

# TITLE 3

## Agriculture

### Department of Agriculture

#### CHAPTER 9. DELAWARE AGRICULTURAL LANDS

#### PRESERVATION ACT

##### Subchapter I. Establishment of Foundation, Advisory Boards and Fund

##### **§ 901 Purpose, policy and intent.**

It is the declared policy of the State to conserve, protect and encourage improvement of agricultural lands within the State for the production of food and other agricultural products. It is also the declared policy of the State to encourage, promote and protect farming as a valued occupation. Preservation of the State's farmlands and forestlands is considered essential to maintaining agriculture as a viable industry and important contributor to Delaware's economy. It is a finding of the General Assembly that valuable and irreplaceable farmlands and forestlands are being lost due to nonagricultural development pressures and that, to insure the long-term utilization of the State's most viable agricultural lands, it is necessary to adopt and implement an effective program and infrastructure for permanent agricultural land preservation. To the maximum extent possible, State agency action, particularly action involving the exercise of powers of eminent domain, which has an adverse impact on viable agricultural lands, should be avoided or minimized. It is further recognized that a need exists to create sufficient economic incentives and benefits to encourage agricultural landowners to voluntarily place viable agricultural lands under protective restrictions through the creation of and participation in agricultural preservation districts and the sale of development rights. It is the purpose and intent of the General Assembly to provide for the creation of permanent agricultural areas comprised of viable farmlands and forestlands to serve the long-term needs of the agricultural community and the citizens of the State. It shall be a priority to create agricultural preservation districts and purchase development rights in those areas located near and adjacent to designated growth zones.

[68 Del. Laws, c. 118, § 2; 71 Del. Laws, c. 378, § 93.;](#)

##### **§ 902 Definitions.**

The following terms shall have the meanings ascribed to them in this chapter:

- (1) "Advisory Board" or "Advisory Boards" means the Farmland Preservation Advisory Boards established and appointed by the respective legislative bodies of each county.
- (2) "Agricultural lands" means farmlands and forestlands.

(3) "Agricultural use" means all forms of farming, including agriculture, horticulture, aquaculture, silviculture and activities devoted to the production for sale of food and other products useful to humans which are grown, raised or harvested on lands and waters.

(4) "Agricultural value" means the value of the land when subject to the District restrictions set forth in § 909 of this title and the requirements imposed under § 914(a)(2) of this title.

(5) "County" means New Castle County, Kent County and Sussex County as referenced.

(6) "Forestlands" means a contiguous area of trees or forest cover at least 10 acres in size which is capable of being timbered and reforested as determined by the State Forester.

(7) "Forestland preservation agreement" means an agreement executed by an owner or owners creating a forestland preservation area and binding forestlands to forestland preservation area restrictions for a period of 10 years and any extended period.

(8) "Forestland preservation easement" means the perpetual easement acquired by the Foundation on forestlands.

(9) "Foundation" means the Delaware Agricultural Lands Preservation Foundation.

(10) "Fund" means the Delaware Farmland Preservation Fund.

(11) "Growth zone" means the areas designated by the Foundation recognizing planned future development.

(12) "LESA" means the Land Evaluation and Site Assessment system adopted by the Department of Agriculture to determine the quality of farmland and forestland and the long-term agricultural viability of such lands.

(13) "Owner" or "owners" means the person or persons holding fee simple title to farmlands and/or forestlands.

(14) "Person" or "persons" means any individual or individuals, partnership, joint venture, corporation, association, trust, institution, cooperative enterprise or duly established legal entity capable of holding title to real property in the State.

(15) "Preservation easement" means perpetual agricultural land preservation easements acquired by the Foundation.

(16) "Professional forester" means an individual who possesses at least a bachelor's degree in forestry or a closely related field.

(17) "Unimproved land" means the open space, the area of land under structures used for agricultural purposes and the land under lakes, dams, ponds, streams and irrigation ditches, but shall not include the land used for dwelling housing.

(18) "Usable" means available and capable of being used for agricultural, horticultural, aquacultural and forestry production activities.

