

[§ 901](#) [§ 902](#) [§ 903](#) [§ 904](#) [§ 905](#) [§ 906](#)

TITLE 3

Agriculture

Department of Agriculture

CHAPTER 9. Delaware Agricultural Lands Preservation Act

Subchapter I. Establishment of Foundation, Advisory Boards and Fund

§ 901. Purpose, policy and intent.

It is the declared policy of the State to conserve, protect and encourage improvement of agricultural lands within the State for the production of food and other agricultural products. It is also the declared policy of the State to encourage, promote and protect farming as a valued occupation. Preservation of the State's farmlands and forestlands is considered essential to maintaining agriculture as a viable industry and important contributor to Delaware's economy. It is a finding of the General Assembly that valuable and irreplaceable farmlands and forestlands are being lost due to nonagricultural development pressures and that, to insure the long-term utilization of the State's most viable agricultural lands, it is necessary to adopt and implement an effective program and infrastructure for permanent agricultural land preservation. To the maximum extent possible, State agency action, particularly action involving the exercise of powers of eminent domain, which has an adverse impact on viable agricultural lands, should be avoided or minimized. It is further recognized that a need exists to create sufficient economic incentives and benefits to encourage agricultural landowners to voluntarily place viable agricultural lands under protective restrictions through the creation of and participation in agricultural preservation districts and the sale of development rights. It is the purpose and intent of the General Assembly to provide for the creation of permanent agricultural areas comprised of viable farmlands and forestlands to serve the long-term needs of the agricultural community and the citizens of the State. It shall be a priority to create agricultural preservation districts and purchase development rights in those areas located near and adjacent to designated growth zones.

[68 Del. Laws, c. 118, § 2 \(https://legis.delaware.gov/SessionLaws?volume=68&chapter=118\); 71 Del. Laws, c. 378, § 93 \(https://legis.delaware.gov/SessionLaws?volume=71&chapter=378\);](#)

§ 902. Definitions.

The following terms shall have the meanings ascribed to them in this chapter:

- (1) "Advisory Board" or "Advisory Boards" means the Farmland Preservation Advisory Boards established and appointed by the respective legislative bodies of each county.
- (2) "Agricultural lands" means farmlands and forestlands.
- (3) "Agricultural use" means all forms of farming, including agriculture, horticulture, aquaculture, silviculture and activities devoted to the production for sale of food and other products useful to humans which are grown, raised or harvested on lands and waters.

- (4) "Agricultural value" means the value of the land when subject to the District restrictions set forth in § 909 of this title and the requirements imposed under § 914(a)(2) of this title.
- (5) "County" means New Castle County, Kent County and Sussex County as referenced.
- (6) "Forestlands" means a contiguous area of trees or forest cover at least 10 acres in size which is capable of being timbered and reforested as determined by the State Forester.
- (7) "Forestland preservation agreement" means an agreement executed by an owner or owners creating a forestland preservation area and binding forestlands to forestland preservation area restrictions for a period of 10 years and any extended period.
- (8) "Forestland preservation easement" means the perpetual easement acquired by the Foundation on forestlands.
- (9) "Foundation" means the Delaware Agricultural Lands Preservation Foundation.
- (10) "Fund" means the Delaware Farmland Preservation Fund.
- (11) "Growth zone" means the areas designated by the Foundation recognizing planned future development.
- (12) "LESA" means the Land Evaluation and Site Assessment system adopted by the Department of Agriculture to determine the quality of farmland and forestland and the long-term agricultural viability of such lands.
- (13) "Owner" or "owners" means the person or persons holding fee simple title to farmlands and/or forestlands.
- (14) "Person" or "persons" means any individual or individuals, partnership, joint venture, corporation, association, trust, institution, cooperative enterprise or duly established legal entity capable of holding title to real property in the State.
- (15) "Preservation easement" means perpetual agricultural land preservation easements acquired by the Foundation.
- (16) "Professional forester" means an individual who possesses at least a bachelor's degree in forestry or a closely related field.
- (17) "Unimproved land" means the open space, the area of land under structures used for agricultural purposes and the land under lakes, dams, ponds, streams and irrigation ditches, but shall not include the land used for dwelling housing.
- (18) "Usable" means available and capable of being used for agricultural, horticultural, aquacultural and forestry production activities.

68 Del. Laws, c. 118, § 2 (<https://legis.delaware.gov/SessionLaws?volume=68&chapter=118>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 71 Del. Laws, c. 378, § 94 (<https://legis.delaware.gov/SessionLaws?volume=71&chapter=378>); 75 Del. Laws, c. 201, § 1 (<https://legis.delaware.gov/SessionLaws?volume=75&chapter=201>);

§ 903. Delaware Agricultural Lands Preservation Foundation.

