

## Introduction to Farmland Preservation



Berks County Agricultural Center  
1238 County Welfare Road, Suite 260  
Leesport, PA 19533  
[www.berkspa.gov/departments/agriculture](http://www.berkspa.gov/departments/agriculture)  
(610) 378-1844 Phone  
(610) 378-7983 Fax

*"A nation that destroys its soil, destroys itself."*

- Franklin D. Roosevelt

### **FARMLAND PRESERVATION:**

#### **How is it done and why is it important?**

Agricultural conservation easements are purchased or donated voluntarily by the landowners to permanently protect farms for agriculture. Land protected by an easement cannot be used for any other purpose other than agricultural production or commercial equine activity. Protecting groups or clusters of farms helps maintain agriculture as a viable industry.

#### **Benefits to the Agricultural Community:**

**Agricultural Conservation Easement Defined:** An interest in land, less than fee simple, which represents the right to prevent the development or improvement of a parcel for a purpose other than agricultural production. It is granted in perpetuity, as the equivalent of covenants running with the land.

- Promotes farming and supports the agri-business system. The agri-business system is a complex network of producers, processors, sellers and supporting services.
- Ensures that no development unrelated to agriculture will occur on the land thus providing security to the landowners and leading to greater capital investments.
- Provides landowners the opportunity to improve or expand their operations.
- Allows the farm to be passed between generations.

#### **Benefits to the General Public:**

- Secures a local food base.
- Stabilizes the local tax base. (Residential development increases taxes in order to provide services such as schools, police, fire, and utilities.)
- Improves water quality and provides for groundwater recharge.
- Preserves the scenic environment.
- Preserves wildlife habitat.
- Preserves the historical integrity of the area.
- Preserves the quality of life in Berks County that residents have come to expect.



## Table of Contents

<b>SECTION I</b>	<b>Overview of the Berks County Agricultural Conservation Easement Program</b>
	<ul style="list-style-type: none"><li>• Establishment of the Agricultural Conservation Easement Program . . . . . 1</li><li>• Act 43: The Agricultural Area Security Law . . . . . 1</li><li>• Agricultural Security Areas Defined . . . . . 1</li><li>• Berks County Agricultural Conservation Easement Program Overview . . . . . 2</li><li>• Summary of Procedures . . . . . 3</li></ul>
<b>SECTION II</b>	<b>Procedures for Participation in the Berks County Agricultural Conservation Easement Program</b>
	<ul style="list-style-type: none"><li>• Applications to the Berks County ACE Program . . . . . 6</li><li>• Application Submission Schedule . . . . . 6</li><li>• Minimum Criteria for Applications . . . . . 7</li><li>• Special Provisions for Parcels not Entirely Within an Agricultural Security Area . . . . . 8</li><li>• Numerical Ranking System: LESA. . . . . 10</li><li>• Sources of Funding . . . . . 17</li><li>• Selection of Applications . . . . . 17</li><li>• Selected Applicant Confirmation Site Visit . . . . . 18</li><li>• Appraisal Process . . . . . 18</li><li>• Easement Value and Purchase Price . . . . . 19</li><li>• Offer to Purchase an Agricultural Conservation Easement . . . . . 19</li><li>• Title Insurance . . . . . 21</li><li>• Survey Requirements . . . . . 21</li><li>• Agreement of Sale and Payment Options . . . . . 22</li><li>• State Recommendation for Easement Purchase . . . . . 22</li><li>• Settlement of the Agricultural Conservation Easement . . . . . 23</li></ul>
<b>SECTION III</b>	<b>Conservation Plan Requirements</b>
	<ul style="list-style-type: none"><li>• Requirements of Conservation Plans . . . . . 25</li><li>• Defining Conservation Plans . . . . . 25</li><li>• Obtaining a Conservation Plan . . . . . 26</li><li>• Procedures for Reviewing Conservation Plans . . . . . 26</li></ul>

<b>SECTION IV</b>	<b>Provisions of the Agricultural Conservation Easement</b>
-------------------	---

- Agricultural Production . . . . . 27
- Construction or Renovation of Buildings. . . . . 27
- Subdivision of Eased Land. . . . . 28
- Utility Right-of-Ways . . . . . 32
- Mining Provisions . . . . . 33
- Rural Enterprises . . . . . 33
- Soil and Water Conservation Requirements . . . . . 34
- Change in Ownership . . . . . 34

<b>SECTION V</b>	<b>Acquiring Approvals for Non-Agricultural Activities on Protected Farms that are Provided for in the Agricultural Conservation Easement (other than Subdivision)</b>
------------------	--

- Procedures for Reviewing the Construction or Modification of a Residential Structure . . . . . 36
- Procedures for Reviewing Permitted Customary Part-time or Off-Season Rural Enterprises . . . . . 37

<b>SECTION VI</b>	<b>Inspecting and Enforcing an Easement</b>
-------------------	---

- Procedures for Inspections and Reporting . . . . . 38
- Enforcement Responsibility . . . . . 38
- Notification to Landowners of Violation . . . . . 39
- Enforcement Actions for Violations . . . . . 39

<b>SECTION VII</b>	<b>Alternatives Methods for Farmland Preservation</b>
--------------------	---

- Local Government Participation . . . . . 40
- Donation of an Agricultural Conservation Easement . . . . . 40
- Land Trust Reimbursement Program . . . . . 41

<b>EXHIBITS</b>	
-----------------	--

- A. Berks County Agricultural Land Preservation Board Bylaws
- B. Definitions
- C. Application to the Berks County ACE Program
- D. Example Worksheet to Determine Easement Value Using Second Appraisal
- E. Notice to be Heard
- F. Conservation Plan Agreement
- G. Agricultural Security Area Program: General Information



## **Overview of the Berks County Agricultural Conservation Easement Program**

### **Establishment of the Berks County Agricultural Conservation Easement Program**

Act 43, the Agricultural Area Security Law (Act of June 30, 1981, P.L. 128, No. 43) (3 P.S. §§ 901-915) was enacted in 1981 to allow townships to establish Agricultural Security Areas (ASAs). An ASA conserves, protects, and encourages the development and improvement of agricultural lands for the production of food and other agricultural products. Agricultural Security Areas are regulated by 7 Pa. Code Chapter 138l., the Agricultural Security Area Program.

Act 43 was amended in 1989 to allow counties to create joint Agricultural Conservation Easement (ACE) Programs with the State to purchase agricultural conservation easements. The easements limit the land to agricultural production in perpetuity. ACE Programs are regulated by 7 Pa. Code Chapter 138e., the Agricultural Conservation Easement Purchase Program.

On August 3, 1989, the Berks County Board of Commissioners established the Berks County Agricultural Land Preservation Board by Resolution 393-89, on authority granted to them by Act 43, whose responsibility it is to administer the Berks County Agricultural Conservation Easement (ACE) Program according to Act 43 and 7 Pa. Code Chapter 138e. A copy of Resolution 393-89 is available upon request.

### **Act 43: The Agricultural Area Security Law**

The intent of Act 43, the Agricultural Area Security Law, is to conserve, protect, and to encourage the development and improvement of agricultural lands for the production of food and other agricultural products. It is also to conserve and protect agricultural lands as valued natural and ecological resources that provide needed open space for clean air, as well as for aesthetic purposes.

Agriculture is under urban pressure, taking the form of scattered development and bringing conflicting land uses into juxtaposition, creating high costs for public services, and the stimulation of land speculation. When scattered development extends into good farm areas, ordinances inhibiting farming tend to follow, farm taxes rise, and hopes for speculative gains discourage investments in farm improvements. Agricultural lands are in jeopardy of being converted to non-agricultural uses. Certain of these lands constitute unique and irreplaceable land resources of statewide importance. It is the purpose of Act 43 to provide the means by which agricultural lands may be protected and enhanced as a viable segment of the economy, and as an economic and environmental resource of major importance.

### **Agricultural Security Areas Defined**

Act 43 authorizes townships to create Agricultural Security Areas (ASAs) on a voluntary basis. Landowners are encouraged to enroll farmland in an ASA that offers three benefits: 1) Protection from condemnation or eminent domain; 2) Protection from local nuisance ordinances; and 3) Eligibility for the ACE Program.

Landowners with 10 acres or more may voluntarily petition their township to form an ASA. A minimum of 250 acres is needed to establish an ASA and a minimum of 500 acres is needed for that land enrolled in the ASA to be eligible for the ACE Program. Most townships in Berks County with an ASA have more than 500 acres enrolled. An ASA may be increased at any time. Landowners simply need to submit an enrollment form to the township office by certified mail, as it is important that the landowners can verify the date the application was submitted. In addition to the township's responsibility to respond to enrollment forms, every seven years townships may review lands enrolled in ASA with the option of adding additional land, at the request of the landowners, or withdrawing land previously enrolled. ASA enrollment forms and supporting documentation may be obtained at the Berks County Agricultural Land Preservation Office.

## **Berks County Agricultural Conservation Easement Program Overview**

The Berks County Agricultural Land Preservation Board oversees the implementation of the Berks County Agricultural Conservation Easement (ACE) Program through the staff of the Berks County Department of Agriculture. The Berks County ACE Program is funded largely by the Commonwealth of Pennsylvania and the County of Berks to purchase agricultural conservation easements in perpetuity. Easements prevent the development of the lands for any other purpose other than agricultural production. Permanently preserving large clusters of farms helps ensure the future of agriculture in Berks County. Furthermore, it is the purpose of the Berks County ACE Program to:

1. Encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security of land use;
2. Protect normal farming operations in Agricultural Security Areas from incompatible non-farmland uses that may render farming impracticable;
3. Protect farming operations from complaints of public nuisance against normal farming operations;
4. Assure conservation of viable agricultural lands in order to protect the agricultural economy of this County and Commonwealth;
5. Provide compensation to landowners in exchange for their relinquishment of the right to develop their private property;
6. Maximize agricultural easement purchase funds and protect the investment of taxpayers in agricultural conservation easements; and
7. Encourage financial partnerships between the Federal, State, County, local governments, and non-profit entities in order to increase the funds available for agricultural conservation easement purchases.

Landowners submit applications to the Berks County Department of Agriculture Office on a voluntary basis by December 31<sup>st</sup> of any given year. Applications must meet minimum criteria. Each year, after the deadline, all applications that meet the minimum criteria are numerically ranked according to the Land Evaluation and Site Assessment (LESA) ranking system. The ranking system evaluates soil quality and site assessment factors designed to evaluate development pressures, productivity of a farm, and the ability to create clusters of protected farmland. Applications are selected for the program based on the ranking order and the amount of available funding. Townships may participate along with the County and the State in the Berks County ACE Program.

Funding for the ACE Program is typically allocated on a yearly basis. The State and County compensate landowners at the settlement of the agricultural conservation easement based on appraisal values and maximum payments per acre. The easements are legal documents restricting the land to agricultural production and are recorded at the Berks County Recorder of Deeds Office. The easements remain with the farm as the property changes ownership and the terms must be attached to any subsequent property deed, thereby protecting the land in perpetuity. Inspections are conducted at least biennially to ensure compliance with the deed of easement.

Information is available upon request or on the Web at [www.berkspa.gov/departments/agriculture](http://www.berkspa.gov/departments/agriculture). Additional information includes an application form, an information pamphlet on conservation easements, and a sample agricultural conservation deed of easement. Please contact the Berks County Department of Agriculture Office at: Berks County Agricultural Center, 1238 County Welfare Road, Suite 260, Leesport, Pennsylvania, 19533 or call (610) 378-1844.

## Summary of Procedures

*Please Note: The ACE Program involves a legal and financial process and landowners are advised to consult with an attorney and/or accountant before proceeding.*

1. Landowners voluntarily submit an application to the ACE Program by December 31<sup>st</sup> of any given year to be considered for the program the following year. As part of the application, landowners are responsible for submitting a copy of the conservation plan, if any, for ranking purposes. There is no charge to submit an application to the program and there is no commitment to proceed if the application is selected.
2. Applications are reviewed to ensure that minimum criteria are met. If an application meets minimum criteria, the landowners may meet with a representative of the County Office to review the ACE Program. A meeting may be deemed unnecessary by staff if the landowners have recently participated in the ACE Program on another property. If an application fails to meet minimum criteria, the landowners will be sent a letter outlining the reasons. If at any time circumstances change so that the farm does meet minimum criteria, it is the landowners' responsibility to contact the County Office, and a new application may be necessary.
3. Applications that meet the minimum criteria are ranked using the LESA Ranking System based on the material submitted by December 31<sup>st</sup>. If the landowners request a modification to the application after December 31<sup>st</sup>, the request will be taken into consideration and will require approval from the County Board. If a request is denied, the landowners may choose to withdraw from the ranking or continue with the program as the application had been originally submitted. The ranking begins after the application deadline and is typically completed within three to four months. If withdrawn, the landowners may reapply again at another time; however, the application would need to meet eligibility requirements at that time.
4. Upon completion of the ranking, applications are selected in the order in which they were ranked, highest to lowest, based on the amount of available funding. Landowners are notified in writing as to whether their application was selected. After annual funds are expended and prior to December 31<sup>st</sup>, landowners of applications that were not selected will be surveyed regarding their interest in continuing to have the application considered for future selection, to submit changes to the application or to withdraw the application from future considerations. If withdrawn, the landowner may re-apply again another time; however, the application would need to meet eligibility requirements at that time. If an application is not selected, it is strongly encouraged that landowners review the ranking of their application with the staff of the County Office. If an application is selected, the landowners may proceed with the program.
5. When an application is selected, the landowners are required to submit a security deposit in the amount of the appraisal cost within fifteen (15) business days after receipt of their selection letter to proceed with an appraisal of the easement value. Requests for an extension may be granted on a case-by-case basis after a request is submitted by the landowners. After the deposit is received, the County Office will order an appraisal that may take several months to complete. The security deposit is returned at settlement provided that the landowners convey an agricultural conservation easement.
6. After the appraisal deposit is received, but prior to the appraisal being requested, the County Office will conduct a site visit of the selected farm to verify the application. The landowner will be notified of an is encouraged to attend the site visit.
7. The County Office acquires a title report to ensure the easement purchase is conveyed in clear title, as well as to obtain title insurance.

**Landowners must be able to convey the easement in clear title. Therefore, all liens must either subordinate to the easement or be paid before or at the settlement of the easement.**

8. An appraisal is prepared for each selected application to determine the value of the agricultural conservation easement. The value of the easement is equal to the difference between the open market value and the agricultural value of the farm.
9. The County Board reviews each appraisal and authorizes a per acre offer to purchase an agricultural conservation easement. The offer may not exceed but may be less than the appraised value of the easement. The County Board may impose a maximum payment per acre, otherwise referred to as a “cap.” Landowners may contact the County office to inquire as to the current cap.
10. The landowners either accept the offer, reject the offer, or proceed with a second appraisal at their own expense. Landowners who reject the offer will have the option of being re-ranked in the following year or withdrawing totally from consideration. This decision should be submitted in writing. If a second appraisal is pursued, the offer may change based on the formula described in Exhibit D of these guidelines. The second appraisal process is described in this section of the guidelines under “Offer to Purchase an Agricultural Conservation Easement.”  
*Please Note: The offer is a legal and financial document. Landowners should consult with their attorney and/or accountant before signing it and proceeding with the ACE Program.*
11. After the landowners accept an offer, the County Office proceeds with the following:
  - a. Obtains a survey of the property, which includes a delineation of the curtilage, or personal use area, for each residence. **The cost of the survey, except for the expenses to survey land withheld from the application at the landowners’ request, will be covered by the ACE Program upon conveyance of the easement to the County Board. Should the landowners accept the offer but fail to convey the easement, they will be responsible to reimburse any survey costs incurred by the County Board.**
  - b. Requests additional documentation, as required, including a conservation plan that meets the requirements.
12. After determination of final easement acreage by survey, an Agreement of Sale is executed. The Agreement of Sale specifies the final easement purchase price (final acreage multiplied by the accepted price per acre) and method of payment. Payment methods include a lump sum payment, a Like-Kind Exchange, or installment payments between 2-5 years as determined by the landowners.  
*Please Note: The Agreement of Sale is a legal and financial document. Landowners should consult with their attorney and/or accountant before signing it and proceeding with the ACE Program.*
13. Adjoining landowners are notified of the impending easement purchase by certified mail or personal service. They may object to the easement purchase based on certain legal and title issues. Please refer to Exhibit E of these guidelines.
14. For those easement purchases involving State funding, a recommendation as described in this section under “State Recommendation for Purchase” is submitted to the PA Bureau of Farmland Preservation. The Bureau reviews the application and recommends the application for approval to the State Board that meets approximately six times each year. Deadlines for submission of the recommendations are approximately 1½ months prior to a State Board meeting. All necessary documents including: the appraisal, survey, conservation plan, subordination agreements if applicable, and the Agreement of Sale are submitted as part of the recommendation.
15. Easement purchases recommended by the PA Bureau of Farmland Preservation need to be reviewed and approved by the State Board to proceed as a joint county and state easement purchase.
16. The staff of the County Office schedules settlement of the easement purchase as checks issued by the State become available. Settlement is typically held at the title company providing the title insurance for the easement purchase unless other arrangements are necessary. The landowners sign the Deed of Agricultural Conservation Easement and the Conservation Plan Agreement and receive financial compensation for conveying the easement. The Deed of Agricultural Conservation Easement and the Conservation Plan Agreement are recorded at the Berks County Recorder of

Deeds Office. The Deed of Easement must then be attached to and recorded with any subsequent property deed.