[68 Del. Laws, c. 118, § 2](#); [70 Del. Laws, c. 186, § 1](#); [71 Del. Laws, c. 378, § 94](#); [75 Del. Laws, c. 201, § 1](#);

### **§ 903 Delaware Agricultural Lands Preservation Foundation.**

(a) There is hereby established and created a statewide agricultural lands preservation foundation, a body politic and corporate constituting a public instrumentality of the State established and created for the performance of an essential public and governmental function, to be known as the Delaware Agricultural Lands Preservation Foundation. The Foundation shall be comprised of 13 trustees, all of whom shall be resident of and qualified to vote in the State. The President Pro Tem shall appoint 1 member from the Senate and the Speaker of the House shall appoint 1 member from the House of Representatives each of whom shall serve an indefinite term. The Governor shall appoint the remaining 11 Trustees and shall designate 1 Trustee as Chairperson, which Trustee shall serve at the pleasure of the Governor and be confirmed with the advice and consent of the Senate. The composition of the 11 members appointed by the Governor to the Board of Trustees of the Foundation shall be as follows:

- (1) The Secretary of the Department of Agriculture or authorized designee to serve an indefinite term.
- (2) The Secretary of the Department of Natural Resources and Environmental Control or authorized designee to serve an indefinite term.
- (3) The State Treasurer or authorized designee to serve an indefinite term.
- (4) A member and representative of the Delaware Farm Bureau, to be selected from a list of 3 nominees submitted by the Delaware Farm Bureau, who shall serve an initial term of 2 years.
- (5) A member and representative of the Delaware State Grange, to be selected from a list of 3 nominees submitted by the Delaware State Grange, who shall serve an initial term of 2 years.
- (6) An individual actively engaged in farming or some other form of agribusiness who is a resident of New Castle County and who shall serve for an initial term of 3 years.
- (7) An individual actively engaged in farming or some other form of agribusiness who is a resident of Kent County and who shall serve for an initial term of 3 years.
- (8) An individual actively engaged in farming or some other form of agribusiness who is a resident of Sussex County and who shall serve for an initial term of 3 years.
- (9) An individual actively engaged in farming or some other form of agribusiness who may reside in any county of the State.

(10) An individual who is a resident of the State who is designated as Chairperson.

(11) The Chair of the Council on Forestry or authorized designee to serve an indefinite term.

(b) Upon the expiration of the terms of the original Trustees having designated terms, the terms of such Trustee positions thereafter shall be 3 years. For the 5 Trustees appointed to the positions indicated in paragraphs (a)(6) through (a)(10) of this section, Trustees registered in either major political party shall not exceed the other major political party by more than 1.

(c) In the event of death, permanent disability, resignation or failure to perform duties of a Trustee, the Governor shall appoint an interim Trustee to serve the unexpired term of the departing Trustee, or, in the case of the Chairperson, an interim term not to exceed 6 months, unless the Chairperson is confirmed with the advice and consent of the Senate.

(d) For purposes of conducting business of the Foundation, 7 Trustees shall constitute a quorum. A majority vote of members constituting the quorum shall be required for action on any matter before the Foundation. All votes on matters before the Foundation shall be conducted at meetings open to the public, and such meetings shall be timely noticed. Nothing shall prevent the Trustees of the Foundation from meeting at executive sessions which are closed to the public for purposes of discussing Foundation matters.

(e) The Trustees shall not be entitled to compensation for the services they provide to the Foundation; however, each Trustee shall be entitled to reimbursement for actual and necessary expenses incurred to enable the performance of official duties.

(f) No Trustee shall be entitled to vote on any matter before the Foundation if such Trustee knowingly has a financial interest in the outcome of such matter. In the event a Trustee knowingly has a financial interest, such Trustee shall indicate to the Chairperson the nature of the interest and the Chairperson shall note for the record that the Trustee did not vote by reason of conflict of interest. In situations in which a Trustee or Trustees do not vote by reason of conflict of interest, the matter pending before the Foundation shall be decided on the basis of a majority vote of the remaining Trustees present who do not have a conflict of interest. A Trustee or Trustees having a conflict of interest as set forth herein shall be counted for purposes of establishing a quorum provided such Trustee or Trustees are present at the meeting. The fact that a Trustee or Trustees have not voted by reason of conflict of interest shall in no way affect the validity of an act or actions taken regarding the matter before the Foundation.

(g) The Foundation shall continue until its existence shall be terminated by law. Upon termination of the existence of the Foundation, all of its rights, properties and liabilities shall pass to and be assumed by the State.

