

Delaware PACE Enabling Laws

3 Del. C. §§ 901 – 949

Current through 82 Del. Laws, ch. 219 (2019)

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.

History: 68 Del. Laws, c. 118, § 2; 71 Del. Laws, c. 378, § 93.

§ 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.

History: 68 Del. Laws, c. 118, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 378, § 94; 75 Del. Laws, c. 201, § 1.

§ 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.

History: 68 Del. Laws, c. 118, § 2; 68 Del. Laws, c. 371, § 7; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 98, § 134; 75 Del. Laws, c. 201, §§ 2, 3; 80 Del. Laws, c. 198, §§ 1-3; 81 Del. Laws, c. 76, § 1.

§ 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.

History: 68 Del. Laws, c. 118, § 2; 71 Del. Laws, c. 221, § 2; 71 Del. Laws, c. 378, § 95; 75 Del. Laws, c. 201, §§ 4, 5.

§ 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.

History: 68 Del. Laws, c. 118, § 2.

§ 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 his 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.

History: 68 Del. Laws, c. 118, § 2; 70 Del. Laws, c. 186, § 1.

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.

History: 68 Del. Laws, c. 118, § 2; 71 Del. Laws, c. 221, § 1.

§ 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.

History: 68 Del. Laws, c. 118, § 2; 71 Del. Laws, c. 257, § 2.

§ 909. District restrictions.

(a) The farmlands and forestlands included in an Agricultural Preservation District shall be 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. The area on which the allowed activities are conducted shall be limited to the extent feasible to avoid impacts on current and beneficial agricultural use of the agricultural lands and the exterior dimensions of the existing farm structures shall not be increased in size.
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.

History: 68 Del. Laws, c. 118, § 2; 71 Del. Laws, c. 257, § 1; 74 Del. Laws, c. 423, §§ 1, 2; 80 Del. Laws, c. 233, § 1; 80 Del. Laws, c. 344, § 1; 81 Del. Laws, c. 441, § 1.

§ 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.

History: 68 Del. Laws, c. 118, § 2.

§ 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.]

History: 68 Del. Laws, c. 118, § 2; 70 Del. Laws, c. 51, § 1; 71 Del. Laws, c. 353, § 1.

Subchapter III. Acquisition of Preservation Easements

§ 913. Acquisition of agricultural lands preservation easements.

(a) The Foundation, subject to the availability of funds and compliance with the requirements of this subchapter, shall be entitled to acquire, maintain and enforce agricultural lands preservation easements for lands which are located in Agricultural Preservation Districts. The purchase of preservation easements by the Foundation is purely a discretionary function and the Foundation shall be under no obligation to purchase a preservation easement from any applicant. The Foundation may utilize such method or methods of payment for preservation easements as may be available. Upon acquisition of a preservation easement the lands subject to such easement shall form a permanent Agricultural Preservation District. The acquisition of a preservation easement by the Foundation shall not grant the public any right of access or right of use of the real property subject to the easement.

(b) The Foundation shall be authorized to enter into installment purchase agreements and to execute all documents necessary or desirable thereto to qualify such agreements for exemption from federal or state taxation to the extent permitted by the tax laws. Pursuant to the installment purchase agreements, the Foundation shall acquire preservation easements, establish special accounts for each agreement from which principal and interest payments shall be made and deposit into such special accounts amounts necessary to fund the agreements. The special accounts may be administered by a bank, escrow agent or other qualified paying agent approved by the Foundation and the deposited funds may only be invested in a manner approved by the Secretary of Finance. The amounts to be paid under an agreement shall not exceed the amounts available from the special account related thereto, including earnings thereon. The Foundation may, under the terms of the agreement, impose on the seller through direct charge or installment payment reduction the costs associated with the agreement and the special account. The Foundation is authorized to use all funds appropriated to it to acquire preservation easements through installment purchase agreements.

History: 68 Del. Laws, c. 118, § 2; 70 Del. Laws, c. 570, § 2[1]

§ 914. Criteria for eligibility and evaluation.

(a) In order for the Foundation to acquire an agricultural lands preservation easement it shall be required that:

- (1) The grantor of the preservation easement has fee simple title to the real property and conveys the easement free and clear of all liens and encumbrances; and
- (2) The preservation easement is granted in perpetuity in a form acceptable to the Foundation and includes the restrictions set forth in § 909 of this title and such other terms and conditions as specified by the Foundation.

(b) In reviewing applications for the conveyance of agricultural lands preservation easements the Foundation shall consider:

- (1) The criteria set forth in § 908(b) of this title; and
- (2) The relative agricultural value of the lands and potential for conversion to nonagricultural use; and
- (3) The relative cost of acquiring the easement giving due consideration to the extent to which an applicant is willing to discount the sale price below the Foundation's appraised easement value.

