

# PROPOSED RULEMAKING

## DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 138e]

### Agricultural Conservation Easement Purchase Program

The Department of Agriculture (Department), Bureau of Farmland Protection, proposes to amend Chapter 138e (relating to agricultural conservation easement purchase program).

The proposed amendments are offered under authority of section 15 of the Agricultural Area Security Law (act)(3 P. S. § 915), which requires the Department to promulgate regulations necessary for the efficient, uniform and Statewide enforcement of the act. That same section of the act allows for the use of "interim guidelines" by the Department until no later than December 31, 1997, by which time the Department is to have regulations in place to supplant the interim guidelines.

The interim guidelines permitted under section 15 of the act were published at 25 Pa.B. 5253 (November 25, 1995) as the "Interim Guidelines for Implementation of the Agricultural Area Security Law" (Interim Guidelines), and have been used by the Department to effectively implement various provisions of the act with respect to which there were no attendant regulations or with respect to which regulations had been rendered inadequate as a result of statutory amendment.

The proposed amendments are intended to accomplish two objectives: 1) supplant the various provisions of the Interim Guidelines with identical regulatory provisions; and 2) accomplish an updating and streamlining of the regulations to reflect changes in the act and the experience of the Department in administering the Agricultural Conservation Easement Purchase Program to date.

#### *Overview of Major Provisions*

An overview of some of the major provisions of the proposed amendments follows:

Proposed § 138e.3 (relating to definitions) includes virtually all of the definitions used in the Interim Guidelines, and refines current definitions.

Proposed § 138e.15 (relating to farmland ranking system) restates the system set forth in the Interim Guidelines, under which a county agricultural conservation easement purchase program (county program) evaluates and assigns a numerical ranking to prospective agricultural conservation easement purchases based upon factors which relate to the considerations for easement purchase set forth in section 14.1(d)(1)(i)—(iv) of the act (3 P. S. § 914.1(d)(1)(i)—(iv)). This system was developed and approved by the State Agricultural Land Preservation Board (State Board), in consultation with county program administrators.

Proposed §§ 138e.44 and 138e.92(c) (relating to periodic recertification of county programs; and review and decision), respectively, describe the county program review requirements and the consequences of failing to comply with these requirements, which were added to section 14.1(b)(4) of the act by the act of November 23, 1994 (P. L. 621, No. 96).

Proposed § 138e.63 (relating to order of appraisal) requires a county program to select farmland tracts for appraisal in descending order of farmland ranking score. This is intended to cause a county program to focus its appraisal efforts on those farmland tracts that are the most worthy subjects of agricultural conservation easement.

Proposed § 138e.64 (relating to appraisal) requires appraisals be performed in accordance with the *Uniform Standards of Professional Appraisal Practice*, published by the Appraisal Standards Board of the Appraisal Foundation. These are the standards to which State-certified general real estate appraisers are required to adhere under 49 Pa. Code § 36.51 (relating to Uniform Standards of Professional Appraisal Practice). Other provisions of this section are revised for the purposes of establishing Statewide uniformity in appraisals and ensuring that appraisals of prospective agricultural conservation easement purchases accurately reflect the value of the easement.

Proposed § 138e.66 (relating to offer of purchase by county board) allows a county board to bypass a farmland tract with a relatively higher farmland ranking score in favor of making an offer to purchase an agricultural conservation easement on a farmland tract with a relatively lower farmland ranking score if the the circumstances under which this would be done are in the county program itself, or if the decision to bypass the higher-ranked farmland is based upon the availability of funds.

Proposed § 138e.70 (relating to notification of owners of land adjoining proposed easement purchases) formalizes a notification procedure that was implemented by the Department and county programs as a result of the Commonwealth Court's decision in *Lenzi v. Agricultural Land Preservation Board*, 602 A.2d 396 (Pa. Cmwlth. 1992).

Proposed § 138e.102 (relating to allocation of funds to counties) reflects the current requirement of the act that allocated funds be available to an eligible county for 2 consecutive county fiscal years.

Proposed § 138e.104 (relating to installment sales) clarifies the installment sales procedures permitted under section 14.1(h)(11) of the act.

Proposed § 138e.224 (relating to construction of one additional residential structure) is restated verbatim from the Interim Guidelines. As was the case with all of the provisions of the Interim Guidelines, this language was developed by the State Board, in consultation with county program directors.

Proposed § 138e.226 (relating to procedure for review of request to subdivide restricted land) expands upon the procedure described in section 14.1(i)(2) of the act.

#### *Statement of Need*

The amendments are needed for the Department to comply with the statutory requirement that it supplant the Interim Guidelines with regulations by December 31, 1997, to update its regulatory authority to reflect changes to the act and to further the efficient, uniform and Statewide administration of the act.

*Fiscal Impact**Commonwealth*

The proposed amendments would impose no costs and have no fiscal impact upon the Commonwealth.

*Political Subdivisions*

The proposed amendments would impose no costs and have no fiscal impact upon political subdivisions.

*Private Sector*

The proposed amendments would impose no costs and have no fiscal impact upon the private sector.

*General Public*

The proposed amendments would impose no costs and have no fiscal impact upon the general public.

*Paperwork Requirements*

The proposed amendments would not result in an appreciable increase in paperwork.

*Regulatory Review*

The Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs on July 16, 1997, in accordance with section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)). The Department also provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1982-2. A copy of this material is available to the public upon request.

If IRRC has an objection to any portion of the proposed amendments, it must notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to final publication of the proposed amendments.

*Contact Person*

All interested persons are invited to submit written comments regarding the proposed amendments within 30 days of publication in the *Pennsylvania Bulletin*. Comments are to be submitted to the Department of Agriculture, Bureau of Farmland Protection, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Raymond C. Pickering, Director.

*Effective Date*

The proposed amendments will become effective upon final adoption.

SAMUEL E. HAYES,  
*Secretary*

*(Editor's Note: The Department is proposing to delete the current version of Chapter 138e, §§ 138e.1—138e.3, 138e.11—138e.20, 138e.41—138e.43, 138e.61—138e.69, 138e.91, 138e.92, 138.101—138e.103, 138e.201—138e.206, 138e.221—138e.226 and 138e.241 as they currently appear in the Pennsylvania Code at the pages 138e-1—138e-42 (serial pps. (202897)—(202938) and replace it with the version which appears in Annex A.)*

**Fiscal Note:** 2-97. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 7. AGRICULTURE****PART V-C. FARMLAND AND FOREST LAND****CHAPTER 138e. AGRICULTURAL CONSERVATION EASEMENT PURCHASE PROGRAM****GENERAL**

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**GENERAL****§ 138e.1. Purpose.**

(a) It is the policy of the Commonwealth to conserve and protect agricultural lands. A sound, Statewide farmland preservation program will assure that farmers in

this Commonwealth have sufficient agricultural lands to provide farm products for the people of this Commonwealth and the Nation.

(b) Agricultural conservation easements restrict and limit the conversion of farmland to nonagricultural use. Easements may be purchased when they are offered voluntarily by the landowner and shall be purchased only in perpetuity.

**§ 138e.2. Eligibility.**

Only a county board that has a county program is eligible to submit recommendations for the purchase of easements to the State Board.

**§ 138e.3. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Agricultural Area Security Law (3 P. S. §§ 901—915).

*Agreement or agreement of sale*—A document executed by a landowner and the county board to purchase a specific agricultural conservation easement as part of the county board's recommendation for purchase, and that includes all of the materials referenced and incorporated into the agreement, in accordance with section 14.1(h)(8.2) of the act (3 P. S. § 914.1(h)(8.2)).

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

*Agricultural production*—The production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of the crops, livestock or livestock products if more than 50% of the processed or merchandised products are produced by the farm operator.

*Agricultural value*—The sum of the following:

(i) The farmland value determined by the applicant's appraisal.

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

*Allocation*—The State Board's designation of funds to eligible counties under section 14.1 of the act. An allocation is an accounting procedure only and does not involve certifying, reserving, encumbering, transferring or paying funds to eligible counties.

*Annual easement purchase threshold*—An amount annually determined by the State Board which equals at least \$10 million to be allocated among eligible counties.

*Applicant*—A person offering to sell an easement on a farmland tract.

*Appropriation*—The irrevocable commitment of a specific amount of money by the county governing body exclusively for the purchase of easements.

*Comparable sales*—Market sales of similar land. In locating comparable sales, first priority will be given to farms within the same municipality as the subject land. The second priority will be farms located within other municipalities in the same county as the subject land. The lowest priority will be given to farms located outside the same county as the subject land.

*Conservation plan*—A plan describing land management practices, including an installation schedule and maintenance program and a nutrient management component, which when completely implemented, will improve and maintain the soil, water and related plant and animal resources of the land.

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

*Contract of sale*—A legally enforceable agreement in a form provided by the State Board obligating the landowner to sell, and the Commonwealth or a county, or both, to purchase an agricultural conservation easement on a specific farmland tract.

*County board*—The county agricultural land preservation board as appointed by the county governing body under the act.

*County fiscal year*—The period running from January 1 through December 31 of a particular calendar year.

*County governing body*—The county board of commissioners or, under home rule charters, another designated council of representatives.

*County matching funds*—Money appropriated by the county governing body for the purchase of easements.

*County program*—A county agricultural land preservation program for the purchase of easements authorized and approved by the county governing body, and approved by the State Board under section 14.1(a)(3)(xi) and (xiv) of the act.

*Crops, livestock and livestock products*—The term includes:

(i) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.

(ii) Fruits, including apples, peaches, grapes, cherries and berries.

(iii) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms.

(iv) Horticultural specialties, including nursery stock ornamental shrubs, ornamental trees and flowers.

(v) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.

(vi) Timber, wood and other wood products derived from trees.

(vii) Aquatic plants and animals and their by-products.

*Crops unique to the area*—The term includes crops which historically have been grown or have been grown

within the last 5 years in the region, and which are used for agricultural production in the region. For example, orchard or vineyard crops that have historically been produced in a particular county might be considered crops unique to the area.

*Curtilage*—The area surrounding a residential structure used for a yard, driveway, onlot sewerage system or other nonagricultural purposes.