[68 Del. Laws, c. 118, § 2](#); [68 Del. Laws, c. 371, § 7](#); [70 Del. Laws, c. 186, § 1](#); [75 Del. Laws, c. 98, § 134](#); [75 Del. Laws, c. 201, §§ 2, 3](#); [80 Del. Laws, c. 198, §§ 1-3](#);

#### **§ 904 Duties and authority of Foundation.**

(a) The Foundation shall be responsible for the following:

- (1) The adoption, after public hearing, of criteria for establishment and maintenance of Agricultural Preservation Districts, which criteria shall supplement and be consistent with the standards set forth in this chapter;
- (2) The adoption, after public hearing, of criteria for the purchase of agricultural lands preservation easements, which criteria shall supplement and be consistent with the standards set forth in this chapter;
- (3) The adoption, after public hearing and consultation with the Department of Agriculture, the Department of Natural Resources and Environmental Control, and the Farmland Preservation Advisory Boards and Planning and Zoning Commissions of each county, of a statewide agricultural lands preservation strategy which specifically identifies the areas of the State in which valuable productive agricultural lands are located and which are considered best suited for long-term preservation, and by specifically identifying the growth zone;
- (4) The administration, operation and supervision of the Delaware Farmland Preservation Fund;
- (5) The monitoring and enforcement of the requirements and restrictions imposed by and under the provisions of this chapter, any duly adopted regulations and legally binding instruments;
- (6) The establishment of a program of cooperation and coordination with the governing bodies of the counties, municipalities and other units of general government below the State level and with private nonprofit or public organizations to assist in the preservation of agricultural lands for agricultural purposes;
- (7) The acquisition of available federal funding, including application for eligible loans under the Farms for the Future Act of 1990 (7 U.S.C. § 4201 et seq.) and for undertaking all other necessary actions required for receipt of such funding, and deposit of any such moneys received into the Delaware Farmland Preservation Fund;
- (8) The performance of an annual audit of the Foundation's accounts, prepared by an independent certified public accountant qualified to perform such an audit, which annual audit shall be part of the Foundation's Annual Report;
- (9) The preparation of an Annual Report of the Foundation's proceedings and activities for the annual period ending June 30, which report shall include the annual audit, an inventory of farmlands and forestlands located in Agricultural Preservation Districts, an inventory of preservation easements acquired during the period, the status of the Fund and such other information deemed appropriate, which Annual Report shall be submitted to the Governor and the General Assembly of the State;
- (10) The establishment of a program of education and promotion of agricultural lands preservation;
- (11) The development of an effective program to fully implement the provisions of this chapter;

(12) The establishment and implementation of a forestland preservation program; and

(13) The adoption of rules of practice and procedure for acquiring forestland preservation easements.

(b) The Foundation shall have the authority to do the following:

(1) Adopt an organizational structure to implement this chapter;

(2) Employ a staff subject to the availability of funding;

(3) Establish an office in the State;

(4) Retain by contract auditors, accountants, appraisers, legal counsel, surveyors, private consultants, financial advisors or other contractual services required by the Foundation;

(5) Sue and be sued;

(6) Utilize a seal;

(7) Conduct such hearings, examinations and investigations as may be necessary and appropriate to the conduct of its operations and the fulfillment of its responsibilities;

(8) Procure and keep in force adequate insurance or otherwise provide for the adequate protection of its property, as well as to indemnify and save itself harmless and its officers, agents or employees against loss or liability with respect to any risk to which it or they may be exposed in carrying out any function of the Foundation;

(9) Purchase, sell, manage, lease or rent such real and personal property for use of the Foundation as deemed necessary, convenient or desirable;

(10) Act on and approve applications for the establishment of Agricultural Preservation Districts consistent with the provisions of this chapter and duly adopted regulations;

(11) Acquire by gift or purchase agricultural land preservation easements;

(12) Seek, obtain and utilize federal and private funding for the purposes of this chapter;

(13) Make short- and long-range plans for the protection and preservation of agricultural lands;

(14) Enter upon lands as may be necessary to perform surveys, appraisals and investigations to accomplish the purposes of this chapter;

(15) Accept gifts, grants or loans of funds, property or service from any source, public or private, and comply, subject to this chapter, with the terms and conditions of any agreements entered and related thereto;

(16) Receive funds from the sale of general bonds, revenue bonds or other obligations of the State or under the name of the Foundation;