(c) The Foundation may adopt, after public hearing, a system for scoring, ranking and prioritizing consideration of applications submitted for the conveyance of agricultural lands preservation easements. Under any system adopted for consideration of applications submitted for the conveyance of agricultural lands preservation easements, the Foundation shall establish by regulation after public hearing means of creating a priority for acquisition of agricultural lands preservation easements in designated areas which are near or adjacent to growth zones, or border in part the growth zones.

History: 68 Del. Laws, c. 118, § 2; 71 Del. Laws, c. 378, § 97.

§ 915. Procedure for acquisition easements.

The Foundation shall adopt, after public hearing, a uniform procedure for acquiring agricultural lands preservation easements. The procedure adopted by the Foundation may incorporate bidding and/or negotiation as part of the procurement process. The Foundation shall be entitled to establish separate methods or incentives to facilitate the acquisition of agricultural lands preservation easements in designated areas which are near or adjacent to growth zones, or border in part the growth zones.

History: 68 Del. Laws, c. 118, § 2; 71 Del. Laws, c. 378, § 96.

§ 916. Valuation of easements.

(a) The maximum value of any preservation easement to be purchased shall be the difference between the fair market value of the land under its agricultural zoning designation and the agricultural value of the land. The fair market value of the land is the price as of the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property was not subject to any restriction imposed under this chapter. The agricultural value of land is the price as of the valuation date which a vendor, willing but not obligated to buy, would pay for the property as a farm unit, to be used for agricultural purposes. The value of the preservation easement shall be determined as of the date the application for conveyance of the preservation easement is received by the Foundation. The value shall be determined by the Foundation based on appraisal by an appraiser selected by the Foundation, which appraisal shall be provided to the owner. The owner shall be entitled

to have an appraisal performed by a qualified appraiser and submit such appraisal to the Foundation for consideration. The value of the easement shall be determined by an appraisal on the entire contiguous acreage, less 1 acre per each dwelling structure; provided, however, the entire contiguous acreage, including the 1 acre per dwelling structure, is considered subject to the preservation easement restrictions.

(b) If the owner and Foundation do not agree on the value of the easement, as determined by appraisal, the owner shall be entitled to withdraw the application for conveyance without prejudice to any submission of an application in the future.

History: 68 Del. Laws, c. 118, § 2.

§ 917. Termination of easement.

(a) *Legislative intent.* — It is the intent of the General Assembly that the preservation easements purchased under this subchapter be held by the Foundation for as long as profitable farming is feasible on the land subject to the easement but at a minimum for the period specified hereinafter. A preservation easement may be terminated only in the manner and at the time specified in this section.

(b) *Request for review.* — At any time after 25 years from the date of acquisition of a preservation easement, the owner may request that the easement be reviewed for possible termination of the easement.

(c) *Inquiry and decision.* — Upon a request for review of an easement for termination, an inquiry shall be conducted by the Foundation to determine the feasibility of profitable farming on the subject land. The inquiry shall be concluded and a decision reached by the Foundation within 180 days after the request for termination, and shall include:

- (1) On-site inspection of the subject land; and
- (2) A public hearing conducted by the Foundation within the county containing the subject land after adequate public notice; and
- (3) A review of the subject land under the LESA scoring system; and
- (4) Approval of termination by the Board of Trustees of the Foundation.

(d) *Repurchase by owner.* — If the request for termination is approved, an appraisal of the subject land shall be ordered by the Foundation at the expense of the owner requesting termination of the easement. Within a period of 180 days following the appraisal, the owner may repurchase the easement by paying to the Foundation the difference between the fair market value and the agricultural value of the subject land, as determined by the appraisal, but in no event shall the repurchase price be less than the amount paid by the Foundation for acquisition of the preservation easement. In addition, the owner shall also pay to the Fund an amount equal to any tax benefit realized under § 918 of this title. For purposes of this subsection, the term agricultural value shall also mean the price as of the valuation date which a buyer, willing but not obligated to buy, would pay for a farm unit with land comparable in quality and composition to the property being appraised, but located in the nearest location where profitable farming is feasible. For purposes of this paragraph, the term fair market value shall mean the price as of the valuation date which a buyer, willing but not obligated to buy, would pay for the land at its best and most beneficial use under any obtainable development zoning category.

(e) *Subsequent request for termination after denial or failure to repurchase.* — If the request for termination is denied, or if the owner fails to repurchase the easement within 180 days of the appraisal, the owner may not again request termination of the easement until 5 years after his last such request.

History: 68 Del. Laws, c. 118, § 2.

§ 918. Benefits of easement conveyance.