(a) There is hereby established and created a statewide agricultural lands preservation foundation, a body politic and corporate constituting a public instrumentality of the State established and created for the performance of an essential public and governmental function, to be known as the Delaware Agricultural Lands Preservation Foundation. The Foundation shall be comprised of 13 trustees, all of whom shall be resident of and qualified to vote in the State. The President Pro Tem shall appoint 1 member from the Senate and the Speaker of the House shall appoint 1 member from the House of Representatives each of whom shall serve an indefinite term. The Governor shall appoint the remaining 11 Trustees and shall designate 1 Trustee as Chairperson, which Trustee shall serve at the pleasure of the Governor and be confirmed with the advice and consent of the Senate. The composition of the 11 members appointed by the Governor to the Board of Trustees of the Foundation shall be as follows:

- (1) The Secretary of the Department of Agriculture or authorized designee to serve an indefinite term.

(2) The Secretary of the Department of Natural Resources and Environmental Control or authorized designee to serve an indefinite term.

(3) The State Treasurer or authorized designee to serve an indefinite term.

(4) A member and representative of the Delaware Farm Bureau, to be selected from a list of 3 nominees submitted by the Delaware Farm Bureau, who shall serve an initial term of 2 years.

(5) A member and representative of the Delaware State Grange, to be selected from a list of 3 nominees submitted by the Delaware State Grange, who shall serve an initial term of 2 years.

(6) An individual actively engaged in farming or some other form of agribusiness who is a resident of New Castle County and who shall serve for an initial term of 3 years.

(7) An individual actively engaged in farming or some other form of agribusiness who is a resident of Kent County and who shall serve for an initial term of 3 years.

(8) An individual actively engaged in farming or some other form of agribusiness who is a resident of Sussex County and who shall serve for an initial term of 3 years.

(9) An individual actively engaged in farming or some other form of agribusiness who may reside in any county of the State.

(10) An individual who is a resident of the State who is designated as Chairperson.

(11) The Chair of the Council on Forestry or authorized designee to serve an indefinite term.

(b) Upon the expiration of the terms of the original Trustees having designated terms, the terms of such Trustee positions thereafter shall be 3 years. For the 5 Trustees appointed to the positions indicated in paragraphs (a)(6) through (a)(10) of this section, Trustees registered in either major political party shall not exceed the other major political party by more than 1.

(c) In the event of death, permanent disability, resignation or failure to perform duties of a Trustee, the Governor shall appoint an interim Trustee to serve the unexpired term of the departing Trustee, or, in the case of the Chairperson, an interim term not to exceed 6 months, unless the Chairperson is confirmed with the advice and consent of the Senate.

(d) For purposes of conducting business of the Foundation, 7 Trustees shall constitute a quorum. A majority vote of members constituting the quorum shall be required for action on any matter before the Foundation. All votes on matters before the Foundation shall be conducted at meetings open to the public, and such meetings shall be timely noticed. Nothing shall prevent the Trustees of the Foundation from meeting at executive sessions which are closed to the public for purposes of discussing Foundation matters.

(e) The Trustees shall not be entitled to compensation for the services they provide to the Foundation; however, each Trustee shall be entitled to reimbursement for actual and necessary expenses incurred to enable the performance of official duties.

(f) No Trustee shall be entitled to vote on any matter before the Foundation if such Trustee knowingly has a financial interest in the outcome of such matter. In the event a Trustee knowingly has a financial interest, such Trustee shall indicate to the Chairperson the nature of the interest and the Chairperson shall note for the record that the Trustee did not vote by reason of conflict of interest. In situations in which a Trustee or Trustees do not vote by reason of conflict of interest, the matter pending before the Foundation shall be decided on the basis of a majority vote of the remaining Trustees present who do not have a conflict of interest. A Trustee or Trustees having a conflict of interest as set forth herein shall be counted for purposes of establishing a quorum provided such Trustee or Trustees are present at the meeting. The fact that a Trustee or Trustees have not voted by reason of conflict of interest shall in no way affect the validity of an act or actions taken regarding the matter before the Foundation.

(g) The Foundation shall continue until its existence shall be terminated by law. Upon termination of the existence of the Foundation, all of its rights, properties and liabilities shall pass to and be assumed by the State.

(h) A Trustee may be removed by the Trustee's appointing authority at any time for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(1) A Trustee is deemed in neglect of duty if the Trustee is absent from 3 consecutive foundation meetings without good cause or attends less than 50% of foundation meetings in a calendar year.

(2) A Trustee who is deemed in neglect of duty is considered to have resigned and, upon appointment of a successor, is no longer a Trustee.

