

Introduction

Luzerne County covers an area of approximately 565,300 acres or 886 square miles. About 9.4 % of this land is farmland and 69 % is woodland. According to the 2004-2005 Statistical Summary from the Pennsylvania Department of Agriculture, Luzerne County has 550 farms comprised of 73,000 acres.

Agriculture is vital to the economy of Luzerne County. A major industry in the County, the value of agricultural production totaled \$12.9 million as reported in the 2004-2005 Statistical Summary from the Pennsylvania Department of Agriculture. Furthermore, agriculture supports a solid infrastructure of related agribusinesses in Luzerne and surrounding counties.

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

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

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

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

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

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

Background

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

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

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

Purpose

It is the purpose of the Luzerne County Farmland Preservation Program to protect and promote the continued agricultural use of valuable agricultural lands by acquiring agricultural conservation easements, which prevent the development or improvement of the land for any purpose other than agricultural production and related agricultural activities.

Further, it is the purpose of this program:

- To protect viable agricultural lands by acquiring agricultural conservation easements which prevent the development or improvement of the land for any purpose other than agricultural production.
- To encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security of land use.
- To protect normal farming operations in agricultural security areas from incompatible non-farmland uses that may render farming impracticable.
- To protect normal farming operations from complaints of public nuisance against normal farming operations.
- To assure conservation of viable agricultural lands to protect the agricultural economy of this Commonwealth.
- To provide compensation to landowners in exchange for their relinquishment of the right to develop their private property.
- To maximize agricultural conservation easement purchase funds and protect the investment of taxpayers in agricultural conservation easements.
- To administer a program for purchasing and receiving gifts of agricultural conservation easements on behalf of the County.
- To adopt rules and regulations for the administration of a county program for the purchase of agricultural conservation easements within agricultural security areas. The Board shall execute all agreements or other documents necessary to effect the purchase of such agricultural conservation easements in the name of Luzerne County and/or the Commonwealth of Pennsylvania.
- To encourage the use of additional farmland preservation techniques through public and private organizations in Luzerne County.
- To promote efforts to enhance the agricultural industry in Luzerne County.
- To concentrate resources in a manner that will ensure the purchase of easements for the protection of the largest amount of farmland possible.
- To perform such other duties and responsibilities as may be authorized pursuant to the Agricultural Security Area Law.
- To maximize agricultural lands' contribution to Luzerne County tourism
- To encourage financial partnerships between state and local governments with non-profit entities in order to increase the funds available for agricultural conservation easement purchases.

Public Information Program

The Luzerne County Farmland Preservation Board will publicize the County Program through the publication and dissemination of newsletters, information brochures, annual reports, press

releases, and through public meetings, workshops, extension service mailings, and direct mailings to farmers participating in agricultural security areas.

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

Agricultural Conservation Easement Purchase Program

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

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

The purchase price paid for an agricultural conservation easement in perpetuity will be equal to or less than the easement value as determined by the appraisal process. Payment to the respective landowner may be made in a lump sum, like-kind exchange, or in installment payments over a period up to five years, or other deferred basis.

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

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

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

Minimum Eligibility Criteria

In order for a farmland site to be prioritized for easement purchase, a landowner must submit a completed application form for the purchase of a conservation easement. The Luzerne County Agricultural Land Preservation Board will accept all applications for further processing for the purchase of conservation easements if the application meets the minimum criteria listed below. Failure of the applicant to meet the minimum criteria will result in rejection of that application. Therefore, the applicant will not receive the benefit of having his/her application ranked. All applicants that have been rejected by the Board for the reason of not meeting the minimum criteria will be given written notice of the rejection along with an explanation of the reason(s) why the application was rejected, within sixty (60) days of the application deadline.

Election by County Board: The Agricultural Security Area Law (at 3 P.S. Section 914.1(d)(1)(v)(I) affords the county the option to acquire an agricultural conservation easement on farmland tracts as few as 35 contiguous acres under certain circumstances. The County Board does not elect to exercise this option. The minimum eligibility criteria for agricultural conservation easement purchases are as follows:

State Minimum Eligibility Criteria

The farmland tract shall meet the following requirements:

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

majority of the tract's viable agricultural land is located within the purchasing county.

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

- (a) Contiguous acreage of at least 50 acres in size.
- (b) Contiguous acreage of at least 10 acres in size and utilized for a crop unique to the area.
- (c) Contiguous acreage of at least 10 acres in size and contiguous to a property which has

a perpetual conservation easement in place which is held by a "qualified conservation organization" as that term is defined in section 170(h)(3) of the Internal Revenue Code

(26 U.S.C.A. section 170(h)(3)).

- 2) Contiguous acreage is defined as all portions of one operational unit as described in the deed, or deeds, whether or not the portions are divided by streams, public roads, bridges, and whether or not described as multiple tax parcels, tracts, purports, or other property identifiers. It includes supportive lands such as unpaved field-access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds, and streams.
- 3) Contain at least 50% of soils, which are available for agricultural production and are of capability classes I through IV, as defined by the soil surveys published by the USDA-NRCS.
- 4) Contain the greater of 50% or 10 acres of harvested cropland, pasture or grazing land.

In addition, the County minimum criteria include:

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

- 5) The farmland tract shall be used as part of an active farming operation generating annual farm receipts.

Significant Agricultural Areas in Luzerne County

The Luzerne County Farmland Preservation Board has adopted a planning map to guide easement purchases. (See Appendix I) The map identifies Significant Agricultural Areas in Luzerne County. These areas will be special targets for farmland preservation activities.

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

Procedures for Easement Evaluation And Purchase

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

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

Deadline to Apply

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

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

Making Application

A separate application shall be required for each farmland tract offered for easement purchase. The farmland tract may be composed of non-contiguous parcels, parcels with different

property tax numbers, or separately deeded properties. The farmland tract must meet the minimum criteria for acreage. The application shall consist of a completed application form, a tax assessment map, a colored soils map, an uncolored soils map, and a topographical map with the farm outlined on each of those maps, a soils report, and a crop and/or livestock report.

A. APPLICATION FORM: The County Board has developed an application form, as shown in Appendix D, requiring the following information:

- Printed name, address, telephone number and signature of all owners of the farmland tract.
- County, municipality and agricultural security area in which the farmland tract is located.
- Total acreage of farm as shown on the deed or instruments of record.
- Number of acres in tract proposed for easement purchase.
- Street address of farm and directions from the nearest State route.
- Most current deed reference book and page. In the case of multiple deeds, numbers for all the deeds shall be provided.
- Copy of the deed.
- County tax map numbers, including tax parcel numbers or account number of each parcel.
- A copy of the USDA-NRCS conservation plan, if any, that has been approved by the Luzerne Conservation District.
- A copy of any Nutrient Management Plan.
- Name, address and telephone number of the person to be contacted to view the farmland tract.
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B. LOCATION MAP: The following information must be provided by the applicant or the county board indicating the location of the farm proposed for easement purchase:

- A United States Geological Survey topographical map showing the location of the farmland tract.
- A tax map or official map used for tax assessment purposes showing the farmland proposed for protection with all tax parcel numbers clearly indicated.

