

LANDOWNER REFERENCE GUIDE

**DAUPHIN COUNTY
AGRICULTURAL LAND
PRESERVATION PROGRAM**

PREPARED BY:

**DAUPHIN COUNTY
AGRICULTURAL LAND
PRESERVATION BOARD**

**1451 PETERS MOUNTAIN ROAD
DAUPHIN PA 17018
717-921-8100**

AUGUST 2016

TABLE OF CONTENTS

Introduction

Section 1 Sales and Other Ownership Changes

Section 2 Subdivision

Section 3 Building Construction

Section 4 Conservation Planning

Section 5 Deed Restrictions

Section 6 Rural Enterprises

Conclusion

Contact Information

INTRODUCTION

Since 1990, Dauphin County has been participating in the statewide Agricultural Conservation Easement Purchase Program. Under this program, millions of taxpayer dollars have been spent to protect the Commonwealth's agricultural lands. Under this program farmland is preserved through the purchase of agricultural conservation easements. These easements spell out very specifically what the land may be used for and how it is to be maintained for the generations that follow us.

This document is intended as a resource for you, the owner of farmland in Dauphin County that is preserved through the easement purchase program. It is hoped that you will consult this document for guidance when considering any sale of land, changes in ownership, and changes in farming practices, building construction or any other decisions that will affect your protected farmland.

You are encouraged to consult the Dauphin County Agricultural Land Preservation Board with any questions you may have regarding what is and is not permitted under the deed of easement and with any other questions you may have in respect to this program.

In this document:

The Dauphin County Agricultural Land Preservation Board is referred to as the Board.

The Dauphin County Agricultural Conservation Easement Purchase Program is referred to as the Program.

The Dauphin County Conservation District is referred to as the District.

SECTION 1

SALES AND OTHER OWNERSHIP CHANGES

There are specific procedures and requirements to be met anytime the ownership of an eased farm changes. A change in ownership may be as obvious as the sale of a farm by the owner to another owner. Other changes in ownership may not be as obvious. For example, the following actions are also a change in ownership:

1. The addition of a child's or spouses name to the deed.
2. Any change in the percentage of ownership of the farm.
3. Formation of a corporation or partnership where the eased land may be owned essentially by the same person or people but under a new corporate or partnership name.
4. The removal of a spouse's name from the deed in cases of divorce, death or other situations.
5. Allowable subdivision

In short, any changes in ownership of any kind or of any magnitude that require the deed to be changed in any way, must be done according to the following procedures and requirements, as outlined in the Program:

1. Before entering into any agreements, contracts or other legally binding mechanisms for the sale, transfer or conveyance of ownership of, or interest in land subject to an Agricultural Conservation Easement, the landowner must notify the Board of the intent to sell, convey or transfer ownership or interest in such land.
2. All requirements of subdivision must be met (see Section 2), if applicable.
3. Deeds to parcels sold, transferred or conveyed must recite the original language of the easement deed **VERBATIM**. This can easily be accomplished by attaching the original deed of easement to the new deed and referencing it in the new deed as an exhibit or attachment.
4. If applicable, the right to build an additional residence must be assigned to a specific parcel by the landowner.
5. A copy of the recorded deed conveying ownership or interest in eased land must be forwarded to the Board within 30 days of recording date.
6. The Board and Pennsylvania Department of Agriculture must be notified within 30 days of closing as to the price per acre or portion thereof received by the landowner for the land and the name, address and phone number of the person, persons or entity to whom the subject land was conveyed or transferred.

Although not required, the landowner is urged to forward a copy of the new deed to the Board for review prior to closing. This will prevent additional time, cost and effort in preparing and re-recording a corrective deed if any errors are present.

The reason for these requirements is not only to maintain the integrity of the easement but also to protect future landowners that might purchase an eased farm. By following these simple procedures the status of the farm as an eased farm will be clear to future owners. This will help to prevent any violations of the easement that may harm the agricultural aspect of the farm. It will also help to make future landowners aware of the deed restrictions thereby allowing them to avoid any violations of the deed of easement and possible legal problems.

SUBDIVISION

On December 28, 1995, the State Agricultural Land Preservation Board approved the subdivision guidelines established by the Board. All counties participating in this program were required to develop guidelines applicable to eased farms in that county. In Dauphin County farms that were approved for easement purchase by the state board on or before December 28, 1995 do not fall under these guidelines. Farms approved for easement purchase after December 28, 1995 do fall under these guidelines. To determine which set of regulations your land falls under, check the signature page of your recorded deed of easement. (If you cannot locate your recorded deed of easement, contact the conservation district at 921-8100.) Deeds that fall under the guidelines will note this below the signatures. Deeds that do not fall under the guidelines do not have this note.