*Department*—The Department of Agriculture of the Commonwealth.

*Easement value*—The difference between the nonagricultural value and agricultural value of a farm. If solely the county or State appraisal is used, nonagricultural value and agricultural value are equal to market value and farmland value, respectively. If the landowner obtains an independent appraisal, nonagricultural value and agricultural value shall be calculated according to section 14.1(f) of the act.

*Economic viability of farmland for agricultural production*—The capability of a particular tract of restricted land, other than a tract of 2 acres or less upon which construction and use of the landowner's principal residence or housing for seasonal or full-time farm employes is permitted under section 14.1(c)(6)(iv) of the act, to meet the criteria in § 138e.16(a) (relating to minimum criteria for applications).

*Eligible counties*—Counties whose county programs have been approved by the State Board. For the purpose of annual allocations, an eligible county shall have its county program approved by the State Board by January 1 of the year in which the annual allocation is made. Counties of the first class are not eligible.

*Encumber*—The reservation by the Commonwealth or a county of previously-allocated funds to pay all or part of the costs of purchasing a specific easement under a specific agreement of sale.

*Farm*—Land in this Commonwealth which is being used for agricultural production as defined in the act.

*Farmland tract*—Land constituting all or part of a farm with respect to which an easement purchase is proposed. A farmland tract may consist of multiple tracts of land that are identifiable by separate tax parcel numbers, separate deeds or other methods of property identification.

*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.

*Fund*—The Agricultural Conservation Easement Purchase Fund established by section 7.2 of the act of June 15, 1982 (P. L. 549, No. 159) (3 P. S. § 1207.2).

*Grant funds*—Funds allocated to a county by the State Board under section 14.1(h)(2) and (5)(ii) of the act, the expenditure of which is not contingent upon the appropriation and expenditure of county matching funds.

*Grantee*—The person or entity to whom an easement is conveyed under the act.

*Grazing or pasture land*—Land, other than land enrolled in the USDA Conservation Reserve Program, used primarily for the growing of grasses and legumes which are consumed by livestock in the field and at least 90% of which is clear of trees, shrubs, vines or other woody growth not consumed by livestock.

*Harm the economic viability of the farmland for agricultural production*—To cause a particular tract of restricted land to fail to meet the criteria in § 138e.16(a) or to create, through subdivision, a tract of restricted land, other than a tract of 2 acres or less upon which construction and use of the landowner's principal residence or housing for seasonal or full-time farm employes is permitted under section 14.1(c)(6)(iv) of the act, that would fail to meet the criteria in § 138e.16(a).

*Harvested cropland*—Land, other than land enrolled in the USDA Conservation Reserve Program, used for the commercial production of field crops, fruit crops, vegetables and horticultural specialties, such as Christmas trees, flowers, nursery stock, ornamentals, greenhouse products and sod. The term does not include land devoted to production of timber and wood products.

*Immediate family member*—A brother, sister, son, daughter, stepson, stepdaughter, grandson, granddaughter, father or mother of the landowner.

*LCC—Land capability class*—A group of soils designated by either the county soil survey, as published by USDA-NRCS in cooperation with the Pennsylvania State University and the Department, or the Soil and Water Conservation Technical Guide maintained and updated by USDA-NRCS.

*Land development*—One of the following activities:

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

(ii) A subdivision of land.

*Land which has been devoted primarily to agricultural use*—Acreage which is a part of restricted land and is harvested cropland, grazing or pasture land, land used for the production of timber and wood products, land containing nonresidential structures used for agricultural production, or other acreage immediately available for agricultural production, and which excludes any acreage upon which immediate agricultural production is impracticable due to residential structures and their curtilages, wetlands, soil quality, topography or other natural or manmade features, and which further excludes any tract of 2 acres or less designated as the site upon which the landowner's principal residence or housing for seasonal or full-time employes is permitted under section 14.1(c)(6)(iv) of the act.

*Landowner*—The person holding legal title to a particular farmland tract.

*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.

*Nonagricultural value*—The sum of the following:

(i) The market value determined by the State or county board's appraiser.

(ii) One-half of the difference between the market value determined by the applicant's appraiser and the market value determined by the State or county board's appraiser, if the market value determined by the applicant's appraiser exceeds the market value determined by the State or county board's appraiser.

*Nonprofit land conservation organization*—A nonprofit organization dedicated to land conservation purposes

recognized by the Internal Revenue Service as a tax-exempt organization under the Internal Revenue Code (26 U.S.C.A. §§ 1—7872).

*Normal farming operations*—The customary and generally accepted activities, practices and procedures that farmers adopt, use or engage in year after year in the production and preparation for market of crops, livestock and livestock products and in the production and harvesting of agricultural, agronomic, horticultural, silvicultural, and aquacultural crops and commodities. The term includes the storage and utilization of agricultural and food processing wastes for animal feed and the disposal of manure, other agricultural waste and food processing waste on land where the materials will improve the condition of the soil or the growth of crops or will aid in the restoration of the land for the same purposes.

*Nutrient management plan*—A written site-specific plan which incorporates best management practices to manage the use of plant nutrients for crop production and water quality protection consistent with the criteria established in the Nutrient Management Act (3 P. S. §§ 1701—1718).

*Pennsylvania Municipalities Planning Code*—53 P. S. §§ 10101—11201.

*Person*—A corporation, partnership, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

*Restricted land*—Land which is subject to the terms of an agricultural conservation easement acquired under the act.

*Secretary*—The Secretary of the Department.

*Soils available for agricultural production*—Soils on land that is harvested cropland, pasture or grazing land, or land upon which no structure, easement, roadway, curtilage or natural or manmade feature would impede the use of that soil for agricultural production.

*Soils report*—A report which identifies and sets forth the amount of each land capability class found on a farmland tract.

*State Board*—The State Agricultural Land Preservation Board.

*State matching funds*—Funds allocated to a county by the State Board under section 14.1(h)(3), (4) or (5)(i) of the act, the expenditure of which is contingent upon the appropriation and expenditure of county matching funds.

*State-certified general real estate appraiser*—A person who holds a current general appraiser's certificate issued to him under the Real Estate Appraisers Certification Act (63 P. S. §§ 457.1—457.19).

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

*Title report*—A report prepared by a person authorized by the Insurance Department to engage in the sale of title insurance or an attorney setting forth the existence of any liens, restrictions or other encumbrances on a farmland tract. A title report does not include the title search, but must include the title binder or the title commitment, or both.

*USDA*—The United States Department of Agriculture.

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

## REQUIREMENTS FOR CERTIFICATION OF COUNTY PROGRAM

### § 138e.11. General requirements.

(a) A county program shall demonstrate that the county has fair, equitable, objective, nondiscriminatory procedures for determining easement purchase priorities.

(b) A county program shall contain written policies and procedures for determining easement purchase priorities and written procedures for purchasing easements. For example, a county program that would allow a farmland tract with a higher farmland ranking score (as described in § 138e.15 (relating to farmland ranking system)) to be bypassed in favor of making an offer to purchase an easement on a farmland tract with a relatively lower farmland ranking score shall set forth the priorities and procedures under which this determination is made.

(c) A county program shall address and meet the standards, criteria and requirements in §§ 138e.12—138e.21. A county program may propose additional standards, criteria and requirements for approval by the State Board. Additional provisions shall be designed to assure that selection of land for easement purchase is consistent with the purposes of the act.

### § 138e.12. Authorization of program by county governing body.

The county governing body shall submit to the State Board a certified copy of the resolution or other official action authorizing administration of the county program by the county board.

### § 138e.13. County board; membership; occupations.

(a) The county governing body shall submit to the State Board a list of the members of the county board which shall contain the following information concerning the composition of the county board:

- (1) The name of each member.
- (2) The address of each member.
- (3) The occupation of each member.
- (4) The length of the term of each member.
- (5) The name of the chairperson.

(b) A county board shall be comprised of five, seven or nine members. Annually, the chairperson of the county governing body shall designate one member of the county board to act as chairperson of the county board. Members of the county board shall be appointed by the county governing body as follows:

- (1) One less than the majority shall be active resident farmers of the county and shall serve initial terms of 3 years.
- (2) One member shall be a current member of the governing body of a township or borough located within the county and shall serve an initial 2-year term.
- (3) One member shall be a commercial, industrial or residential building contractor and shall serve an initial 1-year term.
- (4) The remaining members shall be selected at the discretion of the county governing body and shall serve initial terms of 1 year.

(c) Upon expiration of the initial terms in subsection (b), the term of members shall be 3 years.

(d) Members of a county board shall comply with the act of October 4, 1978 (P. L. 883. No. 170) (65 P. S. §§ 401—413), known as the Public Official and Employee Ethics Law.

**§ 138e.14. County statement of purpose.**

The county program shall contain a statement which defines the purpose of the easement purchase program. It shall state the objectives of the program and include the following as the county program's purposes:

- (1) To protect viable agricultural lands by acquiring agricultural conservation easements which prevent the development or improvement of the land for any purpose other than agricultural production.
- (2) To encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security of land use.
- (3) To protect normal farming operations in agricultural security areas from incompatible nonfarmland uses that may render farming impracticable.
- (4) To protect normal farming operations from complaints of public nuisance against normal farming operations.
- (5) To assure conservation of viable agricultural lands to protect the agricultural economy of this Commonwealth.
- (6) To provide compensation to landowners in exchange for their relinquishment of the right to develop their private property.
- (7) To maximize agricultural conservation easement purchase funds and protect the investment of taxpayers in agricultural conservation easements.

**§ 138e.15. Farmland ranking system.**

(a) *System required.* The county board shall adopt a farmland ranking system meeting the requirements of this section, for use in prioritizing applications for the appraisal of properties meeting the minimum criteria in § 138e.16 (relating to minimum criteria for applications). This farmland ranking system may include additional or substitute criteria as approved by the State Board.

(b) *Review and approval of system.* The county board shall set forth its farmland ranking system in its county program and submit the county program to the State Board for review and approval in accordance with the act.