68 Del. Laws, c. 118, § 2 (<https://legis.delaware.gov/SessionLaws?volume=68&chapter=118>); 68 Del. Laws, c. 371, § 7 (<https://legis.delaware.gov/SessionLaws?volume=68&chapter=371>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 75 Del. Laws, c. 98, § 134 (<https://legis.delaware.gov/SessionLaws?volume=75&chapter=98>); 75 Del. Laws, c. 201, §§ 2, 3 (<https://legis.delaware.gov/SessionLaws?volume=75&chapter=201>); 80 Del. Laws, c. 198, §§ 1-3 (<https://legis.delaware.gov/SessionLaws?volume=80&chapter=198>); 81 Del. Laws, c. 76, § 1 (<https://legis.delaware.gov/SessionLaws?volume=81&chapter=76>);

§ 904. Duties and authority of Foundation.

(a) The Foundation shall be responsible for the following:

(1) The adoption, after public hearing, of criteria for establishment and maintenance of Agricultural Preservation Districts, which criteria shall supplement and be consistent with the standards set forth in this chapter;

(2) The adoption, after public hearing, of criteria for the purchase of agricultural lands preservation easements, which criteria shall supplement and be consistent with the standards set forth in this chapter;

(3) The adoption, after public hearing and consultation with the Department of Agriculture, the Department of Natural Resources and Environmental Control, and the Farmland Preservation Advisory Boards and Planning and Zoning Commissions of each county, of a statewide agricultural lands preservation strategy which specifically identifies the areas of the State in which valuable productive agricultural lands are located and which are considered best suited for long-term preservation, and by specifically identifying the growth zone;

(4) The administration, operation and supervision of the Delaware Farmland Preservation Fund;

(5) The monitoring and enforcement of the requirements and restrictions imposed by and under the provisions of this chapter, any duly adopted regulations and legally binding instruments;

(6) The establishment of a program of cooperation and coordination with the governing bodies of the counties, municipalities and other units of general government below the State level and with private nonprofit or public organizations to assist in the preservation of agricultural lands for agricultural purposes;

(7) The acquisition of available federal funding, including application for eligible loans under the Farms for the Future Act of 1990 (7 U.S.C. § 4201 et seq.) and for undertaking all other necessary actions required for receipt of such funding, and deposit of any such moneys received into the Delaware Farmland Preservation Fund;

(8) The performance of an annual audit of the Foundation's accounts, prepared by an independent certified public accountant qualified to perform such an audit, which annual audit shall be part of the Foundation's Annual Report;

(9) The preparation of an Annual Report of the Foundation's proceedings and activities for the annual period ending June 30, which report shall include the annual audit, an inventory of farmlands and forestlands located in Agricultural Preservation Districts, an inventory of preservation easements acquired during the period, the status of the Fund and such other information deemed appropriate, which Annual Report shall be submitted to the Governor and the General Assembly of the State;

(10) The establishment of a program of education and promotion of agricultural lands preservation;

(11) The development of an effective program to fully implement the provisions of this chapter;

(12) The establishment and implementation of a forestland preservation program; and

(13) The adoption of rules of practice and procedure for acquiring forestland preservation easements.

(b) The Foundation shall have the authority to do the following:

(1) Adopt an organizational structure to implement this chapter;

(2) Employ a staff subject to the availability of funding;

(3) Establish an office in the State;

(4) Retain by contract auditors, accountants, appraisers, legal counsel, surveyors, private consultants, financial advisors or other contractual services required by the Foundation;

(5) Sue and be sued;

(6) Utilize a seal;

(7) Conduct such hearings, examinations and investigations as may be necessary and appropriate to the conduct of its operations and the fulfillment of its responsibilities;

(8) Procure and keep in force adequate insurance or otherwise provide for the adequate protection of its property, as well as to indemnify and save itself harmless and its officers, agents or employees against loss or liability with respect to any risk to which it or they may be exposed in carrying out any function of the Foundation;

(9) Purchase, sell, manage, lease or rent such real and personal property for use of the Foundation as deemed necessary, convenient or desirable;

(10) Act on and approve applications for the establishment of Agricultural Preservation Districts consistent with the provisions of this chapter and duly adopted regulations;

(11) Acquire by gift or purchase agricultural land preservation easements;

(12) Seek, obtain and utilize federal and private funding for the purposes of this chapter;

(13) Make short- and long-range plans for the protection and preservation of agricultural lands;

(14) Enter upon lands as may be necessary to perform surveys, appraisals and investigations to accomplish the purposes of this chapter;

(15) Accept gifts, grants or loans of funds, property or service from any source, public or private, and comply, subject to this chapter, with the terms and conditions of any agreements entered and related thereto;

(16) Receive funds from the sale of general bonds, revenue bonds or other obligations of the State or under the name of the Foundation;