In addition to the district benefits set forth in § 911 hereof of this title, the owner of real property subject to a preservation easement shall be entitled to exemption from taxation for the transfer of any interest in such real property by death otherwise subject to the estate tax under Chapter 15 of Title 30. The Department of Finance shall be entitled to adopt requirements to effectuate the exemption from taxation as provided hereunder.

History: 77 Del. Laws, c. 85, § 8; 79 Del. Laws, c. 11, § 1.

Subchapter IV. Miscellaneous Provisions

§ 919. Right of rejection.

(a) Notwithstanding any provision contained herein to the contrary, the Secretary of the Department of Agriculture shall be entitled, within 30 days of the date of decision of the Foundation, to reject the establishment or expansion of any Agricultural Preservation District or the acquisition of a preservation easement, and the decisions of the Foundation on such matters shall be subject to right of rejection exercisable by the Secretary of the Department of Agriculture. If the right of rejection as provided herein is exercised, the Secretary of the Department of Agriculture shall notify the Foundation in writing of such decision and the reasons for it. The Secretary of the Department of Agriculture may waive the right to reject by providing notification to such effect to the Foundation. Failure to act on the part of the Secretary of the Department of Agriculture within the specified 30-day period shall constitute an affirmation of the decision of the Foundation.

(b) In the event of rejection of an application by the Secretary of the Department of Agriculture for establishment or expansion of any Agricultural Preservation District or the acquisition of a preservation easement, such application shall be considered denied and not subject to reconsideration for a period of at least 1 year.

(c) Notwithstanding any provision contained herein to the contrary, the Secretary of the Department of Agriculture shall be entitled, within 30 days of the date of adoption of criteria for establishment and maintenance of Agricultural Preservation Districts pursuant to § 904(a)(1) of this title, to reject in whole or in part such criteria as adopted by the Foundation. If the right of rejection as provided herein is exercised, the Secretary of the Department shall notify the Foundation in writing of such decision and the reasons for it. The Secretary of the Department of Agriculture may waive the right to reject by providing notification to such effect to the Foundation. Failure to act within the specified 30-day period shall constitute an affirmation of the decision of the Foundation. In response to the exercise of the right of rejection the Foundation shall be entitled to adopt alternative criteria, which action shall also be subject to the right of rejection provided herein.

History: 68 Del. Laws, c. 118, § 2.

§ 920. Enforcement of restrictions.

(a) The Foundation shall be entitled to take action in any court of competent jurisdiction to enforce any restrictions or requirements imposed under this chapter, duly adopted regulations and binding legal

instruments. In any such action the Foundation shall, if it prevails, be entitled to recover its reasonable costs and expenses, including reasonable attorney's fees.

The Foundation shall also be entitled to recover in any such action all tax benefits conferred under § 911 of this title, plus one and one-half percent per month of tax benefit amounts computed on a compound basis from the date the tax benefit was first realized to the date of judgment.

(b) Any person who violates a District restriction, requirement imposed in a preservation easement or the provisions of § 910(a) of this title, shall, after notification and failure to correct the violation, be subject to a civil penalty of not less than \$50 but not more than \$200 for each completed violation. If the violation continues for a number of days, each day of such violation shall be considered a separate violation. Unless joined to an action under subsection (a) of this section, a civil penalty claim hereunder shall be filed in any Court of Common Pleas. Any civil penalties recovered shall be paid to the Fund.

(c) The Foundation shall be entitled to take action, including an action by monition, in any court of competent jurisdiction to enforce liens and to collect the Foundation's share of roll-back taxes, including penalties, which are due under the provisions of § 921(c) of this title. In any such action the Foundation shall be entitled to proceed through its legal counsel, without the need of obtaining any prior approval, and the Foundation shall, if it prevails, be entitled to recover its reasonable costs and expenses, including reasonable attorney's fees. Nothing contained herein shall preclude a county or school district from pursuing legal action to collect, on behalf of the Foundation, the Foundation's share of the roll-back tax through either independent action or as part of another action. Upon collection of the Foundation's share of the roll-back tax through such legal action the amount collected, after deduction of the seven and a half percent administration charge, shall be forwarded to the Foundation.

History: 68 Del. Laws, c. 118, § 2; 68 Del. Laws, c. 371, § 6.

§ 921. Funding.

(a) The Director of the Office of Management and Budget and the Controller General are authorized to transfer the sum of \$48,000 from the Office of Management and Budget Contingency Appropriation Salary, (10-02-04), contained in Senate Bill No. 500 of the 135th General Assembly (Fiscal Year 1991 Appropriation Act) for use by the Foundation to carry out the purposes of this chapter. Any Foundation funds not otherwise appropriated or encumbered as of June 30, 1991, shall be considered a continuing appropriation for Fiscal Year 1992.

