

LEHIGH COUNTY AGRICULTURAL CONSERVATION EASEMENT PROGRAM



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I. Introduction

Lehigh County covers an area of approximately 223,313 acres, or 349 square miles. Of this land area, about **91,304** acres are currently in farms (2002 Census of Agriculture). This represents about 41% of the county's land area. In 2002 there were approximately **618** farms operating in Lehigh County.

Agriculture plays an important role in the county's economy. In 2002, Lehigh County farmers sold \$49,869,000 worth of crops, livestock and livestock products. In 2004, Lehigh County ranked among the top 10 counties in Pennsylvania in the production of peaches (6th), potatoes (10th), wheat (8th), soybeans (9th), and apples (7th). The county also ranks among the top 5 counties in the Commonwealth in the production of turkeys.

The value of Lehigh County's farmland goes well beyond economic values. Farmland plays a vital environmental role by providing habitat for wildlife, aquifer recharge areas, and needed open space in an increasingly urbanizing region. Farmland gives Lehigh County its scenic character and links the present to the county's agricultural past.

As farmland is lost, the county loses a major asset contributing to the area's quality of life. Lehigh County has lost an average of 1,280 acres of farmland and open space yearly from 1972 to 2002. Between 2000 and 2002, Lehigh County lost 1,694 acres of farmland and open space annually. The majority of this acreage loss has been due to the conversion of farmland to residential land uses. Some farmland has also been lost to industrial, commercial and public facility land uses.

In 1987, the Lehigh County Commissioners adopted a resolution creating a Lehigh County Farmland Preservation Task Force. This task force reviewed Lehigh County farmland studies, assessed countywide interest in farmland preservation, and made recommendations for future farmland preservation actions in the county. Following the passage of the \$100 million farmland preservation bond referendum in November of 1987, the Pennsylvania legislature amended the Agricultural Area Security Law (Act 43 of 1981), enabling Pennsylvania counties to tap the \$100 million farmland preservation fund for the purchase of agricultural conservation easements.

In 1989, the Lehigh County Commissioners established a Lehigh County Agricultural Land Preservation Board with Ordinance 1989 - No. 117. This 9-member board's primary purpose is to preserve farmland in Lehigh County by developing and administering a program to purchase agricultural conservation easements from landowners in the county.

Starting in 1993, Pennsylvania began collecting a 2-cent/pack tax on cigarette purchases to fund the agricultural conservation easement program. This generates approximately \$20 million a year for the Commonwealth's farmland preservation program. Since 1989, Lehigh County has been contributing matching funds ranging from \$250,000 to \$2,000,000 annually for the farmland preservation program. Lehigh County voters approved a \$30 million bond referendum in May of 2002 to support the farmland preservation program, park improvements, and acquisitions of other types of open space. Additionally, interest from Act 319 (Clean and Green Preferential Tax Assessment Program) roll back taxes is collected annually for use in the farmland preservation program.

II. Purpose

The Lehigh County Agricultural Conservation Easement Program has the following purposes:

1. To protect viable agricultural lands by acquiring agricultural conservation easements, which prevent the development or improvement of the land for any purpose other than agricultural production.
2. To encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security of land use.
3. To provide compensation to landowners in exchange for their relinquishment of the right to develop their private property.
4. To protect normal farming operations in agricultural security areas from incompatible non-farmland uses that may render farming impracticable.
5. To protect farming operations from complaints of public nuisance against normal farming operations.
6. To assure conservation of viable agricultural lands in order to protect the agricultural economy of this Commonwealth.
7. To maximize agricultural easement purchase funds that protect the investment of taxpayers in agricultural conservation easements.
8. To concentrate resources in a manner that will ensure the purchase of easements for the protection of the largest amount of farmland possible.
9. To encourage financial partnerships between State and local governments with nonprofit entities in order to increase the funds available for agricultural conservation easement purchases.

III. Purchase Procedure

Landowners interested in selling an agricultural conservation easement to Lehigh County and/or the Commonwealth of Pennsylvania should use the following procedure.

All conservation easement applications and other documentation shall be done in accordance with the model formats included in the State guidebook and any future revisions thereto.

Application Submission Deadline

The deadline for submitting agricultural conservation easement applications is **March 31** of each year. Applications received after this date will not be considered for agricultural conservation easement purchase until March 31 of the following year. The County Board's staff is available to assist landowners with completing applications.

Review of Applications

After applications have been received, they will be checked to see if they qualify for Commonwealth funding and/or County funding. In order to qualify for Commonwealth farmland preservation funding, a farm must meet all State minimum criteria (see Appendix D). Farms that do not qualify for Commonwealth farmland preservation funding may qualify for County of Lehigh farmland preservation funding (see Appendix D). Each application will be ranked with the Land Evaluation and Site Assessment System (LESA). The LESA system provides a way to rank the easement applications by evaluating soil and other factors for each tract under consideration. See section IV for a complete description of the LESA system and how applications will be scored using it.

Following the LESA analysis of each application, the County Board will determine an appraisal order for applicants. Two ranking lists will be maintained, one list showing the farms that qualify for Commonwealth funding and another list showing farms that qualify only for County funding. Applications with the highest LESA score will be appraised first, followed by the next highest LESA score and so on. The County Board reserves the right to limit the number of applications it chooses to appraise each year. Priority will be given to farms that qualify for Commonwealth farmland preservation funding.

Appraisal Procedure

The County Board will send an Appraisal Form (Appendix L) and the results of the LESA score to the top ranking applicants. Applicants wishing to proceed must sign and submit the Appraisal Form with a **\$500.00 non-refundable** fee to the County Board.

All appraisals done for the Lehigh County program must be done by a Pennsylvania State Certified General Real Estate Appraiser in accordance with the standards set forth in Act 43 and any future revisions and regulations thereof.

Appraisals will be conducted using the comparable sales method if comparable sales information is available. If comparable sales information is not available, farmland values can be determined based on crop production or through capitalization of rental income information. See Appendix J for the details of how appraisals shall be conducted.

Easement Value and Purchase Price

The value of an easement in perpetuity for purposes of making an offer to purchase an easement shall be the difference between the market value and the farmland value of the property.

The purchase price offered for the purchase of an easement may not exceed, but may be less than the value of the easement.

The applicant may, at the applicant's expense, retain another qualified Pennsylvania State Certified General Real Estate Appraiser to determine the easement value. This second appraisal must be completed in accordance with the State regulations found in Appendix J.

If the applicant secures an independent appraisal, the easement value shall be determined using a combination of the two appraisals using the formula described in Appendix J.

Easement Purchase Cap

Once a year, the Lehigh County Agricultural Land Preservation Board will establish a maximum price/acre easement purchase cap. This cap price will be the maximum amount of State and County money offered per acre to applicants for the purchase of agricultural conservation easements in cases where the appraised easement value/acre exceeds the cap during the year that the cap has been established.

When setting the yearly cap, the County Board shall consider the following:

1. The total amount of State & County funding available for the year for agricultural conservation easement purchases.
2. The agricultural land preservation goals for the year.
3. The number and quality of active applications on file.
4. Current fair market and agricultural land values in the County.
5. Likelihood of landowner acceptance of the cap level.

Applicants will be given written notification of the current cap amount before they are asked to submit the **\$500.00 non-refundable appraisal fee**.

The 2008 easement purchase cap has been set at **\$6,000/acre**.

Agricultural conservation easement purchases can exceed the easement purchase cap if a local government unit or eligible non-profit entity is willing to contribute additional funding towards an easement purchase.

Easement Value and Purchase Price

Maximum Purchase Price. The purchase price offered for the purchase of an easement in perpetuity under Chapter 138e.66(b) may not exceed, but may be less than, the value of the easement. Regardless of the easement value, the overall (state, county, local government unit, and non-profit entity) purchase price for an agricultural conservation easement in perpetuity may not exceed the 100% percent of value of easement).

Approval of Purchase by the Lehigh County Board

All properties considered for easement purchase will be evaluated in compliance with section 14.1 (d) (1) (i-iv) of Act 43 regarding soil quality, likelihood of conversion, proximity to other eased lands, land stewardship, and fair and equitable procedures.

Final purchase decisions will be based on the following factors:

1. LESA Score
2. Cost Factors
 - a. Available Funds

- b. Cost Per Acre
- c. Percent of Easement Value

3. Consistency with Planning Map

4. Proximity to Other Lands Subject to Easements

If the County Board decides not to make an offer to purchase an easement on the farmland tract, the applicant shall be notified in writing.

Lehigh County will not consider any conservation easements for purchase that are not perpetual in nature.

Offers to Purchase

After the County Board has decided to make an offer for the purchase of an agricultural conservation easement, the Board or its representative will meet with the applicant to discuss the offer. At this meeting, the appraisal reports will be reviewed with the applicant. A formal offer to purchase shall be submitted to the applicant in writing and be accompanied by the appraisal report. The offer may be less than or equal to the appraised value of the easement.

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

- (1) accept the offer;
- (2) reject the offer; or
- (3) advise the County Board that the applicant is retaining, at applicant's expense, a Pennsylvania State Certified General Real Estate Appraiser to determine the easement value. The appraisal shall be completed as set forth by the state regulations (Appendix J). Four copies of this independent appraisal shall be submitted to the County Board within 120 days of the receipt of the County Board's offer to purchase.

The failure of the applicant to act within 30 days shall constitute rejection of the offer.

If the offer to purchase is accepted by the applicant, the County Board and the applicant shall enter into an agreement of sale. The agreement shall be conditioned upon the approval of the State Agricultural Land Preservation Board, and be subject to the ability of the applicant to provide good title to the premises, free of any encumbrances such as liens, mortgages, options, rights of others in surface mineable coal, land use restrictions, adverse ownership interests, and other encumbrances which would adversely impact the County and Commonwealth's interest in the farmland tract.

If the applicant chooses to complete a second appraisal according to option (3) above, the County Board has 30 days from the receipt of the second appraisal to:

- 1. Submit a new written offer to purchase in an amount in excess of the first offer, if a larger easement value resulted from the consideration of the second appraisal using the formula described in Appendix J.

2. Notify the applicant, in writing, that the first offer remains open and will not be modified.

The applicant has 15 days from the receipt of the County Board's offer under option (1) or (2) above, to notify the County Board in writing of his/her acceptance or rejection of the offer.

All procedures relating to offers to purchase by the County Board shall follow the State Agricultural Conservation Easement Program Regulations, Subchapter D, Section 138e.65.

State Board Review and Approval

The following documents must be submitted to the State Agricultural Land Preservation Board for easement purchase consideration. State Board approval is required for all joint State/County purchases and all 100% State funded purchases. See Appendix K for the full details of the documentation that must be submitted to the State Board for their purchase consideration.

1. Twenty-five copies of the Summary Report
2. Appraisal Report or Reports
3. Signed Agreement of Sale
4. Title Insurance Report
5. Adjoining Landowner Notice Certification
6. IRS Form W-9 for Individual Grantors
7. Percentage of Ownership Statement from Grantors

This information should be sent to the Director, Bureau of Farmland Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

Settlement

If the State Board approves the purchase of an easement, settlement can be scheduled. At settlement the applicant must execute a deed conveying the easement to the State and/or County. The easement deed must contain the provisions required by the State Regulations and listed in Appendix E. In return for the conveyance of the easement, the State and/or County will pay the applicant according to the arrangements made in the agreement of sale that was executed earlier. Following settlement, the easement deed will be recorded in the Office of the Lehigh County Recorder of Deeds.

