pennsylvania
DEPARTMENT OF AGRICULTURE

BUREAU OF FARMLAND PRESERVATION

A Guide to Farmland Preservation

3rd Edition

pennsylvania
DEPARTMENT OF AGRICULTURE

Dear Friend of Agriculture,

Working toward the goal of "Keeping Pennsylvania Growing," the Pennsylvania Department of Agriculture has helped county and municipal farmland preservation programs preserve more agricultural land than any other state in the nation. It is in this spirit that the department is offering the third edition of "A Guide to Farmland Preservation," an easy-to-use, convenient handbook for local programs.

Pennsylvania leads the nation in farmland preservation, with more than 3,500 farms and 400,000 acres preserved. Since 1988, the Commonwealth, counties and municipalities have invested more than $1 billion to support this effort.

The third edition of "A Guide to Farmland Preservation," in accordance with Pennsylvania Act 43 of 1981, as amended, will help guide local programs through the process of preparing agricultural conservation easement purchase applications for consideration by the State Board.

This guide features new text relevant to farms already eased, including subdivision and rural enterprises, and legislative or regulatory amendments. The official policy document remains County Program. Additionally, the text of this guidebook is available digitally on compact disks included in the book.

Thank you for your dedication to preserving our state's rural heritage and keeping Pennsylvania growing. If you have any questions regarding the guidebook, please contact the Bureau of Farmland Preservation at 717-783-3167.

Sincerely,

Dennis C Wolff
Secretary of Agriculture

Douglas M. Wolfgang
Director, Bureau of Farmland Preservation

Front Cover Photo: Baugher Farm, Adams Co. (Photo by Mark Clowney)

A Guide to Farmland Preservation

3rd Edition, updated December 2008

Pennsylvania Department of Agriculture, Bureau of Farmland Preservation

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Brandstetter Farm, Adams Co. (Photo by Mark Clowney)

Chapter 1

Application Requirements

Section 1.1 – Introduction

A landowner's application provides the foundation for an entire conservation easement purchase recommendation. The information contained within the application must be correct in order for the farm to be considered for easement purchase. It is imperative that landowners and county administrators understand the importance of the application and how to complete it properly. It is the responsibility of the landowner to complete all items on the application and exhibits.

This chapter of the Guidebook attempts to explain various parts of the application forms and how they are used at the county and state levels. A sample application form is contained within the Guidebook as **Exhibit 1.a.**

Section 1.2 – State Minimum Criteria

I. **Election by County Board:** The Agricultural Area Security Law (at 3 P.S. Section 914.2(d)(1)(v)(II)) affords the county the option to acquire an agricultural conservation easement on farmland tracts with as few as 35 contiguous acres under certain circumstances. If the County Board elects not to exercise this option, the minimum eligibility criteria for agricultural conservation easement purchases include the following criteria, as contained in Chapter 138e.16. Commercial equine activity must meet the State Minimum Criteria as established.

State Minimum Eligibility Criteria if County Board elects <u>not</u> to exercise under 35-acres

A. The farmland tract shall be one or more of the following:
   1. Located in an agricultural security area consisting of 500 acres or more.
   2. Bisected by the dividing line between two local government units, having the majority of its viable agricultural land within an agricultural security area of 500 acres or more and the remainder in another local government unit outside of an agricultural security area.
   3. Bisected by the dividing line between the purchasing county and an adjoining county, having the land located in the purchasing county and an agricultural security area of 500 acres or more and the remainder in another county outside of an agricultural security area, and with respect to which one of the following applies:
      a. A mansion house (farmhouse) is on the tract and located within the purchasing county.
      b. When the mansion house on the tract is bisected by the dividing line between the two counties, the landowner has chosen the purchasing county as the situs of assessment for tax purchases.
      c. When there is no mansion house on the farmland tract, the majority of the tract's viable agricultural land is located within the purchasing county.

B. The farmland tract shall be one or more of the following:
   1. Contiguous acreage of at least 50 acres in size.
   2. Contiguous acreage of at least 10 acres in size and utilized for a crop unique to the area (See Section 1.7 Crops Unique to the Area).
   3. Contiguous acreage of at least 10 acres in size and contiguous to a property which has a perpetual conservation easement in place which is held by a "qualified conservation organization," as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. section 170(h)(3).

C. The farmland tract shall contain at least 50% of soils which are both available for agricultural production and of Land Capability Classes I-IV, as defined by the USDA-NRCS.

D. The farmland tract shall contain the greater of 50% or 10 acres of harvested cropland, pasture or grazing land.

Conservation Reserve Program (CRP) and Conservation Reserve Enhancement Program (CREP) acreage does not qualify as harvested cropland "in current use" for minimum eligibility criteria; however, the USDA maintains the field yield cropping history for cropland on the farm.

E. The county program may contain additional criteria to evaluate farmland tracts if the criteria are fair, objective, equitable, nondiscriminatory and emphasize the preservation of viable agricultural land, which will make a significant contribution to the agricultural economy and area approved by the State Board.

As an example, a county program requires crop yields from a farmland tract to meet or exceed county crop yield averages, or requires the farmland tract to generate annual gross receipts of a particular amount, or requires that structures and their curtilage not occupy more than a certain percentage of impervious surfaces.

II. Election by County Board: The Agricultural Area Security Law (at 3 P.S. Section 914.1(d)(1)(v)(II)) affords the county the option to acquire an agricultural conservation easement on farmland tracts with as few as 35 contiguous acres under certain circumstances. If the County Board elects to exercise this option, the minimum eligibility criteria for agricultural conservation easement purchases include the following criteria as contained in Chapter 138e.16. Commercial equine activity must meet the State Minimum Criteria as established.

State Minimum Eligibility Criteria if County Board elects to exercise under 35-acres

The farmland tract shall meet the following requirements:

A. The farmland tract shall meet the following requirements:
   1. Located in an agricultural security area consisting of 500 acres or more.
   2. Bisected by the dividing line between two local government units, having the majority of its viable agricultural land within an agricultural security area of 500 acres or more and the remainder in another local government unit outside of an agricultural security area.
   3. Bisected by dividing line between the purchasing county and an adjoining county, having the land located in the purchasing county and an agricultural security area of 500 acres or more and the remainder in another county outside of an agricultural security area, and with respect to which one of the following applies:
      a. A mansion house is on the tract and located within the purchasing county.
      b. When the mansion house on the tract is bisected by the dividing line between the two counties, the landowner has chosen the purchasing county as the situs of assessment for tax purchases.
      c. When there is no mansion house on the farmland tract, the majority of the tract's viable agricultural land is located within the purchasing county.

B. The farmland tract shall be one or more of the following:
   1. Contiguous acreage of at least 35 acres in size.
   2. Contiguous acreage of at least 10 acres in size and utilized for a crop unique to the area. (See Section 1.7 Crops Unique to the Area).
   3. Contiguous acreage of at least 10 acres in size and contiguous to a property which has a perpetual conservation easement in place held by a "qualified conservation organization," as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. section 170(h)(3)).
   4. A minimum weighted value of 20% shall be required when prioritizing applications for agricultural conservation easement purchase when implementing the provisions of §914.1(d)(ii.1) for easements less than 50 acres in size.
   5. Only 50% of state funds shall be utilized to purchase agricultural conservation easements when the provisions of §914.1(d)(ii.1) are utilized for easements less than 50 acres in size.

C. The farmland tract shall contain at least 50% of soils which are both available for agricultural production and of Land Capability Classes I-IV, as defined by the USDA-NRCS.

D. The farmland tract shall contain the greater of 50% or 10 acres of harvested cropland, pasture or grazing land.

   Conservation Reserve Program (CRP) and Conservation Reserve Enhancement Program (CREP) acreage does not qualify as harvested cropland "in current use" for minimum eligibility criteria; however, the USDA maintains the field yield cropping history for cropland on the farm.

E. The county program may contain additional criteria to evaluate farmland tracts if the criteria are fair, objective, equitable, and nondiscriminatory and emphasize the preservation of viable agricultural land, which will make a significant contribution to the agricultural economy and are approved by the State Board.

Section 1.3 – Required Application Materials (Exhibit 1.a)

According to 138e.61, a separate application is required for each farmland tract offered for easement purchase and should, at a minimum, contain the following information:

A. The printed name, address, telephone number and signature of all owners of the farmland tract.

   Each owner listed on the property's deed must be included. If the property is owned by a corporation, the corporation's official name should be listed. Space should be provided for the landowner's telephone number, including area code and the best time to reach the landowner.

   Please type or print this information, since it will be used to complete and verify the agreement of sale if an easement is purchased on the property.

Each landowner listed on the recorded deed must sign and date the form.

Documentation should be made concerning if the landowner(s) are a member of the County or State Farmland Preservation Board.

B. The county, municipality and Agricultural Security Area (ASA) in which the farmland tract is located.

The farmland tract must be located within a county having a state approved agricultural conservation easement program. County administrators may type their county's name on the master copy. A farmland tract must be enrolled in an ASA that has been recorded at the county recorder of deeds office. The recorded book and page numbers are requested for any enrollment in an ASA. The name of the ASA must be identified and is usually the same as the township, or other form of municipality, where the tract is located. If the tract is located in two townships, both must be listed. A copy of the second township's ASA approval letter for the acreage within their township must be attached.

County Programs – Act 14 of 2001 amends Act 43 to allow for the purchase of cross-county easements. After the ASA is established by the local governing body, the first requirement is the county governing body may authorize a program to be administered by the county farmland preservation board for cross-county and/or cross-municipal easement purchases. This authorization may be in the form of a resolution.
It shall be the duty and responsibility of the County Board to exercise the following powers:

Purchase of an Agricultural Conservation easement in 1 and 2 below on a parcel which is not within an ASA by an Agreement of Sale for various types of conditions including:

- County-only
- Joint County and Commonwealth
- Joint County and Local Government Unit
- Joint County and eligible non-profit entity
- Multi County, Commonwealth and Local Government Unit
- Multi County, Commonwealth and eligible non-profit entity
- Multi County, Commonwealth, Local Government Unit and eligible non-profit entity.
- Multi County, local government and eligible non-profit entity.

Note: State-only easements are not included for cross-county or municipal purchases. Township-only does not apply.

C. Land **not** in an ASA bisected by the dividing line between two local government units if all the following are complied with: (township, borough etc.)
   1. Majority of the farm's viable agricultural land is located within an existing ASA.
   2. Portion not in ASA shall immediately become part of previously established ASA which contains a majority of the farm's viable ag land. The governing body which created the

purchasing ASA shall be responsible for recording, filing and notification of land added to purchasing ASA.

D. Parcel **not** in an ASA bisected by the dividing line between the purchasing county and the adjoining county if all the following are complied with:
   1. The location of the mansion house (farmhouse) – one of the following shall apply:
      a. Mansion located in purchasing county
      b. Line bisects mansion house and owner has chosen purchasing county as the county of assessment for taxes.
      c. No mansion house but majority of agricultural land is in purchasing county.
      d. Portion of parcel in purchasing county is in ASA. Parcel in adjoining county shall immediately become part of ASA in purchasing county.
         - Governing body that created the ASA in the purchasing county shall be responsible for recording, filing and notification of land added to the purchasing ASA.
   2. Counties are required to amend county programs to allow for the purchase of cross-county easements.

E. The total acreage of the farm, as shown on the deed or instruments of record.

F. The number of acres in the farmland tract proposed for easement purchase.

   A landowner owning several farms may decide to simply list the acreage of a single farm they intend to have considered by the program.

   Some counties require the entire deeded acreage must be submitted for the county to consider a farmland tract. In this instance, the figure should always be the same as the prior line, or the county should type in "entire acreage required" on the master copy.

   If the landowner is submitting the entire deeded acreage for consideration, enter the same acreage figure.

G. The street address of the farm, and directions from the nearest state route.

   The address listed should be the primary address to be used on any future Agreement of Sale. If the landowners have more than one address, they should choose one they desire to use for this purpose.

H. The most current deed reference – book, volume, and page – or other reference to the place of record of the deed. In the case of multiple deeds, numbers for all deeds must be provided.

   The deed book, volume, and page number for the subject farmland tract should be listed.

   If a county does not use both deed book and volume numbers, simply provide what is used for that county.

I. County tax map numbers, including tax parcel number, or account number of each parcel.

J. The date of the conservation plan, if any, which has been approved by the county conservation district or county board.

If one has not been approved, print "none." A conservation plan must be approved by a county conservation district or by the county agricultural land preservation board in order for an agricultural conservation easement to be purchased. Some counties require that an approved plan be in place prior to a farmland tract being considered at the county level. This information must be verified by the county. Conservation plan criteria are discussed under Section 1.6.

K. The date of any nutrient management plan.

State law requires that all concentrated animal operations (CAO's) have a fully implemented Act 38 nutrient management plan. All CAO's must have an approved plan prior to an agricultural conservation easement purchase.

L. The name, address, and telephone number of the person to be contacted to view the farmland tract.

If a party other than the landowner(s) must be contacted to view a farmland tract, the next part of the form should provide space to indicate such.

M. Property liens and mineral rights

The landowner is to list the names of all individuals, banks, or corporations having a mortgage or a judgment against the subject property, or who own mineral or gas rights to the property.

N. Crop and livestock report (optional)

If a county program requires crop yields for a farmland tract, or requires a farmland tract to generate annual gross receipts of a particular sum, a crop and livestock report may be required as necessary application material using the available statistics from the Pennsylvania Statistics Service (PASS). The report should generally include production information from the most recent crop year. The crop and livestock report would be for the most recent calendar year.

O. Commercial Equine Activity

The landowner(s) shall provide, if applicable, information concerning any commercial equine activities being conducted on the proposed eased land. Act 61 of 2005 amended Act 43 to allow for the use of a portion of viable agricultural land for commercial equine activity. The legislation defines commercial equine activity as including the activities where a fee is collected to provide: the boarding of equine; training of equine; instruction of people in handling, driving or riding equine; the use of equine in riding or driving; and pasturing of equine. The term does not include activities licensed under the "Race Horse Industry Reform Act" of 1981.

County Board should inquire with applicants whether owners of adjacent land-locked parcels must cross the subject farm in order to gain access to the land-locked parcel. If so, there should be a recorded right-of-way agreement. Once the farm is eased, private rights-of-way may not be granted. The title search will reveal the existence of a recorded right-of-way.

Section 1.4 – Required Maps and Reports

A. United States Geological Survey (USGS) Topographical Map (**Exhibit 1.b**)

The topographic map should be a clear copy of the appropriate USGS map for the area where the farm is located on an 8 ½" X 11" page. The correctly delineated boundaries of the area subject to easement should be drawn onto the map with either a red pen or in black ink and then highlighted in yellow. The location of acreage excepted from the eased area needs to be delineated and identified. Surrounding properties subject to easement should also be outlined. This map allows the county and the state to understand the terrain of the property.

Copies of USGS maps should be available from the county administrator's office or from the county USDA Natural Resources Conservation Service office.

B. Tax map or official map used for tax purposes showing the farmland tract with all tax parcel numbers clearly indicated (**Exhibit 1.c**)

The tax map should be a clear copy of the tax parcels being offered for easement purchase on an 8 ½" X 11" page. Each tax parcel should be easily identified by its tax parcel number. The numbers should correspond to the numbers listed on the application. The boundaries of the areas proposed for easement purchase should be highlighted in yellow. The location of acreage excepted from the eased area must be delineated and identified.

Tax map copies should be available at the county tax assessment or recorder of deeds offices.

C. Soils Map **(Exhibit 1.d)**

The soils map should be a clear copy of the appropriate current soils map for the farmland tract. It should be presented on an 8 ½" X 11" sheet. The subject's easement boundaries should be delineated with red or black ink, then each soil mapping unit should be colored with the appropriate color code by Land Capability Class:

Class I	Green
Class II	Yellow
Class III	Red
Class IV	Blue
Class V and lower	leave white
Wetlands	Cross hatch or include on a separate map

NOTE: Geographical Information Systems (GIS) maps, having USDA soils coverage, are accepted in lieu of hand-delineated USDA Soil Survey Maps. The colored soil map in digital form is preferred.

