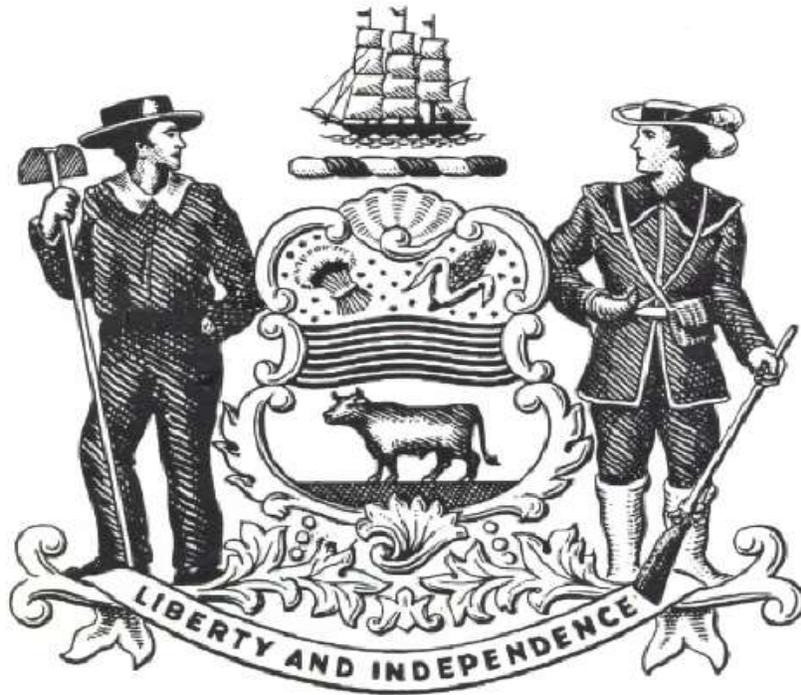

Joint Legislative Oversight & Sunset Committee 2017 Final Report



Agricultural Lands Preservation Foundation

*A Report to the Governor and the
149th General Assembly of the State of Delaware*

June 2017

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2017 Joint Legislative Oversight and Sunset Committee Members

Senator John J. Walsh,
Chair

Representative Stephanie T. Bolden,
Vice-Chair

Representative Andria L. Bennett

Representative Gerald L. Brady

Representative Timothy D. Dukes

Representative Jeffrey N. Spiegelman

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Senator Bryant L. Richardson

Senator David P. Sokola

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The Sunset Law in Delaware, Chapter 102 of Title 29, enacted in 1979, provides for the periodic legislative review of state agencies, boards, and commissions. The purpose of sunset review is to determine whether there is a public need for an agency, board, or commission and, if so, to determine whether it is effectively performing to meet that need. Agencies may be reviewed once every six years.

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) is responsible for guiding the sunset review process. JLOSC is a bipartisan committee comprised of ten legislators. The Senate President Pro Tempore and the Speaker of the House of Representatives each appoint five members to serve on JLOSC.

Sunset reviews are generally conducted over a ten month period commencing in July. A comprehensive review of each agency, based on statutory criteria, is performed by the JLOSC Analyst, who subsequently prepares a preliminary report for use by JLOSC during the public hearings, which take place in February each year. Public hearings serve as a critical component of this process, as they provide an opportunity for JLOSC to best determine whether the agency is protecting the public’s health, safety, and welfare.

At the conclusion of a sunset review, JLOSC may recommend the continuance, consolidation, reorganization, transfer, or termination (sunset) of an agency, board, or commission. Although JLOSC has sunset several agencies since its first set of reviews in 1980, the more common approach has been for JLOSC to work with the entity under review to formalize specific statutory and non-statutory recommendations, with the goal of improving the entity’s overall performance and government accountability.

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2017 Final Recommendations: Agricultural Lands Preservation Foundation

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) recommends that the Agricultural Lands Preservation Foundation (“Foundation”) be continued.

1. The Foundation requested the removal of the 25 year provision, found in 3 *Del. C.* § 917, from the Foundation’s governing statute. This would not apply to easements acquired previously, only newly acquired easements. Elimination of this clause would require legislative approval for any preservation easement termination.

RECOMMENDATION: The JLOSC approved draft legislation which removes the 25 year provision. This legislation was amended to strike that language from the bill.

OUTCOME: Senate Bill 74, with Senate Amendment No. 1, provided in Appendix A. The Amendment is a result of opposition to removing the 25 year provision.