*Please Note: The Deed of Agricultural Conservation Easement and Conservation Plan Agreement are legal and financial documents. Landowners should consult with their attorney and/or accountant before signing them.*

17. Farm inspections are performed at least biennially to ensure compliance with the Deed of Agricultural Conservation Easement. The first inspection occurs within the first year after settlement. See Section VI: Inspection and Enforcing an Easement.



## SECTION II



### Procedures for Participation in the Berks County Agricultural Conservation Easement Program

#### Applications to the Berks County ACE Program *(In accordance with 7 PA Code Chapter 138e.61.)*

Participation in the ACE Program is voluntary. In order to apply for the ACE Program, landowners must submit a completed application form, as prepared by the County Office. A copy of the application is included in these guidelines as Exhibit C or a copy may be obtained by contacting the County Office or on the website located at [www.berkspa.gov/departments/agriculture](http://www.berkspa.gov/departments/agriculture).

1. A separate application is required for each property. All the land contained within an application will be protected under one agricultural conservation easement. Separate parcels on the same application will be subject to a Deed of Merger, which is recorded at settlement. The Deed of Merger is prepared by the County Office, but the landowners are responsible for the preparation and recording fees. Landowners should be aware that the filing of a Deed of Merger may result in the consolidation of the separate parcels into a single parcel, which may require additional approvals. The landowners are also responsible for submitting a copy of the conservation plan, if any, for ranking purposes.  
***Please Note: Careful consideration should be taken when landowners submit an application for a tract consisting of multiple parcels or deeds as separately described parcels or deeds will be required to be merged at the time of settlement.***
2. The County Board will accept all applications for the purchase of agricultural conservation easements if the applications meet the minimum criteria established by the County Board.
3. After the staff of the County Office reviews the application and it is found to be complete and meets the minimum criteria, a meeting will be scheduled with the landowners to review the application, to gather any additional information, and to discuss the ACE Program. A meeting may be deemed unnecessary by staff if the landowners have recently participated in the ACE Program on another property. A further review of the application will be conducted by the County Planning Commission to ensure consistency with the current County Comprehensive Plan.
4. Applications meeting the minimum criteria for the ACE Program shall be assigned a docket number. The docket number will be used when the application is discussed in public meetings instead of the landowners' names until the landowners and the County and/or State execute an Agreement of Sale for the purchase of an easement. Information submitted to the County Board by landowners will not be revealed to members of the public other than the landowners unless either: the landowners submit a letter to the County Board indicating that another individual may have access to the application information or is designated to transact business on their behalf; or a "Right to Know" request is filed and approved. The County Board and staff of the County Office will maintain the confidentiality of all applications.

#### Application Submission Schedule

1. Application Submission Deadline – **December 31<sup>st</sup> of each year** is the deadline for applications, subject to the availability of funds. If landowners request a modification to the application after December 31<sup>st</sup>, the request will be taken into consideration and will require approval by the County Board. If a request is denied, the landowners may choose to withdraw from the ranking and re-apply the following year. If withdrawn, the new application would need to meet eligibility requirements at that time.
2. Applying for Subsequent Rounds – Applications will be considered in subsequent rounds under the following conditions:

- a. After annual funds are expended and prior to December 31<sup>st</sup>, landowners of applications that were not selected will be surveyed regarding their interest in continuing to have the application considered for future selection, to submit changes to the application, or to withdraw the application from future considerations. If withdrawn, the landowner may reapply again at another time; however, the application would need to meet the eligibility requirements at that time.
- b. If an application is selected by the landowner declines the selection, the landowner will be required to indicate on a response form, provided at the time of selection, if the application will be ranked the following year or will be withdrawn from future consideration. If withdrawn, the landowner may re-apply again at another time; however, the application would need to meet eligibility requirements at that time.
- c. If the fee simple ownership of the land changes, the new landowners will be sent a letter with the option to either submit a roll-over application or withdraw the application prior to the next December 31<sup>st</sup> application deadline.

**Minimum Criteria for Applications** *(In accordance with 7 PA Code Chapter 138e.16)*

The land contained within an application shall meet all of the following minimum criteria as set forth by the County Board, which includes all of the minimum criteria in 7 PA Code Chapter 138e.16.

1. Be located in an agricultural security area consisting of 500 acres or more or meets the special provisions for parcels not entirely within an agricultural security area. Please see the “Special Provisions for Parcels Not Entirely Within an Agricultural Security Area” section of these guidelines for further information.
2. Be contiguous acreage of at least 35 acres in size (3 P.S. § 914.1(d)(1)(v)(II)) unless the tract is at least 10 acres in size and:
  - a. Is either utilized for a crop unique to the area; or
  - b. Is contiguous to a property that has a perpetual agricultural conservation easement in place under Act 43 or held by a “qualified conservation organization,” as that term is defined at Section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. § 170(h)(3)).
3. Contain 50% of soils, which are available for agricultural production and are in capability classes I-IV, as defined by the USDA-Natural Resources Conservation Service (NRCS).
4. Contain the greater of 50% or 10 acres of harvested cropland, pasture, or grazing lands. A current conservation plan or crop acreage reported to the USDA – Farm Service Agency can be used as supportive documentation to ensure that the minimum agricultural production acreage is met.
5. No land in an area identified as Designated Growth or Future Growth by the adopted Berks County Comprehensive Plan may be preserved as part of the Berks County Agricultural Conservation Easement Program. The County Planning Commission staff will review all applications to ensure consistency with the adopted Berks County Comprehensive Plan.

Should any portion of the application be located in Designated Growth or Future Growth by the adopted Berks County Comprehensive Plan and after the County Board has reviewed the application for the other minimum criteria and the application meets those requirements, the County Planning Commission will be asked to perform a confidential review of the application. If the County Planning Commission confirms that any part of the application is in Designated Growth or Future Growth, the County Board will notify the landowners of the application in writing that the application will need to be modified in order to comply with the Board of Berks County Commissioners’ directive dated September 13, 2010 (available upon request). The landowners will have until December 31<sup>st</sup>, the application deadline, or fifteen (15) business days if notified after December 31<sup>st</sup>, to amend the application to exclude at least that land located in an area of Designated Growth and/or Future Growth to have the application considered for the ACE Program. If the application is not amended within the allotted time period, the County Board may withdraw the application in its entirety.

If the landowners amend the application to exclude only the portion of land located in Designated Growth and/or Future Growth, the landowners will be awarded points in the LESA ranking for offering the entire parcel. If the landowners exclude more land than what is located in Designated Growth and/or Future Growth, the application will not receive points in the LESA ranking for offering the entire parcel unless otherwise approved by the County Board.

If you have questions regarding whether your land has been identified as Designated Growth or Future Growth, you may contact the Berks County Planning Commission at (610) 478-6300 or [planning@berkspa.gov](mailto:planning@berkspa.gov).

Failure to meet the minimum criteria set by the County Board will result in a rejection of the application. Landowners of applications that are rejected will be given written notice of the rejection along with an explanation of the reasons why the application was rejected.

### **Special Provisions for Parcels Not Entirely within an Agricultural Security Area**

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

1. Parcels Crossing Local Government Unit Boundaries - The County Board may recommend the purchase of an agricultural conservation easement on a parcel, a portion of which is not within an agricultural security area if all of the following occur:
  - a. The agricultural conservation easement would be purchased by the county solely, or jointly with either the Commonwealth or a local government unit, or both.
  - b. The land is part of a parcel of farmland that is transected by the dividing line between two local government units, with the portion within one local government unit being in an agricultural security area of 500 or more acres and the portion within the other local government unit not being within an agricultural security area.
  - c. The majority of the parcel's viable agricultural land is located within an agricultural security area of 500 or more acres.
  
2. Parcels Crossing County Boundaries - The County Board may recommend the purchase of an agricultural conservation easement on a parcel a portion of which is not within an agricultural security area if all of the following occur:
  - a. The agricultural conservation easement would be purchased by the county solely, or jointly with either the Commonwealth or a local government unit, or both.
  - b. The land is part of a parcel of farmland that is transected by the dividing line between Berks County and an adjoining county, with the portion within Berks County being in an Agricultural Security Area of 500 or more acres and the portion within the other local government unit not being within an Agricultural Security Area.
  - c. One of the following shall apply:
    - i. A main dwelling (mansion house) is located on the parcel, and the house is located entirely within Berks County with the local government unit that has an Agricultural Security Area.
    - ii. A main dwelling (mansion house) is located on the parcel, on the dividing line between Berks County and an adjoining county, and the landowners of the parcel has chosen Berks County, with the local government unit that has an Agricultural Security Area, as the house site for tax assessment purposes.
    - iii. There is no main dwelling (mansion house) on the parcel, and the majority of the parcel's viable agricultural land is located within Berks County with the local government unit that has an Agricultural Security Area.

Recording responsibilities - Upon the purchase of an agricultural conservation easement as described above, the portion of the parcel that was not part of an Agricultural Security Area immediately

becomes part of the Agricultural Security Area covering the rest of the parcel. Berks County will take all steps necessary to ensure the governing body which created the Agricultural Security Area meets its responsibility, under §§ 14.1(b)(2)(i)(B)(II) and 14.1(b)(2)(i)(C)(III) of the Agricultural Area Security Law, for the recording, filing and notification described in § 8(d) and 8(g) of the Agricultural Area security Law with respect to the land added to the Agricultural Security Area.

Enforcement – The County Board shall exercise primary enforcement authority with respect to the agricultural conservation easements acquired pursuant to the criteria set forth for the purchase of agricultural conservation easements crossing local government unit and county boundaries, including any portion of an agricultural conservation easement extended into an adjoining county, as set forth in Section IV of these guidelines.

**Numerical Ranking System: LESA** (In accordance with 7 PA Code Chapter 138e.61.)

The County Board shall rank applications that meet the minimum criteria using the Land Evaluation and Site Assessment (LESA) system. The LESA system is a comprehensive farmland ranking system that evaluates applications on a 100-point scale, using the two-part Land Evaluation and Site Assessment system.

**Land Evaluation (LE)** The Land Evaluation accounts for 40% of the LESA score and is derived from basic soils data as contained in the soil survey of Berks County by the USDA Natural Resources Conservation Service (January, 2000). Each different soil mapping unit in Berks County is evaluated as to its productive capacity for corn. A relative value of 100 is assigned to the most productive soil mapping units. All the remaining soil mapping units are evaluated against those soil mapping units with a relative value compared to 100. Considered in the evaluation are natural fertility of the soil, topography, cost of conservation treatment, and cost of drainage.

Map Unit	Soil Class	Relative Value	Map Unit	Soil Class	Relative Value	Map Unit	Soil Class	Relative Value	Map Unit	Soil Class	Relative Value
AbA	III	68	CmB	II	72	JnE	VI	0	PkD	VI	49
AbB	III	68	CpA	II	72	JpB	VII	0	Qu	VIII	0
AnA	IV	61	CpB	II	72	JpD	VII	0	RaB	II	82
AnB	IV	61	CwA	IV	49	JpF	VII	0	ReA	II	82
AoB	VII	0	CwB	IV	49	KlF	VII	0	ReB	II	82
AsB	II	100	DAM	VIII	0	LaB	II	72	RhA	III	49
AsC	III	90	DbA	I	100	LaC	III	68	RhB	III	49
AuD	IV	61	DbB	II	100	LaD	IV	49	Ro	II	100
AwD	VII	0	DfC	III	82	LbB	VII	0	Ru	VIII	0
BfB	II	82	DfD	IV	61	LbD	VII	0	ThA	IV	49
BfC	III	68	EdB	VII	0	LbF	VII	0	ToA	IV	49
BhD	IV	49	EdD	VII	0	LdF	VII	0	ToB	IV	49
BkA	II	68	EdF	VII	0	LfA	IV	49	TwB	VII	0
BkB	II	61	EhB	II	90	LmA	II	68	Ua	N/A	0
BkC	III	49	EhC	III	82	LmB	II	68	UgB	VIII	0
BkD	IV	49	EhD	IV	61	Lv	I	100	UgC	VIII	0
BkF	VII	0	Gc	II	90	Me	II	90	UkB	VIII	0
BmA	I	100	GeB	II	100	MgB	II	72	UkD	VIII	0
BmB	II	100	GeC	III	82	MIB	II	82	UmB	VIII	0
Bo	III	68	GeD	IV	72	MmB	VII	0	UmD	VIII	0
BpB	II	72	GfB	VI	0	MuA	I	100	UnB	VIII	0
BpC	III	61	GfD	VI	0	MuB	II	90	UnD	VIII	0
BpD	IV	49	GfF	VII	0	MuC	III	82	UpB	VIII	0
BsB	VII	0	GnA	II	72	NaB	II	100	UpD	VIII	0
BsD	VII	0	GnB	II	72	NaC	III	90	UsB	VIII	0
BtA	IV	61	HaB	II	100	NaD	IV	72	UsD	VIII	0
BtB	IV	61	HeB	VII	0	NhB	VII	0	UxB	VIII	0
BuB	II	72	HeD	VII	0	NhD	VII	0	UxD	VIII	0
BvB	VII	0	HeF	VII	0	NhF	VII	0	W	NA	0
BvD	VII	0	HgF	VII	0	PaA	III	68	WeB	III	49
CaB	III	49	Ho	III	68	PeB	II	72	WeD	VI	34
CaC	IV	49	JnB	II	90	PeC	III	61			
CaD	VI	34	JnC	III	82	PeD	IV	49			
CmA	II	72	JnD	IV	61	PkC	III	49			

**Land Valuation Score Calculation** The average relative value of the soils of an application being considered shall be calculated by multiplying the relative value of each soil mapping unit by the total acreage of the soil mapping unit, adding these products, and dividing that sum by the total acreage.

## Site assessment (SA)

Site Assessment accounts for 60% of the LESA score and consists of factors in three general categories: Development Potential (DP), Farmland Potential (FP), and Clustering Potential (CP).

### Development Potential (DP) Factors

DP Factors identify the extent to which development pressures are likely to cause conversion of agricultural land to non-agricultural uses. DP Factors account for 10% of the site assessment.

**a. Distance to a borough.**

(Measured from the nearest point of a borough to the nearest point of the subject tract).

POINTS:	0 to ½ mile	=	10 points
	Over ½ mile to 1 mile	=	5 points
	More than 1 mile	=	0 points

*Explanation:* The strategy provides an emphasis on areas closer to development since these areas generally experience a greater pressure to convert to a non-agricultural use.

**b. Availability of public sanitary sewer.**

(Measured from nearest point of public sanitary sewer access to the nearest point of the subject tract).

POINTS:	0 to ½ mile	=	10 points
	Over ½ mile to 1 mile	=	5 points
	More than 1 mile	=	0 points

*Explanation:* The availability of public sewer system indicates a high possibility for development. Agricultural areas in the proximity of public sanitary sewer are under a greater pressure for conversion to a non-agricultural activity.

**c. Availability of public water.**

(Measured from the nearest point of public water access to the nearest point of the subject tract).

POINTS:	0 to ½ mile	=	10 points
	Over ½ mile to 1 mile	=	5 points
	More than 1 mile	=	0 points

*Explanation:* The availability of public water indicates a high possibility for development. Agricultural areas in the proximity of public water are under a greater pressure for conversion to a non-agricultural activity.

**d. Observed distance of road frontage on public roads measured in linear distance.**

POINTS:	More than 2 miles	=	25 points
	More than 1 mile to 2 miles	=	20 points
	More than ½ mile to 1 mile	=	15 points
	¼ mile to ½ mile	=	10 points
	Less than ¼ mile	=	5 points

*Explanation:* The strategy is to provide an emphasis on areas with more road frontage since development is generally more likely to occur in areas with greater access to the land.

**e. Observed distance from access to numbered State Route or Intersection**

(Measured from nearest point of the tract along existing roadways to the nearest numbered State Route or Interstate).

POINTS:	Less than ½ mile	= 25 points
	½ mile to 1 mile	= 15 points
	More than 1 mile to 1 ½ mile	= 10 points
	More than 1 ½ mile to 2 miles	= 5 points
	More than 2 miles	= 0 points

*Explanation:* Areas with greater access to numbered State Routes and Interstates are generally under greater pressure to convert to a non-agricultural use.

**f. Percent of land less than 10 acres within a 1-mile radius of subject tract.**

POINTS:	> 75% - 100 %	= 20 points
	> 50% - 75%	= 10 points
	25% - 50%	= 5 points
	< 25%	= 0 points

*Explanation:* Assessing the land use within 1-mile of the subject tract is an indicator of development pressure in the area. Urban uses are generally considered incompatible with agricultural uses. Therefore, a tract in an area of smaller tracts of land shall receive a relatively higher score since these areas generally experience a greater pressure to convert to a non-agricultural use.

**Farmland Potential (FP) Factors**

FP Factors measure the potential agricultural productivity and farmland stewardship. FP Factors account for 20% of the site assessment.

**a. Acreage of the subject tract proposed for easement purchase.**

POINTS:	> 150 acres	= 25 points
	> 100 – 150 acres	= 15 points
	> 50 – 100 acres	= 10 points
	> 35 – 50 acres	= 5 points
	10—35 acres	= 0 points

*Explanation:* This factor acknowledges that in most cases large parcels are necessary for efficient farming practices.

- b. **Percent of the farm proposed for the sale or donation of an agricultural conservation easement to the Berks County Agricultural Land Preservation Board or a qualified non-profit land conservation organization, including an approved exception for an excluded area where it can be reasonably determined that the area is not suitable to be developed as a competing land use to agriculture.**

POINTS:	100 %	=	20 points
	Less than 100%	=	0 points

*Explanation:* Landowners are encouraged to offer entire areas to prevent incompatible land uses from entering an area and competing with agriculture.

- c. **Percent of subject tract under consideration utilized for cropland, pasture, or grazing lands.**

POINTS:	> 75% - 100 %	=	25 points
	> 65% - 75%	=	10 points
	50% to 65%	=	0 points

*Explanation:* This factor is necessary to determine the current agricultural use of the property.