(b) The Secretary of the Department of Agriculture is hereby authorized and directed, on behalf of the Foundation, to apply on or before August 1, 1991, for federal funding available to the State under the Farms for the Future Act of 1990 (7 U.S.C. § 4201 et seq.) by submitting any necessary applications and taking such other action to qualify for eligibility.

(c) All moneys collected by the respective county receiver of taxes, treasurer or director of finance as the Foundation's share of roll-back taxes under § 8335(d) of Title 9 shall, when collected and after deduction of the seven and a half percent administration charge, be transferred to the Foundation for use in carrying out the purposes of this chapter. The Foundation shall be entitled to adopt and impose procedures and requirements to assure collection of its share of roll-back taxes and the Foundation shall be entitled to notify county taxing authorities of lands subject to the agricultural lands preservation assessment and upon such notification such county taxing authorities shall include the amount due on the property tax statements submitted with respect to the converted lands. Nonpayment of the Foundation's share of the roll-back tax, including penalties, shall when payable result in the imposition of a lien on the land for nonpayment, which lien shall qualify for all purposes as a lien under § 2901 of Title 25.

(d) There is hereby established a Committee on Funding for Farmland Preservation, which shall consist of 2 members of the Delaware Senate as appointed by the President Pro Tem of the Senate, 2 members of the Delaware House of Representatives as appointed by the Speaker of the House of Representatives and 3 members appointed by the Governor. The Committee shall review and consider ways and means of providing reliable, short-term and long-term funding for the permanent preservation of viable agricultural lands. The Committee shall also review and consider ways and means of creating economic incentives for the establishment and expansion of Agricultural Preservation Districts and the acquisition of agricultural lands preservation easements, such as the use of tax credits for activities undertaken in Agricultural Preservation Districts which reduce or eliminate the impact of the release of pollutants to the environment. The Committee shall report its findings to the Governor and the General Assembly on or before March 1, 1993.

(e) All moneys directed to the Foundation under this chapter, either directly or indirectly, shall be for the exclusive benefit of the Foundation in carrying out the purposes of this chapter. Such funding shall be considered separate and distinct from any other funding authorization, even though the funding amount may be determined on the basis of tax rates, assessments or by other means used by other entities.

History: 68 Del. Laws, c. 118, § 2; 68 Del. Laws, c. 306, § 1; 68 Del. Laws, c. 371, §§ 4, 5; 75 Del. Laws, c. 88, § 21(2).

§ 922. Condemnation of Preservation District lands.

Nothing contained in this chapter shall prohibit the exercise of powers of eminent domain or condemnation with respect to lands located in an Agricultural Preservation District; provided, however, that the compensation paid for such lands by the condemning authority shall be based on the highest and best development use of the property with no consideration given to the restrictions and limitations imposed under this chapter; and provided further, that the condemning authority shall also include in its taking such additional lands rendered unusable or unprofitable for intended agricultural uses. Payment of compensation shall be made to the owner or, in the event the property is subject to a preservation easement, to the owner and the Foundation in accordance with their respective interests.

History: 68 Del. Laws, c. 118, § 2.

§ 923. Interim Foundation staffing.

(a) Until such time that funding is available to support a permanent Foundation staff, the staff support necessary for Foundation activities provided under this chapter shall be provided by the Agricultural Lands Preservation Section of the Department of Agriculture. Such Section shall, within 9 months of July 8, 1991, prepare in coordination with the Department of Natural Resources and Environmental Control and the Planning and Zoning Commissions of the respective counties, for review and consideration of the Foundation, the following:

- (1) Proposed additional criteria for establishment and maintenance of Agricultural Preservation Districts;
- (2) A proposed selection system for scoring, ranking and prioritizing applications for conveyance of preservation easements;
- (3) A draft statewide agricultural lands preservation strategy; and
- (4) Proposed procedural rules and regulations for conduct of the internal affairs of the Foundation, including the development of draft application forms and procedures for conducting business.

(b) The Department of Agriculture shall provide to the Foundation the administrative support necessary for the organization of the Foundation, including accommodations for meetings until such time that an office is opened by the Foundation.

(c) The Foundation shall, from its sources of funding, reimburse the Department of Agriculture for any out-of-pocket costs expended by the Department of Agriculture on behalf of the Foundation which are related to efforts undertaken by the Department of Agriculture under this section.

History: 68 Del. Laws, c. 118, § 2.

§ 924. Governmental cooperation.

All municipalities, political subdivisions and every department, agency or public body of the State is hereby authorized and empowered to cooperate with, aid and assist the Foundation in effectuating this chapter and any amendment hereof or supplement hereto.

History: 68 Del. Laws, c. 118, § 2.

§ 925. Recording.