C. SOILS REPORT: The applicant or the county board must provide a soils report and a color-coded soils map for the farmland tract proposed for easement purchase, and a table showing the capability class and use of the land, for the most recent crop year, as follows:

Acres of Cropland/ Pasture	Acres of Other Land	Total Acres
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Class I
Class II
Class III
Class IV
Other
TOTAL

The soils map shall color code soil types as follows:

Class I = Green
Class II = Yellow
Class III = Red
Class IV = Blue
Class V-VIII = Uncolored
Wetlands = Cross-hatch, or shown on a separate map

D. CROP REPORT: The applicant must provide crop production information for the farmland tract for the most recent crop year that comparable statistics are available from the Pennsylvania Agricultural Statistics Service (PASS) as follows:

	Commodity	Acres Grown	Yield Per Acre
1.			
2.			
3.			
4.			

E. LIVESTOCK REPORT: The applicant must provide a livestock report for the farmland tract for the most recent calendar year that comparable statistics are available from the Pennsylvania Agricultural Statistics Service (PASS) as follows:

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

F. NON-PASS: If the applicant grows, crops or produces livestock that are of a type not reported by PASS the County Board shall obtain two years of production data from the applicant in order to determine if the application meets the minimum criteria as set forth in §138e.16 of the State regulations.

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

H. SOIL CONSERVATION PLAN: The applicant is required to have a soil conservation plan, and a Woodland Management Plan, if applicable, at or before closing of the purchase in accordance with Appendix L, §138e.222.

Evaluation and Ranking of Applications

The Luzerne County Farmland Preservation Board will review each application to determine if it is complete and meets the minimum eligibility criteria. If the application is complete and the minimum criteria are met, a representative of the County Board will visit the farm, gather information and discuss the County Program with the applicant. The Board will evaluate all timely applications which meet the minimum eligibility criteria and then rank them according to the County's farmland ranking system.

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

In compliance with §138e.63, the farmland ranking score shall determine the order in which farmland tracts are selected by the County Board for appraisal. Selection for appraisal shall be made in descending order of farmland ranking score.

Farmland Ranking System Criteria

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

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

Land Evaluation (LE)

The land evaluation portion of the LESA system is based on soils data obtained from the Luzerne County Soil Survey. The Soil Survey was published by the USDA-NRCS in cooperation with the Pennsylvania State University and the Pennsylvania Department of Agriculture.

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

The Table of Relative Soil Values can be found in Appendix F.

Using the worksheet found in Appendix E, each farm under consideration will be assigned an average relative value for the soil types making up the tract. To obtain the weighted LE score the average relative value is then multiplied by the weighted value assigned to the Land Evaluation score.

Site Assessment (SA)

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

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

Each of the above categories has factors that rank tracts on a 100-point scale for a total combined maximum score of 300 points. Each factor is assigned a maximum point value that indicates its importance relative to all other factors. Each factor is then stratified into a range of possible point values. The scores for the three categories are then multiplied by the weighted values assigned to each potential. The sum of these three weighted values is the weighted Site Assessment score.

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

Site Assessment Factors

DEVELOPMENT POTENTIAL FACTORS (Weighted Value = 10%)

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

1a. Distance from public sanitary sewer system.

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

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

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

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

2. Distance from Public Water Distribution System

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

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

- (25) Over 2,000 feet of road frontage

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

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

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

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

FARMLAND POTENTIAL FACTORS (Weighted value = 20%)

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

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

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

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

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

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

Conservation planning assistance from the Natural Resource Conservation Service (NRCS) and the Luzerne Conservation District is available free of charge to any farmer in the Luzerne County.

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

3. Amount of acreage offered for easement purchase.

- (17) 125 acres or more
- (12) 100-124 acres
- (9) 75-99 acres
- (6) 50-74 acres
- (3) 30-49 acres
- (0) 10-29 acres

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

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

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

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

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

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

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

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

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

Accepting less than the appraised easement value offer is referred to as a **bargain sale**. The difference between the Board's final offer and the appraised easement amount can be viewed as a charitable contribution on federal income tax which may lower the capital gains tax obligation.

CLUSTERING POTENTIAL FACTORS (Weighted value = 20%)

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

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

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

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

2. Proximity to permanently protected farmland

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

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

protected farms will be mapped to maintain a current record of all permanently protected farmland in the county.

3. Percentage of land adjacent to farm in Agricultural Security Area (ASA)

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

This factor will be determined using the county's Agricultural Security Areas map, compiled from information on Agricultural Security Areas filed with the Luzerne County Recorder of Deeds.

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

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

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

Appraisal of Easements

Successfully ranked applications will be forwarded an Appraisal Deposit Form, as shown in Appendix G. Applicants who wish to proceed with selling a farmland conservation easement will complete the Appraisal Deposit Form and submit the same to the Luzerne County Agricultural Preservation Board, along with a \$500 deposit. The Deposit will be held in escrow by the Board, and will be refunded at closing under the following conditions:

1. The applicant does not sever the Agreement of Sale and proceeds to closing;
2. The Board decides not to make an offer to purchase an easement from the applicant; and
3. The Board and landowner cannot come to an agreement on a purchase price for an agricultural conservation easement.

Determining an easement value may involve a second appraisal paid for by the applicant. (Details on this option can be found on pages 19 and 20).

Easement Value

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

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

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

Choosing an Appraiser

The appraiser shall be a Pennsylvania State-certified general real estate appraiser who is qualified to appraise a property for easement purchase. Appraisers shall be selected by the County Board on the basis of experience, expertise, and professional qualifications.

The Appraisal Report

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

Introduction

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

Description of Property

- Area or neighborhood description
- Description of appraised property
 - Legal description
 - Property data and zoning

- Description of improvements
- Color photos of subject property's fields and improvements
- Tax map or official map used for tax assessment purposes showing subject property and its relationship to neighboring properties.
- Sketch or aerial photograph of subject property showing boundaries, roads, driveways, building locations, rights-of-way, and land use.
- Location map showing location of subject farmland tract in a county or municipality.
- Soils map showing property boundaries.

Analyses and Conclusions

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

Comparable Sales

Appraisers will supply information concerning comparable sales as follows:

- 1) At least three comparable sales will be used for estimating market value and at least three comparable sales will be used for estimating farmland value in an appraisal. If the appraiser cannot obtain sufficient comparable sales data within the same county as the subject farmland tract, the appraiser may use comparable sales from other counties, with approval of the County Board. The use of comparable sales that require adjustment of 50% or more is permitted only with the approval of the County Board.