- d. **Subject tract under consideration has a conservation plan including best management practices such as soil erosion control, sedimentation control, and nutrient management, as approved by either the Berks County Conservation District or the Berks County Agricultural Land Preservation Board.**

POINTS:	Landowners have an approved conservation plan with best management practices in place implemented according to the planning schedule.	=	15 points
	Landowners do not have an approved conservation plan with best management practices implemented according to the planning schedule.	=	0 points

*Explanation:* This factor addresses the extent to which the landowners have demonstrated good stewardship of the land, use of conservation practices, and best management practices.

- e. **Historic, Scenic, and Environmental Qualities.**

<i>Historic Qualities:</i>	POINTS:
Subject tract or property adjacent to the subject tract has a historic barn or structure built before 1960 that is listed on the National Historic Register; or	
Subject tract or property adjacent to the subject tract is a Century or Bicentennial Farm; or	Yes = 5 points
Subject tract is located within a city or town that has corporate status as a local government listed on the National Historic Register, i.e., Oley Township	No = 0 points



<i>Scenic Qualities:</i>	POINTS:
Observed distance to Federal, State and County owned land or water retained for public use as recreation areas or devoted to natural resource protection.	
	Less than 1 mile = 5 points
	1 mile or more = 0 points
<i>Environmental Qualities:</i>	
Recognize recorded perpetual conservation easements intended for protection of woodlands, wetlands, and water quality, encumbering the subject property or property adjacent to the subject property; or	
Recognize PA DEP streams classified as Exceptional Value (EV) and High Quality (HQ) located within the subject property or within property adjacent to the subject property for the purpose of the long-term improvement of water quality.	
	Subject tract or property adjacent to subject tract = 5 points
	Not on subject tract or property adjacent to subject tract = 0 points

**Clustering Potential (CP) Factors**

CP Factors emphasize the importance of preserving blocks of farmland to support commercial agriculture and help to shield the agricultural community from conflicts with incompatible land uses. CP Factors account for 30% of the site assessment.

**a. Percent of land zoned agricultural preservation within a 2-mile radius from the center of the subject tract.**

POINTS:	> 75% - 100%	= 10 points
	> 50% - 75%	= 5 points
	> 25% - 50%	= 3 points
	More than 0% - 25%	= 1 points
	0%	= 0 points

*Explanation:* This factor addresses the question of zoning for agricultural preservation within a 2-mile radius of the site. The greater the percentage of land zoned for agricultural preservation, the greater the ability to cluster protected farms. If urban land uses are zoned within the 2-mile radius of the subject tract, a zoning change may need to be considered.

**b. Percent of land zoned agricultural preservation adjacent to the subject tract.**

POINTS:	> 75% - 100%	= 20 points
	> 50% - 75%	= 10 points
	> 25% - 50%	= 5 points
	More than 0% - 25%	= 3 points
	0%	= 0 points

*Explanation:* This factor is similar to CP Factor (a) but is narrower in focus. This factor addresses the amount of land zoned agricultural preservation in the immediate area of the site.

**c. Percent of land in an Agricultural Security Area within a 2-mile radius from the center of the subject tract.**

POINTS:	> 75% - 100%	= 10 points
	> 50% - 75%	= 5 points
	> 25% - 50%	= 3 points
	> 0% - 25%	= 1 points
	0%	= 0 points

*Explanation:* Being in an Agricultural Security Area is a prerequisite to the purchase of an agricultural conservation easement. This factor will benefit a site under consideration if it is within 2 miles of other properties in Agricultural Security Areas, as there is a greater opportunity to cluster protected farms.

**d. Percent of land in an Agricultural Security Area adjacent to the subject tract.**

POINTS:	> 75% - 100%	= 10 points
	> 50% - 75%	= 5 points
	> 25% - 50%	= 3 points
	More than 0% - 25%	= 1 points
	0%	= 0 points

*Explanation:* This factor is similar to CP Factor (c) but is narrower in focus.

**e. Total number of acres within a 2-mile radius from the center of the subject tract with an agricultural conservation easement with the County Board, a qualified non-profit land conservation organization, or governmental entity, as approved by the County Board.**

POINTS:	> 500 acres	= 10 points
	> 250 – 500 acres	= 5 points
	> 100 – 250 acres	= 3 points
	More than 0 – 100 acres	= 1 points
	0 acres	= 0 points

*Explanation:* This factor will benefit tracts under consideration that are within 2 miles of other preserved properties to cluster preserved farms to protect agricultural as an industry.

f. **Percent of land with an agricultural conservation easement with the County Board, a qualified non-profit land conservation organization or governmental entity, as approved by the County Board, adjacent to the subject tract.**

POINTS:	>75% - 100%	= 20 points
	>50% - 75%	= 10 points
	>25% - 50%	= 5 points
	More than 0% - 25%	= 3 points
	0%	= 0 points

*Explanation:* This factor is similar to CP Factor (e) but is narrower in focus. This factor will benefit sites under consideration that are adjacent to preserved properties.

g. **Is the subject tract located in an area identified by the County Board or the Berks County Comprehensive Plan as desirable for agricultural use?**

POINTS:	75% or more is located in a desirable location	= 10 points
	Less than 75% is located in a desirable location	= 0 points

*Explanation:* To receive points, the subject tract must be within an area identified on the County Board planning map for the purchase of conservation easements or be identified within an area of importance as defined in the Berks County Comprehensive Plan.

h. **Is the subject tract located in an agricultural cluster area as identified by the County Board?**

POINTS:		
	50% or more of the subject tract is located in an agricultural cluster area	= 10 points
	Less than 50% of the subject tract is located in an agricultural cluster area or the tract is adjacent to an agricultural cluster area	= 5 points
	Not in or adjacent to an agricultural cluster area	= 0 points

*Explanation:* A goal of the ACE Program is to have concentrated areas of agricultural conservation easements in order to sustain agriculture in a given area. A subject tract should be located in an area that has the ability to cluster in order to achieve this goal.

**Site Assessment Score Calculation**

The site assessment score shall be calculated as follows:

- DP Score X 10% = DP Weighted Score
- FP Score X 20% = FP Weighted Score CP
- Score X 30% = CP Weighted Score

Site Assessment Score = DP Weighted Score + FP Weighted Score + CP Weighted Score

**LESA Score Determination**

The LESA Score = Land Evaluation Score + Site Assessment Score.

## Sources of Funding

The Berks County Agricultural Conservation Easement Program may be funded by:

1. **The County of Berks.** The County of Berks has funded easement purchases from general funds, bonds, line of credit, interest from Clean & Green rollback taxes, fundraisers, and donations.
2. **The Commonwealth of Pennsylvania.** The Pennsylvania State Department of Agriculture has secured funding through appropriations, bond funding through programs such as Growing Greener, cigarette tax, environmental stewardship, and interest on securities.
3. **The United States of America.** The Federal Government has provided funding for easement purchases through agricultural land preservation programs.
4. **Local Government Units.** Townships may partner with the County Board to purchase agricultural conservation easements. Please refer to Section VII, Local Government Unit Participation, for additional information.

County funds are required to be certified to the State by January 31st of each year. State funding is typically announced by March of each year. County and State funding accounts for the majority of funding for easement purchases. Federal agricultural land preservation programs may release funds, but the amount of funding and time of year varies. Alternative sources may be available.

## Selection of Applications

Applications are typically selected at a spring meeting of the County Board based on the outcome of the LESA ranking and amount of available funding. Subsequent selections may be done if additional funding becomes available.

1. The LESA score will determine the order in which the County Board selects applications for appraisals. The selection for appraisals shall be made in descending order of LESA ranking score. Should multiple applications have the same score, the application with the higher soils score will be considered to have the higher score.
2. The number of applications selected for appraisals will depend on the amount of funds available for the ACE program. Selections will be made until the annual funds are expended. Depending on the interest shown by selected applicants or additional funding that would become available, subsequent selections may be made.
3. If an application is selected, the landowners have the opportunity to proceed with the ACE Program by submitting a security deposit in the full amount of the appraisal cost to have a certified appraisal completed. The deposit will be refunded at settlement should the landowners convey an agricultural conservation easement. Landowners must submit a security deposit in the full amount of the appraisal cost to proceed with the appraisal for each application selected by the County Board within 15 business days of receipt of the written notification that the application was selected. Requests for an extension will be considered on a case-by-case basis after a request is submitted by the landowners. The deposit will only be refunded at settlement if the landowners convey the easement to the County Board in the round that the deposit was submitted. If for any reason, the landowners are unwilling or unable to convey the easement, the deposit will not be refunded. If the landowners withdraw from the round in which the deposit was submitted after the appraisal was completed and the application is ranked and selected in a subsequent round, another deposit in the full amount of the appraisal cost will be required.
4. If an application is selected but the landowner declines the selection, the landowner will be required to indicate on a response form, provide at the time of selection, if the application will be ranked the following year, provided that the application continues to meet the eligibility requirements at that time, or will be withdrawn from future consideration. If withdrawn, the landowner may re-apply again at another time; however, the application would need to meet eligibility requirements at that time.
5. After annual funds are expended and prior to December 31<sup>st</sup>, landowners of applications that were not selected will be surveyed regarding their interest in continuing to have the applications

considered for future selection, to submit changes to the application, or to withdraw the application from future considerations. If withdrawn, the landowner may re-apply again at another time; however, the application would need to meet eligibility requirements at that time.

6. Non-selected applicants are encouraged to schedule an appointment to review how the application was scored. "Ranking Review" meetings are scheduled at the applicant's request.

### **Selected Applicant Confirmation Site Visit**

After receipt of the security deposit, but prior to the appraisal being requested, the staff of the County Office will conduct a site visit of the selected farm. Landowners will be notified of the site visit and are encouraged to attend. The site visit will review the curtilage (residential footprint), crop fields, pastures, grazing land, woodland, and all areas, structures, and items that could impact the integrity of the potential agricultural conservation easement and will be used to verify the original application. As part of the site visit, the following areas will be evaluated:

1. Conservation Plan – A conservation plan is a requirement under State Law and a plan must be signed prior to submission to the State Board and settlement. If the landowners have a current conservation plan, the plan and its implementation will be evaluated. If there is no current conservation plan for the farm, information will be collected to assist the future planner in the development of a plan that meets the requirements.
2. Environmental Concerns – Any environmental concerns, including sinkholes and refuse areas will be noted and must be addressed before the application can proceed.
3. Confirmation of Agricultural Production – The original application submitted by the landowners will be reviewed against the current conditions existing on the farm and aerial photos. The cropland, pasture, and grazing land, woodland, and curtilage (residential footprint) will be evaluated to ensure that the correct information was utilized to rank the application.

#### Procedure

After the site visit, a written report will be provided to the landowners. If no concerns are identified, the application will proceed to the appraisal process.

Any concerns will be directed to the County Board for further evaluation. The County Board will have 60 days to determine whether to do one of the following:

1. Direct the staff to meet with the landowners and develop a remediation plan acceptable to both the landowners and the County Board. Once the remediation plan is in place, the application will proceed to the appraisal process.
2. Withdraw the application from the current selection and re-rank in the following year unless the landowners choose to withdraw from future consideration.
3. Accept the site visit report and allow the application to proceed to the appraisal process.

### **The Appraisal Process** *(In accordance with 7 PA Code Chapter 138e.64)*

After an application is selected by the County Board for the ACE Program, the security deposit has been received, and the site visit has been conducted, an appraisal must be completed for each selected application to determine the value of the agricultural conservation easement. The value of the easement, as determined by the appraisal, will be considered when the County Board approves a per acre offer for the easement purchase.

1. All appraisals completed for the ACE program must be done by a State-certified general real estate appraiser who is qualified to appraise a property for easement purchase and shall be selected on the basis of experience and professional qualifications.
2. An offer to purchase an easement shall be based upon one or more appraisal reports that estimate the market value and the farmland value of the farmland tract, as those terms are defined in Exhibit B. The initial appraisal shall be requested by the County Board.

3. An appraisal of market value and farmland value shall be based on an analysis of comparable sales and shall 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 use an acceptable methodology under the Uniform Standards of Professional Appraisal Practice if the appraisal report clearly describes the information considered, the appraisal procedures followed and the reasoning that supports the analyses, opinion, and conclusions.
4. Existing zoning classifications shall not be a factor in determining either non-agricultural or agricultural values.
5. The value of a building or other improvement on the farmland tract will not be considered in determining the easement value.
6. The appraiser shall complete and submit appraisals in accordance with 7 PA Code Chapter 138e.64 and shall include an introduction, description of property, and analysis and conclusions.

**Easement Value and Purchase Price** *(In accordance with 7 PA Code Chapter 138e.65)*

The County Board will review the easement value as determined by the County Board's appraisal, the allowable maximum purchase price, and the limitations on the purchase price as set by the County Board. Upon approval by the County Board, landowners will be offered a specified price per acre for the purchase of an agricultural conservation easement.

1. **Easement value.** The easement value is the difference between the market value and the farmland value contained in the County Board's appraisal report. If a subsequent appraisal is obtained by the landowners, the value of the easement is derived from a formula set forth under "Offer to Purchase an Agricultural Conservation Easement."
2. **Maximum purchase price.** The purchase price offered for the purchase of an easement may not exceed, but may be less than, the value of the easement.
3. **Limitations on purchase price.** The County Board shall set an upper limit per acre or "cap" for the purchase of agricultural conservation easements at the beginning of each calendar year.  
**Landowners may contact the County Office to inquire as to the current cap.**
4. **Charitable Tax Contributions.** The difference between the appraised easement value and the purchase price may be used as a charitable tax contribution by filing an IRS Form 8283. Please consult an accountant to determine how the charitable tax contribution will impact taxes, as well as for instruction on what documentation is needed. In most cases, the appraisal report will need to be updated at the expense of the landowners.
5. **Calculation of Easement Purchase Price.** The final easement purchase price will be determined by multiplying the acreage, as determined by property deed or survey (Please refer to "Survey Requirements" section.), rounded to the tenth of an acre, by the agreed upon price per acre (Please refer to "Offer to Purchase an Agricultural Conservation Easement.").

**Offer to Purchase an Agricultural Conservation easement** *(In accordance with 7 PA Code Chapter 138e.66)*

Upon approval of the County Board's motion to offer the landowners a specified price per acre for the purchase of an Agricultural Conservation Easement, a representative of the County Office may meet with the landowners to provide them with a written offer and copy of the County's appraisal report. A meeting may be deemed unnecessary by staff if the landowners have recently participated in the ACE Program on another property. In that case, the written offer and appraisal will be provided through certified mail. The County Board has the option to exclude from the offer any land where the current use is deemed to be potentially hazardous, and /or is clearly not part of a normal farming practice, and /or would present a possible liability to the County, State, and / or their respective preservation boards. The exclusion of such

land from an offer to purchase an Agricultural Conservation Easement shall be expressed to the landowners in writing. *Please Note: The offer is a legal and financial document. Landowners should consult with their attorney and / or accountant before signing it and proceeding with the ACE Program.*

Landowners' Response to offer:

1. Within 30 days of receipt of the written offer from the County Board, the landowners may do one of the following:
  - a. Accept the offer, in which case the County Board will determine easement acreage by a property survey (Please refer to survey requirements.) followed by the County Board and the landowners entering into an agreement of sale. The agreement of sale shall be conditioned upon the approval of the State Board and be subject to the ability of the landowners to provide clear 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 of Berks and Commonwealth's interest in the farmland tract. Should the landowners accept the offer but be unwilling or unable to convey the easement, the landowners shall be responsible for any incidental costs incurred by the County Board, including, but not limited to the balance of the appraisal, title, and survey costs.
  - b. Reject the offer and advise the County Board that the application is withdrawn. The landowners would have the option to re-enroll the application for the following year or withdraw it completely from consideration. The decision to withdraw must be submitted in writing.
  - c. Advise the County Board that the landowners, at their expense, are retaining an independent Pennsylvania State Certified General Real Estate Appraiser to determine the easement value. The appraisal shall be completed with the procedures in PA Code Chapter 138e.64. The appraisal shall be submitted to the County Board within 120 days of receipt of the County Board's offer to purchase. The County Board may extend the time within which this appraisal shall be submitted. This extension shall be in writing and shall extend the 120-day deadline by no more than 60 days. Upon completion, three copies of the landowners' appraisal shall be submitted to the County Board. The landowners' decision to obtain an independent appraisal 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 or rejected by the landowners. Any increase by the County Board shall not exceed the current cap.
2. The failure by the landowners to act within 30 days of receipt of a written offer shall constitute rejection of the offer unless the County Board agrees to extend the offer. Extension may be granted on a case-by-case basis after a written request is submitted by the landowners.

Landowners Second Appraisal Process (optional):

1. If the landowners retain a separate independent Pennsylvania State Certified General Real Estate Appraiser, the easement value shall be the difference between the agricultural value and the nonagricultural value, determined as follows:
  - a. *Agricultural value:* The agricultural value shall equal the sum of:
    - i. The farmland value determined by the landowners' appraiser; OR
    - ii. One-half the difference between the farmland value determined by the County Board's appraiser and the farmland value determined by the landowners' appraiser, if the farmland value determined by the Board's appraiser exceeds the farmland value determined by the landowners' appraiser.
  - b. *Non-agricultural value:* The nonagricultural value shall equal the sum of:
    - i. The market value determined by the County Board's appraiser; OR
    - ii. One-half of the difference between the market value determined by the landowners' appraiser and the market value determined by the County Board's appraiser, if the market value determined by the landowners' appraiser exceeds the market value determined by the County Board's appraiser.