(c) *Land Evaluation and Site Assessment (LESA) system.* The farmland ranking system shall evaluate tracts being considered for appraisal on a 100-point scale, using the two-part LESA system described in this section. The weighted Land Evaluation (LE) score shall be calculated in accordance with subsection (d). The weighted Site Assessment (SA) score shall be calculated in accordance with subsection (e). The total of the weighted LE and weighted SA scores equals the farmland ranking score. The county board shall establish in the county program the weighted values to be given the LE score and the SA score, as well as the weighted values to be given the three general categories—development potential (DP), farmland potential (FP) and clustering potential (CP)—of factors to be considered in calculating the SA score. The weighted values in the county program shall total 100%, and shall be within the following ranges:

	<i>Minimum Weighted Value</i>	<i>Maximum Weighted Value</i>
Land Evaluation (LE) Site Assessment (SA)	40%	70%
Development Potential Site Assessment	10%	40%
Farmland Potential Site Assessment	10%	40%
Clustering Potential	10%	40%

A flow chart summarizing the farmland ranking system is set forth in Appendix A.

(d) *LE.*

(1) *Source of soils data.* A farmland ranking system shall designate either or both of the following as the source of the soils data used in LE:

(i) The county soil survey, as published by the USDA-NRCS in cooperation with the Pennsylvania State University and the Department.

(ii) *The Soil and Water Conservation Technical Guide* published and updated by the USDA-NRCS.

(2) *Relative value of soil.* The county program shall set forth a relative value for each soil mapping unit in the county. The relative value shall be on a 100-point-scale, with 100 points assigned to the best soils for agricultural production and all other soils assigned relative values of less than 100 points.

(3) *Calculation of average relative value.* The average relative value of the soils on a tract being considered for appraisal shall be calculated by multiplying the relative value of each soil mapping unit within the tract by the total acreage of the soil mapping unit within the tract, adding these products and then dividing that sum by the total acreage of the tract.

*Example:* A 60-acre tract has 10 acres within soil mapping units with relative values of 95, 20 acres within soil mapping units with relative values of 90 and 30 acres within soil mapping units with relative values of 80. The sum of the relative values is calculated as follows:

- 10 acres x 95 = 950 acres
- 20 acres x 90 = 1,800 acres
- 30 acres x 80 = 2,400 acres
- Total 5,150 acres

The 5,150 acre sum is then divided by the total acreage of the tract (60 acres) to determine the average relative value:

5,150 acres divided by 60 acres = 85.83

In this example, the average relative value of the soils on the tract is 85.83.

(4) *Calculation of weighted LE score.* The weighted LE score of a tract being considered for appraisal shall be the product of the average relative value of the soils on the tract multiplied by the weighted value assigned to the LE score under the county program.

*Example:* The average relative value of the soils on the tract described in the example in paragraph (3) is 85.83. The county program assigns a weighted value to the LE

score of 60% (.60) of the farmland ranking score. The weighted LE score for this tract would be 51.5, calculated as follows:

$$85.83 \times .60 = 51.5$$

(e) *SA*.

(1) *General categories of factors*. The county program shall require the evaluation of three general categories of factors in determining the SA score, and shall specify the individual factors to be considered under each of these general categories. These categories are as follows:

(i) *DP factors*. Factors that identify the extent to which development pressures are likely to cause conversion of agricultural land to nonagricultural uses.

(ii) *FP factors*. Factors that measure the potential agricultural productivity and farmland stewardship practiced on a tract.

(iii) *CP factors*. Factors that emphasize the importance of preserving blocks of farmland to support commercial agriculture and help to shield the agricultural community from conflicts with incompatible land uses.

(2) *Scoring scale*. The county program shall require that each of the three general categories of factors described in paragraph (1) ranks tracts on a 100-point scale. The total combined maximum score under these categories shall be 300 points.

(3) *DP factors*.

(i) *Number*. The county program shall specify no less than 3 and no more than 10 factors to be considered in scoring the DP of a tract being evaluated for appraisal. Three of these factors shall be the factors described in subparagraphs (ii)—(iv), unless substitute factors are approved by the State Board in accordance with subparagraph (v).

(ii) *Required factor: availability of sanitary sewer and public water*. The county program shall require that the availability of sanitary sewer and public water to a tract be considered in scoring its DP. A farmland tract is more likely to be surrounded by incompatible land uses or be converted to nonagricultural use if it is in an area which is suitable for onlot sewage disposal or if it is in an area which has access to public sewer and water service or is expected to have access to the service within 20 years. The tract shall receive a relatively higher score than a tract that does not have sanitary sewer and public water.

(iii) *Required factor: road frontage*. The county program shall require that the public road frontage of a tract be considered in scoring DP. Frontage on public roads increases the suitability of a tract for subdivision or development, and is a measure of the capability of a tract to be developed or improved for nonagricultural use. A tract with extensive road frontage shall receive a relatively higher score than a tract with less public road frontage.

(iv) *Required factor: extent of nonagricultural use in area*. The county program shall require that the extent of nonagricultural use adjoining or in the area of a tract be considered in scoring DP. Consideration shall be given to whether adjacent land uses affect normal farming operations and whether surrounding, but not necessarily adjoining, land uses affect the ability of the landowner to conduct normal farming operations on the tract, or whether the impacts are likely to occur within the next 20 years. Urban uses are generally considered incompatible with agricultural uses. A tract with extensive

nonagricultural uses in the area shall receive a relatively higher score than a tract that is more distant from the nonagricultural uses.

*Example*: A county program may require that the percentage of adjacent land in nonagricultural use or the distance to urban centers or growth areas, or both, be considered in scoring DP.

(v) *Substitute or additional factors*. Subparagraphs (ii)—(iv) notwithstanding, a county program may set forth substitute or additional factors to be considered in scoring development potential, if the factors are reviewed and approved by the State Board.

(vi) *Weight of individual factors*. The county board shall establish and set forth in its county program the number of points that may be awarded under any individual factor in scoring DP. The number of points may vary from factor to factor.

(4) *FP factors*.

(i) *Number*. The county program shall specify no less than 4 and no more than 10 factors to be considered in scoring the FP of a tract being evaluated for appraisal. Four of these factors shall be the factors described in subparagraphs (ii)—(v), unless substitute factors are approved by the State Board in accordance with subparagraph (vi).

(ii) *Required factor: Percentage of certain types of land*. The county program shall require that the percentage of harvested cropland, pasture and grazing land on a tract be considered in scoring FP. Large amounts of productive farmland—harvested cropland, pasture and grazing land—make a farm more viable. If a large percentage of a tract is not used as productive farmland, the tract should receive a lower farmland potential score.

(iii) *Required factor: stewardship of land*. The county program shall require that the stewardship of the land and the use of conservation practices and land management practices be considered in scoring the FP of a tract. A score will not be awarded under this factor unless sound soil and water conservation practices are in place with respect to at least 50% of the tract. The implementation of soil erosion control, sedimentation control, nutrient management and other practices demonstrating good stewardship of the tract shall be considered under this factor.

(iv) *Required factor: size of tract on application*. The county program shall require that the size of a tract described in the easement purchase application be considered in scoring the FP of the tract. A farm tract at or above the optimum acreage in the county should be assigned a relatively higher value than a tract having less than the optimum acreage.

(v) *Required factor: historic, scenic and environmental qualities*. The county program shall require that the designation or listing of a tract by local/State/Federal authorities as an historically or culturally significant location, or a scenic area or open space be considered in scoring the FP of a tract. Tracts adjoining designated protected areas such as flood plains, wildlife habitat, parks, forests and educational sites shall also be considered under this factor. The county program shall specify whether a tract shall receive a relatively higher or relatively lower score based upon its historic, scenic or environmental qualities.

(vi) *Substitute or additional factors*. Subparagraphs (ii)—(v) notwithstanding, a county program may set forth substitute or additional factors to be considered in scoring

FP, if the factors are reviewed and approved by the State Board. The additional factors may include a factor that awards points based upon the landowner's offer to sell the easement at a reduced price.

(vii) *Weight of individual factors.* The county board shall establish and set forth in its county program the number of points that may be awarded under any individual factor in scoring FP. The number of points may vary from factor to factor.

(5) *CP factors.*

(i) *Number.* The county program shall specify no less than 3 and no more than 10 factors to be considered in scoring the CP of a tract being evaluated for appraisal. Three of these factors shall be the factors described in subparagraphs (ii)—(iv), unless substitute factors are approved by the State Board in accordance with subparagraph (v).

(ii) *Required factor: consistency with planning map.* The county program shall require that the location of a tract with respect to those areas of the county identified as important agricultural areas of the county in the planning map described in § 138e.17 (relating to planning and development map) be considered in scoring the CP of the tract. A tract that is within an identified important agricultural area shall receive a higher score than tracts that are distant from these areas. Tracts located within the designated areas are more viable for agricultural use; and are more likely to be compatible with county and local comprehensive plans.

(iii) *Required factor: proximity to restricted land.* The county program shall require that the proximity of a tract to land already under agricultural conservation easement, whether held by a county, the State, jointly by the county and State, or by a nonprofit land conservation organization, be considered in scoring the CP of the tract. A tract that is close to the restricted land shall receive a higher score than tracts that are more distant from the restricted land. Clustering easement purchases will develop a mass of farmland which supports commercial agriculture and reduces conflicts with incompatible land uses.

(iv) *Required factor: percentage of adjoining land in an agricultural security area.* The county program shall require that the percentage of a tract's boundary that adjoins land in an agricultural security area be considered in scoring the CP of the tract. The higher the percentage, the higher the score shall be. Areas where agriculture has been given protection by the municipality, at the request of the landowners, provides an environment conducive to farming.

(v) *Substitute or additional factors.* Subparagraphs (ii)—(iv) notwithstanding, a county program may set forth substitute or additional factors to be considered in scoring clustering potential, if the factors are reviewed and approved by the State Board. The additional factors may include a factor that awards points for the establishment of new clustering areas.

(vi) *Weight of individual factors.* The county board shall establish and set forth in its county program the number of points that may be awarded under any individual factor in scoring CP. The number of points may vary from factor to factor.

