement, provided that all of the following apply:
 - a. 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 the 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, as outlined in §914.1 (b) (2) (i) (A), (B), and (C).
 - b. 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.
 - c. The local government unit shall participate with the county board in complying with paragraph (E) for recording any agricultural conservation easement purchased by the local government unit.
5. 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 Judicial Records of Luzerne 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 agricultural conservation easements submitted to the State Board a description of the farmland subject to the agricultural conservation easement.

Agricultural Conservation Easement Deed §138e.241

Deed Clauses

At settlement, the owner of the subject real estate shall execute a deed conveying the easement. The deed will comply with §138e.241 (relating to Deed Clauses), found in Appendix M.

**Appendix A
Resolution of PCGA**

LUZERNE COUNTY

AGRICULTURAL LAND PRESERVATION DISTRICT

RESOLUTION

WHEREAS, Luzerne County has 440 farms that total 53,000 acres according to the 1997-98 Statistical Summary, Pennsylvania Department of Agriculture; and

WHEREAS, our farms produced 20.3 million dollars in agricultural products in 1997-98, making agriculture an important industry in Luzerne County; and

WHEREAS, the Board of Commissioners has determined that Luzerne County should participate in the Commonwealth's Agricultural Conservation Easement Program as one means to preserve agricultural lands in Luzerne County; and

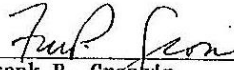
WHEREAS, a requirement of Pennsylvania Act 43, P.L. 128, No. 43, the Agricultural Area Security Law, as amended December 14, 1998, P.L. No. 149, is that counties must appoint a County Agricultural Land Preservation Board to administer the County Farmland Protection Program;

NOW, THEREFORE, IT IS RESOLVED that the Luzerne County Board of Commissioners hereby creates the Agricultural Land Preservation Board to administer the Agricultural Land Preservation Program for Luzerne County.

LUZERNE COUNTY BOARD OF COMMISSIONERS



Thomas A. Makowski, Esq., Chairman




Frank P. Crossin



Joseph "Red" Jones

ATTEST:



Eugene R. Klein, Chief Clerk/Administrator

Date

7/21/99

**Appendix B
Luzerne County Farmland Preservation Board**

NAME	CONTACT INFORMATION
Linda Thoma, Chair 39 Campground Road, Dallas, PA 18612 Term: January 1, 2019 – Dec. 31, 2021 At-Large Member	Business Owner Telephone: 570-574-0342 (cell) E-Mail: Lindathoma1958@gmail.com
Jennifer Lauri 325 Smiths Pond Road, Shavertown, PA 18708 Term: June 1, 2018	Program Administrator Telephone: 570-674-7991 x 7 570-779-0732 E-Mail: jennifer@luzcd.org
Jon Lucas, Board Secretary 182 Cherry Hill Road, Shickshinny, PA 18655 Term: January 1, 2019 - Dec. 31, 2021 Farmer	Farmer Telephone: 570-479-7081 (cell) E-Mail: lucasfarms@epix.net
Bryan McManus, Board Member 100 Baltimore Drive, Wilkes-Barre, PA 18702 Term: January 1, 2017 – Dec. 31, 2019 Developer	Commercial Real Estate Senior VP Telephone: 570-823-1100 (office) E-Mail: bmcmanus@mericle.com
Richard Yost, Board Member 91 Welsh Road Sugarloaf, PA 18249 Term: January 1, 2017 – Dec. 31, 2019 Elected Municipal Official	Business Owner Telephone: 570-788-2361 (store) E-Mail: richy@ptd.net
Nancy Snee, Board Member 740 E. Northampton Street Wilkes-Barre 18702 Term: January 1, 2018 – Dec. 31, 2020 At -Large Member	Retired Telephone: 570-829-1567 (home) E-Mail: Nancy12341@verizon.net
Ransom Young, Board Member 566 West Butler Drive, Drums, PA 18222 Term: August 30, 2019 – Dec. 31, 2021 Farmer	Penn Dot Operator Telephone: 570-233-0841(cell) E-Mail: Acres110@ptd.net
Mathew Balliet 81 Saams Road, Drums, PA 18222 Term: July 9, 2019 - Dec. 31, 2021 Farmer	Farmer Telephone: 570-788-2403 E-Mail: Matt.Balliet@yahoo.com

Luzerne County Farmland Preservation Program

According to state regulations, the make-up of the Board must consist of 3 farmers, 1 elected municipal official, 1 residential, commercial or industrial developer, and 2 at-large members.

**Appendix C
Bylaws of the County Board**

**BYLAWS
Of
THE LUZERNE COUNTY FARMLAND PRESERVATION BOARD

LUZERNE COUNTY, PENNSYLVANIA**

NAME:

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

PURPOSE:

- 1) To protect and promote the continued agricultural use of valuable agricultural lands by acquiring agricultural conservation easements, which prevent the development or improvement of the land for any purpose other than agricultural production and related agricultural activities.
- 2) To protect viable agricultural lands by acquiring agricultural conservation easements which prevent the development or improvement of the land for any purpose other than agricultural production.
- 3) To encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security of land use.
- 4) To assure conservation of viable agricultural lands to protect the agricultural economy of Luzerne County.
- 5) To provide compensation to landowners in exchange for their relinquishment of the right to develop their private property.
- 6) To administer a program for purchasing and receiving gifts of agricultural conservation easements on behalf of the County.
- 7) To adopt rules and regulations for the administration of a county program for the purchase of agricultural conservation easements within agricultural security areas. The Board shall execute all agreements or other documents necessary to affect the purchase of such agricultural conservation easements within agricultural security areas in the name of Luzerne County and/or jointly, with a local government unit or the Commonwealth of Pennsylvania and the federal government.
- 8) To encourage the use of additional farmland preservation techniques through public and private organizations in Luzerne County.
- 9) To perform such other duties and responsibilities as may be authorized pursuant to the Agricultural Security Area Law.
- 10) To encourage financial partnerships between state and local governments with non-profit entities in order to increase the funds available for agricultural conservation easement purchases.
- 11) To permit commercial equine activity in compliance with Act 61 of 2005.

AUTHORIZATION:

The Board was established by the authority granted to PCGA (previous county government administration) by Act 43 R, P.L. 128, No. 43 as amended, at a regularly scheduled meeting on July 21, 1999.

MEMBERSHIP:

Board members shall be appointed by the County Government Administration.

The Board shall be composed of seven (7) members, to be appointed from the following groups:

1. Three shall be active resident farmers in Luzerne County, and shall serve an initial term 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 resided in the County, and shall serve an initial term of one year after establishment of this Board.
4. The remaining members shall be selected at the discretion of the County Government Administration 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 forth under Membership, all terms of office shall be three years.

Except as may otherwise be provided for in this Charter or applicable law, each member of any County board or commission shall serve until the expiration of his/her term and a new appointment is made. However, if a new appointment is not made within 60 days after the expiration of the term, the position shall be considered vacant. – Language adopted from Home Rule Charter of Luzerne County, Pennsylvania. Section 8.02, D. If this language should change in the Home Rule Charter, the bylaw will also change.

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 Government Administration, 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.

ATTENDANCE BY BOARD MEMBERS:

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 Chairperson prior to the meeting.

