

DEPARTMENT OF AGRICULTURE
DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION
Statutory Authority: 3 Delaware Code, Sections 904(b) (3 **Del.C.** §904(b))
3 **DE Admin. Code** 702

FINAL

ORDER

702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 3 of the Delaware Code, Chapter 9, Section 904(b)(20) and (21), the Agricultural Lands Preservation Foundation (the "Foundation") seeks to amend the regulations governing the Delaware Agricultural Forestlands Preservation Program. These regulations are being amended to create a more efficient and flexible application and appraisal process by eliminating the references to unnecessary form information and review procedures. The amendment also eliminates the bonus for properties located in a State Resource Area (SRA) and replaces it with a bonus for properties located in a Forest Legacy Area (FLA). Other changes are typographical or were made to bring the regulation into compliance with the Delaware Administrative Code Drafting and Style Manual.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on November 1, 2020, in the form hereto attached as *Exhibit "A"*. The proposed regulation was presented at a virtual public hearing on November 24, 2020. No formal comments were received from members of the public at that time. Pursuant to Delaware law, the record remained open for fifteen (15) days subsequent to the date of the public hearing for the purpose of allowing additional public comment to be received regarding this matter. The hearing record closed for comment on December 9, 2020, with no public comment having been received during any phase of this matter.

II. FINDINGS OF FACT

The Foundation finds that the elimination of the references to unnecessary form information and review procedures will create a more efficient and flexible application and appraisal process for landowners seeking to submit their property for consideration under the Delaware Agricultural Forestlands Preservation Program. In addition, the Foundation finds that the proposed amendments correcting typographical errors and stylistic changes to conform to the drafting guidelines are appropriate. Accordingly, the Foundation finds that it is appropriate to amend 3 **DE Admin. Code** 702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Foundation concludes that it is appropriate to amend 3 **DE Admin. Code** 702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program. Therefore, pursuant to 3 **Del. C.** §§904(b)(20) and (21), and 29 **Del. C.** §§10113(b)(2) and (b)(4), 3 **DE Admin. Code** 702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program attached hereto as *Exhibit "A"* is hereby amended.

IV. TEXT AND CITATION

The text of 3 **DE Admin. Code** 702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 3 **DE Admin. Code** 702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program in the *Administrative Code of Regulations* for the Department of Agriculture.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Foundation pursuant to 3 **Del. C.** §§904(b)(20) and (21) on December 16, 2020. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 16th day of December, 2020.

Delaware Agricultural Lands Preservation Foundation Advisory Board

Mark Collins, Chairman

702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program

The Foundation is granted authority to establish criteria for Forestland Preservation Areas (hereinafter referred to as "Forestland Preservation Area") and the purchase of forestland preservation easements. [3 ~~Del.C.~~, Del.C. §933]

1.0 Criteria for Forestland Preservation Area Eligibility

- 1.1 In order to qualify for the Agricultural Forestland Preservation Program, the lands proposed as a Forestland Preservation Area in the application must meet the following criteria:
 - 1.1.1 ~~the owner(s)~~ The owner or owners shall hold fee simple title to all land to be placed in the Forestland Preservation Area;
 - 1.1.2 ~~the~~ The land must constitute a contiguous area of trees or forest and cover at least 10 acres in size and be capable of being timbered and reforested, as determined by the State Forester;
 - 1.1.3 ~~the~~ The land shall be zoned to allow for agricultural or open space uses and shall not be subject to any major subdivision plan;
 - 1.1.4 ~~the applicant(s)~~ The applicant or applicants, including all fee simple title holders, must sign a written agreement committing to the Forestland Preservation Area restrictions set forth in this Section and 3 ~~Del.C.~~, Del.C. §934 and other adopted requirements;
 - 1.1.5 ~~the~~ The land must be viable and potentially productive forestlands;
 - 1.1.6 ~~the~~ The land must be located outside a designated Growth Zone, as that term is defined in ~~§ 3 Del.C.~~ §902(9) §902(11);
 - 1.1.7 ~~the~~ The land must not be subject to an existing conservation or preservation easement or other restriction which prohibits development;
 - 1.1.8 ~~the~~ The land proposed for inclusion shall include all of the eligible forestlands located in the tax parcels subject to the application, and no eligible real property shall be carved out or otherwise excluded. One (1) location containing no more than one (1) acre of land may be designated for seasonal recreational dwelling usage provided that the property proposed for inclusion contains at least 30 acres and the use of the designated area does not adversely affect the forestlands of the property. The owner may designate up to three residential locations as permitted under ~~§ 3 Del.C.~~ §933(8)(b), provided that any seasonal recreational dwelling shall be counted against the total allowable dwelling units;
 - 1.1.9 ~~no~~ No more than one (1) acre of land for each 20 acres of usable forestlands, up to a maximum of 10 acres, can be used for permanent dwelling housing;
 - 1.1.10 ~~the~~ The land shall have a forest management plan prepared by a professional forester that addresses the landowner's forest management goals for the land. The plan shall contain, at a minimum, aerial and soil maps of the land, a description and analysis of the forest by management unit, silvicultural prescriptions for each management unit, shall be revised and updated at least once every five years, and shall be available for inspection by the State Forester's office.
- 1.2 For the purposes stated in this chapter, the phrase "viable and potentially productive forestlands" is defined as land that is capable of being timbered and reforested as determined by the State Forester.

2.0 Application Procedures

- 2.1 The Foundation will provide application forms (~~Appendix A~~) on which applicants who volunteer to place their lands into a Forestland Preservation Area ~~will (shall) agree to provide the following information: requested information.~~
 - 2.1.1 ~~name of petitioner(s)~~
 - 2.1.2 ~~mailing address(es)~~
 - 2.1.3 ~~telephone number(s)~~
 - 2.1.4 ~~property location~~
 - 2.1.4.1 ~~county~~
 - 2.1.4.2 ~~community name~~
 - 2.1.4.3 ~~tax parcel number for each parcel~~
 - 2.1.5 ~~deed or property description~~

- 2.1.6 ~~area—total acreage of:~~
 - 2.1.6.1 ~~open space~~
 - 2.1.6.2 ~~forestlands~~
 - 2.1.6.3 ~~pasture~~
 - 2.1.6.4 ~~tidal wetlands~~
 - 2.1.6.5 ~~farm or commercial structures~~
 - 2.1.6.6 ~~residence/buildings~~
 - 2.1.6.7 ~~other~~
- 2.1.7 ~~land use/zoning designation or designations~~
- 2.1.8 ~~easements/rights of way (identify, if any)~~
- 2.1.9 ~~mortgages/liens (identify, if any):~~
 - 2.1.9.1 ~~mortgagee or lien holder's name or names~~
 - 2.1.9.2 ~~date of mortgages or liens~~
- 2.1.10 ~~number of dwelling units and any residential acreage designated by the owner pursuant to 9 Del.C. §933(8).~~
- 2.1.11 ~~forest management plan (if any)~~
- 2.1.12 ~~information regarding the occupancy of dwelling units on the property~~
- 2.1.13 ~~the approximate location of the acreage, if any, the applicant intends to designate for seasonal recreational dwelling usage pursuant to 3 Del.C., §933(7).~~
- 2.2 The Foundation shall provide assistance to potential applicants in completing application forms when requested.
- 2.3 Foundation staff may conduct on-site inspections ~~and/or~~ and phone interviews with the applicants to acquire data necessary to review the application and write a staff report.
- 2.4 ~~In conjunction with the application, all fee simple owners shall sign a Forestland Preservation Area Agreement (Appendix B) which serves as a declaration in recordable form and acknowledgment of the policies and restrictions that must be followed, and all benefits realized in a Forestland Preservation Area.~~