D. Soils Report Form C (**Exhibit 1.e**)

Soils Report Form C should coincide with the acreages presented elsewhere in the application. Acres of cropland listed on the application should be easily reconciled with the totals on this form.

The second part of the form is for the county office to determine the farm's compliance with state minimum soil quality criteria.

E. Soils List **(Exhibit 1.f)**

A soils list should include the soil mapping unit name, symbol, and land capability class for each mapping unit on the property. The size of this section will vary depending on the number of soils on the subject farm. Detailed soil descriptions from the conservation plan are no longer necessary.

Section 1.5 – Farmland Ranking – Land Evaluation Site Assessment (LESA) (Exhibit 1.g)

The Farmland Ranking Score shall determine the order in which farmland tracts are selected by the county board for appraisals. Selection for appraisals shall be made in descending order of the Farmland Ranking Score.

A copy of the county's ranking worksheet used to rank the subject property should be included as part of the application materials.

County Boards are required to adopt a farmland ranking system using the **Land Evaluation and Site Assessment System (LESA) (Exhibit 1.h).** The farmland ranking should be based on a 100-point scale. The farmland ranking system may include additional or substitute criteria as approved by the State Board.

A. The LESA system consists of two components, Land Evaluation and Site Assessment:
   1. **Land Evaluation (LE)** scoring reflects the relative value for each soil mapping unit. The relative value of a soil mapping unit is rated on a scale of 100. This data is obtained from USDA, Natural Resources Conservation Service (NRCS). The minimum weighted value a county may place on land evaluation is 40%, and a maximum is 70%.
   2. **Site Assessment (SA)** scoring is comprised of three subcomponents. The minimum weighted value for the individual subcomponents is 10%, and a maximum is 40%:
      a. *Development Potential Factors*, including availability of sanitary sewer and public water, road frontage, and extent of non-agricultural uses within the area. A county may include additional factors upon approval by the State Board, however no less than three or no more than 10 of these factors may be included. Three of these factors shall be factors described in Chapter 138e.15(e)(3).
      b. *Farmland Potential Factors*, including percentage of certain types of land, stewardship of land, size of tract, and historic, scenic, and environmental qualities of the tract. A county

may include additional factors upon approval by the State Board; however, no less than four or no more than 10 of these factors may be included. Four of these factors shall be factors described in Chapter 138e.15(e)(4). The additional factors may include a factor that awards points based upon a "bargain sale" of the easement by the landowner.

c. *Clustering Potential Factors*, including consistency with planning map, proximity to eased land, and percentage of adjoining land in an ASA. A county may include additional factors upon approval by the State Board; however no less than three or no more than 10 of these factors may be included. Three of these factors shall be factors described in Chapter 138e.15(e)(5).

- Counties that allow easements on at least 35 to 49 acres must adjust the minimum weight for clustering potential to 20 percent in the Land Evaluation Site Assessment (LESA) ranking.

Section 1.6 – Conservation Plan

Introduction

The non-point source impacts of agriculture on the environment continue to be a major concern to Pennsylvanians. Studies show that approximately 40 percent of all non-point source pollution comes from agricultural lands. Runoff, erosion, and pollutants from agricultural areas such as livestock farms, cropland, and pastureland usually result from the depletion or removal of natural vegetation. The agricultural conservation easement program is committed to ensuring the conservation of viable agricultural lands under easement to protect the agricultural economy of the Commonwealth.

Legislative Mandate

In order to preserve the agricultural viability of the eased land, the legislature provided for county programs to include the stewardship of the land and use of conservation practices and best land management practices, including, but not limited to, soil erosion and sedimentation control, nutrients and odor management (Article 914.1(d)(1)(iii)).

I. A conservation plan is required under the Agricultural Conservation Easement program for compliance with the Chapter 138e. Rules and Regulations for easement purchases.
   A. According to Section 914.1(d) (1) (iii) of the Agriculture Area Security Law, a conservation plan shall only be required to be updated when a change in land management practice takes place or when a violation to the Clean Streams law occurs.
   B. Act 46 of 2006 removed the requirement that a conservation plan shall be updated every ten years.

II. A complete and fully executed Conservation Plan Agreement form, according to Chapter 138e.222 (a) (2), shall be recorded with the Deed of Easement at closing.

Conservation Plan Required

The Rules and Regulations under Chapter 138e.222 of Act 43 provides for the implementation of a conservation plan for all eased land preserved under the agricultural conservation easement program. The

key element to the regulations is that the landowner of the restricted land shall implement a conservation plan approved by the County Conservation District or the County Board. This is re-emphasized in the Deed of Agricultural Conservation Easement under the section *Soil and Water Conservation* by stating that 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 executed, signed, and recorded Deed of Easement by the landowner places a legal obligation on the owner to follow the provisions as stated in the deed or the landowner may face notification of violation of the Deed of Easement.

As part of completing the settlement documents at closing, a conservation plan agreement shall be executed by the landowner and recorded at the county recorder of deeds according to Chapter 138e.93 (a) (4) This is discussed in greater detail in Chapter 7 and Exhibit 7.d.

Conservation Plan Provisions

The conservation plan, when completely implemented with the planned land management practices, will improve and maintain the soil, water and related plant and animal resources of the land. The elements of the conservation plan shall include the following:

- An installation schedule
- A maintenance program
- A nutrient management component

The nutrient management component shall contain 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 at closing.

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.

Conservation Plan Criteria
A conservation plan is required under the ACE program for compliance with Chapter 138e Rules and Regulations for easement purchase. The recommended criteria set forth in the NRCS Field Office Technical Guide (FOTC) is displayed in **Exhibit 1.j** and **Exhibit 1.k**.

Section 1.7 – Crops Unique to the Area

During the past year, several County Boards have inquired about the definition of “crops unique to the area” under the easement purchase program. This term is used in connection with the State minimum

criteria for applications under Chapter 138e.16 (2). During the discussion by the State Agricultural Land Preservation Board concerning setting the state minimum criteria, it became obvious that certain crops were grown on a regional basis that were quite unique to the soil conditions, climate conditions, and location within a county. Landowners in Erie County, for example, have acquired land adjoining Lake Erie in narrow tracts with traditionally small acreages that support the commercial agricultural production of Concord and Niagara grapes. In preparation for the 1998 revised Rules and Regulations under Chapter 138e.16 (2) Minimum Criteria, the State Board decided to include the 10-acre size limitation if either a crop unique to the area was utilized or the 10 acres were contiguous to a property with a perpetual conservation easement in place.

Traditionally, it has been requested that county boards submit a list of crops considered unique to the area for approval by the State Board as part of their County Program criteria. In order to give guidance to the County Boards in consideration for the definition for crops unique to the area under Chapter 138e.3, the Bureau offers the following guidelines and discussion to assist counties in determining the crops that may qualify as unique to the area in their counties. The emphasis is on agricultural production of crops for commercial purposes.

1. Grapes - already discussed above
2. Tobacco - ranks 10th in the nation in crop production
3. Speltz - a small grain grown as an alternative to federally regulated feed grains under USDA programs
4. Orchard Crops - commercial agricultural enterprise
5. Mushrooms - commercial agricultural enterprise
6. Tomatoes - commercial agricultural enterprise
7. Cantaloupes - commercially grown for fresh market
8. Snap beans - commercially grown for processing
9. Pumpkins - commercially grown for fresh market
10. Strawberries - commercially grown for fresh market or processing
11. Potatoes - commercially grown for fresh market or processing
12. Sweet Corn - commercially grown for fresh market or processing
13. Christmas Trees - grown as a rotation crop with a management plan for cultivation, harvesting, and replacement of Christmas trees
14. Floriculture crops - grown as a commercial agricultural enterprise
15. Maple Syrup - commercial agricultural enterprise
16. Sod, nursery stock, ornamental trees and shrubs - grown for commercial agriculture enterprise with the Deed of Easement restriction that removal of excess soil is prohibited.
17. Crown and Hairy Vetch - commercially grown for seed production

The County Board shall prepare the necessary revision to the county program using specific crops listed above, or other unique crops proposed for inclusion in the county program for approval. The county program shall include language pertaining to the consideration of each application for easement purchase on a case-by-case basis when pertaining to growing authorized crops unique to the area.

Section 1.8 – County Programs and Rural Enterprise

A. County Program

Every county participating in the farmland preservation program has a county program containing pertinent information on how a county board will function in regard to the easement program. Key components of the county program include: Minimum Criteria, LESA Ranking System, Subdivision, Rural Enterprises, and Monitoring and Enforcement.

Act 43 and Chapter 138e. Rules and Regulations set guidelines for the county farmland preservation boards to follow. Although the regulations are somewhat flexible and allow a county to tailor its program to meet its needs, the county board criteria must be fair and equitable and within the parameters of Act 43 and the regulations.

It is important to note that policies adopted at the county board level must be approved by the state board for inclusion in the county program guidelines. Changes in policy can be submitted to the state board at any time throughout the year.

It is required by Chapter 138e. Rules and Regulations that each county program shall be recertified every seven years. If the county program is not recertified within the allotted time, the State Board will not approve a county board's recommendations for purchase.

B. Rural Enterprise

Rural Enterprise is a permitted act within the Deed of Conservation Easement and is described as customary part-time or off-season minor or rural activity that is incidental to the normal farming operation. This could include anything from a road side market to a bed and breakfast.

The county board may be flexible when considering which activities will be permissible as rural enterprises in the county program. Included in **Exhibit 1.i** is a general list of activities.

In October 2004, the State Board approved the installation of communications antennae as an allowable rural enterprise with restrictions. The installation or construction of any permanent non-agricultural equipment or structures associated with the communications antennae must be located within the existing curtilage at the base of the existing structure supporting the communications antennae and such associated equipment or structures shall remain incidental to the agricultural and open space character of the property.

In June 2008, the State Board approved "Farm-Based Renewable Energy" as a permitted use, with certain limitations.

Rural Enterprise activities may be made retroactive if county program guidelines permit it. ■

Pringle Farm, Adams Co. (Photo by Mark Clowney)

Chapter 2

Appraisal Requirements & Offer of Purchase

Section 2.1 – Order of Appraisal

The farmland ranking score shall determine the order in which farmland tracts are selected by the county board for appraisal. Selection for appraisal shall be made in descending order of farmland ranking score.

Section 2.2 – County Ag Preserve Board Responsibility

I. The appraiser shall be selected by the county board on the basis of experience, expertise and professional qualifications.

II. The initial appraisal shall be at the county board's expense. This expense may be reimbursed as a cost incidental to the easement purchase. Use the state form Exhibit "B" to document the reimbursement of incidental costs.

III. An offer to purchase an easement shall be based upon one or more appraisal reports which determine the agricultural conservation easement value.

Section 2.3 – Appraiser Qualifications

The appraiser shall be a state-certified general real estate appraiser who is qualified to appraise a property for easement purchase. The appraisal services shall be provided by properly-trained, knowledgeable individuals who can provide fair and equitable values based upon experience in evaluating real property rights.

Section 2.4 – Evaluations

I. The purpose of the appraisal is to estimate the conservation easement value of the subject property.

II. The conservation easement value is the difference between the unrestricted market value of the property and the farmland or restricted agricultural value of the property.

III. The appraisal of the 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 (USPAP), published by the Appraisal Standards Board of the Appraisal Foundation.

> If an appraiser cannot practicably conduct an appraisal based on an analysis of comparable sales, the appraiser may conduct an appraisal using another methodology only if that methodology is an acceptable methodology under the Uniform Standards of Professional Appraisal Practice (USPAP) and the appraisal report clearly describes the information considered, the appraisal procedures followed and the reasoning that supports the analyses, opinions, and conclusions.

IV. The value of a building or other improvements on the farmland tract will not be considered in determining the easement value. (138e. 64(c)).

V. The highest and best use analysis is the *fulcrum* of the appraisal process. Highest and best use is an economic concept that produces the most benefits and the highest land value as of the date of value determination. In determining the highest and best use of the property, the appraiser takes into account and analyzes the legal permissibility, physical possibility, financial feasibility and maximum profitability. The use that produces the highest value is the highest and best use.

Section 2.5 – Appraisal Contents

I. The appraiser shall provide at least one original and two copies of the report; all shall be bound with rigid covers. The narrative report shall contain the following information and be in the following format:

A. Introduction

The first section of the appraisal introduces both the subject property and the appraiser which shall include items one through six (1-6) below. These items should appear in the following order with the appropriate information included under each discussion.

1. Letter of Transmittal -- The letter of transmittal contains pertinent information about the appraisal as well as a statement by the appraiser attesting the compliance with the USPAP. This letter should be provided on the appraiser's business letterhead and must include an original signature of the appraiser. The letter shall include the following information: appraiser's name and business address; property being appraised; effective date of appraisal; acreage appraised; market value; farmland value; easement value and appraisers license number and Certification Title.
2. The Appraiser's Certificate of Value as to Conservation Easement Value – This section certifies the personal inspection of the property by the appraiser; the conformity with USPAP and other standards; the assumptions; statement of limiting conditions report; certification of conservation easement values; the signature, date and license number of the appraiser and assistants, if applicable; and other pertinent information as determined by the appraiser.
3. Table of Contents – It is important that this item list the significant parts of the appraisal in the order set forth in the Chapter 138e.64(e). Include Appendices, maps and exhibits used in the appraisal report. A copy of the most current recorded deed for all tracts needs to be included in the Appendix.
4. A Summary of Salient Facts and Conclusions – This is a one page executive summary of the body of the appraisal. At a minimum, this page should include:
   a. Owners of Record
   b. Property Location
   c. Day of Valuation
   d. Legal Description: Deed book/page
   e. Directions
   f. Deeded Acres/ Appraised Acres

g. Zoning
h. Present Use
i. Highest and Best Use
j. Conclusion of Value

5. The Purpose of the Appraisal – The purpose of the appraisal is to estimate the conservation easement value for the subject property.
6. The Definitions, including market value, farmland value, and easement value – This section states that the definitions listed below govern how the conservation easement value is determined.
   a. Market Value – The price as of the valuation date for the highest and best use of the property which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.
   b. Farmland Value – The price as of the valuation date for property used for normal farming operations which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.
   c. Easement Value – The difference between the market value and the farmland value.

B. Description of the Property
1. Neighborhood Description – This should be a brief description of the local neighborhood surrounding the subject property. It should include an overview of the county and a more in-depth look at factors directly associated with the subject property. These might include the rural or urban nature of the area, proximity to public utilities such as water and sewer lines, school district comments, proximity to agricultural suppliers and processors, and demographics.
2. A Description of the Appraised Property – This section should attempt to give the county and state an overview of the farm and its important features and shall include the following:
   a. Legal Description – Provide an easily readable copy of the property's legal description contained in the Appendices. All parcel numbers, recorded book/page, purchase date, and acreage needs included. Include a direction map of the subject property and written directions to the eased land.
   b. Property data and zoning – Provide a listing of municipal, legal and administrative as well as physical limitations on the subject property, i.e. zoning, flood plain, road frontage, utilities, wetlands, etc., scenic and environmental attributes, soil and topographic characteristics, on-site septic and water, ground cover, water resources, ownership, encumbrances and appurtenances, taxes, and assessment. Describe how these affect the value and use of the property. Also, include a copy of the municipal zoning ordinance which describes the district in which the subject property is located as an exhibit within this section.
   c. A brief description of improvements on the property. Do not include sketch maps and structural drawings.
   d. Color photos of the subject property's fields and improvements.
   e. Tax map showing the subject and its relationship to neighboring properties.
   f. A legible sketch or aerial photograph of the subject property showing boundaries, roads,

streams, woods, driveways, building locations, right of ways and land use. **(Exhibit 2.a)**

g. A location map showing the location of the subject tract in the county or municipality.

h. Soils map showing property boundaries. Soils maps are available from the USDA Natural Resource Conservation Service Office in each county and must include the Land Capability Classes in proper NRCS color scheme and brief soil descriptions for individual soil mapping units.

C. Analyses and Conclusions – This section of the appraisal is extremely important. It includes the analyses of the subject property and comparable sales and states the value of the agricultural conservation easement. It is crucial that this section be in conformity with the definitions of value described in item 6 of the Introduction Section.