OFFICERS:

The Board will be directed by a Chairperson. Additional officers shall be vice-chair and secretary.

A staff person may serve as Secretary but shall have no vote.

ELECTION OF OFFICERS:

The Chairperson shall be appointed annually by the chairman of the County Government Administration.

Other officers shall be elected annually by members of the Board.

DUTIES OF OFFICERS:

The Chairperson 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-Chairperson shall preside at all meetings of the Board in the absence of the Chairperson.

The Secretary shall be responsible for seeing that all meetings are recorded. The Secretary shall preside at all meetings of the Board in the absence of the Chairperson and Vice-Chairperson.

REMOVAL OF OFFICERS:

The Chairperson can be removed from the 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:

Meetings shall be held at 8:30 AM. in a designated conference room at the Luzerne Conservation District, when deemed necessary by the County Administrator and/or Board Chairperson. Special meetings shall be held at the call of the County Administrator and/or Chairperson, or at the request of three (3) members of the Board, and shall require written, electronic or verbal notice of at least one day.

CONDUCT OF MEETINGS:

All Board meetings shall be open to the public in accordance with the Sunshine Act (Act of July 3, 1986, P.L. 388, No. 84), and with the Right-To-Know Law (Act 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.

VOTING:

Each member of the Board shall be allowed to cast one vote.

Board members not present at meetings can vote via telephone or e-mail ballot.

Motions shall be passed by a majority vote of members present at a meeting, and on telephone conference.

COMMITTEES:

The Chairperson 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 County Board may form an advisory committee composed of representatives of local, county, state, and federal agencies and private groups who have experience with the County's agricultural industry and land use concerns. Members of this advisory committee shall not have voting privileges on the County Board.

STAFF:

The Luzerne Conservation District shall provide primary staff support to the Board.

STAFF ASSISTANCE FROM OTHER AGENCIES:

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

FINANCES:

All monies received from the 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 Government Administration. Board members shall not receive salary or payment for their services of the Board, 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 the debts of the Board.

PUBLIC OFFICIAL AND EMPLOYEE ETHICS LAW:

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

AMENDMENTS:

The Bylaws may be amended at a Board meeting by a majority vote of the entire membership of the Board, subject to the approval of the County Government Administration, 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 Government Administration at least seven days prior to the meeting.

Adopted: August 23, 1999

Linda Thoma, Board Chair

Jon Lucas, Secretary

Adopted: 8/23/1999
Amended: 8/15/2001
Amended: 7/18/2002
Amended: 3/18/2019

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Appendix D
Agricultural Conservation Easement Application Form
Luzerne County Farmland Preservation Board

GENERAL INFORMATION *(Please Print)*

Landowner Name(s): _____

Mailing Address(s): _____

Farm Address: _____

Telephone #(s): _____

Name, address & telephone of person to contact to view farmland tract

Directions to farm from nearest State route:

Name(s), address and telephone number of person(s) to contact to view the farmland tract:

FARMLAND TRACT INFORMATION

Township: _____

Is the farmland tract enrolled in an official township agricultural security area (ASA) (Check box)?

- YES NO

If yes, list deed reference where ASA is recorded. Deed Book/Page or Instrument #: _____

If no, contact your municipality for information on joining the ASA. The farm is not eligible for easement program until the farm is enrolled in the ASA.

Total acreage of farmland tract: _____

Acreage offered for agricultural easement purchase: _____

If less than 50 acres, answer **one** of the following:

What is the specialty crop being grown? _____

Provide the name of the organization that holds the conservation easement on the adjoining parcel of land. _____

Acreage excluded from agricultural easement application: _____

Reason for exclusion: _____

Any acreage not to be included in the agricultural easement must be identified at the time of application. If withholding land from the easement, please attach a sketch showing the location of the excluded area.

List deed reference(s), tax parcel number(s) and acreage for the farmland tract:

Deed Reference: _____ Parcel #: _____ Acreage: _____

Deed Reference: _____ Parcel #: _____ Acreage: _____

Deed Reference: _____ Parcel #: _____ Acreage: _____

Deed Reference: _____ Parcel #: _____ Acreage: _____

Deed Reference: _____ Parcel #: _____ Acreage: _____

Amount of Road Frontage (Check appropriate box):

- More than 1/2 mile
- 1/4 mile – 1/2 mile
- 1/8 mile to 1/4 mile
- Less than 1/8 mile

Availability of Public Sewer According to Planning Areas in Municipal Act 537 Sewage Facilities Plan.

Contact your local municipality for information. (Check appropriate box):

- Tract is located within a planned public sewer service area
- Tract is NOT located within a planned public sewer service area

Availability Public Water (Check appropriate box):

- Tract has public water service adjacent
- Tract has public water service within 1/2 mile measured along public roads
- Public water service is greater than 1/2 mile as measured along public roads

Family Farm (Check appropriate box):

- Property is operated by the owner or immediate family member
- Property is NOT operated by the owner or immediate family member

Historic, Scenic and Environmental Qualities (Check any that apply):

- Farm is adjacent to land preserved via the National Park Service, State Game Commission, State Forest, State Park, State Fish & Boat Commission, a local government unit or other land conservation organization.
- Farm contains environmentally sensitive features including but not limited to streams, wetlands, woodlands of 10 acres or more, floodplains, steep slopes, PNDI sites, etc.
- Farm is listed on the National Register of Historic Places

AGRICULTURAL PRODUCTION INFORMATION

Percent of the property is used for agricultural production (i.e. cropland, pasture or grazing)
Example: 100-acre farm with 85 acres cropland and pasture, 13 acres woodland and 2 acre homestead = 85% of tract in agricultural production

Acres of cropland: _____ Acres of pasture: _____

Acres of woodlands: _____ Acres of headquarters/farmstead: _____

Acres enrolled in CRP, CREP, WRP, or similar programs: _____

Percent of tract in agricultural production: _____

Describe the Nature of the Agricultural Operation: _____

List Commodities Grown: _____

List Numbers and Type of Livestock: _____

Is manure or agricultural process wastewater land applied to the farmland? YES NO

Does livestock utilize pasture or Animal Heavy Use Areas? YES NO

CONSERVATION PLAN

Submission of a conservation plan and/or nutrient management plan/manure management plan with application is required in order for farm to be eligible. Conservation plan requirements are listed in section 103.B of the Program Guidelines.

Date of Conservation Plan: _____

Date of Nutrient Management Plan, if required: _____

Date of Manure Management Plan, if required: _____

Describe conservation practices currently in use: _____

Is land enrolled in NRCS programs or easements such as CRP, CREP, WRP, etc.? YES NO

If yes, how many acres are enrolled in program? _____

If yes, when will contract for program expire? _____

MORTGAGES, LIENS, MINERAL RIGHTS, LAND USE RESTRICTIONS, ETC

List all mortgages, liens, options, owners of mineral rights, right-of-ways, easements, land use restrictions, land leases, billboards, cellular towers, cemeteries, or other interests on the farmland tract.

BUSINESSES OR RURAL ENTERPRISES

List any agriculture-related or non-agriculture-related businesses on the farm including energy production (solar, wind, methane, etc), traditional trades, home occupations, etc.