FARMS APPROVED FOR EASEMENT PURCHASE ON OR BEFORE DECEMBER 28, 1995

The restrictions that apply to subdivision of farms approved for easement purchase on or before December 28, 1995 are found in item 3 of the deed of easement. That item states:

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

For farms that fall under this subdivision provision, for all tracts created by subdivision, the following must be met.

1. The farm must be 50% or more harvestable cropland or pastureland.
2. The farm must have 50% or more of its soils in production in Class I-IV.
3. The farm must be 50 acres in size or 10 acres in size and adjoin another eased farm.

If subdivision will create a new parcel or parcels capable of meeting the above criteria, and if the remaining land is also capable of meeting the above criteria, subdivision may be allowable. If subdivision will create or leave any tracts that cannot meet the above criteria, subdivision may not be allowable.

FARMS APPROVED FOR EASEMENT PURCHASE AFTER DECEMBER 28, 1995

For farms approved for easement purchase after December 28, 1995, the Board has developed a more specific set of subdivision guidelines. These guidelines were required by the state and will vary from county to county. The following subdivision requirements must be met:

1. Approval of a subdivision must be requested, in writing, and granted by the county board and the state board.
2. Subdivision cannot harm the agricultural viability of any parcel created by subdivision.
3. Each parcel created or remaining as a result of subdivision shall have all of the following:
 - Fifty percent (50%) of its soils in USDA Capability Class I-IV
 - Fifty percent (50%) of its area utilized for crop or pasture land
 - 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.
4. No parcel of less than 100 acres may be created or remain after subdivision of the original parcel.

In addition to the above, there is a specific procedure for subdivision. This procedure is not included here. The complete procedure is outlined in the Dauphin County Agricultural Land Preservation Program document.

There is one, and only one, exception to the subdivision requirements outlined above for all farms. This exception pertains to subdivision of up to two acres of land for the construction of a residential structure to be used by the principle landowner or for providing housing for seasonal or full-time farm employees. The construction of additional buildings is addressed further in Section 3. Under this provision the principle landowner may subdivide up to two acres of eased land for the purpose of building a residential structure. It is also important to understand that this right to subdivide two acres for a residential structure is reserved for the landowner only and that it may be used only once.

What this means is that if the owner of an eased farm does not exercise this right prior to selling the property to another owner, the right to subdivide the two acres and build the additional residential structure pass to the new owner. Further, once this right is exercised, the deeds to the two-acre parcel and the original farm must incorporate language that prohibits any additional residential structures on either tract.

As outlined above, the right to subdivide up to two acres for a residential structure is reserved for the principle landowner. But what if an owner of an eased farm subdivides the land according to all regulations but does not exercise the right to subdivide the two acres for a residential structure? For example, a landowner owns a 250-acre farm that is subject to a conservation easement. The landowner, in accordance with all regulations, subdivides the farm creating two 125-acre farms and sells one to another individual for farming. Who is entitled to subdivide the two acres for the allowable residential structure?

In these cases, regulations specify that the owner who subdivided the property must specify which parcel the right to subdivide two acres and construct the residential structure will be assigned. The deed to this parcel will state that this right may be exercised on this parcel. The deeds to other parcels must state that no additional residential structures may be built on those parcels.

It is important to be aware that even in situations where the landowner is exercising his or her right to subdivide up to two acres for one additional residential structure, County Board and possibly State Board approval is needed.

BUILDING CONSTRUCTION

The restrictions on the number and types of building that may be constructed on preserved farms maybe the most important restrictions of all in preserving a farm for agricultural use. The deed of easement, in Item 2, outlines the restrictions on building construction.

2. Construction of Buildings and Other Structures – The construction or use of any building or other structure on the subject land other than as existing on the date of the delivery of this Deed is prohibited except that:

- (a) The erection of fences for agricultural production and protection of watercourses such as lakes, streams, springs and reservoirs is permitted.*
- (b) The construction of one additional residential structure is permitted if;*
 - i. The construction and use of the residential structure is limited to 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 restricted land at any time since the delivery of the Deed.*
 - 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.*
- (c) The construction or use of any building or other structure for agricultural production is permitted.*
- (d) The replacement of a residential structure existing on the restricted land on the date of the granting of the easement is permitted.*

For the most part, these regulations are self-explanatory. Structures used for agricultural production are permitted as needed. This would include silos, barns, equipment sheds, milking parlors, poultry houses, stables, other livestock facilities and manure storage structures. Fences for agricultural production and protection of water resources are allowed. This would include fencing of pasture areas or streambank fencing.

Also allowable is the construction of one additional residential structure. This structure is to be for the use of the principle landowner or seasonal or full-time farm employees. Once this right is exercised, no additional residential structures may be built on the eased property. The Deed to the property must be revised to state that no additional residential buildings may be constructed.