- 2) Pertinent data for each comparable sale used in the preparation of the appraisal shall be stated in the appraisal report, including date of sale, purchase price, zoning, road frontage in feet, and soil mapping units. The appraisal must include an analysis comparing the pertinent data for each comparable sale to the subject property.
- 3) The location of each market value comparable sale used in the appraisal report must be shown accurately on the comparable sales map depicting the entire county in which the comparable sale is located, and be sufficiently identified and described so that it may be located easily.
- 4) The location of each farmland value comparable sale used in the appraisal report will be shown accurately on a comparable sales map depicting the entire county in which the comparable sale is located, and will be sufficiently identified and described so it may be located easily. If the comparable sales map depicts the county in which the property that is the subject of the appraisal is located, that property will also be sufficiently identified and described so it may be located easily. If a farmland value comparable sales map and a market value comparable sales map would depict the same county, they may be combined in a single map.
- 5) For comparable sales used to estimate the farmland value, the appraiser may use sales of land that are confined to agricultural use because of agricultural conservation easements or other legal restrictions or physical impairments that make the land valuable only for agricultural use. Comparable sales will be in primarily agricultural use. Data may also be gathered from farm real estate markets when farms have no apparent developmental value.
- 6) The appraiser will set forth the reasons the farmland comparable sales are confined primarily to agricultural use. Examples of these reasons include:
 - a) The farmland tract has public or private land use restrictions.
 - b) The farmland tract is within a flood plain or a wetland (in whole or in part).
 - c) The farmland tract is landlocked, subject to additional easements, subject to restrictive zoning or has other physical attributes, which limit its developmental capability.
- 7) The appraiser will provide at least one original and two copies of each report to the County Board. Each original report and all copies will be bound with rigid covers.
- 8) The appraisal will include the entire acreage offered for easement sale. If, following completion of the appraisal, acreage is added to or deleted from the proposed easement sale for any reason, the appraisal will be revised accordingly or the appraiser will agree in writing to the use of a per acre value to account for the change in easement value resulting from such a change in acreage.
- 9) If acreage is voluntarily withheld from the easement sale by the landowner through subdivision accomplished in accordance with the Pennsylvania Municipalities Planning

Code, the appraiser will, in making the estimate of agricultural conservation easement value, take into account any increase in the value of the subdivided acreage because of the placement of the easement on the remaining farmland.

Easement Value and Purchase Price

Easements shall only be purchased in perpetuity.

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

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

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

Conservation Easements – County Only

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

2. A conservation easement is a legally-binding document, which is filed with the Recorder of Deeds restricting use to agriculture and directly associated uses. As an easement in gross, the restrictions are binding upon the owner and future owners. The conservation easement carries with the land. \$1 bargain sale conservation easements will be held solely by Luzerne County in perpetuity and the county is responsible for enforcing the deed restrictions contained in the conservation easement.

3. Prerequisite to acceptance of a \$1 bargain sale agricultural conservation easement, agricultural land must meet the following criteria:

- a. Be in an agricultural security area.
- b. Be in an agricultural or open space use.
- c. Consist of at least 50% productive agricultural soils of Pennsylvania soils capability classes I, II, III, and IV.

- d. Any liens or mortgages against the land must be made subordinate to the easement.
- e. Title to the land must be clear.
- f. Must have acceptable undisputed metes and bounds description of property.

Offer of Easement Purchase by County Board

- A. The Luzerne County Farmland Preservation Board, when determining whether to offer to purchase an easement following receipt of the County appraisal, will consider the following:
 - 1. Evaluation according to the farmland ranking system; and
 - 2. Cost relative to total allocations and appropriations.
- B. If a farmland tract is approved for easement purchase, the County Board, or a representative of the County Board, shall meet with the applicant to review the appraisal reports. Any offer to purchase an easement shall be submitted to the applicant in writing and accompanied by the County appraisal report. The offer may be less than or equal to the appraised value of the easement.
- C. Within 30 days of receipt of the written offer from the County Board an applicant may do one of the following:
 - 1. Accept the offer in which case the County Board and the applicant shall enter into an agreement of sale. The agreement will be conditioned upon the approval of the State Board and be subject to the ability of the applicant to provide good title to the premises, free of encumbrances such as liens, mortgages, options, rights of others in surface mineable coal, land use restrictions, adverse ownership interest, and other encumbrances which would adversely impact the County and Commonwealth's interest in the farmland tract.
 - 2. Reject the offer and advise the County Board that the application is withdrawn; or
 - 3. Advise the County Board that the applicant is retaining, at applicant's expense, an independent State-certified general real estate appraiser to determine the easement value. The appraiser shall be qualified, and the appraisal shall be completed in accordance with the procedure in §138e.64 (relating to appraisal). Upon completion, three copies of the applicant's appraisal shall be submitted to the County Board within 120 days of receipt of the County Board's offer to purchase. The applicant's decision to obtain an independent appraisal under this paragraph shall not constitute a rejection of the County Board's offer. The County Board's offer shall remain open unless increased by the County Board under subparagraph (b) or rejected by the applicant.
 - a) If the applicant secures an independent appraisal, the easement value will be the difference between the agricultural value and the non-agricultural value, determined as follows:

(1) The agricultural value will equal the sum of:

- The farmland value determined by the applicant's appraiser; and
- one-half of the difference between the farmland value determined by the County Board's appraiser and the farmland value determined by the applicant's appraiser, if the farmland value determined by the County Board's appraiser exceeds the farmland value determined by the applicant's appraiser.

(2) The non-agricultural value will equal the sum of:

- The market value determined by the County Board's appraiser; and
- one-half of the difference between the market value determined by the seller's appraiser and the market value determined by the County Board's appraiser, if the market value determined by the seller's appraiser exceeds the market value determined by the County Board's appraiser.

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

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

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

D. An agreement of sale shall be in a form provided by the State Board.

Requirements of the Agricultural Easement Deed

A. The owners of the subject farmland tract shall execute a deed conveying the easement. This deed shall include the provisions of Appendix M (relating to deed clauses).

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 requirement of paragraphs (B) and (C). A survey required by the provisions of the paragraph must comply with the boundary survey measurement standards of §138e.73 (relating to survey requirements.).

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.

G. For purchase made entirely with local municipal funds, the municipality shall be the sole grantee.

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 the 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.
3. Any person conveying or transferring land subject to an agricultural conservation easement will, within 30 days of the change in ownership, notify the County Board and the Commonwealth of the name and address of the person to whom the subject land was conveyed or transferred, provide each a copy of the deed, provide a statement of the price

per acre or portion thereof received by the landowner from such person, and a reference to the volume and page in which the transfer has been recorded by the county recorder of deeds.

4. The deed conveying or transferring such interest shall recite in verbatim the language of the easement restrictions as set forth in the deed executed in connection with the purchase of the agricultural conservation easement.

H. A copy of the deed shall be submitted to the State Board for approval prior to execution and delivery. All instruments and documents for the purchase of easements must be approved by the State Board prior to execution and delivery. A copy of the Deed of Easement can be provided upon request to the County Administrator.