1. Analysis of Highest and Best Use - In order for an agricultural conservation easement value to exist, the highest and best use of the subject property before the easement is in place must be something other than agriculture. The determination of an interim use as a designation is unacceptable for easement purchases.
2. The Valuation Methodology: **Market Value** – use at least three comparable sales from local farm sales without deed restrictions.
   a. Comparable sales data
      i. Date of Sale
      ii. Purchase Price
      iii. Zoning
      iv. Road Frontage in feet
      v. Comparison Analysis – provide a narrative analysis comparing the individual comparable sale to the subject property.
   b. An adjustment grid – Provide a one page grid that lists the pertinent items for which each comparable purchase price was adjusted in order to bring it in line with the subject. Provide dollar figures and percent for each adjustment, plus total adjustment dollars and percent for each comparable sale. **(Exhibit 2.b)**.
   c. A locational map of comparable sales showing the location of the subject tract with respect to the comparable sales. Include multiple location maps for multiple counties.
3. The Market Value Estimate – Provide an analytical conclusion as to what the market value is on both the subject land and on a per acre basis.
4. The Valuation Methodology: **Farmland Value** – use at least three comparable sales from local farm sales with agricultural deed restrictions.
   a. Comparable sales data
      i. Date of sale
      ii. Purchase Price
      iii. Zoning
      iv. Soil Mapping Unit
      v. Comparison Analysis – provide a narrative analysis comparing the individual comparable sale to the subject property.
   b. An adjustment grid – Provide a one page grid which lists the pertinent items for which each comparable purchase price was adjusted in order to bring it in line with the subject.

Provide dollar figures and percent for each adjustment, plus total adjustment dollars and percent, for each comparable sale. **(Exhibit 2.c)**.

c. A locational map of comparable sales showing the location of the subject tract with respect to the comparable sales. Include multiple location maps for multiple counties.

5. A Farmland Value Estimate – Provide an analytical conclusion as to what the farmland value is on both the subject land and on a per acre basis.
6. The Final Estimate Easement of Value – This section should bring together the reconciliation of all the analyses, conclusions and indications of value into one integrated summary of the subject property's market and farmland values. This should clearly state these values on both the subject land and on a per acre basis. The final conservation easement value shall be stated for both the subject land and per acre basis. The effective date of the easement value shall be identified.
7. Enhancement Value – If acreage is voluntarily withheld from the easement sale by the landowner through subdivision accomplished in accordance with the PA Municipalities Planning Code, the appraiser shall, in making the estimate of agricultural conservation easement value, take into account any increase in value of the subdivided acreage resulting from the placement of the easement on the subject land. It is possible for the subject property or adjoining properties to actually increase in value after the easement restrictions are imposed. 138.64(f) (9). **(Exhibit 2.e)**
8. Appendix - Contains a brief statement of the appraiser's professional qualifications and a copy of the appraiser's current certification issued in accordance with the Real Estate Appraisers Certification Act. **(Exhibit 2.d)**

II. The appraiser shall supply information concerning comparable sales 138e.64(f) as follows:

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

B. Pertinent data to be supplied by the appraiser for each comparable sale used in the preparation of the appraisal report is contained in Chapter 138e.64(f) (1) through (9) in the Rules and Regulations for easement purchase.

Section 2.6 – Easement Value and Purchase Price

I. Easement Value - The maximum value of an easement for purposes of making an offer to purchase shall be the difference between the market value and the farmland value contained in the county appraisal report.

II. Maximum Purchase Price – The purchase price offered for the purchase of an easement under Chapter 138e.66(b) may not exceed, but may be less than, the value of easement.

Section 2.7 – Checklist for Appraisal Reports Completed for the Easement Purchase Program

A checklist for the review of the appraisal report is listed in **Exhibit 2.g.** The checklist is to be used for reviewing both the county appraisal and the landowners appraisal if applicable. Deficiencies in the appraisal will be noted on the checklist and discussed with the county administrator.

Section 2. 8 – Offer of Purchase by County Board

I. The county board shall determine whether to offer to purchase an easement following receipt of the county appraisal report by considering the factors in Chapter 138e.66(a) (1) through (3).

If the county board determines to make an offer to purchase an easement, the county board or representative, shall meet with the landowner(s) to review the contents of the county appraisal report. An offer to purchase an easement shall be submitted in writing to the landowner(s) along with a copy of the county appraisal report.

II. Within 30 days of receipt of the written offer from the county board, an applicant may do one of the following:

A. Accept the offer. It is at this point that the county board and the landowner(s) shall enter into an agreement of sale.

B. Reject the offer and advise the county board that the application is withdrawn.

C. Advise the county board that the applicant is retaining, at the applicant's expense, an independent state-certified general real estate appraiser to determine the easement value. **(The appraiser shall be qualified, and the appraisal shall be completed in accordance with the procedure in Chapter 138e.64 (relating to appraisal.)** 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 applicant's appraisal shall be submitted to the county board. The applicant's decision to obtain an independent appraisal does not constitute a rejection of the county board's original offer.

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

a. The agricultural value shall equal the sum of:

i. The farmland value determined by the applicant's appraiser;

ii. One-half of the difference between the farmland value determined by the county board's appraiser and the farmland value determined by the applicant's appraiser, if the farmland value determined by the county board's appraiser exceeds the farmland value determined by the applicant's appraiser.

b. The nonagricultural value shall equal the sum of:

i. The market value determined by the county board's appraiser; and

ii. One-half of the difference between the market value determined by the applicant's appraiser and the market value determined by the county board's appraiser, if the market value determined by the applicant's appraiser exceeds the market value determined by the county board's appraiser. Use the work sheet provided by the state. **(Exhibit 2.f)**

2. If the easement value determined by the work sheet is less than the easement value determined by the county appraiser, the county board may offer a purchase price equal to the county's original offer.
3. The purchase price offered for the purchase of an easement may not exceed the appraised per acre value or any overall purchase price limit established in the county program, but may be less than the value of the easement.
4. Within 30 days of receipt of the applicant's appraisal, the county board shall do one of the following:
   i. Submit a written offer to purchase in an amount in excess of the original amount offered.
   ii. Notify the applicant, in writing, that the original offer made remains open and will not be modified.
5. The applicant shall, within 15 days of receipt of the county board's written offer (Item 4 above) accept or reject the offer.
6. Failure of the applicant to act shall constitute a rejection of the county board's offer.
7. If the offer of purchase is accepted, the county board and the applicant shall enter into an agreement of sale.

D. The failure by the applicant to act within 30 days of receipt of a written offer shall constitute rejection of the offer.

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

Bleiler Farm, Lehigh Co. (Photo by Jeff Zehr)

Chapter 3

Payment Methods, Agreements & Deeds

Section 3.1 - Introduction

An offer to purchase an easement shall be submitted to the applicant in writing and be accompanied by the county appraisal report, which is reviewed with the landowner by the county board, or its representative. At this time the county board or its representative will explain the different methods of payment available to the landowner(s). It is ***highly*** recommended the landowner(s) consult with a tax attorney or financial advisor prior to signing the Agreement of Sale. **Do not give tax advice!** The landowner(s) needs to consider the financial and tax implications of the agricultural conservation easement purchase. The landowner(s) may be subject to capital gains tax. This is a major investment and requires due consideration from the landowner(s) prior to accepting the easement purchase offer.

Section 3.2 - Payment Methods

There are five payment methods available to the landowner, including:

A. Lump Sum Payment
B. Short-term Installment Sale
C. Long-term Installment Sale
D. Like-Kind Exchange
E. Installment Purchase Agreement (IPA)

A. Lump Sum Payment

The lump sum payment is a straight sale where the landowner(s) elects to accept one payment for the total amount of the easement purchase price at the time of settlement.

B. Short-Term Installment Sale

A Short-Term Installment Sale is a payment method with an annual payment period of five years or less. The landowner(s) electing this payment method would receive payments in installments with or without interest for a period of normally two (2) to five (5) years.

The Department will provide the agreement of sale for purchases solely or jointly by the Commonwealth and eligible counties. The interest rate shall be negotiated between the landowner(s) and the county board. This interest rate shall be established on the outstanding balance by the county board and stated in the agreement of sale.

The landowner(s) may decide to take a specific amount of the principal at the time of settlement with the remaining principal amount being divided variably between the remaining years or paid in equal payments over the term of the agreement. A short-term installment sale may be elected without interest. This is usually done when the payment is to be made over two (2) installments or funds are limited. In this instance, the landowner(s) may desire the services of a tax consultant in order to calculate the interest for tax purposes.

When the landowner(s) elects this payment method, the installment Agreement of Sale must be used. The total estimated interest needs to be calculated for Exhibit "B" Statement of Costs to ensure the state board approves the total amount needed for this purchase. The date of installment payments shall be between February 1 and March 31.

The first installment payment occurs at settlement and does NOT include interest. The second installment payment interest must be estimated based on an assumed closing date. For ease of calculations, the closing date will be assumed to be sixty (60) days after State Board approval. The estimated interest is used only to calculate the total interest cost to be included on Exhibit "B" Statement of Costs. If estimated interest costs are not sufficient to make the purchase, the State Board will have to approve the additional interest needed prior to payment being made. **Exhibit 3.a** details a sample calculation of a short-term installment purchase.

C. Long-Term Installment Sale

In this method the landowner(s) may elect to take payments over a period of more than five years. If this method is elected, the county board will be responsible for investing the Commonwealth's share and the county's share and making the payments over time. The first installment payment is made at settlement. The remaining allocation of state and county funds shall then be invested by the county within five (5) working days after the time of settlement. Examples of investment options include interest-bearing Certificate of Deposit(s) or United States Treasury Note(s).

If this payment method is elected, the county shall notify the state board to assist in preparation of a modified Agreement of Sale incorporating the above requirements.

D. Like-Kind Exchange

A like-kind exchange is used when the landowner(s) elects to use the proceeds of the agricultural conservation easement to purchase income-producing real estate. For example, the landowner(s) could purchase additional land to expand the current operation with no additional outlay of capital or purchase other productive real estate used in a trade, business or investment. The IRS refers to this option as a 1031 exchange. There are specific time frames involved with this election and the landowner(s) will need an attorney to prepare the like-kind exchange agreement.

If the landowner(s) elects a like-kind exchange, it must be noted on the Agreement of Sale by typing "LIKE-KIND EXCHANGE" in the upper right corner. Also, the following statement must be added to Article XIII of a state or state-county Agreement of Sale, and added to Article XIV of a Multi-Agreement of Sale:

"7. This Agreement may be assigned by Grantors without the prior consent of Grantees."

If the easement is a multi-funded like-kind, this sentence should go at the end of Section XIV. In addition, there will need to be a like-kind exchange agreement and assignment. Usually this assignment is labeled as Exhibit "B" to the like-kind exchange agreement. A sample of the like-kind exchange agreement and assignment are attached in **Exhibit 3.b**. The assignment will name the qualified intermediary, who will

handle the financial transaction. The check will be made payable to the qualified intermediary. A social security number or EIN number shall be provided for the qualified intermediary.

Election of this sale method may assist the landowner(s) in lowering or deferring capital gains tax. County Boards and staff should always refrain from giving landowner(s) tax advice. Landowners should be referred to their own tax advisors.

E. Installment Purchase Agreement (IPA)

The tax-deferred installment sale method is a program currently in the developmental phase. The Pennsylvania Department of Agriculture, through the New Garden General Authority, developed a model program for counties. The installment purchase agreement method allows landowners to defer payment of capital gains tax for up to thirty years and enables the county to leverage funds.

An installment purchase agreement (IPA) is a contract between a qualified investor and the landowner(s) selling the development rights. The IPA promises to pay the purchase price by the end of a specified period of time (as long as 30 years) and interest on the purchase price semi-annually. IPA payments come from funds paid by the county board to the authority under a conveyance agreement, which is a valid and binding general obligation of the county, similar to the county's municipal bonds.

The terms of a transaction (purchase price, cash received at settlement, period over which IPA principal is paid and interest rate on the IPA) are negotiated between the county board and the landowner(s). Once agreed upon, the county's governing body adopts a resolution requesting the authority to enter into an IPA with the landowner(s) on the agreed-upon terms. At closing on the IPA, the county board enters into a conveyance agreement with the authority that insures IPA payments to the landowner(s).

The tax-exempt interest rate will typically be set just prior to closing for each IPA and will remain the same until the IPA matures. The rate will be based on market yields but typically will not be less than a floor rate set when an agreement of sale is executed. A bank, acting as paying agent, will make interest payments twice a year directly to landowner(s) until the IPA matures. Landowner(s) will receive an opinion of bond counsel at closing that the interest payments will be exempt from federal and state income tax.

At settlement on the IPA, a landowner(s) signs and gives the county/commonwealth (through the authority) a deed of easement. This easement binds the landowner(s) and anyone else who owns or uses the land from ever developing it for anything but farm uses. The easement is binding at settlement and the easement is owned by the county/state in perpetuity.

A landowner(s) requesting more information on this payment method should contact the state board.

Section 3.3 - Bargain Sale

A bargain sale is a transaction where a landowner(s) accepts less than 100% of the easement value. The bargain sale may be applied to any of the payment methods used to purchase an ACE. As an example, a landowner(s) may elect a bargain sale with a like-kind exchange, an installment purchase, or lump

sum payment. The landowner(s) may be able to use the bargain sale as a charitable contribution for federal income tax reporting. The landowner(s) may consult with a tax attorney or financial advisor to determine any tax advantages.

In order to request a charitable contribution, the landowner shall complete the IRS Form 8283 and forward it to the state board for completion of Part IV, Donee Acknowledgment. The state board will acknowledge receipt of the donated property. See Section 3.8 for further details. A sample Form 8283 is in **Exhibit 3.i.**

Section 3.4 - Agreement of Sale

After the easement purchase offer has been accepted by the landowner(s), an Agreement of Sale shall be completed. The first decision to be made is what type of funding to use for this purchase. Decide whether it will be a state-only funded purchase, a joint purchase, a county-only funded purchase, or a multi-funded purchase with funding coming from any combination of state, county, eligible nonprofit entity or township funds. This decision determines which Agreement of Sale to use. Examples of each type of Agreement of Sale are contained in electronic format on CD provided by the Bureau.

The Agreement of Sale has a coding in the upper left corner of the first page. They all have the same first six (6) letters - ACEPER. The last series of letters indicate the type of Agreement of Sale designated: SF is for State Funded; JF is for Jointly Funded. For example a state-only funded purchase would be put on an Agreement of Sale - ACEPERSF and a joint-funded Agreement of Sale is designated ACEPERJF. Joint Township or nonprofit Agreement of Sales include the designation MULTI in the coding symbol.

These agreements may **NOT** be **RE-TYPED.** The Agreements are fill-in the blanks. The landowner(s) must be listed on the Agreement of Sale. Please make sure their legal names are used. Add "single person" behind the name if applicable. The landowner(s) listed as Grantor(s) on the Agreement must match the fee simple owner(s) on the Title Insurance Commitment. The landowner(s) need to sign their names **EXACTLY** as listed on the front of the Agreement of Sale and contained in the Title Insurance Commitment, Schedule A.

The acreage inserted on the Agreement of Sale must match the amount of eased acreage listed on the Exhibit "A" Legal Description.

Under Article IX (9)type in the word "NONE". This article should contain only items not included in the title insurance commitment as exceptions such as unrecorded loans, unrecorded rights-of-way, and unrecorded easements.

The Agreement of Sale must be signed and dated by all landowners. In addition, the social security number of each landowner is also required. The social security number may be listed under each landowner's signature on the signature page. Each landowner's signature must be attested to and dated. Each landowner's name must also be typed below their signature. The state board requires original signatures on the Agreement of Sale, not a copy.

If the Agreement of Sale is with a corporation, a copy of the corporation's Articles of Incorporation and the corporation EIN number are needed. Also, the Agreement of Sale must be signed and dated by the President or Vice President and Secretary or Treasurer, or a resolution by the corporation naming the persons authorized to sign. All signatures need attested and dated.

If the Agreement of Sale is with a partnership, a copy of the partnership agreement is needed. Also, all owners, or persons appointed in the partnership agreement authorized to conduct business on behalf of the partnership, must sign, date, and the FIN number are needed. All signatures must be attested and dated.