The Foundation shall submit executed documents for recording in order to fully implement and enforce the provisions of this chapter. The offices of the Recorder of Deeds for the respective counties shall receive and appropriately index any such documents submitted by the Foundation. No recording cost, fee or charge of any nature shall be imposed for the recording of any documents or other materials submitted by the Foundation for purposes of implementing the provisions of this chapter.

History: 68 Del. Laws, c. 118, § 2; 70 Del. Laws, c. 51, § 3.

§ 926. Tax status.

The duties and functions exercised by the Foundation under this chapter, and any amendments hereof or supplements hereto, are and will be in all respects for the benefit of the people of the State and for the protection of their health and welfare. To this end, the Foundation shall be regarded as performing essential governmental functions in exercising such duties and functions and in carrying out this chapter and any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied either by the State or a political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange. The acquisition and transfer of preservation easements hereunder shall be exempt from all realty transfer tax imposed under Chapter 54 of Title 30 and any county or municipal ordinance requiring payment of a realty transfer tax.

History: 68 Del. Laws, c. 118, § 2.

§ 927. Judicial review.

Judicial proceedings to review any rule, regulations or other action of the Foundation or to determine the meaning or effect thereof may be brought in the Superior Court of this State, provided such review is requested within 30 days from the date of the promulgation of the rule or regulation or other action of the Foundation.

History: 68 Del. Laws, c. 118, § 2.

§ 928. Public hearings.

For any public hearing conducted under the provisions of this chapter, the Foundation shall provide at least 20 days advance notice published in a daily newspaper of general circulation throughout the State. For a public hearing on a regulation or plan proposed for adoption the notification shall include a brief description of the regulation or plan, the time and place of the hearing, and time and place where copies of the proposed regulation or plan may be obtained or reviewed. A record from which a verbatim transcript can be prepared shall be made of all public hearings and shall, along with the exhibits and other documents introduced, constitute the record.

History: 68 Del. Laws, c. 118, § 2.

§ 929. Construction of chapter.

This chapter and the regulations promulgated thereunder shall be construed liberally to effectuate the legislative intent and as complete authority for the performance of each and every act and thing herein authorized.

History: 68 Del. Laws, c. 118, § 2.

§ 930. Rules and regulations; investigations; review by Attorney General.

(a) The Secretary of the Department of Agriculture may establish and promulgate such rules and regulations as he deems necessary to enforce the state policy established under this chapter.

(b) Whenever the Secretary of the Department of Agriculture has reason to believe that a public agency's action will have an adverse impact on agriculture without an ample finding of public need or is harmful to the maintenance and preservation of agricultural activities, the Secretary may conduct a hearing to investigate the actions and make recommendations consistent with this chapter to the public agency.

(c) Whenever the public agency disagrees with the Secretary's recommendations, the Secretary may request the Attorney General to review the record of the hearing on the matter and determine whether a Chancery Court action for injunctive relief consistent with this chapter is warranted.

History: 64 Del. Laws, c. 465, § 1; 68 Del. Laws, c. 118, § 1.

Subchapter V. Forestland Preservation

§ 931. Purpose, policy and intent.

It is the declared policy of the State to conserve, protect and encourage the proper utilization of the State's forestland resources. The forestlands of the State are a renewable resource which provide economic, environmental and social benefits. There is a need to provide sufficient economic benefit to the owners of forestlands to voluntarily subject forestlands to protective restrictions through the sale of forestland preservation easements. The establishment of permanent forested areas throughout the State will serve the long term needs of the forest industry while providing invaluable wildlife and habitat protections and open space benefits to the citizens of the State.

History: 75 Del. Laws, c. 201, § 6.

§ 932. Establishment of forestland preservation areas.

(a) Any owner or owners of contiguous forestland containing at least 10 acres of such lands located in the State and outside of a designated growth zone may submit on a voluntary basis, on such forms as the Foundation prescribes, an application for establishment of a forestland preservation area. Upon receipt of a completed application, the Foundation and the State Forester shall review the application to determine if it satisfies the criteria for eligibility established under § 933 of this title, and any rules of practice and procedure for acquiring forestland preservation easements adopted and related thereto. The Foundation shall notify the applicant of the findings, and may provide assistance to potential applicants regarding completion of necessary application forms.

(b) The Foundation shall consider approval of application at noticed regularly scheduled meetings. Upon Foundation approval of a forestland preservation area, and after the landowner or owners execute a forestland preservation agreement in a recordable form as provided by the Foundation, the Foundation shall provide appropriate notice and a description of the established forestland preservation area to the planning and zoning commission and board of assessment for the county in which the forestland preservation area is located. Upon receipt of such information from the Foundation, the planning and zoning commission and board of assessment shall provide appropriate reference in their real property records and notations on maps which are utilized and maintained that the subject real property is designated as a forestland preservation area.