3.0 Application Review Procedures

- 3.1 The Foundation, subject to the review and approval of the State Forester, has the authority to approve applications establishing Forestland Preservation Areas and to purchase forestland preservation easements. [~~3 Del.C.,~~ Del.C. §931]
- 3.2 The Foundation staff and the State Forester will review applications and determine whether or not the minimum eligibility requirements under Section subsection 1.1 have been met.
- 3.3 If the minimum eligibility requirements have not been met, the applicant will be notified by letter from the Foundation indicating that the application does not qualify for further review, and the reasons for ineligibility.
- 3.4 If an applicant excludes a portion of property otherwise includable in a proposed Forestland Preservation Area, the Foundation shall deny the application; provided however that the applicant shall have the right to designate a location for seasonal recreation dwelling usage and residential usage, as allowed by law.
- 3.5 Subject to Section subsection 3.3 ~~above of this regulation~~, if the lands proposed as a Forestland Preservation Area in the application meet minimum eligibility criteria, then the Foundation staff will submit to the Foundation and the State Forester applications and criteria checklists describing and summarizing the criteria as established in this chapter.
- 3.6 If the applicant disagrees with the staff evaluation of the proposed Forestland Preservation Area, then the applicant may contact the Foundation staff to discuss the application review. The Foundation staff will meet with the landowner to discuss the review within thirty (30) days from receiving such telephone call or letter.
- 3.7 If the issue is not resolved to the applicant's satisfaction, the applicant may request an administrative review with the Foundation by submitting a letter to the Foundation within fourteen days (14) of the applicant's last meeting with Foundation staff. This letter must include reasons and documentation to justify the applicant's ~~claim(s)~~ claim or claims.
- 3.8 Within seven (7) working days from the receipt of the landowner's letter, the Foundation will schedule a meeting and notify the applicant by certified letter of the date, time, and place of the meeting, at least seven (7) days in advance.
- 3.9 At the administrative review meeting, the ~~applicant(s)~~ applicant or applicants shall present information or documentation as to how the proposed Forestland Preservation Area satisfies the eligibility criteria.

- 3.10 The Foundation will render a decision within thirty (30) days from the administrative review meeting and notify the applicant in writing of its decision.

4.0 Creation of a Forestland Preservation Area

- 4.1 To establish a Forestland Preservation Area, the application must be approved by the Foundation and the State Forester. [3 ~~Del.C.~~, Del.C. §932 (a)]
- 4.2 After review by the Foundation and State Forester, the application is subject to a review period of thirty (30) days in which the Secretary of Agriculture may approve or reject the application. The application shall be deemed officially approved at the end of the review period if it is not approved or rejected by the Secretary of Agriculture. [3 ~~Del.C.~~, Del.C. §919 and 938]
- 4.3 The property legally becomes a Forestland Preservation Area when the applicant and Foundation Chairperson (or designee) have signed the Forestland Preservation Area Agreement and no rejection has been exercised by the Secretary of Agriculture, or the Secretary of Agriculture has specifically approved the application.
- 4.4 Copies of the Forestland Preservation Area Agreement shall be filed with the County Planning and Zoning and Tax Assessor's Offices and recorded in the Office of the Recorder of Deeds. The Foundation shall require from these Offices proof of ~~recording and/or~~ recording, receipt of the Forestland Preservation Area Agreement, or both.
- 4.5 The Foundation shall endeavor to provide written notification of the date of establishment of the Forestland Preservation Area and provide a copy of the Forestland Preservation Area Agreement to the applicant, however, the failure of the Foundation to satisfy any formality following execution of a Forestland Preservation Area Agreement shall not affect the validity of the Forestland Preservation Area Agreement.

5.0 Forestland Preservation Area Restrictions

- 5.1 Any rezoning or major subdivision of real property included in a Forestland Preservation Area is prohibited. [3 ~~Del.C.~~, Del.C. §934 (a)(1)]
- 5.2 The submission of applications for preliminary rezoning or approval of subdivision plans for any property within a Forestland Preservation Area to a county or municipality shall be considered evidence of the intent to rezone or subdivide and no action shall be taken by any county or municipality on any such application until the expiration of the Forestland Preservation Area Agreement.
- 5.3 During the term of the Forestland Preservation Area Agreement, activities on the property shall be limited to forestry production, forestry operations, forestry management and control, wildlife habitat management, and activities related to the foregoing. [~~9 Del.C.~~, 3 Del.C. §934(a)(2)]
- 5.4 Forestry management, control and related activities allowed on Forestland Preservation Areas are as follows:
- 5.4.1 Hunting, trapping and fishing, provided such activities are limited to private non-commercial activities that do not adversely affect the forestland use of the property, and provided further that leasing of the property for such non-commercial activities shall be allowed.
- 5.4.2 Easements, licenses and other property interests for utility, telecommunications, and access uses are allowed subject to the requirements set forth in ~~9~~ 3 ~~Del.C.~~ §909(a)(5)(f).
- 5.4.3 The use of portable non-permanent forest planting, harvesting and processing equipment.
- 5.4.4 Conservation, educational and research activities related to forestlands.
- 5.4.5 Ditching for drainage necessary to enhance or preserve forestlands.
- 5.4.6 The grazing of livestock, excluding housing or shelters, subject to prior approval by the State Forester.
- 5.4.7 Timbering and reforestation.
- 5.4.8 Noncommercial private recreational uses such as hiking, horseback riding, and primitive camping, provided such activities do not adversely affect the forestland use of the property.
- 5.4.9 Activities involving best forestland management practices.
- 5.5 No more than 1 acre of land for each 20 acres of usable land in a Forestland Preservation Area, subject to a maximum of 10 acres, shall be allowed for permanent dwelling housing. The seasonal recreational dwelling usage designated pursuant to ~~9~~ 3 ~~Del.C.~~ §933(7) shall be counted against the total allowable permanent dwelling housing acreage. With respect to acreage allowed for dwelling housing there shall be a limit of 3 dwelling houses for residential use placed on the allowable acreage at 3 locations designated by the owner. This limit shall include any pre-existing dwelling housing ~~and/or~~ or the seasonal dwelling usage designated pursuant to ~~9~~ 3 ~~Del.C.~~ §933(7). If however there exists 3 dwelling houses on the real property at the time of approval of the new Forestland Preservation Area, the allowable total number of dwelling housing and the allowable acreage shall be allocated to the existing dwelling houses and no additional dwelling houses, including seasonal dwelling usage, shall be allowed. The aforesaid dwelling housing allowances are subject to

any applicable zoning laws and regulations, and the approval of said allowances by the Foundation shall not be considered a representation by the Foundation that said allowances comply with any applicable zoning laws and regulations.