If the Agreement of Sale is with a Trust, a copy of the Trust Agreement is needed as well as the Trust FIN number. All Trustees must sign the Agreement of Sale, as authorized by the Trust. If it is a Revocable Living Trust, the Trust may use either a Social Security Number or a Federal Identification Number (FIN). All signatures must be attested and dated.

If the Agreement of Sale is with an Estate, a copy of the will or letters of testimony naming the executor(s) is needed as well as the Estate FIN number. All executor(s) of the estate must sign and date the Agreement of Sale for the Estate. Each signature must be attested and dated.

If the landowner has a power of attorney, a copy of the power of attorney document is required. The power of attorney signs and dates the Agreement of Sale as such. All signatures must be attested to and dated.

If a landowner becomes deceased after signing the Agreement of Sale, a copy of the death certificate will need to be produced at settlement.

The County Board Chairperson and County Solicitor need to sign and date the Agreement of Sale. The County Board Chairperson's signature needs to be attested and dated. The Agreement of Sale requires the County's FIN. These numbers are found in **Exhibit 3.c**.

In addition, the Agreement of Sale should have the following Exhibits attached as described in the following sections:

Exhibit "A" - Legal Description
Exhibit "B" - Statement of Costs
Exhibit "C" - Deed of Easement
Exhibit "D" - Contractor Integrity Provisions
Exhibit "E" - Nondiscrimination/Sexual Harassment Clause
Exhibit "F" - IRS Form W-9

A. Exhibit "A" - Legal Description

The legal description sets forth the metes and bounds of the total farmland tract subject to the agricultural conservation easement. This is the legal description to be recorded at settlement with the Deed of Easement and also identical to the legal description the Title Insurance Company issues. A copy of the final legal description must be sent to the Title Insurance Company for insertion in the Title Insurance Commitment and final Title Insurance Policy.

B. Exhibit "B" - Statement of Costs

This is a Statement of Costs detailing the purchase price, incidental costs, and interest costs associated with the agricultural conservation easement purchase. It breaks down the funding by state, county, nonprofit entity, or township. A sample is found in **Exhibit 3.d**. The Exhibit "B" comments block shall be modified to include the interest, total acres in the easement and per acre easement cost. When interest is used also show the interest rate and number of installment payments.

C. Exhibit "C" - Deed of Easement

The Deed of Easement is also known as Exhibit "C" attached to the Agreement of Sale. The Deed of Easements are as varied as the Agreement of Sales. Examples of each type of Deed of Easement are contained in electronic format on CD provided by the state board.

The Deed of Easement to be used is determined by the type of Agreement of Sale. If a joint funded Agreement of Sale is used, then a joint deed must be used. **DEEDS MAY NOT BE RE-TYPED.** The landowner(s) signature shall be identical to the signature(s) on the Agreement of Sale and identified in Schedule A of the Title Insurance Commitment. **Exhibit 3.j includes each county subdivision reference needed in Section 3 of the Deed of Easement**. The Deed of Easement is executed at settlement. In addition, the legal description recorded with the Deed of Easement **MUST** be **identical** to the one used as Exhibit "A" in the Agreement of Sale. The Deed of Easement must be recorded in the Recorder of Deeds office. In addition to the deed, Exhibit "A" (the legal description) any executed subordinations, and the conservation plan agreement are recorded with the Deed of Easement. A copy of this recorded deed must be sent to the Bureau.

D. Exhibit "D" - Contractor Integrity Provisions

A sample is attached in **Exhibit 3.e**

E. Exhibit "E" – Nondiscrimination/Sexual Harassment Clause

A sample is attached in **Exhibit 3.f**

F. Exhibit "F" - IRS Form W-9

This form must be completed by the landowner(s). Instructions on how to complete the IRS Form W-9 are contained on the form itself. If the landowner is a corporation, estate, or trust, the W-9 must be completed using the EIN (employer identification number). If there are multiple owners, each owner must complete a W-9. A sample W-9 is attached in **Exhibit 3.g**.

A signed copy of the landowners IRS W-9 form needs to be included in order for the county and Commonwealth to properly report easement proceeds to the federal government.

If a landowner is a single individual, his/her name should be printed at the top of the form, then he/she should print his/her social security number in the space provided and sign the form.

If the landowner is a husband/wife who file their taxes under one or the others individual social security number, then both landowners individually must complete a W-9 form.

If the farm is owned by a partnership or corporation and reports taxes under a separate FIN the partnership or corporate name should be printed on the first line, the FIN should be listed, and the signature of the authorized person to sign for the corporation or partnership should appear.

Section 3.5 - Year-End Encumbrance of Funds

The annual allocation received by each participating county shall be either expended or encumbered within a two-year period. For example, funds allocated to counties in the beginning of 2008 must be spent or encumbered by December 31, 2009. Money not expended or encumbered reverts back to the fund to be redistributed. The term "expended" means the easement purchase has been approved by the state board. The term "encumbered" means the easement purchase has not been approved by the state board. In order for the easement purchase to be "encumbered" by the state board, all the necessary documents must be received by close of business on December 31st. Simply put, it is all the documents except the survey. A year-end checklist is attached in **Exhibit 3.h.** See also Chapter 6.5.

Year-end encumbrance is an involved part of the easement purchase. The following explanation will hopefully provide clarification: The county board is trying to encumber the money necessary to make the easement purchase on a farm that is not ready to be placed on the agenda for the last board meeting of the year. The county board obtains the appraisal, a signed agreement of sale, orders the title insurance commitment, and prepares the other necessary forms listed on the year-end checklist. All these documents are submitted to the state board by December 31, and the farm is encumbered. At this time, the county board proceeds with the survey. Once the survey is completed and the correct acreage is known, the county board must re-do all the documents that were submitted on December 31 to reflect the correct acreage and costs.

Please be advised that in order to expend or encumber all the state match money, the county board must expend or encumber all its county match money.

Section 3.6 - DONATIONS

Act 46 of 2006 amended Act 43 to allow counties to acquire easements through donations. Donated easements can be acquired by the county, state board, an eligible nonprofit entity or a local government unit if all of the following apply:

- The land is used for agricultural production. This includes land that is used for timber but does not include commercial equine activities.
- The term of the agricultural conservation easement must be perpetual.
- The conservation easement must be acquired by the county or by the eligible county in conjunction with the Commonwealth, an eligible nonprofit entity or a local government unit. The acquisition can also be a combination of any of these as long as the county is on the deed of easement.

- All documents used to acquire the donation must be approved by the State Board or county board prior to execution and delivery.
- All agricultural conservation easements acquired by donation must be free and clear of all encumbrances.
- The agricultural conservation easement is required to have title insurance.
- The deed of agricultural conservation easement is as prescribed by the State Board for agricultural conservation easement purchase by the Commonwealth.
- The county board must record a donated agricultural conservation easement in the office of the recorder of deeds of the respective county and submit to the State Board a recorded copy of the agricultural conservation easement within 30 days after recording.

If the land does not meet the minimum criteria established by the State Board for purchase of an agricultural conservation easement, the land shall be contiguous to property which is subject to an agricultural conservation easement.

Reimbursable expenses for incidental costs are limited to a maximum of $5,000 per easement acquired by donation.

Section 3.7 - 1099-S

Internal Revenue Code, Section 6045, requires that a 1099-S form be issued for all easement purchases. Counties are responsible to ensure that their closing agents issue 1099-S forms for the gross proceeds of all easements.

A 1099-S Verification Form must be submitted to the state board along with the other required closing material (Chapter 138e.93).

Section 3.8 - FORM 8283

1. If the landowner accepts a bargain sale, the Department of Treasury, Internal Revenue Service states the landowner should complete and file the IRS Form 8283. A representative of the state board will complete and sign Part IV (Donee Acknowledgement) at the landowner's request, which is acknowledging receipt of the donated property. A sample Form 8283 and instructions are in **Exhibit 3.i.** ■

Schulteis Farm, Adams Co. (Photo by Mark Clowney)

Chapter 4

Description/ Accuracy/Survey Requirements

Section 4.1 – Introduction

An agricultural conservation easement is a legal contract a property owner makes with the easement holder restricting the use of property. The boundary of the easement area is defined by a written description identifying the property subject to the agricultural conservation easement. This "legal description" consists of a listing of the metes and bounds of the subject property. This legal description shall be based upon a verbatim restatement of a previously recorded deed's legal description or from a draft of survey prepared by a Professional Land Surveyor. The County program shall establish the procedure for selecting a surveyor to provide the level of quality necessary to be maintained to purchase conservation easements. These guidelines are explained as follows:

Section 4.2 - Legal Description from Recorded Deed

A legal description of the proposed area for easement purchase shall be created, setting forth the exact boundary of the easement through a metes and bounds description. This legal description shall be based upon a verbatim restatement of a legal description in a previously recorded deed or from the draft of a survey prepared by a professional land surveyor.

Format

The legal description shall be in a narrative format describing all the boundaries of the eased area by direction, expressed in degrees, minutes and seconds; distance, expressed in decimal feet; the intent regarding adjoiners or other existing features; a description of fixed boundary monuments, and whether set or found. For each curve line, the direction of curvation, radius, arc length, chord bearing and chord distance shall be included. The description shall contain a recital setting forth the background **"chain of title"** essential for understanding the basis for its creation. Within the description, rights-of-way, covenants and restrictions affecting the easement area shall be described and referenced to the recorded deeds, subdivision plans or maps. Exceptions to the eased area shall be described, using metes and bounds. If the area subject to the conservation easement consists of more than one tract as identified in the current deed or deeds, the legal description shall identify the acreage of each parcel as well as the acreage of all property subject to the agricultural conservation easement. The acreage of each exception shall be provided separately. The net acreage of all property subject to the ACE shall be stated at the end of the deed description. An exception to this is land under the same ownership but outside the border of the property to be eased need not be included on the ACE legal description or survey.

At least one course and distance for both the main tract(s) and each exception needs to be referenced to permanent markers, or monuments, of the type commonly placed in the field by a surveyor.

The legal description shall be identified as Exhibit "A" at the top of the first page. As Exhibit "A," the legal description is attached to the signed Agreement of Sale, subsequently approved by the State Agricultural Land Preservation Board. Once the Comptroller executes the agreement of sale by affixing a signature to the agreement,,the legal description (Exhibit "A") shall remain **unchanged and not retyped** unless authorized by

the State and County farmland preservation offices. The legal description as contained in Exhibit "A" shall be recorded at the County Recorder of Deeds after settlement without being **retyped** for any visual or recording purposes.

The final recorded Deed of Easement and legal description (Exhibit "A") shall be forwarded to the state board for maintaining individual easement document records. A copy of the recorded Deed of Easement and legal description should also be maintained by the county agricultural land preservation board.

Section 4.3 – Accuracy of Deed Description

The legal description contained in the most current recorded deed at the time the property applies for the purchase of development rights shall not contain a closure error greater than one foot per 200 linear feet. This provision shall be satisfied for each tract in which a conservation easement is to be purchased as well as parcels to be excluded from the easement.

A. Error of Closure Check

The error of closure check must be submitted separately from the Agreement of Sale for each parcel or tract and exception to the property. The error of closure check shall include as a minimum, the bearing and distance for each course as plotted from the recorded legal description, the total perimeter distance in feet and the closure error expressed as a bearing and distance. From this data, the error of closure and accuracy shall be calculated using the following formula:

$$\frac{\text{Total Perimeter (feet)}}{\text{Closure error (feet)}} = \text{Error of Closure}$$

B. Error of Closure Standards

The error of closure is expressed as a ratio and shall not be greater than one foot per 200 linear feet (1':200') as calculated from the recorded legal description. Computer programs are available that are capable of calculating the error of closure and accuracy of recorded legal descriptions. An example of such a computer program is displayed in **Exhibit 4.a**. The cost of making an error of closure check of the eased area is reimbursable by the State as an incidental cost.

If any part of the existing legal description does not meet the one-foot per 200 linear feet error of closure criteria, a boundary survey shall be completed by a Professional Land Surveyor for the entire acreage proposed for easement purchase as well as all exceptions.

Section 4.4 – Survey & Plat Requirements

A. Survey Requirements

If a land survey is required to complete the purchase of an agricultural conservation easement, the survey shall have a closure error of no more than one (1) foot per 10,000 linear feet in the survey, and

shall otherwise comply with the standards published by the Pennsylvania Society of Land Surveyors in its ''Manual of Practice for Professional Land Surveyors in the Commonwealth of Pennsylvania,'' adopted July 10, 1998, or its most current successor document.

A recordable legal description shall be prepared setting forth the metes, bounds, monumentation, exceptions, easements and rights-of-way with respect to the farmland tract or other subject of the survey.

A copy of the final boundary survey in digital electronic format shall be provided that complies with the Section 4.5 – Geographic Information System (GIS) technical standards maintained in this guidebook. The digital format shall show the bearings and distances for each course surveyed and the northing and easting for each monument.

In addition, a paper copy of the plotted field survey map from the digital file shall be provided showing the course bearings and distances and other annotations and symbols as required in the guidebook. Two sequential ground control monuments shall be plotted on the survey map along with the latitude and longitude readings expressed in decimal degrees.

Monumentation described in the legal description shall include at least one course and distance referencing an affixed marker or monument of a type commonly placed in the field by a surveyor. Fixed markers may include iron pins, pk nails, spikes, concrete monuments or stones.

B. Plat Requirements

All boundary surveys shall require a map or plat produced in a professional manner in accordance with good drafting practices. The plat shall be drawn at a scale of no greater than 1" = 200'. The plat shall identify the purpose of the survey, ownership and address of the property, municipality and county in which the property is located, date and scale of the plat, and the practitioner responsible for the survey and plat.

The plat shall contain an accurate representation of the boundary, geometry of the lines (bearings and distances), corner markers and any points of reference, names of record adjoiners and other property identifications, any differences between record and occupation lines, encroachments, easements, deed restrictions, and zoning information if applicable.

The plat shall include a signed surveyor's certification statement or separate certification letter as contained in the following sample:

SURVEYOR'S CERTIFICATE

I hereby certify that this plan is true and correct to the best of my knowledge and represents the findings of an easement boundary survey performed under my direction, that the work has been done in accordance with the standards published by the Pennsylvania Society of Land Surveyors in its ''Manual of Practice for Professional Land Surveyors in the Commonwealth of Pennsylvania,''

adopted July 10, 1998, or its most current successor document, and that the error of closure is no greater than 1 foot per 10,000 linear feet in the survey.

_____	_____
John Doe, P.L.S. SU-000000-E	Date

C. Monumentation Requirements

When using a recorded deed, the legal description shall include one course and distance referencing fixed markers or monuments, of a type placed in the field by a surveyor, as required for each tract or parcel and exception included in the subject property. Fixed markers may include iron pins, pk nails, spikes, concrete monuments or stones. Existing fixed markers shall be used whenever available in the field.

If a survey is required, the survey shall establish monumentation for at least two ground control points located sequentially along the boundary survey. This monumentation shall consist of permanent, concrete markers of substantial length and width containing ferrous or other materials detectable by an electromagnetic locator. The identity of the surveyor who places the monument shall be affixed or marked upon the monument so that it can be ascertained by inspection of the monument in the field.

D. Survey Costs

The cost of preparing a new boundary survey, when required by the County Agricultural Land Preservation Board, is reimbursable by the state board as an incidental cost. The county board shall require that a survey be performed when:

1. The error of closure of the legal description of the most recently recorded deed is less than 1”:200’
2. There is not at least one course and distance for both the main tract(s) and each exception referenced to permanent markers or monuments of the type commonly placed in the field by a surveyor.
3. There is an issue regarding location of boundaries, easements or other issues of occupation that may effect the holding of the agricultural conservation easement.
4. The legal description of the parcel subject to the agricultural conservation easement does not recite verbatim the legal description in the most recent previously recorded deed.
5. When the landowner withholds land from inclusion in the easement boundary, the land accepted or withheld shall be surveyed.