2. The JLOSC recommended that statute language include a process for removal of a Foundation member.

RECOMMENDATION: The Foundation shall provide to JLOSC proposed amendments to its governing statute to include standard language regarding removal of a foundation member.

3. The JLOSC recommended a technical correction to 3 Del.C. §945.

RECOMMENDATION: The Foundation shall provide to JLOSC an amendment to 3 Del.C. § 945 to correct a mistake in the code reference. The reference should be for 909(a)(4) a. and b. rather than 904(a)(4) a and b.

OUTCOME: Senate Bill 74, provided in Appendix A is the result of the above recommendations.

RECOMMENDATION: The Foundation shall be released from review [upon the enactment of recommended any/all legislation] with no reporting requirements.

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A NOTE ABOUT THIS FINAL REPORT

The information provided in this report is taken from the Joint Legislative Oversight and Sunset Committee (“Committee”) Performance Review Questionnaire, as it was completed by the agency under review. When appropriate, the Analyst who prepared this report made minor changes to grammar and the organization of information provided in the questionnaire, but no changes were made to the substance of what the agency reported. Any point of consideration which arose in analyzing the questionnaire and compiling this report is addressed in the section titled “Additional Comment from the Committee’s Analyst.”

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AGENCY HISTORY

The Delaware Aglands Preservation Foundation (“Foundation”) was established in 1991 by House Bill No. 200.¹ The impetus for the legislation, through efforts by the Delaware State Grange, was to establish a farmland preservation program to address Delaware’s dwindling farmland base. Maryland, New Jersey, and Pennsylvania all had farmland preservation programs at the time.

JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE REVIEW HISTORY

The Committee previously reviewed the Foundation in 1986 and 1994. In its 1994 review of the Foundation, the Committee made specific recommendations concerning the Foundation’s operations and statute.

Recommendation #1: The Committee recommended that the Agricultural Lands Preservation Foundation not be terminated, but rather that the Foundation be continued.

The Foundation has continued to function since the last Committee review.

Recommendation #2: The Committee sent correspondence to the Joint Finance Committee urging that they appropriate support in the amount of \$100,000 to the Agricultural Lands Preservation Foundation.

The Aglands Preservation Foundation has received funding since FY96 of at least \$2 million per year.

Recommendation #3: The Committee recommended that the term “agricultural preservation easement” be defined in the Foundation’s statute.

The Foundation’s statute contains a definition of “preservation easement” and a definition of “forestland preservation easement” – these definitions are located in § 902 of Title 3.

Recommendation #4: The Committee recommended that the Foundation provide a decision regarding the Secretary of Agriculture’s separate veto powers over the establishment of preservation districts and easements.

The Foundation retained the Secretary of Agriculture’s separate veto powers over the establishment of districts and easements.

MISSION & GOALS

The Foundation’s mission is to protect viable farmlands and forestlands to serve the long-term needs of the agricultural community and the citizens of Delaware.

The Foundation’s goals are to:

- *Permanently protect enough farmland to maintain a viable agricultural industry in Delaware (250,000 acres by 2035). This is accomplished through the voluntary purchase of development rights from landowners utilizing primarily state funds, but, when possible, with matching funds from federal, county, and nongovernment organizations.*

¹ See summary of legislation on pages 10 and 11

- *Ensure there are a sufficient number of farmers to maintain an agricultural industry.* This goal is addressed through the Young Farmer’s Loan Program which provides long-term, no-interest loans to qualified applicants to help them purchase a farm. These farms are also placed into permanent agricultural preservation easements.
- *Enhance the profitability and viability of agriculture.* The purchase of development rights and the Young Farmer Loan Program both provide funding to farmers to both help them grow their business and remain profitable.

The Foundation supports these goals by tracking the following information statewide and by county:

- Agricultural district/expansion applications.
- Agricultural preservation easement applications.
- Agricultural preservation easements purchased.
- Young Farmer Loan Program prequalification applications.
- Young Farmer Loan Program loan applications.
- Young Farmer Loan Program loans settled.
- Forestland Preservation area applications.
- Forestland Preservation easement applications.
- Forestland Preservation easements purchased.

COMPOSITION & STAFFING OF THE FOUNDATION

There are 13 Trustees, as defined in the foundation’s governing statute.² The legally designated term of office for Foundation trustees is three years. Trustees may serve multiple terms.

The governing statute defines the qualifications and requirements for the Trustees. The membership includes:

- Secretary of Agriculture.
- Secretary of DNREC.
- State Treasurer.
- DE Farm Bureau Representative.
- DE State Grange Representative.
- Farmer/agribusiness person from each county.
- Chairperson of Governor’s Council on Forestry.