The replacement of a residential structure that existed on the property at the time the Deed was signed is also allowable. This replacement does not affect the landowner's right to build the allowable additional residential structure. For example, if a landowner sells a conservation easement for a farm that has one house on it and that house would burn down, the landowner could rebuild the home and still have the right to build one additional residential structure.

Other types of buildings may or may not be allowable under the terms of the easement. For example, a roadside fruit or vegetable stand may be allowable if at least 50% of the commodities sold from the stand are produced on the farm. If more than 50% of what is sold is produced off of the farm, the stand would be a violation.

The use of existing buildings for non-agricultural purposes such as home-based businesses or office space could also be a violation of the Deed of Easement. Examples of this would include a motor vehicle repair shop operated out of an existing garage, the conversion of a residential structure to apartments or the use of an existing home as professional office space. Some uses, however, are allowable as "customary part-time or off-season minor or rural enterprises".

CONSERVATION PLANNING

Item 7 of the Deed of Easement states that agricultural production on eased farms shall be done in compliance with a conservation plan approved by the conservation district or county board. In Dauphin County, the conservation district approves or disapproves conservation plans.

The implementation of a sound conservation plan is critical to the long-term maintenance of an eased farm. When the voters of the Commonwealth approved the referendum that enabled this program to become a reality, they did so with the realization that an ample supply of farmland was a necessary resource for Pennsylvanians now and in the future. Given that hundreds of millions of dollars in county and state tax dollars have been spent to preserve farmland, it is absolutely imperative that these farms be managed in such a way as to ensure that the soil resources on this land be available for future agricultural production.

The first step in achieving this goal is the development of a sound conservation plan. There are several types of conservation plans written. The plan type required under the Deed of Easement is a plan that provides conservation practices for the entire farm; cropland, pastureland, woodland, barnyards, homestead and so on. Other types of plans include Alternative Conservation Plans and Food Security Act (FSA) Plans. Alternative plans do not provide adequate protection against soil erosion and are not approved in Dauphin County. FSA type plans do not provide conservation practices for the entire farm.

The second step is to fully implement the conservation plans. This means the complete installation and maintenance of necessary structures and practices and following the plan's recommendations. Structures and practices include strips, terraces, diversions, streambank fencing and stabilized stream crossings for livestock, crop rotation, conservation tillage, and pasture and nutrient management.

It is the responsibility of owners of eased farms to ensure that the proper plan is written for the farm and implemented fully. This is true for any owner of an eased farm, whether the owner farms the land himself or rents the eased land to another farmer.

Remember that the preservation of your farm only makes sense if there is sufficient soil retained on the land for crops to thrive in. A sound, fully implemented and maintained conservation plan will protect the valuable soil resources on your farm for your use and for the use of future generations for whom we have undertaken this effort.

Plans must be revised or updated when needed. This would include changes in crops, adding or removing pasture or cropland, changes in ownership or renter and any other changes that would render the conservation plan obsolete.

DEED RESTRICTIONS

The activities that are and are not permissible on the eased farm are spelled out in the Deed of Easement. These items include, by reference, the subdivision guidelines established by the county board. As discussed earlier, farms that received state board approval for easement purchase prior to December 28, 1995 are not subject to the subdivision restrictions listed as item 3 in the Deed of Easement. Beyond the subdivision restriction differences, all farms, regardless of when approved are subject to the 13 Deed restrictions shown below.

1. Permitted Acts – During the term of the agricultural conservation easement conveyed herein, the subject land shall be used solely for the production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of such crops, livestock or livestock products if more than fifty percent of such processed or merchandised products are produced on the subject land (hereinafter “agricultural production”). For purpose of this Deed, “crops, livestock and livestock products” include, but are not limited to:
 - A. Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans;
 - B. Fruits, including apples, peaches, grapes, cherries and berries;
 - C. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onion 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, fur-bearing animals, milk, eggs and furs;
 - F. Timber, wood and other wood products derived from trees; and
 - G. Aquatic plants and animals and their by-products.
 - H. Commercial equine activity including boarding of equine, training of equine, instruction of people 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 any activity on the subject land other than agricultural production.

2. Construction of Buildings and Other Structures – The construction or use of any building or other structure on the subject land other than as existing on the date of the delivery of the Deed is prohibited except that:
 - A. The erection of fences for agricultural production and protection of watercourses such as lakes, streams, springs and reservoirs is permitted.
 - B. The construction of one additional residential structure is permitted if;
 - 1) The construction and use of the residential structure is limited to providing housing for persons employed in farming the subject land on a seasonal or full-time basis,
 - 2) No other residential structure has been constructed on the restricted land at any time since the delivery of the Deed.
 - 3) The residential structure and its curtilage occupy no more than two acres of the subject land, and
 - 4) The location of the residential structure and its driveway will not significantly harm the economic viability of the subject land for agricultural production.