(17) Recover reasonable costs for service provided;

(18) Delegate to 1 or more of its Trustees, its Executive Director or its agents such powers and duties as it may deem necessary and proper for the conduct of its authorized business;

(19) Select an Executive Director, who shall be a member and chief executive officer of the staff of the Foundation, subject to the availability of funding for such position, and provided further that the Executive Director shall be a resident of the State, have an undergraduate degree from an accredited institution of higher learning and possess at least 5 years experience in the administration of agricultural programs, land use planning or agribusiness activities;

(20) Adopt procedural rules to govern the manner in which internal affairs of the Foundation are conducted;

(21) Adopt, after notice and public hearing, rules and regulations to fulfill the Foundation's responsibilities and fully effectuate the authority, purposes, intent and activities contemplated under this chapter; and

(22) Engage in all the activities specified in this subsection (b) of this section as they may relate to the forestland preservation program set forth in subchapter V of this chapter.

(c) The members of the staff of the Foundation shall be afforded protections comparable to those provided under the State Merit System and shall be included under and subject to Chapter 55 of Title 29.

[68 Del. Laws, c. 118, § 2](#); [71 Del. Laws, c. 221, § 2](#); [71 Del. Laws, c. 378, § 95](#); [75 Del. Laws, c. 201, §§ 4, 5](#);

### **§ 905 Delaware Farmland Preservation Fund.**

(a) The Delaware Farmland Preservation Fund is created and shall be maintained, administered, operated and supervised by the Foundation to implement the provisions of this chapter.

(b) All moneys received by the Foundation or designated for deposit into the Fund shall be placed in such accounts established by and for the use of the Foundation. To the extent moneys in the Fund are not needed on a current basis, the Foundation shall be entitled to invest such moneys on a long-term or short-term basis; provided, however, that the policies governing any such investment of moneys by the Foundation shall be subject to the approval of the Cash Management Policy Board.

(c) All banks, bankers, trust companies, savings banks and other persons carrying on a banking business under the laws of the State are authorized to do business with the Foundation and to give security for the safekeeping and prompt payment of moneys of the

Foundation deposited by it with them. The Foundation shall be entitled to establish such accounts as deemed appropriate for the conduct of its business.

[68 Del. Laws, c. 118, § 2.](#);

### **§ 906 Farmland Preservation Advisory Boards.**

(a) Each county legislative body shall establish a Farmland Preservation Advisory Board which shall consist of 4 active farmers or agribusinessmen residing within the county and 1 member of the county legislative body, who shall serve as the Chairperson of the Board. The members of such Board shall be appointed by the county legislative body. The members shall serve without salary, but the county legislative body may entitle each such member to reimbursement of his actual and necessary expenses incurred in the performance of official duties. A quorum of the Board for conducting business shall be 3 members and a majority vote of the quorum shall be necessary to take action on matters before the Board.

(b) The Chairperson of the Board shall serve for an indefinite term and the 4 other members shall serve for terms of 4 years each; provided further, that Board members registered in either major political party shall not exceed the other major political party by more than 1. Any member of the Board may be reappointed for a succeeding term without limitations as to the number of terms served.

(c) The Board shall advise the Foundation in relation to any regulations proposed for adoption by the Foundation. The Foundation shall provide a draft of proposed regulations to the Board at least 60 days in advance of the time that proposed regulations are released for public notice in order to allow for comment of the Board and possible amendment. The Board may request the Foundation to review any adopted regulation which the Board identifies as having an adverse effect on the furtherance of the purpose and intent of this chapter. Upon receipt of any such request, the Foundation shall submit in writing to the Board a response indicating the Foundation's position on the matter and the action, if any, which is contemplated in response to the request.

(d) Whenever an application for establishment of an Agricultural Preservation District is received by the Foundation and the Foundation determines that the eligibility criteria have been satisfied, the Foundation shall submit the application to the Board for the county in which the proposed District is located for a recommendation. The Board shall act on an application by recommending in favor or against approval within 60 days of receipt of the application, and the Board may include reasons for its decisions. In the event that the Board fails to make its recommendation within the specified 60-day period, or if the Board is not duly established or constituted, the decision required of the Board under the Agricultural Preservation District application process as specified hereunder shall be deemed an approval.

[68 Del. Laws, c. 118, § 2;](#) [70 Del. Laws, c. 186, § 1.](#);