There is currently no representative from the House of Representatives or the Senate. Concerns have been raised about dual office provisions contained in the Delaware Constitution regarding legislators.

² See Appendix A for governing statute, 3 *Del. C.* § 901- § 949.

Compensation:

The Foundation’s Trustees are not compensated for the services they provide to the Foundation; however, each Trustee is entitled to reimbursement for actual and necessary expenses incurred to enable the performance of official duties.

Member Trainings:

Trustees are not offered any formal training; however, staff will meet with new Trustees, if requested, to review the program and its laws and regulations.

Conflict of Interest:

The governing statute includes language regarding conflicts of interest.³ Foundation Trustees are not permitted to vote on any matter where the Trustee knowingly has a financial interest.

Staffing:

There are seven Department of Agriculture (“Department”) staff members (one appointed and six merit) that assist the Foundation:

- Deputy Secretary (appointed).
- Three (3) Planner positions.
- Administrative Specialist II.
- Management Analyst II.
- Accounting Specialist.

The Accounting Specialist and Management Analyst II work full-time for the Foundation. The remaining merit positions perform other duties within the Department, although most of their time is devoted to the Aglands Preservation Program.⁴

Recruitment and Training:

All of the staff, excluding the Deputy Secretary, are merit positions recruited and hired through the state recruiting process. There is not an orientation session for new hires; however, staff work with new hires to develop a performance plans, conduct performance reviews, and train them as needed.

As merit employees, staff have access to training opportunities as other merit employees funding permitting.

Temporary or Contractual Employees:

The Foundation did not have temporary or contractual employees during the past two fiscal years. However, the Foundation does utilize outside legal counsel, Parkowski, Guerke, and Swayze for all legal matters.⁵ The Foundation utilizes a private appraiser, Karen H. Belinko Appraisals, LLC, to complete all of the appraisals for the program. The Foundation also contracts with an independent accounting firm, Faw Casson, to compile the annual financial statements as recommended in an earlier audit.

³ See Appendix A for governing statute, 3 *Del C.* § 901-§ 949.

⁴ See Appendix B for staff list.

⁵ See Appendix C for 2006 letter from Dept. of Justice to Parkowski, Guerke & Swayze, P.A. regarding legal service fees.

Staff Limitations:

The Foundation is not hindered by a lack of staff assistance. Some of the merit positions have been reclassified over the past three years to better address the work-load and control of duties. For instance, the Foundation reclassified a vacant position to a Planner III position. The Planner III now handles all of the geographic information system (“GIS”) mapping duties. These duties were previously handled by a private contractor.

Licensing:

The Foundation does not issue any licenses or certificates.

ENACTED LEGISLATION IMPACTING THE FOUNDATION

State Legislation:

House Bill No. 200 – 136th General Assembly – Signed July 8, 1991. Enabling legislation (Title 3, Chapter 9).

Senate Bill No. 177 (21st Century Fund) – 138th General Assembly – Signed July 1995. This legislation provided the initial funding of \$12 million for the purchase of development rights, also called preservation easements, from the Twenty-First Century Fund. The legislation required a minimum of a 20% match of non-state funds, which could include discounts or donations of the easement value by the landowner.

House Bill No. 750 (FY99 Bond Bill) – 139th General Assembly – Signed July 8, 1998. The Epilogue of the Bond Bill amended the original Aglands Preservation law and added a requirement to prioritize the creation of agricultural preservation districts and preservation easements near and adjacent to designated growth zones.

Senate Bill No. 193 – 139th General Assembly – Signed January 27, 1998. This legislation allowed district expansions to occur within three miles (instead of one mile) of an agricultural district.

Senate Bill No. 333 – 142nd General Assembly – Signed August 23, 2004. This legislation: (1) eliminated the requirement that any residences on farms enrolled in the Aglands Preservation Program must be for family or farm help and instead limited the number of residences to three, with no requirement on who could live in them; and (2) clarified or specified certain types of activities that are allowed on farms enrolled in the Program.

Senate Bill No. 121 w/SA 1 – 143rd General Assembly – Signed July 20, 2005. This legislation established the Forestland Preservation Program (Title 3, Chapter 9, Subchapter V). It also added the Chair of the Governor’s Council on Forestry to the Foundation Board.

Senate Bill No. 190 (FY06 Bond Bill) – 143rd General Assembly – Signed July 1, 2005. Added a member of the House, appointed by the Speaker, and a member of the Senate, appointed by the President Pro Tem, to the Foundation Board.