- 5.6 Excavation or filling, borrow pits, extraction, processing and removal of sand, gravel, loam, rock or other minerals is prohibited unless such action is currently required by or ancillary to forestry management, control and related activities allowed on forestland preservation areas.
- 5.7 Activities that would be detrimental to drainage, flood control, water conservation, erosion control or soil conservation are prohibited.
- 5.8 Any other activity that might negatively affect the continued use of the land as forestlands is prohibited.
- 5.9 No conversion of forestland to cropland, pasture-land, open space or other types of land use shall be allowed.
- 5.10 No permanent commercial or industrial structures shall be located on the property.
- 5.11 No disposal, burial, storage, or stock piling of junk, vehicles, equipment, liquid or solid waste or other liquid or solid materials shall be allowed, except that wastewater spray irrigation shall be allowed utilizing best available treatment technology with storage and treatment facilities located on lands outside the Forestland Preservation Area.
- 5.12 The Forestland Preservation Area Agreement and Forestland Preservation Area requirements and benefits shall be binding on the heirs, successors and assigns of property owners within a Forestland Preservation Area. A property owner intending to transfer all or a portion of the property in a Forestland Preservation Area shall provide written notice to the Foundation at least (10) days in advance of the date of transfer of the property, and shall notify the purchaser or transferee that the property is subject to Forestland Preservation Area restrictions. Any transfer of real property in a Forestland Preservation Area shall be preceded by the execution by the transferor and the transferee of an Acknowledgment in the form ~~on Appendix C~~ designated by the Foundation and in recordable form acknowledging the restrictions applicable to the property and the agreement by the transferee to be bound by said restrictions.
- 5.13 Pursuant to 3 ~~Del.C., Del.C.~~ §934 (d), all restrictions shall be covenants which run with and bind the lands in the Forestland Preservation Area for a minimum of ten (10) years, beginning when the Forestland Preservation Area Agreement takes effect as specified in the Forestland Preservation Area Agreement.

6.0 Continuation of a Forestland Preservation Area

- 6.1 All properties are to remain in a Forestland Preservation Area for at least ten (10) years.
- 6.2 If a landowner wishes to withdraw from, or terminate a Forestland Preservation Area, then the Foundation must receive a written notice of intent to withdraw no less than six (6) months prior to the ten (10) year anniversary date of initial establishment of the Forestland Preservation Area. [3 ~~Del.C., Del.C.~~ §934 (d)]
- 6.3 If the Foundation does not receive a written notification of the landowner's intent to withdraw from the Forestland Preservation Area at least six (6) months prior to the ten (10) year anniversary date of that Forestland Preservation Area, then the land shall remain in the Forestland Preservation Area for an additional five-year period unless and until written notice of intent to withdraw shall be given at least six months prior to the end of each additional five-year period.

7.0 Inspection of Forestland Preservation Area

- 7.1 The Foundation and State Forester shall have the authority to enter upon lands located within a Forestland Preservation Area as may be necessary to perform surveys, appraisals, and investigations to accomplish its mission; consistent with applicable statutes and these regulations. [3 ~~Del.C., Del.C.~~ §939]
- 7.2 The Foundation or its designee, including the State Forester, reserves the right to inspect restricted land and enforce agreements.
- 7.3 If any violations of the terms and the conditions of the Forestland Preservation Area Agreement occur, the Foundation may institute proceedings in the appropriate court to enforce the terms and seek appropriate relief. [3 ~~Del.C., Del.C.~~ §939]

8.0 Purchase of Forestlands Preservation Easements [3 ~~Del.C., Del.C.~~ §936]

- 8.1 The intent of this section is to provide a framework for the acquisition of Forestland Preservation Easements (hereinafter referred to as "Forestland Preservation Easements") to protect in perpetuity those lands of the state most suitable for long-term utilization of forestland resources while preserving invaluable wildlife and habitat protections and open space benefits to the citizens of the State of Delaware.
- 8.2 The Foundation will give priority to on acquiring Forestland Preservation Easements in areas where significant forestlands can be maintained for long-term forestry production.

- 8.3 Based on the long-range goal set forth in Section 8.2, the Foundation will only consider properties outside of ~~state~~ designated growth areas in the acquisition of Forestland Preservation Easements.
- 8.4 In the criteria established for the prioritization of Forestland Preservation Easements, the Foundation will also give weight to the Forest Land Evaluation (LE) score for the subject parcel and the location of the subject parcel in relation to ~~State Resource Areas (SRAs)~~ approved Delaware Forest Legacy Areas and state-designated Natural Areas.

9.0 Schedule for Acquisition of Forestland Preservation Easements

- 9.1 Recognizing that voluntary applications by Forestland Preservation Area landowners may exceed available funds for the procurement of Forestland Preservation Easements, it is necessary to establish a procedure for pooling, reviewing, prioritizing, and funding applications for permanent Forestland Preservation Easements.
- 9.2 Application and funding cycles will take place on schedules established by the Foundation.
- 9.3 Applications for the purchase of Forestland Preservation Easements in Rounds of Purchases shall be subject to deadlines established by the Foundation.
- 9.4 For each Round of Forestland Preservation Easement Purchases the Foundation shall rank the applications in the Round in accordance with the criteria set forth herein.
- 9.5 Upon completion, the appraisals shall be provided to the landowners, and the procedures set forth herein involving offers for the sale of preservation easements shall be initiated.
- 9.6 After receipt and the completion of review of offers for the sale of preservation easements, the Foundation shall review the offers and announce the selections.
- 9.7 Following the selection of properties for acquisition of Forestland Preservation Easements, the Foundation shall arrange for surveys of the properties to be conducted, and proceed to settlement under the terms of option agreements, subject to the availability of funding and satisfaction of regulatory, financial or other restrictions or limitations.
- 9.8 The Foundation is under no obligation to purchase a Forestland Preservation Easement which is offered for sale.

10.0 Matching Contributions To The Program

The Foundation may establish a reserve of available funds for the matching of federal, county, state, local, or private funds for the preservation of forestlands.

11.0 Eligibility Criteria For Forestland Preservation Easements

The criteria for eligibility of acquisition of a Forestland Preservation Easement shall be the same as the criteria for Forestland Preservation Area eligibility. In addition, offered preservation easement lands shall be in an established Forestland Preservation Area and in compliance with Forestland Preservation Area requirements to be eligible; provided however that the Foundation shall have the authority to acquire Forestland Preservation Easements located within an existing Agricultural Preservation District heretofore approved by the Foundation. The Foundation shall have the right, in its sole discretion, to acquire a Forestland Preservation Easement on only a part of the property included within the Forestland Preservation Area Agreement or Agricultural Preservation District, as the case may be.

12.0 Application Procedures

- 12.1 A separate application shall be required for each forestland tract offered for Forestland Preservation Easement purchase. The Foundation shall not be obligated to process any incomplete application.
- 12.2 The Foundation shall ~~develop~~, develop and make the application form available to landowners or other interested parties, ~~an application form which requires the following information:~~ parties.
- 12.2.1 ~~Name, address, telephone number and signature of the owner of the forestlands.~~
- 12.2.2 ~~County, municipality or hundred, and Forestland Preservation Area in which the forestlands are located.~~
- 12.2.3 ~~Total acreage of the forestlands and the number of acres of that tract proposed for Forestland Preservation Easement purchase.~~
- 12.2.4 ~~Street/Road location of the forestlands, and directions from the nearest State route.~~
- 12.2.5 ~~Deed reference – book, volume and page.~~
- 12.2.6 ~~County tax map records, including tax parcel number, or account number of each parcel.~~
- 12.2.7 ~~A copy of the forest management plan prepared by a professional forester shall be submitted with the application.~~

- ~~12.2.8 Name, address and telephone number of the person to be contacted to view the forestlands tract.~~
~~12.2.9 The approximate location of the acreage, if any, the applicant intends to designate for seasonal dwelling or residential use pursuant to 3 Del.C., §933(8)(b).~~
12.3 A form of Application is attached hereto as Appendix D.