Options for Receiving Payment

Landowners who are selling agricultural conservation easements in Lehigh County have three options for receiving their payment:

1. Landowners can receive their payment in one lump sum at settlement.

2. Landowners can receive their payment in a series of yearly installments. Installment payments can be arranged for two, three, four or five years.
3. Landowners can also use the proceeds from the sale of an agricultural conservation easement in a "like-kind" exchange to purchase additional business real estate. A "like-kind" exchange transaction may allow landowners to defer the payment of federal capital gains taxes through the use of Section 1031 of the Internal Revenue Code.

Time Period for Use of Funding

Each year's County and State funding allocation for the purchase of agricultural conservation easements in Lehigh County will be available for use over a period of two years.

Special Provisions for Parcels Not Entirely Within an Agricultural Security Area

Act 14 of 2001 amended the Agricultural Area Security Law (Act 43) to prescribe certain conditions which would allow for the purchase of an agricultural conservation easement (ACE) on a parcel that is not entirely within an agricultural security area (ASA). The county governing body authorized the county board on 12/12/01 to administer a program for the purchasing of agricultural conservation easements from landowners whose land is either within an agricultural security area or in compliance with the criteria set forth below as it applies to the Act 14 amendment. The county board shall follow the Chapter 138e.43 Revision of County Program procedures and approvals.

1. Consistent Standards. The standards and procedures for the selection and purchase of an agricultural conservation easement set forth in this county program are applicable to the selection and purchase of easements crossing local government unit boundaries and county boundaries.

2. Parcels Crossing Local Government Unit Boundaries. The county board may recommend the purchase of an agricultural conservation easement on a parcel a portion of which is not within an agricultural security area if all of the following occur:

a. The Agricultural Conservation Easement would be purchased by the county solely, or jointly with either the Commonwealth or a local government unit, or both. State-only easements are not included. Township-only easement purchases do not apply.

b. The land is a part of a parcel of farmland that is transected by the dividing line between two local government units, with the portion within one local government unit being in an agricultural security area of 500 or more acres and the portion within the other local government unit not being within an agricultural security area.

c. The majority of the parcel's viable agricultural land is located within an agricultural security area of 500 or more acres.

3. Parcels Crossing County Boundaries. The county board may recommend the purchase of an agricultural conservation easement on a parcel a portion of which is not within an agricultural security area if all of the following occur:

a. The agricultural conservation easement would be purchased by the county solely, or jointly with either the Commonwealth or a local government unit, or both. State only easements are not included. Township-only easement purchases do not apply.

b. The land is part of a parcel of farmland that is transected by the dividing line between the purchasing county and an adjoining county, with the portion within the purchasing county being in an agricultural security area of 500 or more acres and the portion within the adjoining county's local government unit not being within an agricultural security area.

c. One of the following shall apply:

i. The main dwelling (mansion house) is located on the parcel, and the house is located entirely in the purchasing county with the local government unit that has an ASA.

ii. The main dwelling (mansion house) is located on the parcel, on the dividing line between counties and the owner of the parcel has chosen the purchasing county with the local government unit that has an ASA as the house site for tax assessment purposes.

iii. There is no main dwelling (mansion house) on the parcel, and the majority of the parcel's viable agricultural land is located in the purchasing county with the local government unit that has an ASA.

4. Recording Responsibilities. Upon the purchase of an agricultural conservation easement as described above in items 2 and 3, the portion of the parcel that was not part of an agricultural security area immediately becomes part of the agricultural security area covering the rest of the parcel. The purchasing county will take all steps necessary to ensure the local government unit which created the agricultural security area meets its responsibility, under §§ 14.1(b)(2)(i)(B)(II) and 14.1(b)(2)(i)(C)(III) of the Agricultural Area Security Law, for the recording, filing and notification described in § 8(d) and 8(g) of the Agricultural Area Security Law with respect to the land added to the agricultural security area.

IV. Application Ranking System

Applications will be ranked using a Land Evaluation and Site Assessment (LESA) system. The Land Evaluation considers the quality of the soils on a farmland tract. The Site Assessment considers a tract's development potential, farmland potential and the potential of the tract to become part of a larger cluster of preserved farms. Each portion of the LESA has been assigned the following weights:

	<u>Weight</u>
1. Land Evaluation (Soils)	40%
2. Site Assessment:	
A. Development Potential	10%
B. Farmland Potential	30%
C. Clustering Potential	20%
Total	100%

Land Evaluation

This part of the LESA System is based on soils data obtained from the Lehigh County Soil Survey. The Soil Survey has been published in digital form by the USDA's Natural Resource Conservation Service for use with Geographical Information Systems (GIS).

Each soil mapping unit found in Lehigh County has been assigned a numerical value based on its land capability classification, important farmland classification and productivity. Considering these factors, each soil has been assigned a relative value with 100 being assigned to the best soils for agricultural production in the county. See Appendix G for a listing of the relative values for all the soils in the county.

Using the worksheet found in Appendix H, each farm under consideration will be assigned an average relative value for the soil types making up the tract from 0 - 100. This relative value score will then be multiplied by the .40 weighting factor to obtain the final Land Evaluation Score.

Site Assessment

A. Development Potential Factors (Maximum Score = 100 x .10)

1. Distance from Public Sanitary Sewerage Services

- (25) Sewer service area adjacent
- (20) Sewer service area within 1/4 mile
- (15) Sewer service area within 1/2 mile
- (10) Sewer service area within 1 mile
- (5) Sewer service area within 2 miles
- (0) No sewer service area within 2 miles

2. Distance from Public Water Distribution System

- (25) Public water service area adjacent
- (20) Public water service area within 1/4 mile
- (15) Public water service area within 1/2 mile
- (10) Public water service area within 1 mile
- (5) Public water service area within 2 miles
- (0) No public water service area within 2 miles

3. Extent of Public Road Frontage

- (25) 5,000 feet or more of public road frontage
- (20) 4,000 - 4,999 feet of public road frontage
- (15) 3,000 - 3,999 feet of public road frontage
- (10) 2,000 - 2,999 feet of public road frontage
- (5) 1,000 - 1,999 feet of public road frontage
- (0) Less than 1,000 feet of public road frontage

4. Adjacent Non-Agricultural Land Uses

- (25) Tract is 100% surrounded by non-agricultural land uses
- (20) 75% - 99% of the land adjoining the tract is in non-agricultural land uses
- (15) 50% - 74% of the land adjoining the tract is in non-agricultural land uses
- (10) 25% - 49% of the land adjoining the tract is in non-agricultural land uses
- (5) 1% - 24% of the land adjoining the tract is in non-agricultural land uses
- (0) Tract is 100% surrounded by agricultural land uses

B. Farmland Potential Factors (Maximum Score = 100 x .30)

1. Acreage of Farmland Tract

- (30) 100 acres or more
- (25) 75 - 99 acres
- (20) 50 - 74 acres
- (10) 25 - 49 acres
- (0) Less than 25 acres

2. Percent of Tract Used for Cropland or Pasture

- (20) 85% - 100% cropland or pasture
- (15) 65% - 84% cropland or pasture
- (5) 50% - 64% cropland or pasture
- (0) Less than 50% cropland or pasture

3. Soil and Water Conservation Practices Used on the Tract

- (20) NRCS conservation plan fully implemented
- (15) NRCS conservation plan 50-99% implemented
- (10) No conservation plan, but sound conservation practices used on at least 50% of tract
- (0) No conservation plan and limited or no conservation practices used

4. Historic, Scenic, Environmental Qualities

- (10) Exceptional features favorable to preservation (National Register of Historic Places, exceptional scenic contribution on major highway corridor, exceptional or special environmental circumstances)
- (7) Significant features favorable to preservation (locally documented historic features, significant local scenic contribution, and/or significant environmental features)
- (5) Features favorable to preservation (significant but undocumented historic features, moderate local scenic contribution, and/or limited but recognized environmental factors favorable to preservation)

5. Percentage of Tract Offered for Preservation

- (10) 100% of the farm is being offered for preservation

- (5) 95% - 99% of the farm is being offered for preservation
- (0) Less than 95% of the farm is being offered for preservation

6. Operation of Farm

- (10) Property is farmed by the owner or family member
- (0) Property is not farmed by the owner or family member

C. Clustering Potential Factors (Maximum Score = 100 x .20)

1. Consistency with County Planning Map

- (30) Farm is located within an area recommended for farmland preservation as shown on the Lehigh/Northampton County Comprehensive Plan General Land Use Plan Map
- (15) Farm is located within an area recommended for rural development as shown on the Lehigh/Northampton County Comprehensive Plan General Land Use Plan Map
- (0) Farm is not located in an area recommended for farmland preservation or rural development as shown on the Lehigh/Northampton County Comprehensive Plan General Land Use Plan Map

2. Proximity to Permanently Protected Farmland

- (30) One or more farms with perpetual agricultural conservation easements are adjacent to the tract
- (20) One or more farms with perpetual agricultural conservation easements are within 1/2 mile of the tract
- (10) One or more farms with perpetual agricultural conservation easements are within 1 mile of the tract
- (0) There are no farms with perpetual agricultural conservation easements within 1 mile of the tract

3. Percentage of Adjoining Land in an Agricultural Security Area

- (20) 75% - 100% of the adjoining land is in an agricultural security area
- (10) 50% - 74% of the adjoining land is in an agricultural security area
- (5) 25% - 49% of the adjoining land is in an agricultural security area
- (0) 0% - 24% of the adjoining land is in an agricultural security area

4. Agricultural Protection Zoning

- (20) More than 50% of the land adjoining the tract is in an agricultural protection zoning district
- (10) More than 50% of the land adjoining the tract is in the lowest density zoning district of the municipality

(0) More than 50% of the land adjoining the tract is in a higher density zoning district
Any zoning district that encourages agricultural activities and limits non-agricultural development to small percentages (less than 25%) of existing tracts will be considered an agricultural protection zoning district.

V. Planning Map

The Lehigh County Agricultural Land Preservation Board has adopted the General Land Use Plan map as published in the Comprehensive Plan for Lehigh and Northampton Counties, Pennsylvania. This map indicates areas in the County recommended by the Lehigh Valley Planning Commission for farmland preservation. The County Board will take this map into consideration when ranking farms with the Land Evaluation and Site Assessment system and also when making final decisions on easement purchases. The areas recommended for farmland preservation in the Comprehensive Plan are shown in Appendix P.

VI. Public Information Program

Copies of the Lehigh County Agricultural Conservation Easement Program are available to the public by contacting Jeff Zehr, Farmland Preservation Specialist at the Lehigh County Conservation District Office, Lehigh County Agricultural Center, Suite 102, 4184 Dorney Park Road, Allentown, PA 18104 or by calling (610) 391-9583, ext15.

The Lehigh County Agricultural Conservation Easement Program is promoted through the use of the following public information tools:

1. Press releases are prepared periodically to keep the public informed of application deadlines and the progress of the program. These press releases are mailed to newspapers, television stations, radio stations, and farm publications.
2. Newsletters are prepared and mailed to landowners enrolled in agricultural security areas to make them aware of the program and how they can apply. These newsletters are also sent to local agricultural organizations.
3. Public meetings are held regionally in the County to explain the program to the public and show landowners how they can participate.
4. A Slide presentation has been prepared for use at public meetings and other public gatherings to explain the program.
5. A Display has also been prepared to educate the public about the farmland preservation program at fairs and other public events.
6. Signs with the words "This Farm is Preserved" have been created to identify the location of preserved Lehigh County farms and to make the general public aware of the farmland preservation program.
7. Information on the program (including applications) can also be obtained by visiting the Web Site for the farmland preservation program. Go to www.lehighcounty.org and then use the Site Map to look up *farmland preservation* or *agricultural land preservation*.