Senate Bill No. 229 – 143rd General Assembly – Signed July 20, 2005. Transfers \$10 million of the realty transfer tax receipts to the Delaware Farmland Preservation Fund on or before October 15 each year.

Senate Bill No. 117 – 146th General Assembly – Signed July 28, 2011. This legislation established the Young Farmers Loan Program (Title 3, Chapter 9, Subchapter VI).

Senate Bill No. 124 – 148th General Assembly – Signed February 3, 2016. This legislation added a 13th member to the Foundation Board; this individual must be actively involved in farming or an agribusiness.

Senate Bill No. 201 – 148th General Assembly – Signed May 11, 2016. This legislation clarified that private airstrips for non-commercial use are allowed on farms enrolled in the Aglands Preservation Program.

Senate Bill No. 260 – 148th General Assembly – Signed July 28, 2016. This legislation allowed certain agri-tourism activities, such as barn weddings, educational tours, and annual and semi-annual events, such as festivals, to occur on enrolled farms, with prior written permission from the Foundation Board.

Federal Legislation:

The Agricultural Lands Easement Program (“ALE”) authorized by the 2014 Farm Bill and administered by the United States Department of Agriculture Natural Resources Conservation Service (“NRCS”) provides federal matching funds to qualifying farmland preservation programs to purchase farmland preservation easements. Also see information in Fiscal Information Section.

PENDING LEGISLATION

There is no pending legislation at this time.

ADMINISTRATIVE PROCEDURES ACT COMPLIANCE

The Foundation promulgates rules and regulations. Current rules and regulations have been reviewed for compliance by Parkowski, Guerke, and Swayze.⁶

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⁶ See Appendix D for Regulations adopted November 18, 2015.

FREEDOM OF INFORMATION ACT (“FOIA”) COMPLIANCE

FOIA requests are handled by the Department’s FOIA coordinator. The coordinator processes and responds to requests in consultation with Foundation staff, the Department’s Deputy Attorney General, and Foundation legal counsel, if needed.

Since 2014, the Department received seven FOIA requests pertaining to the Foundation. Of those requests, four were fulfilled, one was fulfilled in part and withdrawn in part, one required additional information from the requestor that was not provided, and one request had no such records available.

The Foundation has never received a complaint that it violated FOIA.

The following information is available to the public without requiring a formal FOIA request.

Meeting agendas are posted at least seven full days prior to the meeting, both in the publicly-accessible lobby area of the Department of Agriculture at 2320 South DuPont Hwy., Dover, DE, and on the State’s public meeting calendar.

Meeting minutes are prepared after every meeting and are posted on the State’s public meeting calendar once they are approved by the Foundation Board. They are also available upon request from Delaware Department of Agriculture (“Department”).

The Foundation has gone into executive session during the past three calendar years; however, no action is taken during executive session.⁷ These instances included the review the landowner bids for easement purchases and to review Young Farmer loan applications, as these documents contain confidential financial information. There was also one executive session to review the confidential health records of an individual whose family was petitioning to have their agricultural preservation district terminated. Requests for minutes of executive sessions are handled through the Department of Agriculture’s standard FOIA request process and disclosure decisions are made on a case-by-case basis.

The Foundation publishes its current Situation Report in conjunction with each Foundation Board meeting that summarizes the number of statewide and county agricultural preservation districts and easements, including funding.⁸ The report also includes a summary of the Young Farmers Loan Program and the Forestland Preservation Program. These reports are provided upon request and published on the Delaware Department of Agriculture webpage: http://www.dda.delaware.gov/aglands/Aglands_news.shtml.

The list, by year and round of agricultural land preservation easements purchased is also available on the website and by request at: http://www.dda.delaware.gov/aglands/Indpres_prog.shtml.

This same page of the website includes an overview of the Aglands Program; as well as links to the various applications, the enabling statute, the rules and regulations, and an interactive, online statewide map (using Delaware FirstMap) that shows the locations of agricultural preservation districts, easements, Young Farmer Loan properties, and Forestland Preservation easements.

There is a page on the website for the Young Farmers Loan Program which contains the program information packet, including application forms, and the list of Young Farmer loans awarded: http://www.dda.delaware.gov/aglands/young_farmers.shtml.

⁷ Executive sessions occurred during the following meeting dates: 10/16/13, 11/20/13, 12/19/13, 1/15/14, 4/16/14, 12/10/14, 4/14/15, and 5/18/16.

⁸ The Foundation Board typically meets each month.