13.0 Review and Evaluation of Forestlands Preservation Easement Application

- 13.1 The Foundation shall review the application to determine if it is complete and meets the minimum criteria set forth herein.
- 13.2 If the application is complete and the minimum criteria are met, a representative of the Foundation shall view the forestlands.
- 13.3 The Foundation shall for each Round of Preservation Easement Purchases evaluate applications which meet the minimum criteria and rank the applications in accordance with the criteria of Section 14 14.0. Notwithstanding the ranking procedure set forth in Section 14 14.0, the Foundation shall be entitled to have all eligible properties appraised and considered for purchase of Forestland Preservation Easements.

14.0 Ranking Criteria for Forestland Preservation Easement Applications

- 14.1 A system for ranking Preservation Easement applications is established to assist the Foundation in reaching a final decision.
- 14.2 Four categories will be utilized to rank the Preservation Easement applications during the Foundation's review period with a maximum score of 220 points. The four categories, each of which is discussed below, are forest productivity, size of discount, proximity to ~~State Resource~~ an approved Delaware Forest Legacy Area, and proximity to a state designated Natural Areas. In the event of a tie score, the property with the higher Forest Land Evaluation (LE) will receive the higher ranking. If the tie score is not resolved by the Forest LE scores, then the parcel with the greater acreage will receive the higher ranking.
- 14.3 Forest Productivity - Forest Land Evaluation Score - 100 Points.
- 14.3.1 In order to follow a rational, statewide plan for the acquisition of development rights on forestlands, the Foundation will give weight to applications for sale of Preservation Easements based on the land's capacity to produce timber. A property's Forest LE score will be used to reflect this capacity. Forest LE scores range from 0 to 100 with 100 reflecting the best soils for timber production.
- 14.3.2 Land with multiple soil types with differing LE scores will be categorized based on a weighted area average of the various LE scores.
- 14.4 Forestland Preservation Easement Discount - 100 Points.
- 14.4.1 The Foundation will also consider applications for sale of Forest Preservation Easements based on the ability to purchase easements at a discounted cost or donation.
- 14.4.2 Weight will be given to the owner's willingness to receive a discounted payment from the appraised value of the Forestland Preservation Easement. One point will be awarded for each percentage of discount provided by the owner from the appraised value of the Forestland Preservation Easement.
- 14.5 Other factors - 20 Points.
- 14.5.1 Other criteria the Foundation will consider in the ranking of applications for sale of Forest Preservation easements will include the property's natural resource values, in addition to timber, and its location relative to lands designated as high priority for protection by the State.
- 14.5.2 Ten (10) points will be awarded if the property is located within a ~~State Resource Area (SRA) as defined in 7 Del.C. §7507~~ an approved Delaware Forest Legacy Area (FLA). A property shall be considered within a ~~SRA FLA~~ if at least half of the property's area is located within the ~~SRA FLA~~.
- 14.5.3 Ten (10) points will be awarded if the property is located within a state-designated Natural Area as defined in 7 Del.C. Ch. 73. A property shall be considered within a Natural Area if at least half of the property's area is located within the Natural Area.

15.0 Appraisals [3 Del.C., Del.C. §916]

- 15.1 An offer to purchase a Forestland Preservation Easement shall be based upon one or more appraisal reports which estimate the full market value of the forestlands under its agricultural zoning designation and the forest-only value of the forestlands tract. Any appraisal obtained by the Foundation shall remain the property of the Foundation and may not be used by the property owner for tax purposes.
- 15.2 Subject to ~~Section subsection~~ 15.7 hereof of this regulation, an appraisal to the extent possible shall be based primarily on an analysis of comparable sales.

- 15.3 The value of buildings or other improvements on the forestlands shall be excluded in determining the Forestland Preservation Easement value. ~~The value of the buildings or other improvements shall appear separately in the appraisal.~~ Excluded from the value of the Forestland Preservation Easement shall be the acreage designated for residential use or seasonable dwelling use.
- 15.4 The appraiser shall be:
- 15.4.1 An independent, licensed real estate appraiser who is qualified to appraise a property for easement purchase. An appraiser shall be selected on the basis of experience, expertise and professional designation, and
- 15.4.2 A member of an organization which subscribes to the "Uniform Standards of Professional Appraisal Practice" published by the Appraisal Standards Board of the Appraisal Foundation, and shall follow their ethical and professional standards.
- 15.5 The appraiser shall supply a narrative report which contains ~~the following information and (must be) is in the following format:~~ information specified by the Foundation.
- 15.5.1 Introduction
- 15.5.1.1 ~~Professional qualifications of the appraiser~~
- 15.5.1.2 ~~Letter of transmittal or appraiser certificate~~
- 15.5.1.3 ~~Table of contents~~
- 15.5.1.4 ~~Summary of salient facts and conclusions~~
- 15.5.1.5 ~~Purpose of the appraisal~~
- 15.5.1.6 ~~Easement value definition as provided in 3 Del.C. §916(a)~~
- 15.5.2 Description of property
- 15.5.2.1 ~~Area or neighborhood description~~
- 15.5.2.2 Description of appraised property
- 15.5.2.2.1 ~~Legal description~~
- 15.5.2.2.2 ~~Property data and zoning~~
- 15.5.2.2.3 ~~Description of improvements~~
- 15.5.2.2.4 ~~Photos and sketches (if available) of subject property~~
- 15.5.2.2.5 ~~Tax map of subject property. In instances where the county does not have tax maps available, the sketch map required below shall include the boundary lines and acreage of properties adjoining the subject property and the names of all adjoining property owners~~
- 15.5.2.2.6 ~~Location map~~
- 15.5.2.2.7 ~~Development constraints. The appraiser shall report whether the farmland tract has public or private land use restrictions, is within a flood plain, or has other physical attributes which limit its developmental capability~~
- 15.5.3 Analyses and conclusions
- 15.5.3.1 ~~Analysis of highest and best development use~~
- 15.5.3.2 Full market valuation
- 15.5.3.2.1 ~~Comparable sales data~~
- 15.5.3.2.2 ~~Adjustment grid~~
- 15.5.3.2.3 ~~Location map of comparable sales~~
- 15.5.3.2.4 ~~Market value estimate~~
- 15.6 The appraiser shall provide ~~at least one original and three copies of each report to the Foundation. The original of each report and all copies shall be bound with rigid covers~~ the Foundation with paper and electronic copies of each appraisal report as determined by the Foundation.
- 15.7 The forest-only valuation shall be based on the property's capacity to produce timber through ~~the~~ each soil type(s) type located on the property. The State Forester shall calculate annual timber production rates for each soil type and determine a five-year, rolling average of timber sale prices for the state. These values will produce an average annual income per acre for the property. This income value will then be capitalized to produce the forest-only valuation using a five-year, rolling average rate of return.
- 15.8 The Forestland Preservation Easement value is then calculated using the full market valuation appraisal and the forest-only valuation.

16.0 Comparable Sales Data

- 16.1 The appraiser shall supply information concerning comparable ~~sales as follows:~~ sales.