MAPS & SOILS REPORT

The following items **shall be prepared by the county board**, in cooperation with the applicant:

1. Locational Map – A United States Geographical Survey topographical map showing the location and boundaries of the farmland tract. The map shall show the location of any acreage being withheld from the easement.
2. Soils Map – A soils map of the farmland tract, color coded. The soils map of the farmland tract must be color-coded as follows:
 - Class I Green
 - Class II Yellow
 - Class III Red
 - Class IV Blue
 - Class V–VIII Uncolored
 - Wetlands Cross hatch or include on a separate map
3. Soils Report Form “C” – A soil report detailing quality of soils (total acres in land capability classes I-IV) and the extent of agricultural use (total acres of farm in agricultural use) on the farmland tract (See Appendix F, Table of Luzerne County Relative Soil Values).

The applicant must provide a tax map(s) of the farmland tract with map reference and tax parcel numbers clearly indicated.

SELLING PRICE

I/We would consider selling a perpetual Conservation Easement to the Luzerne County Farmland Preservation Board and/or the Commonwealth of Pennsylvania for one of the following easement values: Please check one of the options below: (Please see page 14 for the amount of

points allotted to each option. These points will be taken into consideration in your overall score. If no option is checked, we will assume option #5.)

- _____ 1. 50% or less than the appraised easement value
- _____ 2. 51 to 70% of the appraised easement value
- _____ 3. 71 to 80% of the appraised easement value
- _____ 4. 81 to 90% of the appraised easement value
- _____ 5. 91 to 100% of the appraised easement value

SIGNATURES(S)

Signatures of all property owners are required to submit an application. Only completed applications will be considered.

All acreage to be withheld must be identified at the time of application. Changes in the application made following selection will nullify any offer made by the board and will require re-application.

The undersigned do hereby acknowledge that they understand that all information supplied to the Luzerne County Farmland Preservation Board in connection with their application will be kept on file with the Program Administrator and also with the Commonwealth of Pennsylvania Department of Agriculture. As such, all information will be treated as public records available to the general public for review and copying. No information submitted as a part of an application will be treated as confidential or not available to the public. Specifically, the information in connection with an application that will be treated as public records will include, without limitation, the conservation plan, production reports and appraisals.

By signature hereto, the undersigned do authorize the release of all information in connection with their application and will hold the Luzerne County Agricultural Land Preservation Board, Luzerne County, and their employees, agents and representatives, from any and all liability for the release of said information or making of said information available to the public. It is necessary for all owners of the farmland tract to give their approval and consent to this application.

Signed _____	Date _____
Signed _____	Date _____
Signed _____	Date _____
Signed _____	Date _____
Signed _____	Date _____

Submit completed application by February 1st to qualify for upcoming calendar year ranking

Please submit this application with all supplemental materials and a non-refundable check for \$25 payable to “Luzerne County Planning Commission” to:

Jennifer Lauri, Program Administrator
Luzerne County Farmland Preservation Board
325 Smiths Pond Road
Shavertown, PA 18708

Questions? Contact:

Jennifer Lauri, Program Administrator
Telephone: 570-674-7991 x 7
E-Mail: jennifer@luzcd.org

Applicants may also contact the Board Chairperson, or other Board members.
(See Appendix B for a list of the Board members).

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**Appendix E
Land Evaluation and Site Assessment (LESA) Worksheet**

Municipality _____
 Name of farm _____ Date _____
 Parcel No. _____ Prepared by _____

I. Land Evaluation (Weighted Value = 50%)

A Mapping Unit	B Acreage		C Relative Value	=	D
_____	_____	X	_____	=	_____
_____	_____	X	_____	=	_____
_____	_____	X	_____	=	_____
_____	_____	X	_____	=	_____
_____	_____	X	_____	=	_____
_____	_____	X	_____	=	_____
_____	_____	X	_____	=	_____
_____	_____	X	_____	=	_____
_____	_____	X	_____	=	_____
_____	_____	X	_____	=	_____
_____	_____	X	_____	=	_____
_____	_____	X	_____	=	_____
_____	_____	X	_____	=	_____
_____	_____	X	_____	=	_____
_____	_____	X	_____	=	_____
Totals	_____				_____

Average Soil Value for Farm (Total of D/Total of B) = _____

Weighted Land Evaluation Score (Average Soil Value x 50%) = _____

II. Site Assessment:

Development Potential Factors	Points
1a. Distance from Public Sanitary Sewer System	_____
1b. Percent of Soils with Limitations	_____
2. Distance from Public Water Distribution System	_____
3. Amount of Road Frontage	_____
4. Extent of Non-agricultural Use in Area	_____
Total	_____
Development Potential Score (Total x 10%)	_____

Farmland Potential Factors	Points
1. Percent of Tract Used for Harvested Cropland, Pasture or Grazing	_____
2. Soil and Water Conservation Practice Used	_____
3. Amount of Acreage Offered for Easement Purchase	_____
4. Buffering of Parks, Environmentally Sensitive Areas	_____
5. Acreage of Prime/State Soils on Tract	_____
6. Accepting Less Than the Appraised Easement Value	_____
Total	_____
Farmland Potential Score (Total x 20%)	_____

Clustering Potential Factors	Points
1. Proximity of Farm from a Significant Agricultural Area	_____
2. Proximity to Permanently Protected Farmland	_____
3. Percentage of Adjoining Land in Agricultural Security Area	_____
4. Proximity to Farm with an Easement Application in Same Round	_____
Total	_____
Clustering Potential Score (Total x 20%)	_____
Total Site Assessment Score	_____

III. Total LESA Score

Total Land Evaluation Score = _____

Total Site Assessment Score = _____

Total LESA Score = _____

Appendix F
Table of Luzerne County Relative Soil Values

Based on: USDA, NRCS Luzerne County Soil Land Evaluation 10/92
 Target Crop: Non-Irrigated Field Corn

GROUP	RELATIVE VALUE	MAP SYMBOL & NAME	CLASS	SLOPE
1	100	ln – Linden	1	0-3%
		ps – Pope	1	0-3%
		lkb – Leck Kill	2e	3-8%
		meb – Meckesville	2e	3-8%
		cha – Chenango	2s	0-3%
		bf – Basher	2w	0-3%
		2	73	bkb – Bath Chann
bub – Buchanan	2e			3-8%
kdb – Kedron Cha	2e			3-8%
lab – Lackawanna	2e			3-8%
chb – Chenango b	2s			3-8%
bra – Braceville	2w			0-3%
brb – Braceville	2w			3-8%
wlb – Wellsboro	2w			3-8%
wrb – Wurtsboro	2w			3-8%
pob – Pocono Gra	3s			3-8%
3	66			olb – Oquaga And
		mab – Mardin Cha	2w	3-8%
		bkc – Bath Chann	3e	8-15%
		brc – Braceville	3e	8-15%
		chc – Chenango g	3e	8-15%
		kdc – Kedron cha	3e	8-15%
		lac – Lackawanna	3e	8-15%
		lkc – Leck kill	3e	8-15%
		mec – Meckesville	3e	8-15%
		wa – Wayland d	3w	0-3%
		4	55	mac – Mardin cha
moc – Morris cha	3e			8-15%
olc – Oquaga and	3e			8-15%
poc – pocono gra	3e			8-15%
voc – Volusia ch	3e			8-15%
web – Weikert an	3e			3-8%
wlc – Wellsboro	3e			8-15%
wrc – Wurtsboro	3e			8-15%
kwb – Kedron cha	3w			0-8%
alb – alvira sil	3w			3-8%
ho – holly silt	3w			0-3%
mob – Morris cha	3w			0-8%
rda – Rexford lo	3w			0-3%
rdb – Rexford lo	3w			3-8%
vob – Volusia ch	3w			0-8%