- C. The construction or use of any building or structure for agricultural production is permitted.
 - D. The replacement of a residential structure existing on the restricted land on the date of the granting of the easement is permitted.
 - E. The renovation or modification of an existing residential structure, or an addition to an existing residential structure, is permitted if it would not increase the curtilage of the residential structure.
 - F. The renovation or modification of an existing agricultural building or structure, or an addition to an existing agricultural building or structure, is permitted. The maximum building coverage may be restricted if the County Agricultural Conservation Easement Purchase Program approved by the State Board imposes such a restriction.
3. Subdivision – The subject land may be subdivided if subdividing will not harm the economic viability of the subject land for agricultural production. If the subject land is subdivided, the Deeds to all of the subdivided parcels shall state on which of the subdivided parcels the residential structure permitted by this Deed may be constructed. Deeds to all other parcels shall recite that no additional residential structure is permitted.
 4. Utilities – The granting of rights-of-way by the Grantor, his heirs, executors, administrators, successors and assigns or any other 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.
 5. Mining – The granting of leases, assignments or other conveyances or the issuing of permits, licenses or other authorization for the exploration, development, storage or removal of coal by underground mining methods, oil and gas by the owner of the subject land or the owner of the underlying coal by underground mining methods, oil and gas or the owner of the rights to develop the underlying coal by underground mining methods, oil and gas, or the development of appurtenant facilities related to the removal of coal by underground mining methods, oil or gas development of activities incident to the removal or development of such minerals is permitted.
 6. Rural Enterprises – Customary part-time or off-season minor or rural enterprises and activities that are provided for in the Dauphin County Agricultural Easement Purchase Program approved by the state board are permitted.
 7. Soil and Water Conservation – All agricultural production on the subject land shall be conducted in accordance with a conservation plan approved by the county conservation district or the county board, the conservation plan shall require that:
 - A. The use of the land for growing sod nursery stock, ornamental trees and shrubs does not remove excessive soil from the subject land, and
 - B. The excavation of soil, sand, gravel, stone or other materials for use in agricultural production on the land is conducted in a location and manner that preserves the viability of the land for agricultural production.
 8. Responsibilities of Grantor Not Affected – Except as specified herein, this Deed does not impose any legal or other responsibility on the Grantees, their successors, or assigns. Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the subject land and all improvements erected thereon. Grantor shall continue to be solely responsible for the maintenance of the subject land and all improvements erected thereon. Grantor acknowledges that Grantees have no knowledge or notice of any hazardous waste stored on or under the subject land. Grantee’s exercise or failure to exercise any right conferred by the agricultural conservation easement shall not be deemed to be management or control of activities on the subject land for purposes of enforcement of the Act of October 18, 1988, (PL 756, No. 108), known as the Hazardous Sites Cleanup Act.

Grantor, his heirs, executors, administrators, successors or assigns agree to hold harmless, indemnify and defend Grantees, their successors or assigns from and against all liabilities and expenses arising from or in any way connected with all claims, damages, losses, costs or expenses, including reasonable attorneys' fees, resulting from a violation or alleged violation of any state or federal environmental statute or regulation including, but not limited to, statutes or regulations concerning the storage or disposal of hazardous or toxic chemicals or materials.

9. Enforcement – Annually, Grantees, their successors, assigns or designees have the right to enter the subject land for the purpose of inspecting to determine whether the provisions of this Deed are being observed. Written notice of such annual inspection shall be mailed to the Grantor, his heirs, executors, administrators, successors or assigns at least ten days prior to such inspection. The annual inspection shall be conducted between the hours of 8 AM and 5 PM on a weekday that is not a legal holiday recognized by the Commonwealth of Pennsylvania or at a date and time agreeable to the county and the landowner.

Grantees, their successors, assigns or designees shall also have the right to inspect the subject land at any time, without prior notice, if Grantees have reasonable cause to believe the provisions of this Deed have been or are being violated.

Grantor acknowledges that any violation of the terms of this Deed shall entitle Grantees, their successors, assigns or designees to obtain an injunction against such violation from a court of competent jurisdiction along with an order requiring Grantor, his heirs, executors, administrators, successors or assigns to restore the subject land to the condition it was in prior to the violations, and recover any costs or damages incurred including reasonable attorney's fees. Such relief may be sought jointly, severally or serially.