VII. Inspection and Enforcement Procedures

The Lehigh County Agricultural Land Preservation Board shall exercise primary enforcement authority with respect to the following:

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

The Lehigh County Agricultural Land Preservation Board will conduct yearly inspections of the properties on which they hold conservation easements to check to see if any violations of the easement have occurred.

Landowners subject to these inspections will be notified 10 days in advance of the proposed inspection.

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

The County Board will adhere to the regulations of the Commonwealth in inspecting and enforcing all agricultural conservation easements. See Appendix F for the section of the State Regulations pertaining to the inspection and enforcement of easements.

VIII. Conservation Plans

All agricultural production on farms preserved with an agricultural conservation easement shall be conducted in accordance with a conservation plan approved by the Lehigh County Conservation District or the Lehigh County Agricultural Land Preservation Board. Each conservation plan shall be updated every ten years and upon any change in the basic type of agricultural production being conducted on the subject land. In addition to the requirements established by the Lehigh County Conservation District or the County Board, the conservation plan shall require that:

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

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

IX. Subdivision of Eased Properties

After a farm has been preserved with an agricultural conservation easement, all requests for subdivisions must be made to the Lehigh County Agricultural Land Preservation Board in writing following the procedures described in Lehigh County's Subdivision Guidelines (See Appendix N). The Subdivision Guidelines also provide general and specific criteria for the types of subdivisions that may be permitted on eased properties.

X. New Residential Structures

Each agricultural conservation easement allows for the construction of one new residential structure on the land subject to the easement. This additional residential structure can be built for the purposes of providing housing for the owner(s) of the property or for providing housing for farm employees. Placement of the new residential structures is subject to the permission of the Lehigh County Agricultural Land Preservation Board as well as any permissions needed from the local municipality. All requests for the construction of a new residence shall follow the procedures detailed in Appendix Q.

XI. Procedure for 100% Lehigh County Funded Easement Purchases

Lehigh County farm properties that do not meet all the State Minimum Criteria (Appendix D) may be considered for agricultural conservation easement purchase using 100% County of Lehigh funds. The same purchase procedures used for the purchase of Commonwealth funded easements will apply to 100% Lehigh County funded easement purchases, with the exception that only County Board approval is required. Farms that do not meet the State Minimum Criteria will be ranked separately from farms that do qualify for Commonwealth farmland preservation funding. The deed of agricultural conservation easement for 100% Lehigh County funded easement purchases will contain the same restrictions as those used for Commonwealth funded easement purchases.

XII. Local Government Unit Participation in Easement Purchases

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

1. The local government unit, in conjunction with a county board, may participate with the State Board in the purchase of agricultural conservation easements.
2. The local government unit shall recommend to the county board the purchase of agricultural conservation easements by the eligible county and the local government unit as joint ownership.
3. The local government unit shall recommend to the county board the purchase of agricultural conservation easements by the local government unit and the Commonwealth as joint ownership.

4. The local government unit may purchase an agricultural conservation easement, provided that all of the following apply:

i. The agricultural conservation easement is located within an agricultural security area of at least 500 acres **or** the easement purchased is a joint purchase with either a county or both a county and the Commonwealth pursuant to the criteria set forth for the purchase of agricultural conservation easements cross local government unit boundaries and cross county boundaries including any portion of an agricultural conservation easement extending into an adjoining county.

ii. The deed of agricultural conservation easement is at least as restrictive as the deed of agricultural conservation easement prescribed by the State board for agricultural conservation easements purchased by the Commonwealth.

iii. The local government unit shall participate with the county board in complying with paragraph (5) for recording any agricultural conservation easement purchased by the local government unit.

5. The county board shall be responsible to record an agricultural conservation easement where a local government unit is a party to the purchase of the easement. The easement shall be recorded by the county board in the office of the recorder of deeds of the county wherein the agricultural conservation easement is located. The county board shall submit to the State Board a certified copy of the agricultural conservation easement within 30 days after recording. The county board shall attach to all certified copies of agricultural conservation easements submitted to the State Board a description of the farmland subject to the agricultural conservation easements.

6. The local government unit may incur debt pursuant to 53 PA C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing) for the purchase of agricultural conservation easements.

XIII. Non-profit Conservation Organization Participation in Easement Purchases

Eligible nonprofit entities (see definition in Appendix R) can participate in the purchase of agricultural conservation easements in accordance with the Agricultural Area Security Law (Act of June 30, 1981, P.L. 128, No. 43) (3 P.S. §§ 901-915) as amended by Act 46 of 2006.

XIV. Land Trust Reimbursement Program

Eligible land trusts (non-profit conservation organizations) can receive up to \$5,000 per easement from the Commonwealth of Pennsylvania for the costs associated with the purchase of agricultural conservation easements. Eligible expenses for reimbursement include:

- a. Appraisals
- b. Legal Services
- c. Title Searches
- d. Document preparation
- e. Title insurance
- f. Closing fees

g. Survey costs

The Land Trust Reimbursement Program will follow all the provisions and procedures included in Act 46 of 2006.

XV. Easement Pre-Acquisition by Non-Profit Conservation Organization

The Lehigh County Agricultural Land Preservation Board has the authority to ask a non-profit conservation organization to purchase an agricultural conservation easement on its behalf at anytime, if the Board makes a determination that a farm is in immediate danger of being lost to development. For this to occur, the farm in danger, must meet the State or County Minimum Criteria for Applications (Appendix D), have an acceptable Land Evaluation and Site Assessment (LESA) score, and must make application to the program.

Below are a few situations where the Board may wish to consider an emergency agricultural conservation easement purchase:

- 1) A desirable farm is up for sale and a conservation buyer is interested in purchasing the property.
- 2) A farmland owner has a life threatening health problem which may force the sale of a property
- 3) A farmland owner is under severe financial pressure to sell their property

Section 138e.69 of the State Regulations for the Agricultural Conservation Easement Program states that county boards can request reimbursement for costs incurred by a non-profit land conservation organization that has acquired an easement at the request of the county board, for the purpose of transferring the easement to the county and/or the Commonwealth. These costs can include the easement purchase price, reasonable costs of financing the purchase, appraisal costs, necessary legal costs, recording fees and survey costs.

Appendix S describes the steps involved in an easement pre-acquisition by a non-profit land conservation organization.

XVI. Use of PA Farmland and Forest Land Assessment / Roll-Back Tax Interest

During the annual certification of matching Lehigh County farmland preservation funding made to the Commonwealth of Pennsylvania, Lehigh County will certify the amount of Act 319 (Clean and Green) roll-back tax interest that was collected in the previous year.

Lehigh County will also annually indicate how the previous year's Act 319 roll-back interest will be used in accordance with Act 46 of 2006.

Act 319 roll-back interest can be used for matching funding for easement purchases or for any of the following uses as permitted by Act 46 of 2006:

- a. Conservation plan development
- b. Monitoring of agricultural conservation easements

c. Legal enforcement of agricultural conservation easements

APPENDIX A

Lehigh County Agricultural Land Preservation Board Members

William L. Dietrich
7319 Central Road
Germansville, PA 18053

Curtis E. Schneck
5426 Route 873
Schnecksville, PA 18078

Occupation - Dairy Farmer
Term Expiring - May 2010

Occupation - Builder/Developer
Term Expiring - May 2011

Alan K. Greiss
3664 Friedens Rd.
Slatington, PA 18080

Sterling H. Raber, Chairman
4093 Raber Road
New Tripoli, PA 18066

Occupation - Farmer
Term Expiring - May 2010

Occupation - County Commissioner
Term Expiring - Dec 2009

Diane Matthews-Gehringer
2774 Silver Creek Rd.
Kutztown, PA 19530

Scott C. Bieber
6071 St. Peters Rd.
Emmaus, PA 18049

Occupation - Entomologist/Farmer
Term Expiring - May 2010

Occupation - Soils/Wetlands Consultant
Term Expiring - May 2011

J. Howard Shelly
5801 Schultz Bridge Road
Zionsville, PA 18092
Occupation - Farmer
Term Expiring - May 2010

Thomas L. Gettings
5330 Vera Cruz Rd.
Center Valley, PA 18034
Occupation - Photographer/Program
Director
Term Expiring - May 2011

Roy O. Dengler
3436 Main Street
Emerald, PA 18080

Occupation - Township Supervisor
Term Expiring - May 2009

REV. 2/2/09

APPENDIX B

Lehigh County Agricultural Land Preservation Board Bylaws

Article I

Name

The name of this nonprofit organization shall be called the Lehigh County Agricultural Land Preservation Board. For the purpose of these bylaws it will be referred to as the "Board."

Article II

Purpose

The Board will have the following purposes:

1. To protect viable agricultural lands by acquiring agricultural conservation easements which prevent the development or improvement of the land for any purpose other than agricultural production.
2. To encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security of land use.
3. To provide compensation to landowners in exchange for their relinquishment of the right to develop their private property.
4. To protect normal farming operations in agricultural security areas from incompatible non-farmland uses that may render farming impracticable.
5. To protect farming operations from complaints of public nuisance against normal farming operations.
6. To assure conservation of viable agricultural lands in order to protect the agricultural economy of this Commonwealth
7. To maximize agricultural easement purchase funds that protect the investment of taxpayers in agricultural conservation easements.
8. To concentrate resources in a manner that will ensure the purchase of easements for the protection of the largest amount of farmland possible.
9. To execute all agreements and other documents necessary to effect the purchase of such agricultural conservation easements in the name of Lehigh County and/or the Commonwealth of Pennsylvania.
10. To do all other lawful acts permitted by these bylaws as they may be amended from time to time.

Article III Membership

The membership of the Board will be as specified in the state guidelines and will be appointed by the County Commissioners.

1. The Board shall be comprised of nine members. Annually, the chairman of the County Board of Commissioners shall designate one member of the Board to act as chairman of the Board to continue in that office for one year or until a new appointment is made pursuant to this Article.
2. Four members of the Board shall be active resident farmers of the county and shall serve initial terms of three years.
3. One member of the Board shall be a current member of a township or borough governing body within the county and serve an initial two year term.
4. One member of the Board shall be a commercial, industrial, or residential contractor and serve an initial one year term.
5. Three members of the Board shall be selected at the pleasure of the County Board of Commissioners and serve an initial one year term.
6. Upon expiration of the initial terms stated above, all terms of members shall be three years.
7. Any Board member may be removed from office for malfeasance, misfeasance, or nonfeasance in office or for other just cause by the majority vote of the Board of County Commissioners at a duly noticed public meeting.
8. Any appointment to fill any vacancy created by removal, resignation or otherwise shall be only for the balance of the unexpired term.
9. The Lehigh County Executive Branch and the of Lehigh Valley Planning Commission shall each have one (1) advisory, non-voting membership.

Article IV Voting

1. Each member of the Board shall be permitted to cast one vote upon all motions, resolutions and other business before the Board, subject to the limitations set forth below.
2. No Board member shall be permitted to cast a vote upon any motion, resolution and other form of business before the Board which involves, concerns or in any way effects any real estate or real property interest, either in the form of a present or future interest, of a Board member or his or her immediate family.
3. Should any Board member cast or attempt to cast a vote in violation of Article IV, Paragraph 2 above, such a vote shall be null and void and of no force and effect.