(6) *Calculation of weighted SA score.* The SA score of a tract being considered for appraisal shall be calculated as follows: the product of the DP score multiplied by the weighted value for that category is the weighted DP score. The product of the FP score multiplied by the

weighted value for that category is the weighted FP score. The product of the CP score multiplied by the weighted value for that category is the weighted CP score. The sum of these three weighted scores is the weighted SA score.

*Example:* A county program assigns weighted values of 10% to DP, 20% to FP and 30% to CP. The DP, FP and CP scores for a particular tract are 92, 85 and 80, respectively. The weighted DP score equals the DP score (92) multiplied by its weighted value (10%): 9.2. The weighted FP score equals the FP score (85) multiplied by its weighted value (20%): 17. The weighted CP score equals the CP score (80) multiplied by its weighted value (30%): 24. The weighted SA score is the sum of these three weighted scores (9.2 + 17 + 24): 50.2.

(f) *Calculation of farmland ranking score.* The sum of the weighted LE score and the weighted SA score equals the farmland ranking score.

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

**§ 138e.16. Minimum criteria for applications.**

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

(1) Be located in an agricultural security area consisting of 500 acres or more.

(2) Be contiguous acreage of at least 50 acres in size unless the tract is at least 10 acres in size and is either utilized for a crop unique to the area or is contiguous to a property which has a perpetual conservation easement in place which is held by a "qualified conservation organization," as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. § 170(h)(3)).

(3) 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.

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

(b) 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 are approved by the State Board. For example, a county program might require crop yields from a farmland tract to meet or exceed county crop yield averages, or might require the farmland tract to generate annual gross receipts of a particular sum, or might require that structures and their curtilages not occupy more than a certain percentage of the total acreage of the farmland tract.

**§ 138e.17. Planning and development map.**

(a) The county board shall, in consultation with the county planning commission, prepare a map identifying the important agricultural areas of the county. The scale of the map shall be such that it can be used to locate specific land proposed for easement purchase.

(b) The county board shall encourage the formation of agricultural security areas in the important agricultural areas identified in the map described in subsection (a).



(c) The planning and development map shall identify areas in the county devoted primarily to agricultural use where development is occurring or is likely to occur in the next 20 years. The identification of these areas shall be made in consultation with the county planning commission, and any other body the county board deems appropriate.

**§ 138e.18. Schedule for submission of applications.**

The county program shall contain a schedule for the submission of applications to the county board.

**§ 138e.19. Purchasing procedures.**

The county program shall contain or incorporate by reference the procedures in §§ 138e.61—138e.65 (relating to procedure for purchasing an easement) and additional consistent procedures as approved by the State Board.

**§ 138e.20. Public information.**

(a) The county board shall publicize the county program.

(b) The county program shall set forth the manner in which the county board will publicize the county program.

(c) The county board shall be subject to the Sunshine Act (65 P. S. §§ 271—286) and the act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. §§ 66.1—66.4), known as the Right-To-Know Law, relating to the inspection and copying of public records.

**§ 138e.21. Inspection and enforcement of an easement.**

The county program shall contain or incorporate by reference the procedures for inspecting and enforcing an easement in §§ 138e.201—138e.207 (relating to procedure for inspecting and enforcing an easement) and additional, consistent procedures as approved by the State Board.

**STATE BOARD REVIEW OF COUNTY PROGRAM**

**§ 138e.41. Application for review of county program.**

A county board seeking State Board review, certification and approval of its county program shall submit one copy of its county program and its bylaws to the State Board at the following address: Director, Bureau of Farmland Protection, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

**§ 138e.42. Review, certification and approval of a county program.**

(a) The State Board will acknowledge receipt of the county program and may request additional information.

(b) Within 60 days of receipt of a complete county program, the State Board will approve or disapprove the county program.

(1) The State Board will approve the county program if it finds that the standards, criteria and requirements in the act and §§ 138e.11—138e.21 (relating to requirements for certification of county program) have been satisfied, and will immediately notify the county board in writing that the county program has been approved.

(2) The State Board will disapprove the county program if it is not in accordance with the act and §§ 138e.11—138e.21 and will immediately notify the county board in writing of the reasons for the disapproval. The county board may submit a revised county program to the State Board. The revised county program shall be treated as a new request for certification and approval.

(3) The county board may withdraw its county program from the State Board prior to action by the State Board. The county board may resubmit the county program for review. The State Board has 60 days from resubmittal to act on the county program.

(c) A decision of the State Board to disapprove a county program shall be an adjudication subject to 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). An appeal from a decision of the State Board to disapprove a county program may be made by the county board to the Secretary of Agriculture and shall be filed in writing with the Secretary within 30 days of the State Board's action. An appeal from a decision of the State Board will be governed by 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

**§ 138e.43. Revision of county program.**

(a) Following initial approval by the State Board, a county program may be revised in accordance with this section.

(b) A county board seeking review of a proposed revision to its county program shall submit one copy of the proposed revision to the State Board at the following address: Director, Bureau of Farmland Protection, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

(c) A county board's request for review of a proposed revision to a county program shall set forth the following:

(1) The text of the existing provisions of the county program to be revised.

(2) The text of all proposed revisions to the county program.

(3) A brief narrative explaining the reasons for, and the benefits from, the proposed revisions.

(4) Other supporting documentation or information deemed relevant by the county board or requested by the State Board.

(d) A proposed revision to the county program shall comply with the act and this chapter and may not conflict with another provision of the county program.

(e) The State Board will follow the procedures in § 138e.42 (relating to review, certification and approval of a county program) in reviewing a proposed revision to a county program.

**§ 138e.44. Periodic recertification of county programs.**

(a) *Responsibilities of the State Board.*

(1) The State Board will review a county program and approve or disapprove the recertification of that county program in accordance with this section and section 14.1(b)(4) of the act (3 P. S. § 914.1(b)(4)).

(2) A county program that was approved by the State Board on or before December 31, 1994, will be reviewed by the State Board and approved or disapproved for recertification by December 31, 1996, and by December 31 of every 7th year thereafter.

(3) A county program that was approved by the State Board after December 31, 1994, will be reviewed by the State Board and approved or disapproved for recertification by December 31 of the 7th year after the date of original approval and by December 31 of every 7th year thereafter.

(4) The State Board's approval or disapproval of recertification need not be granted within the times specified in paragraphs (1)—(3) if the county board fails to submit its county program to the State Board by the applicable deadline in subsection (c), or if the State Board postpones the deadline in accordance with subsection (e).

(b) *Standard of review.* The State Board will approve the recertification of a county program if it determines that the county program is in compliance with section 14.1(b)(4) and (d) of the act (3 P. S. § 914.1(b)(4) and (d)) and otherwise complies with the act and this chapter.

(c) *Responsibilities of the county board.*

(1) If a county board seeks State Board review and recertification of a county program that does not contain proposed revisions, it shall submit the county program to the State Board September 1 of the year within which recertification must be completed.

(2) If a county board seeks State Board review and recertification of a county program that contains proposed revisions, it shall submit the county program, including proposed revisions, to the State Board by July 1 of the year within which recertification must be completed. Proposed revisions to county programs shall comply with § 138e.43 (relating to revision of county programs).

(d) *Consequence of noncompliance.* The State Board will not approve a county board's recommendation for purchase unless the county program has been approved for recertification in accordance with the schedule set forth in section 14.1(b)(4) of the act and this section.

(e) *Discretionary extension of time.* Subsection (d) notwithstanding, the State Board may postpone the deadline for recertification of a county program by up to 12 months and, during this period of postponement, may approve a county board's recommendation for easement purchase.

#### **PROCEDURE FOR PURCHASING AN EASEMENT**

##### **§ 138e.61. Application.**

(a) A separate application shall be required for each farmland tract offered for easement purchase. The application shall consist of a completed application form, locational maps and a soils report form. A copy of a soils report form is in Appendix B (relating to Form C Soils Report). If the county program contains minimum criteria for easement purchase that vary from those in § 138e.16 (relating to minimum criteria for applications), the application shall also include documentation (such as a production report form contained in a guidebook authorized by the State Board under section 14.1(a)(3)(xv) of the act (3 P. S. § 914.1(a)(3)(xv)) to demonstrate the farmland tract meets these minimum criteria.

(b) The county board shall develop and make available to a county resident an application form which requires the following information:

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

(2) The county, municipality and agricultural security area in which the farmland tract is located.

(3) The total acreage of the farm as shown on the deed or instruments of record.

(4) The number of acres in the farmland tract proposed for easement purchase.

(5) The street address of the farm, and directions from the nearest State route.

(6) 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 the deeds shall be provided.

(7) County tax map numbers, including tax parcel number, or account number of each parcel.

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

(9) The date of any nutrient management plan.

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

(c) The applicant or the county board shall provide both of the following locational maps with the application:

(1) A United States Geological Survey topographical map or a portion of the map showing the location of the farmland tract, with the farmland tract boundaries clearly and correctly delineated and showing the location of acreage being excepted from the easement.

(2) A tax map or official map used for tax assessment purposes showing the farmland tract with all tax parcel numbers clearly indicated.

(d) The applicant or the county board shall provide a soils report and a color-coded soils map for the farmland tract proposed for easement purchase. The soils report shall also contain a list of soil mapping unit names, symbols and land capability classes on the farmland tract. The soils map shall use as a base soil survey maps published by the USDA-NRCS. A county with a digital mapping database system for soils may provide the soils map in digital form in an appropriate scale acceptable to the Department. The soils map shall color code soil types as follows:

Land capability class I = Green

Land capability class II = Yellow

Land capability class III = Red

Land capability class IV = Blue

Land capability class V = Uncolored

Wetlands = Cross-hatch, or shown on a separate map

(e) If the county program requires crop yield data or gross annual receipts to determine whether a farmland tract meets the county program's minimum criteria for easement purchase, the applicant shall provide a production report for the farmland tract for the most recent crop year that comparable statistics are available from the Pennsylvania Agricultural Statistics Service (PASS)

##### **§ 138e.62. Evaluation of application.**

(a) The county board shall review the application to determine if it is complete and meets the minimum criteria in §§ 138e.11—138e.21 (relating to requirements for certification of county program).