10. Duration of Easement – The agricultural conservation easement created by this Deed shall be a covenant running with the land and shall be perpetual in duration. Every provision of this Deed applicable to Grantor shall apply to Grantor's heirs, executors, administrators, successors, assigns, agents and any person, partnership, corporation or other entity claiming title under or through Grantor.
11. Conveyance or Transfer of the Subject Land – Grantor, his heirs, executors, administrators, successors or assigns and any person, partnership, corporation or other entity claiming title under or through Grantor, shall notify Grantees in writing of any conveyance or transfer of ownership of the subject land. Such notification shall set forth the name, address and telephone number of the Grantor and the party or parties to whom ownership of the subject land has been conveyed or transferred. This obligation shall apply to any change in ownership of the subject land.

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

12. Applicability – Every provision of this Deed applicable to Grantor shall apply to Grantor's heirs, executors, administrators, successors, assign, agents and any person, partnership, corporation or other entity claiming title under or through Grantor.
13. Interpretation – This Deed shall be interpreted under the laws of the Commonwealth of Pennsylvania. For purposes of interpretation, no party to this Deed shall be considered to be the drafter of the Deed. All provisions of this Deed are intended and shall be interpreted to effectuate the intent of the General Assembly of the Commonwealth of Pennsylvania as expressed in Section 2 of the Act.

Subject also to the Subdivision Guidelines of the County of Dauphin Agricultural Land Preservation Program, approved by the PA State Agricultural Land Preservation Board on December 28, 1995, currently recorded in the Dauphin County Recorder of Deeds Office at Record Book 257, Page 506 and in accordance with the guidelines and/or regulations of the said state board, which county subdivision guide lines are incorporated herein by reference, as presently recorded and made part hereof.

For the most part, these items are all self-explanatory. Some of these items, such as subdivision, building construction, rural enterprises and conservation plans are discussed and further explained in other sections of this document.

NOTES ON DEED REVISION

In November 2006, Dauphin County began using a revised Deed of Easement. The revisions are shaded above. The revised deed has language that specifies that certain equine activities are an allowable agricultural activity and specifies that renovations and additions to existing residential and agricultural buildings are permitted subject to certain conditions. While this language appears only in deeds for farms that went to settlement in November 2006 or later, the language is retroactive and applies to all eased farms regardless of the date of settlement.

FEDERAL RESTRICTIONS

Beginning in 2004, if federal funding for the easement on your farm was used, there may be additional restrictions placed on the land. These restrictions are attached to the Deed of Easement as "Exhibit A". In order for federal funding to be obtained, the land owner must agree to the restrictions in Exhibit A and be willing to have the Exhibit attached to the deed. If you are not certain if the federal restrictions apply to your farm, refer to your copy of the deed of easement or contact the Dauphin County Program Administrator. The federal restrictions are as follows:

A. PERMITTED AND PROHIBITED USES:

- 1. Construction of Buildings and Other Structures:** The construction or use of any building or other structure on the subject land other than those existing on the date of the recording of this deed is prohibited except for the instances as outlined below. Regardless of these exceptions, all existing and newly constructed buildings and structures which contain impervious surfaces, including non-seasonal permanent rooftops and pavement, shall not exceed 6% of the total area under easement as determined by the County and Natural Resource Conservation Service (NRCS).
 - a. Fences for agricultural production and protection of watercourses such as lakes, streams, springs and reservoirs is permitted.
 - b. The construction of one additional residential structure is permitted if:
 - i. The construction and use of the residential structure is used as the landowner's principal residence or for the purpose of 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 restricted land at any time since the recording of the Deed;
 - iii. The residential structure and its curtilage occupy no more than two acres of the subject land and shall only be subdivided from the property in accordance with Paragraph 3 of the Deed and Section (A)(2) of this Addendum;
 - iv. The location of the residential structure and its driveway will not significantly harm the economic viability of the subject land for agricultural production;
 - v. 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; and
 - vi. Approval from the County for such residential structure is obtained prior to siting and constructing the residential structure.
 - c. The construction or use of any building or other structure for agricultural production is permitted, provided that the buildings and structures are sited to the greatest extent practicable in a manner that protects prime, unique and important soils and approval from the County is obtained prior to siting and construction.
 - d. The replacement of a residential structure existing on the subject land on the date of the granting of the Agricultural Conservation Easement is permitted provided such location is sited to the greatest extent practicable in a manner that protects the impact to prime, unique and important soils and approval from the County is obtained if a location is chosen other than the current location of the residential structure.