Article V
Officers

The Board will have the following officers:

1. Chairman. The member of the Board who serves as chairman shall be selected annually by the Chairman of the County Board of Commissioners. The chairman shall preside at all meetings of the Board and shall have duties normally conferred by parliamentary usage on such officers.
2. Vice-Chairman. The member of the Board who serves as vice-chairman will be selected annually by the vote of the Board. The vice-chairman shall act for the chairman in his/her absence.
3. Treasurer. The member of the Board who serves as treasurer shall be selected annually by vote of the Board. The treasurer shall be responsible for keeping and maintaining records of all receipts and disbursements and shall annually submit a financial report to the Board with the assistance of the Board's staff.

Article VI
Finance

1. All Commonwealth and Lehigh County farmland preservation funding allocated to Lehigh County shall be used for the purpose of protecting viable farmland in Lehigh County and also for the protection of viable farmland parcels that extend from Lehigh County into adjoining counties (as permitted by Act 14 of 2001, amending the Agricultural Area Security Law, Act 43).
2. The Board shall operate within a budget as approved annually by the Lehigh County Board of Commissioners.
3. No member of the Board shall be liable for debts of the Board.
4. No net income of the Board shall accrue to the benefit of any member with the exception of purchasing conservation easements consistent with Act 149 of 1988.

Article VII
Meetings

Meetings of the Board will be as follows:

1. Regular. The Board may meet to carry out important business at the call of the chairman or by a petition to the chairman from a quorum of Board members.
2. All meetings shall require a quorum of at least five members of the Board to conduct business. Meetings shall be in compliance with the provisions of the Act of July 3, 1986, (P.L. 388, No. 84) known as the Sunshine Act. The Board shall also be subject to the provisions of the Act of June 21, 1957 (P.L. 390, No. 212), referred to as the Right-To-Know Law, relating to the

inspection and copying of public records. Roberts Rules of Order shall apply to all events not otherwise covered by the Bylaws.

Article VIII
Outside Assistance

The Board may receive assistance from staffs of the Lehigh Valley Planning Commission, county departments, or from other sources as they become available.

Article IX
Amendments

These bylaws shall be amended by a majority vote of the members of the Board, provided such amendments, along with notice of the date of the meeting, shall have been circulated to all Board members at least two weeks prior to the meeting.

Article X
Public Official and Employee Ethics Law

All members and employees of the Board shall comply with the provisions of the Public Officials and Employee Ethics Law, 65, P.S. Sections 401-413.

Before selling an easement, a person who is a member of the Board shall obtain an opinion from the State Ethics Commission stating that such participation is in fact permitted under the provisions of the Public Official and Employee Ethics Law.

APPENDIX C

Agricultural Conservation Easement Application Form

I. GENERAL INFORMATION (Please Print)

Name _____

Name _____

Address _____
(Street) (City) (State) (Zip Code)

(Farm Address, if different from above)

Telephone #(s) _____
(please include best times to reach)

Contact to View Farmland Tract _____ Phone _____

II. FARM INFORMATION

County _____ Township _____ Acreage of Farm _____

Total acreage offered for easement purchase _____

Name of Agricultural Security Area _____

ASA Book & Page Number _____

Deed reference(s): Volume _____ Page _____
Volume _____ Page _____ or
Document ID Number _____

Tax parcel #(s): Number _____ Acreage _____
(PIN #) Number _____ Acreage _____
Number _____ Acreage _____
Number _____ Acreage _____
Number _____ Acreage _____

Directions to farm from nearest State Route _____

III. SIGNATURE(S) It is necessary for all farmland owners to give their approval and consent to this application.

I hereby authorize the Conservation Plan preparer to release copies of the Conservation Plan and Nutrient Management Plan (Act 6, if applicable), to the County Agricultural Land Preservation Board and the Bureau of Farmland Preservation as required under Act 43 criteria for easement purchase.

Signed _____ Date _____

Signed _____ Date _____

I hereby certify that I am _____ am not _____ a county board member.

IV. Crop Production Information

The applicant must provide crop production information for the most recent crop year.

Crop Report for crop year _____

	Commodity	Acres Grown	Average Yield
1.			
2.			
3.			
4.			

V. Livestock Report

Livestock Report for calendar year _____

	Livestock	Average Numbers	Product Sold	Number Sold
1.				
2.				
3.				
4.				

Total Acreage Farmed (including rented land) _____

VI. Conservation Plan

Date of NRCS Conservation Plan _____

Conservation Practices in use currently _____

VII. MORTGAGES, LIENS AND MINERAL RIGHTS

Please list all mortgagees, lienholders, or owners of mineral rights for the farmland tract.

Mortgagees: _____

Lienholders: _____

Mineral Rights: _____

VIII. MAPS

The Farmland Preservation Office will provide the following maps as part of this application:

- 1. Location map - A United States Geographical Survey topographical Map showing the location and approximate boundaries of the farmland tract.
- 2. Tax map - Tax map(s) of the farmland tract with map reference and tax parcel numbers clearly indicated.
- 3. Soils map - The soils map of the farmland tract must be color coded as follows:

- Class I - Green
- Class II - Yellow
- Class III - Red
- Class IV - Blue
- Wetlands - Cross Hatch or include on separate map

IX. SOILS REPORT AND LAND CAPABILITY CLASSES

The Farmland Preservation Office will provide a soils report and a written description of each soil type including the soil capability class for the farmland tract as part of the application.

Please submit this application to:

Lehigh County Agricultural Land Preservation Board
Lehigh County Agricultural Center, Suite 102
4184 Dorney Park Road
Allentown, PA 18104

Please call Jeff Zehr, Farmland Preservation Specialist, at (610) 391-9583 x 15 or Beverly Weaver x 14 if you have any questions or would like some assistance in completing this application.

APPENDIX D

Minimum Criteria for Applications

STATE MINIMUM CRITERIA

(a) The county program shall consider quality of the farmland tract, including the USDA soil classification and productivity. The farmland tract shall:

- (1) Be located in an agricultural security area consisting of 500 acres or more.
- (2) Be contiguous acreage of at least 35 acres * in size unless the tract is at least 10 acres in size and is either utilized for a crop unique to the area or is contiguous to a property which has a perpetual conservation easement in place which is held by a "qualified conservation organization," as that term is defined at section 170 (h) (3) of the Internal Revenue Code of 1986 [Public Law 99-514, 26 U.S.C. § 170(h)(3)].

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

(3) Contain at least 50% of soils which are available for agricultural production and are of capability classes I through IV, as defined by the USDA - Natural Resources Conservation Service.

(4) Contain the greater of 50% or 10 acres of harvested cropland, pasture or grazing land.

All properties considered for conservation easement purchase must be included as part of a duly recorded agricultural security area which has at least 500 acres enrolled.

* Commonwealth funds cannot exceed 50% of the agricultural conservation easement purchase price for farm tracts that are at least 35 acres but less than 50 acres in size and are not contiguous to other lands protected with perpetual conservation easements.

100% COUNTY FUNDED EASEMENT PURCHASES (COUNTY-ONLY EASEMENTS)

The Lehigh County Agricultural Land Preservation Board may consider farmland tracts for 100% County funded agricultural conservation easement purchases that do not meet all of the above State minimum criteria.

APPENDIX E

Agricultural Conservation Easement Deed Requirements

The following is taken from Pennsylvania's Agricultural Conservation Easement Purchase Program Regulations, Subchapter D, Section 138e.66.

(a) The owners of the subject farmland tract shall execute a deed conveying the easement which deed shall be included in the easement deed clauses to follow.

(b) The deed shall be in recordable form and contain:

1) A legal description setting forth the metes and bounds of the farmland tract subject to the easement.

(2) At least one course and distance referencing a fixed marker or monument of a type commonly placed in the field by a surveyor.

(c) The legal description shall not contain a closure error greater than one foot per 200 linear feet in the survey.

(d) The farmland tract on which an easement is to be purchased must be surveyed unless the legal description contained in the deed recorded in the land records of the county in which the farmland tract is located satisfies the requirements of paragraphs (b) and (c). A survey required by the provisions of this paragraph must comply with the boundary survey measurement standard for a Class A-2 survey as published by the Pennsylvania Society of Land Surveyors.

(e) For purchases made entirely with State funds, the Commonwealth shall be the sole grantee.

(f) For purchases made using a combination of State and county funds, the grantees shall be the Commonwealth and the county providing the funds under joint ownership as defined in the act.

(1) Neither the Commonwealth nor the county may sell, convey, extinguish, lease, encumber, restrict or otherwise dispose of its interest in the easement without the consent of the other.

(2) Upon sale, conveyance, extinguishment, lease, encumbrance or other disposition of the easement, the Commonwealth and the county shall receive a pro rata share of the proceeds based upon their respective contributions to the purchase price.

(g) A copy of the deed shall be submitted to the State Board for approval prior to execution and delivery.

Easement Deed Clauses

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

(1) A granting clause stating;

NOW THEREFORE, in consideration of the sum of _____ Dollars, the receipt and sufficiency of which is hereby acknowledged, Grantor does voluntarily grant, bargain and sell, and convey to the Grantee its successors and assigns, and Grantee voluntarily accepts, an agricultural conservation easement in the subject land, under and subject to the Act and the following terms and conditions:

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

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

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

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

Construction of Buildings and Other Structures

The construction or use of any building or other structure on the subject land other than as existing on the date of the delivery of this Deed is prohibited except that:

- i. The erection of fences for agricultural production and protection of watercourses such as lakes, streams, springs and reservoirs is permitted.
- ii. The construction of one additional residential structure is permitted if;
 - a. The construction and use of the residential structure is limited to provide housing for persons employed in farming the subject land on a seasonal or full-time basis,
 - b. No other residential structure has been constructed on the restricted land at any time since the delivery of the Deed,
 - c. The residential structure and its curtilage occupy no more than two acres of the subject land, and
 - d. The location of the residential structure and its driveway will not significantly harm the economic viability of the subject land for agricultural production.
- iii. The construction or use of any building or other structure for agricultural production is permitted.
- iv. The replacement of a residential structure existing on the restricted land on the date of the granting of the easement is permitted.
- v. No more than ten percent (10%) of the total conservation easement area shall be covered by permanent buildings for any purpose. Temporary agricultural buildings that do not have permanent foundations will not be considered as permanent buildings. The spaces between buildings, such as yard areas, driveways, and parking areas, shall not be included in the calculation of building coverage. Buildings that are present on the restricted land on the date of the granting of the conservation easement shall be included in the calculation of building coverage.

Subdivision - The subject land may be subdivided if subdividing will not harm the economic viability of the subject land for agricultural production. If the subject land is subdivided, the Deeds to all of the subdivided parcels shall state on which of the subdivided parcels the residential structure permitted by this Deed may be constructed. Deeds to all other parcels shall recite that no additional residential structure is permitted.

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

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

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

Soil and Water Conservation - All agricultural production on the subject land shall be conducted in accordance with a conservation plan approved by the County Conservation District or the County Board. Such plan shall be updated every ten years and upon any change in the basic type of agricultural production being conducted on the subject land. In addition to the requirements established by the County Conservation District or the County Board the conservation plan shall require that:

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

(3) An enforcement clause stating that:

Annually, Grantee(s), its/their successor(s), assigns(s) or designee(s) shall have the right to enter the subject land for the purpose of inspecting to determine whether the provisions of this Deed are being observed. Written notice of such annual inspection shall be mailed by Certified Mail to the Grantor, his heirs, executors, administrators, successors or assigns at least ten days prior to such inspection. The annual inspection shall be conducted between the hours of 8:00 a.m. and 5:00 p.m. on a weekday that is not a legal holiday recognized by the Commonwealth of Pennsylvania or at a date and time agreeable to the county and the landowner.