Luzerne County Farmland Preservation Program

	VALUE	& NAME		
5	41	bkd – Bath chann	4e	15-25%
		lad – Lackawanna	4e	15-25%
		lkd – Leck kill	4e	15-25%
		mad – Mardin cha	4e	15-25%
		med – Meckesville	4e	15-25%
		olc – Oquaga and	4e	15-25%
		wec – Weikert an	4e	8-15%
		wld – Wellsboro	4e	15-25%
		wrd – Wurtsboro	4e	15-25%
		wyd – Wyoming gr	4e	15-25%
		cla – Chippewa s	4w	0-3%
		clb – Chippewa s	4w	3-8%
		sha – Shelmadine	4w	0-5%
		at – Atherton s	4w	0-3%
6	0	wa – Wayland si	5w	0-3%
		mu – Muck	5w	0-3%
		ard – Arnot-rock	6e	8-25%
		wed – Weikert an	6s	15-25%
		anb – Alvira ver	6s	0-8%
		bnb – Bath very	6s	3-8%
		bnd – Bath very	6s	8-25%
		keb – Kedron ver	6s	3-8%
		kec – Kedron ver	6s	8-20%
		kxb – Kedron ver	6s	0-8%
		lcb – Lackawanna	6s	3-8%
		lcd – Lackawanna	6s	8-25%
		mcb – Mardin ver	6s	3-8%
		mcd – Mardin ver	6s	8-25%
		mfb – Meckesville	6s	3-8%
		mfd – Meckesville	6s	8-25%
		msb – Morris ver	6s	0-8%
		wmb – Wellsboro	6s	3-8%
		wmd – Wellsboro	6s	8-25%
		wtb – Wurtsboro	6s	3-8%
		wtd – Wurtsboro	6s	8-25%
		asf – Arnot-rock	7e	25-70%
		mg – mine dump	7e	0-50%
		mh – mine dump	7e	0-50%
		sm – strip mine	7e	0-50%
		wyf – Wyoming gr	7e	25-60%
		bxh – Buchanan e	7s	3-8%
		bxh – Buchanan e	7s	8-25%
		ddb – Dekalb ext	7s	0-8%
		ddd – Dekalb ext	7s	8-25%
		arb – Arnot-rock	7s	0-8%
		ag – Alluvial I	7s	0-5%
		cnb – Chippewa v	7s	0-8%
		ddf – Dekalb ext	7s	25-80%

Luzerne County Farmland Preservation Program

GROUP	RELATIVE VALUE	MAP SYMBOL & NAME	CLASS	SLOPE
6	0	lef – Lackawanna	7s	25-50%
		mm – mine wash	7s	0-8%
		opb – Oquaga	7s	3-8%
		opd – Oquaga	7s	8-25%
		oxf – Oquaga	7s	25-50%
		ppb – Pocono ext	7s	3-8%
		ppd – Pocono ext	7s	8-25%
		skb –Shelmadine	7s	0-5%
		vrh – Volusia ve	7s	0-8%
		vrc – Volusia ve	7s	8-15%
		ub – Urban land	8	
		uf – Urban land	8	
		cut & fill	8	
		pits and q	8	

Appendix G

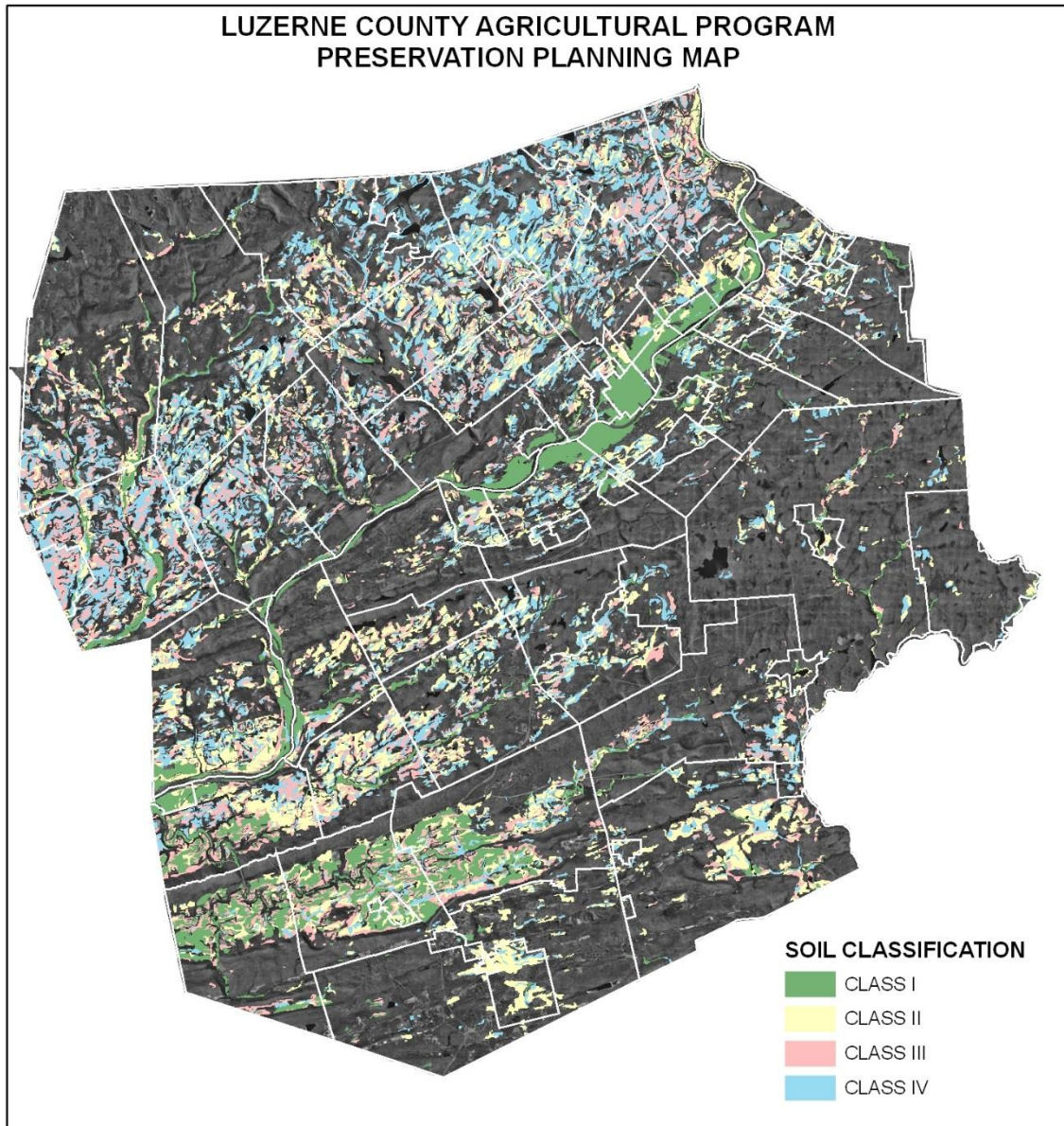
List of Mapping Units Found in Luzerne County that Qualify as Prime Farmland Soils