(b) If the application is complete and the minimum criteria are met, an agent or member of the county board shall view the farmland tract and discuss the county program with the applicant.

(c) The county board shall evaluate timely applications which meet the minimum criteria and rank them according to the county, farmland ranking system.

##### **§ 138e.63. Order of appraisal.**

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.

**§ 138e.64. Appraisal.**

(a) An offer to purchase an easement shall be based upon one or more appraisal reports which estimate the market value and the farmland value of the farmland tract, as those terms are defined in § 138e.3 (relating to definitions).

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

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

(d) The appraiser shall be a State-certified general real estate appraiser who is qualified to appraise a property for easement purchase. An appraiser shall be selected by a county board on the basis of experience, expertise and professional qualifications.

(e) The appraiser shall supply a minimum of three copies of a narrative report which contains the following information and is in the following format:

- (1) *Introduction.*
  - (i) A letter of transmittal.
  - (ii) The appraiser's certificate of value as to market value, farmland value and easement value.
  - (iii) A table of contents.
  - (iv) A summary of salient facts and conclusions.
  - (v) The purpose of the appraisal.
  - (vi) The definitions, including definitions of market value, farmland value and easement value.
- (2) *Description of property.*
  - (i) A brief area or neighborhood description.
  - (ii) A description of appraised property.
    - (A) A legal description.
    - (B) Property data and zoning.
    - (C) A brief description of improvements.
    - (D) Color photos of the subject property's fields and improvements.
    - (E) A tax map or official map used for tax assessment purposes showing the subject property and its relationship to neighboring properties.
    - (F) A legible sketch or aerial photograph of subject property showing boundaries, roads, driveways, building locations, rights of way and land use.
    - (G) A location map showing the location of the subject farmland tract in a county or municipality.
    - (H) Soils map showing property boundaries.

(3) *Analyses and conclusions.*

- (i) An analysis of highest and best use.
- (ii) The valuation methodology: market value.
  - (A) Comparable sales data.
  - (B) An adjustment grid.

(C) A locational map of comparable sales showing the location of the subject farmland tract with respect to the comparables. A single locational map shall be submitted with respect to each county from which comparable sales are drawn.

- (iii) The market value estimate.
- (iv) The valuation methodology: farmland value.
  - (A) A comparable sales data.
  - (B) An adjustment grid.

(C) A locational map of comparable sales showing the location of the subject farmland tract with respect to the comparables. A single locational map shall be submitted with respect to each county from which comparable sales are drawn.

- (v) A farmland value estimate.
- (vi) The easement value.

(vii) An appendix containing a brief statement of the appraiser's professional qualifications and a copy of the appraiser's current certification issued in accordance with the Real Estate Appraisers Certification Act (63 P. S. §§ 457.1—457.19).

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

(1) 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.

(2) Pertinent data for each comparable sale used in the preparation of the appraisal shall be stated in the appraisal report, including date of sale, purchase price, zoning, road frontage in feet (for determining market value) and soil mapping units (for determining farmland value). The appraisal shall include an analysis comparing the pertinent data for each comparable sale to the subject farmland tract. This analysis shall be in the form of a narrative statement of the information considered and the reasoning that supports the analyses, opinions and conclusions, and an adjustment grid assigning, when practicable and within the *Uniform Standards of Professional Appraisal Practice* referenced in subsection (b), approximate dollar values to adjustments shown on the adjustment grid.

(3) The location of each market value comparable sale used in the appraisal report shall be shown accurately on a comparable sales map depicting the entire county in which the comparable sale is located, and shall be sufficiently identified and described so it may be located easily. If the comparable sales map depicts the county in which the property that is the subject of the appraisal is located, that property shall also be sufficiently identified and described so it may be located easily.

(4) The location of each farmland value comparable sale used in the appraisal report shall be shown accurately on a comparable sales map depicting the entire county in which the comparable sale is located, and shall be sufficiently identified and described so it may be located easily. If the comparable sales map depicts the county in which the property that is the subject of the appraisal is located, that property shall also be sufficiently identified and described so it may be located easily. If a farmland value comparable sales map and a market value comparable sales map would depict the same county, they may be combined in a single map.

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

(6) The appraiser shall set forth the reasons the farmland comparable sales are confined primarily to agricultural use. Examples of these reasons include:

(i) The farmland tract has public or private land use restrictions.

(ii) The farmland tract is within a floodplain or a wetland (in whole or in part).

(iii) The farmland tract is landlocked, subject to additional easements, subject to restrictive zoning or having other physical attributes which limit its developmental capability.

(7) The appraiser shall provide at least one original and two copies of each report to the county board. The original of each report and all copies shall be bound with rigid covers.

(8) The appraisal shall include the entire acreage offered for easement sale. If, following completion of the appraisal, acreage is added to or deleted from the proposed easement sale for any reason, the appraisal shall be revised accordingly or the appraiser shall agree in writing to the use of a per acre value to account for the change in easement value resulting from such a change in acreage.

(9) If acreage is voluntarily withheld from the easement sale by the landowner through subdivision accomplished in accordance with the Pennsylvania Municipalities Planning Code, the appraiser shall, in making the estimate of agricultural conservation easement value, take into account any increase in the value of the subdivided acreage because of the placement of the easement on the remaining farmland.

**§ 138e.65. Easement value and purchase price.**

(a) *Easement value.* An easement shall be purchased in perpetuity. The maximum value of an easement for purposes of making an offer to purchase an easement under § 138e.66(b) (relating to offer of purchase by county board) shall be the difference between the market value and the farmland value contained in the county appraisal report.

(b) *Maximum purchase price.* The purchase price offered for the purchase of an easement under § 138e.66(b) may not exceed, but may be less than, the value of the easement. Regardless of the easement value, the State funds paid toward the purchase price of an easement will not exceed \$10,000 per acre.

**§ 138e.66. Offer of purchase by county board.**

(a) In determining whether to offer to purchase an easement following receipt of the county appraisal report, the county board shall consider the following:

(1) The farmland ranking score, as calculated in accordance with § 138e.15 (relating to farmland ranking system).

(2) The cost relative to total allocations and appropriations.

(3) The factors or considerations in the county program as those factors or conditions under which an offer to purchase would be made in something other than descending order of farmland ranking score. An example of a factor or consideration under which a county program might provide for the making of an offer to purchase in something other than descending order of farmland ranking score would be the landowner being unable to obtain clear title to the farmland tract within a time specified in the county program.

(b) If the county board determines to offer to purchase an easement on the farmland tract, the county board, or a representative of the county board, shall meet with the applicant to review the county appraisal report. An offer to purchase an easement shall be submitted to the applicant in writing and be accompanied by the county appraisal report.

(c) Within 30 days of receipt of the written offer from the county board, an applicant may do one of the following:

(1) Accept the offer, in which case the county board and the applicant shall enter into an agreement of sale. The agreement of sale shall be conditioned upon the approval of the State Board and be subject to the ability of the applicant to provide good title to the premises, free of encumbrances such as liens, mortgages, options, rights of others in surface mineable coal, land use restrictions, adverse ownership interest and other encumbrances which would adversely impact the county and Commonwealth's interest in the farmland tract.

(2) Reject the offer and advise the county board that the application is withdrawn.

(3) 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 § 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 under this paragraph does not constitute a rejection of the county board's offer. The county board's offer shall remain open unless increased by the county board under subparagraph (ii) or rejected by the applicant under subparagraph (iii) or (iv).

(i) 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.

(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.

(i) If the easement value determined under subparagraph (i) is less than the easement value determined by the county appraiser, the county board may offer a purchase price equal to the county's offer under subsection (b).

(iii) Regardless of the easement value, the purchase price may not exceed \$10,000 per acre of State funds.

(iv) Within 30 days of receipt of the applicant's appraisal, the county board shall do one of the following:

(A) Submit a written offer to purchase in an amount in excess of the amount offered under subsection (b) to the applicant.

(B) Notify the applicant, in writing, that the offer made under subsection (b) remains open and will not be modified.

(v) The applicant shall, within 15 days of receipt of the county board's written offer under subparagraph (ii)(A) or receipt of the county board's written notice under subparagraph (ii)(B), notify the county board in writing that the applicant does one of the following:

(A) Accepts or rejects the offer made under subparagraph (iv)(A).

(B) Accepts or rejects the offer made under subsection (b).

(vi) The failure of the applicant to act as set forth in subparagraph (v) shall constitute a rejection of the county board's offer.

(vii) If the offer of purchase is accepted, the county board and the applicant shall enter into an agreement of sale containing the same requirements and subject to the same conditions in subsection (c)(1).

(4) The failure by the applicant to act within 30 days of receipt of a written offer under subsection (b) shall constitute rejection of the offer.

(d) An agreement of sale shall be in a form provided by the State Board.

**§ 138e.67. Requirements of the agricultural conservation easement deed.**

(a) The owners of the subject farmland tract shall execute a deed conveying the easement. This deed shall include the provisions of § 138e.241 (relating to deed clauses).

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

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

(2) At least one course and distance referencing a fixed marker or monument of a type commonly placed in the field by a surveyor. Fixed markers may include iron pins, pk nails, spikes, concrete monuments or stones.

(c) The legal description may not contain a closure error greater than 1 foot per 200 linear feet in the survey.

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

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

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

(1) Neither the Commonwealth nor the county may sell, convey, extinguish, lease, encumber or restrict in whole or in part its interest in the easement for 25 years from the date of the purchase of the easement. This prohibition will not be construed to prevent a public entity, authority or political subdivision from exercising the power of eminent domain and condemning restricted land in accordance with section 14.1(c)(5) of the act (3 P. S. § 914.1(c)(5)).

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

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

**§ 138e.68. Title insurance.**

(a) The county board shall provide a title report to the State Board upon submission of its recommendation for the purchase of an easement.

(b) At settlement, the county board shall provide a title insurance policy issued by a title insurance company authorized to conduct business in this Commonwealth by the Insurance Department. A marked up title commitment may serve as a policy until the policy is issued.