Grantee(s), its/their successor(s), assign(s) or designee(s) shall also have the right to inspect the subject land at any time, without prior notice, if it/they has/have reasonable cause to believe the provisions of this Deed have been or are being violated.

Grantor acknowledges that any violation of the terms of this Deed shall entitle Grantee(s), its/their successor(s), assign(s) or designee(s) to obtain an injunction against such violation from a court of competent jurisdiction along with an order requiring Grantor, his heirs, executors, administrators, successors or assigns to restore the subject land to the condition it was in prior to the violation, and recover any costs or damages

incurred including reasonable attorney's fees. Such relief may be sought jointly, severally, or serially.

(4) A clause setting forth the duration of the easement as perpetual.

(5) A clause stating that:

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

(6) A clause setting forth the obligation of the Grantor upon conveyance of the farmland tract as follows:

Conveyance Or Transfer Of The Subject Land Grantor, his heirs, executors, administrators, successors or assigns, and any person, partnership, corporation, or other entity claiming title under or through Grantor, shall notify Grantee in writing of any conveyance or transfer of ownership of the subject land. Such notification shall set forth the name, address and telephone number of the Grantor and the party or parties to whom ownership of the subject land has been conveyed or transferred. This obligation shall apply to any change in ownership of the subject land.

The restrictions set forth in this Deed shall be included in any Deed purporting to convey or transfer an ownership interest in the subject land.

(7) A habendum clause.

Additional Deed Requirements (as required by Act 43 as amended)

All properties within Lehigh County upon which conservation easements are placed shall recite in verbatim the language of the easement as set forth in the deed whenever interest in said properties is conveyed or transferred to another person or entity.

All persons conveying or transferring land subject to an agricultural conservation easement shall notify the Lehigh County Agricultural Land Preservation Board and the Bureau of Farmland Protection of the price per acre or portion thereof received by the landowner.

APPENDIX F

Procedure for Inspecting and Enforcing an Easement

The following procedure is taken from the Pennsylvania Agricultural Conservation Easement Purchase Program Regulations, Subchapter G, Sections 138e.201 - 138e.206.

138e.201. Responsibility.

- (a) The county board shall have the primary responsibility for inspecting restricted land and enforcing an easement.
- (b) The State Board or its designee will have the right to inspect restricted land and enforce an easement on its own behalf or in conjunction with the county board.

138e.202. Inspections.

- (a) The county board shall inspect all restricted land within the county at least annually to determine compliance with the applicable deed of easement.
- (b) Written notice of an inspection to be conducted under subsection (a) shall be mailed by certified mail to the owner at least 10 days prior to the inspection.
- (c) Any inspection conducted under subsection (a) shall be performed between the hours of 8 a.m. and 5 p.m. on a weekday that is not a legal holiday recognized by the Commonwealth, or a date and time agreeable to the county and the landowner.
- (d) Within 10 days of conducting an inspection under subsection (a), the county board shall prepare a written inspection report setting forth the following information:
 - (1) The identification of the land inspected.
 - (2) The name of the owner of the land inspected.
 - (3) A description of modifications in the number, type, location or use of any structures on the land since the date of the filing of the deed of easement.
 - (4) A description of the conservation practices being observed on the restricted land.
 - (5) A statement of whether the provisions of the deed of easement are being observed.
- (e) A copy of the inspection report shall be mailed by certified mail to the owner.
- (f) The county board and the State Board may inspect the restricted land, jointly or severally, without prior notice if they have reasonable cause to believe that any provision of the easement has been or is being violated.

138e.203. Annual Report.

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

138e.204. Enforcement.

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

138e.205. Notification to owner.

(a) Within 10 days of the discovery of a violation of the terms of an easement, either through an inspection or otherwise, the county board shall send written notice of the violation to the owner of the restricted land, the county governing body and the State Board.

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

- (1) A copy of the inspection report.
- (2) A copy of the deed of easement.
- (3) A description of the action or condition that constitutes the alleged violation.
- (4) A statement of the measures necessary to correct the alleged violation.

138e.206. Enforcement actions.

(a) Sixty days after the mailing of a notice of violation under section 138e.205 (relating to notification to owner), the county board shall commence and prosecute an action in the Court of Common Pleas of the county in which the restricted land is located seeking an order requiring correction of the violation, enjoining further violation of the terms of the easement, and other appropriate relief, unless the county board does one of the following:

- (1) Determines with the State Board that the violation has been corrected.
- (2) Completes the following requirements:
 - (i) Determines that the owner of the restricted land has commenced the necessary corrective measures, or determines that the necessary corrective measures cannot reasonably be completed within the 60 day period described in subsection (a).

(ii) Establishes a period not to exceed 1 year within which the corrective measures shall be completed.

(b) The county board shall commence and prosecute the enforcement action described in subsection (a) if the violation is not corrected within the time established under subsection (a) (2) (ii).

(c) The owner of the restricted land shall bear all costs associated with the correction of a violation of the easement, including:

(1) Costs of work required and materials used to correct the violation.

(2) Administrative costs incurred by the county board and the State Board.

(3) Court costs and reasonable attorneys' fees incurred by the county board and the State Board in enforcing the easement.

(d) If the county board fails to institute and prosecute a timely enforcement action, the State Board may institute the action and recover costs incurred, including reasonable attorneys' fees, from the county board or the owner of the restricted land, or both.

APPENDIX G

Lehigh County Relative Soil Values

Map Symbol	Farmland Importance	Capability Class	Relative Value
AfA	P	1	100
AfB	P	2E	100
ArA	P	1	100
BmA	P	1	100
BmB	P	2E	100
DbA	P	1	100
DbB	P	2E	100
GeA	P	2E	100
GeB	P	2E	100
Lv	P	1	100
NaB	P	2E	100
WaA	P	1	100
WaB	P	2E	100
ArB	P	2E	84
BfA	P	2S	84
EhB	P	2E	84
Gc	S	2W	84
GeC	S	3E	84
Me	P	2W	84
MuB	P	2E	84
NaC	S	3E	84
WaC	S	3E	84
ArC	S	3E	72
BfB	P	2E	72
BkA	S	2S	72
BuB	P	2E	72
CmA	P	2W	72
CmB	P	2E	72
CpA	P	2W	72
CpB	P	2E	72
DfC	S	3E	72
EhC	S	3E	72
GnA	P	2W	72
GnB	P	2E	72
LaB	P	2E	72
MgB	P	2E	72
MlB	P	2E	72
MuC	S	3E	72

PeB	P	2E	72
ReA	P	2W	72
ReB	S	2E	72
BfC	S	3E	55
BkB	S	2E	55
LaC	S	3E	55
LmB	P	2W	55
MlC	S	3E	55
AbC	S	3E	48
ArD	0	4E	48
BkC	S	3E	48
BwB	S	3W	48
CaB	S	3S	48
DfD	0	4E	48
EhD	0	4E	48
GeD	0	4E	48
GnC	S	3E	48
Ho	S	3W	48
LmC	S	3E	48
NaD	0	4E	48
PeC	S	3E	48
PkC	S	3E	48
WaD	0	4E	48
WeB	S	3E	48
AnA	0	4W	36
AnB	0	4W	36
BhD	0	4E	36
Bo	0	4W	36
BtA	0	4W	36
BtB	0	4W	36
CaC	0	4S	36
CwA	0	4W	36
CwB	0	4W	36
LaD	0	4E	36
LfA	0	4W	36
PeD	0	4E	36
ThA	0	4W	36
ToA	0	4W	36
ToB	0	4W	36
BkD	0	4E	31
CaD	0	6E	31
PkD	0	4E	31
WeD	0	6E	31
AoB	0	7S	0
BkF	0	7E	0
BvB	0	7S	0
BvD	0	7S	0
EdD	0	7S	0

Fb	0	5W	0
GfB	0	6S	0
GfD	0	6S	0
GfF	0	7S	0
HeB	0	7S	0
HeD	0	7S	0
HeF	0	7S	0
HgF	0	7S	0
KlF	0	7E	0
LbB	0	7S	0
LbD	0	7S	0
LbF	0	7S	0
LdF	0	7S	0
NhB	0	7S	0
NhD	0	7S	0
NhF	0	7S	0
Qu	0		0
TwB	0	7S	0
Ua	0		0
UgB	0	8S	0
UgC	0	8S	0
Uh	0		0
UkB	0		0
UkD	0		0
UmB	0	8S	0
UmD	0	8S	0
UnB	0	8S	0
UnD	0	8S	0
UsB	0	8S	0
UsD	0	8S	0
UvB	0	8S	0
UxB	0	8S	0
W	0		0
w	0		0

B. Farmland Potential Factors (100 Points Maximum)

1. Acreage of Farmland Tract
2. % of Tract Used for Cropland or Pasture
3. Conservation Practices
4. Historic, Scenic, Environmental Qualities
5. % of tract Offered for Preservation
6. Operation of Farm

Total 0

C. Clustering Potential Factors (100 Points Maximum)

1. Consistency with County Planning Map
2. Proximity to Protected Farmland
3. % of Adjoining Land in Ag. Sec. Area
4. Agricultural Protection Zoning

Total 0

III. Weight Adjustments and Total LESA Score

		Multiplier Weighted Score	
Land Evaluation Score (40%)	#N/A	0.4	#N/A
Development Potential Score (10%)	0	0.1	0
Farmland Potential Score (30%)	0	0.3	0
Clustering Potential Score (20%)	0	0.2	0

Total LESA Score	#N/A
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APPENDIX I

Agricultural Conservation Easement Program Yearly Work Plan

<u>Month</u>	<u>Tasks</u>
January	<ul style="list-style-type: none">- Publicize agricultural easement program.- Finish annual report for previous year.
February	<ul style="list-style-type: none">- Hold public information meeting(s) to inform public of program and application deadline.
March	<ul style="list-style-type: none">- March 31st - Deadline for submission of applications.
April	<ul style="list-style-type: none">- Farm visits with new applicants.- Begin LESA rankings on new applications.
May	<ul style="list-style-type: none">- Continue LESA rankings.
June	<ul style="list-style-type: none">- Finish LESA rankings.- Select farms for appraisal.
July	<ul style="list-style-type: none">- Continue with appraisals.
August	<ul style="list-style-type: none">- Continue with appraisals.
September	<ul style="list-style-type: none">- Complete appraisals.
October	<ul style="list-style-type: none">- Make offers to landowners.
November	<ul style="list-style-type: none">- Begin boundary surveys.
December	<ul style="list-style-type: none">- Continue with boundary surveys.- Order title searches.

Ongoing Tasks:

- Prepare offer letters and sales agreements.
- Prepare and submit easement purchase proposals for State Board consideration.
- Coordinate settlements with landowners, County, and State.
- Inspect agricultural conservation easements for deed compliance.
- Prepare inspection reports.
- Publicize easement acquisitions.
- Maintain current map of agricultural security areas.
- Map agricultural conservation easements as they are acquired.

APPENDIX J

Farmland Appraisal Procedure

The procedure below is from Pennsylvania's Agricultural Conservation Easement Program Regulations, Subchapter D, Section 138e.63.