- 16.1.1 ~~At least four comparable sales shall be used for an appraisal. If the appraiser cannot obtain sufficient comparable sales data within the same general area as the subject farmland tract, the appraiser may use comparable sales from other areas within the county, state or outside the state, after consultation with the Foundation. The use of comparable sales which require adjustment of 50 percent or more is permitted only with the approval of the Foundation.~~
- 16.1.2 ~~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, road frontage in feet, soil series, an estimate of the range of slope and other relevant information. The appraisal shall include an analysis comparing the pertinent data for each comparable sale to the subject farmland tract.~~
- 16.1.3 ~~The location of each comparable sale used in the appraisal report shall be shown accurately on the comparable sales map and sufficiently identified and described so as to be located easily.~~

17.0 Forestland Preservation Easement Value and Purchase Price

- 17.1 The value of a Forestland Preservation Easement in perpetuity shall be the difference between the full market value and the forest-only value contained in the appraisal report.
- 17.2 The price paid by the Foundation for the purchase of a Forestland Preservation Easement may not exceed, but may be less than, the value of the Forestland Preservation Easement. [3 Del.C. §916(a)]
- 17.3 If an applicant is not satisfied with the appraisal provided by the Foundation, the applicant shall be entitled to have an independent appraisal performed at the applicant's expense by a qualified appraiser as specified in Section subsection 15.4. The alternative appraisal shall be prepared in the same format as the Foundation's appraisal and shall be submitted to the Foundation within forty-five (45) days of the applicant's date of receipt of the appraisal provided by the Foundation. The forty-five (45) day period may be extended by the Foundation, provided the time extension does not delay the time frame established by the Foundation for making selection and acquisition decisions.
- 17.4 The review of the alternative appraisals by the Foundation shall be based on written submissions under such procedures as specified by the Foundation.
- 17.5 The maximum adjusted Preservation Easement value which the Foundation may accept is the difference between the adjusted forest-only value and the adjusted full market value, determined as follows:
 - 17.5.1 The adjusted forest-only value shall equal the sum of:
 - 17.5.1.1 The forest-only value determined by the applicant's appraiser, and
 - 17.5.1.2 Up to one-half of the positive difference between the forest-only value determined by the Foundation's appraiser and ~~his/her~~ that appraiser's values which exceed those determined by the applicant's appraiser.
 - 17.5.2 The adjusted full market value shall equal the sum of:
 - 17.5.2.1 The full market value determined by the Foundation's appraiser, and
 - 17.5.2.2 Up to one-half of the positive difference between the full market value determined by the applicant's appraiser and ~~his/her~~ that appraiser's values which exceed those determined by the Foundation's appraiser.

18.0 Offer of Purchase by the Foundation

- 18.1 The priority for making purchases of Forestland Preservation Easements shall be those properties with the highest score as described in Section 44 14.0.
- 18.2 Notwithstanding the priority and non-priority requirements set forth in this Section, the Foundation ~~(4)~~ shall be entitled to ~~accept to:~~
 - 18.2.1 Accept donations of preservation easements under such terms and conditions that may be imposed in the donations, provided the preservation easements contain the restrictions imposed under 3 ~~Del.C., Del.C.~~ Ch. 9 and ~~(2) the Foundation shall be entitled to participate 9; and~~
 - 18.2.2 Participate in programs which make monies available for the purchase of preservation easements, subject to the requirements of such programs, provided the preservation easements contain the restrictions imposed under 3 ~~Del.C., Del.C.~~ Ch. 9.

19.0 The Forestlands Preservation Easement

- 19.1 The owners of the subject forestlands shall execute a document conveying the Forestland Preservation Easement which document shall be in the form of ~~Appendix E specified by the Foundation~~ or such other form which contains conditions contained in Option Agreements executed by landowners.
- 19.2 The document shall be in recordable form and contain:

- 19.2.1 A legal description setting forth the metes and bounds of the forestlands subject to the Forestland Preservation Easement and the seasonal dwelling or residential acreage, if any, designated by the owner pursuant to 9 3 Del.C. §933(8)(b).
- 19.2.2 At least one course and distance referencing a fixed marker or monument of a type commonly placed in the field by a surveyor.
- 19.2.3 The legal description shall not contain a closure error greater than one foot per 200 linear feet in the survey.
- 19.2.4 The forestlands on which a Forestland Preservation Easement is to be purchased must be surveyed and the survey shall show any residential acreage designated by the owner pursuant to 9 3 Del.C. §933(8)(b).

20.0 Title Quality

The Forestland Preservation Easement conveyed to the Foundation shall be unencumbered except for standard exceptions and be capable of being insured as such by an established and recognized title insurance company doing business in the State of Delaware. Any title defects, liens, survey discrepancies, boundary line disputes, or similar title issues shall be resolved by the property owner, at his or her sole expense. If subsequent to the purchase of a Preservation Easement it is determined that the amount of acreage is less than as reflected on the survey used by the Foundation for purposes of calculating the purchase price for the Preservation Easement, the property owner shall be required to refund to the Foundation any excess funds paid in reliance upon the inaccurate survey.

10 DE Reg. 825 (11/01/06)

24 DE Reg. 860 (03/01/21) (Final)

Appendix A

LETTERHEAD OF FOUNDATION

Return to: ~~The Delaware Agricultural Lands Preservation~~ FILE # _____
 Foundation
 2320 S. duPont Highway, Dover, DE 19901
 Phone (302) 698-4530 or Toll Free in DE Only
 (800) 282-8685

Please Type or Print:

Name of Petitioner(s) _____
 (All Fee Simple Owners of Record)

Mailing Address

Telephone: (H) _____ (W) _____ (CELL) _____

Email Address _____ **FAX NO:** _____

Forest Location (County) _____ **Total Acreage of Forest** _____

Adjoining Roads _____

County Tax Parcel Number(s) _____

Zoning Designation _____
 (Call County Planning for zoning designation)

~~Appendix A~~

Type of Land use:

Forestlands _____ Acres	Open Space _____ Acres
Cropland _____ Acres	Pasture Land _____ Acres
# Of Farm Structures _____	Tidal Wetlands _____ Acres
Residence _____ Acres	Other (specify) _____ Acres
# Of Dwelling Units: ____	# Seasonal Dwelling Units _____
	# Seasonal Dwelling Acres _____

~~Occupant's Name(s) & Relationship~~

Historic Significance of Forest (if any) _____

Easements/Rights-of-Way (if any) _____

~~Is there a forest management plan for the property prepared by a professional forester?~~
~~Yes _____ No _____~~

If yes, what is the date of the plan? _____ Name of forester _____

~~Is any portion of the property currently subject to subdivision? Yes ___ No ___~~

Mortgage or Lien Holders: _____

~~INSTRUCTIONS~~

The following supplement is designed to assist in filling out the application for establishing your property as a Forestland Preservation Area:

4. ~~Names of Petitioners: The application(s) must be signed by all fee simple owners of the parcel(s) being placed in a Forestland Preservation Area. If there is more than one property proposed to be in an Area where:~~
- ~~a) parcels are not contiguous, and/or~~
- ~~b) parcels are in differing forms of title,~~
- ~~Then, each parcel must have a separate application.~~

~~All applications to create one Area should be returned to the Foundation together.~~

2. ~~Mailing Address: The address that you want used for correspondence pertaining to this application.~~
3. ~~Adjoining Roads: Because some people have a post office box number for a mailing address, it is necessary for the Foundation to know the exact road number(s) on which the parcel is located. Please list your main road (i.e., RT. 18) and any roads that adjoin your property.~~