According to county programs, if a survey is required as a result of the landowner’s desire to withhold acreage from the easement, excluding the existing homestead and curtilage, the landowner shall bear the cost of survey, or that portion of the survey done to delineate the withheld acreage. When a survey is completed to delineate portions of the property to be excluded from the easement boundaries at the request of the County Board, these costs shall be reimbursable as incidental costs. Survey costs are subject to requirements contained in Chapter 138e.69.

The county board shall determine the need for surveys prior to easement purchase. The County Board will notify the property owner concerning the eligible reimbursable costs for survey. Any additional survey costs incurred other than for easement purchase, shall be paid by the landowner.

Section 4.5 – Geographic Information System Requirements

For each tract, coordinates accurate to plus or minus three meters shall be established for at least two ground control points located sequentially along the boundary survey. These coordinates shall be identified by latitude and longitude expressed in decimal degrees with an accuracy of two (2) recorded decimal places.[1]

These coordinates shall be based on the "North American Datum of 1983," and shall be obtained through field observation or verification. The coordinates, a copy of the deed description and information providing the location of these coordinates within the deed description shall be provided to the State Board.

When a boundary survey of the agricultural conservation easement property has occurred, where available, a digital depiction of the property shall be provided. This digital depiction shall be in .DXF format, and shall contain the perimeter boundary of the property on one layer and boundary annotation on a separate layer. This information will be used to locate the property on the Statewide Farmland Preservation GIS database. ■

[1] Chapter 138e.73(b)(3) inadvertently recorded that an accuracy of "6 decimal places" is required when the intent was "2 decimal places". This will be corrected when the regulations are revised at a later date. It was determined administratively that an accuracy of 2 decimal places is sufficient.

Hartlaub Farm, Adams Co. (Photo by Mark Clowney)

Chapter 5

Title Insurance Commitment/ Title Insurance/ Title Issues

Section 5.1 – Introduction

Several important tasks are accomplished through the process of obtaining title insurance data. The title information identifies the legal owner(s) with fee simple ownership of the property. The legal description of the property is provided for both the Agreement of Sale and Final Title Insurance Policy. The title data lists any liens and encumbrances recorded against the property such as mortgages, judgments, bankruptcy action and outstanding back taxes. Part of the title insurance data is devoted to listing special exceptions to the endorsement of the policy, such as established transportation and utility rights-of-way, water rights easements, access easements, and other defects on the title. Copies of the exceptions cited in Schedule B–Section II of the Title Insurance Commitment shall be provided to the State Board for review. The named insured holder of the easement and the amount of the insurance coverage is identified in Schedule "A". The county board shall provide a Title Insurance Commitment to the State Board upon submission of its recommendation for the purchase of an easement.

The title insurance information is requested in the form of a Title Insurance Commitment. An example of a Title Insurance Commitment is contained in **Exhibit 5.c**.

At closing, the County Board shall provide a Title Insurance Commitment or Title Insurance Policy naming the grantees' as the insured and issued by a Title Insurance Company authorized to issue title insurance in the Commonwealth of Pennsylvania. The title insurance document shall reflect that all listed title insurance exceptions were addressed and resolved prior to the purchase of the agricultural conservation easement. The title insurance policy shall insure the full easement value of the subject land as shown by the appraisal report. The full easement value may be considered as the per acre value times the proposed easement acreage.

The Title Insurance Policy insures the easement is free and clear of all encumbrances that could affect the easement. The Title Insurance Policy insures the condition of the property at the instant of settlement of the deed of easement. This is accomplished by the Title Insurance Company making a last minute "bring-down" title search just prior to the instant of settlement of the deed of easement. The policy insures for everything up to the time of settlement when the policy takes effect. Encumbrances against the property after settlement are not insured by the policy.

At the time of settlement of the easement purchase, the closing agent shall review the title insurance provisions and exceptions to the policy with the owner(s) and indicate by initials and date the completion and disposition of each item. Items satisfied at settlement will be marked "removed" from the policy while other items will be marked for inclusion in the policy. A copy of the marked-up title insurance commitment shall be forwarded by the county board to the state board along with a settlement statement and copy of the executed Deed of Agricultural Conservation Easement within 10 days after the settlement. The settlement statement shall include an accounting of all funds received from the commonwealth, county, township and non-profit in connection with the purchase of the easement.

After settlement, the county board shall submit a revised statement of costs and revised Exhibit "B" in the event that actual costs were greater or lesser than the costs estimated in the initial statement of cost approved by the state board. The county board may submit to the state board a request for payment of its unreimbursed costs incidental to the purchase of the easement within 10 days after the settlement of the purchase of the

easement. Payment of such costs will be approved at the next regularly scheduled meeting of the state board if such costs are reasonably within the scope of the statement of cost, and the allocation of funds to the county is sufficient to pay the costs. Detailed instruction on post-settlement procedures are contained in Chapter 7 of the Guidebook and Chapter 138e.93(d)(1).

Once received, the county board shall forward to the state board the final issued Title Insurance Policy and the executed Deed of Agricultural Conservation Easement, as recorded by the County Recorder of Deeds.

Section 5.2 – Format of Title Insurance Commitment: Restrictions

The Title Insurance Commitment is generally divided into three parts: Schedule "A," Schedule "B," and Schedule "C." Schedule "A" consists of the proposed insured, the amount of insurance coverage, the estate or interest in the land as described, and land described in the insurance coverage. Schedule "B" is divided into Section I, which includes the requirements, taxes, mortgages, mechanics liens, judgments and bankruptcies; and Section II, which includes exceptions to the policy and endorsements. Schedule "C" includes the legal description and recital of the eased area covered by the policy.

The restrictions to the coverage of the policy are contained in Schedule "B." The policy is subject to the exclusions from insurance coverage for exceptions contained in Schedule "B"- Section I, and the provisions of the conditions and stipulations of the policy. Schedule "B"- Section II lists the exceptions which the policy does not insure against for loss or damage which arise by reason of the restricted item. Schedule "B" generally include exceptions such as:

SCHEDULE B - Section I

A. Unrecorded easements, discrepancies or conflicts in boundary lines, acreages and disclosures by an accurate survey.
B. Easements or claims of easements, not shown by the public records.
C. Any lien or right to a lien for services, labor, or material furnished, imposed by law and not shown by the public records.
D. Payment of all taxes for all years, due and payable.
E. Streams of water flow through premises. Subject to rights of other riparian owners abutting streams.
F. Unrecorded utility easement agreements.
G. Proof of identity, legal age, competency and marital status of all parties to the transaction.
H. Proof that no sewers have been installed or ordered to be installed in front of, abutting or upon the premises.
I. Proof there is no outstanding support judgments against the grantor(s) or divorce decree.
J. Proof there are no unpaid water rents, sewer rents or trash removal fees due.
K. Defects, liens, encumbrance, adverse claims or other matters, if any, created first appearing in the public records.
L. Possible unfilled mechanics and municipal claims.

These restrictions or exemptions to the policy coverage do not discredit or relinquish the insurance coverage from the policy. These kinds of exemptions may be removed at settlement by the closing agent or included in the Final Title Insurance Policy when issued.

Other exemptions, which affect the validity and endorsement of the insurance coverage, must be satisfied and/or removed at settlement by the closing agent. Many of these items may be of a technical, legal nature, and if not removed, may affect future marketability of title to the property. Exemptions that affect the issuance of clear title insurance coverage to the easement holder and proposed insured include:

SCHEDULE B - Section II

A. Surface coal rights owned by someone other than the fee simple owner of the property.
B. Unresolved rights of any spouse.
C. Bankruptcy claims or lawsuits under judgment before the courts.
D. Property surveys when plotted do not close within the required error of closure tolerance for the easement purchase program.
E. Unsubordinated mortgages, judgments, or mechanics liens held against the eased land.
F. Unpaid prior taxes and assessments subsequent to the date of closing.
G. Subject to easements and restrictive covenants or leases which prohibit or restrict the easement area from being used for agricultural production into perpetuity.
H. Terms of Agricultural Security Area resolutions as set forth and recorded in the county.
I. Subject to provisions of Acts of Assembly authorizing the Pennsylvania Department of Transportation to extend the boundaries of state roads.
J. Rights granted and recorded by utility companies, water companies, pipe-line companies and oil and gas leases.
K. Preferential Assessment of Land under the Pennsylvania Farmland and Forest Land Assessment Act (Act 319, Clean and Green) and provisions of Act 515.
L. Subject to rights-of-way, free ingress, egress and regress of interests other than fee simple ownership that are not included in the legal description as exemptions and appear within the boundary of the easement acreage.

These restrictions or exemptions to the policy shall be **"marked-up"** by the closing agent at settlement and satisfied or removed from the Final Title Insurance Policy when issued. The copy of the marked-up title insurance commitment by the closing agent at settlement serves as the official Title Insurance Policy until the Final Title Insurance Policy is issued by the company.

Section 5.3 - Subordination of Restrictions

Restrictions, including mortgages, judgments and other mechanics liens filed against the eased acreage are contained in Schedule "B," Section I of the Title Insurance Commitment. These pre-existing claims on the property present a special problem in providing a clear fee simple title to the property. A problem exists if the lending institution forecloses on the mortgage or other lien and demands title to the property. In that case, the easement purchase could be nullified. The solution to this dilemma is for the lending institution to subordinate its rights in the property to the rights of the grantee holding the easement. In the event of a foreclosure, the subordination will prevent the easement from becoming null-and-void. The easement purchase program does not allow the purchase of an easement on a farm with an outstanding active

mortgage or judgment unless the lending institution agrees to execute a subordination agreement. The subordination agreement must be signed by the financial institution. The state board must receive a copy of the signed subordination agreement as part of the easement purchase recommendation. The original signed subordination must be held by the closing agent for signature and execution by the landowner(s) at closing. The completely executed subordination agreement shall be recorded along with the Deed of Easement and legal description following closing of the easement by the County Recorder of Deeds. A sample subordination agreement is included as **Exhibit 5.a**.

If the landowner decides to pay off the mortgages or liens at closing, this will satisfy and negate any need for subordination of those mortgages or liens. A landowner may do a partial payoff and subordination of the remaining balance. A Satisfaction Piece will need to be filed and recorded in these cases to show the mortgages or liens were satisfied and liquidated at closing of the easement purchase. A letter from the landowner, attorney or title insurance company is needed by the state board to declare such actions in lieu of executing subordination agreements. This letter should be included with the easement purchase recommendation.

Section 5.4 – Legal Description

A legal description of the proposed area for easement purchase must set forth the exact boundary of the easement acreage using metes and bounds provided by an accurate survey or previously recorded deed of record. The legal description is set forth in Schedule "C" of the Title Insurance Policy. The legal description contained in the Final Title Insurance Policy needs to be taken verbatim from the legal description contained in Exhibit "A" of the Agreement of Sale executed by the State Comptroller's Office for easement purchase and as contained in the Deed of Easement recorded at the County Recorder of Deeds. The legal description in the Final Title Insurance Policy shall be an exact copy as recorded at the County Recorder of Deeds during settlement of the easement purchase. (Refer to Chapter 4 for detailed summary of the legal description).

Section 5.5 – Third-Party Mineral Rights Issues

One of the most important aspects to be resolved on farms proposed for easement purchase is the issue of a third party ownership in mineral rights on the property. The complication exists where the landowner cannot ensure that a third-party owner of the mineral rights will not engage in surface mining on the property. Although this does not apply to every property, a significant number of properties are affected where coal and mineral rights were sold off as long ago as 100 or more years. The deeds conveying rights to remove coal from beneath a tract of land during that era generally lacked language pertaining to the surface rights and surface mining of coal or other minerals, such as limestone, sand and gravel, fire clay and shale deposits.

A. Coal and Other Subsurface Mineral Rights.
   In Pennsylvania, the mineral rights may not be owned by the surface owner. The mineral rights may be owned by a coal company, other individuals, county government, oil and gas companies, and other entities with mineral interests. It is essential for landowners to consult with an attorney on these issues.

In § 914.1 of the Agricultural Area Security Law, there are several provisions that restrict the State Agricultural Land Preservation Board from purchasing easements. Under Article 914.1(e)(1)(ii), the State Board may reject an application where clear title cannot be conveyed by the landowner(s). The landowner(s) must demonstrate there is fee simple ownership of the title to the property in order to convey the deed of easement for purchase. In addition, Article 914.1(e)(1)(v), provides that where compensation is not provided to owners of surface mineable coal disturbed or affected by the creation of such easement then the easement purchase recommendation should be rejected. If these provisions are not satisfied, the state board is charged with rejecting the recommendation for Agricultural Conservation Easement Purchase.

Historically, the state board has approved easement purchases where third-parties owning rights to surface mineable coal or other minerals have voluntarily relinquished these rights or where these rights have been extinguished through quitclaim deed, quiet title, voluntary relinquishment, court order, declaratory judgment or repurchased rights. The question of rights to surface mineable coal should be addressed and resolved, ***with certainty,*** before the state board addresses the easement purchase recommendation. It can not be left for the landowner, coal owner, county or state to litigate this issue after the easement has been purchased with respect to the farmland.

Legal counsel for the Pennsylvania Department of Agriculture has offered the opinion that any question of whether a deed conveying coal rights or other mineral rights includes the right to surface mine should be resolved ***with certainty***-between the landowner(s) and the owner(s) of the mineral rights – before the state board considers the easement purchase. **Exhibit 5.b** includes sample copies of the typical instruments used to extinguish the surface mineable mineral claims. It is the burden of the easement seller to prove clear "fee simple" title to the property being eased; therefore, the seller of the easement shall bear the "incidental expenses" of extinguishing the rights to surface mineable minerals and resolving the mineral issues.

Article 914.1(c)(6)(i)and (ii) states that an agricultural conservation easement shall not prevent the exploration, development, storage or removal of coal by underground mining methods. The granting of rights-of-way by the owner of the eased land for the installation of, transportation of, or use of coal by underground mining methods shall not be prevented. There are certain long-range effects of mining, including subsidence that may need to be considered depending on the circumstances. It should be understood that even under the best circumstances the surface impact of subsurface mining, whether for coal, oil and gas or other minerals can be substantial. These surface impacts may include roads, drill holes, pipelines, pump stations, mine shafts, ventilation openings, subsidence, and other temporary structures used to support subsurface mining activities.

Many title insurance companies will include these mining hazards as a disclaimer in Schedule "B" – Section II of the Title Insurance Commitment and Final Title Insurance Policy.

B. Coal Bed Methane Gas (CBM) Extraction

Over the last years, there have been extensive discussions concerning the extraction of Coal Bed Methane Gas (CBM) on eased farms. The main issue is whether CBM gas extraction is an activity that can lawfully take place on land that is subject to an easement acquired under Act 43.

In general, the surface extraction of CBM gas is an activity that is allowed on land eased under the Agricultural Area Security law (Act 43). The Agricultural Area Security law (3P.S. §914.1(c) (6)(i) and (ii) provides as follows:

> "(6) An agricultural conservation easement shall not prevent:
> (i) 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 owners of the rights to develop the underlying coal 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.
> (ii) the granting of rights-of-way by the owner of the subject land in and through the land for the installation of, transportation of, or use of water sewage, electric, telephone, coal by underground mining methods, gas oil or oil products lines."

This issue arose as a result of a 1983 opinion issued by the Pennsylvania Supreme Court in the matter of *U.S. Steel vs. Hoge* (468A.2d 1380).

In summary, the court in *Hoge* determined that the ownership of CBM gas is vested in the owner of the coal bed so long as the gas remains in the coal or is captured while it is in the coal bed. In Pennsylvania therefore, the coal owner owns the CBM gas, unless that right has been specifically reserved or conveyed to another.

In this matter, their right to own something includes the right to access it. The owner of CBM gas rights has a resultant right to make reasonable surface intrusions (wells, pumps, access roads, mine shafts, or to her appurtenants) to access the CBM gas. The Agricultural Area Security Law does not impede or contradict this right.

CBM gas can be extracted by diagonal or horizontal drilling, so it is not always essential that the extraction occur directly over the coal bed in which the CBM gas is located.

The state board considers deeds that convey coal rights but are silent about CBM gas as also conveying the rights to extract CBM gas from the coal bed. This right includes the right to establish reasonable surface intrusions or rights-of-way related to CBM gas extraction on eased land, so as to minimize any adverse impacts.