Appraisal

- (a) An offer to purchase easements shall be based upon one or more appraisal reports which estimate both the market value and the farmland value of the farmland tract.
- (b) An appraisal shall be based primarily on an analysis of comparable sales.
- (c) The value of the buildings or other improvements on the farmland tract **may not** be considered in determining the easement value. The description of the buildings or other improvements shall appear separately in the appraisal report.
- (d) The appraiser shall be a Pennsylvania State Certified General Real Estate Appraiser in accordance with the standards set forth in Act 43 and any future revisions and regulations thereof (Section 14.1(f) and (f)(3)).
- (e) The appraiser shall supply a narrative report which contains the following information and is in the following format:

- (1) Introduction

- (i) Letter of Transmittal or Appraiser's Certificate
- (ii) Table of Contents
- (iii) Summary of Salient Facts and Conclusions
- (iv) Purpose of the Appraisal
- (v) Easement Value Definition

- (2) Description of Property

- (i) Area or Neighborhood Description
- (ii) Description of Appraised Property
 - (A) Legal Description
 - (B) Property Data and Zoning
 - (C) Description of Improvements
 - (D) Color Photos of Subject Property
 - (E) Tax Map of Subject Property
 - (F) Sketch of Subject Property
 - (G) Location Map
 - (H) Soils Map

- (3) Analyses and Conclusions

(i) Analysis of Highest and Best Use

(ii) Valuation Methodology: Market Value

- (A) Comparable Sales Data
- (B) Adjustment Grid
- (C) Location Map of Comparable Sales

(iii) Market Value Estimate

(iv) Valuation Methodology: Farmland Value

- (A) Comparable Sales Data
- (B) Location Map of Comparable Sales
- (C) Adjustment Grid

(v) Farmland Value

(vi) Easement Value

(vii) Professional Qualifications of the Appraiser

(f) The appraiser shall supply information concerning comparable sales as follows:

(1) At least **four** comparable sales shall be used for appraisal. If the appraiser cannot obtain sufficient comparable sales data within the same county as the subject farmland tract, the appraiser may use comparable sales from other counties, after consultation with the County Board. The use of comparable sales which require adjustment of 50% or more is permitted only with the approval of the County Board.

(2) Pertinent data for each comparable sale used in the preparation of the appraisal shall be stated in the appraisal report including date of sale, purchase price, road frontage in feet, soil series, an estimate of the range of slope and other relevant information. The appraisal shall include an analysis comparing the pertinent data for each comparable sale to the subject farmland tract.

(3) The location of each comparable sale used in the appraisal report shall be shown accurately on the comparable sales map and sufficiently identified and described so as to be located easily.

(4) For comparable sales used to estimate the farmland value, the appraiser may use sales of land that are confined to agricultural use because of legal restrictions or physical impairments that make the land valuable only for agricultural use. Data may also be gathered from farm real estate markets where farms have no apparent developmental value.

(5) If comparable sales data is not available for farmland value, the County Board, subject to the approval of the State Board, may assign a farmland value based on crop production or a capitalization of rental income.

(6) The appraiser shall report whether the farmland tract has any public or private land use restrictions, or is within a flood plain, or has any other physical attributes which limit its developmental capability.

(7) The appraiser shall provide at least **one original and three copies** of each report to the County Board. The original of each report and all copies shall be bound with rigid covers.

Procedure For Determining the Easement Value if Applicant Retains an Independent Appraiser
(From State Regulations, Section 138e.65)

(a) The applicant may, at applicant's expense, retain another Pennsylvania Certified General Real Estate Appraiser to determine an easement value. The appraiser shall be qualified and the appraisal must be completed in accordance with the above regulations. The appraisal shall be submitted to the County Board within 120 days of receipt of the County Board's offer to purchase. Upon completion, three copies of the applicant's appraisal shall be submitted to the County Board.

(b) If the applicant retains an independent appraiser, the easement value shall be the difference between the agricultural value and the nonagricultural value, determined as follows:

(A) The agricultural value shall equal the sum of:

(1) The farmland value determined by the applicant's appraiser; and

(2) One-half of the difference between the farmland value determined by the County Board's appraiser and the farmland value determined by the applicant's appraiser, if the farmland value determined by the County Board's appraiser exceeds the farmland value determined by the applicant's appraiser.

(B) The nonagricultural value shall equal the sum of:

(1) The market value determined by the County Board's appraiser; and

(2) one-half of the difference between the market value determined by the applicant's appraiser and the market value determined by the County Board's appraiser, if the market value determined by the applicant's appraiser exceeds the market value determined by the County Board's appraiser.

APPENDIX K

Documentation Requirements Pennsylvania Agricultural Land Preservation Board

Section 138e.91 Application for Review

Applications for State Board review of a proposed purchase of an easement is made by submitting the following documents to the Director, Bureau of Farmland Protection, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

(1) Twenty-five copies of the summary report prepared in accordance with section 138e.69 (relating to summary report), including the following items:

- (i) Cover Letter From County (optional)
- (ii) Narrative Summary Report
- (iii) Legible United States Geological Survey (USGS) topographic map showing the subject property location and boundaries, location of neighboring easements, and exclusions withheld from the subject property.
- (iv) Soil Report Form "C"
- (v) List of soil mapping unit names, symbols and Land Capability Classes on the subject property.
- (vi) Legible, uncolored soil map of subject property.
- (vii) Tax map showing the subject property location and boundaries, exclusions withheld from the subject property, utility rights-of-way, and access road rights-of-way.
- (viii) Summary table showing the individual ranking scores by category for applications selected for county appraisal, including an indication of the easement purchase status of higher-ranking applicants.
- (ix) Copy of Exhibit "B", from the Agreement of Sale modified to include interest, total acres, and per acre easement cost.
- (x) Twenty-five copies submitted shall be individually collated and three-hole punched, but not stapled.

(2) The appraisal report or reports.

(3) The signed contract of sale, including the proposed legal description, a statement of cost, the proposed deed of agricultural conservation easement, a contractor integrity clause, and a nondiscrimination clause.

- (4) The title insurance report or commitment.
- (5) A letter certifying that all adjoining landowners were provided with notice and opportunity to be heard in a manner consistent with administrative agency law with respect to the proposed easement purchase, including one (1) copy of the notification letter and a list of all adjoining landowners.
- (6) A completed and signed IRS Form W-9, Request for Taxpayer Identification Number and Certification for individual grantors.
- (7) A letter from the grantors stating the percent (%) of ownership of each grantor for the purpose of issuing IRS Form 1099.
- (8) A copy of the approved soil conservation plan.
- (9) A copy of the nutrient management plan if applicable.

APPENDIX L

Lehigh County Agricultural Land Preservation Board

Appraisal Request Form

I/We _____,
landowners of farm property consisting of _____ acres, located on _____
_____ in _____ Township,
Lehigh County, Pennsylvania and a qualified and approved agricultural conservation easement
sale applicant, hereby request an appraisal by the Lehigh County Agricultural Land Preservation
Board. A **\$500.00** fee accompanies this form. I/We understand that this fee is **non-refundable**
even if we choose not to accept an offer from the County Preservation Board.

SIGNATURES OF
LANDOWNER(S): _____

ADDRESS _____

TELEPHONE: _____ DATE: _____

PLEASE MAKE CHECK PAYABLE TO: **The County of Lehigh**

PLEASE SUBMIT TO: **Lehigh County Agricultural Land Preservation Board**
4184 Dorney Park Road, Suite 102
Allentown, PA 18104

Office Use:

File #: _____

Date Received: _____

APPENDIX M

Permitted Customary Part-time or Off-season Minor or Rural Enterprises

Pursuant to State Regulations, Subchapter I, Section 138e.241, the County Board intends that agricultural conservation easements shall not prevent "customary part-time or off-season minor or rural enterprises and activities." For purposes of definition, these are limited to the following:

1. Direct sale to the public of agricultural products produced principally on the farm, provided that at least 50% of such products are produced by the farm operator.
2. Any and all structures contributing to the production, primary processing, direct marketing and storage of agricultural products produced principally on the farm.
3. Structures associated with the production of energy for use principally on the farm including wind, solar, hydroelectric, methane, wood, alcohol fuel and fossil fuel systems and structures and facilities for the storage and treatment of animal wastes.
4. Structures and facilities associated with irrigation, farm pond improvements, and soil and water conservation practices including but not limited to wetland development or restoration, wildlife wetland habitat management, wildlife upland habitat management, and riparian forest buffer resource management systems used for erosion and sediment control and water quality improvement. The State Agricultural Land Preservation Board approved and authorized on 7/13/00 the use of any conservation practice under the USDA CRP/CREP Programs as not violating the deed of agricultural conservation easement with respect to the restricted land provided the conservation plan allows for the implementation of any such conservation practices.
5. The provision of services or production and sale, by persons in residence, of incidental agricultural goods, services, supplies, and repairs and/or the conduct of traditional trades and the production and sale of home occupation goods, arts and crafts, so long as these uses remain incidental to the agricultural and open space character of the farm and are limited to occupying residential and/or principally agricultural structures of the property; limited in site coverage to one-half of one percent of the area of the property.
6. The accommodation of tourists and visitors within principally family residential and/or agricultural structures otherwise permitted under the law so long as the accommodation of tourists and visitors is undertaken as a part-time or off-season minor or rural enterprise and is incidental to the agricultural and open space character of the property.
7. Regulated hunting operations and the production and stocking of game birds so long as these uses remain incidental to the agricultural and open space character of the property.
8. Agricultural composting operations where at least 50% of the composted material is generated from on-farm agricultural activities associated with the farm operation. All composting activities shall be in accordance with the approved conservation plan for the

subject land. No more than 5%, not to exceed 5 acres, of the area covered by the conservation easement shall be used for agricultural composting.

9. Agriculture-related services or activities associated with customary part-time or off-season minor rural enterprises or activities incidental to agricultural production. These services and activities are permissible as long as they remain incidental to the agricultural and open space character of the farm. No excavating, paving, gravelling, construction of permanent structures, or other activities that would diminish the productive capacity of the soils are permitted in connection with such activities. Such activities include but are not limited to corn mazes, harvest festivals, hay rides and farm tours. The County Board reserves the right to review and approve these activities on a case-by-case basis.

10. Other similar uses upon approval by the Lehigh County Agricultural Land Preservation Board and the State Agricultural Land Preservation Board.

APPENDIX N

Subdivision Guidelines

Lehigh County Agricultural Conservation Easement Program

Purposes

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

General Provisions

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

Definitions

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

County Board – The Lehigh County Agricultural Land Preservation Board, its officers or others authorized to act on behalf of the Board.

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

Eased – Protected against uses other than agricultural through the purchase of a conservation easement.

Economic Viability of Farmland for Agricultural Production – The capability of a particular tract of restricted land, other than a tract of two acres or less upon which construction and use of the landowner’s principal residence or housing for seasonal or full-time employees is permitted pursuant to Section 14.1 (c) (6) (iv) of the Act [3 P.S. Section 914.1 (c) (6) (iv)], to meet all of the criteria set forth at Section 138e.16 (a) (2), (3), (4) and (5)(relating to minimum criteria for applications) of the Regulations.

Farmland Tract – A separately described area of land comprised of contiguous acreage, which is capable of being separately conveyed either before or after the proposed subdivision.

Harm the Economic Viability of the Farmland for Agricultural Production – To cause a particular tract of restricted land to fail to meet the criteria set forth at Section 138e.16 (a) (2), (3), (4) and (5) (relating to minimum criteria for applications) of the Regulations, or to create, through subdivision, a tract of restricted land, other than a tract of two acres or less upon which construction and use of the landowner’s principal residence or housing for seasonal or full-time employees is permitted pursuant to Section 14.1 (c) (6) (iv) of the Act [3 P.S. Section 914.1 (c) (6) (iv)], that would fail to meet the aforescribed criteria.

Land Development – Either of the following activities:

(1) The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving a group of two or more residential buildings, whether proposed initially or cumulatively; or

(2) A subdivision of land.