2. Within 30 days of receipt of the landowners' appraisal, the County Board shall:
  - a. Submit a written offer to purchase in an amount in excess of the original amount to the landowners; or
  - b. Notify the landowners, in writing, that the original offer remains open and will not be modified.
3. The landowners shall, within 15 days of receipt of the County Board's written new offer or written notification that the original offer will remain open, accept or reject the offer. If the landowners reject the offer, they will have the option to re-enroll the application for the following year or withdraw it completely from consideration. The decision to withdraw must be submitted in writing.
4. Failure of the landowners to respond within 15 days shall constitute a rejection of the County Board's offer unless the County Board agrees to extend the offer. Extensions may be granted on a case-by-case basis after a written request is submitted by the landowners.
5. If the offer of purchase is accepted, the County Board and the landowners shall enter into an agreement of sale containing the same requirements and subject to the same conditions as set forth in 7 PA code Chapter Section 138e.66(c)(1).
6. If the landowners propose an amendment to an offer or Agreement of Sale that is executed by the County and/ or State, and the amendment to the offer or Agreement of Sale is approved by the County and/or State, the landowners shall be responsible for paying all additional incidental costs associated with the amendment to the offer or Agreement of Sale including, but not limited to the cost for revising the appraisal report and the cost of revising the survey.

**Title Insurance** *(In accordance with 7 PA Code Chapter 138e.68)*

1. Landowners must be able to convey or sell the agricultural conservation easement in clear title. The County Board will acquire a title report that will include a legal description of the farm, list liens against the land, and describe exceptions to the title.
2. Any liens against the property must be either paid in full at or prior to settlement or the lender(s) must agree to subordinate to the easement. This includes, but is not limited to mortgages, lines of credit, judgments, and taxes. If the lender agrees to subordinate to the easement, it is agreeing to take a second position, which means that in the case of foreclosure, the property would be sold preserved by the agricultural conservation easement. This ensures that the land remains in agriculture and protects the investment of the County of Berks and the State. The landowners are responsible for costs associated with preparing and recording subordination agreements.
3. Exceptions or other restrictions listed in the title report will be reviewed to ensure they are compliant with the agricultural conservation easement. If they are not, the staff of the County Office will advise the landowners how to proceed. Any unexecuted subdivision plans must be extinguished prior to settlement.
4. At settlement, the County Board will acquire a title insurance policy on the agricultural conservation easement, a copy of which will be provided to the State. If the title insurance policy is not readily available at settlement, a marked-up title commitment may serve as a policy until the policy is issued.

**Survey Requirements** *(In accordance with 7 PA Code Chapter 138e.73)*

The County Office will request the survey from a firm contracted with the County of Berks to complete surveys for the ACE Program, and will, upon conveyance of the easement to the County Board, assume the costs of the survey. The landowners are responsible for the survey costs associated with providing a legal description for land withheld from the easement purchase at their request or if they request additional survey work to be completed, and for the full survey cost if the landowners accept the offer but do not convey the easement to the County Board.



The survey shall meet the requirements as set forth in PA Code Chapter 138e.73 and include:

1. A recordable legal description setting forth the metes, bounds, monumentation, exceptions, easements, and rights-of-way with respect to the farmland tract or other subject of the survey.
2. Verification that the survey has a closure error of not greater than 1 foot per 10,000 linear feet;
3. Coordinates of at least two ground control points located sequentially along the boundary survey, with latitude and longitude expressed in decimal degrees with an accuracy of 6 recorded decimal places.
4. Monumentation for at least the two ground control points consisting of permanent concrete markers or substantial length and width containing ferrous or other materials detectable by an electromagnetic locator.

As part of the survey process, the surveyor will also delineate the curtilage, or personal use area, around each residence on the property. This area will include any well and septic areas for the residence. Landowners will be provided with a map of the estimated curtilage as the initial site visit and have the ability to make any necessary adjustments for accuracy. Once the curtilage has been verified by the surveyor, the landowners will sign an agreement form acknowledging the curtilage area.

Copies of the final boundary survey and curtilage map shall be submitted in both paper copy and digital format that shows the course bearings and distances and other annotations and symbols, including the coordinates of each monument. Landowners will be provided with a copy of the survey and curtilage map at settlement.

#### **Agreement of Sale and Payment Options**

The landowners will sign an Agreement of Sale to convey an agricultural conservation easement to the grantees after the acreage of the easement area is determined. The easement purchase price will be the agreed upon price per acre multiplied by the acreage, as determined by survey, rounded to the tenth of an acre. The Agreement of Sale will be structured for how the landowners decide to accept the proceeds from the sale of the easement. The landowners may choose to accept the proceeds by one of the following methods:

1. ***A lump sum payment:*** Net proceeds are received at settlement.
2. ***Installments:*** The landowners may opt to receive net proceeds in installment payments over two to five years, as determined by the landowners. Interest on installment payments will be set by the Board in January of each year.
3. ***A Like-kind Exchange:*** Landowners work through a third-party qualified intermediary to purchase a replacement property with the proceeds. The exchange will impact capital gains taxes.

Landowners are advised to seek the advice of an attorney and / or accountant when deciding on the method of payment.

*Please Note: The Agreement of Sale is a legal and financial document. Landowners should consult with their attorney and / or accountant before signing it and proceeding with the ACE Program.*

The Agreement of Sale will include exhibits such as a legal description of the easement area, a statement of costs, the Deed of Agricultural Conservation Easement and conservation plan agreement to be signed at settlement.

The Agreement of Sale shall be executed in a form provided by the State Board if the State is to be listed as a Grantee. An Agreement of Sale may be structured as: 1) A joint purchase by the State and the County; 2) A joint purchase by the State, County, and a township; 3) A joint purchase by the County and a township; or 4) An individual purchase by either the State or the County. The County Board reserves the right to decide how the Agreement of Sale will be structured. Sample copies of the Agreement of Sale are available at the County Office.

#### **State Recommendation for Purchase (In accordance with 7 PA Code Chapter 138e.91)**

The County Board seeks to purchase easements jointly with the Commonwealth of Pennsylvania. Easement purchases funded in part by the Commonwealth of Pennsylvania require approval from the State Agricultural Land Preservation Board, chaired by the Secretary of Agriculture. Recommendations are submitted to the Bureau of Farmland Preservation that reviews the recommendations for compliance with Act 43 and 7 PA Code Chapter 138e regulations. The County Office prepares and submits recommendations to the Bureau of Farmland Preservation on behalf of the landowners. Deadlines for submission are approximately 1 ½ months prior to the State Board meeting. Recommendations include:

1. Summary information, as described in 7 PA Code Chapter 138e.70;
2. A statement of costs as described in 7 PA Code Chapter 138e.69;
3. A copy of the application form;
4. Aerial, topographic, tax, and soil maps;
5. A list of soil types and soils report;
6. LESA ranking information;
7. A list of adjoining landowners and copy of the notification letter to be sent to the adjoining landowners as described in 7 PA Code Chapter 138e.71 (See Exhibit E);
8. A letter from the landowners stating the percent of ownership of each grantor for the purpose of issuing IRS Form 1099.
9. A copy of the approved soil conservation plan that is required prior to settlement;
10. A copy of the nutrient management plan, if applicable;
11. Documentation on how liens will be addressed;
12. An appraisal report;
13. A title insurance report;
14. Survey work or closure documentation;
15. A signed Agreement of Sale;
16. A completed and signed IRS Form W-9, Request for Taxpayer Identification Number and Certification for individual grantors.

When it is determined the recommendations are complete and in compliance, the farms are submitted to the State Board for approval. Notification of the easement purchase is sent to the adjoining landowners, who have the option to object to the easement purchase based on certain legal and title issues. Please see Exhibit E. The State Board, which typically meets six times per year, will review the recommendation and provide a decision according to 7 PA Code Chapter 138e.92. After State Board approval, the Agreement of Sale is executed, and checks are requested from the State Comptroller's Office. Typically, this process takes approximately four months after State approval for the County to be able to schedule settlement of the easement purchase.

### **Settlement of the Agricultural Conservation Easement**

At settlement, the landowners will convey a Deed of Agricultural Conservation Easement in exchange for proceeds, as outlined in the Agreement of Sale, and sign a Conservation Plan Agreement. The Deed of Agricultural Conservation Easement protects the farm for agriculture in perpetuity. The Conservation Plan Agreement identifies the current conservation plan and reiterates that the landowners agree to comply with the conservation practices and implementation schedule and acknowledges that failure to comply would violate the terms of the Deed of Agricultural Conservation Easement. Examples of both documents are available at the County Office.

1. The County Office will schedule the settlements, which are typically held at the title company issuing the title insurance policy, unless the landowners are unable to attend.
2. The landowners, closing agent for the title company, county solicitor, county controller or a county commissioner, and a representative from the County Board will attend settlement.
3. Landowners need to bring their driver's licenses to settlement.
4. Landowners must be able to sign an affidavit verifying that the easement is being conveyed in clear title, that there are no outstanding agreements of sale on the farm, that liens or debts that may give rise to a lien have been disclosed, that there are no taxes owed, and that there is no child support due. If tax bills have been issued for the current year, they are considered due and will be deducted from the easement

proceeds unless other arrangements are made.

5. The landowners of the subject farmland tract shall execute a deed conveying the easement at settlement. The deed shall include the provisions of the 7 PA Code Chapter 138e.241 (relating to deed clauses). The grantees of the Deed of Easement will be the State, County, or local municipality or a combination thereof, depending on the entity that funded the easement purchase.
  - a. For purchases made entirely with State funds, the Commonwealth shall be the sole grantee.
  - b. 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.
  - c. For purchases made entirely with county funds, the county shall be the sole grantee.
  - d. For purchases made entirely with local municipal funds, the municipality shall be the sole grantee.
6. Landowners will have minimal settlement fees including, but not limited to, fees to the local tax collector certifying that the taxes are paid and for the preparation and recording of subordination agreements and deed of merger, if applicable.
7. Following settlement, the County Board will comply with post settlement and reporting procedures according to 7 PA Code Chapter 138e.93. The Deed of Agricultural Conservation Easement and the Conservation Plan Agreement will be recorded at the Berks County Recorder of Deeds Office.

*Please Note: The Deed of Agricultural Conservation Easement and the Conservation Plan Agreement are legal and financial documents. Landowners should consult with their attorney and / or accountant before signing them.*



## SECTION III

### Conservation Plan Requirements

To preserve the agricultural viability of the eased land, landowners are required to implement a conservation plan acknowledged by the Berks County Conservation District or the County Board.

Landowners applying to the Agricultural Conservation Easement (ACE) Program are *strongly* encouraged to have an implemented conservation plan. It is the responsibility of the landowners to submit a copy of the conservation plan to the County Office. Additional points will be awarded in the LESA ranking (Please refer to Section II, "Numerical Ranking System.") to those applications that have an acknowledged and implemented conservation plan.

After an application is selected for the ACE Program, it is a *requirement* that there is a conservation plan on the farm before the County Office recommends the farm to the State Board for easement purchase. As part of the selected application confirmation site visit, any existing conservation plan will be reviewed for implementation and any resource concerns will be evaluated. If necessary, the landowners will be assisted with developing an updated plan. A Conservation Plan Agreement will be signed at settlement. (Please refer to Section II for additional information on procedures for participation in the ACE Program.) Implementation of the conservation plan will be monitored during the inspection process, as described in Section VI.

#### Requirements for a Conservation Plan

1. Landowners of land under agricultural conservation easement are required to have a conservation plan that addresses all environmental concerns on the farm. The plan may be in the operator's name, but it is the landowners' responsibility for compliance.
2. Conservation plans may be developed by private consultants, landowners, a county conservation district, or the Natural Resources Conservation Service (NRCS). If a farm is selected to participate in a federal agricultural land preservation program, a NRCS-approved conservation plan may be required.
3. State regulations authorize the County Board or a county conservation district to acknowledge plans for the easement program.
4. At the time the plan is submitted to the Board for review, the conservation plan must reflect the present best management practices and any agreed-to future improvements or management changes. If a conservation plan is unavailable or does not adequately address the resource concerns on the farm, the landowners must agree to begin the process of developing the plan and either submit and SC-1 form to obtain a plan or indicate the agency that will develop it. A conservation plan must be completed prior to State Board approval and the plan must be acknowledged prior to settlement. The landowners and / or the decision makers (if different) must sign the conservation plan.
5. Landowners who participate in the easement program must update their conservation plan when there are significant changes to the operation. Updates to the conservation plan must be acknowledged by the County Board or a county conservation district.
6. In the event of a nutrient management or Chapter 102 Clean Stream's violation occurring on the farm, the conservation plan must be reviewed and revised to include any measures necessary to correct the violation.

#### Defining Conservation Plans

Conservation plan - A plan describing land management practices which, when completely implemented, will improve, and maintain the soil, water and related plant and animal resources of the land.

In accordance with State regulations, a conservation plan shall include:

1. An installation schedule for best management practices;
2. A nutrient management component consisting of a statement of whether a nutrient management plan is

required under the Nutrient Management Act. If a nutrient management plan is not required, the nutrient management component shall consist of a description of the amounts and types of nutrients imported to or generated on the farmland tract and a description of any current and planned measures or procedures for containment, use, disposal, or other disposition of the nutrients described. The source of any manure imported to the farm, or the destination of manure exported from the farm should be indicated;

3. An Environmental Evaluation Worksheet to identify resource concerns;
4. A Grazing Plan to guide proper management of pasture areas;
5. Soil and topography maps (including elevation levels) and an aerial photograph. Maps should have a title that includes the landowners' name, acreage, township, type of map, and source of map data, as well as include a north arrow, scale, legend, and other relevant information;
6. Soil descriptions;
7. Soil loss calculations, indicating that acceptable level of soil loss is met;
8. Any other conservation concerns that may have been identified by the Board during an inspection or site visit;
9. Signatures for both the landowners and the operator, if the plan is written by a private consultant; and signatures to NRCS policy if the plan is written by NRCS or a county conservation district;
10. If the plan is written by a private consultant, the plan must include certification from the private consultant indicating that the plan meets all of the requirements of a conservation plan as indicated above.

### **Obtaining a Conservation Plan**

Conservation plans may be obtained by:

1. Filling out proper documentation, an SC-1 Form, and submitting it to the County Office, the USDA Natural Resources Conservation Service (NRCS); or the Berks County Conservation District (BCCD); or
2. Hiring a private crop consultant. A list of private crop consultants may be obtained at the County Office.
3. Landowners can create their own conservation plan. PAOneStop Farm mapping and E&S Planning System are available tools for conservation planning.

### **Procedures for Reviewing Conservation Plans**

Conservation plans must be acknowledged by the County Board or a county conservation district. The County Board will review and acknowledge plans as follows:

1. New or revised plans must be submitted at least two weeks prior to the County Board taking official action. The County Board may waive this requirement under special circumstances.
2. Staff at the County Office will review all conservation plan submissions. Staff may contact landowners or their designees to acquire additional information, perform site visits, if necessary, or request amendments to the plan. Landowners and / or decision makers may schedule meetings with staff at any time during regular office hours to review plan submissions or update information.
3. The County Office staff shall recommend the plan for County Board acknowledgement when all plan requirements are met.
4. The County Office staff shall recommend the conservation plans to the County Board in executive session and the County Board shall acknowledge the conservation plans in regular session using docket or settlement numbers.
5. If after receipt of the staff recommendation for acknowledgement, the County Board has questions or concerns regarding the conservation plan, the County Board can request further information, or a site visit be conducted. Any landowner and / or decision maker can request the opportunity to discuss the conservation plan during the public comment period of the regularly scheduled County Board meeting.

## SECTION IV



### Provisions of the Agricultural Conservation Easement

Copies of the Deed of Agricultural Conservation Easement are available at the County Office.

**Landowners must seek approvals from both the County Board and all other interested entities when exercising the provisions of the agricultural conservation easement, including approvals from townships and any other programs in which the land is enrolled such as the Clean & Green Program (Act 319). Any approval by the County Board shall not be construed to provide approval by any other agency or governmental unit.**

#### **Agricultural Production** *(In accordance with 7 PA Code Chapter 138e.221)*

The eased land shall be used solely for the production for commercial purposes of crops, equine, livestock and livestock products, including the processing or retail marketing of such crops, equine, livestock or livestock products if more than fifty percent of such processed or merchandised products are produced on the subject land (hereinafter "agricultural production"). For purpose of this Deed, "crops, equine, livestock and livestock products" include, but are not limited to:

- (a) Field crops, including corn, wheat, oats, rye, barley, soybeans, speltz, buckwheat, hay, potatoes and dry beans;
- (b) Fruits, including apples, peaches, grapes, cherries, pears and berries;
- (c) Vegetables, including tomatoes, pumpkins, snap beans, cabbage, carrots, beets, onions, sweet corn and mushrooms;
- (d) Horticultural specialties, including nursery stock ornamental shrubs, ornamental trees and flowers;
- (e) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs, and furs;
- (f) Timber, wood and other wood products derived from trees; and
- (g) Aquatic plants and animals and their byproducts.
- (h) Commercial equine activity including boarding of equine, training of equine, instruction of people in handling, driving or riding equines, use of equines for riding or driving purposes, pasturing equines all of where a fee is collected. **THE TERM DOES NOT INCLUDE ACTIVITY LICENSED UNDER THE ACT OF DECEMBER 17, 1981 (P.L. 435, NO. 135), KNOWN AS THE "RACE HORSE INDUSTRY REFORM ACT."**

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

#### **Construction or Renovation of Buildings**

##### **New buildings or structures** *(In accordance with 7 PA Code Chapter 138.223)*

The construction or use of a building or other structure on the eased land other than a building or structure existing on the date of the granting of an easement is prohibited, except that:

1. The erection of fences for agricultural production or a commercial equine activity and protection of watercourses such as lakes, streams, springs, and reservoirs is permitted.
2. The construction of one additional residential structure is permitted under 7 PA Code Chapter 138.224. (Refer to following section for additional guidelines.)
3. The construction or use of any building or other structure for agricultural production or a commercial equine activity is permitted. Before construction, renovation, or modification of structures, the landowner is required to submit documentation to the County Office. Such documentation shall include the size, location, and use of the structure, as well as the proposed date of construction.
4. The replacement of a residential structure existing on the eased land on the date of the granting of

the easement is permitted if the preexisting structure is razed or removed and the replacement residential structure is erected within the curtilage of the residential structure it replaces.