Additional Program Procedures

Title Insurance

The County Board will provide a title report to the State Board upon submission of its recommendation for a purchase of an easement.

At settlement, the County Board will provide a title insurance policy issued by a title insurance company authorized to conduct business in the Commonwealth of Pennsylvania by the Pennsylvania Insurance Department. A marked up title commitment may serve as a policy until the policy is issued. The amount of title insurance coverage shall equal or exceed the higher of the following amounts:

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

Statement of Costs

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

- 1) Easement purchase price.
- 2) County appraisal costs.
- 3) Necessary legal fees for title search, preparation of documents, and attendance at closing.

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

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

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

Summary Report

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

- 1) Description of the farm, including names of all landowners, location in relation to nearest town, number of acres proposed for purchase, and type of agricultural production on the farm.
- 2) Description of the quality of the farmland tract, including soil capability classes of the soils available for agricultural production.
- 3) The farmland ranking score, including a statement of the relative ranking of the farmland tract among other tracts considered by the county in the same round of applications.
- 4) A description of the likelihood of conversion to other uses if the easement is not purchased.
- 5) A description of the nature and scope of developmental pressure in the municipality or area.

- 6) A description of the nature and scope of conservation practices and best land management practices, including soil erosion and sedimentation control and nutrient management.
- 7) A discussion of the purchase price, summarizing the appraisals, including the agricultural and non-agricultural value, negotiations for purchase and the percentage of the appraised easement value accepted by the landowner.
- 8) A statement of costs as described above.
- 9) Certification. The County Board will certify that the information presented to the State Board is true and correct.
- 10) Appendix. This shall include the:
 - Application form.
 - Locational maps, including tax, topographic, and soil maps
 - Soils report.
 - Any crop and livestock reports required by the County program.
 - Evaluation of the application (ranking worksheet), showing how the farm scored in comparison to other farms.
 - A quitclaim deed, or a subordination, release or letter approving purchase from a mortgagee, lien holder or owner of rights in surface mineable coal.
 - Other relevant documents and information.

Notification of Owners of Land Adjoining Proposed Easement Purchase

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

Application for State Board Review

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

- A. Twenty-five copies of the summary report prepared in accordance with §138e.70 (relating to summary report), including the following items:

1. Cover letter from the County (optional)
 2. Narrative Summary Report
 3. Legible United States Geological Survey (USGS) topographic map showing the boundaries, location of neighboring easements, and exclusions withheld from the subject property.
 4. Soil Report Form "C" (a form provided by the Department), both pages.
 5. List of soil mapping unit names, symbols and Land Capability Classes on the subject property.
 6. Legible, uncolored soil map of subject property.
 7. 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.
 8. 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.
 9. Copy of Exhibit "B", from the Agreement of Sale, modified to include interest, total acres, and per acre easement cost.
 10. The twenty-five copies submitted shall be individually collated and three-hole punched, but not stapled.
- B. The appraisal report or reports.
- C. The signed agreement 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.
- D. The title insurance report or commitment.
- E. 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.
- F. A completed and signed IRS Form W-9, Request for Taxpayer Identification Number and Certification for individual grantors.
- G. A letter from the grantors stating the percent ownership of each grantor for the purpose of issuing IRS Form 1099.
- H. A copy of the approved soil conservation plan that is required to be in place with respect to the land under §138e.241(2) (relating to deed clauses).
- I. A copy of the nutrient management plan that has been developed, certified, reviewed and approved in accordance with the Nutrient Management Act (3 P.S. §§ 1701-1718), if the nutrient management plan is required under the Nutrient Management Act for any portion of the property that is the subject of the recommendation for purchase.

Review and Decision by State Board

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

Installment Sales

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

Easement Inspection and Enforcement Procedures

The Luzerne County Farmland Preservation Board shall have the primary responsibility for inspecting restricted land and enforcing the following;

(1) Agricultural conservation easements that were acquired under authority of the act and are located within the county.

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

(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.

Landowners subject to these inspections will be notified by certified mail 10 days in advance of the proposed inspection. The first inspection will be completed within one year of the date of easement sale and shall be included in the annual report described in § 138e.203 (relating to annual report) no later than the first annual report following the 1-year period. An inspection conducted under subsection (a) shall be performed between the hours of 8:00 AM and 5:00 PM

on a weekday that is not a legal holiday recognized by the Commonwealth, or a date and time agreeable to the county and the landowner.

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

The County Board will adhere to regulations of the Commonwealth in inspecting and enforcing all agricultural conservation easements. See the enforcement clause required in the easement deed in Appendix M. The complete State regulations for inspecting and enforcing agricultural conservation easements are listed in Appendix K.

Responsibility of Owner

Rural Enterprise

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

1. Direct sale to the public of agricultural products produced principally on the farm, provided that at least 50% of such products are produced by the farm operator;
2. Any and all structures contributing to the production, primary processing, direct marketing and storage of agricultural products produced principally on the farm;
3. Structures and facilities associated with the production of energy for use principally on the farm including wind, solar, hydroelectric, methane, wood, alcohol fuel and fossil fuel systems and structures and facilities for the storage and treatment of animal wastes (The State Agricultural Farmland Preservation Board approved and authorized on 7/13/00 the use of any conservation practice under CRP/CREP as not violating the deed of agricultural conservation easement with respect to the restricted land provided the conservation plan, as revised, allows for the implementation of any such conservation practices);
4. Structures and facilities associated with irrigation, farm pond improvements, and soils and water conservation practices including but not limited to Wetland Development or Restoration, Wildlife Wetland Habitat Management, Wildlife Upland Habitat Management, and Riparian Forest Buffer Resource Management Systems used for erosion and sediment control and water quality improvement.
5. The provision of services or production and sale, by persons in residence, of incidental agricultural goods, services, supplies, and repairs and/or the conduct of traditional trades

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

6. The accommodation of tourists and visitors within principally family residential and/or agricultural structures otherwise permitted under the law so long as the accommodations of tourists and visitors is undertaken as a part-time or off-season minor or rural enterprise and is incidental to the agricultural and open space character of the property.
7. Other similar uses, such as, but not limited to, fee and non-fee hunting and fishing activities are allowed, upon review and approval by the Luzerne County Farmland Preservation Board and the State Farmland Preservation Board.

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

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

Local Government Unit Participation

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

- A. The local government unit, in conjunction with a county board, may participate with the State Board in the purchase of an agricultural conservation easements.
- B. 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.
- C. 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.
- D. The local government unit may purchase an agricultural conservation easement, provided that all of the following apply:
 1. The agricultural conservation easement is located within an agricultural security area of at least 500 acres, or the easement purchased is a joint purchase with either the County or

both the County and the Commonwealth, pursuant to the criteria set forth for the purchase of agricultural conservation easements crossing local government unit boundaries and

crossing county boundaries including any portion of an agricultural conservation easement extending into an adjoining county, as outlined in §914.1 (b) (2) (i) (A), (B), and (C).