**§ 138e.69. Statement of costs.**

(a) For purposes of section 14.1(h)(6) of the act (3 P. S. § 914.1(h)(6)), the county board shall submit, on a form provided by the Department, a statement of costs. This statement of costs shall include the cost of the agricultural conservation easement and the costs incident to the purchase of the easement, and shall be submitted to the State Board along with the application for review described in § 138e.91 (relating to application for review). The incidental costs may include:

(1) The county appraisal costs.

(2) The necessary legal fees for title search, preparation of documents and attendance at the closing.

(3) The recording fees.

(4) The survey costs.

(5) The costs of providing adjoining landowners with required notices and of providing necessary advertisements.

(6) Reimbursements to a nonprofit land conservation organization that has acquired an easement at the request of the county board, for the purpose of transferring the easement to the county or the Commonwealth, or both. These costs include the easement purchase price, reasonable costs of financing the purchase, appraisal costs, necessary legal costs, recording fees and survey costs.

(7) The cost of the title insurance.

(b) The statement of costs shall specify the amount of funding requested from the Commonwealth for the purchase, and the amount of county funds allocated for the purchase.

(c) After settlement, the county board shall submit a revised statement of costs if actual costs were greater or less than the costs estimated in the initial statement of costs.

(d) If the actual costs are less than the estimated costs, the county board shall promptly refund the difference to the Department by check payable to "Commonwealth of Pennsylvania."

#### § 138e.70. Summary report.

(a) *General.* A recommendation by the county board for the purchase of an easement shall be accompanied by a summary report consisting of a narrative report and an appendix as described in subsections (b) and (c).

(b) *Narrative report.* The narrative report shall consist of the following:

(1) A description of the farm, including the name of all landowners, location in relation to the nearest town, number of acres proposed for purchase and type of agricultural production on the farm.

(2) A description of the quality of the farmland tract, including soil capability classes.

(3) The farmland ranking score, including a statement of the relative ranking of the farmland tract among other tracts considered by the county in the same round of applications.

(4) A description of the likelihood of conversion to other uses if the easement is not purchased.

(5) A description of the nature and scope of developmental pressure in the municipality or area.

(6) A description of the nature and scope of conservation practices and best land management practices, including soil erosion and sedimentation control and nutrient management.

(7) A discussion of the purchase price summarizing the appraisals, including the agricultural and nonagricultural value, negotiations for purchase and the percentage of the appraised easement value accepted by the landowner.

(8) A statement of costs as described in § 138e.69 (relating to statement of costs).

(9) A certification by the county board that the information presented to the State Board is true and correct.

(c) *Appendix.* The appendix of the summary report shall consist of the following:

(1) The application form.

(2) Locational maps, including tax, topographic and soils maps.

(3) A soils report.

(4) A crop report.

(5) A livestock report.

(6) An evaluation of the farmland ranking score, showing how the farm scored in comparison to other farms.

(7) A quitclaim deed, or a subordination, release or letter approving the purchase from a mortgagee, lienholder or owner of rights in surface mineable coal.

(8) Other relevant documents and information.

#### § 138e.71. Notification of owners of land adjoining proposed easement purchase.

(a) *General.* A county board shall provide the owners of land adjoining a farmland tract with respect to which an easement purchase is proposed with notice of the proposed purchase and notice of an opportunity to be heard at the State Board meeting at which the easement purchase recommendation is to be considered. At a minimum, this notice shall identify the property being considered for easement purchase, reference the time and place of the State Board meeting at which the easement purchase recommendation is to be considered and reference the criteria at section 14.1(e)(1) of the act (3 P. S. § 914.1(e)(1)) upon which the State Board could disapprove a recommended easement purchase. Service of this notice may be accomplished by personal service or mail as described in subsections (b) and (c).

(b) *Personal service.* The notice described in subsection (a) may be accomplished by personal service upon the landowners entitled to notice. If service is accomplished by personal service, the county board shall submit verification of service to the State Board in advance of the State Board meeting at which the easement purchase recommendation is to be considered.

(c) *Certified mail.* The notice described in subsection (a) may be accomplished by certified mail, return receipt requested, addressed to the landowner entitled to the notice. If service is accomplished by certified mail, the county board shall submit verification of service, including a copy of the return receipt, to the State Board in advance of the State Board meeting at which the easement purchase recommendation is to be considered.

#### STATE BOARD REVIEW OF A PURCHASE RECOMMENDATION

#### § 138e.91. Application for review.

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

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

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

(ii) A narrative summary report.

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

(iv) The Soil Report Form C (a form provided by the Department), both pages. See Appendix B (relating to Form C Soils Report).

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

(vi) A legible, uncolored soil map of the subject property.

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

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

(ix) A copy of Exhibit B, from the agreement of sale, modified to include interest, total acres and per acre easement cost.

(x) Twenty-two copies submitted shall be individually collated and three-hole punched, but not stapled.

(2) The appraisal reports.

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

(4) The title insurance report or commitment.

(5) A letter certifying that the adjoining landowners were provided with notice and opportunity to be heard in a manner consistent with administrative agency law with respect to the proposed easement purchase, including one copy of the notification letter required under § 138e.71 (relating to notification of owners of land adjoining proposed easement purchase) and a list of the adjoining landowners.

(6) A completed and signed IRS Form W-9, Request for Taxpayer Identification Number and Certification for individual grantors.

(7) A letter from the grantors stating the percent of ownership of each grantor for the purpose of issuing IRS Form 1099.

(8) A copy of the approved soil conservation plan that is required to be in place with respect to the land under § 138e.241(2) (relating to deed clauses).

(9) A copy of the nutrient management plan that has been developed, certified, reviewed and approved in accordance with the Nutrient Management Act (3 P. S. §§ 1701—1718), if the nutrient management plan is required under the Nutrient Management Act for any portion of the property that is the subject of the application.

#### § 138e.92. Review and decision.

(a) The State Board will acknowledge receipt of the application for review. The State Board will notify the county board if the application is incomplete or incorrect and request that additional necessary clarification, information or documentation be supplied.

(b) Within 60 days of receipt of a complete application for review, the State Board may approve, disapprove or table the purchase. The State Board may delay its action on a complete application beyond this 60-day deadline if one or more of the conditions excusing the delay, as set forth in section 14.1(e)(2) of the act (3 P. S. § 914.1(e)(2)), occur. If State Board action is delayed as a result of any of these conditions, the 60-day period shall be extended until applicable issues set forth in § 14.1(e)(2) of the act are resolved to the satisfaction of the State Board,

whereupon the State Board will act on the recommendation of the county board at its next scheduled meeting.

(1) If the application is approved, the State Board will execute the agreement of sale.

(2) If the application is disapproved or tabled, the State Board will notify the county board in writing of the reasons for disapproval or tabling. The State Board shall mail this written notification within 10 days of the disapproval or tabling. If the application has been disapproved, the county board may resubmit the application if the purchase recommendation has been revised to address the State Board's reasons for disapproval. The resubmittal shall be treated as a new application.

(3) The county board may withdraw its application from the State Board prior to action by the State Board. The county board may resubmit the application for consideration. The resubmittal will be treated as a new application.

(4) Failure of the State Board to act on an application within 60 days of its receipt constitutes approval by the State Board.

(c) Following the end of each 7-year period within which recertification of a county program is required under section 14.1(b)(4) of the act, the State Board will not approve a county board's recommendation to purchase until the county program has been approved for recertification in accordance with that section and the procedure described in § 138e.44 (relating to periodic recertification of county programs). The State Board may postpone the deadline for recertification of any county's program by up to 12 months and, during the period of postponement, may approve a county board's recommendation to purchase.

(d) A decision of the State Board to disapprove a purchase shall be an adjudication subject to 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). The owner of the farmland tract proposed for easement purchase or the county board may appeal a decision of the State Board to disapprove the purchase of an easement. An appeal shall be made to the Secretary and shall be filed in writing within 30 days of the State Board's action. An appeal from the decision of the State Board shall be governed by 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

#### ALLOCATION OF FUNDS

##### § 138e.101. Annual easement purchase threshold.

(a) On or before March 1 of each year in which money is available from the Fund, the State Board will meet and determine the annual easement purchase threshold for the current county fiscal year.

(b) The annual easement purchase threshold shall be at least \$10 million, unless the total amount available in the Fund is less than \$10 million, in which case the annual easement purchase threshold shall be the total amount available in the Fund.

##### § 138e.102. Allocation of funds to counties.

(a) On or before March 1 of each year in which money is available from the Fund, the State Board shall determine and announce an allocation of grant funds and State matching funds to eligible counties

(b) An allocation of grant funds shall be made to all eligible counties.

(c) Grant funds allocated to an eligible county will be available to be expended or encumbered for easement

purchases for 2 consecutive county fiscal years, commencing with the county fiscal year within which the allocation is made.

(d) A county that wishes to participate in the allocation of State matching funds shall:

(1) Appropriate county matching funds to be used exclusively for the purchase of easements.

(2) Submit to the State Board a certified copy of the resolution or other action of the county governing body appropriating county matching funds to be used exclusively for the purchase of easements.

(i) The certified resolution or other action shall be executed by the chief fiscal officer of the county and an authorized official of the county governing body.

(ii) The certified resolution or other action shall be in a form provided by the State Board.

(iii) The certified resolution or other action shall be received by the State Board by January 31 to be considered for an allocation of State matching funds for the year.

(iv) County matching fund appropriations shall be available for the same 2-consecutive-county-fiscal-year period during which grant funds allocated under subsection (c) are available to be expended or encumbered.

(e) State matching funds allocated to an eligible county will be available to be expended or encumbered for easement purchases if the expenditure or encumbrance occurs during the county fiscal year for which the allocation is initially made and for the following county fiscal year.

(f) Allocations will be made on an annual basis, concurrent with the calendar year beginning January 1.

(g) Funds allocated for easement purchases shall be expended or encumbered within the period in subsections (c) and (e). Funds shall be considered encumbered when the county board has submitted to the Department an application to purchase an easement on a specific farm for a specific amount of money expressed on a per acre basis or expressed as a total price based on the acreage contained in the deed of record. The application shall include all of the documents required by § 138e.91 (relating to application for review), except that multiple copies of the summary report and the final legal description are not required. Minor corrections may be made to the application as part of the review and comment process conducted by the Department without affecting the encumbrance of the funds.