**Construction of One Additional Residential Structure** (In accordance with 7 PA Code Chapter 138e.224)

1. *General* – In addition to structures existing on the eased land at the date of the granting of the easement, one additional residential structure may be constructed subject to the following conditions:
  - a. The construction and use of the residential structure is limited for the landowners’ principal residence or for an immediate family member or for the purpose of providing necessary housing for persons employed in farming the subject land on a seasonal or full-time basis.;
  - b. No other residential structure has been constructed on the eased land at any time since the delivery of the Deed;
  - c. The additional residential structure and its curtilage, including its driveway, occupy no more than two acres of the eased land; and
  - d. The location of the residential structure and its driveway will not significantly harm the economic viability of the subject land for agricultural production or a commercial equine activity.
  - e. The location of the residential structure shall be sited in a manner that protects the prime, unique, and important soils to the greatest extent practicable.
  - f. The right to the additional residential structure has not been relinquished and extinguished by current or previous owner in accordance with subsection (c)(6)(iv) of the Act.
  - g. Before construction, renovation, or modification of structures, the landowner is required to submit documentation to the County Office. Such documentation shall include the size, location, and use of the structure, as well as the proposed date of construction.
  
2. *Replacement of structures* – The replacement of a residential structure existing on the eased land on the date of the granting of the easement is permitted if the preexisting structure is razed or removed and the replacement residential structure is erected within the curtilage of the residential structure it replaces in an area that does not affect the agricultural production or agriculturally related areas of the property.

**Renovations to Buildings and Residential Structures** (In accordance with 7 PA Code Chapter 138.223)

1. A renovation or modification of an existing residential structure, or an addition to an existing residential structure, is permitted if it is within the curtilage of the existing residential structure and does not affect the agricultural production or agriculturally related areas of the property.
2. A renovation or modification of an existing agricultural building or structure, or an addition to an existing agricultural building or structure, is permitted.
3. Renovations or modifications to non-agricultural buildings or structures will be considered on a case-by-case basis after a request is submitted to the County Board.
4. Before construction, renovation, or modification of structures, the landowner is required to submit documentation to the County Office. Such documentation shall include the size, location, and use of the structure, as well as the proposed date of construction.

**Subdivision of Eased Land**

**General** — The landowners of a property subject to an agricultural conservation easement through the Berks County Agricultural Land Preservation Program, whether the easement be held solely by the State, solely by the County, or held jointly by the State and County, may subdivide the property one time into a maximum of two parcels with a minimum of 52 acres each provided that the following conditions apply:

1. The subdivision is consistent with the statement of purpose of the Berks County Agricultural Land Preservation Board as defined in the Agricultural Conservation Easement Program Guidelines, as amended.
2. No restriction, prohibitions or condition shall prevent the landowners from subdividing eased lands

for the purpose of constructing one additional residential structure for the landowner, an immediate family member, or an employee of the farm, unless the right to the residence has been relinquished and extinguished in accordance with Section (c)(6)(iv) of the Act. The right includes both the construction of the additional residential structure or subdivision of the existing residential structure and is limited to two acres or less, which includes the driveway access.

3. The prohibitions, restrictions, and conditions of subdivision of eased land shall be recited verbatim in the deed for all subdivided and remaining parcels.
4. The subdivided parcels shall continue to be subject to the terms of the original agricultural conservation easement.
5. The subdivision guidelines, 7 PA Code Section 138e.225 (relating to subdivision of eased land), are intended to preserve as much farmland as possible in integral parcels and to promote viable agricultural enterprises. Special exceptions to these subdivision guidelines will be considered by the County Board on a case-by-case basis depending on the size of the subdivided parcels, township zoning, neighborhood characteristics, and other pertinent factors.
6. All costs associated with subdivision shall be the responsibility of the landowners.
7. Nothing shall relieve the landowners of any municipal, county or state regulations, procedures or requirements necessary for the subdivision of land.
8. Reservation of right to construct after subdivision – If the eased land is subdivided prior to the construction of the additional residential structure, the landowners shall do the following:
  - a) Inform the County Board of specific subdivided tract upon which the right to construct and use such a residential structure is reserved.
  - b) Ensure that the deed to the subdivided tract upon which the right to construct and use such a residential structure is reserved clearly sets forth the reservation of this right.
  - c) Ensure that all deeds to remaining subdivided tracts recite that no such residential structure may be constructed on such remaining subdivided tracts.
9. Reservation of the right to the residential subdivision after general subdivision – If the eased land is subdivided prior to the execution of the residential subdivision, the landowners shall do the following:
  - a) Inform the County Board of the specific subdivided tract upon which the right to the residential subdivision is reserved.
  - b) Endure that the deed to the subdivided tract upon which the right to the residential subdivision is reserved clearly sets forth the reservation of this right.
  - c) Ensure that all deeds to remaining subdivided tracts recite that no such residential subdivision may be executed on such remaining subdivided tracts.

**Subdivision Restrictions** — Except as provided in #2 above, no subdivision of eased land shall be permitted unless all of the following conditions are met:

1. Approval of a subdivision shall be requested, in writing, of and granted by the County Board and by the State Board.
2. Subdivision shall not harm the economic viability, as defined the Subdivision Guidelines of the Deed of Agricultural Conservation Easement, of any parcel created by or remaining after subdivision. The landowners shall have the burden of proof.
3. The subdivision of property does not convert land which has been devoted primarily to agricultural use to another primary use, other than a tract of two acres or less upon which construction and use of



a principal residence for the landowner or an immediate family member, or housing for seasonal or full-time employees is permitted pursuant to 3 PS. Section 914.1 (c)(6)(iv).

4. Subdivision of a property with an agricultural conservation easement may be prohibited if the landowners can accomplish the construction and use of a principal residence or housing for seasonal or full-time farm employees in accordance with 3 P.S. Section 914.1(c)(6)(iv), under the applicable subdivision and land development ordinance, by a land development other than subdivision.
5. Each parcel created or remaining as a result of subdivision shall have all of the following:
  - a. At least fifty percent (50%) of its soils in USDA Soil Capability Class I-IV.
  - b. At least fifty percent (50%) of its area utilized for crop or pasture land.
  - c. Site characteristics (including but not limited to slopes, topography, shape, location of roads, streams, wetlands, ponds, access) that allow for practicality and reasonable efficiency of agricultural activity.
6. No parcel of less than 52 acres may be created by subdivision. The sole exception to this 52-acre-minimum subdivision standard shall allow a tract of as few as 10 acres to be created through subdivision for the purposes of annexation to an adjacent property which has been preserved through a Deed of Agricultural Conservation Easement. (See Annexation Requirements)

**Procedures and Requirements of Subdivision** — Landowners proposing to subdivide eased land shall be subject to following procedures and requirements.

1. Requests for subdivision review and approval shall be submitted, in writing, to the County Board. The letter, hereafter referred to as the “subdivision application,” shall explain the reasons for such a subdivision, including evidence that the agricultural economic viability of the resulting parcels will not be diminished as a result of the proposed subdivision.  
*Please Note: Subsequent subdivision applications on the same farm or modifications to the subdivision application will not be accepted unless the previous pending application is withdrawn by the landowner in writing.*
2. The landowners should be mindful that it is their responsibility, in accordance with the Pennsylvania Municipalities Planning Code, to submit a subdivision plan to the local municipality for review and approval. Landowners are encouraged to seek this review, any other required review, and the County Board review simultaneously.
3. The landowners shall submit to the County Board a copy of the landowners’ subdivision request to the local government unit or provide a signature from a representative of that local government unit.
4. Requests shall include the following maps and information:
  - a. Written requests for subdivision approval including description of subdivision and reason for subdivision.
  - b. A map or sketch, at a scale sufficient to clearly show the following:
    - i. Location of crop land, pasture land, wood land and other lands.
    - ii. Roads, streets, driveways, utility right-of-way, streams.
    - iii. Location of existing buildings, sheds, barns, dwellings, and other structures.
    - iv. Delineation of proposed subdivision.
    - v. Indication of which parcel either created by subdivision or remaining after subdivision on which the additional residential structure permitted by 3 P.S. Section 914.1 (c)(6)(iv) and described above may be constructed, unless this right has been exhausted or relinquished
    - vi. Indication of which parcel, either created by subdivision or remaining after subdivision, which retains the right to the residential subdivision, unless this right has been exhausted.
5. The County Board will note receipt of the request for subdivision approval at its next regularly scheduled meeting.

6. The County Board may agree to permit a parcel of land subject to an Agricultural Conservation Easement to be subdivided after the granting of such easement after appropriate review as follows:
  - a. The County Office will review the subdivision request to ensure that it is complete and meets the terms of the Deed of Agricultural Conservation Easement. If necessary, staff will request additional information from or a meeting with the landowners.
  - b. After reviewing the application and the comments and recommendations submitted by the reviewing agencies, the County Board shall approve or reject the application to subdivide within 120 days after the date the request for subdivision was noted at the regularly scheduled County Board meeting, unless the time is extended by mutual agreement of the landowners and reviewing agencies.
  - c. If the application to subdivide the land is approved by the County Board, a copy of the application, along with supporting documentation, shall be forwarded to the State Board for review and approval or disapproval. When reviewing an application to subdivide land subject to a Deed of Agricultural Conservation Easement, the State Board shall consider only whether the application complies with the conditions under which subdivisions are permitted by the approved county program. The State Board shall notify the County Board of its decision regarding the application.
  - d. If the application to subdivide is rejected by the County Board, the application shall be returned to the landowners with a written statement of the reasons for such rejection. Within 30 days after receipt of the statement of rejection, the landowners may appeal the rejection in accordance with 2 PA. CS. Chapter 5 Subchapter B (relating to practice to judicial review of local agency action).
7. Failure of the County Board to render a decision to approve or disapprove a subdivision within the time from described in #6 above shall constitute approval of request to subdivide, provided that the parcels created by and remaining after subdivision comply with the Subdivision Restrictions listed above.
8. Approval of the County Board, or failure to act by the County Board as per #7 above shall not be construed to provide approval of the State Board or any other governmental unit with authority to approve or disapprove subdivisions.
9. For subdivisions approved prior to the construction of additional residential structure or the execution of the residential subdivision:
  - a. If the County Board and State Board approval is granted for subdivision of eased land prior to the construction of one additional residential structure as permitted by 3 P.S. Section 914.1 (c) (6)(iv) and the "Construction or Renovation of Buildings" section above, the landowners must do the following:
    - i. Ensure that the deed to the parcel created by or remaining after subdivision upon which the additional residential structure may be constructed clearly reserves the right to construct this residential structure.
    - ii. The parcel for which the right to construct the allowed additional residential structure shall be the same parcel indicated in Section 4 (b) (v) above.
    - iii. Ensure that the deeds to all other parcels created by subdivision or remaining after subdivision clearly state that no residential structures of any kind may be constructed on the eased parcels.
    - iv. The future location of the additional residential structure will require a separate review and approval from the County Board and must meet the criteria outlined above.
  - b. If the County Board and State Board approval is granted for subdivision of eased land prior to the execution of the permitted residential subdivision, the landowners must do the following:
    - i. Ensure that the deed to the parcel created by or remaining after subdivision upon which the residential subdivision is permitted clearly reserved the right.
    - ii. The parcel for which the right to the allowed residential subdivision shall be the same parcel as indicated in Section 4 (b)(vi) above.
    - iii. Ensure that the deeds to all other parcels created by subdivision or remaining after subdivision clearly state that no residential subdivision of any kind may be executed.
    - iv. The future location of the residential subdivision will require a separate review and approval

from the County Board and State Board.

- c. If the County Board and the State Board approval is granted for subdivision of eased land after the right to the additional residential structure has been exhausted, the landowners must ensure that the deeds to both the parcel created by and remaining after subdivision clearly state that this right has been exhausted.
  - d. If the County Board and the State Board approval is granted for subdivision of eased land after the right to the residential subdivision has been exhausted, the landowners must ensure that the deeds to both the parcel created by and remaining after subdivision clearly state that this right has been exhausted.
10. If the County Board and State Board approval is granted for subdivision of eased land after the right to the residential subdivision has been exhausted, the landowners must ensure that the deeds to both the parcel created by and remaining after subdivision clearly state that this right has been exhausted.
  11. Prior to recording deeds to parcels created by subdivision or remaining after subdivision, the landowners requesting subdivision approval shall forward copies of the deed for each such parcel to the County Office review and approval.
  12. Within 15 days of recording deeds to tracts created by subdivision or remaining after subdivision, the landowners at the time of subdivision shall forward a copy of all recorded deeds to all parcels created by subdivision or remaining after subdivision to the County Office.
  13. Three (3) copies of the final certified sketch plan must be submitted to the County Office.
  14. The sole exception to the 52-acre minimum subdivision standard shall allow for a tract of as few as 10 acres to be created through subdivision if all of the following shall occur:
    - a. The subdivision results in the residue parcel, which is a minimum of 52 acres and the parcel for annexation; and
    - b. Each of these parcels, by itself, meets the minimum criteria in #5 above and
    - c. The parcel for annexation is annexed, by deed of merger, to an adjacent receiving parcel, which has been preserved through a Deed of Agricultural Conservation Easement, with this deed of merger effectively extinguishing the legal right to convey the parcel for annexation as a separate building lot; and
    - d. The residue parcel retains any existing right to the additional residential structure or residential subdivision allowed under the Agricultural Area Security Law, with the deed of merger for the parcel for annexation clearly reserving these rights for the residue parcel; and
    - e. The parcel for annexation remains subject to the restrictions of its original Deed of Agricultural Conservation Easement. If said restrictions encumbering the parcel for annexation are stricter than the restrictions of the original deed of easement encumbering the receiving parcel, the landowners of the receiving parcel shall execute documentation satisfactory to the County Board imposing the restrictions encumbering the parcel for annexation on the receiving parcel; and
    - f. No further annexations or general subdivisions under this section may occur with respect to the residue parcel.

### **Utility Right-of-Ways**

An agricultural conservation easement shall not prevent: the granting of rights-of-way by the Grantor, his or her heirs, executors, administrators, successors and assigns, or any person, partnership, corporation, or other entity claiming title under or through Grantor in and through the subject land for the installation, transportation, or use of, lines for water, sewage, electric, telephone, coal by underground mining methods, gas, oil, or oil products is permitted. The term "granting of rights-of-way" includes the right to construct or install such lines. The construction or installation of utility lines other than of the type stated in this paragraph is prohibited on the subject land.

## **Mining Provisions**

An agricultural conservation easement shall not prevent: the granting of leases, assignments or other conveyances or the issuing of permits, licenses or other authorization for the exploration, development, storage or removal of coal by underground mining methods, oil and gas by the landowners of the subject land or the landowners of the underlying coal by underground mining methods, oil and gas or the landowners of the rights to develop the underlying coal by underground mining methods, oil and gas, or the development of appurtenant facilities related to the removal of coal by underground mining methods, oil or gas development or activities incident to the removal or development of such minerals is permitted.

## **Customary Part-Time, Off-Season Minor and/or Rural Enterprises Regulations**

Pennsylvania's "Agricultural Area Security Law", known as Act 43, 3 P.S. §§901. et seq., and the Regulations promulgated thereunder by the Pennsylvania Department of Agriculture [See: Subchapter I, §138e.241] require that an Agricultural Conservation Easement (ACE) shall not prevent customary part-time or off-season minor or rural enterprises which are provided for in the County Agricultural Conservation Easement Program approved by the State Board [See: 3 P.S. §914.(c)(6)(v)].

Agriculture-related products, services and activities associated with customary part-time or off-season minor or rural enterprises are permissible, provided that they remain incidental to the agricultural production. Except as otherwise set forth herein, the County Board, or its staff, will review and approve or disapprove all customary part-time or off-season minor or rural enterprises on a case-by-case basis. In order to obtain a required approval for a rural enterprise, an application form must be submitted to the County Office by 12:00 noon two weeks prior to a regularly scheduled Board meeting.

**The construction of new buildings for the purpose of "Customary Part-Time, Off-Season Minor and/or Rural Enterprises" is prohibited.**

Structures and/or buildings existing on the eased land at the date of granting of the easement and/or subsequent County Board recognized structures are intended to be used for agriculture. When agricultural opportunities are exhausted, those buildings to be utilized for "Customary Part-Time, Off-Season Minor and/or Rural Enterprises" must comply with the following:

1. The direct sale of agricultural products to the public provided that at least fifty percent (50%) of such products are produced on the preserved farm by the farm operator, which may be the farm owner(s) or tenant(s).
2. The production and sale of home occupation services, goods, and arts and crafts, so long as (i) these uses remain incidental to the agricultural production of the preserved farm; and (ii) at least 50% of the items for sale are produced on the preserved farm.
3. The provision of agricultural services, supplies, and repairs on the farm, as long as these provisions remain incidental to the agricultural production on the preserved farm.
4. The accommodation of tourists and visitors at the property is permitted in accordance with applicable law as long as the accommodation of such tourists and visitors is undertaken as a part-time or off-season minor or rural enterprise, is incidental to the agricultural production and does not diminish the productive capacity of the soils in connection with such activities.
5. Regulated hunting operations and the stocking of game birds are permitted so long as these uses remain incidental to the agricultural production and cannot diminish the productive capacity of the soils in connection with such activities.
6. Energy Rural Enterprises shall remain incidental to agricultural production. The energy generated by this enterprise shall be available for use on the farm and the excess energy that is generated may be available for retail sale.
7. The installation of communications antennae on existing structures along with associated equipment and structures shall be permitted, provided the installation or construction of any

permanent non-agricultural equipment or structures associated with communications antennae remains incidental to the agricultural production of the preserved farm.