(17) Recover reasonable costs for service provided;

(18) Delegate to 1 or more of its Trustees, its Executive Director or its agents such powers and duties as it may deem necessary and proper for the conduct of its authorized business;

(19) Select an Executive Director, who shall be a member and chief executive officer of the staff of the Foundation, subject to the availability of funding for such position, and provided further that the Executive Director shall be a resident of the State, have an undergraduate degree from an accredited institution of higher learning and possess at least 5 years experience in the administration of agricultural programs, land use planning or agribusiness activities;

(20) Adopt procedural rules to govern the manner in which internal affairs of the Foundation are conducted;

(21) Adopt, after notice and public hearing, rules and regulations to fulfill the Foundation's responsibilities and fully effectuate the authority, purposes, intent and activities contemplated under this chapter; and

(22) Engage in all the activities specified in this subsection (b) of this section as they may relate to the forestland preservation program set forth in subchapter V of this chapter.

(c) The members of the staff of the Foundation shall be afforded protections comparable to those provided under the State Merit System and shall be included under and subject to Chapter 55 of Title 29.

68 Del. Laws, c. 118, § 2 (<https://legis.delaware.gov/SessionLaws?volume=68&chapter=118>); 71 Del. Laws, c. 221, § 2 (<https://legis.delaware.gov/SessionLaws?volume=71&chapter=221>); 71 Del. Laws, c. 378, § 95 (<https://legis.delaware.gov/SessionLaws?volume=71&chapter=378>); 75 Del. Laws, c. 201, §§ 4, 5 (<https://legis.delaware.gov/SessionLaws?volume=75&chapter=201>);

§ 905. Delaware Farmland Preservation Fund.

(a) The Delaware Farmland Preservation Fund is created and shall be maintained, administered, operated and supervised by the Foundation to implement the provisions of this chapter.

(b) All moneys received by the Foundation or designated for deposit into the Fund shall be placed in such accounts established by and for the use of the Foundation. To the extent moneys in the Fund are not needed on a current basis, the Foundation shall be entitled to invest such moneys on a long-term or short-term basis; provided, however, that the policies governing any such investment of moneys by the Foundation shall be subject to the approval of the Cash Management Policy Board.

(c) All banks, bankers, trust companies, savings banks and other persons carrying on a banking business under the laws of the State are authorized to do business with the Foundation and to give security for the safekeeping and prompt payment of moneys of the Foundation deposited by it with them. The Foundation shall be entitled to establish such accounts as deemed appropriate for the conduct of its business.

68 Del. Laws, c. 118, § 2 (<https://legis.delaware.gov/SessionLaws?volume=68&chapter=118>);

§ 906. Farmland Preservation Advisory Boards.

(a) Each county legislative body shall establish a Farmland Preservation Advisory Board which shall consist of 4 active farmers or agribusinessmen residing within the county and 1 member of the county legislative body, who shall serve as the Chairperson of the Board. The members of such Board shall be appointed by the county legislative body. The members shall serve without salary, but the county legislative body may entitle each such member to reimbursement of such member's actual and necessary expenses incurred in the performance of official duties. A quorum of the Board for conducting business shall be 3 members and a majority vote of the quorum shall be necessary to take action on matters before the Board.

(b) The Chairperson of the Board shall serve for an indefinite term and the 4 other members shall serve for terms of 4 years each; provided further, that Board members registered in either major political party shall not exceed the other major political party by more than 1. Any member of the Board may be reappointed for a succeeding term without limitations as to the number of terms served.

(c) The Board shall advise the Foundation in relation to any regulations proposed for adoption by the Foundation. The Foundation shall provide a draft of proposed regulations to the Board at least 60 days in advance of the time that proposed regulations are released for public notice in order to allow for comment of the Board and possible amendment. The Board may request the Foundation to review any adopted regulation which the Board identifies as having an adverse effect on the furtherance of the purpose and intent of this chapter. Upon receipt of any such request, the Foundation shall submit in writing to the Board a response indicating the Foundation's position on the matter and the action, if any, which is contemplated in response to the request.

(d) Whenever an application for establishment of an Agricultural Preservation District is received by the Foundation and the Foundation determines that the eligibility criteria have been satisfied, the Foundation shall submit the application to the Board for the county in which the proposed District is located for a recommendation. The Board shall act on an application by recommending in favor or against approval within 60 days of receipt of the application, and the Board

may include reasons for its decisions. In the event that the Board fails to make its recommendation within the specified 60-day period, or if the Board is not duly established or constituted, the decision required of the Board under the Agricultural Preservation District application process as specified hereunder shall be deemed an approval.