(h) Grant funds that have not been expended or encumbered within the period specified in subsection (c) shall be restored to the Fund.

(i) State matching funds that have not been expended or encumbered within the period specified in subsection (e) shall be restored to the Fund.

**§ 138e.103. Expenditure of matching funds.**

(a) State matching funds may be expended in a county only upon the recommendation of the county board.

(b) A county board that recommends the expenditure of State matching funds for the purchase of a specific easement shall state the amount of county matching funds that will be used for the purchase of the easement.

(c) County matching funds shall be expended within the periods specified in § 138e.102(e) (relating to allocation of funds to counties).

(d) An easement purchased using solely county funds will be considered an expenditure of county matching funds under sections 14.1(h)(3), (4) and (5)(i) of the act (3 P. S. §§ 914.1(h)(3), (4) and (5)(i)) if:

(1) The easement document recorded in the land records of the county in which the farmland tract is located contains the provisions in § 138e.241 (relating to deed clauses) and any more restrictive provisions required under the county program.

(2) Upon settlement of the purchase of an easement, the county board submits the following to the State Board:

(i) A copy of the signed deed of agricultural conservation easement.

(ii) A copy of the production report with respect to the farmland tract, if the report is required under § 138e.61(e) (relating to application).

(iii) A statement describing the nature and scope of compliance with the conservation plan for the farmland tract.

(iv) The date of approval of the conservation plan.

(e) An easement purchased using solely county funds shall be considered an expenditure of county matching funds unless the State Board notifies the county board in writing within 60 days of receipt of the documentation required by subsection (d)(2) that the purchase will not be considered an expenditure of county matching funds and the reasons for the determination.

(f) If the State Board notifies the county board that the purchase will not be considered an expenditure of county matching funds, the county board shall have 60 days to resubmit documentation. Upon resubmittal of documentation, the State Board shall determine whether the purchase meets the requirements of subsection (d). The county board shall be notified of the State Board's determination within 60 days of the resubmittal.

**§ 138e.104. Installment sales.**

(a) *Options.* Payment for an agricultural conservation easement may be made in a lump sum, in installments or in another lawful manner of payment.

(b) *Installment sales with a payment period of 5 years or less.* Installment sales in which the final payment for the easement purchase is to be made no longer than 5 years from the date the contract of sale is fully executed are subject to the following requirements:

(1) Purchases may be made in the name of the Commonwealth, an eligible county or jointly by the Commonwealth and an eligible county.

(2) The Department will provide the agreement of sale for purchases made in the name of the Commonwealth solely or jointly by the Commonwealth and an eligible county.

(3) The installment payment terms, including the dates of payments, payment amounts and interest rate on the outstanding balance shall be negotiated between the landowner and the county board.

(4) The interest rate to be paid on the outstanding balance shall be established by the county board and shall be stated in the agreement of sale.

(c) *Installment sales with a payment period of more than 5 years.* Installment sales in which the final payment for the easement purchase is to be made more than



5 years from the date the contract of sale is fully executed are subject to the following provisions:

(1) Purchases may be made in the name of the Commonwealth, an eligible county or jointly by the Commonwealth and an eligible county.

(2) Notwithstanding the requirement of § 138e.66(d) (relating to offer of purchase by county board), the county board may, subject to approval by the Department, provide the agreement of sale for purchases made under this subsection.

(3) The agreement of sale and the deed of easement shall meet the same requirements and be subject to the same conditions as set forth in § 138e.66(c) and § 138e.67 (relating to requirements of the agricultural conservation easement deed).

(4) The installment payment terms, including the dates of payments, payment amounts and interest rate on the outstanding balance shall be negotiated between the landowner and the county board.

(5) The interest rate paid on the outstanding balance will be established by the county board and shall be stated in the agreement of sale.

(6) The State's share of the easement purchase price, exclusive of interest, shall be transferred to the county board for deposit into an irrevocable escrow account or deposit in another manner provided by law.

(7) Transfer of the Commonwealth's share of the easement purchase price, exclusive of interest, according to the terms of this paragraph shall relieve the Commonwealth of any obligation to pay or assure the payment of the easement purchase price and interest.

**PROCEDURES FOR MONITORING, INSPECTING AND ENFORCING AN EASEMENT**

**§ 138e.201. Responsibility.**

(a) The county board shall have the primary responsibility for inspecting restricted land and enforcing an easement.

(b) The State Board or its designee will have the right to inspect restricted land and enforce an easement on its own behalf or in conjunction with the county board.

**§ 138e.202. Inspections.**

(a) The county board shall inspect all restricted land within the county at least annually to determine compliance with the applicable deed of easement. The first inspection shall be completed within 1 year of the date of easement sale.

(b) Written notice of an inspection to be conducted under subsection (a) shall be mailed by certified mail to the owner at least 10 days prior to the inspection.

(c) An inspection conducted under subsection (a) shall be performed between the hours of 8 a.m. and 5 p.m. on a weekday that is not a legal holiday recognized by the Commonwealth, or a date and time agreeable to the county and the landowner.

(d) Within 10 days of conducting an inspection under subsection (a), the county board shall prepare a written inspection report setting forth the following information:

(1) The identification of the land inspected.

(2) The name of the owner of the farmland at the time the easement was originally acquired and the name of the current owner of the land inspected.

(3) A description of modifications in the number, type, location or use of any structures on the land since the date of the filing of the deed of easement.

(4) A description of deviations from the conservation plan observed on the restricted land.

(5) A statement of whether the provisions of the deed of easement are being observed.

(e) A copy of the inspection report shall be mailed by certified mail to the owner.

(f) The county board and the State Board may inspect the restricted land, jointly or severally, without prior notice if it has reasonable cause to believe that any provision of the easement has been or is being violated.

**§ 138e.203. Annual report.**

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

**§ 138e.204. Enforcement.**

(a) The county board shall enforce the terms of each easement purchased within the county under the act, whether it be a county, State or joint purchase.

(b) The State Board may enforce the terms of State or jointly purchased easements.

(c) The right of the State Board to enforce the terms of an easement may be exercised either jointly with the county board or by the State Board acting on its own behalf.

**§ 138e.205. Notification to owner.**

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

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

(1) A copy of the inspection report.

(2) A copy of the deed of easement.

(3) A description of the action or condition which constitutes the alleged violation.

(4) A statement of the measures necessary to correct the alleged violation.

**§ 138e.206. Enforcement actions.**

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

(1) Determines with the State Board that the violation has been corrected.

(2) Completes the following requirements:

(i) Determines that the owner of the restricted land has commenced the necessary corrective measures, or

determines that the necessary corrective measures cannot reasonably be completed within the 60-day period described in this subsection.

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

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

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

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

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

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

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

**§ 138e.207. County board's duties with respect to change of ownership.**

(a) 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 prior to execution of the deed. The county board shall provide the State Board with a copy of a deed conveying an ownership interest in restricted land no later than 20 days of learning of the change in ownership.

(b) As part of its enforcement responsibility, the county board shall ensure that a deed conveying an interest in the restricted land sets forth the language of the easement restrictions verbatim.

**RESPONSIBILITY OF OWNER**

**§ 138e.221. Permitted acts.**

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

**§ 138e.222. Conservation plan.**

(a) To preserve the agricultural viability of the restricted land, the county board shall require, and the owner of the restricted land shall implement, a conservation plan approved by the county conservation district or the county board.

(b) In addition to the requirements established by the county conservation district or the county board, the conservation plan shall meet the definitional requirement of a conservation plan in § 138e.3 (relating to definitions) and also require that:

(1) The use of the land for agricultural production, such as growing sod, nursery stock, ornamental trees and shrubs does not remove excessive soil from the restricted land.

(2) The excavation of soil, sand, gravel, stone or other materials for use in agricultural production on the restricted land is conducted in a location and manner that preserves the economic viability of the restricted land for agricultural production.

(3) The mining of minerals is conducted only through the use of methods authorized in the act.

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

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

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

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

(3) The construction or use of a building or other structure for agricultural production is permitted. The county program may restrict the maximum building coverage.

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

(b) *Existing buildings or structures.*

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

(2) A renovation or modification of an existing agricultural building or structure, or an addition to an existing agricultural building or structure, is permitted. The county program may restrict the maximum building coverage.

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

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

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

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

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

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

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

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

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

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

**§ 138e.225. Subdivision of restricted land.**

(a) *Authority to prohibit subdivision.* A county program may prohibit the subdivision of restricted land if the landowner can accomplish the construction and use of a principal residence or housing for seasonal or full-time farm employes in accordance with section 14.1(c)(6)(iv) of the act (3 P. S. § 914.1(c)(6)(iv)), under the applicable subdivision and land development ordinance, by a land development other than subdivision.

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

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

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

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

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

(2) Recite the prohibitions or restrictions with respect to subdivision verbatim in the deed of agricultural conservation easement.

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

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

(1) The landowner shall submit an application to the county board, in a form and manner prescribed by the county board, requesting review and approval of the subdivision of a tract of restricted land.

(2) The county board shall note the date upon which the application is received.

(3) Upon receipt of the application, the county board shall forward written notice of the application to the county zoning office (if such an office exists), county planning office and county farmland preservation office. For purposes of this subsection, the offices listed in this paragraph shall be referred to as the "reviewing agencies."

(4) The county board shall note the date upon which each reviewing agency receives the written notice described in paragraph (3).

(5) Each reviewing agency shall have 60 days from receipt of the written notice described in paragraph (3) within which to review, comment and make recommendations on the proposed application to the county board. The county board may not consider comments and recommendations received beyond this deadline unless the landowner agrees in writing.

(6) The county board shall have 120 days from receipt of the application for approval to subdivide within which to review the application, review comments and recommendations submitted by the reviewing agencies and approve or reject the application. This 120-day deadline may be extended by the mutual agreement of the landowner and the reviewing agencies. If the county board fails to approve or reject an application within the 120-day deadline or an extension thereof, the application shall be deemed approved.