As a general rule, a good practice is to engage operators of planned surface intrusions or rights-of-way related to CBM gas extraction on eased land as early as possible, so as to minimize any adverse impacts.

In general, the surface activities necessary for the extraction and removal of CBM gas from beneath ACE restricted land is permitted. Facilities/activities relating to processing and refining that do not need to take place at the point of extraction are not permitted under the deed of easement.

C. Oil and Gas Extraction

The Agriculture Area Security Law specifically contemplates the extraction of oil and gas from restricted land, together with the necessity of the "appurtenant facilities related to…oil or gas development or activities incident to the removal or development of such minerals." The exploration and/or extraction of oil and gas on eased land by a third–party holder of subsurface mineral rights is normally accomplished through a right-of-way agreement, oil and gas lease, or easement. An owner of restricted land, or an applicant to sell an agricultural conservation easement, would not be in violation of the deed of easement simply by virtue of having entered into oil and gas exploration by allowing the extraction of these minerals from the land. The oil and gas lease normally "reserves" the necessary or useful surface rights and privileges for the underground storage of gas, the right of ingress and egress, the right to erect temporary buildings, tanks, towers, stations, or other structures for surface support for the subsurface extraction of oil and gas. None of these reservations would necessarily violate the terms of the deed of agricultural conservation easement or Agricultural Area Security Law.

Although the form "Oil and Gas Lease" does not,violate the terms of the deed of agricultural conservation easement per se, or disqualify farmland subject to such a lease from consideration for agricultural conservation easement purchase, the *exercise* of the surface support rights reserved in that lease *could*, at some point, exceed the scope of the exception carved-out for these rights in §914.1(c)(6) of the Agricultural Area Security Law. It will ultimately be the responsibility of the County to monitor the extent to which the right to surface support is exercised.

During the State Board review process, the individual oil and gas leases contained in the Title Insurance Commitment, Schedule B – Section II or ROW agreements are reviewed for, basically, two questions:

a. Does the lease restrict or in any way prohibit the owner(s) from conducting agricultural production activities?
b. Is the oil and gas lease actually a "lease" arrangement and not a fee simple ownership by the oil and gas company or option to buy the land?

The provisions of § 914.1(c)(6) of the Agricultural Area Security Law are incorporated into the deed of agricultural conservation easement, under the clause entitled *"Mining"* (See 7 Pa.Code § 138e.241).

Section 5.6 – Oil and Gas Exploration and/or Extraction in Pennsylvania

The recent interest by energy companies to lease property for natural gas exploration and development represents a unique opportunity for landowners to increase their economic returns from the land. Two-thirds of the state is located in the Marcellus Black Shale gas region where potentially natural gas formations contain large lucrative quantities of untapped natural gas. With this economic gain also comes the potential for many unforeseen side effects. Under the terms of the agricultural conservation easement, landowners are permitted to grant leases for the exploration and development of natural gas on eased land. The oil and gas

lease is a legally binding document that may have implication well beyond the agreed upon lease period. This document can also provide the landowner(s) with the needed protections and contains the terms under which the landowner receives royalty payments. The single most important thing a landowner can do for themself is consult with an attorney who is knowledgeable in oil and gas leasing.

The Department shares the concerns county boards and landowners have expressed over how oil and gas exploration activities may affect preserved farms and agricultural production. Landowners should become fully informed about the rights and duties of oil and gas exploration and producing companies. The rights, desired limitations and the landowner's payments for property and crop damages, delays, and actual oil and gas production shall be clearly stated in the lease. Lease provisions should cover activities such as location and timing of exploration and production, well site location, pipeline placement (laying technique and depth), access roads (including damages to farmland, crops and improvements) and protection of domestic water supplies, reservoirs, ponds, and streams. The lessor should know that any lease form can be modified or altered with addendums containing provisions important to the lessor. The landowner should clearly understand all the terms of the lease and addendums and be comfortable with the limitations.

It is recommended that eased landowners allow the County Board and program administrator to review the lease document before signing. When an eased landowner consults with County Board or administrator regarding a lease, information should be provided on measures that can be taken to ensure that the land remains in production agriculture, as well as protecting the Commonwealth and County interests in the ACE. In addition, an attorney may be contacted to help ensure the lease agreement contains the specific provisions desired, clear title to mineral rights and protect the landowner's interests. Other groups and agencies such as the Department of Environmental Protection, Cooperative Extension Service and the Agricultural Land Resource and Reference Center are excellent sources for anyone to contact with questions on oil and gas leasing.

In Pennsylvania, oil and gas companies can engage in oil and gas leasing without a license, bond, or investigation or approval by any commonwealth agency. Landowners should obtain information on the leasing company's creditability before signing the lease.

Foremost consideration should be given by the landowner(s) as to whether the lease will harm the viability of the farm for agricultural production. While not all-inclusive, it is important the lease addresses the following issues:

- Will this lease harm the viability of my farm for production agriculture?
- Will this lease permit coal bed methane extraction?
- Will it permit the removal of other minerals?
- Who is responsible for environmental damage?
- Is there an extension of the primary term?
- When and how will I receive my primary rental payment?
- What are the royalty payments, and how will I be compensated if there are no royalties being generated from a well?
- Who will pay what taxes: who is responsible for repayment from violations of "Clean and Green," CREP or CRP agreements?

- Will gas storage be permitted?
- How will earth disturbances be reclaimed?
- Can I approve the location of roads, wells and pipelines?
- What will be my compensation for any damage; can water from my property be used by drillers?
- What happens if my water supply becomes contaminated?
- What compensation will I receive for timber removed, and/or crops destroyed?
- Who will be responsible for maintaining livestock fences and gates?
- Will the well and associated equipment be fenced?
- To what extent and under what conditions will the lease permit the construction of pipelines on the property?
- Who is responsible for soil conservation and how will this be achieved?
- Who is responsible for termination of the lease?
- Will I receive free gas or a payment in lieu of free gas?

Eased farm owners are encouraged to negotiate language into the lease agreement, designed to protect not only the landowner's interests, but the County and Commonwealth interests in the agricultural conservation easement. At a minimum the lease may include language similar to the example contained in **EXHIBIT 5.d**.

While oil and gas leases commonly provide payment for damages, it is true that the lessee has considerable freedom to explore or drill and produce. Pennsylvania has rules and regulations covering well-drilling, dry holes and producing wells. Pennsylvania regulations require the drilling company to restore the surface as nearly as practicable to the condition it was prior to the drilling of the well after completion and/or plugging. The Pennsylvania required bond is subject to forfeiture should an operator of the well fail to adhere to Pennsylvania oil and gas laws. Funds from forfeited bonds are used to clean-up sites on an environmental priority basis. It does not cover damages to fences, tile drainage, crops, roads, soil, and buildings away from the dry hole or well site or livestock. Additions to the Pennsylvania rules should be included in the lease. A list of specific provisions a landowner may consider are included in **EXHIBIT 5.d.**

Landowners should inform themselves completely on all issues related to the signing of an oil or gas lease. Additional information may be obtained from the following sources:

"Negotiating Oil and Gas Leases on Pennsylvania Farmland" prepared by the Pennsylvania Department of Agriculture, D. Robert Davidson, Esq., Special Assistant to the Secretary, August 2008.

The Pennsylvania Department of Environmental Protection

The Pennsylvania Department of Conservation and Natural Resources

The Penn State Cooperative Extension

Landowners should be aware of the fact that once a gas and oil lease is signed, the leasee's mineral rights take on an independent nature. The lease shall be recorded at the County Recorder of Deeds where the land is located, establishing an ownership interest in the landowner's chain of title to the property.

Section 5.7 – Non-Point Source Pollution Control Related to Oil and Gas Activities

Landowners in Pennsylvania have an opportunity to lease or convey the rights to oil and gas exploration and production. The property owner should recognize that the lessee and future owners of the leasing rights have a long-term interest in the property similar to electric power line rights-of-way. If oil or gas production is initiated and continues at an acceptable commercial rate, the period of the lease may become indefinite. During the exploration, discovery and production of oil and gas leasing, the landowner lease should include provisions for sustained agricultural production and eliminate or minimize pollution at the source.

The required conservation plan developed for the eased land becomes the vehicle to achieve the acceptable level of protection of the soil, water, air, plant and animal resources. The conservation plan shall satisfy the criteria contained in the USDA-NRCS Field Office Technical Guide (FOTG).

The conservation plan should address the drilling activities associated with damage to growing crops, trees, fences, tile drainage, drainage ditches, springs, water wells, soil, livestock, access roads and other improvements associated with production agriculture. The implementation of conservation measures should be focused on the combined strategies to both reduce upland soil erosion and minimize sediment delivery to receiving waters.

The first and most desirable strategy is to implement conservation practices on the land that prevents erosion and the transport of sediment and associated pollutants by runoff into receiving water bodies. In addition, the reduction of erosion provides an increased agronomic benefit to production agriculture. The practices used to accomplish this level of erosion and sediment control include conservation tillage, terraces, critical area planting, access roads, heavy use area protection and fencing.

The second strategy is to route sediment laden runoff water through edge-of-field practices that can effectively remove sediment before it leaves agricultural land. The conservation practices used to accomplish this benefit include filter strips, field borders, graded stabilization structures, sediment retention ponds, water and sediment control basins, and terraces. Site conditions dictate the assortment of practices to be used in any specific situation.

Some operational and maintenance functions will be needed to ensure the measures will continue to function as designed and installed over the life of the practice.

The cost of installation of planned conservation practices may be negotiated with the oil and gas company as a provision of the lease agreement. The conservation plan for the eased property, including the oil and gas drilling site, shall be inspected annually by the county board to determine compliance with the applicable recorded deed of easement (138e.202). Violations to the terms of the easement shall be sent by written notice within 10 days of discovery to the owner, the county governing body and state board. ■

Murren Farm, Adams Co. (Photo by Mark Clowney)

Chapter 6

Easement Purchase Recommendations/ Submission Requirements

Section 6.1 – Summary Report (see Exhibit 6.a)

The summary report is prepared by the county office and acts as an executive summary of the easement recommendation for the state board. It includes the most pertinent information needed by the state board to determine if the proposed farm meets the state's minimum criteria for easement purchase. (**see Exhibit 6.b**)

I. **Heading** – The first information listed on the summary report is to include:
   A. The landowner name(s): The landowner name should state the legal name of the person or persons selling the easement.
   B. County name: Identifies the county purchasing the easement, regardless of the funding source.
   C. Township name: Identifies the townships in which the property is located.
   D. Agricultural Security Area: Lists the name(s) of the ASA in which the property is recorded and the recorded book and page numbers. The ASA may or may not be the same as the township in which the farm is located.
   E. Acreage information: Acreage of the property that is being considered for easement purchase.

II. **Description of the Farm** - The general information regarding the farm shall include:
   A. The location of the property in relation to the local community.
   B. The type of production carried out on the farm property.
   C. The rank of the property within its round of applications.

III. **Quality of the Farmland Tract** - A paragraph containing a description of the quality of the farmland tract in relation to the state's minimum criteria. The paragraph is to include:
   A. The percentage amount of each soil in Land Capability Classes I-IV.
   B. A total percentage for all other Land Capability Classes.
   C. The percentage of soils in Land Capability Classes I-IV that are available for agricultural production. The eased portion must meet the 50% state minimum criteria.
   D. The percentage of all soils that are harvested cropland, pasture or grazing land listed as a total. (The percentage figures for 'C' and 'D' should be calculated using Soils Report Form C of the Application.)
   E. Any criteria as required by the county program such as farm income, crop yield or minimum acreage requirements that differ from the state program.

IV. **Contribution to Agricultural Productivity** - A narrative concerning how the placement of an easement on this tract of land will contribute to maintaining the agricultural character and productivity of a county and/or local area. It is to include, if applicable:
   A. A list of any neighboring farms with easements owned by the state program, a county program or by a private conservation or preservation organization.
   B. Any crops unique to that area, i.e., grapes or orchards, located on subject farm.
   C. Century Farm designation.

V. **Likelihood of Conversion to Non-farm Uses** - This explores the development pressure this farm currently faces along with a forecast of future pressure.
   A. The likelihood of conversion should use one of the following categories: **LOW, MODERATE or HIGH**. Choose one and do not use an intermediate description such as "low to moderate".
   B. A description of nature and scope of development pressure in the municipality or area. This item should include the property's zoning status.

VI. Conservation Practices

A. The date of approval of the farm's conservation plan must be listed. (Farms must have plans approved by their county conservation district or county board prior to state board approval.)

B. The different types of conservation practices in use on the property should be listed.

C. If a nutrient management plan is needed under PA Act 38 its date of approval should also be noted. If a nutrient management plan is *not* required, this fact should be noted.

VII. Discussion of Purchase Price - This summarizes the value of the farmland tract as determined by the appraisal process and any further negotiations carried out by the county board. It should include:

A. The per acre and total value for agriculture, nonagricultural and easement value.

B. The percentage of the easement value which the landowner is accepting.

C. If acreage of the easement differs from the appraisal report, reconcile the per acre and total value to reflect the total easement acreage being purchased.

VIII. Certification of Accuracy - A statement in the summary report by the duly authorized representative of the county board as to the true and correct nature of the complete application package being submitted to the state board along with the signature of the authorized person (preferably the county board chairperson) should be made.

IX. Statement of Costs - This part of the summary report is simply a copy of Exhibit "B" of the Agreement of Sale. It lists all of the costs associated with the easement purchase that are being submitted for state board approval.

Section 6.2 – Easement Submission Material*

The following is a list of easement submission material needed for review by the state farmland preservation office staff:

A. A cover letter from the county (optional).

B. A narrative summary report (see Section 6.1).

C. A legible United States Geological Survey (USGS) topographic map showing the subject property location and boundaries, location of neighboring easements and exclusions withheld from the subject.

D. The Soils Report Form "C" (a form provided by the Department).

E. The list of soil mapping unit names, symbols and land capability classes on the subject property.

F. A legible and labeled uncolored soils map of the subject property.

G. A tax map showing the subject property location and boundaries, exclusions withheld from the subject, utility rights-of-way and access road rights-of-way.

H. A summary table showing the individual ranking scores by category for applications *selected for county appraisal*, including an indication of the easement purchase status of higher-ranking applicants.

I. A copy of Exhibit "B" from the Agreement of Sale, with modified comments to include interest rates, total acres purchased and per acre easement cost.

J. The appraisal report.

K. The signed Agreement of Sale, including the proposed legal description (Exhibit "A"), a statement of cost, (Exhibit "B") the proposed deed of agricultural conservation easement (Exhibit "C"), a contractor integrity clause (Exhibit "D"), a nondiscrimination clause (Exhibit "E"), and

conservation plan agreement form. If the easement is proposed for federal FPP funding, additional forms and data shall be added as per state staff and NRCS direction. The signatures must be original.

L. The title insurance commitment with any pertinent subordinations and rights-of-way, etc. Include copies of all exceptions, including ASA recordings and subordinations. Do not send original subordinations. The ASA must be listed on the title insurance commitment with a copy of the recorded book and page included.

M. A copy of both the approved soil conservation plan required under 138e.241(2) and Nutrient Management Plan, if required under Act 38, for any portion of the property subject to the easement purchase.

N. A copy of the landowner application form.

O. A copy of the letter of notification to adjoining landowners and a list of the adjoining landowners names and addresses. Copies of return certified mail receipts and a letter from an authorized county representative verifying that all adjoining landowners have been notified of the easement request is required.**(Exhibit 6.c and Exhibit 6.c-1) Notice may also be given by personal service.**

P. An IRS W-9 form, signed and completed for each individual listed on the Agreement of Sale.

Q. A distribution of easement funds letter signed by all landowners (not necessary in case of single landowner). This form is used to determine the distribution of funds and should reflect how the owners wish to receive payment. **(Exhibit 6.d)**

Section 6.3 – State Board Copies*

Upon notification by the state farmland preservation office, 25 packets of the following information should be submitted for state board review. The packets should be individually collated, should be three-hole punched on the left side, double-sided, separated by left side three-hole punched colored paper. **Do not staple**. Copies are to be submitted in the following order:

1. A copy of Statement of Costs (Exhibit "B") from the agreement of sale, with modified comments to include interest rates, total acres purchased and per acre easement cost.
2. A narrative summary report (see Section 6.1).
3. A legible United States Geological Survey (USGS) topographic map showing the subject property location and boundaries, location of neighboring easements and exclusions withheld from the subject.
4. A tax map showing the subject property location and boundaries, exclusions withheld from the subject, utility rights-of-way and access road rights-of-way.
5. A legible, labeled uncolored soils map of the subject property.
6. The list of soil mapping unit names, symbols and land capability classes labeled on the subject map.
7. The Soils Report Form "C" (a form provided by the Department).
8. A summary table showing the individual ranking scores by category for applications selected for county appraisal, including an indication of the easement purchase status of higher-ranking applicants.