4. ~~# of Dwelling and Seasonal Dwelling Units: This is the number of houses on the parcel(s) which can be occupied. Please specify the names of the occupants and their relationship to the owners listed on the application. If any of the Dwelling Units are for seasonal use only, please specify.~~
5. ~~County Tax Parcel Number(s): If you are unsure of your parcel number, please attach a copy of your most recent tax bill.~~
6. ~~Zoning designation: In order to qualify for a Forestland Preservation Area, your land must be zoned for agricultural purposes (i.e., SR, S, SE, AG, AR, or AR-1). If you are not sure about your zoning designation, contact your County Planning Office. Kent: 744-2471, New Castle: 395-5400, Sussex: 855-7878.~~
7. ~~Type of Land Use: The number of acres that is in each land use listed on the application. Your farmland assessment application may serve as a good reference for this information.~~

~~PLEASE RETAIN A COPY OF THE AREA APPLICATION FORM FOR YOUR RECORDS AND RETURN THE ORIGINAL FORMS OF EACH OF THESE TO THE FOUNDATION.~~

~~APPENDIX B~~

~~Tax Map No.~~ _____

**~~Prepared By:~~ Delaware Agricultural
Lands Preservation Foundation
2320 S. DuPont Highway, Dover, DE 19904**

~~Return To:~~ _____ Parkowski, Guerke & Swayze, PA
116 W. Water Street, Dover, DE 19904

~~DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION FORESTLAND PRESERVATION AREA AGREEMENT~~

This Forestland Preservation Area Agreement, in the nature of a declaration of a Restriction on the Use of Land for the purpose of preserving productive Forestlands, is made this day of _____, _____ by and between _____, _____ heirs and assigns, (hereafter individually and collectively referred to as "**~~GRANTOR~~**"), of the County of _____, Delaware, and the **~~DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION~~**, its successors, nominees or assigns, a body politic and corporate constituting a public instrumentality of the State, created and organized under the laws of the State of Delaware, with its offices at 2320 S. DuPont Highway, Dover, Delaware 19901 (hereinafter "**~~GRANTEE~~**").

~~RECITALS:~~

A. ~~GRANTOR is the owner in fee of lands consisting of Forestlands (as that term is defined in 3 Del.C. §902(6) and as shown on Exhibit "A" (hereinafter referred to as the "Property"), which Grantor desires to be included in a Forestland Preservation Area. The Property is located in _____ County, Delaware, and is more fully described in whole or in part in a Deed recorded in the Office of the Recorder of Deeds in and for _____ County, Delaware in Deed Book _____, Page _____, and being County Parcel No. _____. The Property consists of _____ acres on which _____ acres are classified as Forestlands.~~

B. ~~The public and the economy benefits from the protection and conservation of Forestlands, including the protection of scenic areas for public visual enjoyment from the public right of way. The conservation and protection of Forestlands as a valued natural and ecological resource provides needed space for clean air as well as for aesthetic purposes, and the public will benefit from the conservation, protection, development and improvement of Forestlands for the production of timber.~~

C. **~~GRANTEE~~** has declared that the preservation of prime Forestlands is vital to the public interest of the State, the

region, and the nation through its economic, environmental, and productive benefits.

D. ~~GRANTOR~~ desires and intends that the Forestlands of the Property be preserved, protected, and maintained, and in consideration of those benefits conferred under 3 ~~Del.C.~~ §935, the Grantor is willing to enter into this Agreement.

E. ~~GRANTEE~~ is entitled to enforce this Forestland Preservation Area Agreement and to preserve and protect for ten years from the effective date of this Agreement, or any extension period, the Property subject to the restrictions imposed under this Agreement.

RESTRICTIONS:

NOW THEREFORE, in consideration of the foregoing and as required by 3 ~~Del.C.~~ §934, the undersigned ~~GRANTOR~~ agrees to the following restrictions which shall apply to the Property:

1. No rezoning or major subdivision of the Property, or any portion thereof, shall be allowed.
2. Activities conducted on the Property shall be limited to forestry production, forestry operations, forestry management and control, wildlife habitat management, and related activities, as defined in 3 ~~Del.C.~~ §934. Grantor shall manage the Parcel in accordance with a forest management plan prepared by a professional forester that addresses the Grantor's forest management goals for the Parcel. The plan shall contain, at a minimum, aerial and soil maps of the Property, a description and analysis of the forest by management unit, and silvicultural prescriptions for each management unit. The plan shall be made available for inspection by the State Forester's office and the plan shall be revised and updated at a minimum every five years.
3. If the Property contains at least thirty (30) acres, one (1) location containing no more than one (1) acre of land may be designated for seasonal recreational dwelling usage provided the use of the designated area does not adversely affect the forestland use of the Property. Residential use of the Property shall be limited to usage of no more than one (1) acre of land for each twenty (20) acres of usable land on the Property, with a maximum of ten (10) acres of land being used for dwelling housing on the Property. The establishment or existence of any seasonal housing will be counted against the total allowable permanent housing acreage. The Property consists of _____ acres, of which _____ acres are usable for forestry and related uses. With respect to the acreage allowed for dwelling housing, there shall be a limit of three (3) dwelling houses for residential use placed on the allowable acreage at three (3) locations to be designated by the Grantor, unless there exists three (3) or more dwelling houses on the Parcel as of the date hereof, in which case the allowable acreage shall be allocated to the existing dwelling houses and no additional dwelling houses shall be allowed. There are currently _____ dwelling houses located on the Property, and only _____ additional dwelling houses shall be allowed.;
4. No conversion of the Forestlands to cropland, pasture land, open space or other types of land uses shall be allowed.
5. No permanent commercial or industrial structures shall be located on the Property.
6. No mining, commercial or extractive uses shall be conducted on the Property.
7. No disposal, burial, storage, or stock piling of junk, vehicles, equipment, liquid waste, solid waste or other liquid or solid materials, except that wastewater spray irrigation shall be allowed utilizing best available treatment technology with storage and treatment facilities located on lands other than Forestland preservation areas.
8. The allowability of a general use, conditional use, special use or other use under any zoning law or ordinance shall not have any effect on the restrictions imposed on the Property under this Agreement.
9. This Agreement shall become effective as of the date the necessary approvals have been rendered and the Secretary of Agriculture has either failed to exercise or waived the right of rejection allowed within the thirty (30) day period following Foundation action on the Forestland Area Application. At the time of recording of the Agreement the Foundation shall certify the date of creation of the Forestland Area or extension thereto, and such date shall serve as the effective date of this Agreement.
10. This Agreement shall remain in effect for a minimum period of ten (10) years from the effective date. Unless GRANTOR provides written notification to the Foundation of intent to withdraw the Property from the Forestland Area at least six (6) months prior to expiration date of this Agreement or any extension thereto, this Agreement shall continue for additional five (5) year periods.
11. This Agreement shall be considered a covenant which runs with and binds the Property and the terms and conditions shall be subject to specific performance, and other action allowed under 3 ~~Del.C.~~ §939. ~~GRANTOR~~ agrees to abide by the provisions of 3 ~~Del.C.~~ Chapter 9 and the duly adopted regulations thereunder as such provisions relate to the Property.