**If more than one rural enterprise as permitted above either exists or is established on the farm, the total site coverage of all such rural enterprises shall be limited to one-half of one percent of the area of the eased farm.**

The County Board and/or its staff reserve the right to consider other similar “Customary Part-Time or Off-Season Minor or Rural Enterprises” that support the local agricultural economy and economic viability of preserved farms. Approval of one rural enterprise by the County Board does not constitute an automatic approval of future requests nor set a precedent for any future requests.

During inspections of a preserved farm, any rural enterprises will be evaluated based on the facts and information included within the approved application. If a rural enterprise is not in conformity with said application, the landowner/tenant will be given 60 days to comply with the original approved application. If a rural enterprise remains out of compliance, County Board will initiate violation procedures.

#### **Soil and Water Conservation Requirements** (Additional information in Section IV)

All agricultural production or commercial equine activity on the subject land shall be conducted in accordance with a conservation plan acknowledged by the County Conservation District or the County Board. Such plan shall be updated upon any change in the basic type of agricultural production or commercial equine activity being conducted on the subject land. In addition to the requirements established by the County Conservation District or the County Board, the conservation plan shall include an installation schedule and maintenance program and a nutrient management component which, when completely implemented, will improve and maintain the soil, water and related plant and animal resources of the land and shall require that:

1. The use of the land for growing sod, nursery stock ornamental trees, and shrubs does not remove excessive soil from the subject land; and
2. The excavation of soil, sand, gravel, stone, or other materials for use in agricultural production or commercial equine activities on the land is conducted in a location and manner that preserves the viability of the subject land for agricultural production or commercial equine activity.

As part of the settlement documents, the executed Conservation Plan Agreement shall be recorded with the Deed of Easement at the County Recorder of Deeds.

#### **Change in Ownership**

*(In accordance with 7 PA Code Chapter 138e.227 and Section 11 of the Deed of Agricultural Conservation Easement.)*

New property deeds may be recorded for a variety of reasons including the sale of the property to others, the re-recording of a property deed from the landowners to themselves, or to place ownership in a trust. Anytime a new property deed is recorded, regardless of the reason, the following must occur:

1. A deed conveying an interest in the eased land shall set forth the language of the easement restrictions verbatim. This is most easily done by attaching the entire Deed of Agricultural Conservation Easement to the new property deed as an exhibit. The Deed of Agricultural Conservation Easement includes: the recorded Deed of Easement, Subdivision Guidelines for Berks County if the farm was preserved in August, 1996 or later, and the legal description of the eased property.
2. Within 30 days of a change in ownership of the eased land, the prior landowners or their representative shall notify the Berks County Agricultural Land Preservation Board and the Pennsylvania Bureau of Farmland Preservation, Department of Agriculture of the transfer.

The following information shall be provided:

- a. The name, address, and telephone number of the landowners selling the property;
- b. The name, address, and telephone number of the new landowners;
- c. The price per acre or portion thereof involved in the transfer;

- d. A reference to the volume and page or Instrument Number in which the transfer has been recorded by the Berks County Recorder of Deeds; and
- e. A copy of the deed.

*The information should be sent to:*

Berks County Department of Agriculture,

1238 County Welfare Road, Suite 260, Leesport, PA 19533

Bureau of Farmland Preservation

2301 North Cameron Street, Room 402, Harrisburg, PA 17110-9408

- 3. Upon receipt of notice of or discovery of a change in ownership, the County Office will provide the new landowners with a “Welcome Packet” of information regarding the easement.

*Please Note: Any ownership transfers involving subdivision of a property are required to be approved by both the Berks County Agricultural Land Preservation Board and the Pennsylvania State Agricultural Land Preservation Board. In addition, any transfers involving subdivision or previously subdivided parcels have additional deed requirements and are best discussed on a case-by-case basis.*

## SECTION V



### **Acquiring Approvals for non-agricultural Activities on Protected Farms that are Provided for in the agricultural Conservation Easement (other than subdivision)**

Landowners should contact the County Office for any activity provided for in the agricultural conservation easement other than agricultural production. Procedures for seeking approvals for the construction or modification of a residential structure and rural enterprises are provided in this section to assist landowners. Procedures for approving Soil and Water Conservation Plans and subdivisions are included in Sections IV and Section III, respectively. Other activities may be reviewed on a case-by-case basis.

*Please Note: Forms are available at the County Office to assist with the submission of a request for the construction or modification of a residential structure and a customary part-time or off-season minor or rural enterprise.*

#### **Procedures for Reviewing the Construction or Modification of a Residential Structure**

1. Landowners submit a written request for the construction or modification of a residential structure. The written request will specify whether the construction is to be considered the one permitted additional residential structure, if the landowners are removing an existing residential structure and the construction of a new residential structure is to be considered a replacement structure, or if the construction is a modification of an existing residential structure.
  - a. If the construction of the residential structure is to be considered the additional residential structure, the written request shall specify that:
    - i. The construction and use of the residential structure is limited to a principal residence for the landowner or an immediate family member or for providing housing for persons employed in farming the subject land on a seasonal or full-time basis;
    - ii. No other residential structure has been constructed on the eased land at any time since the delivery of the Agricultural Conservation Deed of Easement or that right has not been relinquished;
    - iii. The residential structure and its curtilage occupy no more than two acres of the subject land; and,
    - iv. The location of the residential structure and its driveway will not significantly harm the economic viability of the subject land for agricultural production.
  - b. If the construction of a residential structure is to be considered a replacement structure, the written request shall specify:
    - i. The residential structure to be removed, and
    - ii. The replacement residential structure is to be erected within the curtilage of the residential structure it replaces.
  - c. If the construction is to be considered a modification of a residential structure, the written request shall specify that the construction will not increase the curtilage of the residential structure being modified.
2. Landowners submit a survey drawing or sketch to scale of the proposed construction containing:
  - a. Location of the proposed construction;
  - b. Location of existing buildings, sheds, barns, dwellings, and other structures;
  - c. Identification of the residential structure to be replaced or modified, if applicable;
  - d. Location of the existing curtilage areas;
  - e. Location of cropland, pastureland, woodland and other lands;
  - f. Roads, streets, driveways, utility right-of-way, streams; and,
  - g. Other information that may be pertinent, as requested by the Board.

3. The County Board will note receipt of the request for the construction or modification of a residential structure at its next regularly scheduled meeting and shall have 120 days from the note of receipt to approve or disapprove the request. Failure to approve or disapprove the request within the specified time will constitute approval of the request.

**Procedures for Reviewing Permitted customary part-time or Off-season minor or Rural Enterprises**

Landowners submit a written request for a customary part-time or off-season minor or rural enterprise to the County Office for preliminary review. The written request shall describe the rural enterprise and:

1. Specify which section of the rural enterprises permits the activity;
2. Identify the landowners and operator of the rural enterprise;
3. Identify the location of the rural enterprise;
4. Discuss whether it involves the direct sale to the public of agricultural products produced principally on the farm;
5. Specify how much total eased land will be involved in acres and by percentage;
6. Describe any excavation, paving, gravelling, or construction of non-agricultural structures;
7. Discuss updates to the conservation plan, if any;
8. Discuss how the farm operation will be impacted by the rural enterprise; and,
9. Specify that land will not be taken out of production for the rural enterprise.

Landowners may submit sketches or other documentation that may be useful for the County Board to render a decision.

The County Office will review the request and submit it to the County Board. Landowners will be notified as to when the County Board will consider the request and are encouraged to attend the meeting to present the request and answer questions.





## SECTION VI

### Inspecting and Enforcing an Easement

The County Board has the primary responsibility for inspecting the land under easement and enforcing an easement. The State Board will also have the right to inspect eased land and enforce an easement on its own behalf or in conjunction with the County Board.

#### **Procedures for Inspections and Reporting**

*(In accordance with 7 PA Code Chapter 138e.202 and Chapter 138e.203)*

1. The County Office shall inspect all eased land within the County on at least a biennial basis to determine compliance with the applicable deed of easement. The first inspection shall occur within the first year after settlement.
2. Written notice of an inspection to be conducted shall be mailed to the landowners at least 10 days prior to the inspection.
3. The inspection shall be conducted on a date and time scheduled by the County Office. Landowners have the option to contact the County Office to reschedule the inspection for a time during normal business hours.
4. Within 10 days of conducting an inspection, the County Office shall prepare a written inspection report setting forth the following information:
  - a. The identification of the land inspected;
  - b. The name of the landowners of the farmland at the time the easement was acquired and the name of the current landowner;
  - c. 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;
  - d. A description of deviations from the conservation plan observed on the eased land; and
  - e. A statement of whether the provisions of the deed of easement are being observed.
  - f. A statement indicated whether a structure permitted under section 14.1(c)(6)(iv) of the Act 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.
  - g. A statement indicating whether the residential subdivision permitted under Section 14.1(c)(6)(iv) has been exercised.
5. A copy of the inspection report shall be mailed to the landowners. In the event of a violation, the inspection report will be mailed by certified mail.
6. The County Office has the right to conduct a follow-up or additional inspection for any reason, including: to review a submitted request, if a violation is suspected, or for some other issue.
7. The County Office, the County Board and the State Board may inspect the eased land, jointly or severally, without prior notice if they have reasonable cause to believe that any provision of the easement has been or is being violated.
8. As required by the State Board, the County Office shall review and file with the State Board a copy of reports for inspections conducted during the prior year and compile an annual report that summarizes the number of inspections, violations detected, violations resolved and the circumstances surrounding any unresolved violations.

#### **Enforcement Responsibility** *(In accordance with 7 PA Code Chapter 138e.204)*

The County Board shall enforce the terms of every easement purchased within the County under Act 43, whether it is a County, State, Federal, or joint purchase. The State Board may enforce the terms of State

or jointly purchased easements. The right of the State Board to enforce the terms of an easement may be exercised either jointly with the County Board or by the State Board acting on its own behalf.

If a property is found to be noncompliant with the terms of the Deed of Agricultural Conservation Easement, either as a result of an inspection or otherwise, the County Office will contact the landowners or their representative and provide recommendations to resolve the issue. Failure by the landowners to correct the situation may result in the issuance of a notice of violation by the County Board.

If a violation of the terms of the deed of easement is discovered and a notice of violation is issued, an injunction may be obtained against the violation from a court along with an order requiring the landowners to restore the land under easement to the condition it was in prior to the violation, and reimburse any legal costs or damages incurred by the County.

**Notification to Landowners of Violation** *(In accordance with 7 PA Code Chapter 138e.205)*

Within 10 days of the County Board issuing a notice of violation of the terms of an easement, either as a result of an inspection or otherwise, the County Board shall send written notice of the violation to the landowners of the eased land, the County governing body and the State Board. The written notice required by this section shall be sent by certified mail and shall include the following information:

1. A copy of the inspection report; and,
2. A copy of the deed of easement; and,
3. A description of the action or condition that constitutes the alleged violation; and,
4. A statement of measures necessary to correct the alleged violation; and
5. Any other necessary supporting documentation.

**Enforcement Actions for Violations** *(In accordance with 7 PA Code Chapter 138e.206)*

1. Sixty days after the mailing of a notice of violation under 7 PA Code Chapter 138e.205 (relating to notification to landowners), the County shall commence and prosecute an action in the Court of Common Pleas of the County in which the eased land is located seeking an order requiring correction of the violation, enjoining further violation of the terms of the easement, and other appropriate relief, unless the County does one of the following:
  - a. Determines with the State Board that the violation has been corrected; or,
  - b. Completes the following requirements:
    - i. Determines that the landowners of the eased land have commenced the necessary corrective measures or determines that the necessary corrective measures cannot reasonably be completed within the 60-day period.
    - ii. Establishes a period not to exceed 1 year within which the corrective measures shall be completed.
2. The County shall commence and prosecute the enforcement action if the violation is not corrected within the time established.
3. The landowners of the eased land shall bear all costs associated with the correction of a violation of the easement, including:
  - a. Costs of work required and materials used to correct the violation.
  - b. Administrative costs incurred by the County Board and the State Board.
  - c. Court costs and reasonable attorneys' fees incurred by the County Board and the State Board in enforcing the easement.
4. If the County fails to institute and prosecute a timely enforcement action, the State Board may institute the action and recover the costs incurred, including reasonable attorneys' fees, from the County or the landowners of the eased land, or both.

## SECTION VII

### Alternatives methods for Farmland Preservation

#### Local Government Participation

Any local government unit that has created an Agricultural Security Area may participate along with Berks County and the Commonwealth in the preservation of farmland through the purchase of agricultural conservation easements.

1. The local government unit, in conjunction with the County Board, may participate with the State Board in the purchase of agricultural conservation easements.
2. The local government unit shall recommend to the County Board the purchase of agricultural conservation easements by Berks County and the local government unit as joint ownership.
3. The local government unit shall recommend to the County Board the purchase of agricultural conservation easements by the local government unit and the Commonwealth as joint ownership.
4. The local government unit may purchase an agricultural conservation easement, provided that all of the following apply:
  - a. The agricultural conservation easement is located within an Agricultural Security Area of at least 500 acres, or the easement purchased is a joint purchase with either Berks County or both Berks County and the Commonwealth pursuant to the criteria set forth for the purchase of agricultural conservation easements cross local government unit boundaries and cross county boundaries including any portion of an agricultural conservation easement extending into an adjoining county.
  - b. The Deed of Agricultural Conservation Easement is at least as restrictive as the Deed of Agricultural Conservation Easement prescribed by the State Board for agricultural conservation easements purchased by the Commonwealth.
  - c. The local government unit shall participate with the County Board in complying with paragraph (5) for recording any agricultural conservation easement purchased by the local government unit.
5. The County Board shall be responsible to record agricultural conservation easements where a local government unit is a party to the purchase of the easement. The Deed of Agricultural Conservation Easement shall be recorded by the County Board in the office of the Berks County Recorder of Deeds wherein the agricultural conservation easements are located. The County Board shall submit to the State Board a certified copy of the Deeds of Agricultural Conservation Easements within 30 days after recording. The County Board shall attach to all certified copies of the Deed of Agricultural Conservation Easements submitted to the State Board a description of the farmland subject to the agricultural conservation easements.

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

#### Donation of an Agricultural Conservation Easement

Landowners may donate an agricultural conservation easement on their farm, or a portion thereof, to the County of Berks in conjunction with the Commonwealth, an eligible nonprofit entity, or a local government unit, or any combination of these. If a portion is donated, it may be done so in conjunction with the balance of the land applying to the Berks County Agricultural Conservation Easement (ACE Program).

The donation of an agricultural conservation easement may be acquired if all the following apply:

1. The land is used for agricultural production;
2. The term of the agricultural conservation easement is perpetual;
3. The County Board provides for the acquisition by donation of an agricultural conservation easement;

4. The agricultural conservation easement is being acquired by donation by the County Board in conjunction with the Commonwealth, an eligible nonprofit entity, or a local government unit, or any combination of these;
5. Instruments and documents for the acquisition by donation of an agricultural conservation easement are approved by the State Board or the County Board, as the case may be, prior to execution and delivery. Proper releases from mortgage holders and lienholders must be obtained and executed to ensure that all agricultural conservation easements are acquired by donation free and clear of all encumbrances;
6. The agricultural conservation easement has title insurance;
7. The Deed of Agricultural Conservation Easement is as prescribed by the State Board for agricultural conservation easements purchased by the Commonwealth;
8. The County Board records a Deed of Agricultural Conservation Easement acquired by donation by the County in the office of the Recorder of Deeds of the county wherein the agricultural conservation easement is located and submits to the State Board a certified copy of the Deed of Agricultural Conservation Easement within 30 days after recording; and,
9. If the land does not meet the minimum criteria established by the State Board for purchase of an agricultural conservation easement, the application may include donated land along with land that does meet the minimum criteria, provided that the donated portion of the land shall be contiguous to property which is being eased.

The costs associated with the donation such as survey work, title insurance, and recording fees may be paid for by the County of Berks, if it is found that the donation is consistent with the goals of the program. The County of Berks may seek from the Commonwealth reimbursement for costs, except administrative costs, incurred by the County Board incident to the acquisition by donation of an agricultural conservation easement.

### **Land Trust Reimbursement Program**

The Land Trust Reimbursement Program allows nonprofit entities to be reimbursed up to \$5,000 in incidentals expenses per agricultural conservation easement acquisition.

#### **Eligibility**

A land trust shall be an eligible nonprofit entity and shall:

1. Register with the State Agricultural Land Preservation Board (State Board);
2. Coordinate agricultural conservation easement purchase activities with County Board; and
3. Submit an application to the State Board, with the statement of costs incidental to the acquisition, the Deed of Agricultural Conservation Easement, and any other documentation required by the State Board, within 60 days of closing the easement.