History: 75 Del. Laws, c. 201, § 6.

§ 933. Forestland preservation area criteria for eligibility and review.

In order to be considered eligible for inclusion in a forestland preservation area, an application which meets the requirements of § 932 of this title shall satisfy the following criteria:

- (1) The owner or owners seeking inclusion of real property in a forestland preservation area shall hold fee simple title to such property;
- (2) The real property shall be located outside a designated growth zone;
- (3) The real property shall be zoned to allow for agricultural or open space uses and shall not be subject to any major subdivision plan;
- (4) The real property consists of viable and potentially productive forestlands;
- (5) The real property is not subject to an existing conservation or preservation easement or other restriction which prohibits development;
- (6) The owner or owners of the real property proposed for inclusion in a forestland preservation area execute a forestland preservation agreement in recordable form as provided by the Foundation which contains the forestland preservation area restrictions set forth in § 934 of this title;
- (7) The property proposed for consideration in the forestland preservation area shall include all of the eligible forestlands located in the tax parcels subject to the application. No eligible real property shall be carved out or otherwise excluded from the application to create a forestland preservation area or an application to sell a forestland preservation easement, except that 1 location containing no more than 1 acre of land may be designated for seasonal recreational dwelling usage provided that the property proposed for consideration in the forestland preservation area or proposed for sale of a forestland easement contains at least 30 acres and the use of the designated area does not adversely affect the forestland use of the property;

(8)

a. No more than 1 acre of land for each 20 acres of usable land owned in a forest conservation area or forest conservation easement, to a maximum of 10 acres, shall be allowed for permanent dwelling housing. The establishment or existence of any seasonal housing will be counted against the total allowable permanent dwelling housing acreage; and

b. With respect to acreage allowed for dwelling housing there shall be a limit of 3 dwelling houses for residential use placed on the allowable acreage at 3 locations designated by the owner. This includes any pre-existing dwelling housing and/or the seasonal housing pursuant to paragraph (7) of this section above, unless there exist 3 dwelling houses on the real property at the time of approval of the new forest conservation area or forest conservation easement, in which case the allowable total number of dwelling housing and the allowable acreage shall be allocated to be existing dwelling houses and no additional dwelling houses shall be allowed. Such dwelling housing locations must be designated at the time of establishing the forest conservation area; and

(9) The property shall have a forest management plan prepared by a professional forester that addresses the landowner's forest management goals for the property. The plan shall contain, at a minimum, aerial and soil maps of the property, a description and analysis of the forest by management unit, and silvicultural prescriptions for each management unit. The plan shall be made available for inspection by the State Forester's office and the plan shall be revised and updated at a minimum every 5 years.

History: 75 Del. Laws, c. 201, § 6.

§ 934. Forestland preservation area restrictions.

(a) The forestlands included in a forestland preservation area shall be 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 forestry production, forestry operations, forestry management and control, wildlife habitat management, and related activities;

(3) No residential use of the real property shall be allowed, except for the seasonal recreational dwelling usage designated pursuant to § 933(7) of this title hereof;

(4) No conversion of the forestland to cropland, pasture land, open space or other types of land uses shall be allowed.

(5) No permanent commercial or industrial structures shall be located on the real property; and

(6) No mining, commercial excavation or extractive uses shall be conducted on the property.

(7) No disposal, burial, storage, or stock piling of junk, vehicles, equipment, liquid waste, solid waste or other liquid or solid materials, except that wastewater spray irrigation shall be allowed utilizing best available treatment technology with storage and treatment facilities located on lands other than forestland preservation areas.

(b) Forestry management, control and related activities allowed on forestland preservation areas are:

- (1) Hunting, trapping and fishing provided such activities are limited to private noncommercial activities and do not adversely affect the forestland use of the property, and provided further that leasing of the property for such noncommercial activities shall be allowed.
- (2) Easements, licenses and other property interests for utility, telecommunications, and access uses subject to the requirements set forth in § 909(a)(5)f. of this title;
- (3) The use of portable nonpermanent forest planting, harvesting and processing equipment;
- (4) Conservation, educational and research activities related to forestlands;
- (5) Ditching for drainage necessary to enhance or preserve forestlands; and
- (6) The grazing of livestock, excluding housing or shelters, subject to prior approval by the State Forester;
- (7) Timbering and reforestation;
- (8) Noncommercial private recreational uses such as hiking, horseback riding, and primitive camping, provided such activities do not adversely affect the forestland use of the property; and
- (9) Activities involving best forestland management practices.

(c) Any transfer of real property in a forestland preservation area or subject to a forestland preservation easement shall be preceded by the execution by the transferee of a document, in recordable form and as prescribed by the Foundation, which references the restrictions applicable to the real property.