68 Del. Laws, c. 118, § 2 (<https://legis.delaware.gov/SessionLaws?volume=68&chapter=118>); 70 Del. Laws, c. 186, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 84 Del. Laws, c. 42, § 8 (<https://legis.delaware.gov/SessionLaws?volume=84&chapter=42>);

Delaware General Assembly (<http://legis.delaware.gov/>).

Judicial (<http://courts.delaware.gov/>)

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[§ 907](#) [§ 908](#) [§ 909](#) [§ 910](#) [§ 911](#)

TITLE 3

Agriculture

Department of Agriculture

CHAPTER 9. Delaware Agricultural Lands Preservation Act

Subchapter II. Agricultural Preservation Districts

§ 907. Establishment of Agricultural Preservation Districts.

(a) Any owner or owners of contiguous farmland and/or forestland containing at least 200 usable acres of such lands located in the State may submit on a voluntary basis, on such forms as the Foundation prescribes, an application for establishment of an Agricultural Preservation District. Upon receipt of a completed application, the Foundation shall review within 45 days the application to determine if it satisfies the criteria for eligibility established under § 908 of this title and any regulations adopted and related thereto. The Foundation shall, following its review to determine eligibility, notify the applicant of its findings. The Foundation shall be entitled to provide assistance to potential applicants regarding the completion of necessary application forms.

(b) If an application for establishment of an Agricultural Preservation District satisfies the criteria for eligibility, the Foundation shall submit the application to the Board and Planning and Zoning Commission for the county in which the farmlands and/or forestlands are located for purposes of obtaining a recommendation. The application shall be reviewed by the Board in accordance with the procedures set forth under § 906(d) of this title. The Planning and Zoning Commission, upon receipt of an application from the Foundation, shall timely notice consideration of the application at its next regularly scheduled meeting, and shall recommend in favor or against approval, and include any reasons for its decision. If the Planning and Zoning Commission fails to render a decision on an application within 90 days of receipt, the application shall be deemed approved.

(c) The Foundation shall consider applications for establishment of Agricultural Preservation Districts at its next noticed regularly scheduled meeting after the review process has been completed at the Board and Planning and Zoning Commission levels. The Foundation shall render a decision in favor or against approval of the application. An Agricultural Preservation District shall be established if the application is approved by any 2 of the 3 entities which considered the application, namely: The Foundation, the Board and the Planning and Zoning Commission.

(d) An owner of farmland and/or forestland consisting of less than 200 acres in the State may submit on a voluntary basis, on such forms as the Foundation prescribes, an application for expansion of an established Agricultural Preservation District if the application satisfies the criteria for eligibility established under § 908 of this title and any regulations adopted thereunder, as determined by the Foundation, and the farmland and/or forestland is either (1) contiguous to the established Agricultural Preservation District, or (2) located in whole or part within a 3-mile radius of an established Agricultural Preservation District. The Foundation shall render decisions in favor or against applications for expansions of Agricultural Preservation Districts at noticed regularly scheduled meetings.

(e) Upon the establishment of an Agricultural Preservation District or the expansion of an Agricultural Preservation District, the Foundation shall provide appropriate notice and a description of the established or expanded District to the Planning and Zoning Commission and Board of Assessment for the county in which such District is located. Upon receipt of such information from the Foundation, the Planning and Zoning Commission and the Board of Assessment shall provide appropriate reference in their real property records and notations on maps which are utilized and maintained that the subject farmlands and/or forestlands are included in an Agricultural Preservation District.

68 Del. Laws, c. 118, § 2 (<https://legis.delaware.gov/SessionLaws?volume=68&chapter=118>); 71 Del. Laws, c. 221, § 1 (<https://legis.delaware.gov/SessionLaws?volume=71&chapter=221>);

§ 908. Criteria for eligibility and review.

(a) In order to be considered eligible for inclusion in an Agricultural Preservation District, an application which qualifies under the requirements of § 907(a) or (d) of this title shall satisfy the following criteria:

- (1) The owner or owners seeking inclusion of real property in the District shall hold fee simple title to such property;
- (2) The real property proposed for inclusion in the District shall have an agricultural zoning designation and shall not be subject to any major subdivision plan;
- (3) The real property shall consist of viable and productive farmlands and/or forestlands which meet the minimum LESA scoring requirements for eligibility established by the Foundation through adopted regulations;
- (4) The owner or owners of the real property proposed for inclusion in the District execute a declaration in recordable form committing to the District restrictions set forth in § 909 of this title; and
- (5) The real property proposed for inclusion in the District shall include all of the eligible real property located in the tax parcel or tax parcels subject to application, and no eligible real property shall be carved out or otherwise excluded from the application for establishment of an Agricultural Preservation District or the application to sell a preservation easement pursuant to subchapter III of this chapter.