#### **Registration of a nonprofit entity with the State Agricultural Land Preservation Board**

1. Send a letter of request to the Bureau of Farmland Preservation stating the organization's desire to register with the State Board for the purpose of receiving reimbursement of grants under the Land Trust Reimbursement Program.
2. The letter is to be signed by the president or other appropriate officer of the land trust.
3. Enclose a copy of the land trust's Section 501(c)(3) tax-exempt certification as issued by the Internal Revenue Service and any other documentation necessary to demonstrate that the land trust has the acquisition of agricultural conservation easements or other conservation easements as part of its state purposes.
4. Include a letter from the Director or Chairperson of the County Board indicating that the land trust coordinates its farmland preservation activities with those of the County Board.

#### **Eligible expenses for reimbursement include:**

1. Appraisals;
2. Legal services;

3. Title searches;
4. Document preparation;
5. Title insurance;
6. Closing fees; and,
7. Survey costs.

**Limitations**

1. Reimbursement shall be limited to \$5,000 per agricultural conservation easement.
2. The term of an agricultural conservation easement shall be perpetual.

*EXHIBIT A*



**Berks County Agricultural Land Preservation  
Board By-Laws**

**ARTICLE I: Name**

The name of this non-profit organization shall be called the Berks County Agricultural Land Preservation Board. For the purposes of these bylaws, it will be referred to as the “County Board.”

**ARTICLE II: Purpose**

The County Board was established to administer the Agricultural Conservation Easement (ACE) Program for Berks County as set forth in the Agricultural Area Security Law (3 P.S. §§ 901-915) as amended, and any other public program approved by the Berks County governing body for the purpose of preserving agricultural land.

**ARTICLE III: Membership**

Size of Membership: The County Board shall be comprised of nine members appointed by the Berks County Board of Commissioners, of which, no less than four members shall serve initial terms of one year.

Representation: The County Board shall be appointed by the Board of County Commissioners as follows:

1. Four members shall be active resident farmers of Berks County and shall serve initial terms of three years;
2. One member shall be a current member of the governing body of a township or borough located within Berks County and shall serve an initial two-year term;
3. One member shall be a commercial, industrial, or residential contractor and shall serve an initial one-year term;
4. Three members shall be selected at the pleasure of the Berks County governing body and shall serve initial terms of one year; and,
5. The Board may include appropriate non-voting ex officio members who have expertise in appropriate areas.

Terms of Office: Upon expiration of the initial terms set forth above, all terms of members shall be three years.

Vacancies: Appointments to fill vacancies on the County Board shall be made by the Berks County Board of Commissioners for the balance of the term vacated.

**ARTICLE IV: Membership Reappointments and Nominations**

Reappointments: The County Board members are appointed by the County Commissioners. In September of every year, the Executive Director will contact sitting Board Members with terms scheduled to expire and the end of the year to inquire and if the County Board member is interested in serving another term. The Executive Director will report these decisions to the County Board Chair.

The Executive Director will notify the appropriate Commissioner to provide information regarding the County Board member(s) with expiring term(s) and each County Board member’s interest in continuing to serve on the County Board. The County Commissioners may request names of potential candidates from the County Board or County Staff when considering filing County Board member vacancies. County Board member appointments are reappointments are approved by the Board of County Commissioners prior to December 31<sup>st</sup>.

Prior to the January County Board meeting, the newly appointed Board members will attend a brief orientation provided by the County Board’s Chair and Executive Director.

## **ARTICLE V: Officers**

The following officers shall govern the County Board:

1. Chair: The member of the County Board who serves as Chair will be selected annually by the Chair of the Board of Berks County Commissioners and shall preside at all meetings of the Berks County Agricultural Land Preservation Board, call special meetings, establish committees, appoint committee chairs, and delegate other tasks and assignments as may be appropriate.
2. Vice-Chair: The member of the County Board who serves as Vice-chair will be selected annually by the vote of the County Board and shall preside at all meetings of the Berks County Agricultural Land Preservation Board in the absence of the Chair.
3. Secretary: The staff person for the County Board may serve as Secretary and will have no vote. The Secretary shall be responsible for seeing that all meetings are recorded.

## **ARTICLE VI: Election of Officers**

Terms of office: Install a limit of four (4) consecutive years in which a member of the Board can serve as Chairman or Vice Chairman beginning with the 2013 Chair appointment by the Chair of the County Commissioners and the election of the 2013 Vice Chairman by the Board.

Date of Election: Annually, the Chairperson of the Board of County Commissioners shall designate one member of the Board to act as Chairperson of the Board.

Nomination of Officers: All officers, except Chairperson, shall be nominated by members of the County Board and shall be themselves members of the County Board. A nominated candidate must be present at the meeting and may decline nomination.

Election: An officer shall be considered elected upon having received a simple majority vote of members present.

Vacancies: If a vacancy occurs in any office other than Chairperson, the County Board shall fill the vacancy at an election to be held at the first meeting after the vacancy occurs. Officers elected to un-expired terms are eligible for nomination for re-election to a full one-year term. The Chairperson of the Board of County Commissioners shall fill any vacancy in the office of the Chairperson of the Board.

## **ARTICLE VII: Meetings**

Meetings shall be in compliance with the provisions of the Sunshine Act (65 P.S. §§ 271-286).

1. *Regular Meetings* – The County Board will meet at least six times annually. Regular meetings are typically held the last Wednesday of each month. A schedule may be obtained at the County Office. The first meeting of the calendar year will be a re- organization meeting.
2. *Special Meetings* – The County Board may meet at any day, time, or place in a special meeting to carry out important business. The meeting may be called by the Chairperson, or by a petition to the Secretary from a quorum of Board members.

Business to be on a County Board meeting agenda must be submitted as follows:

1. Matters requiring legal review must be submitted by 12:00 noon three (3) weeks prior to a regular County Board meeting. If legal council will attend the regular County Board meeting to discuss the matter, the landowners' attorney must also submit a legal argument by the deadline.
2. Non-legal matters must be submitted by 12:00 noon two weeks prior to the regular County Board meeting unless an exception is approved by the Executive Director or County Board officer.

## **ARTICLE VIII: Quorum**

All meetings shall require a quorum of at least five members of the County Board to conduct business.

## **ARTICLE IX: Voting**

Each member of the County Board will be allowed to cast one vote. A simple majority vote of members present (provided the quorum rule is met) is needed to pass all resolutions and to transact all other items of business requiring a vote, except to amend these bylaws (see ARTICLE IX).

## **ARTICLE X: Amendments**

These bylaws can be amended only by a simple majority vote of all members of the County Board. The Secretary shall provide written notification of all proposed bylaw changes to all County Board members at least fifteen days prior to a vote at a regular or special meeting.

## **ARTICLE XI: Board Member Responsibilities**

Finance: All monies received via County or State funds shall be used for the purpose of protecting viable agricultural farmland in Berks County.

1. No member of the County Board shall be liable for the debts of the County Board.
2. No net income of the County Board shall accrue to the benefit of any member with the exception of purchasing conservation easements consistent with the Agricultural Area Security Law (3 P.S. §§ 901-915), as amended.
3. County Board members who have a personal interest or private interest in any measure proposed or pending before the County Board shall disclose the fact to the County Board and shall not vote thereon.

Participation: The County Board members shall be able to participate in the Berks County ACE Program provided they comply with the Act of October 4, 1978 (P.L. 833, No.170), known as the Public Official and Employees Ethics Law.

### Code of Conduct:

1. *Privacy of Landowner information and Communications.* Applications to the Agricultural Conservation Easement (ACE) Program are confidential. The County Board will direct inquiries regarding the ACE Program and applications to the County Office.
2. *Integrity of Records.* The County Board will protect, to the best of its ability, the information provided with regard to landowners applying to the ACE Program, including their financial information. However, the County Board recognizes that the PA State Agricultural Land Preservation Board will advertise information regarding a selected farm upon its approval.
3. *Conflicts of Interest.* The County Board will inform each member that his or her personal interests shall not conflict with the policies and practices of the County Board. The County Board will inform each member that any endorsements, testimonials, or statements made by a County Board member will be communicated as a reflection of the County Board member's personal opinion and not the opinion of the County Board. If a County Board member has a conflict of interest, he or she will identify the conflict of interest in writing to the County Board. The County Board will request that any member recuse himself or herself from voting on any matter in which the County Board member is personally involved.
4. *Business Partnerships.* The County Board agrees to conduct the business of accepting and selecting applications to the Berks County ACE Program on an impartial basis and with the best interests of the program. The County Board will treat all landowners applying to the ACE Program with fairness and will not discriminate on the basis of the personal opinion of a County Board Member.
5. *Complaints.* If a complaint is received regarding the conduct of any County Board member as to the above guidelines, the County Board Chair, the County Board Solicitor, and the Executive Director will investigate the complaint. The information derived from this investigation will be shared with the County Commissioners. It will be the sole responsibility of the County Commissioners to act upon such information and take whatever action they deem appropriate.
6. Attendance and participation in County Board members is critical to the success and advancement of the ACE Program. It is expected that County Board members attend a minimum of 50% of the regularly scheduled



meetings held annually. If any County Board member is unable to attend a meeting, the County Board member is responsible for contacting the Executive Director within 48 hours prior to the meeting date. If the Executive Director determines a quorum is not available after conferring with the County Board Chair, the Executive Director shall contact the County Board members regarding the cancellation or rescheduling of the meeting.

If any Board member attends fewer than 50% of the regularly scheduled monthly meetings held annually, unless the absence was due to unforeseen circumstances, the County Board member is subject to removal. Any complaints of absenteeism are to be directed to the County Board Chair. It is the responsibility of the County Board Chair to discuss any concerns with the County Board member.

If the County Board Chair determines the matter should be escalated, the County Board Chair shall approach the Commissioner who appointed the County Board member. Since the County Board members serve at the discretion of the County Commissioners, it is the responsibility of the Commissioners to address any removal.

If a County Board member determines he or she is unable to participate to the extent necessary, he or she should consider resigning from the Board.



## EXHIBIT B

### Definitions

Unless otherwise and expressly stated the following definitions apply to words, terms and phrases used in these guidelines.

- **Access** – A driveway, street, or other means of vehicle passage between the highway and abutting property, including acceleration and deceleration lanes and such drainage structures as may be necessary for the proper construction and maintenance of the roadway system.
- **ACE Program** – The Berks County Agricultural Conservation Easement Program.
- **Act, the** - The Agricultural Area Security Law (3 P.S. Section 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 a parcel for a purpose other than agricultural production. The easement may be granted by the landowners 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. It shall meet the minimum criteria, as set forth in Section VII of the Berks County Agricultural Conservation Easement Program Guidelines. 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 act of October 18, 1988 (P.L. 756, No. 108), known as the “Hazardous Sites Cleanup Act.”
- **Agricultural production** – The production for commercial purposes of crops, livestock, and livestock products, including the processing or retail marketing of such crops, livestock, or livestock products if more than 50% of such processed or merchandised products are produced by the farm operator. The term includes the use of land that is devoted to and meets the requirements of and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government.
- **Agricultural products** – Any animal product produced, or plant product cultivated, and other life forms produced for food, fiber, biofuel, medicinals and other products used to sustain and enhance human life. These agricultural products can be broadly grouped into foods, fibers, fuels, and raw materials.
- **Agricultural Security Area (ASA)** – A unit of 250 or more acres of land used for the agricultural production of crops, livestock, and livestock products under the ownership of one or more persons and designated as such by the procedures set forth in Act 43. Benefits of land being enrolled in an ASA include:
  - a. A local government unit may not impose ordinances that unreasonably restrict farm structures or practices within the Area, nor may normal farming operations and practices be deemed “nuisances” in a nuisance ordinance. State government agencies must modify their administrative regulations and procedures to encourage viable farming in Agricultural Security Areas.
  - b. Land condemnations within an ASA, proposed by either the Commonwealth or local agencies (such as municipal authorities, school boards, and governing bodies), must be reviewed and approved before land may be condemned.
  - c. Land must be enrolled in an ASA of 500 acres or more to be eligible for participation in the Berks County Agricultural Conservation Easement.
- **Animal Heavy Use Area** – Barnyard, feedlot, loafing area, exercise lot, or other similar area on an agricultural operation where due to the concentration of animals, it is not possible to establish and maintain vegetative cover of a density capable of minimizing accelerated erosion and sedimentation by usual planting methods.
- **Annex/Annexation** - To append or attach one tract of land to another.

- **Best Management Practices (BMPs)**– Activities, facilities, measures, planning, or procedures used to minimize accelerated erosion and sedimentation and manage stormwater to protect, maintain, reclaim, and restore the quality of waters and the existing and designated uses of waters within the Commonwealth of Pennsylvania before, during, and after earth disturbance activities.
- **Condemnation**– The legal process by which a governmental body exercises its right of “eminent domain” to acquire private property for public uses (highways, schools, redevelopment, etc.)
- **Conservation Plan** – A plan describing land management practices which, when completely implemented, will improve and maintain the soil, water and related plant and animal resources of the land. A conservation plan shall include the following:
  - (i) An installation schedule.
  - (ii) A maintenance program.
  - (iii) A nutrient management component consisting of a statement of whether a nutrient management plan is required under the Nutrient Management Act (3 P. S. §§ 1701—1718) and, if required, confirmation that a plan is in place or will be in place prior to conveyance of the agricultural conservation easement. If a nutrient management plan is not required under the Nutrient Management Act, the nutrient management component shall consist of a description of the amounts and types of nutrients generated on the farmland tract and a description of any current and planned measures or procedures for containment, use, disposal or other disposition of the nutrients described.
- **Contiguous acreage** - All portions of one operational unit as described in a deed, whether or not the portions are divided by streams, public roads, bridges, or railroads and whether or not described as multiple tax parcels, tracts, purparts, or other property identifiers. The term includes supportive lands such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds, and streams.
- **County Board** - The Berks County Agricultural Land Preservation Board, its officers or others authorized to act on behalf of the Board.
- **County Office** – The Berks County Department of Agriculture Office.
- **County Planning Commission** – The Berks County Planning Commission, its officers, or other staff authorized to act on behalf of the Commission.
- **Curtilage** - The area surrounding a residential structure used for a yard, driveway on lot sewage system or other nonagricultural purposes.
- **Driveway** – a private road giving access from a public way to a building on abutting grounds.
- **Deed of Merger** - A deed which, when recorded, accomplishes an annexation and which shall contain a condition and restriction in substantially the following form:
 

“UNDER AND SUBJECT nevertheless, to the express condition and restriction that Parcels A and B described hereinabove are hereby annexed, one to the other, and shall not hereafter be separately conveyed and shall not hereafter be considered separate building lots. The Grantees for themselves, their heirs and assigns, by acceptance of this indenture, agree that the said condition and restriction shall be a covenant running with the land.”
- **Eased Land** – Land protected against uses other than agriculture through the purchase of an agricultural conservation easement.
- **Easement** – An agricultural conservation easement.
- **Economic Viability of Farmland for Agricultural Production** - The capability of a particular tract of eased land, other than a tract of two acres or less upon which construction and use of the landowners’ principal residence or housing for a seasonal or full-time employee(s) is permitted

pursuant to Section 14.1(c)(6)(iv) of the Act (3 P.S. Section 914.1(c)(6)(iv), to meet all of the criteria set forth at Section 5.4 (relating to minimum criteria for applications).

- **Eligible Nonprofit Entity** - An entity that provides the State Board or Berks County satisfactory proof of all of the following:
  - a. That the entity is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. section 501 (c)(3); and
  - b. That the entity has experience acquiring, whether through purchase, donation, or other transfer, and agricultural or other conservation easement.
- **Eminent Domain** – A right of a government to take private property for public use by virtue of the superior dominion of the sovereign power over all lands within its jurisdiction.
- **Energy Rural Enterprise** - The production of energy from renewable sources, such as, but not limited to, wind, solar, hydroelectric, methane, wood, geothermal, alcohol fuel and fossil fuel systems, structures and facilities for the storage and treatment of animal wastes and equipment, and structures associated with the production of energy.
- **Goods, Arts and Crafts** – Materials, products, objects, and articles made with the hands exhibiting skill and craftsmanship. These items may be available on a preserved farm for purchase by a consumer and could include but are not limited to quilting; products from the culinary arts, such as baking, chocolatiering, and winemaking; products from the media arts, such as photography and film; and products from the visual arts, including drawing, painting, and sculpting with the use of wood, clay, ceramics, glass, textiles, stone, and metal.
- **Harm the Economic Viability of the Farmland for Agricultural Production** - To cause a particular tract of eased land to fail to meet the criteria set forth at Section 5.4a (relating to minimum criteria for applications) of this chapter, or to create, through subdivision, a tract of eased land, other than a tract of two acres or less upon which construction and use of the landowners' principal residence or housing for seasonal or full-time employees is permitted pursuant to Section 14.1(c)(6)(iv), of the Act (3 P.S. Section 914.1(c)(6)(i), what would fail to meet the aforescribed criteria.
- **Home Occupation** - A home occupation is an occupation conducted as an accessory use in or from a residential dwelling or its accessory building by persons whose principal residence is on the preserved farm, and which has no more effect on an adjacent property than normal residential use. Examples include: Hair salon, Financial Consultant, etc.
- **Land development** - Either of the following activities:
  - a. 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
  - b. A subdivision of land.
- **Land which has been devoted primarily to agricultural use** - That area which has been devoted primarily to agricultural use such as 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 impractical 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 two acres or less designated as the site upon which the landowners' principal residence or housing for seasonal or full-time employees is permitted pursuant to Section 14.1 (c)(6)(iv) of the Act (3 P.S. Section 914.1 (c)(6)(iv).
- **Local government unit** – Any city, borough, township or town or any home rule municipality, optional plan municipality, optional charter municipality or similar purpose unit of government, which may be created or authorized by statute.
- **Main Parcel** - Parent tract from which the parcel for annexation is taken.