- 2. Subdivision:** If the county Agricultural Conservation Easement purchase program allows for subdivision of the Property subject to an Agricultural Conservation Easement, the subdivision shall not create any parcel that is not economically viable for agricultural productions as the term is defined in the regulation at 7 PA Code Section 138e.3 as that provision reads as of the date of the recording of this Agricultural Conservation Easement.
- 3. Utilities:** The granting of rights of way by the Grantor, his heirs, executors, administrators, successors and assigns, or any person, partnership, corporation or other entity claiming title under or through Grantor in and through the subject land for the installation, transportation or use of lines for water, sewage, electric, telephone, coal by underground mining methods, gas, oil or oil products is permitted, provided the location of activities and structures, permitted under this provision is consistent with the agricultural viability and the protection of soils purposes as articulated in this Agricultural Conservation Easement. The granting of rights of ways includes the right to construct or install such lines provided any excavation of soils to install such lines is returned to the original topography promptly upon completion of the construction or installation and methods are taken to control soil erosion. To the greatest extent practicable, such utility rights-of-ways shall be sited to protect the impact to prime, unique and important soils. After the Agricultural Conservation Easement is recorded, granting of utility rights-of-ways on the subject land may only occur through the condemnation process, which is subject to the review by the Agricultural Lands Condemnation Approval Board in accordance with 3 P.S. Section 913, unless the condemnation is exempt from review under that section. If the proposed condemnation is exempt from review by the Agricultural Lands Approval Board, the Grantees shall give notice of this fact to the United States Department of Agriculture. Due to the federal interest in the Agricultural Conservation Easement, the United States shall be notified as soon as possible by the Grantees of a proposed taking and prior to any condemnation approval by the Agricultural Lands Condemnation Approval Board or successor entity so that the United States may review and/or challenge the proposed taking. The construction or installation of utility lines other than the type stated in this paragraph is prohibited.
- 4. Mining and Drilling:** The granting of leases, assignments or other conveyances or the issuing of permits, licenses or other conveyances or the issuing of permits, licenses or other authorization for the exploration, development, storage or removal of coal by underground mining methods, oil and gas by the owner of the subject land or the owner of the underlying coal by underground mining methods, oil and gas, or the 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, provided the location of activities and structures, permitted under this provision is consistent with the agricultural viability and the protection of soils purposes as articulated in this Agricultural Conservation Easement. In the event underground access to coal veins is necessary and above ground drilling for oil and gas occurs, the installation of drills, underground mining entrances and road access shall be permitted, provided that such activities are located and carried out in a manner that protects to the greatest extent practicable prime, unique and important soils and approval from the County is obtained prior to installation for construction under this section. Any new road access to such sites shall be subject to the impervious surface limitation articulated in Section (A)(1) of the Addendum.
- 5. Rural Enterprises:** Customary part-time or off-season minor or rural enterprises and activities which are provided for in the County Agricultural Easement Purchase Program approved by the State Board are permitted. The applicable provisions of the referenced County Agricultural Easement Purchase Program are attached to this Addendum as Exhibit "2" and are incorporated herein. Any Structures required for such part-time or off-season minor or rural enterprises are subject to the impervious surface limitation as specified in Section (A)(1); must be located in a manner that protects to the greatest extent practicable prime, unique or important soils; and approval from the County is obtained prior to the construction or installation of such structures.
- 6. Mining for On-Farm Use:** The excavation of soil, sand, gravel, stone or other materials for on-farm use in agricultural production on the subject land is permitted, provided that such excavation is located in a manner that protects to the greatest extent practicable the prime, unique and important soils; approval from the County is obtained prior to carrying out such activities; and the total disturbed area does not exceed 1 acre, as determined by the County and NRCS.

7. **Roads:** Existing roads, as identified in the Baseline Documentation of this Agricultural Conservation Easement, may be maintained and repaired in their current state. New roads may be constructed for permitted agricultural or residential uses on the subject land, provided that they are located in a manner that protects to the greatest extent practicable the prime, unique and important soils; are subject to the impervious surface limitation detailed in Section (A)(1); and approval from the County is obtained prior to locating and constructing such roads.
8. **Conservation Plan:** All agricultural production shall be subject to paragraph 7 of the main body of the Agricultural Conservation Easement deed; however, as a condition of receiving FRPP funding, the following provisions, at a minimum, must be implemented regardless of any other conservation planning provisions contained within the conservation easement deed:

As required by Section 1238I of the Food Security Act of 1985, as amended, the Grantor, his heirs, successors or assigns shall conduct all agricultural operations on the Protected Property in a manner consistent with a conservation plan prepared in consultation with NRCS and approved by the Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on the date this Deed of Agricultural Conservation Easement is recorded and shall meet all of the requirements of a conservation plan under Pennsylvania's Agricultural Area Security Law (3 P.S. §§ 901-915) and its attendant regulations (7 PA Code Chapter 138e) that are in effect on the date this Deed of Agricultural Conservation Easement is recorded.