(b) In reviewing applications for establishment of an Agricultural Preservation District the Foundation, the Board and the Planning and Zoning Commission shall consider the following factors:

- (1) The viability and productivity of the farmlands and/or forestlands based on the LESA scoring system;
- (2) The extent to which the farmlands and/or forestlands are being actively utilized for agricultural purposes;
- (3) The extent to which the long-term preservation of the farmlands and/or forestlands would be consistent with land use plans adopted after public hearing at state and county levels;
- (4) The potential for expansion of the District if established and compatibility with surrounding land uses;
- (5) The ancillary benefit of creating additional open space adjacent to existing established and protected open space;
- (6) The potential for acquisition of agricultural preservation easements under rating or ranking systems that may be adopted through regulations of the Foundation;
- (7) The socio-economic benefits derived from an agricultural and historic perspective as a result of inclusion of the farmlands and/or forestlands in an Agricultural Preservation District; and
- (8) Consistency with the statewide agricultural lands preservation strategy adopted pursuant to § 904(a)(3) of this title.

68 Del. Laws, c. 118, § 2 (<https://legis.delaware.gov/SessionLaws?volume=68&chapter=118>); 71 Del. Laws, c. 257, § 2 (<https://legis.delaware.gov/SessionLaws?volume=71&chapter=257>);

§ 909. District restrictions.

(a) The farmlands and forestlands included in an Agricultural Preservation District are subject to the following restrictions:

(1) No rezoning or major subdivision of the real property shall be allowed;

(2) Activities conducted on the real property shall be limited to agricultural and related uses, and residential use of the real property shall be limited as follows:

a. No more than 1 acre of land for each 20 acres of usable land owned in a District or an expansion of a District, to a maximum of 10 acres, shall be allowed for dwelling housing; and

b. The dwelling housing shall be limited to residential use of the owner, relatives of the owner and persons providing permanent and seasonal farm labor services; provided however, that the Foundation may, pursuant to regulations adopted after notice and public hearing, allow, from the effective date of an initial District Agreement, no more than a total of 3 dwellings or dwelling lots located in the Agriculture Preservation District to be transferred from an owner or relatives of an owner to any other person, subject to the following limitations and requirements:

1. The owner or relative of an owner seeking to make the transfer shall establish that a hardship condition exists, as defined pursuant to Foundation regulations, and obtain Foundation approval;

2. The dwelling or dwelling lot, after transfer, shall be used only for residential purposes;

3. The transferred property shall not qualify for District benefits or benefits of easement conveyance established under this chapter; and

4. If a preservation easement has been acquired by the Foundation on the real property subject to transfer, the owner or relatives of the owner shall, as a condition of Foundation approval, pay to the Foundation an amount equal to 25 percent of the then current fair market value of the land subject to transfer; and

c. Any transfer of real property in a District or an expansion of a District to another person shall be preceded by the execution by the transferee of a document, in recordable form and as prescribed by the Foundation, which sets forth the acreage allowed for dwelling housing and the restrictions which apply to the real property under this chapter and the regulations of the Foundation.

(3) The restrictions shall be deemed covenants which run with and bind the lands in the District for a period of 10 years or any extended period from the date of placement of the lands in the District.

(4) For any new District or expansion of a District approved after August 23, 2004, the provisions of paragraph (a)(2)b. of this section shall be replaced by the following restrictions:

a. With respect to the acreage allowed for dwelling housing pursuant to paragraph (a)(2)a. of this section, there shall be a limit of 3 dwelling houses for residential use placed on the allowable acreage at 3 locations designated by the owner, unless there exists more than 3 dwelling houses on the real property at the time of approval of the new district or expansion of a District, in which case the allowable acreage shall be allocated to the existing dwelling houses and no additional dwelling houses shall be allowed.

b. The dwelling housing utilized pursuant to paragraph (a)(4)a. of this section, above, for residential use shall not be restricted to owners, relatives of owners or persons providing permanent and seasonal farm labor services, and any person shall be entitled to use the dwelling housing for residential purposes.

c. The owners of real property in any District or expansion of a District, which District is in existence on August 23, 2004, shall be entitled to be released from the restrictions of paragraph (a)(2)b. of this section, provided such owner executes an amendment to their District Agreement in a form designated and acceptable to the Foundation, subjecting the real property to the restrictions set forth in paragraphs (a)(1), (a)(2)a., (a)(4)a. and (a)(4)b. of this section. If an owner of real property in any District or expansion of a District has before August 23, 2004, conveyed a preservation easement to the Foundation, such owner shall be entitled to be released from the restrictions of paragraph (a)(2)b. of this section as contained in the preservation easement, provided the owner

executes an amendment to the preservation easement in a form designated and acceptable to the Foundation subjecting the real property to the restrictions set forth in paragraphs (a)(1), (a)(2)a., (a)(4)a. and (a)(4)b. of this section.