**At the time of printing, a project to automate the easement recommendation submission process is being developed. Section 6.3 will be modified upon completion of this project.*

Section 6.4 – Year-End Encumbering of State Funded Easements

To encumber state funds at the end of each calendar year for state funded easements, the following items must be submitted to the state board by the close of business on December 31 or remaining funding will be restored to the Fund:

A. A narrative summary report.
B. A copy of the landowner's application form.
C. A USGS topographical map.
D. A labeled uncolored soils map.
E. A tax map.
F. The Soils Report Form "C".
G. A list of soil mapping unit names, symbols and land capability classes labeled on the subject soils map.
H. A summary table showing the individual ranking scores by category for applications selected for county appraisal, including an indication of the easement purchase status of higher-ranking applicants.
I. A signed Agreement of Sale with Exhibits A-E.
J. The title insurance commitment with any pertinent subordinations and rights-of-way, etc. Do not send original subordinations. The ASA must be listed as an exemption on the title commitment insurance with a copy of the recorded book and page included.
K. The appraisal report. ■

Gutshall Farm, Cumberland Co. (Photo by Agrarian Associates)

Chapter 7

Settlement Procedures & Reporting

Section 7.1 - Settlement

Prior to settlement the state board will forward two (2) copies of the executed Agreement of Sale to the county. This Agreement will have been signed by the landowner(s), Secretary of Agriculture, state and county officials. The Comptroller will have also signed and dated the agreement. As per Article VIII of the Agreement of Sale, settlement must occur within 120 days from the date of complete execution of the agreement. The Agreement of Sale is considered executed by the date the Comptroller has signed. If needed, the landowner(s) may request an extension as per Article X. This request must be in writing and signed by all landowners. The grantee will approve the request in writing. If settlement does not occur within the specified time, the Agreement of Sale terminates.

The state board will forward two (2) copies of the executed Agreement of Sale to the county. One (1) copy is for the county to use at settlement, and one (1) copy is to be given to the grantor(s) for review prior to settlement. The Bureau will forward checks or bank drafts from the Commonwealth of Pennsylvania - one (1) payable to the county for incidental costs; and checks made payable to the each landowner(s) as per the distribution of easement funds letter.

In addition, before settlement can occur, the landowner(s) must have an approved conservation plan. This provision is also required before State Board approval.

Section 7.2 – Settlement Procedures

Settlement is conducted by a settlement agent who may be the county solicitor, the title insurance agent, or other attorney retained by the county board. The county administrator shall **not** serve as the settlement agent, unless he or she has all the legal qualifications, including being bonded. At settlement, the landowner(s) will sign the deed of easement, any subordinations, and conservation plan agreement. The settlement agent will ensure all outstanding mortgages, judgments, child support, taxes, etc. are paid prior to the distribution of easement funds to the landowner(s).

The settlement agent will use the copy of the executed Agreement of Sale (including Exhibits A through E) sent to the county. The settlement agent will use Exhibit "C" deed of easement and Exhibit "A" Legal Description for signature and recording at the county recorder of deeds office.

DO NOT RE-TYPE ANY DOCUMENT.

A settlement sheet noting all costs involved with the easement purchase will be prepared.
The Title Insurance Commitment shall be "marked-up" and signed by the settlement agent at closing, and will serve to verify that the title insurance will be issued. Any subordination agreements will be signed and recorded with the deed of easement. The conservation plan agreement will be executed at settlement and recorded with the deed of easement.

Section 7.3 – Reporting Procedures

After settlement has occurred, but prior to recording, make a photocopy of the fully signed deed of easement, Legal Description, the conservation plan agreement, any subordination agreements, and the "marked up" title insurance commitment.

Within ten (10) days after settlement, send the following to the Bureau:

A. Notification of Settlement Form (Sample in **Exhibit 7.a**)
B. A photocopy of the fully signed deed of easement which includes the legal description, conservation plan agreement **(Exhibit 7.d)** and any subordinations
C. A copy of the settlement sheet
D. A "marked up" copy of the title insurance commitment
E. Verification Form for the 1099-S Form (Sample in **Exhibit 7.b**)
F. An invoice from the county for any additional incidentals, if needed, using the form in **Exhibit 7.c**
G. A revised Exhibit B, Statement of Costs, if costs are greater or less than originally submitted and approved by the State Board

These items are required by Article III, Paragraphs 3 & 4, and Article IX, Paragraph 3 of the Agreement of Sale.

Record the deed of easement with the legal description and conservation plan agreement, along with any subordination agreements, at the county recorder's office as soon as possible after settlement. The original recorded deed should be returned to the county office subsequent to settlement, regardless of easement ownership.

Within thirty (30) days from recording, a certified copy of the recorded deed of easement with legal description, conservation plan agreement and any recorded subordinations shall be sent to the state board. A "certified copy" means that the County Recorder of Deeds has certified the document sent to the state board as being identical to the Deed of Record. This is generally done by using the Recorder's Stamp and/or the Recorder signing the document. The county may either send the original certified recorded deed to the state board and keep a copy for county files, or send a certified copy to the state board and keep the original in the county files. If the grantor(s) was not provided a copy of the deed at settlement, a copy should be provided to the grantor(s) at this time.

The Title Insurance Policy should be sent to the state board in a reasonable time after settlement, preferably within sixty (60) days.

Section 7.4 – Settlement Procedures For County Only Purchases

The following shall be submitted to the state board for reimbursement of the incidental costs associated with a county-only purchase as permitted by the county program:

A. A copy of the complete and fully-executed deed of agricultural conservation easement, including the complete legal description of the land subject to the agricultural conservation easement and the conservation plan agreement.
B. A copy of the production report with respect to the farmland tract, if the report is required in the county program.
C. A copy of the current conservation plan.
D. A statement describing the nature and scope of compliance with the conservation plan for the farmland tract.
E. The date of approval of the conservation plan.
F. A completed Soils Report Form "C" (Exhibit 1.e).
G. A current United States Geological Survey (USGS) topographical map that clearly and legibly shows the subject property location and boundaries, location of neighboring easements and exclusions withheld from the subject property.
H. A statement of costs (Exhibit B).
I. An invoice (Exhibit 7.e).
J. Notification of Settlement Form (Exhibit 7.f).

Section 7.5 – CONSERVATION PLAN COMPLIANCE AT SETTLEMENT

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

A. The county board shall obtain a conservation plan approved by the county conservation district or county board prior to the approval of the easement purchase by the state board.
B. As a part of the settlement documents, a complete and fully-executed conservation plan agreement form shall be prepared for recording at the appropriate Recorder of Deeds office along with the executed deed of easement. The executed conservation plan agreement form shall contain the information outlined in Chapter 138e.222(a)(2). **Exhibit 7.d** contains a copy of the conservation plan agreement.
C. A copy of the recorded form shall be forwarded to the state board as part of the settlement documents. (see Chapter 138e.93) ■

Bender Farm, Cumberland Co. (Photo by Becky Wiser)

Chapter 8

Inspection & Enforcement

Section 8.1 – Introduction

Perhaps the most important responsibility counties assume when joining the Pennsylvania Farmland Preservation Program is the ongoing easement inspection, monitoring and enforcement function. When a farm is eased, the county's commitment to that preserved land has just begun. There must be a consistent and diligent effort to maintain the perpetual conservation partnership.

It is the responsibility of the county to inspect every eased farm annually. Experience has shown that most violations deal with the conservation plan, and may be resolved when the practice is implemented, or when a reasonable timeline to implement the practice is established by the county board and the county NRCS. Deeds recorded incorrectly when there is a change in ownership is another frequently occurring violation. It is imperative the deed conveys the interest in the restricted land set forth in the language of the easement restrictions verbatim. Most landowners will be willing to do what is necessary in order to regain compliance status. Other violations may be more serious and require enforcement action. This section of the guidebook highlights annual inspection requirements and the protocol for enforcement.

Section 8.2 – Annual Inspections

I. The county board shall inspect all restricted land within the county annually to determine compliance. The first inspection must be completed within one year of the date of easement sale.
   A. Written notice of the inspection shall be mailed by certified mail to the owner at least 10 days prior to the inspection. The inspection must be conducted between the hours of 8 a.m. and 5 p.m. on a weekday that is not a state holiday, or a date and time agreeable to the county and landowner. **(Exhibit 8.a)**
   B. Within 10 days of conducting an inspection, the county board shall prepare an inspection report containing the following information: **(Exhibit 8.b)**
      1. The identification of the land to be inspected.
      2. The name of the current owner(s) and name of the owner at the time the easement was originally purchased.
      3. A description of any modifications in the number, type, location, or use of any structures on the land since the date of preservation.
      4. A description of deviations from the conservation plan observed on the preserved farm.
      5. A statement of whether the provisions of the deed of easement are being observed.
      6. A statement indicating whether a structure permitted under section 14.1 (c)(6)(iv) of the act (3P.S. 914.(c) (6)(iv) has been constructed on the restricted land and, if such a structure has been constructed, the month and year construction was completed and a description of the structure and its location on the land.
   C. A copy of the final inspection report shall be mailed to the owner by certified mail within 10 days from the date of the inspection.
   D. The county and state boards may inspect the eased land, jointly or separately, without prior notice if there is reason to believe that any provision of the easement has been or is being violated.
   E. The county board shall submit an annual inspection report to the state board highlighting the number of inspections, violations detected, violations resolved and the circumstances surrounding

unresolved violations. A copy of the inspection report must be included with the annual inspection report to the state. Chapter 138e.203 requires the county board to file the annual report and the inspection reports with the state board by March 1 of each year **(Exhibit 8.d).** A suggested example of how to summarize inspections is contained in Exhibit 8.e.

Section 8.3 – Enforcement

I. The county board is responsible for enforcement of the easements whether they be local government unit, eligible nonprofit entity, county, State or joint purchases. The state board may enforce the terms of the easement either jointly or on its own behalf. The state board may enforce the terms of State or jointly purchased easements.
   A. Within 10 days of discovering the violation, the county board shall send written notice to the owner of the restricted land, the county governing body and the state board. **(Exhibit 8.c)**
   B. The written notice shall be mailed certified mail, and contain the following information:
      1. A copy of the inspection report.
      2. A copy of the deed of easement.
      3. A description of the action violating the deed of easement.
      4. A statement of the prescribed measures to correct the violation.

II. Within 60 days of mailing the violation notice, the county board shall:
   A. Determine with the state board that the violation has been corrected.
   B. Do the following:
      1. Determine that the necessary corrective measures cannot be completed within the 60- day time period
      2. Establish a period not to exceed one (1) year when the corrective measures will be completed
   C. If the preceding does not occur within 60 days of mailing the violation notice, the county board must file an action in the court of common pleas of the county in which the farm is located, seeking an order requiring the corrective action and enjoining further violation of the terms of the easement
   D. The owner of the eased land shall bear the costs associated with this action, including:
      1. Costs of work required and materials used to correct violation.
      2. Administrative costs incurred by the county and state board.
      3. Legal fees incurred by county and state boards in enforcing the easement.

III. The state board may institute and prosecute an enforcement action, if the county board does not. The state board may recover costs incurred from the county board or the owner of the restricted land, or both.

Section 8.4 – Change in Ownership, Conveyance or Transfer of the Subject Land

A. Landowner's Responsibility. (Chapter 138e.227)
   1. A deed conveying a change in ownership in the restricted land shall set forth the language of the easement restrictions verbatim in the deed conveying or transferring ownership of the eased land.

2. Within 30 days of a change in ownership of the restricted land, the prior owner (Grantor) shall notify the county board and the state board of the name, address, and telephone number of the Grantor and the party or parties to whom ownership of the restricted land has been conveyed or transferred. The Grantor shall provide a copy of the deed, a statement of the price per acre or portion involved in the transfer, and a reference to the volume and page in which the transfer has been recorded at the County Recorder of Deeds. All costs shall be borne by the Grantor.
3. Landowners are encouraged to have the proposed deed reviewed by the county board prior to recording. Errors and costly recording fees could be avoided.

B. County Board Responsibility. (Chapter 138e.207)

1. The county board shall provide the state with an advanced copy of the proposed deed in the event of an ownership change. The county board shall provide the State with a copy of the executed deed no later than 20 days of learning of the change in ownership.
2. The county board shall ensure that the deed conveying an interest in the restricted land sets forth the restricted easement language **verbatim in the deed**. ■

Centre Co. (Photo by Norm Lathrury)

Chapter 9

Subdivisions

Section 9.1 – Introduction

A subdivision occurs when a single tract of land is split or divided into two or more pieces, and at least one of those pieces is transferred to a new owner. Subdividing a preserved farm requires that the county board and landowner follow specific instructions to stay in compliance with the regulations of the Agricultural Conservation Easement. The Subdivision section of Chapter 138e.241 states:

> "The subject land may be subdivided if subdividing will not: 1) Harm the economic viability of the subject land for agricultural production; or 2) Convert land which has been primarily devoted to agricultural use to some other use, unless the subdivision is for the purpose of the construction of a principal residence for the land owner or an immediate family member and the county program permits one tract to be created by subdivision for this purpose; or 3) Violate any provision of the county program. If the subject land is subdivided, the deed to the subdivided tract with respect to which the right to construct and use a residential structure is reserved shall clearly set forth the reservation of this right, and the deed to all other parcels shall recite that no additional residential structure is permitted."

Chapter 138e.225 outlines the subdivision of restricted land as it relates to the policy of the county board.

A subdivision may also be a change of ownership. The regulations regarding changes in ownership also apply to subdivisions (See Chapter 8.4). As stated in Chapter 138e.207, "the county board is encouraged to provide the state board with a copy of **any** proposed deed under which an ownership interest in restricted land is to be conveyed…" This must be accomplished no later than 20 days of learning of the change of ownership.

Section 9.2 – County Responsibilities and Procedures

The county board has certain responsibilities and procedures to follow when a landowner requests to subdivide restricted land. Counties should follow the procedure set forth in the county program and Chapter 138e.226 when reviewing a request for a subdivision. The subdivision should also comply with the guidelines set forth in Chapter 138e.225.

All subdivisions occurring after the subdivision guidelines were adopted by the county board must be approved by the State Board at one of their public meetings. This includes subdivisions for the two-acre maximum building lot for the landowners' principal residence.

The county board shall also follow guidelines set forth in Chapter 138e.207 regarding duties with respect to change of ownership. In concurrence with the duties set forth in Chapter 138e.207, the subdivision guidelines set forth in the Agricultural Conservation Easement state, "if the subject land is subdivided, the Deeds to all of the subdivided parcels shall state…" This statement signifies that a new deed must be recorded for each subdivided parcel, including a new deed for the easement grantor if he/she retains a subdivided parcel. The combination of these guidelines also signifies that the county board shall provide the state board with a copy of the deed for each subdivided tract. Before a copy of the deed is provided to the state board, the county board shall ensure the deed restrictions are recited **verbatim** on all owners' deed of easement.

When a restricted property is subdivided, it becomes two or more separate tracts, owned by two or more different individuals. As a result of this, the county is responsible for inspecting each of those subdivided farms, and must submit an inspection report for each farm. The same guidelines set forth in Chapter 138e.202 shall apply to inspecting all subdivided farms.

The county board shall inform all owners of restricted land of the landowner's duties in regard to subdivision and transfer of ownership of the restricted land.

Upon completion of the subdivision of a restricted farm, the county board shall prepare a report summarizing the subdivision for the state board (**Exhibit 9.a**). The county board shall also record and keep accurate data of all subdivision and changes of ownership of restricted land.