In the event of non-compliance with the conservation plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform Grantees of the Grantor's non-compliance. The Grantees shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such non-compliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of the Grant based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

B. GENERAL PROVISIONS:

1. **Responsibilities of Grantor Not Affected:** Except as specified herein, this Deed and Addendum does not impose any legal or other responsibilities on the United States. Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the subject land and all improvements erected thereon. Grantor acknowledges that the United States has no knowledge or notice of any hazardous waste stored on or under the subject land. The United States' exercise or failure to exercise any right conferred by the Agricultural Conservation Easement shall not be deemed to be management or control of activities on the subject land for the purposes of enforcement of the Act of October 18, 1988 (P.L. 756, No. 108), known as the Hazardous Sites Cleanup Act. Grantor, his heirs, executors, administrators, successors or assigns agree to hold harmless, indemnify and defend the United States from and against all liabilities and expenses arising from or in any way connected with all claims, damages, losses, costs or expenses, including reasonable attorneys fees, resulting from a violation or alleged violation of any State or Federal environmental statute or regulation including, but not limited to, statutes or regulations concerning the storage or disposal of hazardous or toxic chemicals or materials.
2. **Assignment of the Agricultural Conservation Easement:** Grantees may only assign their interest in this Agricultural Conservation Easement pursuant to 3 P.S. Section 914.1(c)(3), and with the prior written consent of the United States as required by the Contingent Right set forth herein.

- 3. Extinguishment:** This Agricultural Conservation Easement may not be extinguished for at least 25 years from the date of purchase of the Agricultural Conservation Easement and only after it has been determined by the State Agricultural Lands Preservation Board and County Agricultural Lands Preservation Board that the land subject to the Agricultural Conservation Easement is no longer viable agricultural land. Such extinguishment may occur only after approval by the State Agricultural Lands Preservation Board, County Agricultural Lands Preservation Board and the United States.
- 4. Condemnation:** The United States of America possesses an interest in this Agricultural Conservation Easement as provided for in Section (B)(6) below, constituting a Federal property interest in the subject land. No State or local government may institute condemnation proceeding against Federal property interest without prior approval of the Secretary of the United States Department of Agriculture. If the Secretary of the United States Department of Agriculture consents to condemnation, the proceeds derived from said condemnation shall be distributed as provided for in Section (B)(5). Consent from condemnation does not relieve the condemner of the requirements of Section 913 of Act 43 of June 30, 1981 as amended (The Agricultural Area Security Law).
- 5. Proceeds from Extinguishment or Condemnation:** If this Agricultural Conservation Easement is extinguished via transfer to the Grantor, condemnation or other means, in whole or in part, then Grantees and the United States are each entitled to their proportional share of the value of the Agricultural Conservation Easement at the time of condemnation. The proportional shares of the United States and the Grantees are X % and X % respectively, representing the proportion each party contributed to the purchase price of the Agricultural Conservation Easement.
- 6. Contingent Right:** In the event that the Grantees fail to enforce the terms of this Agricultural Conservation Easement, as determined in the sole discretion of the Secretary of the United States Department of Agriculture ("Secretary"), the Secretary, his successors and assigns shall have the right to enforce the terms of the Agricultural Conservation Easement through any and all authorities available under Federal or State law. Further, in the event that the Grantees attempt to terminate, transfer or otherwise divest itself of rights, title or interest in the Agricultural Conservation Easement or extinguish this Agricultural Conservation Easement without prior consent of the Secretary and payment of consideration as provided herein, then at the option of the Secretary, all right, title or interest in this Agricultural Conservation Easement shall become vested in the United States of America.

CUSTOMARY PART-TIME OR OFF-SEASON MINOR OR RURAL ENTERPRISES

Many farm owners supplement their income with part time or off-season enterprises. These sources of income are often very important to farm owners. This being the case, the Deed of Easement does allow for certain activities to be conducted to provide supplemental income. These activities are referred to as “customary part-time or off-season minor or rural enterprises”. Each county develops guidelines for such activities. These guidelines apply to eased farms within that county. In Dauphin County, the following guidelines have been established.

1. Structures associated with the production of energy for use principally on the farm.
2. Structures and facilities associated with irrigation, farm pond improvements, and soil and water conservation practices.
3. CRP/CREP practices
4. Agriculture related services or activities associated with customary part-time or off-season minor or rural enterprises or activities incidental to agricultural production. Examples include corn mazes, Pick Your Own crop operations, butchering and processing of game animals, taxidermy, seed sales, tax collection, home occupations such as beauty parlors, arts and crafts, direct marketing, appliance repair, electronics repair, tax return preparation, plumbing and enterprises similar in scope and nature. These activities are subject to the following restrictions:
 - The activities shall be limited to the interior of the existing of buildings
 - Such activities shall not be the primary use of or primary activity conducted within buildings
 - In no case shall additions to existing buildings be constructed for purposes of conducting such activities.
 - The Dauphin County Agricultural Land Preservation Board reserves the right to review and approve the nature and scope of such activities on a case by case basis.