<u>Map Symbol</u>	<u>Mapping Unit Name</u>
Bf	Basher soils
BkB	Bath channery silt loam, 3 to 8 percent slopes
BrA	Braceville gravelly loam, 0 to 3 percent slopes
BrB	Braceville gravelly loam, 3 to 8 percent slopes
BuB	Buchanan channery loam, 3 to 8 percent slopes
ChA	Chenango gravelly loam, 0 to 3 percent slopes
ChB	Chenango gravelly loam, 3 to 8 percent slopes
KdB	Kedron channery silt loam, 3 to 8 percent slopes
LaB	Lackawanna channery silt loam, 3 to 8 percent slopes
LkB	Leck Kill channery silt loam, 3 to 8 percent slopes
Ln	Linden soil
MaB	Mardin channery, 8 to 15 per cent slopes
MeB	Meckesville channery silt loam, 3 to 8 percent slopes
PoB	Pocono gravelly sandy loam, 3 to 8 percent slopes
Ps	Pope soils
WIB	Wellsboro channery silt loam, 3 to 8 percent slopes
WrB	Wurtsboro channery loam, 3 to 8 percent slopes

Appendix H
List of Soil Mapping Units Found in Luzerne County that Qualify as Additional Farmland of Statewide Importance

<u>Map Symbol</u>	<u>Mapping Unit Name</u>
AIB	Alvira silt loam
Bkc	Bath channery silt loam, 8 to 15 percent slopes
BrC	Braceville gravelly loam, 8 to 15 percent slopes
ChC	Chenango gravelly loam, 8 to 15 percent slopes
Kdc	Kedron channery silt loam, 8 to 15 percent slopes
KoB	Kedron channery silt loam, somewhat poorly drained, 0 to 8 percent slopes
KwB	Kedron channery, 0 to 8 per cent slopes
LaC	Lackawanna channery silt loam, 8 to 15 percent slopes
LkC	Leck Kill channery silt loam, 8 to 15 percent slopes
MaB	Mardin Channery, 8-15 per cent slopes
MaC	Mardin channery silt loam, 8 to 15 percent slopes
MeC	Meckesville channery silt loam, 8 to 15 percent slopes
MoB	Morris channery silt loam, 0 to 8 percent slopes
MoC	Morris channery silt loam, 8 to 15 percent slopes
OIB	Oquaga and Lordstown channery silt loams, 3 to 3 percent slopes
OIC	Oquaga and Lordstown channery silt loams, 8 to 15 percent slopes
PoC	Pocono gravelly sandy loam, 8 to 15 percent slopes
RdA	Rexford loam, 0 to 3 percent slopes
RdB	Rexford loam, 3 to 8 percent slopes
VoB	Volusia channery silt loam, 0 to 8 percent slopes
VoC	Volusia channery silt loam, 8 to 15 percent Slopes
WeB	Weikert and Klinsville channery silt loam, 3 to 8 percent slopes
WeC	Weikert and Klinsville channery silt loam, 8 to 15 percent slopes
WIC	Wellsboro channery silt loam, 8 to 15 percent slopes
WrC	Wurtsboro Channery loam, 8 to 15 percent slopes

Appendix I
Map of Significant Agricultural Areas (Soil Classes I-IV)



**Appendix J
Appraisal Deposit Form**

Luzerne County Farmland Preservation Board

I/We _____ landowner(s) of farm property consisting of _____ acres, located on _____ in _____ Township, Luzerne County, Pennsylvania, and a qualified and approved agricultural conservation easement sale applicant, hereby request an appraisal by the Luzerne County Farmland Preservation Board. A deposit of \$1500.00 accompanies this form. (See page 20 for conditions under which the deposit will be returned).

Signatures of Landowner(s): _____

Address: _____

Telephone: _____ Date: _____

Please make check payable to: Luzerne County Planning Commission

Please submit this form to: Luzerne County Farmland Preservation Program Administrator
325 Smiths Pond Road
Shavertown, PA 18708

Your check will be handled by the Program Administrator and processed by the Luzerne County Planning Commission.

Office Use:

File Name: _____

Date Received: _____

Date forwarded to Planning Commission: _____

**Appendix K
Procedures for Inspecting and Enforcing an Easement**

§138e.201 Responsibility.

- (a) The County Administrator shall have the primary responsibility for inspecting restricted land and enforcing an easement.
- (b) 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 Administrator or County Board.

§138e.202 Inspections.

- (a) The County Board shall inspect all restricted land within the County on at least a biennial basis to determine compliance with the applicable deed of easement. The first inspection shall be completed within one year of the date of easement sale.
- (b) Written notice of an inspection to be conducted under subsection (a) shall be mailed to the owner at least 10 days prior to the inspection.
- (c) Any inspection conducted under subsection (a) shall be performed between the hours of 8 a.m. and 5 p.m. on a weekday that is not a legal holiday recognized by the Commonwealth, or a date and time agreeable to the County and the landowner.
- (d) Within 10 days of conducting an inspection under subsection (a), the County Board shall prepare a written inspection report setting forth the following information:
 - (1) The identification of the land inspected.
 - (2) The name of the owner of the farmland at the time the easement was originally acquired and the name of the current owner of the land inspected.
 - (3) A description of modifications in the number, type, location or use of any structures on the land since the date of the filing of the deed of easement.
 - (4) A description of the conservation practices being observed on the restricted land.
 - (5) A statement of whether the provisions of the deed of easement are being observed.
 - (6) A statement indicating whether a structure permitted under section 14.1 (c) (6) (iv) of the act (3 P. S. § 914.1 (c) (6) (iv)) has been constructed on the restricted land and, if such a structure has been constructed, the month and year construction was completed and a description of the structure and its location on the land.
 - (7) A statement indicating whether the residential subdivision permitted under section 14.1 (c) (6)(iv) has been exercised.
- (e) A copy of the inspection report shall be mailed by certified mail to the owner.
- (f) The County Administrator, the County Board and the State Board may inspect the restricted land, jointly or severally, without prior notice if it has reasonable cause to believe that any provision of the easement has been or is being violated.

§138e.203 Annual Report.

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

§138e.204 Enforcement.

- (a) The County Board shall enforce the terms of each easement purchased within the County under the act, whether it be a County, Local Government, or State or joint purchase.
- (b) The State Board may enforce the terms of State or jointly purchased easements.
- (c) The right of the State Board to enforce the terms of an easement may be exercised whether jointly with the County Board or by the State Board acting on its own behalf.

§138e.205 Notification to owner.

- (a) Within 10 days of the discovery of a violation of the terms of an easement, 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.
- (b) The written notice required by this section shall be sent by certified mail and shall set forth the following information:
 - (1) A copy of the inspection report.
 - (2) A copy of the deed of easement.
 - (3) A description of the action or condition which constitutes the alleged violation.
 - (4) A statement of the measures necessary to correct the alleged violation.