(d) The restrictions set forth in a forestland preservation area agreement shall be deemed covenants which run with and bind the lands in the forestland preservation area for a period of 10 years or any extended period from the date of approval of the forestland preservation area. The real property in a forestland preservation area shall be released from the restrictions at the expiration of the 10-year period if the owner of the forestland provides written notification to the Foundation of the intent to withdraw such lands from the forestland preservation area at least 6 months prior to expiration of the referenced 10-year period; otherwise the real property shall remain as a forestland preservation area 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.

(e) In the event of the purchase of a forestland preservation easement by the Foundation, the restrictions set forth under this section shall become permanent and not subject to release.

History: 75 Del. Laws, c. 201, § 6.

§ 935. Forestland use protections and benefits.

(a) Owners of real property located in a forestland preservation area shall be entitled to the same protections provided to the owners of real property in Agricultural Preservation Districts under the provisions of § 910 of this title, and the term "Agricultural Preservation District(s)" as used in § 910 of this title, shall include a forestland preservation area.

(b) Owners of real property located in a forestland preservation area shall be entitled to the same benefits provided to owners of real property located in Agricultural Preservation Districts under the provisions of § 911 of this title, and the term "Agricultural Preservation District(s)", as used in § 911 of this title, shall include a forestland preservation area.

History: 75 Del. Laws, c. 201, § 6.

§ 936. Acquisition of forestland preservation easements.

(a) The Foundation, subject to the availability of funds, shall be entitled to acquire, maintain and enforce forestland preservation easements for lands which are located in forestland preservation areas. The purchase of forestland preservation easements by the Foundation is purely a discretionary function, and the Foundation shall be under no obligation to purchase a forestland preservation easement from any applicant. The Foundation may utilize such method or methods of payment for forestland preservation easements as may be available. Upon acquisition of a forestland preservation easement the lands subject to such easement shall form a permanent forestland preservation area. The acquisition of a forestland preservation easement by the Foundation shall not grant the public any right of access or right of use of the real property subject to the easement.

(b) The Foundation shall adopt rules of practice and procedure for the acquisition of forestland preservation easements which shall include the process and timeframe for submitting applications for the sale of forestland preservation easements, the establishment of the purchase price for the easements through use of appraisal information, the manner in which offers to sell easements are accepted, and the basis upon which offers for sale of easements are accepted. The rules of practice and procedure shall incorporate, to the extent necessary, provisions for utilizing federal, county or other funding.

History: 75 Del. Laws, c. 201, § 6.

§ 937. Forestland preservation easement criteria for eligibility and evaluation.

(a) In order for the Foundation to acquire a forestland preservation easement it shall be required that:

- (1) The grantor of the forestland preservation easement has fee simple title to the real property and conveys the easement free and clear of all liens and encumbrances; and
- (2) The preservation easement is granted in perpetuity in a form acceptable to the Foundation, and includes the restrictions set forth in § 934 of this title, and such other terms and conditions as specified by the Foundation.

(b) In reviewing applications for the conveyance of forestlands preservation easements the Foundation shall consider the relative cost of acquiring the easement giving due consideration to the extent to which an applicant is willing to discount the sale price below the easement value established by the Foundation.

(c) The Foundation shall approve and announce the purchase price of forestland preservation easements at its regularly scheduled meetings.

History: 75 Del. Laws, c. 201, § 6.

§ 938. Right of rejection.

The Secretary of the Department of Agriculture shall, with respect to the approval of a forestland preservation area or the approval of purchase of forestland preservation easements, be entitled to reject such approvals in the manner and subject to the provisions of § 919 of this title.

History: 75 Del. Laws, c. 201, § 6.

§ 939. Enforcement of restrictions.

The Foundation is authorized to take those actions and exercise the authority and entitlements set forth under § 920 of this title to enforce the restrictions and other provisions which apply to forestland

preservation areas, forestland preservation area agreements, forestland preservation easements, and the provisions of this subchapter.

History: 75 Del. Laws, c. 201, § 6.

§ 940. Condemnations.

The provisions of § 922 of this title as they apply to land located in agricultural preservation districts shall also apply to the real property located in forestland preservation areas and real property subject to forestland preservation easements, and the terms “Agricultural Preservation District(s)”, “agricultural uses,” and “preservation easement,” as used in § 922 of this title, shall include a “forestland preservation area,” “forestry and related activities” and “forestland preservation easement” respectively.

History: 75 Del. Laws, c. 201, § 6.

§ 941. Program participation.