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

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

E. The County Board shall be responsible to record agricultural conservation easements where a local government unit is a party to the purchase of the easement. The easement shall be recorded by the County Board in the office of the Recorder of Deeds of Luzerne County. The County Board shall submit to the State Board a certified copy of the agricultural conservation easement within 30 days after recording. The County Board shall attach to all certified copies of the agricultural conservation easements submitted to the State Board a description of the farmland subject to the agricultural conservation easement.

Appendix A

Resolution of County Commissioners

LUZERNE COUNTY

AGRICULTURAL LAND PRESERVATION DISTRICT

RESOLUTION

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

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

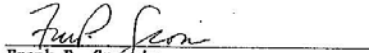
WHEREAS, the Board of Commissioners has determined that Luzerne County should participate in the Commonwealth's Agricultural Conservation Easement Program as one means to preserve agricultural lands in Luzerne County; and

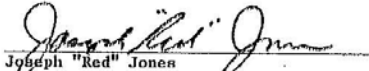
WHEREAS, a requirement of Pennsylvania Act 43, P.L. 128, No. 43, the Agricultural Area Security Law, as amended December 14, 1998, P.L. No. 149, is that counties must appoint a County Agricultural Land Preservation Board to administer the County Farmland Protection Program;

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

LUZERNE COUNTY BOARD OF COMMISSIONERS


Thomas A. Makowski, Esq., Chairman


Frank P. Crossin


Joseph "Red" Jones

ATTEST:


Eugene R. Klein, Chief Clerk/Administrator

7/21/99
Date

Appendix B

Luzerne County Farmland Preservation Board

Representation	Name/Address	Term
Farm Representative	Robert Houck 435 Berwick-Hazleton Hwy. Nescopeck, PA 18635 Telephone:379-3681	May 21, 2008 – December 31, 2008
Farm Representative	Matthew Balliet 110 Saams Road Drums, PA 18222 Telephone:233-2242	May 21, 2008 – December 31, 2008
Farm Representative	Ted Dymond 348 Brace Rd. Dallas, PA 18612 Telephone: 675-1696 (store) Home: 333 0459	May 21, 2008 – December 31, 2008
Elected Official	John J. Wilkes Jackson Twp. Supervisor 2211 Huntsville Rd. Shavertown, PA 18708 Telephone: 675-8371	May 21, 2008 – December 31, 2010
Builder/Contractor	Richard Arnold 2260 Church Rd. Mt. Top, PA 18707 Cell: 262-7277	May 21, 2008 – December 31, 2010
At Large Representative	Richard Maculaitis NRCS 911 W. Main Street Plymouth, PA 18651 Telephone: 779-0732, Ext.108	May 21, 2008 – December 31,2009
At Large Representative	Linda Thoma North Branch Land Trust 11 Carverton Road Trucksville, PA 18708 Telephone:696-5545	May 21, 2008 – December 31, 2009

Appendix C

Bylaws of County Board

**BYLAWS
Of
THE COUNTY FARMLAND PRESERVATION BOARD
LUZERNE COUNTY, PENNSYLVANIA**

NAME:

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

PURPOSE:

- 1) To protect and promote the continued agricultural use of valuable agricultural lands by acquiring agricultural conservation easements, which prevent the development or improvement of the land for any purpose other than agricultural production and related agricultural activities.
- 2) To protect viable agricultural lands by acquiring agricultural conservation easements which prevent the development or improvement of the land for any purpose other than agricultural production.
- 3) To encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security of land use.
- 4) To protect normal farming operations in agricultural security areas from incompatible non-agricultural uses that may render farming impracticable.
- 5) To protect normal farming operations from complaints of public nuisance against normal farming operations.
- 6) To assure conservation of viable agricultural lands to protect the agricultural economy of this Commonwealth.
- 7) To provide compensation to landowners in exchange for their relinquishment of the right to develop their private property.
- 8) To maximize agricultural conservation easement purchase funds and protect the investment of taxpayers in agricultural conservation easements.
- 9) To administer a program for purchasing and receiving gifts of agricultural conservation easements on behalf of the County.
- 10) To adopt rules and regulations for the administration of a county program for the purchase of agricultural conservation easements within agricultural security areas. The Board shall execute all agreements or other documents necessary to affect the purchase of such agricultural conservation easements in the name of Luzerne County and/or the Commonwealth of Pennsylvania.
- 11) To encourage the use of additional farmland preservation techniques through public and private organizations in Luzerne County.
- 12) To promote efforts to enhance the agricultural industry in Luzerne County.
- 13) To concentrate resources in a manner that will ensure the purchase of easements for the protection of the largest amount of farmland possible.
- 14) To perform such other duties and responsibilities as may be authorized pursuant to the Agricultural Security Area Law.
- 15) To maximize the contribution of agricultural lands to Luzerne County tourism.
- 16) To encourage partnerships with local governments.

AUTHORIZATION:

The Board was authorized to administer the County Program by resolution of the County Governing Body at a regularly scheduled meeting on July 21, 1999 and the Board was established on July 21, 1999.

MEMBERSHIP:

Board members shall be appointed by the County Governing Body.

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

1. Three shall be active resident farmers in Luzerne County, and shall serve an initial term of three years after establishment of this Board.
2. One shall be a current member of a borough or township governing body, which is located in the County, and shall serve an initial term of two years after establishment of this Board.
3. One shall be a commercial, industrial, or residential building contractor who resided in the County, and shall serve an initial term of one year after establishment of this Board.
4. The remaining members shall be selected at the discretion of the County Governing Body and shall serve initial terms of one year after establishment of this Board.

TERM OF OFFICE:

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

REMOVAL FROM COUNTY BOARD:

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

VACANCIES:

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

ATTENDANCE BY BOARD MEMBERS:

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

OFFICERS:

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

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

ELECTION OF OFFICERS:

The Chairperson shall be appointed annually by the chairman of the County Governing Body.

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

DUTIES OF OFFICERS:

The Chairperson shall preside at all meetings of the Board, call special meetings, establish committees, appoint committee chairmen, and delegate other tasks and assignments as may be appropriate.

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

The Secretary shall be responsible for seeing that all meetings are recorded, and for sending and receiving correspondence of the Board.

REMOVAL OF OFFICERS:

The Chairperson can be removed from the position by the County Governing Body.

Other officers can be removed from office at any time for just cause by a majority vote of all members of the Board.

MEETINGS:

Regular monthly meetings shall be held on the fourth Monday of the month at 8:30 AM. in the Commissioners' Meeting Room, Luzerne County Courthouse or at a time and location designated by the Chairperson of the Board, and subject to change. Special meetings shall be held at the call of the Chairperson, or at the request of three (3) members of the Board, and shall require written notice of at least one day.