(5) The following uses shall be deemed “related uses” for purposes of paragraph (a)(2) of this section:

a. A farm market or roadside stand shall be allowed provided the products offered for sale are grown or produced on the property included within the District and such farm market or roadside stand complies with § 2601(b)(5), § 4901(b)(5), or § 6902(b)(5) of Title 9.

b. Hayrides, horseback riding, guided tours, and petting zoos shall be allowed, provided that said activities are limited to no more than 50 persons on the premises at a time. Notwithstanding the foregoing, educational tours and agricultural demonstration events shall not be subject to the 50-person limitation.

c. Horse stabling and training and caring for horses is permitted; provided however, quasi-public horse events such as polo fields and horse shows, shall not be permitted.

d. Hunting, trapping, and fishing shall be allowed provided said activities are limited to private noncommercial activities and do not adversely affect the agricultural use of the property.

e. Spray irrigation designed to replenish soil nutrients and improve the quality of the soil is allowed provided that the spray effluent is treated pursuant to the best available treatment technology, is disposed of on property utilized for the production of conventional cash crops, and all storage and treatment of the effluent disposed of on the District property takes place on property other than District property.

f. Easements, licenses and other property interests for utility, telecommunications, and access uses are allowed provided that:

1. The property subject to the easement, license or other property interest is limited to only the area necessary to accommodate the utility, telecommunications or access use;

2. The area affected by the use is located so as to minimize, to the maximum extent practicable, the impact on farming activities and operations;

3. No commercial advertising or commercial activities unrelated to the utility, telecommunications or access use shall be conducted on the area of the utility, telecommunications or access use;

4. Any document used to grant an easement, license or other property interest shall limit the activities to utility, telecommunications or access uses and shall contain the prohibitions of commercial advertising or commercial activities unrelated to the permitted use; and

5. The written approval of the Foundation shall be obtained in accordance with the rules and regulations of the Foundation.

g. Farm structures in existence at the time of approval of a District or expansion of a District that are no longer used in farming operations may be used for the enclosed storage of property belonging to others.

h. A restricted landing area utilized for the personal use of the owner or tenant of the owner is permitted provided that said use does not require any rezoning of the property or conditional use allowing for commercial use. As used herein, “restricted landing area” means any area of land, water or both which is used for the landing and takeoff of aircraft.

i. A “bed and breakfast” may be operated in any allowed dwelling located on the property.

j. A daycare center for the care of no more than 5 children under the age of 16 shall be allowed in any allowed dwelling located on the property.

k. Farm structures in existence at the time of approval of a District or expansion of a District that are no longer used in farming operations, and any related temporary ancillary structure used in conjunction with the existing farm structures, may be used for public and private gatherings, such as weddings, parties, conferences,

fundraising ceremonies and other similar events, provided that all of the following requirements are satisfied:

1. The property with improvements on which the allowed activities are conducted must be owned by the person subject to the District Agreement or preservation easement.
2. The area on which the allowed activities are conducted cannot be subdivided from the agricultural lands.
3. A. The area on which the allowed activities are conducted must be limited, to the extent feasible, to avoid impacts on current and beneficial agricultural use of the agricultural lands. Farmland that is in current and beneficial agricultural use may be used for events under this paragraph (a)(5)k.3.A. if all of the following apply:
 - I. One acre or less of land is used.
 - II. An area of land equal or greater to the amount in paragraph (a)(5)k.3.A.I. of this section is converted to active beneficial agricultural use.
- B. The exterior dimensions of the existing farm structures may be increased in size as follows:
 - I. By no more than 50% of the footprint area of the existing farm structure at the time the structure became part of a District.
 - II. A canopy attached to the allowed farm structure may not exceed more than 30% of the farm structure's footprint area.
4. The person seeking to conduct activities allowed under this paragraph (a)(5)k. shall submit to the Foundation Board, in advance and on an application form provided by the Foundation, a detailed description and plan of the proposed activities.
5. The application shall have been approved by the Foundation, subject to such terms and conditions deemed necessary and desirable to protect the agricultural value of the property, which terms and conditions shall be subject to the enforcement provisions set forth in § 920(a) of this title.
6. The person seeking to conduct activities allowed under this subsection shall have agreed, in writing, to comply with the terms and conditions set forth in the Foundation Board's approval.

l. Annual and semi-annual events related to agricultural commodities and agricultural enterprises during the growing season, and other annual and semi-annual events during the nonprimary growing season, subject to case by case review and approval by the Foundation Board, and if approved subject to such terms and conditions imposed to protect the agricultural value of the property, which terms and conditions shall be subject to the enforcement provisions set forth in § 920(a) of this title.

m. A private restricted landing area used for agricultural spraying and applications, including spraying and applications conducted under government sponsored programs, subject to the written approval of the Foundation Board.