12. By executing this Agreement the GRANTOR verifies that individually or collectively ~~GRANTOR~~ holds a fee simple interest in the Property and is entitled to enter into this Agreement. ~~GRANTOR~~ further verifies that the information contained in the Forestland Area Application is true and correct.

13. The Agreement shall be binding on the heirs, successors and assigns of ~~GRANTOR~~. Prior to any transfer of any interest in the Property during the term of this Agreement, ~~GRANTOR~~ shall provide advance written notification of this Agreement and the restrictions contained herein to the party acquiring such interest and a copy of such written notification shall be provided to the Foundation.

SIGNATURES APPEAR ON FOLLOWING PAGES

IN WITNESS WHEREOF, the parties have set their hands and seals this _____ day of _____ A.D. 20____.

WITNESS:

(SEAL)

(SEAL)

STATE OF _____ **) SS:**
COUNTY OF _____ **)**

ON THIS, the _____ day of _____, 20____, before me, the undersigned Notary Public for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person or persons whose names are subscribed to the within instrument and acknowledged that _____ executed the same for purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.

Notary Public

NOTARY NAME - TYPED OR PRINTED

My Commission Expires: _____

I, THE UNDERSIGNED, being the Chairman of the Delaware Agricultural Lands Preservation Foundation or authorized assignee of the Delaware Agricultural Lands Preservation Foundation, hereby execute this Forestland Preservation Area Agreement on behalf of the Foundation, and certify that the Forestland Preservation Area or extension of existing Forestland Area has been established as of, 20____.

IN WITNESS WHEREOF, I have set my hand and seal this _____ day of _____, 20____.

WITNESS:

(SEAL)

Chairman, Delaware Agricultural
Lands Preservation Foundation or
Authorized Designee

STATE OF _____ **)**

SS: _____

COUNTY OF _____)

ON THIS, the _____ day of _____, 20____, before me, the undersigned Notary Public for the County and State aforesaid, personally appeared, _____, known to me (or satisfactorily proven) to be the person or persons whose names are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.

Notary Public

NOTARY NAME - TYPED OR PRINTED

My Commission Expires: _____

CERTIFICATION:

The Property subject to this Forestland Preservation Area Agreement was accepted into a Forestland Preservation Area on _____ which is the effective date of this Agreement.

APPENDIX C

TAX MAP NO.: _____

DALPF Project I.D.#: _____

Parkowski, Guerke & Swayze, P.A.

P.O. Box 598

Dover, Delaware 19903

DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION

ACKNOWLEDGMENT PURSUANT TO 3 Del.C. §934(c)

WHEREAS, _____, ("Transferor(s)") are the owner(s) of forestlands comprised of _____ acres located at _____, Delaware, said lands lying in _____ County, and described in and subject to a Forestland Preservation Agreement (the "Agreement"), dated _____, of record in the Office of the Recorder of Deeds in and for _____ County, State of Delaware in Deed Book _____, Page _____; and

WHEREAS, Transferor(s) is/are about to transfer (_____ acres of) subject lands to _____, ("Transferee(s)") as shown on a subdivision plot dated _____, performed by _____, and about to be recorded in the Office of the Recorder of Deeds in and for _____ County, State of Delaware.

NOW, THEREFORE, in accordance with the requirements of 3 Del.C. §934(c), Transferor(s) and Transferee(s) acknowledge their understanding of the acreage allowed for dwelling housing, and the restrictions which apply to the real property about to be conveyed, and that said lands are subject to the referenced Agreement, the provisions of 3 Del.C. ch. 9 and the regulations adopted pursuant thereto. Transferor(s) and Transferee(s) agree to be bound by same. Transferee(s) shall be allowed _____ acres of dwelling housing. Transferor(s) will retain _____ acres of said lands, of which _____ acres are currently used for dwelling housing. Transferor(s) shall be allowed _____ additional acre(s) for dwelling housing. Transferor(s) shall have the right to designate _____ locations for residential use and Transferee(s) shall have the right to designate _____ locations for residential use.

IN WITNESS WHEREOF, the Transferor(s) and Transferee(s) have executed this Acknowledgment this _____ day of _____, 20____.

Transferor(s):

Witness

Witness

Witness _____(SEAL)

 _____ (SEAL)
 Witness

~~STATE OF DELAWARE)~~
~~) : SS~~ _____
~~COUNTY OF~~ _____

BE IT REMEMBERED that on this _____ day of _____, A.D. 20____, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, _____, and _____, parties to this Indenture, known to me personally to be such, and they acknowledged this Indenture to be their act and deed.

~~GIVEN under my Hand and Seal of office the day and year aforesaid.~~

Notary Public Signature

Notary Name – Printed or Typed
My Commission Expires: _____

~~APPENDIX D~~

**~~DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION FORESTLAND
PRESERVATION EASEMENT APPLICATION~~**

~~Please type or print~~

~~I/We _____~~
~~("Owner(s)"), of certain forestlands that have been established by recorded agreement as a~~
~~Forestland Preservation Area in _____ County, Delaware, apply to the Delaware Agricultural~~
~~Lands Preservation Foundation ("Foundation") to sell a Forestland Preservation Easement~~
~~("Easement"). The Forestland Preservation Easement sale to the Foundation is offered in~~
~~consideration of not less than:~~

1) \$_____ for the entire forest; or 2) _____ per acre; or 3) an amount to be determined by appraisal and acceptable to the Owner and the Foundation \$_____

The forestlands to be subject to the Easement total _____ acres and consist of (check one):

- ~~the entire property covered by and described in the Forestland Preservation Area Agreement.~~
- ~~the property outlined on the Forestland Preservation Area map attached hereto (highlight the land proposed for a Forestland preservation Easement).~~

~~Attach drawing showing the approximate location and acreage, if any. Applicant intends to designate for seasonal dwelling or residential use.~~

Tax Parcel Number(s): _____
 Deed Reference(s): _____
 Leases/Timber Agreements: _____
 Street/Road Location: _____
 Mortgages or Liens on the Property: _____

 Easements/Right-of-Way (identify, if any): _____
 # of Dwelling Units: _____ Date of Forest Management Plan: _____
 Applicant(s): Corporate or Business Name: _____
 Federal I.D. Number (if applicant is a corporation or business): _____
 Name: _____
 Address: _____
 Telephone Number: (H) _____ (W) _____ (CELL) _____
 Email Address: _____

LAND TYPE AND USE

Forestlands: _____ acres	Residence/Buildings _____ Acres
Seasonal Dwelling: _____ acres	Farm Structures: _____ Acres
Tillable Cropland _____ acres	Open Space: _____ Acres
Pasture: _____ acres	Other (Specify): _____ Acres

1. **MINERAL/TIMBER RIGHTS:** Does a party or parties other than yourself own or lease mineral or timber rights on this property? Yes _____ No _____ If yes, secure signatures and addresses of such parties:

~~I/We submit this application, true and complete, to convey a Forestlands Preservation Easement to the Delaware Agricultural Lands Preservation Foundation, and declare that good title is provided to the premises, free of encumbrances such as liens, mortgages, options, rights of others in extraction or mineral rights, timber rights, land use restrictions, adverse ownership interests, and other encumbrances which would adversely impact the State of Delaware's interest in the farmland tract. I/We understand that any false information may be cause for rejection of application.~~

_____ Landowner Signature	_____ — Social Security #	_____ Date
------------------------------	------------------------------	---------------

_____ Landowner Signature	_____ — Social Security #	_____ Date
------------------------------	------------------------------	---------------

_____ Landowner Signature	_____ — Social Security #	_____ Date
------------------------------	------------------------------	---------------

_____ Landowner Signature	_____ — Social Security #	_____ Date
------------------------------	------------------------------	---------------

_____ Landowner Signature	_____ — Social Security #	_____ Date
------------------------------	------------------------------	---------------

FOR OFFICE USE ONLY

File #: _____

District Name: _____

Date Received: _____

APPENDIX E

Tax Map No(s):

Prepared By: Delaware Agricultural Lands Preservation Foundation

2320 S. DuPont Highway

Dover, DE 19904

Return To: Parkowski, Guerke & Swayze, P.A.