Interest Groups (Groups affected by agency actions or represent others served by or affected by agency actions)		
Group or Association Name/Contact Person	Address	Phone Number Fax Number Internet Address
Delaware Farm Bureau Contact: Pam Bakerian, Executive Director	3457 S. DuPont Highway Camden, DE 19934	302-697-3183 pam.bakerian@defb.org
Delaware State Grange Contact: William (Chip) Narvel, Jr., Secretary	911 S. Governors Avenue Dover, DE 19904	302-734-4653
The Nature Conservancy – Delaware Chapter Richard I.G. Jones, Jr. - Director	100 West 10 th Street Suite 1107 Wilmington, DE 19801	302-654-4707 Ext. 426 Richard.jones@tnc.org
Delaware Nature Society Contact: Brenna Goggin – Director of Advocacy	P.O. Box 700 Hockessin, DE 19707	302-239-2334 Ext. 132 brenna@delnature.org
League of Women Voters of Delaware Contact: Peggy Schultz, Land Use and Transportation Chair	2400 W. 17 th Street, Clash Wing Room 1, Lower Level Wilmington, DE 19806	302-255-7182 schultz_peggy@yahoo.com

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National Organizations or other Government Entities (that serve as an information clearinghouse or regularly interact with the agency)		
Group or Association Name/Contact Person	Address	Phone Number Fax Number Internet Address
USDA Natural Resources Conservation Service – Delaware Office Contact: Paul Petrichenko, Asst. State Conservationist - Programs	USDA NRCS 1221 College Park Drive Suite 100 Dover, DE 19904	302-678-4180 paul.petrichenko@de.usda.gov
American Farmland Trust (AFT) Contact: Jim Baird, Mid-Atlantic Director	1150 Connecticut Ave, NW Suite 600 Washington, DC 20036	202-378-1235 jbaird@farmland.org
Kent County Levy Court Contact: Sarah Keifer, Director, Dept. of Planning Services	555 Bay Road Dover, DE 19901	302-744-2471 302-736-2128 (fax) Sarah.Keifer@co.kent.de.us
Sussex County Contact: Todd Lawson, Administrator	Sussex County Administrative Office Building, 1 st Floor 2 The Circle P.O. Box 589 Georgetown, DE 19947	302-855-7742 302-855-7749 (fax) tlawson@sussexcountyde.gov
New Castle County Contact: Matthew Meyer, County Executive	New Castle County Government Center 87 Read's Way New Castle, DE 19720	302-395-5102 302-395-5268 (fax)
Ducks Unlimited Contact: Jacob McPherson, Regional Biologist – MD, DE, WV	114 South Washington Street Suite 104 Easton, MD 21601	410-690-7346 jmcperson@ducks.org
DelDOT Contact: Rosemary Richardson Statewide Acquisition & Relocation Manager	DelDOT 800 Bay Road P.O. Box 778 Dover, DE 19903	302-760-2231 rosemary.richardson@state.de.us

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FISCAL INFORMATION

Fiscal Year	Source(s)of Funds	Amount \$\$
FY17 (budgeted)*	Special Funds	
	Aglands Preservation Fund (Bond Bill)	\$2,500,000
	Department’s Pesticides Section ⁹	\$275,000
	Property Rollback Taxes ¹⁰	\$168,808
	County funds (farmland preservation) ¹¹	\$116,127
	Young Farmer Loan Repayment	\$23,727
	Property Lease (Wilson Farm) ¹²	\$12,155
	License Plate Income ¹³	\$5,500
	Interest Income	\$3,445
	TOTAL: \$3,104,762	
FY16 (actual)	Special Funds	
	Aglands Preservation Fund (Bond Bill)	\$3,000,000
	Department’s Pesticides Section	\$294,000
	Property Rollback Taxes	\$120,915
	County funds (farmland preservation)	\$146,432
	Sussex County payment – Wilson Farm ¹⁴	\$66,010
	Young Farmer Loan Repayment	\$23,727
	Property Lease (Wilson Farm)	\$12,155
	License Plate Income	\$6,580
	Interest Income	\$3,445
Donations	\$2,000	
	TOTAL: \$3,675,264	
FY15 (actual)	Special Funds	
	Aglands Preservation Fund (Bond Bill)	\$2,000,000
	Property Rollback Taxes	\$63,941
	Ducks Unlimited Funds ¹⁵	\$135,255
	County funds (farmland preservation)	\$95,526
	Young Farmer Loan Repayment	\$23,727
	Property Lease (Wilson Farm)	\$11,576
	License Plate Income	\$5,145
	Interest Income	\$1,501
Federal Funds	\$4,847,270	
	TOTAL \$7,183,941	

Federal Funds:

⁹ While the FSF Budgetary reports for FY16 show a combined spending authority of \$508,800 in ASF, the FY16 Bond Bill Epilogue directed the Foundation to utilize ASF from the Department’s Pesticides Section for the Foundation’s operating expenses. The FY17 Bond Bill Epilogue contained the same provision; staff hope to use only \$275,000 of Pesticides funds for the Foundation’s operating expenses. Revenue is shown as it is received, so receivables are counted in the fiscal year in which they are actually paid.