Section 9.3 – Landowner Responsibilities

If a landowner chooses to subdivide their property, certain responsibilities shall be observed. A landowner may obtain review of a request for approval to subdivide a tract of restricted land in accordance with the procedure set forth in Chapter 138e.226.

If the restricted land is subdivided prior to the construction of a residential structure under the authority of Chapter 138e.224, the landowner shall do the following:

A. Inform the county board of the specific subdivided tract with respect to which the right to construct and use such a residential structure is reserved.
B. Ensure that the deed to the subdivided tract with respect to which the right to construct and use the residential structure is reserved clearly sets forth the reservation of this right.
C. Ensure that the deeds to the remaining subdivided tracts recite that no residential structure may be constructed on the remaining subdivided tracts.

If the restricted land is subdivided, a landowner's duties with respect to change of ownership apply. These duties include:

A. A deed conveying an interest in the restricted land shall set forth the language of the easement restrictions **verbatim**. There are two approaches to meeting the easement language provisions:
   1. The new fee simple deed would contain **verbatim** all the terms and conditions set forth in Items 1 through 13, as contained in the recorded Deed of Easement executed for the subject property.
   2. As an option, a legal recital may be included in the new fee simple deed stating that the property is subject to an agricultural conservation easement as recorded in book and page at the Recorder of Deeds. The recital needs to state that a copy of the original Deed of Easement is attached to the new fee simple deed package for recording at the Recorder of Deeds. The Deed of Easement document shall include the Exhibit "A" legal description for the eased acreage on the property.
B. Within 30 days of a [subdivision] of the restricted land, the prior owner shall notify the county board and the state board of the name and address of the new owner, provide each a copy of the deed(s), provide a statement of the price per acre or portion thereof involved in the transfer and a reference to the volume and page in which the transfer has been recorded by the county recorder of deeds.

Section 9.4 – Parcel Conveyance

A preserved farm may, and usually does, include two or more parcels. A parcel conveyance occurs when an owner conveys at least one of those parcels to another individual. Although it is not a true subdivision, a parcel conveyance should be approached in the same manner as a subdivision in terms of filing a report for the state board. A Subdivision/Parcel Conveyance Report should be completed to summarize the information and actions taken place.

A landowner conveying a parcel is not required to follow the procedure for review of a request to subdivide restricted land. However, the landowner shall ensure the following is completed:

A. Inform the county board of the specific parcel(s) to which the right to construct and use such a residential structure is reserved.
B. Ensure that the deed to the parcel(s) with respect to which the right to construct and use the residential structure is reserved clearly sets forth the reservation of this right.
C. Ensure that the deeds to the remaining parcel(s) recite that no residential structure may be constructed on the remaining parcel(s).
D. A deed conveying an interest in the restricted land shall set forth the language of the easement restrictions verbatim.
E. Within 30 days of a change in ownership of the restricted land, the prior owner shall notify the county board and the state board of the name and address of the new owner, provide each a copy of the deed(s), provide a statement of the price per acre or portion thereof involved in the transfer and a reference to the volume and page in which the transfer has been recorded by the county recorder of deeds. ■

King Farm, Adams Co. (Photo by Mark Clowney)

Chapter 10

Eminent Domain Procedures

Section 10.1 – Introduction

It is the policy of the Commonwealth to encourage improvement of its agricultural lands for the production of food and other agricultural products. Agricultural lands provide needed open space for clean air, groundwater recharge and aesthetic purposes. Agriculture in many parts of the Commonwealth is under urban pressures from expanding metropolitan areas. Much of the agricultural land in the Commonwealth is in jeopardy of being lost to development. These lands constitute unique and irreplaceable resources of statewide importance. The purpose of Act 43 is to protect and enhance agricultural lands as a viable segment of the Commonwealth's economy.

Section 10.2 – Conservation Easements

As a means of fulfilling the Commonwealth's purposes under Act 43, conservation easements run in perpetuity with the land. However, the questions of how or when an easement can be extinguished are often raised by landowners and governmental entities. Condemnation of portions of eased lands has occurred in the past and will likely occur again in the future. An increasing population places greater demands on services and requires construction of public facilities such as schools, hospitals, airports, roads, public sewer and water facilities and housing.

Act 43 provides a procedure whereby eased lands may be terminated in whole or in part to attain a needed public purpose. A governmental entity may acquire private lands through eminent domain (condemnation). Under this condition, prior approval by the Agricultural Lands Condemnation Approval Board (ALCAB) may be necessary.

Section 10.3 – Condemnation Limitations

The Legislature created the Agricultural Lands Condemnation Approval Board (ALCAB) through Act 100 of 1979 to oversee the condemnation of agricultural lands for two purposes:

- Highway/roadway projects
- Disposal of solid or liquid waste materials

Act 43 of 1981 *expanded* ALCAB jurisdiction to include not only highway/roadway projects and disposal of solid or liquid waste materials, but other types of condemnations that may impact farms enrolled in an ASA. Examples include:

- Township buildings
- Schools
- Waste water treatment plants
- Public water supply structures
- Recreational trails
- Public parks

The ALCAB is comprised of six (6) members representing the Governor's Office, Department of Agriculture, Department of Transportation, Department of Environmental Protection, and two farmer board members. The board convenes on an as-needed basis. It is the condemner's responsibility to petition board review. Since the inception of the board, and at the time of this printing, nearly 80 cases have been heard and decided upon.

I. Approval required by an agency of the commonwealth:
   A. No agency of the commonwealth having or exercising powers of eminent domain shall condemn for any purpose any land within an ASA which land is being used for productive agricultural purposes (not including the growing of timber) unless prior approval has been obtained from the Agricultural Lands Condemnation Approval Board.
      1. This condemnation approval shall not be required for:
         a. An underground public utility facility that does not permanently impact the tilling of the soil; or
         b. For any facility of an electric cooperative cooperation; or
         c. For any public utility facility the necessity for and the propriety and environmental effects of which have been reviewed and ratified or approved by the Pennsylvania Public Utility Commission (PUC) or the Federal Energy Regulatory Commission (FERC).
   B. All State-funded development projects that may affect land in established ASA shall be reviewed by the appropriate local agricultural advisory committee and by ALCAB. Each reviewing body may suggest any modification to the State-funded development projects which ensures the integrity of the agricultural security areas against non-farm encroachment.

II. Approval Required for Condemnation by All Other Authorities Having Powers of Eminent Domain:
   A. No political subdivision, authority, public utility or other body having or exercising powers of eminent domain shall condemn any land within an ASA for any purpose, unless prior approval has been obtained from each of the following bodies:
      1. The governing bodies of the local government units encompassing the ASA (*Board of Township supervisors)*
      2. The county governing body (*County Commissioners)*
      3. The Agricultural Security Area Advisory Committee (*Township)*
      4. Agricultural Lands Condemnation Approval Board (*Commonwealth)*
   B. This condemnation approval shall not be required for:
      1. An underground public utility facility that does not permanently impact the tilling of the soil; or
      2. For any facility of an electric cooperative cooperation; or
      3. For any public utility facility the necessity for and the propriety and environmental effects of which have been reviewed and ratified or approved by the Pennsylvania Public Utility Commission (PUC) or the Federal Energy Regulatory Commission (FERC).
   C. Notice – Any condemner wishing to condemn property, the approval for which is required under this section, shall at least thirty (30) days prior to taking such action notify each of the foregoing bodies that such action is contemplated, and no such condemnation shall be effective until sixty (60) days following the receipt of such notice.
   D. Review by ALCAB and Other Bodies *(For Highways and All Other Cases)*
      1. In the case of condemnation for highway purposes (but not including activities relating to existing highways such as, but not limited to, widening roadways, the elimination of curves

or reconstruction, for which no approval is required) and in the case of condemnation for the disposal of solid or liquid waste material, the Agricultural Lands Condemnation Approval Board (ALCAB) or other appropriate reviewing body shall approve the proposed condemnation only if it determines there is no reasonable and prudent alternative to the utilization of the land within the ASA for the project.

2. The ALCAB or other appropriate reviewing body shall approve the proposed condemnation only if it determines:
   a. The proposed condemnation would not have an unreasonable adverse affect upon the preservation and enhancement of agriculture or municipal resources within the area or upon the environmental and comprehensive plans of the county, municipality and the commonwealth, or upon the goals, resource plans, policies or objectives thereof.
   b. There is no reasonable or prudent alternative to the utilization of the lands within the ASA for the project.

E. Public hearings *(timeline)*
   1. Within the sixty (60) day period the ALCAB and other indicated bodies, as appropriate, shall hold a public hearing concerning the proposed condemnation at a place within or readily accessible to the area. In addition,
      a. Timely notice of such hearing shall be placed in a newspaper having a general circulation within the area and a written notice shall be posted at five conspicuous places within or adjacent to the area. *(Proposed for condemnation)*
      b. Individual written notice shall be given to all local government units encompassing all or part of the area, to the proposed condemner, and to the owners of the land proposed to be condemned.

F. Findings and decisions (*issuance of adjudication document*)
   1. The ALCAB and other indicated bodies *(such as county and township governing bodies)* as appropriate, shall render findings and decisions *(Adjudication Document)* before the expiration of such 60-day period, and:
      a. Likewise within such period *(60 days)* shall report the same to the proposed condemner, the local government units affected, and any party who files an appearance at such hearing.
      b. If the ALCAB or any other body fails to act within the 60-day period, the condemnation shall be deemed approved.

G. Injunctions – The ALCAB may request the Attorney General or the bodies may request their solicitor to bring an action to enjoin such condemner from violating any of the provisions of this section.

Section 10.4 – Just Compensation

A. Whenever a public entity, authority or political subdivision exercises the power of eminent domain and condemns land subject to a agricultural conservation easement, the condemner shall provide just compensation to the owner of the land in fee and to the owner of the easement as follows:
   1. The owner of the land in fee shall be paid the full value which would have been payable to the owner but for the existence of an agricultural conservation easement less the value of the agricultural conservation easement at the time of condemnation.

2. The owner of the easement shall be paid the value of the easement at the time of condemnation.
3. For easements owned jointly by the commonwealth and an eligible county, if the eligible county commits its share of funds received under this paragraph toward the purchase of agricultural conservation easements, the condemner shall provide the commonwealth's share of funds to the eligible county for use in purchasing agricultural conservation easements in accordance with this act.
4. For easements owned by the commonwealth, the condemner shall provide the commonwealth's share of funds received under this paragraph to the eligible county for use in purchasing agricultural conservation easements in accordance with this act.
5. Funds received by an eligible county under this paragraph shall not be considered matching funds.
6. If an eligible county which receives funds under this paragraph fails to spend the commonwealth's share of funds within two years of receipt of the funds, the eligible county shall pay the commonwealth its share of funds received under the paragraph plus six percent (6%) simple interest. These funds shall be deposited into the *(commonwealth's)* Agricultural Conservation Easement Purchase Fund.

B. Although not all condemnations of eased land require ALCAB approval, just compensation to the county and/or state program is always necessary.

C. Information regarding the area subject to condemnation should be provided to the state board so that records may be updated. Documentation showing that compensation was provided to the county program should also be provided.

Section 10.5 - Site Acquisition by School Districts

School Districts throughout the commonwealth continue to seek additional land resources for the expansion of their campuses. In order to bring a degree of accountability to the site acquisition process by districts, the Pennsylvania Department of Education (PDE) has developed the PlanCon Part C. This site acquisition plan incorporates the Governor's Executive Order 2003-2 and the attendant stipulations contained therein, including the feasible alternatives test. The information listed below represents the most recent information available.

I. PA Department of Education: Site Acquisition - PlanCon Part C
www.pde.state.pa.us/constr_facil/lib/constr_facil/C_INS2007.pdf

Procedure and PDE Statement: (PLANCON-C, JULY 1, 2007 INSTRUCTIONS EXPIRE 06-30-09)

II. AGRICULTURAL LAND PRESERVATION POLICY:
Executive Order 2003-2, Agricultural Land Preservation Policy, directs all agencies under the Governor's jurisdiction to "protect the Commonwealth's 'prime agricultural land' from irreversible conversion to uses that result in its loss as an environmental and essential food and fiber resource." The order further states that "Commonwealth funds shall not be used to encourage the conversion of 'primary agricultural land' to other uses when feasible alternatives are available."

In order to comply with this order, school districts considering the acquisition of lands in active agricultural use must:

A. Look at the alternatives to converting the "primary agricultural land;" and
B. Weigh the alternatives based on the policy's priority ranking. Documentation of this process must be submitted with PlanCon Part C to fulfill the requirements of this executive order. Please note that the review of this documentation will increase the processing time for a PlanCon Part C submission.

To determine a project's impact on protected agricultural resources, the Department of Agriculture may independently request additional information on the presence or absence of agricultural resources within the project area.

Only after this information is provided can the state board identify the existence of protected agricultural resources within the scope of a proposed project. Any questions concerning this policy should be directed to the Bureau.

Section 10.6 - Landlocked Property

Neighboring landowners to the eased farm sometimes seek assistance for gaining access to a landlocked portion of their property. The owner of an eased farm may not grant a private ROW; therefore, the right to gain access to the landlocked property lies with the court system. Possible solutions (through court) include the establishment of an easement or the creation of a "private road."

A. Easement Rights-Of-Way
In Pennsylvania, the practice of common law provides the vehicle whereby landowners with landlocked property can gain a right of access to the property by imposing an easement over the land owned by another person. Common law is created when judges through binding written opinions decide individual disputes or cases. In such cases, the rights-of-way (ROW), a legally written easement, is prepared describing the ingress and egress in terms of a survey showing the metes and bounds and future responsibilities for repairs and maintenance of the access road under easement. This easement document is properly recorded at the County Recorder of Deeds and added to the property deed as a legal recital.

In the case where the landowner(s) are preparing for ACE purchase, the access easement should be recorded at the County Recorder of Deeds prior to settlement or closing of the ACE purchase. According to the provisions of the Agricultural Conservation Deed of Easement, a rights-of-way easement can not be granted by the landowner(s) after the ACE has been put in place and recorded. The Deed of Easement limits the purposes for which rights-of-way may be granted but allowing neighbor's access is not one of these purposes.

B. Pennsylvania Private Road Act

Under the provisions of Act 169 of 1836 (P.L.551, as amended, 36P.S. §2731…), commonly referred to as the Private Road Act, owners of landlocked property are allowed to petition the court system for creation of a "private road." The Private Road Act provides for a "Board of View" to be appointed by the Judge to ascertain if the factual and legal requisites for a private road exist to allow access to a landlocked parcel.

A Board of View has broad authority to determine whether a private road is necessary. The opinion in *Holtzman et al v. Etzweiler et al* (2000) speaks to the four factors that the Board of View must consider when determining the site for a private road:

- The shortest distance
- Best ground
- Least injury to the private parties, and
- Desire of the petitioners

From a historical perspective, the court in Tioga County decided that ALCAB was not required. In the appeal to the Commonwealth Court from Common Pleas Court of Tioga County, in *Ruane et al v. Stephen* 683 A.2nd 947 (1996) Pa. Commw., the court upheld the decision that ALCAB approval was not required.

In the Tioga case, the most salient feature lies in the precedent that the appellant could gain access to the landlocked property by placing a 25-foot road across the ASA property, and that no requirement of ALCAB approval was deemed necessary by the court. To date, the courts at various jurisdictional levels in Pennsylvania have agreed with this determination, the significance of which continues to impact Pennsylvania farmland and its owners.

In *Forrester et al v. McKenrick et al* (2001), the ALCAB requirement of approval for the "condemnation" of ASA land by ALCAB was again determined to be unnecessary. The *Forrester* case decision speaks extensively concerning the appropriateness of ALCAB approval not being required. The *Forrester* case was appealed to the Pennsylvania Supreme Court 575 Pa. 365; 836 A.2nd. 102; 2003 Pa., and affirmed the decision of the commonwealth court.

As of printing, a situation is currently under review by a court in Northampton County, whereby access via a private road is sought through eased land enrolled in an ASA. The presiding judge has instructed the Board of View to make a recommendation to the court. ■