§138e.206 Enforcement actions.

- a. Sixty days after the mailing of a notice of violation under §138e.205 (relating to notification of owner), the County Board shall commence and prosecute an action in the Luzerne County Court of Common Pleas in which the restricted land is 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:
 - A. Determines with the State Board that the violation has been corrected.
 - B. Completes the following requirements:
 - I. Determines that the owner of the restricted land has commenced the necessary corrective measures, or determines that the necessary corrective measures cannot reasonably be completed within the 60-day period described in this subsection.
 - II. Established a period not to exceed 1 year within which the corrective measures shall be completed.
- b. The County Board shall commence and prosecute the enforcement action described in subsection (a) if the violation is not corrected within the time established under subsection (a)(2)(ii).
- c. The owner of the restricted land shall bear the costs associated with the correction of a violation of the easement, including:

- A. Costs of work required and materials used to correct the violation.
- B. Administrative costs incurred by the County Board and the State Board.
- C. Court costs and reasonable attorneys' fees incurred by the County Board and the State Board in enforcing the easement.
- d. 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 attorneys' fees, from the County Board or the owner of the restricted land, or both.

**Appendix L
Responsibility of Owner**

§138e.221 Permitted acts.

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

§138e.222 Conservation plan.

The county board shall require the owner of land being considered for agricultural conservation easement purchase to do the following:

(1) Before the county board recommends approval of the easement purchase to the State Board, obtain a conservation plan as approved by the county conservation district or the county board for the land that would be subject to the agricultural conservation easement.

(2) As part of the settlement documents described in § 138e.93 (relating to post settlement recording and reposting procedures), execute a conservation plan agreement form containing the following:

- (i) The name, address and telephone number of the landowner.
- (ii) The location of the land.
- (iii) The acreage of the land.
- (iv) An acknowledgement that the deed of agricultural conservation easement requires that all agricultural production on the subject land be conducted in accordance with the conservation plan.

- (v) An acknowledgement that a conservation plan exists with respect to the land, together with the following:
 - (a) The source of the conservation plan (typically, the county conservation district).
 - (b) An identifying number given to the conservation plan.
 - (c) The date of the conservation plan.

- (vi) An acknowledgement that the landowners agree to comply with the conservation practices and implementation schedule in the conservation plan, and an acknowledgement that failure to so comply would be a violation of the terms of the deed of agricultural conservation easement

- (vii) The signature of the landowners.

§138e.223 Construction of buildings; changes in use.

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

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

(b) ***Existing buildings or structures.***

- (1) 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.
- (2) A renovation or modification of an existing agricultural building or structure, or an addition to an existing agricultural building or structure, is permitted.

§138e.224 Construction of one additional residential structure.

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

- (1) The residential structure is constructed and used as the landowner's principal residence or for an immediate family member or for the purpose of providing necessary housing for seasonal or full-time farm employees.
- (2) No other residential structure has been constructed on the restricted land, under authority of §14.1(c)(6)(iv) of the act (3 P.S. §914.1(c)(6)(iv)) and this section, after the date of the granting of the easement.
- (3) The residential structure and its curtilage occupy no more than 2 acres of the restricted land.
- (4) The location of the residential structure and its driveway will not harm the economic viability of the preserved farm for agricultural production.
- (5) The location of the residential structure shall be sited in a manner that protects the prime, unique, and important soils to the greatest extent practicable.
- (6) The right to the additional residential structure has not been relinquished and extinguished by current or previous owner in accordance with subsection (c)(6)(iv) of the Act.

(b) ***Replacement of structures.*** The replacement of a residential structure constructed under authority of §14.1(c)(6)(iv) of the act and this section is permitted.

(c) ***Reservation of right to construct after subdivision.*** If the restricted land is subdivided prior to the construction of a residential structure under authority of §14.1(c)(6)(iv) of the act and section, the landowner shall do the following:

- (1) Inform the County Board of the specific subdivided tract with respect to which the right to construct and use such a residential structure is reserved.
- (2) Ensure that the deed to the subdivided tract with respect to which the right to construct and use the residential structure is reserved clearly sets forth the reservation of this right.

- (3) Ensure that the deeds to the remaining subdivided tracts recite that no residential structure may be constructed on the remaining subdivided tracts.

§138e.225 Subdivision of restricted land.

The Luzerne County Farmland Preservation Program prohibits subdivision of restricted land except that the county program permits one tract to be created by subdivision under § 914(i) (1) (22), for the purpose of the construction of a principal residence for the landowner or an immediate family member or an employee. The construction and use of a principal residence or housing for seasonal or full-time farm employees in accordance with section 14.1(c) (6) (iv) of the Act [3 P.S. § 914.1 (c) (6) (iv)], under the applicable subdivision and land development ordinance can be accomplished in Luzerne County by a land development other than subdivision.

Land subject to an agricultural conservation easement may be subdivided, provided the owner or owners (applicant) meet the criteria contained in the county program. Any and all expenses incurred in connection with a request for subdivision shall be the sole responsibility of the applicant. The burden of proof that any proposed subdivision of land subject to an agricultural conservation easement conforms to and complies with the act, the regulations, and the board's program guidelines shall rest with the applicant.

- (a) **Authority to prohibit subdivision.** A county program must allow the subdivision of restricted land for a residence for the landowner, an immediate family member or an employee, unless the right has been relinquished in accordance with §14.1(c)(6)(iv) of the act (3 P.S. §914.1(c)(6)(iv)). The right includes both construction of the additional residential structure or subdivision of the existing residential structure and is limited to two acres or less.
- (b) **Discretion to allow subdivision.** A county program may allow the subdivision of restricted land, and may place restrictions or conditions upon subdivision provided that the subdivided parcels continue to meet all program eligibility requirements individually.
- (c) **Preservation of economic viability for agricultural production.** Subsection (b) notwithstanding, a county program may not permit a subdivision which would harm the economic viability of the farmland for agricultural production.
- (d) **Prevention of conversion to non-agricultural use; exception.** Subsection (b) notwithstanding, a county program may not permit a subdivision which would convert land which has been devoted primarily to agricultural use to another primary use except that, without regard to this requirement, a county program may permit one tract to be created by subdivision for the purpose of the construction of a principal residence for the landowner or an immediate family member or an employee of the farm.
- (e) **Notice to landowner.** A County Board shall do at least one of the following:
 - (1) File its county program, or that portion setting forth any prohibitions or restrictions with respect to subdivision of restricted land, at the Office of Judicial Records for that County, and reference the place of filing of these prohibitions or restrictions in the deed of agricultural conservation easement.
 - (2) Recite the prohibitions or restrictions with respect to subdivision verbatim in the deed of agricultural conservation easement.

Subdivision language amendment – Act 33 of 2019

In accordance with the regulations of House Bill 370, this amends the act of June 30, 1981 (P.L.128, No.43), entitled "An act authorizing the creation of agricultural areas," Agricultural Area Security Law as it pertains to subdivision and construction of additional residential structures. As of October 23, 2019, the Luzerne County Farmland Preservation Board hereby revises the Luzerne County Farmland Preservation Program in compliance with Act 33 of 2019. This bill is effective on August 30, 2019 and must be applied retroactively.