(7) If the application is rejected by the county board, the county board shall return the application and a written statement of the reasons for the rejection to the landowner. Within 30 days after receipt of the statement of rejection, the landowner may appeal the rejection in accordance with 2 Pa.C.S. Chapter 5, Subchapter B and Chapter 7, Subchapter B (relating to local agency law) action).

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

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

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

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

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

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

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

**DEED OF AGRICULTURAL CONSERVATION  
EASEMENT**

**§ 138e.241. Deed clauses.**

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

(1) A granting clause stating:

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

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

*Permitted Acts*—During the term of the agricultural conservation easement conveyed herein, the subject land shall be used solely for the production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of such crops, livestock or livestock products if more than 50 percent of such processed or merchandised products are produced by the farm operator (hereinafter “agricultural production”). For purposes of this Deed, “crops, livestock and livestock products” include, but are not limited to:

(i) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans;

(ii) Fruits, including apples, peaches, grapes, cherries and berries;

(iii) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms;

(iv) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers;

(v) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs;

(vi) Timber, wood and other wood products derived from trees; and

(vii) Aquatic plants and animals and their byproducts.

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

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

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

(ii) The construction of one additional residential structure is permitted if:

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

(B) No other residential structure has been constructed on the restricted land at any time since the granting of the easement;

(C) The residential structure and its curtilage occupy no more than 2 acres of the subject land, and;

(D) The location of the residential structure and its driveway will not harm the economic viability of the subject land for agricultural production.

(iii) The construction or use of any building or other structure for agriculture production, or the renovation or modification of an existing agricultural structure, is permitted, but the maximum building coverage may be restricted if the County Agricultural Conservation Easement Purchase Program approved by the State Board (hereinafter “county program”) imposes such a restriction.

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

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

*Subdivision*—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 landowner 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 deeds to all other parcels shall recite that no additional residential structure is permitted.

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

*Mining*—The granting of leases, assignments or other conveyances or the issuing of permits, licenses or other authorization for the exploration, development, storage or removal of coal by underground mining methods, oil and gas by the owner of the subject land or the owner of the underlying coal by underground mining methods, oil and gas or the

owner of the rights to develop the underlying coal by underground mining methods, oil and gas, or the development of appurtenant facilities related to the removal of coal by underground mining methods, oil or gas development or activities incident to the removal or development of such coal, oil or gas are permitted.

*Rural Enterprises*—Customary part-time or off-season minor or rural enterprises and activities which are provided for in the county program are permitted.

*Soil and Water Conservation*—All agricultural production on the subject land shall be conducted in accordance with a conservation plan approved by the County Conservation District or the county board. Such plan shall be updated every 10 years and upon any change in the basic type of agricultural production being conducted on the subject land. In addition to the requirements established by the County Conservation District or the county board the conservation plan shall include an installation schedule and maintenance program and a nutrient management component which, when completely implemented, will improve and maintain the soil, water and related plant and animal resources of the land and require that:

(i) The use of the land for growing sod, nursery stock, ornamental trees, and shrubs does not remove excessive soil from the subject land; and

(ii) The excavation of soil, sand, gravel, stone or other materials for use in agricultural production on the land is conducted in a location and manner that does not harm the economic viability of the land for agricultural production.

(3) An enforcement clause stating that:

At intervals of no greater than 1 year the Grantee(s), its/their successor(s), assign(s) or designee(s) shall have the right to enter the subject land for the purpose of inspecting to determine whether the provisions of this Deed are being observed. Written notice of an inspection shall be mailed, by certified mail, to the Grantor, his heirs, executors, administrators, successors or assigns at least 10 days prior to the inspection. An inspection shall be conducted between the hours of 8 a.m. and 5 p.m. on a weekday that is not a legal holiday recognized by the Commonwealth of Pennsylvania or at a date and time agreeable to the county and the landowner.

Grantee(s), its/their successor(s), assign(s) or designee(s) shall also have the right to inspect the subject land at any time, without prior notice, if it/they

has/have reasonable cause to believe the provisions of this Deed have been or are being violated.

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

(4) A clause stating that: The easement is granted in perpetuity as the equivalent of a covenant running with the land.

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

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

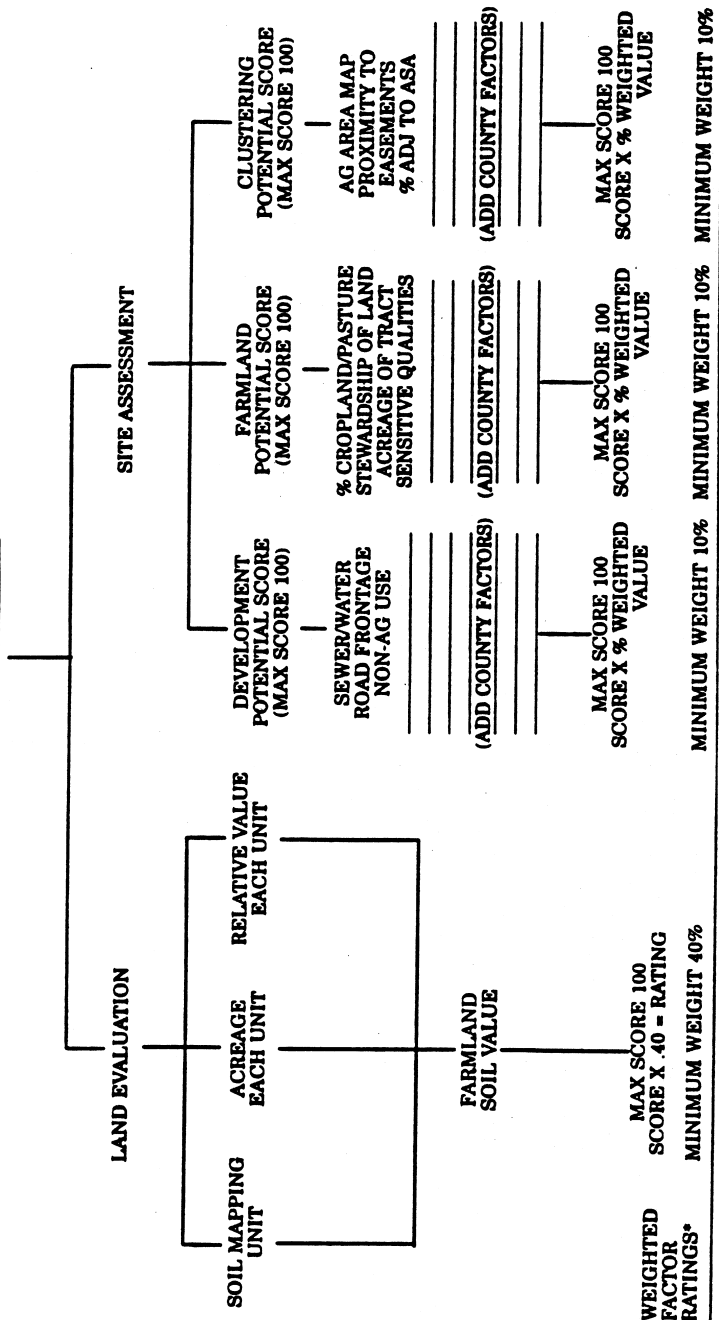
*Conveyance Or Transfer of the Subject Land*—Grantor, his heirs, executors, administrators, successors or assigns, and any person, partnership, corporation, or other entity claiming title under or through Grantor, shall, within thirty days of a change in ownership or within any lesser period prescribed in the county program, notify the county agricultural land preservation board and the Pennsylvania Department of Agriculture in writing of any conveyance of transfer of ownership of the subject land. Such notification shall set forth the name, address and telephone number of the Grantor and the party or parties to whom ownership of the subject land has been conveyed or transferred, and the price per acre or any portion thereof.

This obligation shall apply to any change in ownership of the subject land. Whenever interest in the subject land is conveyed or transferred to another person, the deed conveying or transferring such land shall recite in verbatim the language of the easement as set forth in this deed.

(7) A clause stating that: Terms and provisions of this deed shall be interpreted in accordance with the provisions of the Agricultural Area Security Law, the regulations at 7 Pennsylvania Code Chapter 138e and the county program.

(8) A habendum clause.

APPENDIX A  
FARMLAND RANKING SYSTEM  
LESA RANKING SYSTEM



FARM	SOIL NO.	DEVELOPMENT NO.	LAND NO.	CLUSTERING NO.	TOTAL**	PRIORITY RANKING
1						
2						
3						

\*COUNTIES MAY DISTRIBUTE AN ADDITIONAL 30% WEIGHT AMONG THE FOUR CATEGORIES.  
\*\* MAX RATING SCORE 100

**Appendix B  
FORM C  
SOILS REPORT**

Name: \_\_\_\_\_ Township: \_\_\_\_\_

Total Acres: \_\_\_\_\_ Acres Offered: \_\_\_\_\_

**CAPABILITY CLASSES I-IV**

Capability Class	Cropland Acres	Pasture Acres	Other	Total
I				
II				
III				
IV				
Sub Total I-IV				

**CAPABILITY CLASSES V-VIII**

Capability Class	Cropland Acres	Pasture Acres	Other	Total
V				
VI				
VII				
VIII				
Sub Total V-VIII				

**TOTALS**

Capability Class	Cropland Acres	Pasture Acres	Other	Total
I-IV				
V-VIII				
TOTAL				

**PERCENT OF TOTAL ACRES IN LAND CAPABILITY CLASSES I-IV**

Step 1.

Total Acres Cropland and Pasture in  
Soil Capacity Classes I-IV

\_\_\_\_\_ x 100 = \_\_\_\_\_ %

\_\_\_\_\_ Total Easement Acres

Step 2.

Is percentage in Step 1. 50%, or greater? (yes/no) \_\_\_\_\_

Step 3.

If no, document whether 50%, or more, of the total easement acreage is both available for and of soil capability classes I-IV.

**PERCENTAGE OF TOTAL ACRES IN AGRICULTURAL USE**

Total Acres Cropland + Total Acres Pasture

\_\_\_\_\_ x 100 = \_\_\_\_\_ %

\_\_\_\_\_ Total Easement Acres

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