CONDUCT OF MEETINGS:

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

QUORUM:

A majority of the total Board membership shall constitute a quorum for the conduct of business.

VOTING:

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

Board members must be present at meetings in order to vote.

Motions shall be passed by a majority vote of members present at a meeting, except as specified elsewhere in the Bylaws.

COMMITTEES:

The Chairperson may appoint such committees as are desirable for accomplishing the purpose of the Board.

Committees may include persons other than Board members.

AGRICULTURAL SECURITY AREA ADVISORY COMMITTEES:

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

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

STAFF:

The Luzerne County Planning Commission shall provide primary staff support to the Board.

STAFF ASSISTANCE FROM OTHER AGENCIES:

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

FINANCES:

All monies received from the State, County, or other sources shall be used for the purpose of protecting viable agricultural land in the County.

The Board shall operate within a budget as approved annually by the County Governing Body. Board members shall not receive salary or payment for their services of the Board, but may be reimbursed for expenses incurred in the course of their service on the Board.

No member of the Board shall be liable for the debts of the Board.

PUBLIC OFFICIAL AND EMPLOYEE ETHICS LAW:

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

AMENDMENTS:

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

Adopted: August 23, 1999

Linda Thoma, Board Chair

Fred "Ted" Dymond, Secretary

Appendix D

Agricultural Conservation Easement Application Form
Luzerne County Farmland Preservation Board

I. General Information (PLEASE PRINT)

Name(s) of each applicant _____

Address

(Street/Rural Route) (City) (State) (Zip)

Social Security Number(s) of each applicant

Telephone Number(s)

(please include best times to contact)

Township _____

Is your farm in an Agricultural Security Area? _____ If yes, in which
municipality? _____

Street location of farmland tract

Directions from nearest State Route _____

Total acreage of farmland tract _____

Total acreage being offered for easement purchase _____

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

- What is the special crop being grown? _____

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

Crops grown on farmland tract _____

Number and kinds of livestock _____

Does the farmland tract being offered for easement purchase have any pre-existing perpetual restriction against development or farming? _____ Yes _____ No

Deed Reference(s): Book _____ Page _____

County tax map number of each parcel _____

Tax assessment Property Identification Number (PIN #)

map _____ block _____ lot _____

Date of USDA NRCS Soil Conservation Plan _____

Date of Nutrient Management Plan, if any _____

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

II. Maps

The applicant is required to provide the following maps as part of this application. Please contact the Luzerne County Planning Commission office, USDA NRCS office or the Luzerne Conservation District for assistance.

1. Locational Map – A United States Geological Survey topographical map showing the location of the farmland tract.
2. 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
- Class V–VIII Uncolored
- Wetlands Cross hatch or include on a separate map

3. Tax Map – Tax map(s) of the farmland tract with map reference and tax parcel numbers clearly indicated.

III. Soils Report

The applicant is required to provide a soils report for the farmland tract as part of the application.

IV. Capability Class Table

The applicant is required to provide a table showing the capability class and use of the land for the most recent crop year as part of this application.

	Acres of Cropland/Pasture	Acres of Other Land	Total Acres
Class I			
Class II			
Class III			
Class IV			
*Unique Land			

Totals

*Unique land is land other than Class I – IV that is used for the production of specific high value food crops such as fruits and vegetables. To be evaluated for easement purchase, the unique land must be used for its unique purpose at the time of application.

V. Crop Production Information

The applicant must provide crop production information for the most recent crop year that comparable statistics are available from the PA Agricultural Statistics Service (PASS) as follows.

Note: If the applicant grows crops or produces livestock that are of a type not reported by PASS, the County Board shall obtain two years of production data from the applicant in order to determine if the application meets the minimum criteria.

CROP REPORT FOR THE YEAR _____

CROP (COMMODITY)	ACRES GROWN	AVERAGE YIELD PER ACRE	COUNTY AVERAGE YIELD	GROSS VALUE
1.				
2.				
3.				
4.				
5.				
6.				
7.				

CROP REPORT FOR THE YEAR _____

CROP (COMMODITY)	ACRES GROWN	AVERAGE YIELD PER ACRE	COUNTY AVERAGE YIELD	GROSS VALUE
1.				
2.				
3.				
4.				
5.				
6.				
7.				

VI. Livestock Report

The applicant shall provide a livestock report for the farmland tract for the most recent calendar year that comparable statistics are available from the PA Agricultural Statistics Service (PASS) as follows:

LIVESTOCK REPORT FOR THE YEAR _____

LIVESTOCK	AVERAGE		PRODUCT SOLD	AMOUNT RECEIPTS	GROSS VALUE
	NUMBERS	SOLD			
1.					
2.					
3.					

4.					
5.					

LIVESTOCK REPORT FOR THE YEAR _____

LIVESTOCK	AVERAGE		PRODUCT SOLD	AMOUNT RECEIPTS	GROSS VALUE
	NUMBERS	SOLD			
1.					
2.					
3.					
4.					
5.					

TOTAL FARM GROSS RECEIPTS: _____, _____
(indicate year) (indicate year)

VII. Selling Price

I/We would consider selling a perpetual Agricultural Conservation Easement to the Luzerne County Agricultural Land Preservation Board and/or the Commonwealth of Pennsylvania for one of the following easement values: Please check one of the options below: (Please see page 14 for the amount of points allotted to each option. These points will be taken into consideration in your overall score. If no option is checked, we will assume option #5.)

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

Signature(s)

It is necessary for all owners of the farmland tract 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 Luzerne County Agricultural Preservation Board and the Bureau of Farmland Preservation as required under Act 43 criteria for easement purchase.

Signed: _____ Date _____

Signed: _____ Date _____

Signed: _____ Date _____

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

Nancy Snee, Program Administrator
Luzerne County Agricultural Land Preservation Board
C/o Luzerne County Planning Commission
Penn Place Bldg.
20 N. Pennsylvania Avenue
Wilkes-Barre, PA 18711

Questions? Contact:

Linda Thoma, Chair of the Luzerne County Farmland Preservation Board, at (570) 696-5545 or Nancy Snee, Board Administrator at (570) 825-1564.