Land which has been devoted primarily to agricultural use – That acreage which is part of restricted land and is harvested cropland, grazing or pastureland, land containing non-residential structures used for agricultural production, or other acreage immediately available for agricultural production, and which excludes any acreage upon which immediate agricultural production is impracticable due to residential structures and their cartilages, wetlands, soil quality, topography or other natural or man-made features, and which further excludes any tract of two acres or less designated as the site upon which the landowner’s principal residence or housing for seasonal or full-time employees is permitted pursuant to Section 14.1 (c) (6) (iv) of the Act [3 P.S. Section 914.1 (c) (6) (iv)].

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

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

Regulations, The – Agricultural Conservation Purchase Program Regulations, (Title 7., Part V-C., Chapter 138e.)

State Board – The Pennsylvania State Agricultural Land Preservation Board.

Subdivision – The division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines

for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development.

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

General Subdivision Criteria

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

1. To create a separate tract of land of two acres or less upon which construction of one new residential structure is permitted for use as a principal residence by the landowner, or housing for seasonal or full-time farm employees. Subdivision will not be permitted for this purpose if the landowner(s) can accomplish the construction of the residential structure in accordance with Section 14.1 (c) (6) (iv) of the Act [3 P.S. Section 914.1 (c) (6) (iv)], under the applicable municipal subdivision and land development ordinance, by a land development other than subdivision.

2. To divide separately deeded tracts of land that have been legally described under a single agricultural conservation easement provided that each of the separately deeded tracts meets all of the minimum criteria for applications to the Pennsylvania Agricultural Conservation Easement Program (Section 1348e.16 of the Regulations).

3. To divide land for agricultural purposes providing that all the farm tracts created by the subdivision are at least 50 acres in size and meet the minimum criteria for application to Pennsylvania Agricultural Conservation Easement Program (Section 1348e.16 of the Regulations).

No subdivisions will be permitted under purpose 2 and 3 above which will harm the economic viability of the farmland for agricultural production or convert land which has been devoted primarily to agricultural use to another primary use.

Specific Subdivision Criteria

1. All tracts created by the subdivision shall be appropriately shaped and located in such a fashion that they are economically viable for agricultural production, and such subdivision shall not render agricultural production on any of the resulting farm tracts less efficient.

2. The subdivision shall be consistent with the Statement of Purpose of the Lehigh County Agricultural Conservation Easement Program.

3. Fifty percent (50%) of the soils in each parcel resulting from the subdivision must be harvested cropland, orchard, pasture or grazing land.

4. Fifty percent (50%) of the soils in each parcel resulting from the subdivision must be in USDA Soil Classes I-IV.

5. The Lehigh Valley Planning Commission and the Lehigh County Farmland Preservation Office have been afforded the opportunity to review, comment and make recommendations on the proposed application for subdivision in accordance with Section 14.1 (i) (2) of the Act [3 P.S. Section 914.1 (i) (2)].

6. All costs associated with subdivision shall be the responsibility of the landowner.

7. No subdivision of land subject to an agricultural conservation easement shall become final until the owner has secured the approval from the Lehigh County Agricultural Land Preservation Board and the State Agricultural Land Preservation Board as being in compliance with the terms and conditions set forth herein. In addition, the proposed subdivision of land may require the approval of other reviewing agencies applying standards other than those set forth herein or in the Act [such as those allowed under the authority of Pennsylvania's Municipalities Planning Code (Act 170)]. Nothing in these subdivision guidelines shall be construed to relieve the landowner of any municipal, county, or State regulations, procedures or requirements necessary for the subdivision of land.

Construction and Use of Certain Structures if Subdivision is Required

If the landowner elects to construct and use a structure on the restricted land for the landowner's principal residence or for the providing necessary housing for seasonal or full-time employees on two acres or less of the restricted land, as permitted under Section 14.1 (c) (6) (iv) of the Act [3 P.S. Section 914.1 (c) (6) (iv)], and, under the applicable municipal subdivision and land development ordinance, this construction and use can be accomplished only through subdivision, rather than some other land development, then, notwithstanding any provision in these Subdivision Guidelines to the contrary, the General and Specific Subdivision Criteria set forth above shall not be construed to prevent the aforescribed construction and use – although they may limit the site on the restricted land where said construction and use may occur.

Subdivision Procedure

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

1. Landowner(s) shall submit a written request and application for subdivision to the Lehigh County Agricultural Land Preservation Board. This application shall include the following information:

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

(4) Impact of the shapes and arrangement of the proposed new farm tracts on the future agricultural production on these tracts.

2. Upon receipt of 3 copies of the above application, the Lehigh County Agricultural Land Preservation Board will forward a copy of this application to the following review agencies:

- a. Lehigh Valley Planning Commission
- b. Lehigh County Farmland Preservation Office

3. The two review agencies have 60 days from the receipt of the subdivision application to review, comment and make recommendations on the proposed subdivision to the County Board.

4. The County Board shall review the application, comments, and recommendations submitted by the reviewing agencies and approve or reject the application to subdivide within 120 days after the date that the subdivision application was initially filed. The review time can be extended by mutual agreement of the landowner and the reviewing agencies.

5. If the application to subdivide is approved by the County Board, the application, along with the comments and recommendations of the reviewing agencies shall be forwarded to the State Board for review and approval or disapproval. When reviewing an application to subdivide land subject to an agricultural conservation easement, the State Board shall consider only whether the application complies with the conditions under which subdivisions are permitted by the Lehigh County Agricultural Land Preservation Board. The State Board shall notify the County Board of its decision regarding the application.

6. If the application to subdivide is rejected by the County Board, the application shall be returned to the landowner with a written statement of the reasons for such rejection. Within 30 days after the receipt of the statement of rejection, the landowner may appeal the rejection in accordance with 2 Pa. C.S. Ch. 5 Subch. B (relating to practice and procedure of local agencies) and Ch. 7 Subch. B (relating to judicial review of local agency action).

7. If no residential structure other than that existing on the date of the granting of the easement has been constructed on the land subject to the easement, the landowner shall include in one of the new property deeds language indicating that this one subdivided tract retains the right for the construction of the additional residential structure. The deeds to the other parcel(s) shall state that no additional residential structures are permitted.

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

The subdivision guidelines shall be recorded in the Lehigh County Office of the Recorder of Deeds. Reference to the recording of these Subdivision Guidelines shall be incorporated in all future Deeds of Agricultural Conservation Easement prepared by the Lehigh County Agricultural Land Preservation Board.

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

APPENDIX O

County Ordinance 1989 - No. 11

COUNTY OF LEHIGH, PENNSYLVANIA
COMMISSIONERS BILL 89-11
SPONSORED BY COMMISSIONERS RABER, LICHTERWALNER, MOHR,
NEWMAN AND WLEAND
REQUESTED JANUARY 30, 1989
ORDINANCE 1989 - NO. 117

THE ESTABLISHMENT OF THE LEHIGH COUNTY
AGRICULTURAL LAND PRESERVATION BOARD

WHEREAS, Act 149 of 1988 signed by the Governor on December 14, 1988 and effective February 13, 1989, provides for the establishment of a County Board "for purchasing agricultural conservation easements from land owners whose land is within an agricultural security area" as defined in that act; and

WHEREAS, said Board should be established by Ordinance,

NOW THEREFORE IT IS HEREBY ENACTED AND ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LEHIGH, PENNSYLVANIA THAT:

1. The Lehigh County Agricultural Land Preservation Board is hereby established pursuant to Section 14.1(b) of Act 149 of 1988.

2. The Lehigh County Agricultural Land Preservation Board shall be composed of nine members appointed by the Lehigh County Board of Commissioners. The Chairman or Chairwoman of the Board of Commissioners shall designate annually one member of said Board of Commissioners to serve as Chairman or Chairwoman of the Lehigh County Agricultural Land Preservation Board. The other eight members shall be appointed from among the following groups: four members shall be farmers; one member shall be a current member of a governing body of a township or borough located within Lehigh County; one member shall be a commercial, industrial or residential building contractor and the remaining two members shall be selected at the pleasure of the Lehigh County Board of Commissioners.

3. The membership on the Board of any member of the governing body of a township or borough located within the County shall be deemed vacated upon vacancy in, or the expiration of the term of, the township or borough office to which the member was elected.

4. The term of the initial farmer appointees shall be three (3) years, the initial term of the current member of the governing body of a township or borough shall be two (2) years and the initial term of all other members shall be one (1) year. Thereafter, the term of all members shall be three (3) years.

5. The Lehigh County Agricultural Land Preservation Board shall exercise the duties and responsibilities provided in §14.1(b)(2) of Act 149 of 1988 and all other powers ancillary thereto.

6. The proper officers and other personnel of Lehigh County are hereby authorized and empowered to take all such further action and execute such additional documents as they may deem appropriate to carry out the purpose of this ordinance.

7. The County Executive shall distribute copies of this ordinance to the proper offices and other personnel of Lehigh County whose further action is required to achieve the purpose of this ordinance.

8. Any ordinance or part of an ordinance conflicting with the provisions of this ordinance is hereby repealed insofar as the same affects this ordinance.

9. This ordinance shall become effective in ten (10) days.

ADOPTED BY THE LEHIGH COUNTY BOARD OF COMMISSIONERS on the 26th day of April, 1989 by the following vote:

	<u>AYE</u>	<u>NAY</u>
Jane S. Baker	X	
Leon W. Eisenhard	X	
Frances A. Lichtenwalner	X	
John F. McHugh (Absent)		
Donald R. Miller	X	
Kenneth H. Mohr, Jr. (Absent)		
Philip F. Newman	X	
Sterling H. Raber	X	
Donald E. Wieand, Jr.	X	

ATTEST: Mary T. HANEY
 CLERK TO THE BOARD OF COMMISSIONERS

APPROVED this 28th day of April, 1989.

DAVID K. BAUSCH
 COUNTY EXECUTIVE

ENACTED this 28th day of April, 1989.

CERTIFICATION

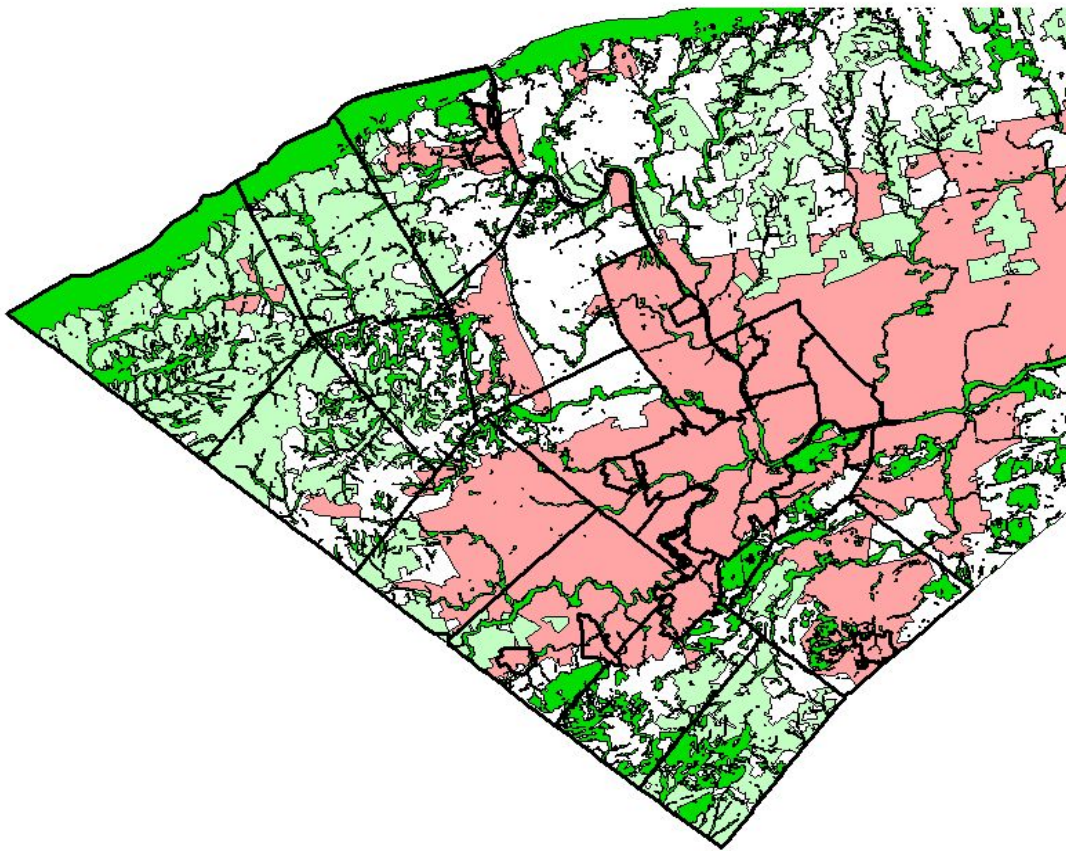
I, MARY HANEY, Clerk to the Board of Commissioners of Lehigh County do hereby certify that the attached is a true and correct copy of the ordinance enacted at a regular meeting of the County Commissioners of Lehigh County held on the 26th day of April, 1989, and approved on the 28th day of April, 1989, by the Lehigh County Executive, and effective on the 8th day of May, 1989.