116 W. Water Street

Dover, DE 19904

**FORESTLAND PRESERVATION EASEMENT
STATE OF DELAWARE
FORESTLANDS PRESERVATION PROGRAM**

THIS PRESERVATION EASEMENT, made, granted, assigned and conveyed this _____ day of _____, A.D. 200__, by _____, whose address is _____ and who are hereinafter referred to as "Grantor", and the **DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION**, a body politic and corporate constituting a public instrumentality of the State of Delaware, and which is hereinafter referred to as "Grantee" and/or "Foundation."

WHEREAS, Grantor is fee simple title holder of certain lands situated in _____ Hundred, Kent County, Delaware, being of record in Deed Book _____, Page _____ at the Office of the Recorder of Deeds, in and for _____ County, at _____, Delaware, hereinafter referred to as the "Parcel" and more particularly described in Exhibit "A" (annexed hereto); and as shown on a plot entitled "Delaware Agricultural Lands Preservation Foundation - Lands of _____" as prepared by _____, dated _____ and recorded in the aforesaid Office of the Recorder of Deeds in Plot Book _____, Page _____ (hereinafter the "Plot").

WHEREAS, the General Assembly of the State of Delaware has declared that the preservation of the State's farmlands and forestlands is considered essential to maintaining forestry as a viable industry and as an important contributor to Delaware's economy; and

WHEREAS, the General Assembly of the State of Delaware has recognized that a need exists to create sufficient economic incentives and benefits to encourage landowners to voluntarily place viable forestlands under protective restrictions through the creation of and participation in forestland preservation areas and sale and/or donation of development rights;

WHEREAS, the Grantor desires to grant and convey to the Foundation a forestlands preservation easement as provided in Chapter 9, Title 3 of the **Delaware Code Annotated**.

NOW, THEREFORE, the Grantor, for and in consideration of the sum of _____ DOLLARS (\$ _____), the receipt and sufficiency of which are hereby acknowledged, and in consideration of the benefits conferred under 3 **Del.C.** Ch. 9, hereby grants and conveys to the Foundation, its successors and assigns, a forestlands preservation easement on and over the Parcel, and covenants and promises that the Parcel will be owned, used and conveyed subject to, and not in violation of, the following restrictions:

1. No rezoning or major subdivision of the Parcel shall be allowed.
2. Activities conducted on the Parcel shall be limited to forestry production, forestry operations, forestry management and control, wildlife habitat management, and related activities, as defined in 3 **Del.C.** §934.
3. The allowability of a general use, conditional use, special use or other use under any zoning law or ordinance shall

not have any effect on the restrictions imposed on the Parcel under this easement.

4. ~~No conversion of the forestlands to cropland, pastureland, open space or other types of land uses shall be allowed.~~
5. ~~No permanent commercial or industrial structures shall be located on the Parcel.~~
6. ~~No mining, commercial or extractive uses unrelated to forestry operations shall be conducted on the Parcel.~~

7. ~~Residential use of the Parcel shall be limited to usage of no more than one (1) acre of land for each twenty (20) acres of usable land on the Parcel, with a maximum of ten (10) acres of land being used for dwelling housing on the Parcel. The Parcel consists of _____ acres, of which _____ acres are usable for forestry and related uses. With respect to the acreage allowed for dwelling housing, there shall be a limit of three (3) dwelling houses for residential use placed on the allowable acreage at the three (3) locations designated on the Plot as "Residential Acreage", unless there exists three (3) or more dwelling houses on the Parcel as of the date hereof, in which case the allowable acreage shall be allocated to the existing dwelling houses and no additional dwelling houses shall be allowed. There are currently _____ dwelling houses located on the Property, and only _____ additional dwelling houses shall be allowed.~~

8. ~~This easement shall be deemed a covenant which runs with and binds the Parcel permanently and in perpetuity, the terms and conditions of which shall be subject to specific performance and other action allowed under 3 Del.C. §920 and §939. This easement shall be binding upon the heirs, executors, administrators, successors and assigns of the Grantor. This easement may be managed, administered and enforced by the Grantee or the State of Delaware.~~

9. ~~The provisions of Title 3, Chapter 9 of the Delaware Code Annotated and duly adopted regulations thereunder as such provisions relate to the Parcel shall govern this easement.~~

10. ~~Grantor shall manage the Parcel in accordance with a forest management plan prepared by a professional forester that addresses the Grantor's forest management goals for the Parcel. The plan shall contain, at a minimum, aerial and soil maps of the Parcel, a description and analysis of the forest by management unit, and silvicultural prescriptions for each management unit. The plan shall be made available for inspection by the State Forester's office and the plan shall be revised and updated at a minimum every five years.~~

11. ~~Notwithstanding anything stated herein to the contrary, the rights afforded Grantee under this Preservation Easement may only be assigned by Grantee to a "qualified organization" within the meaning of Section 170(b)(1)(A)(v), 170(c)(1), 170(h)(3)(A) and 170(h) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code and only with assurances that the purposes of this Preservation Easement, as described herein, will be maintained in perpetuity by such Assignee. If any such Assignee shall be dissolved or shall abandon this Preservation Easement or the rights and duties of enforcement herein set forth, the Preservation Easement and the rights of enforcement shall revert to the Grantee, and if the Grantee shall be dissolved and if the terms of the dissolution fail to provide a successor, then the State of Delaware, or its successors or assigns, shall appoint an appropriate successor as Grantee, and any such successor shall be a "qualified organization" within the meaning of Section 170(h) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code. No assignment may be made by the Grantee of its rights under this Preservation Easement unless the Grantee, as a condition of such Assignment, requires the Assignee to carry out the conservation purposes of this Preservation Easement, as described herein. Grantee agrees to hold this Preservation Easement exclusively for conservation purposes as defined in Section 170(h)(4)(A) of the Internal Revenue Code.~~

12. ~~The Preservation Easement granted hereunder shall be perpetual.~~

IN WITNESS WHEREOF, the said _____ have hereunto set their hands and seals the day and year first above written.

SIGNED AND DELIVERED

IN THE PRESENCE OF:

Witness

(SEAL)

~~STATE OF DELAWARE)~~

~~)-SS.~~

~~COUNTY OF~~ _____

~~BE IT REMEMBERED~~ that on this _____ day of _____, A.D. 200_, personally came before me, the
Subscriber, a Notary Public for the State and County aforesaid, _____, parties to this Indenture, known to me personally to
be such, and they acknowledged this Indenture to be their act and deed.

~~GIVEN~~ under my hand and seal of office the day and year aforesaid.

Notary Public Signature

Notary Name - Typed or Printed

My Commission Expires: _____