Appendix E

LAND EVALUATION AND SITE ASSESSMENT (LESA) WORKSHEET

Name of farm _____ Date _____

Application No. _____ Prepared by _____

I. Land Evaluation (Weighted Value = 50%)

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

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

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

II. Site Assessment

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

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

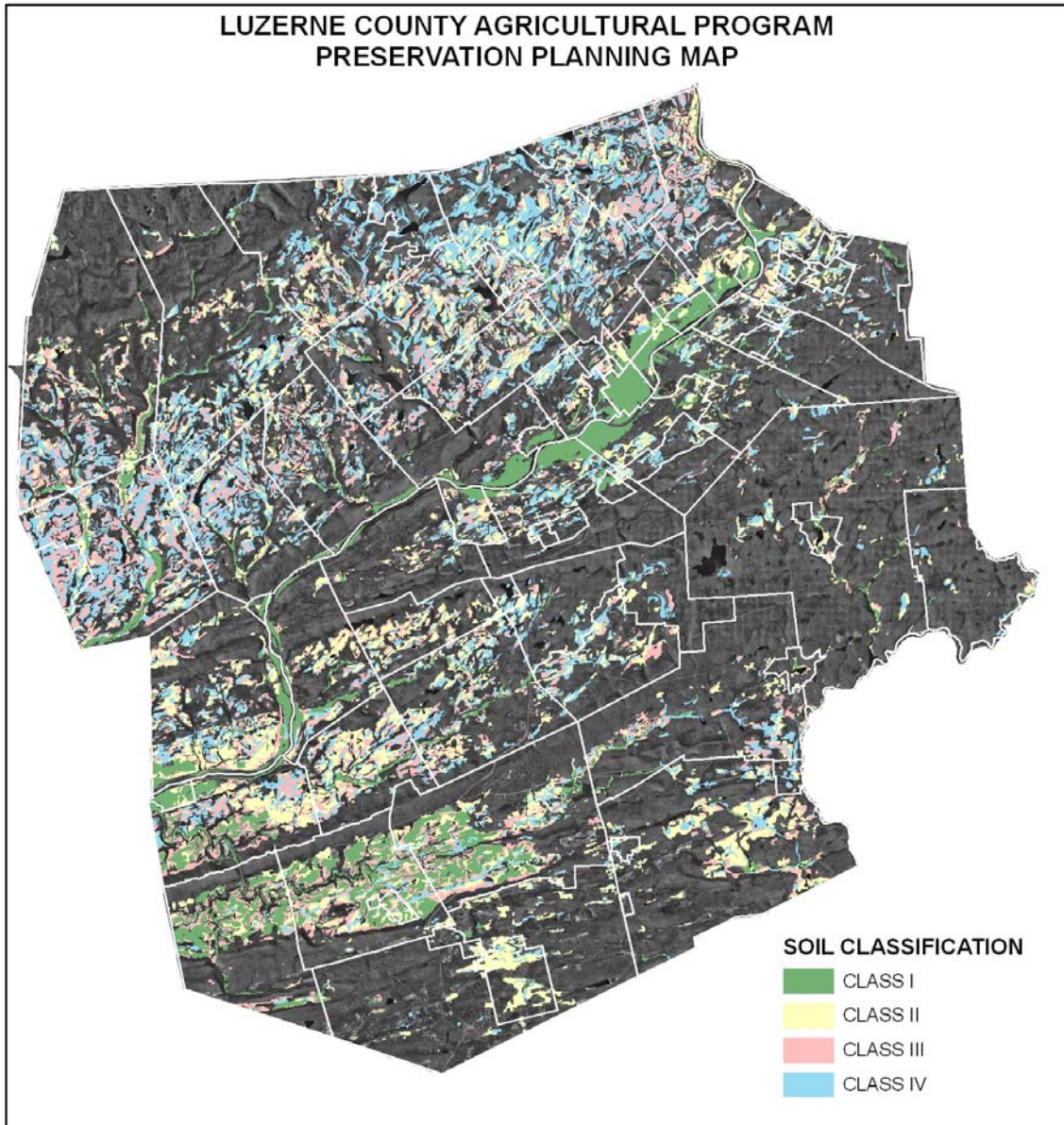
Clustering Potential Factors	Points
1. Proximity of Farm from a Significant Agricultural Area	_____
2. Proximity to Permanently Protected Farmland	_____
3. Percentage of Land Adjacent to Farm in Agricultural Security Area	_____

4.	Proximity to Farm with an Easement Application in Same Round	_____
	Total	_____
	Clustering Potential Score (Total x 20%)	_____
	Total Site Assessment Score	_____

III. Total LESA Score

Total Land Evaluation Score	=	_____
Total Site Assessment Score	=	_____
Total LESA Score	=	_____

Appendix G



Appendix H

**Appraisal Deposit Form
Luzerne County Farmland Preservation Board**

I/We _____ landowners of farm property consisting of _____ acres, located on _____ in _____ Township, Luzerne County, Pennsylvania, and a qualified and approved agricultural conservation easement sale applicant, hereby request an appraisal by the Luzerne County Farmland Preservation Board. A deposit of \$500 accompanies this form. (See page 15 for conditions under which the deposit will be returned.

Signatures of Landowner(s): _____

Address: _____

Telephone: _____ Date: _____

Please make check payable to: Luzerne County Planning Commission

Please submit this form to: Luzerne County Farmland Preservation Board
C/o Luzerne County Planning Commission
Penn Place Bldg.
20 N. Pennsylvania Avenue
Wilkes-Barre, PA 18711

Office Use:

File Name or Number: _____

Date Received: _____

Appendix I

Procedures for Inspecting and Enforcing an Easement

§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.

§138.202 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. The first inspection shall be completed within one year of the date of easement sale.
- (b) Written notice of an inspection to be conducted under subsection (a) shall be mailed 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 farmland at the time the easement was originally acquired and the name of the current owner of the land inspected.
 - (3) A description of modifications in the number, type, location or use of any structures on the land since the date of the filing of the deed of easement.
 - (4) A description of deviations from the conservation plan 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 it has reasonable cause to believe that any provision of the easement has been or is being violated.
- (g) A statement indicating whether a structure permitted under section 14.1 (c) (6) (iv) of the act 3 P. S. § 914.1 (c) (6) (iv) has been constructed on the restricted land and, if such a structure has been constructed, the month and year construction was completed and a description of the structure and its location on the land.

§138e.203 Annual Report.

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

§138e.204 Enforcement.

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

§138e.205 Notification to owner.

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

§138e.206 Enforcement actions.

- (a) Sixty days after the mailing of a notice of violation under §138e.205 (relating to notification of owner), the County Board shall commence and prosecute an action in the Luzerne County Court of Common Pleas in which the restricted land is seeking an order requiring correction of the violation, enjoining further violation of the terms of the easement, and other appropriate relief, unless the County Board does one of the following:
 - (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 this subsection.
 - (ii) Established a period not to exceed 1 year within which the corrective measures shall be completed.
- (b) The County Board shall commence and prosecute the enforcement action described in subsection (a) if the violation is not corrected within the time established under subsection (a)(2)(ii).
- (c) The owner of the restricted land shall bear the costs associated with the correction of a violation of the easement, including:
 - (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 J
Responsibility of Owner

§138e.221 Permitted acts.

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

§138e.222 Conservation plan.

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

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

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

(i) The name, address and telephone number of the landowner.

(ii) The location of the land.

(iii) The acreage of the land.

(iv) An acknowledgement that the deed of agricultural conservation easement requires that all agricultural production on the subject land be conducted in accordance with the conservation plan.

(v) An acknowledgement that a conservation plan exists with respect to the land, together with the following:

(A) The source of the conservation plan (typically, the county conservation district).