(i) Subdivision of land after easement purchase—

(1) Each county program shall specify the conditions under which the subdivision of land subject to an agricultural conservation easement may be permitted. In no case, however, shall a county program permit a subdivision which will:

- (i) harm the economic viability of the farmland for agricultural production; or
- (ii) convert land which has been devoted primarily to agricultural use to another primary use, except that a county program shall permit one subdivision for the purpose of a residence for the landowner, an immediate family member or an employee, unless the right to the residence has been relinquished and extinguished in accordance with subsection (c)(6)(iv).

(Section (c)(6)(iv)):

- (iv) Construction and use of structures on the subject land for the purpose of a residence for the landowner, an immediate family member or an employee: Provided, That only one such structure may be constructed on no more than two acres of the subject land during the term of the agricultural conservation easement: and Provided further, That the owner of the land subject to the agricultural conservation easement may relinquish and extinguish the right of construction and use of structures conferred by this clause by recording, in the office for the recording of deeds in the county in which the land subject to the agricultural conservation easement is located, an affidavit evidencing the intent to relinquish and extinguish which includes a reference to the original deed of easement.

§138e.226 Procedure for review of request to subdivide restricted land.

A landowner may obtain review of a request for approval to subdivide a tract of restricted land in accordance with the following procedure:

- (1) The landowner shall submit an application to the County Board, in a form and manner prescribed by the County Board, requesting review and approval of the subdivision of a tract of restricted land.
- (2) The County Board shall note the date upon which the application is received.
- (3) Upon receipt of the application, the County Board shall forward written notice of the application to the Luzerne County Planning Commission. For purposes of this subsection, the foregoing office shall be referred to as the "reviewing agencies."
- (4) The County Board shall note the date upon which each reviewing agency receives the written notice described in paragraph (3).
- (5) Each reviewing agency shall have 60 days from receipt of the written notice described in paragraph (3) within which 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.

(6) The County Board shall have 120 days from receipt of the application for approval to subdivide within which to review the application, review comments and recommendations submitted by the reviewing agencies and approve or reject the application. This 120-day deadline may be extended by the mutual agreement of the landowner and the reviewing agencies. If the County Board fails to approve or reject an application within the 120-day deadline or an extension thereof, the application shall be deemed approved.

(7) If the application is rejected by the County Board, the County Board shall return the application and a written statement of the reasons for the rejection to the landowner. Within 30 days after 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 practice and procedure of local agencies) and Chapter 7 Subchapter B (relating to judicial review of local agency action).

(8) If the application is approved by the County Board, the County Board shall promptly forward a copy of the application and the comments and recommendations of the reviewing agencies to the State Board for review and approval or disapproval.

(9) The State Board will provide the County Board and the landowner with written notice of the date, time and location of the meeting at which the State Board shall review and consider the application. This notice will be forwarded by regular mail at least 14 days in advance of the State Board meeting.

(10) In its review of an application requesting approval of the subdivision of a tract of restricted land, the State Board will consider only whether the application complies with the conditions under which subdivisions are permitted by the County Program.

(11) The State Board will provide both the County Board and the landowner with written notice of its decision regarding the application for approval of the subdivision of a tract of restricted land. If the application is disapproved, the notice shall contain a statement of the reasons the application does not comply with the conditions under which subdivisions are permitted by the County Program.

§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.

(b) Within 30 days of a change in ownership of the restricted land, the prior owner shall notify the County Board and the Department of the name and address of the new owner, provide each 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 Luzerne County Office of Judicial Records.

Appendix M
Deed of Agricultural Conservation Easement

§138e.241 Deed clauses.

The Deed of Agricultural Conservation Easement delivered in connection with the purchase of an easement shall identify the owner of the farmland tract as grantor and either the Commonwealth or the county, or both, as grantee and contain the following provisions and additional, consistent provisions approved by the State Board:

(1) A granting clause stating:

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 Grantee, its successors and assigns, and Grantee voluntarily accepts, an agricultural conservation easement in the subject land, under and subject to the act and the following terms and conditions:

(2) A clause restricting use of the land to specific permitted acts as follows:

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, livestock and livestock products, including the processing or retail marketing of such crops, livestock or livestock products if more than 50 percent of such processed or merchandised products are produced by the farm operator (hereinafter “agricultural production”). For purposes of this Deed, “crops, livestock and livestock products” include, but are not limited to:

- (i) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans;
- (ii) Fruits, including apples, peaches, grapes, cherries and berries;
Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms;
- (iii) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers;
- (iv) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs;
- (v) Timber, wood and other wood products derived from trees; and
- (vi) Aquatic plants and animals and their byproducts.

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 any activity on the subject land other than agricultural production.

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:

- (i) The erection of fences for agricultural production and protection of watercourses such as lakes, streams, springs and reservoirs is permitted.
- (ii) The construction of one additional residential structure is permitted if:
 - (A) The residential structure is constructed and used as the landowner’s principal residence or for the purpose of providing necessary housing for seasonal or for an immediate family member or for full-time farm employees;
 - (B) No other residential structure has been constructed on the restricted land under authority of section 14.1(c)(6)(iv) of the act and this section, after the date of the granting of the easement;
 - (C) The residential structure and its curtilage occupy no more than 2 acres of the subject land;
 - (D) The location of the residential structure and its driveway will not harm the economic viability of the preserved farm for agricultural production;
 - (E) The location of the residential structure shall be sited in a manner that protects the prime, unique, and important soils to the greatest extent practicable; and
 - (F) The right to the additional residential structure has not been relinquished and extinguished by current or previous owner in accordance with subsection (c)(6)(iv) of the Act.
- (iii) The construction or use of any building or other structure for agriculture production, or the renovation or modification of an existing agricultural structure, is permitted, but the maximum building coverage may be restricted if the County Farmland Preservation Program approved by the State Board (hereinafter “county program”) imposes such a restriction.
- (iv) 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.
- (v) 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.

Subdivision – The following conditions shall apply to subdivision of lands eased through the Luzerne County Farmland Preservation Program whether the easement be held solely by the State, solely by the County, or held jointly by the State and County.

- (a) Authority to prohibit subdivision. The Luzerne County Farmland Preservation Program must allow the subdivision of restricted land subdivision is for a residence for the landowner, an immediate family member or an employee, unless the right has been relinquished in accordance with §14.1(c)(6)(iv) of the act (3 P.S. §914.1(c)(6)(iv)). The right includes both construction of the additional residential structure or subdivision of the existing residential structure and is limited to two acres or less. ordinance, by land development other than subdivision.