¹⁰ Expected receipts of rollback tax income as of June 30, 2016, is included in the budgeted revenue for FY17.

¹¹ County funds are those received from the counties to assist with the purchase of preservation easements within those counties.

¹² The Foundation was willed a 47-acre farm, the Wilson Farm, located between Lewes and Rehoboth in 2004. The cropland is leased to a farmer and the rental income is placed into the Wilson Farm account specifically for the maintenance and improvement of the farm.

¹³ The Foundation receives the fees for the purchase of the Agricultural Farmland Preservation license plates.

¹⁴ Sussex County purchased a permanent easement on the Wilson Farm in FY16 to expand their adjoining sewer pump station. These funds were deposited into the Wilson Farm account.

¹⁵ Ducks Unlimited provided funding, through a North American Wetlands Conservation Act (“NAWCA”) grant they received from the U.S. Fish and Wildlife Service, to assist with the purchase of preservation easements on farms that had forested wetlands.

In FY14, the Foundation received \$4,847,270 of matching federal funds from the USDA National Resources Conservation Service (NRCS) Farm and Ranch Lands Protection Program (“FRPP”). These funds assisted with the purchase of five qualifying easements in Round 17 and 23 easements in Round 18 (FY13 and FY14 purchases) and provided up to 50% of the federal easement value for each farm. Landowner donation can count as part of the State’s 50% match; however, the federal program will not pay more than 75% of the actual purchase price. The State must pay at least 25% of the easement purchase price even if the landowner discounted more than 50% from the appraised value. Note that these funds were not available for all easement purchases, only those that met the federal criteria.

FRPP was eliminated by the 2014 Farm Bill and the Delaware Aglands Program has not received any funding from the new USDA easement program – the Agricultural Land Easement (ALE) program. The Foundation continues to negotiate with USDA NRCS to try to reach mutually agreeable conservation easement deed terms. Two major issues must be satisfied for the Foundation to receive federal funding:

- Subdivision into smaller farms - Currently ACEP/ALE provides three options for dividing a preserved farm into smaller farms: (1) none; (2) identify future subdivisions at the time of easement settlement, which is virtually impossible; or (3) subdivide in the future as long as the resulting parcels are not smaller than the median-sized farm for that county based on USDA’s latest Ag Census.¹⁶ The Foundation has multiple instances where an owner wants to subdivide 15-20 acres, such as to a child or other relative, for a poultry operation; this is not possible with current terms. The Foundation argued that as long as the resulting subdivisions meet the entity's (State's) definition of a farm, subdivision should be allowed. Delaware uses the definition of Delaware’s Farmland Assessment Act, which is 10 acres, although the Farmland Assessment Act allows smaller farms if they generate at least \$10,000 annually in agricultural sales, such as a poultry farm, vineyard, etc. As of February 7, 2017 NRCS agreed to allow Delaware’s terms in the conversation easement deed regarding subdivision.
- Eminent Domain/State Sovereignty – ACEP/ALE states that NRCS has to approve or disapprove a state's eminent domain (condemnation) requests. It is unclear whether NRCS would deny such a request; however, they do have the ability. The Foundation does not support the USDA NRCS, or any other entity, to have the ability to prohibit the State from using its right of eminent domain.
- Currently, some of the provisions in the federal conservation easement deed conflict with Delaware’s easement terms. Prior to the 2014 Farm Bill, Delaware received over \$49 million of federal funds between 1997 and 2014 through FRPP to assist with the purchase of 302 easements. As previously noted, the 2014 Farm Bill eliminated FRPP and replaced it with ALE.