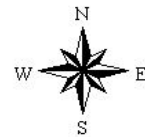
MARY T. HANEY, CLERK TO THE
BOARD OF COMMISSIONERS

APPENDIX P

Areas Recommended For Farmland Preservation



-  Polbndy_muni.shp
-  Generallanduseplan.shp
-  Farmland Preservation
-  Natural Features
-  Urban Development
-  Rural Development



APPENDIX Q

Request & Review Procedure for a New Residence

Lehigh County Agricultural Land Preservation Board

As a requisite to review a proposal for a new residential structure by the County Board, an applicant shall submit an application as prescribed in the procedure to follow. Applicant should be mindful that he/she must also submit the residential structure proposal to the appropriate local governing body for review in accordance with the Pennsylvania's Municipalities Planning Code (Act 170). Applicants shall seek this review simultaneously. Landowner(s) or the owner(s) in equity must follow the procedures below to request the construction of a new residential structure.

1. The landowner shall ask the township to make a determination as to whether or not a subdivision is required to build the proposed residence. If a subdivision is required, the procedure in the existing Lehigh County Subdivision Guidelines shall be followed and approval is needed from both the County Board and the State Board (for State Owned Easements acquired after May 23, 1996).

In any case where a subdivision is required for the construction of a new residence on an eased property, the County Board shall require that the subdivision plan and the newly created deed both contain the following notation:

“The Lehigh County Agricultural Land Preservation Board shall have the responsibility to enforce any restriction imposed by the above-referenced easement, including, but not limited to, the restriction that any residential structure built on Lot No. _____ may only provide housing for the owner of Lot No. _____ or provide housing for persons employed in farming either Lot No. _____ and/or Lot No. _____ on a full-time or seasonal basis. A violation of this or any other restriction may expose the then owners and occupants of either lot to corrective proceedings by the Lehigh County Agricultural Land Preservation Board.”

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

2. Landowner(s) shall submit a written request and application for the construction of a new residence to the Lehigh County Agricultural Land Preservation Board. This application shall include the following information:

- a. A map or sketch, at a scale sufficient to clearly show the following:
 - (1) Location of cropland, pasture, woodland and other lands.
 - (2) Roads, streets, driveways, utility rights-of-ways, streams, and ponds.
 - (3) Location of existing buildings, sheds, barns, dwellings, and other structures.
 - (4) Location of the proposed new residence, yard area, and driveway.

- b. Soil map showing the current property boundary and the location of the proposed new residence, yard area, and driveway.
- c. Aerial photograph indicating the current property boundary and the proposed location of the new residence, yard area and driveway.
- d. Applicant's name, address, and phone number.
- e. Tax parcel number and the deed reference for the tract of land where the new residence is proposed.
- f. Narrative describing who will be housed in the new residence. This narrative shall include evidence that the agricultural economic viability of the farm tract will not be diminished as a result of the construction of a new residence. Specifically, the narrative should address the following:
 - (1) Impact of the proposed residence on prime and statewide importance soils.
 - (2) Impact of the proposed residence on existing soil and water conservation practices and structures.
 - (3) Impact of the proposed residence on water rights and water access points.
 - (4) Impact of the proposed residence on the utilization and availability of farm structures, barns and infrastructure.
 - (5) Impact of the proposed residence on the existing layout of crop fields and pastures.
- g. If the applicant proposes to construct a new residence and also proposes to significantly change the existing agricultural enterprise or operation, the landowner shall provide a viable business plan for the new agricultural enterprise or operation and show how the location of the proposed new residence is compatible with the business plan.

3. Upon receipt of the application, the Lehigh County Agricultural Land Preservation Board shall forward a copy of the application to the township planning commission requesting review and comment on the proposal. The Lehigh County Farmland Preservation Office and the township planning commission shall have **60 days** from the receipt of the application to review, provide comment and make recommendations on the residential structure proposal to the County Board.

4. The Lehigh County Agricultural Land Preservation Board shall review the application, comments, and recommendations submitted by the Farmland Preservation Office and the township planning commission. A determination shall be made as to whether or not the construction of the residence, as proposed, would significantly harm the economic viability of the subject land for agricultural production. The County Board shall approve or reject the

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

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

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

This procedure was approved by the Lehigh County Agricultural Land Preservation Board on September 20, 2001.

APPENDIX R
DEFINITIONS

Agricultural Conservation Easement

In the first sentence of the definition, the use of the term “the land” has been replaced by the words “a parcel”.

Agricultural Production

The production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of such crops, livestock or livestock products if more than 50% of such processed or merchandised products are produced by the farm operator. *The term includes use of land which is devoted to and meets the requirements of and qualifications for payments and other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government.*

Local Government Units

Any city, borough, township or town or any home rule municipality, optional plan municipality, optional charter municipality or similar general purpose unit of government which may be created or authorized by statute.

Eligible Nonprofit Entity

An entity that provides the State board or an eligible county satisfactory proof of all of the following:

(1) That the entity is tax exempt under section 501 (c) (3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501 (c) (3)).

(2) That the entity has experience acquiring, whether through purchase, donation or other transfer, an agricultural or other conservation easement.

Parcel

A tract of land in its entirety which is assessed for tax purposes by one county, including any portion of that tract that may be located in a neighboring county. The county responsible for assessing an entire tract, on its own or in conjunction with either the Commonwealth or a local government unit, or both, shall be eligible to purchase agricultural conservation easements covering the entire tract.

APPENDIX S

Procedure for Pre-Acquisition of an Agricultural Conservation Easement by a Non-Profit Conservation Organization

1. County Board makes determination that easement pre-acquisition may be necessary.
2. County Board checks to make sure the farm meets the State and/or County Minimum Criteria and ranks the farm with the Land Evaluation and Site Assessment (LESA) system.
3. County Board sends written request to the conservation organization asking the organization to assist in the protection of the farm by pre-acquiring an easement for the County Board. The letter should clearly state what costs will be reimbursed to the non-profit entity for undertaking the easement pre-acquisition.
4. Conservation organization responds to County Board request agreeing to do the easement pre-acquisition.
5. If the Commonwealth is to eventually hold the easement, notice should be given to the Bureau of Agricultural Land Protection that an easement is being pre-acquired by the conservation organization.
6. Conservation Organization and/or County Board should then take the following steps:
 - a. Appraise the value of the conservation easement. Make sure the appraisal is done following the Commonwealth's Farmland Appraisal Procedure (Appendix J)
 - b. Survey the property if necessary.
 - c. Negotiate an easement purchase price with the landowners.
 - d. Order a title search and secure a title insurance commitment for the easement purchase.
 - e. Obtain any necessary releases or subordinations from mortgage holders or other lien holders.
7. Conservation organization and the attorney for the conservation organization, in consultation with the County Board and Bureau of Farmland Protection, should draft the following legal documents:
 - a. **Deed of Agricultural Conservation Easement** - If the easement is to be eventually transferred to the Commonwealth, the easement language must be identical to the standard Commonwealth Deed of Agricultural Conservation Easement. The county subdivision guidelines should also be included or referenced in the Deed of Easement.
 - b. **Purchase and Sales Agreement** - Agreement between the conservation organization and the landowner to purchase and sell the agricultural conservation easement.

c. **Assignment Agreement** - This is the legal agreement between the conservation organization, the County Board and the State Board describing how the conservation

easement ownership will be transferred from the conservation organization to the Commonwealth and/or County. This includes the details on the costs involved in the transaction and how these costs will be reimbursed.

d. **Assignment of Agricultural Conservation Easement** - This is the legal document which is used to transfer the ownership of the conservation easement from the conservation organization to the Commonwealth and/or County. It is included as an attachment to the Assignment Agreement.

8. Conservation organization obtains financing and follows through with the purchase of the easement from the landowner. The conservation organization should record the deed of easement in the Recorder of Deeds Office immediately following settlement with the landowner.

9. If the easement is to be transferred to the Commonwealth, the County Board should submit a written request to the State Board to approve the assignment of the conservation easement from the conservation organization to the Commonwealth. The same documentation should be submitted to the State Board as is required for recommending a standard Commonwealth easement purchase with the additional legal documents included.

10. After the State Board votes to approve the assignment, the conservation organization must wait for the State funds to be released to cover the assignment costs and the reimbursement of incidental costs involved in the pre-acquisition transaction.

11. At the assignment settlement, representatives or agents for the conservation organization, the Commonwealth and/or County Board sign the assignment document, legally transferring ownership of the easement from the conservation organization to the Commonwealth and/or County. During the settlement, the conservation organization is reimbursed for all agreed costs in pre-acquiring the easement. The County Board should have the assignment document recorded in the Recorder of Deeds Office immediately following the settlement.

12. The last step in the pre-acquisition process is for the County Board to submit a request to the State Board to reimburse any additional incidental costs that were incurred by the conservation organization and/or County Board that were not initially requested in the assignment agreement (i.e. additional financing costs, recording costs, legal costs, etc.)

APPENDIX T

COMMERCIAL EQUINE ACTIVITIES AMENDMENT

LEHIGH COUNTY AGRICULTURAL LAND PRESERVATION PROGRAM AMENDMENT

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

DEFINITIONS

Commercial Equine Activity

The term includes the following activities where a fee is collected: the boarding of equines, training of equines, the instruction of people in handling, driving or riding equines, the use of equines for riding or driving purposes, the pasturing of equines. The term does not include activity licensed under the act of December 17, 1981 (P.L. 435, No. 135), Known as the “Race Horse Industry Reform Act.”

Agricultural Security Areas

Section 14.05(a) of Act 43 is amended to include “or of viable agricultural land a portion of which is used for commercial equine activity,” to the first sentence of this section.

COUNTY PROGRAM

Sections 14.1(B)(2)(I) and (C)(6) of Act 43 are amended to include “establishing minimum criteria for eligibility of viable agricultural land a portion of which is used for commercial equine activity.”

RESTRICTIONS AND LIMITATIONS

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

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

AMENDMENT OR ADDITION OF SECTION

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