In addition to the above there are other procedures and restrictions that are applicable. The full set of guidelines is included in the Dauphin County Agricultural Land Preservation Program document.

AGRICULTURAL PRODUCTION

Agricultural production is defined as 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. While agricultural production is specifically permitted by the deed of easement, the intent of this section is to ensure that activities and structures associated with such production do not significantly diminish the productive capacity of the land. In order to achieve this goal, the following requirements shall apply to agricultural production.

1. The following are allowable activities:
 - Direct sale to the public of agricultural products or the processing or storage of such products, provided that at least 50% of such products are produced by the farm operator.
 - Any and all structures contributing to the primary processing, direct sale to the public and storage of agricultural products provided that at least 50% of such products are produced by the farm operator.
 - Other activities allowable under the deed of easement as agricultural production.
2. There are limits on floor space, siting and coverage for buildings constructed for these activities.
3. There is a process for approval for buildings constructed for the above purposes.

The complete guidelines can be found in the Customary Part-time or Off-season Minor or Rural Enterprises section of the Dauphin County Agricultural Land Preservation Program document.

CONCLUSION

The statewide effort to preserve agricultural land is a tremendous undertaking. The preservation of this land will:

1. Help to maintain Pennsylvania's largest industry; agriculture.
2. Help to ensure adequate food supplies at a reasonable cost.
3. Help to preserve an important cultural heritage and protect an important aesthetic aspect of Pennsylvania.

For preservation of farmland to make sense, the farmland must be capable of producing agricultural commodities into the future. The deed of agricultural conservation easement that protects your farmland has been designed to achieve this goal.

The primary restrictions of the deed are on subdivision, conversion of farmland to non-agricultural use and soil conservation. This document has attempted to summarize these restrictions in order to make the preservation of your land convenient and understandable. It is important to remember that this document does not contain all restrictions or procedures in detail. Please contact the Dauphin County Agricultural Land Preservation Board for more details.

The Dauphin County Agricultural Land Preservation Board urges and invites you to consult the board when any issues of subdivision, sale, conservation planning or any type of construction arise. By maintaining these open lines of communication and by working together, the goals of this program can be realized and the agricultural legacy that we have received and that gives us so much can be passed proudly to future generations.

**CONTACT INFORMATION FOR THE
DAUPHIN COUNTY AGRICULTURAL LAND PRESERVATION PROGRAM**

**WITH QUESTIONS REGARDING CONVEYING EASED FARMS, BUILDING CONSTRUCTION,
SUBDIVISION, CONSERVATION PLANS, INSPECTIONS, RURAL ENTERPRISES, OTHER
EASEMENT RESTRICTIONS OR GENERAL QUESTIONS CONTACT:**

Bob Christoff
Dauphin County Conservation District
1451 Peters Mountain Road
Dauphin PA 17018
Phone: 717-921-8100
E mail: rchristoff@dauphinc.org

Courtney Papinchak
Dauphin County Conservation District
1451 Peters Mountain Road
Dauphin PA 17018
Phone: 717-921-8100
E mail: cpapinchak@dauphinc.org

FOR COPIES OF YOUR DEED OF EASEMENT:

Copies can be obtained from the Dauphin County Recorder of Deeds Office. The Recorder of Deeds Office does charge for copies and you will need to go to the deeds office. If you have internet access, copies of your deed can be obtained and down loaded or printed from the following web address:

www.dauphinc.org/deeds

There is no charge for accessing your deed of easement through this website.

In either case you will need the Book and Page number or the Instrument Number where your deed is recorded. In 2006 the Recorder of Deeds Office stopped using Book and Page numbers and began recording documents by Instrument Number.

If you do not know Book and Page number or the Instrument Number where your deed of easement is recorded, you can contact Bob Christoff or Courtney Papinchak at the above address or phone number.

**FOR COPIES OF THE DAUPHIN COUNTY SUBDIVISION AND CONSTRUCTION OF AN
ADDITIONAL RESIDENTIAL STRUCTURE GUIDELINES:**

The guidelines are recorded in the Recorder of Deeds Office at Book 2573 Page 506. A copy can be obtained in the same way as getting a copy of your deed at the Recorder of Deeds Office or using the website above.

**IF YOU HAVE NEED TO CONTACT THE BUREAU OF FARMLAND PRESERVATION IN THE
PENNSYLVANIA DEPARTMENT OF AGRICULTURE:**

Bureau of Farmland Preservation
Pennsylvania Department of Agriculture
2301 North Cameron Street
Harrisburg PA 17110
Phone: 717-783-3167