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¹⁶ The median-sized farm in Delaware is currently 25 acres in New Castle County, 37 acres in Sussex, and 40 acres in Kent

Actual (FY15, FY16) and Budgeted (FY17) Expenditures:

Fiscal Year	Source(s)	Amount \$\$
FY17 (budgeted)	Special Funds	\$3,376,976
		TOTAL \$3,376,900
FY16 (actual)	Special Funds	\$1,682,016
		TOTAL \$1,682,016
FY15 (actual)	Special Funds Federal Funds	\$6,636,843 \$4,847,270
		TOTAL \$11,484,113

FY17 Budgeted Expenses:

Line Item	Source(s)	Amount of Expenditures
Easement purchases and associated closing costs and survey fee	Special Fund – Bond Bill	\$2,866,000
Easement Appraisals	Special Fund – Bond Bill	\$165,000
Easement Options and Negotiations	Special Fund – Bond Bill	\$65,000
Legal Fees (not related to easement purchases – i.e., district agreements, district modifications, ownership changes, etc.)	Special Fund – Pesticides Appropriated Special Funds (“ASF”)	\$130,000
Salaries & OECs (Accounting Specialist & Management Analyst)	Special Fund – Pesticides ASF	\$107,700
Financial Statement Preparation and Annual Financial Audit	Special Fund – Pesticides ASF	\$37,500
Insurance	Special Fund – Pesticides ASF	\$5,500
Supplies	Special Fund – Pesticides ASF	\$200
		TOTAL \$3,376,900

The significant impacts to the Foundation’s budget over the past three years are:

- Not receiving the full \$10 million of state funding to purchase easements.¹⁷
- Not receiving any USDA NRCS federal funds to purchase easements since 2014.
- Using Department’s Pesticides Section ASF for operating expenses.

¹⁷ FY13 was the last year that the Foundation received \$10 million in state funding.

The reduction in state funding for easement purchases over the past three years coupled with the loss of federal funds since 2014, significantly reduced the number of easements that the Aglands Program was able to purchase over the past three years. Additionally, having to utilize Department’s Pesticides Section funds for operating expenses is a burden for the Pesticides program.

AUDITS

The State Auditor of Accounts conducts an audit of the Foundation’s financial records annually through an outside accounting and audit firm. The most recently completed audit (FY15) had the following finding:

The Foundation’s FY15 financial statements neglected to address the Foundation’s adoption of Government Accounting Standards Board (“GASB”) Statement No. 68 “Accounting and Financial Reporting for Pensions” and GASB Statement No. 71 “Pension Transition for Contributions Made Subsequent to the Measurement Date.”

The Foundation staff was not aware of the requirement to implement GASB Nos. 68 and 71 into the financial statements, since all staff are state employees; however, staff will meet quarterly with the Department’s Controller to discuss accounting procedures.¹⁸

The Foundation’s FY16 Audit revealed no findings.

ACCOMPLISHMENTS

- Of the 250,000 acre goal, the Foundation has acquired permanent preservation easements on 825 farms totaling over 118,000 acres. Total cost of easements is \$211 million with a total donation (discount) by landowners of over \$273 million.
- Twenty eight Young Farmer loans settled since 2011 totaling \$6.3 million, which helped young farmers purchase over 2,200 acres. These farms are also permanently preserved.
- Nearly 300 farms totaling 54,000 acres enrolled in 10-year agricultural preservation districts.
- Nine Forestland Preservation easements totaling 872 acres. This program was funded for only one year but still exists.

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¹⁸ Analyst Note: FY15 Audit and Financial Statement is available upon request.

CHALLENGES

- Lack of consistent state funding. Legislation passed in 2005 directs \$10 million of realty transfer funds to the Aglands Preservation Program annually; however, due to recent state budget constraints, this amount has been reduced.
- Reduced or eliminated federal funding. As mentioned previously, Delaware’s Aglands Preservation Program received over \$49 million of USDA matching funds for farmland preservation between 1997 and 2014. Since passage of the 2014 federal Farm Bill, the Program has not received any funds due to federal easement deed requirements that conflict with the state’s easement terms. Staff continue negotiations with USDA NRCS to resolve this issue. Staff and legal counsel are also negotiating with the U.S. Department of Defense to use Readiness and Environmental Protection Integration (“REPI”) funds to assist with the purchase of easements that are near military facilities.
- Reduced landowner participation. Landowner participation in the program, such as, landowners enrolling their lands into the ten-year district agreements, has decreased over the past year; we believe this is primarily due to the reduced funding.