The owners of farmlands and forestlands included in Agricultural Preservation Districts shall be entitled to apply to sell an agricultural lands preservation easement to the Foundation under the provisions of subchapter III of this chapter, and concurrently apply to sell a forestland preservation easement under the provisions of this subchapter. If the owner’s offers to sell the agricultural lands preservation easement and a forestland preservation easement on the same agricultural lands are accepted by the Foundation, the owners shall be entitled to proceed with the offer to sell an agricultural lands preservation easement for the entire property, or to separately sell a forestland preservation easement under the accepted offer and sell an agricultural lands preservation easement for the balance of the property under the accepted offer, whichever is considered desirable by the owner, provided further that the separate sale of a forestland preservation easement shall not limit the residential use allowance for the entire property as utilized on the balance of the property.

History: 75 Del. Laws, c. 201, § 6.

Subchapter VI. Farmland Purchase and Preservation Loan Program

§ 942. Purpose, policy and intent.

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

History: 78 Del. Laws, c. 157, § 1.

§ 943. Loan program.

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

History: 78 Del. Laws, c. 157, § 1.

§ 944. Loan program eligibility.

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

- (1) The loan recipient shall be at least 18 years of age and no older than 40 years of age at the time a loan application is submitted to the Foundation.
- (2) The loan recipient at the time of loan application shall have at least 3 years of farming or agriculturally related activity experience.
- (3) The loan recipient at the time of loan application shall have a net worth of no more than \$300,000.
- (4) The loan recipient shall be required to take title to the farmland in an individual name.
- (5) The farmland subject to purchase shall contain at least 15 tillable acres.
- (6) The loan recipient prior to the receipt of loan moneys shall not own or have an ownership interest in more than twice the tillable acres of farmland than the amount of tillable acres subject to purchases with loan moneys.
- (7) The farmland shall be located in the State of Delaware.
- (8) Loan applicants shall be residents of the State of Delaware.
- (9) The farmland subject to purchase may be comprised of a combination of tillable acres, forestlands or wetlands; provided however, that the farmland property is zoned for agricultural usage.
- (10) The farmlands being purchased shall not be subject to an existing preservation easement, conservation easement or similar limitation which restricts residential or commercial development.
- (11) Loan applicants shall contractually commit that they will be actively engaged in agricultural usage of the purchased farmland during the term of the Foundation loan.

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

History: 78 Del. Laws, c. 157, § 1.

§ 945. Loan requirements and approval.

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

- (1) The maximum total amount of loans provided to an individual recipient shall not exceed \$500,000.
- (2) The maximum loan amount for any loan shall not exceed 70% of the appraised preservation easement value of the farmland property which is being purchased and subject to perpetual preservation easement.
- (3) A condition of the loan is that the eligible farmland being acquired is to be subjected at closing to a permanent preservation easement in the form determined by the Foundation, such easement to have priority status and not be subject to subordination.

(4) The loans provided by the Foundation shall be secured by notes and mortgages which allow for the following conditions:

a. Notes and mortgages will be subordinated to other loans provided for the purchase, in whole or in part, of the eligible farmlands; provided however, that the perpetual preservation easement placed on the eligible farmland property at the time of settlement shall not be subordinated.

b. The notes and mortgages shall bear no interest and the payback may be structured for final payback within 30 years, with initial payments to begin after the primary commercial or other financing for the purchase of the farmland property is satisfied or released.

c. The notes and mortgages shall contain a requirement for payment in full of the balance of the loan upon the sale or transfer of the secured farmland property; provided however, the Foundation shall have the discretion to allow for assumption of the loan by the transferee under such terms and conditions deemed advisable, provided the transferee satisfies the loan eligibility requirements set forth in § 944(a) of this title above.

(5) Loans are limited to the purchase of farmland and farmland improvements only. Portions of the property subject to purchase which are used or proposed for use for residential purposes are not eligible for loans, provided further nonetheless, that those lands used or intended for use for residential purposes are subject to the limitations set forth in § 909(a)(4)a. and b. of this title.

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

History: 78 Del. Laws, c. 157, § 1; 81 Del. Laws, c. 76, § 3.

§ 946. Preservation easements.

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

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

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

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

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

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

History: 78 Del. Laws, c. 157, § 1.

§ 947. Preservation Loan Fund.

There is hereby established a Preservation Loan Fund to be maintained, operated, supervised and administered by the Foundation, and used for making loan payments and related transaction costs and expenses for the loans provided under this subchapter. Moneys for the Preservation Loan Fund may be derived from specific appropriations provided by the General Assembly, federal grants, county and municipal grants and private funding. The Fund shall be operated as a revolving fund, with moneys paid to the Foundation as repayment of loans or condemnation related compensation deposited in the Fund and used to make additional loans.

History: 78 Del. Laws, c. 157, § 1.

§ 948. Administration.

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

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

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

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

History: 78 Del. Laws, c. 157, § 1.

§ 949. Secretary's veto.

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

History: 78 Del. Laws, c. 157, § 1.

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