(B) An identifying number given to the conservation plan.

(C) The date of the conservation plan.

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

(vii) The signature of the landowners.

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

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

(1) The erection of fences for agricultural production and protection of watercourses such as lakes, streams, springs and reservoirs is permitted.

(2) The construction of one additional residential structure is permitted under §138e.224 (relating to construction of one additional residential structure).

(3) The construction or use of a building or other structure for agricultural production is permitted.

(4) The replacement of a residential structure existing on the restricted land on the date of the granting of the easement is permitted if the preexisting residential structure is razed or removed and the replacement residential structure is erected within the curtilage of the residential structure it replaces.

(b) *Existing buildings or structures.*

(1) A renovation or modification of an existing residential structure, or an addition to an existing residential structure is permitted if it would not increase the curtilage of the residential structure.

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

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

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

(1) The residential structure is constructed and used as the landowner's principal residence or for the purpose of providing necessary housing for seasonal or full-time farm employees.

(2) No other residential structure has been constructed on the restricted land, under authority of §14.1(c)(6)(iv) of the act (3 P.S. §914.1(c)(6)(iv)) and this section, after the date of the granting of the easement.

(3) The residential structure and its curtilage occupy no more than 2 acres of the restricted land.

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

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

(1) Inform the County Board of the specific subdivided tract with respect to which the right to construct and use such a residential structure is reserved.

(2) Ensure that the deed to the subdivided tract with respect to which the right to construct and use the residential structure is reserved clearly sets forth the reservation of this right.

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

§138e.225 Subdivision of restricted land.

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

(a) *Authority to prohibit subdivision.* A county program may prohibit the subdivision of restricted land if the landowner can accomplish the construction and use of a principal residence or housing for seasonal or full-time farm employees in accordance with

§14.1(c)(6)(iv) of the act (3 P.S. §914.1(c)(6)(iv)), under the applicable subdivision and land development ordinance, by a land development other than subdivision.

(b) *Discretion to allow subdivision.* A county program may allow the subdivision of restricted land, and may place restrictions or conditions upon subdivision.

(c) *Preservation of economic viability for agricultural production.* Subsection (b) notwithstanding, a county program may not permit a subdivision which would harm the economic viability of the farmland for agricultural production.

(d) *Prevention of conversion to non-agricultural use; exception.* Subsection (b) notwithstanding, a county program may not permit a subdivision which would convert land which has been devoted primarily to agricultural use to another primary use except that, without regard to this requirement, a county program may permit one tract to be created by subdivision for the purpose of the construction of a principal residence for the landowner or an immediate family member.

(e) *Notice to landowner.* A County Board shall do at least one of the following:

- (1) File its county program, or that portion setting forth any prohibitions or restrictions with respect to subdivision of restricted land, at the Office of Recorder of Deeds for that County, and reference the place of filing of these prohibitions or restrictions in the deed of agricultural conservation easement.
- (2) Recite the prohibitions or restrictions with respect to subdivision verbatim in the deed of agricultural conservation easement.

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

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

- (1) The landowner shall submit an application to the County Board, in a form and manner prescribed by the County Board, requesting review and approval of the subdivision of a tract of restricted land.
- (2) The County Board shall note the date upon which the application is received.
- (3) Upon receipt of the application, the County Board shall forward written notice of the application to the Luzerne County Planning Commission. For purposes of this subsection, the foregoing office shall be referred to as the “reviewing agencies.”
- (4) The County Board shall note the date upon which each reviewing agency receives the written notice described in paragraph (3).
- (5) Each reviewing agency shall have 60 days from receipt of the written notice described in paragraph (3) within which to review, comment and make recommendations on the proposed application to the County Board. The County Board may not consider comments and recommendations received beyond this deadline unless the landowner agrees in writing.
- (6) The County Board shall have 120 days from receipt of the application for approval to subdivide within which to review the application, review comments and recommendations submitted by the reviewing agencies and approve or reject the application. This 120-day deadline may be extended by the mutual agreement of the landowner and the reviewing agencies. If the County Board fails to approve or reject an application within the 120-day deadline or an extension thereof, the application shall be deemed approved.
- (7) If the application is rejected by the County Board, the County Board shall return the application and a written statement of the reasons for the rejection to the landowner. Within

30 days after receipt of the statement of rejection, the landowner may appeal the rejection in accordance with 2 Pa. C.S. Chapter 5 Subchapter B (relating to practice and procedure of local agencies) and Chapter 7 Subchapter B (relating to judicial review of local agency action).

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

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

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

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

§138e.227 Landowner's duties with respect to change of ownership.

(a) A deed conveying an interest in the restricted land shall set forth the language of the easement restrictions verbatim.

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

Appendix K

Definition of Terms

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

Agricultural conservation easement – An interest in land, less than fee simple, which interest represents the right to prevent the development or improvement of the land for a purpose other than agricultural production. The easement may be granted by the owner of the fee simple to a third party or to the Commonwealth, to a county governing body or to a unit of local government. It shall be granted in perpetuity, as the equivalent of covenants running with the land. The exercise or failure to exercise any right granted by the easement will not be deemed to be management or control of activities at the site for purposes of enforcement of the Hazardous Sites Cleanup Act (35 P.S. §§ 6020.101 – 6020.1305).

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

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

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

Curtilage – The area surrounding a residential structure used for a yard, driveway, on-lot sewerage system or other non-agricultural purposes.

Economic viability of farmland for agricultural production – The capability of a particular tract of restricted land, other than a tract of two acres or less upon which construction and use of the landowner’s principal residence or housing for seasonal or full-time farm employees is permitted pursuant to §14.1 (c)(6)(iv) of the Act, to meet all other criteria in § 138e.16(a) (relating to minimum criteria for applications).

Harm the economic viability of the farmland for agricultural production – To cause a particular tract of restricted land to fail to meet the criteria set forth in §138e.16(a)(2), (3), (4), and (5) (relating to minimum criteria for applications) of this chapter, or to create, through subdivision, a tract of restricted land, other than a tract of 2 acres or less upon which construction and use of the landowner’s principal residence or housing for seasonal or full-time farm employees is permitted pursuant to §14.1 (c)(6)(iv) of the Act (3 P.S. §914.1 (c)(6)(i)), that would fail to meet the aforementioned criteria.

Land Development – either of the following activities:

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

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

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

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

State Board – The Pennsylvania State Agricultural Land Preservation Board.

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

USDA – The United States Department of Agriculture.

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

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

Appendix M Commercial Equine Activities Amendment

In accordance with the regulations at 7 PA Code § 138e.43 (relating to revision of county programs), the county board hereby revises the Luzerne County Agricultural Land Preservation

Program in compliance with Act 61 of 2005 amendments of the Agricultural Security Law, Act 43 to take affect for the 2006 applicants. This Act is retroactive and applies to easements executed after June 29, 1981. The revisions to the county program are described by section.