OPPORTUNITIES FOR IMPROVEMENT

- Full state funding of \$10 million would enable the Foundation to reduce the backlog of over 250 landowners who wish to voluntarily sell their preservation easements. It would also provide additional opportunities to receive matching funds from other organizations.
- Opportunity to receive matching federal funds for easement purchases. As mentioned previously, staff continue to negotiate with USDA NRCS to attempt to reach mutually agreeable conservation easement deed language so that the Aglands Program can receive ALE federal funds.
- Consider reducing the initial period for agricultural preservation districts from 10 years to 5 years; this may increase landowner participation. Landowners must enroll their farm into an agricultural preservation district before they are eligible to sell their development rights. Some owners have stated that the initial 10-year commitment, with no monetary compensation, is too long.
- Consider eliminating the clause that allows landowners to apply to buy back their farm development rights at least 25 years after the Foundation purchases the easement. The landowner has to prove that they can no longer profitably farm the property and pay to the Foundation the farm’s current development rights value, which would be the current fair market value at the highest-valued development zoning category, less any farm value. The ultimate decision to terminate is the Foundation’s. There has been some discussion if this provision is needed, if it were changed, it would not apply to easements acquired previously, only newly acquired easements. Elimination of this clause would require legislative approval for any preservation easement termination.
- Provide state funding to the Forestland Preservation Program. The Program was funded for one year, FY08. State funding may also provide opportunities for matching funds from other organizations.

ADDITIONAL COMMENT FROM THE COMMITTEE’S ANALYST

As part of the Technical Corrections Bill research, an error was pointed out in 3 *Del C.* § 945. The Code reference is a mistake and should be 909(a)(4) a and b. This technical correction will be added to recommendations for the Committee to vote on.

APPENDIX A



SPONSOR: Sen. Walsh & Rep. Bolden
Sens. Hansen, Sokola, Pettyjohn, Richardson; Reps.
Bennett, Brady, Dukes, Spiegelman

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 74

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO THE DELAWARE AGRICULTURAL
LANDS PRESERVATION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 903, Title 3 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 903. Delaware Agricultural Lands Preservation Foundation.

4 (h) A Trustee may be removed by the Trustee's appointing authority at any time for gross inefficiency, neglect of
5 duty, malfeasance, misfeasance, or nonfeasance in office.

6 (1) A Trustee is deemed in neglect of duty if the Trustee is absent from 3 consecutive Foundation meetings
7 without good cause or attends less than 50% of Foundation meetings in a calendar year.

8 (2) A Trustee who is deemed in neglect of duty is considered to have resigned and, upon appointment of a
9 successor, is no longer a Trustee.

10 Section 2. Amend § 917, Title 3 of the Delaware Code by making deletions as shown by strike through and
11 insertions as shown by underline as follows:

12 § 917. Termination of easement.

13 (b) Request for review. — ~~At any time after 25 years from the date of acquisition of a preservation easement~~ For a
14 preservation easement acquired before [the date of enactment of this Act], the owner may, any time after 25 years from
15 the date of acquisition of the easement, request that the easement be reviewed for possible termination of the easement.
16 Section 917 of this title does not apply to preservation easements acquired after [the date of enactment of this Act].
17 Preservation easements acquired after [the date of enactment of this Act] may not be terminated under § 917 of this title.

18 Section 3. Amend § 945, Title 3 of the Delaware Code by making deletions as shown by strike through and
19 insertions as shown by underline as follows:

20 § 945. Loan requirements and approval.

21 (a) The following requirements and conditions ~~shall~~ apply to loans provided by the Foundation:

22 (5) Loans ~~shall be~~ are limited to the purchase of farmland and farmland improvements only. Portions of the
23 property subject to purchase which are used or proposed for use for residential purposes ~~shall not be~~ are not eligible for
24 loans, provided further nonetheless, that those lands used or intended for use for residential purposes ~~shall be~~ are
25 subject to the limitations set forth in ~~§ 904(a)(4)a. and b. [sic]~~ § 909(a)(4)a. and b. of this title.

SYNOPSIS

This Act fulfills recommendations made by the Joint Legislative Oversight and Sunset Committee. First, this Act adds language to establish the circumstances under which Trustees of the Delaware Agricultural Lands Preservation Foundation may be removed, using language standard to boards and commissions in this State. Second, this Act limits review of a preservation easement after 25 years of the easement's acquisition to only easements that were acquired before the enactment of this Act. Preservation easements acquired after the enactment of this Act are not subject to termination under § 917 of Title 3. Third, this Act corrects an internal reference, and makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator John Walsh



SPONSOR: Sen. Walsh

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE AMENDMENT NO. 1
TO
SENATE BILL NO. 74

1. AMEND Senate Bill No. 74 by deleting lines 10 through 17 in their entirety.

SYNOPSIS

This Amendment removes the changes made to § 917 of Title 3 regarding the termination of preservation easements.

Author: Sen. John Walsh