- **Parcel** - A tract of land in its entirety which is assessed for tax purposes by one county, including any portion of that tract that may be located in a neighboring county. The county responsible for assessing an entire tract, on its own or in conjunction with either the Commonwealth or a local government unit, or both, shall be eligible to purchase agricultural conservation easements covering the entire tract.
- **Parcel for Annexation** - The tract of land of at least 10 acres to be attached to the Receiving Parcel.
- **Pennsylvania Municipalities Planning Code** - The Act of December 21, 1988 (P.L. 1329, No. 170)(53 P.S. Sections 10101-11201), as amended.
- **Receiving Parcel** - A tract of land subject to an agricultural conservation easement to which the parcel for annexation shall be annexed.
- **Residence** – A building used as a home; a dwelling.
- **Residue Parcel** - The tract of land of at least 52 acres remaining after the annexation.
- **State Board** - The Pennsylvania State Agricultural Land Preservation Board.
- **State Bureau** – The Pennsylvania Bureau of Farmland Preservation
- **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 divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development. Subdivisions can either be general subdivisions, which result in two parcels with a minimum of 52 acres each, or residential, which permits the subdivision of one parcel of two acres or less which contains either the existing residential structure or the permitted additional residential structure.
- **Subordination Agreement** – Document signed by a lender in which the lender agrees to take second position to the Deed of Agricultural Conservation Easement.
- **Tract** - A tract shall be considered to be that area of land offered by the landowners for agricultural conservation easement purchase, which meets or exceeds the minimum criteria. The tract may consist of multiple tax parcel identification numbers and/or deeds.
- **Utility** - Any surface, subsurface or aerial transmission medium for electricity, oil, gas, water, sewage, telecommunications.



# BERKS COUNTY *agricultural land* PRESERVATION BOARD

Berks County Agricultural Center  
1238 County Welfare Road, Suite #260  
Leesport, PA 19533 - 9199  
(610) 378-1844 Fax (610) 378-7983  
[www.berkspa.gov/departments/agriculture](http://www.berkspa.gov/departments/agriculture)

## Application to the Berks County Agricultural Conservation Easement (ACE) Program

### Landowner Information:

Name(s): \_\_\_\_\_

Address: \_\_\_\_\_  
(Street) (City) (State) (Zip Code)

Telephone: ( ) \_\_\_\_\_ Email: \_\_\_\_\_

Optional Alternate contact (If different from landowner, i.e. Relative, Farm Operator, Power of Attorney, etc.):

(Name) (Street) (City) (State) (Zip code) (Phone)

Relationship: \_\_\_\_\_

*I/we grant permission to contact this individual, concerning the application of my/our farm to the ACE Program.*

### Farm Identification Information:

Township(s): \_\_\_\_\_ County(s): \_\_\_\_\_

Farm Address: \_\_\_\_\_  
(Street) (City) (State) (Zip code)

Directions from nearest state route: \_\_\_\_\_  
\_\_\_\_\_

Tax Parcel Identification Number(s) (PIN(s)): \_\_\_\_\_  
\_\_\_\_\_

Deed Reference(s): \_\_\_\_\_

List existing deed restrictions: \_\_\_\_\_  
\_\_\_\_\_

(Deed restrictions would include, but are not limited to: Restrictions that would limit non-agricultural or agricultural uses; cellular towers; others interest in the land, such as water rights, sewage easements, right of ways, etc.)

List businesses, buildings or activities on the farm that are not related to agriculture: \_\_\_\_\_  
\_\_\_\_\_

Is the farm enrolled in an Agricultural Security Area? Yes ( ) No ( )

If no, have you applied to be in an agricultural security area? \_\_\_\_\_

**Farm Operations Information:**

Crops grown on farmland tract: \_\_\_\_\_

Number & kinds of livestock: \_\_\_\_\_

Is there a conservation plan for the farm? Yes ( ) No ( )  
 If yes, under what name? \_\_\_\_\_

Is there a nutrient management plan for the farm? Yes ( ) No ( )  
 If yes, under what name? \_\_\_\_\_

Farm acreage: \_\_\_\_\_ - \_\_\_\_\_ = \_\_\_\_\_

**Total Acreage of the Farm** Minus **excluded acreage** equals **total acreage offered**

Please provide the acreage for the following land uses:

	Farm acres:	Exclusion:	Acres offered:
<b>Cropland:</b>	_____	_____	_____
<b>Pasture:</b>	_____	_____	_____
<b>Woodland:</b>	_____	_____	_____
<b>Buildings and Roads:</b> (i.e.: House, barn, yard, etc.)	_____	_____	_____
<b>Other:</b> Please circle. (Cemeteries, cell towers, quarries, etc.) or CREP, CRP, WRP, GRP, WHIP	_____	_____	_____
<b>Total acres:</b> (Must match acres offered in application.)	_____	_____	_____

**Landowner Signatures: (ALL Landowners' Signatures Are Required)**

*If selected, you are advised to meet with your attorney and accountant as you proceed through the Berks County ACE Program, as this is a legal and financial process.*

_____ Name	_____ Date	_____ Name	_____ Date
_____ Name	_____ Date	_____ Name	_____ Date

**For Office Use Only**

PIN(s): \_\_\_\_\_

App. Acreage: \_\_\_\_\_ Prime Soils Ac: \_\_\_\_\_ Percentage: \_\_\_\_\_

ASA: \_\_\_\_\_ Ag Production Ac: \_\_\_\_\_ Percentage: \_\_\_\_\_

Fut./Des.: \_\_\_\_\_ App. Received: \_\_\_\_\_

Comp Plan: \_\_\_\_\_ Cooperator Form Status: \_\_\_\_\_

EXHIBIT D



**Example of WORKSHEET TO DETERMINE  
Easement Value Using Second Appraisal**

**EXAMPLE ON A 100 ACRE FARM**

County Board's Appraisal values:

Market Value	\$9,500 per acre	\$950,000
Farmland Value	\$7,400 per acre	\$740,000
Easement Value	\$2,100 per acre	\$210,000

Landowners' Appraisal Values:

Market Value	\$9,900 per acre	\$990,000
Farmland Value	\$7,200 per acre	\$720,000
Easement Value	\$2,700 per acre	\$270,000

**THE FARMLAND VALUE SHALL EQUAL THE SUM OF**

1. The farmland value determined by the landowners' appraiser = \$7,200 per acre or \$720,000
2. One-half the difference between the farmland value determined by the County Board's appraiser and the farmland value determined by the landowners' appraiser, if the farmland value determined by the Board's appraiser exceeds the farmland value determined by the landowners' appraiser.

	\$7,400 per acre or \$740,000 = Farmland value by the County Board's appraiser
Less	\$7,200 per acre or \$720,000 = Farmland value by the landowners' appraiser
	\$ 200 per acre or \$ 20,000 divided by 2 = \$100 per acre or \$10,000

	\$7,200 per acre or \$ 720,000
	+ \$ 100 per acre or \$ 10,000
<b>Re-Calculation of farmland value:</b>	<b>\$7,300 per acre or \$730,000</b>

**THE MARKET VALUE SHALL EQUAL THE SUM OF**

1. The market value determined by the County Board's appraiser = \$9,500 per acre or \$950,000
2. One-half of the difference between the market value determined by the landowners' appraiser and the market value determined by the County Board's appraiser, if the market value determined by the landowners' appraiser exceeds the market value determined by the County Board's appraiser.

	\$9,900 per acre or \$990,000 = Market value by the landowners' appraiser
Less	\$9,500 per acre or \$950,000 = Market value by the County Board's appraiser
	\$ 400 per acre or \$ 40,000 divided by 2 = \$200 per acre or \$20,000

	\$9,500 per acre or \$ 890,000
	+ \$ 200 per acre or \$ 40,000
<b>Re-Calculation of market value:</b>	<b>\$9,700 per acre or \$970,000</b>

**CALCULATION OF REVISED EASEMENT VALUE**

Revised market value =	\$9,700 per acre or \$950,000
Revised Agricultural value =	\$7,300 per acre or \$740,000
<b>Revised easement value =</b>	<b>\$2,400 per acre or \$240,000</b>



*EXHIBIT E*



**BERKS COUNTY**  
*agricultural land*  
**PRESERVATION BOARD**

Berks County Agricultural Center  
1238 County Welfare Road, Suite #260  
Leesport, PA 19533 - 9199  
(610) 378-1844 Fax (610) 378-7983  
[www.countyofberks.com/departments/agriculture](http://www.countyofberks.com/departments/agriculture)

**Notice to Be Heard Memorandum**

TO: All Adjoining Landowners  
FROM: Director  
DATE:  
RE: Agricultural Conservation Easement

The Berks County Agricultural Land Preservation Board is pleased to announce that the farm listed below, which adjoins your property, is being considered for the purchase of an agricultural conservation easement. If an easement is purchased, the farm can never be developed or used for any purpose, other than agriculture. The easement severely restricts subdivision and allows only one additional residential structure for the landowners or employee of the farm. The landowners will also be required to maintain sound farming practices in accordance with a prescribed conservation plan. All preserved farms are inspected annually to ensure that the restrictions of the easement are being followed. By Pennsylvania State law, you, as a neighbor, must be notified and be given the right to be heard on one or more of the five criteria listed below. Please contact the Berks County Department of Agriculture Office at (610) 378-1844 with any questions or concerns. If you want more information about the program, please visit our website at [www.berkspa.gov/departments/agriculture](http://www.berkspa.gov/departments/agriculture).

This announcement will hereby serve to notify the citizens of “Name of Township(s)”, Berks County, that the Berks County Agricultural Land Preservation Board has received and reviewed an application for an agricultural conservation easement purchase for the farm owned by “Landowner Name(s)” located on “Street address” consisting of “Acreage” and will be recommending that the State Agricultural Land Preservation Board approve the easement sale.

An “agricultural conservation easement” would prevent the farmland in question from being developed or improved for any purpose other than agricultural production. The complete definition and explanation of agricultural conservation easement is found at Section 2 of the “Agricultural Area Security Law” (3 P.S. § 901-914.2)

A Commonwealth Court decision requires that the State Board give you (as an landowners of land adjoining a proposed agricultural conservation easement purchase) NOTICE AND OPPORTUNITY TO BE HEARD on the question of whether the State Board should approve this purchase.

The State Board’s authority to review this agricultural conservation easement purchase recommendation, and your authority to challenge this recommendation, is limited. Section 141(e)(1) of the Agricultural Security Law describes the boundaries of this authority.

The State Board may reject the recommendation made by a county for purchase of an agricultural conservation easement whenever:

1. The recommendation does not comply with a county program certified and approved by the State Board for purchasing agricultural conservation easements.

2. Clear title cannot be conveyed.
3. The farmland which would be subject to the agricultural conservation easement is not located within a duly established agricultural security area established or recognized under this act.
4. The allocation of state and county fund established pursuant to subsection (h) is exhausted or is insufficient to pay the purchase price.
5. Compensation is not provided to owners of surface-mineable coal distributed or affected by the creation of such easement.

The State Board shall meet to consider approving the application for purchase of the agricultural conservation easement at issue on “Date” at “Time” in “Room #” of the Pennsylvania Department of Agriculture Building, located at 2301 North Cameron Street in Harrisburg, PA.

**YOU HAVE THE RIGHT TO PRESENT RELEVANT EVIDENCE, TO OFFER TESTIMONY OR TO CROSS-EXAMINE WITNESSES AT THIS MEETING.** You may be represented by your attorney, if you so choose. Only evidence that is relevant to the five factors listed above may be considered by the State Board.

**IF YOU WISH TO PARTICIPATE** in this meeting, you must notify \_\_\_\_\_, Director, Bureau of Farmland Preservation, 2301 North Cameron Street, Room #402, Harrisburg, PA 17110-9408, by letter postmarked no later than “Date”, of your intention to participate and the specific factors (of the five listed above) which you wish to challenge. Failure to follow this procedure shall result in the State Board denying you the opportunity to be heard.

**EXHIBIT F**

Prepared By: Berks County Agricultural Land  
Preservation Board  
Berks County Agricultural Center  
1238 County Welfare Road  
Leesport, PA 19533  
(610) 378-1844

Premises: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Return To: Berks County Agricultural Land  
Preservation Board  
Berks County Agricultural Center  
1238 County Welfare Road  
Leesport, PA 19533

**Conservation Plan Agreement**

Landowner Information:

Name(s): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Farmland Information:

Street Location: \_\_\_\_\_

Township: \_\_\_\_\_ Acreage: \_\_\_\_\_

Deed Recorded at: \_\_\_\_\_

WHEREAS, the deed of agricultural conservation easement requires that all agricultural production on the subject land shall be conducted in accordance with a conservation plan;

WHEREAS, \_\_\_\_\_ has prepared a conservation plan for the subject land, identified as plan number \_\_\_\_\_, dated \_\_\_\_\_, or as amended, located on file in the Berks County Agricultural Land Preservation office, incorporated herein by reference.

AND THEREFORE, the Grantor(s) do hereby agree to comply with the conservation practices and implementation schedule in the conservation plan, and acknowledge that failure to comply would violate the terms of the deed of agricultural conservation easement.

IN WITNESS WHEREOF, the undersigned have agreed to the following:

(I)(We) acknowledge and agree to comply with the conservation practices and implementation schedule as indicated in the conservation plan. If the management or operation of this property changes or when the conservation plan is more than ten years old, I will modify the conservation plan as necessary.





# **BERKS COUNTY** *agricultural land* **PRESERVATION BOARD**

Berks County Agricultural Center  
1238 County Welfare Road, Suite #260  
Leesport, PA 19533 - 9199  
(610) 378-1844 Fax (610) 378-7983  
[www.berkspa.gov/departments/agriculture](http://www.berkspa.gov/departments/agriculture)

## **Agricultural Security Area Program**

Act 43 of 1981, as amended

The Agricultural Security Area program began in 1981 as a tool for strengthening and protecting agriculture in Pennsylvania. Landowners, working together, initiate the process of establishing such areas where agriculture is the primary activity. When enrolled, participating farmers are entitled to special consideration from local and state government agencies thus encouraging the continuing use of the land for productive agricultural purposes.

Agricultural Security Areas are intended to promote more permanent and viable farming operations by strengthening the farming community's sense of security in land use and the right to farm. Agricultural Security Areas are created by local municipalities in cooperation with individual landowners who agree to collectively enroll at least 250 acres in an Agricultural Security Area.

### **Benefits to Landowners Joining an Agricultural Security Area**

1. The local governments refrain from enacting ordinances and regulations which restrict farming operations and farm structures within an Agricultural Security Area.
2. When defining a public nuisance, the local government will provide exceptions for normal agricultural activities occurring within an Agricultural Security Area, unless the law protects public health and safety.
3. State agencies or programs, which could negatively affect farmers, shall act in a manner that will encourage the continuation of viable agriculture in the areas.
4. Limitations are placed on the use of land condemnation procedures—eminent domain—by State and local agencies unless approval is obtained from the Agricultural Land Condemnation Approval Board (ALCAB).
5. Landowners have the opportunity to apply to the Agricultural Conservation Easement (ACE) Program once enrolled into an Agricultural Security Area\*. The ACE Program can provide financial benefits to those landowners that sell an agricultural conservation easement to Berks County.

*\* The ACE Program has other criteria that must be met in addition to the ASA enrollment prior to applying.*

### **Who Should Enroll Into an ASA**

*Landowners whose land meets the following requirements:*

- The property must be at least 10 acres in size. It does not have to be adjoining other property enrolled in an Agricultural Security Area.
- The property must be viable agricultural land. Cropland, pasture, and woodland can all be included in an Agricultural Security Area.
- At least 50% of the land should be in soil capability classes I-IV, as defined by the county soil survey. Options exist if this requirement is not met.
- The property must be zoned to permit agricultural uses.

## **How to Enroll Your Land In an ASA**

1. Complete an agricultural security area application form and attach a copy of your tax map. Application forms and tax maps may be obtained by contacting our office, the Berks County Agricultural Land Preservation Board, at (610) 378-1844, by visiting our website at [www.berkspa.gov/departments/agriculture](http://www.berkspa.gov/departments/agriculture), or at the township where you reside.
2. Mail the application to your township office by certified mail with return receipt, provided your township has an Agricultural Security Area.\*

*\* Please Note: If your land is located in a township without an ASA, please contact our office for additional information and options.*

## **Township Review and Approval**

- All townships within Berks County that have an ASA have more than 250 acres enrolled.
- New parcels of farmland may be added to an established ASA at any time. *Note: Many townships have specific enrollment periods for ease in processing.*
- Townships review enrollment in Agricultural Security Areas every seven years.

### **Participation in Act 43, the Agricultural Security Area Law, is voluntary.**

Both enrollment in an Agricultural Security Area and participation in the Berks County Agricultural Conservation Easement (ACE) Program are voluntary.

## **Additional Information is Available, including:**

ASA Enrollment Form  
ASA Township Enrollment Periods  
ASA Handbook  
ASA Legislation  
ASA Seven-Year Review Fact Sheet  
Seven-Year Review Process  
Information on the ACE Program  
Application to the ACE Program

## **Berks Co. Townships with Agricultural Security Areas**

Albany  
Amity  
Bern  
Bethel  
Brecknock  
Caernarvon  
Centre  
Colebrookdale  
District  
Douglass  
Greenwich  
Heidelberg  
Hereford  
Jefferson  
Longswamp  
Lower Heidelberg  
Maidencreek  
Marion  
Maxatawny  
North Heidelberg  
Oley  
Ontelaunee  
Penn  
Perry  
Pike  
Richmond  
Robeson  
Rockland  
Ruscombmanor  
South Heidelberg  
Spring  
Tilden  
Tulpehocken  
Union  
Upper Bern  
Upper Tulpehocken  
Washington  
Windsor