- (b) Discretion to allow subdivision. The Luzerne County Farmland Preservation Program may allow the subdivision of restricted land, and may place restrictions or conditions upon subdivision provided that the subdivided parcels continue to meet all program eligibility requirements individually.
- (c) Preservation of economic viability for agricultural production. Subsection (b) notwithstanding, a county program shall not permit a subdivision which would harm the economic viability of the farmland for agricultural production.
- (d) Prevention of conversion to non-agricultural uses; exception. Subsection (b) notwithstanding, a county program shall not permit a subdivision which would convert land which has been devoted primarily to agricultural use to another primary use except that, without regard to this requirement, the Luzerne County Farmland Preservation Program permits one tract to be created by subdivision for the purpose of the construction of a principal residence for the landowner or an immediate family member or an employee of the farm.
- (e) The prohibitions, restrictions and conditions of subdivision of eased land as set forth in Subsection (d) of this section shall be recited verbatim in the deed for all subdivided and remaining parcels.
- (f) All costs associated with subdivision shall be the responsibility of the landowner.
- (g) Nothing in this section shall relieve the landowner of any municipal, County or State regulation, procedures or requirements necessary for the subdivision of land.
- (h) Notice to landowner. The Luzerne County Farmland Preservation Board shall do at least one of the following:
 - (i) File its County Program, or that portion setting forth any prohibitions or restrictions with respect to subdivision of restricted land, at the Office of the Recorder of Deeds for Luzerne County, and reference the place of filing of these prohibitions or restrictions in the deed of agricultural conservation easement.
 - (ii) Recite the prohibitions or restrictions with respect to subdivision verbatim in the deed of agricultural conservation easement.

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 of, transportation of, 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.

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 and gas development or activities incident to the removal or development of such minerals are permitted.

Rural Enterprises – Customary part-time or off-season minor or rural enterprises and activities which are provided for in the County Program are permitted.

Soil and Water Conservation – All agricultural production 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 every ten years and upon any change in the basic type of agricultural production 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 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 on the land is conducted in a location and manner that does not harm the economic viability of the land for agricultural production.

(3) An enforcement clause stating that:

At intervals of no greater than 1 year the Grantee(s), its/their successor(s), assign(s) or designee(s) 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 an inspection shall be mailed, by certified mail, to the Grantor, his heirs, executors, administrators, successors or assigns at least 10 days prior to the inspection. An 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(s), its/their successor(s), assign(s) or designee(s) shall also have the right to inspect the subject land at any time, without prior notice, if it/they has/have 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(s), its/their successor(s), assign(s) or designee(s) to obtain 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.

(4) A clause stating that: The easement is granted in perpetuity as the equivalent of a covenant running with the land.

- (5) A clause stating that: 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.
- (6) A clause setting forth the obligation of the Grantor upon conveyance of the farmland tract as follows:

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 days of a change in ownership or within any lesser period prescribed in the County Program, notify the Luzerne County Farmland 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.

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.

- (7) A clause stating that: Terms and provisions of this deed shall be interpreted in accordance with the provisions of the Agricultural Security Area Law, the regulations at 7 Pennsylvania Code Chapter 138e and the County Program.
- (8) A habendum clause.

Appendix N Definition of Terms

Act, The – The Agricultural Area Security Law (3 P.S. §§ 901 – 915) as amended.

Agricultural Conservation Easement – An interest in land, less than fee simple, which interest represents the 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 party 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. The exercise or failure to exercise any right granted by the easement will not be deemed to be management or control of activities at the site for purposes of enforcement of the Hazardous Sites Cleanup Act (35 P.S. §§ 6020.101 – 6020.1305).

Agricultural Security Area - A unit of 250 or more acres of viable land, a portion of which is used for commercial equine activity, owned by one or more persons and used for the production of crops, livestock and livestock products. An area may be made up of several non-connected parcels, in which case the non-connected areas must be at least ten acres in size. In order to apply to the Luzerne County Farmland Preservation Program, the Agricultural Security Area must consist of at least 500 acres. The commercial equine activity applies only to applicants from the 2006 round and beyond. For more information, contact your municipality.

Commercial Equine Activity – The term includes the following 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, the pasturing of equines. The term does not include activities licensed under the act of December 17, 1981 (P. L.435, No. 135) known as the “Race Horse Industry Reform Act.”

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 or railroads, and whether or not described as multiple tax parcels, tracts, purports, or other property identifiers. The term includes supportive lands, such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds and streams.

County Board – The Luzerne County Farmland Preservation Board, its officers or others authorized to act on behalf of the Board.

Curtilage – The area surrounding a residential structure used for a yard, driveway, on-lot sewerage 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 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 §14.1 (c)(6)(iv) of the Act, to meet all other criteria in § 138e.16(a) (relating to minimum criteria for applications).

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 in §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 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 pursuant to §14.1 (c)(6)(iv) of the Act (3 P.S. §914.1 (c)(6)(i)), that would fail to meet the aforementioned criteria.

Land Development – either of the following activities:

- (1) 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
- (2) A subdivision of land.

Land Devoted Primarily to Agricultural Use – That acreage which is a part of restricted land and is harvested cropland, grazing or pasture land, land used for the production of timber and wood products, land containing non-residential structures used for agricultural production, or other acreage immediately available for agricultural production, and which excludes any acreage upon which immediate agricultural production is impracticable due to residential structures and their curtilages, wetlands, soil quality, topography or other natural or man-made features, and which further excludes any tract of 2 acres or less designated as the site upon which the landowner’s principal residence or housing for seasonal or full-time employees is permitted pursuant to §14.1 (c)(6)(iv) of the Act (3 P.S. §914.1 (c)(6)(iv)).

Parcel – All land defined by a single tax parcel number.

Pennsylvania Municipalities Planning Code – The Act of December 21, 1988 (P.L. 1329, No. 170) (53 P.S. ss 10101 – 11201).

State Board – The Pennsylvania State Agricultural Land Preservation Board.

Subdivision – The division or re-division of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other division 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.

USDA – The United States Department of Agriculture.

USDA-NRCS – the Natural Resources Conservation Service of the USDA. This entity was formerly known as the Soil Conservation Service

Utility – Any surface, subsurface or aerial transmission medium for electricity, oil, gas, water, sewage, telecommunications.

Appendix O
Commercial Equine Activities Amendment

In accordance with the regulations at 7 PA Code § 138e.43 (relating to revision of county programs), the county board hereby revises the Luzerne County Farmland Preservation Program in compliance with Act 61 of 2005 amendments of the Agricultural Security Law, Act 43 to take affect for the 2006 applicants. This Act is retroactive and applies to easements executed after June 29, 1981. The revisions to the county program are described by section.

Commercial Equine Activity: The following activities for which a fee is collected will be considered commercial equine activity:

- Boarding of Equines
- Training of Equines
- Instruction of People in Handling, Driving, or Riding Equines
- Use of Equines for Riding or Driving Purposes
- Pasturing of Equines

Agricultural Security Areas: Section 14.05 (a) of Act 43 is amended to include the following language in the first sentence: “or of viable agricultural land, a portion of which is used for commercial equine activity.”

County Program: Section 14.1 (8)(2)(1) and (C)(6) of Act 43 are amended to include the following language: “establishing minimum criteria for eligibility of viable agricultural land, a portion of which is used for commercial equine activity.”

Restrictions & Limitations: Section 14.1(C)(6)(iii) of Act 43 is amended to allow “Construction and use of structures on the subject land necessary for agricultural production or a commercial equine activity.”

Section 14.1(C)(6)(VI) of Act 43 allows for “commercial equine activity on the subject land.”

Amendment or Addition of Section: Section 4 of Act 61 of 2005 states “The amendment or addition of section 14.1 (C)(6)(III) and (VI) of the Act shall apply to easements executed after June 29, 1981.