(b) Farmlands and/or forestlands included in an Agricultural Preservation District shall be released from such District at the expiration of 10 years from the date such lands are initially placed in the District if the owner of the farmlands and/or forestlands provides written notification to the Foundation of intent to withdraw such lands from the District at least 6 months prior to the expiration of the referenced 10-year period; otherwise, such lands shall remain in the District for additional 5-year periods until such time that the owner provides prior to the expiration date of any such additional period at least 6 months prior written notice to the Foundation of intent to withdraw the lands from the District.

(c) In event of a purchase of an agricultural lands preservation easement by the Foundation, the restrictions set forth in subsection (a) of this section shall become permanent and subject to release only under § 917 of this title, or in the case of the restrictions set forth in paragraph (a)(2)b. of this section, under paragraph (a)(4)c. of this section.

<https://legis.delaware.gov/SessionLaws?volume=80&chapter=233>); 80 Del. Laws, c. 344, § 1
(<https://legis.delaware.gov/SessionLaws?volume=80&chapter=344>); 81 Del. Laws, c. 441, § 1
(<https://legis.delaware.gov/SessionLaws?volume=81&chapter=441>); 83 Del. Laws, c. 26, § 1
(<https://legis.delaware.gov/SessionLaws?volume=83&chapter=26>);

§ 910. Agricultural use protections.

(a) Normal agricultural uses and activities conducted in a lawful manner are preferred and priority uses and activities in Agricultural Preservation Districts. In order to establish and maintain a preference and priority for such normal agricultural uses and activities and avert and negate complaints arising from normal noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations, land use adjacent to Agricultural Preservation Districts shall be subject to the following restrictions:

(1) For any new subdivision development located in whole or in part within 300 feet of the boundary of an Agricultural Preservation District, the owner of the development shall provide in the deed restrictions and any leases or agreements of sale for any residential lot or dwelling unit the following notice:

“AGRICULTURAL PRESERVATION DISTRICT

This property is located in the vicinity of an established Agricultural Preservation District in which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities.”

(2) For any new subdivision development located in whole or in part within 50 feet of the boundary of an Agricultural Preservation District, no improvement requiring an occupancy approval shall be constructed within 50 feet of the boundary of the Agricultural Preservation District.

(b) Normal agricultural uses and activities conducted in accordance with good husbandry and best management practices in Agricultural Preservation Districts shall be deemed protected actions and not subject to any claim or complaint of nuisance, including any such claims under any existing or future county or municipal code or ordinance. In the event a formal complaint alleging nuisance related to normal agricultural uses and activities is filed against an owner of lands located in an Agricultural Preservation District, such owner, upon prevailing in any such action, shall be entitled to recover reasonably incurred costs and expenses related to the defense of any such action, including reasonable attorney's fees.

68 Del. Laws, c. 118, § 2 (<https://legis.delaware.gov/SessionLaws?volume=68&chapter=118>);

§ 911. District benefits.

(a) Owners of real property located in an Agricultural Preservation District shall, with respect to such real property, be entitled to the following benefits:

All unimproved land shall be exempt from:

(1) Taxation otherwise imposed under Chapter 83 of Title 9 and Chapter 19 of Title 14; provided, however, that the amount of tax relief shall nonetheless be determined for the unimproved lands under established valuation and assessment procedures and taxation related to tax ditches under Chapter 41 of Title 7 shall in no way be affected;

(2) Taxation otherwise imposed under Chapter 54 of Title 30, and any county or municipal ordinance requiring payment of a realty transfer tax; provided, however, that the amount of tax relief shall nonetheless be determined and such tax relief shall be subject to recovery and placed in the Fund if within 5 years after the unimproved lands are released from a District pursuant to § 909(b) of this title, such unimproved lands are rezoned or subject to subdivision; and

(3) Any ad valorem tax imposed by the State, a county, a municipality and any quasi-governmental body.

(b) The Department of Natural Resources, Department of Finance, and the Board of Assessment and Recorder of Deeds for the respective counties shall coordinate, assist and cooperate with the Foundation to fully effectuate the applicable provisions of this chapter.

(c) [Deleted.]

68 Del. Laws, c. 118, § 2 (<https://legis.delaware.gov/SessionLaws?volume=68&chapter=118>); 70 Del. Laws, c. 51, § 1 (<https://legis.delaware.gov/SessionLaws?volume=70&chapter=51>); 71 Del. Laws, c. 353, § 1 (<https://legis.delaware.gov/SessionLaws?volume=71&chapter=353>);

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