



DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION

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1. Transfers of Properties.

District Agreements and Easements set forth requirements for Residential Use of the property and when the property is conveyed to a new owner, in whole or in part, it is required that the Seller and Buyer sign an Acknowledgement indicating the current level of residential use (both number of residences and acreage) that is being transferred and possibly retained. The Acknowledgements are prepared by the Foundations legal counsel based on information provided by the involved landowners or their legal counsel. For the Foundation's legal counsel to review the request for the Acknowledgement document and the District Agreement/Easement file, it is necessary that the request for the Acknowledgement and copy of the proposed Deed be made at least two (2) weeks before the settlement date. Although the existence of District Agreement/Easement shows up in title searches conducted by Buyer's attorneys, it would be helpful if Sellers would remind Buyers that there is an Acknowledgment requirement that needs to be satisfied at settlement and the Buyer's attorneys should be reminded of the requirement. Failure to provide the two (2) weeks advance notice, and a copy of the proposed Deed, could lead to delays in the settlements.

2. Timeframe for Preservation Easement Purchases.

Following the bidding process for Preservation Easement purchases and the announcement of successful bidders there are a few steps that need to be taken before settlement can be scheduled. The first step is for the awarding of survey contracts for the selected farms, since easement payments are based on survey acreage for the category of appraisal property. Because there are a limited number of surveyors who bid on the selected properties, the surveys are scheduled over an extended period, but usually with the longest being less than nine (9) months. There is also a title search required, and if there is current financing on the property a subordination needs to be obtained from lenders. As a general matter Easement purchase closing can be completed within one (1) year of the date of the announcement of successful bidders. There are a limited number of delays which sometimes occur because of title defects, boundary issues, lender refusal to provide subordinations (or providing requirements for approval), and coordination requirements involving federal funding. Although there can be delays, the great majority of Easement purchases are completed within the timeframe indicated.

3. Residential Use–District Agreement/Easements vs. Planning & Zoning Requirements.

Under District Agreement/Easement residential use is limited to one (1) acre for every twenty (20) acres of farmland, with no more than three (3) locations, with the excess acreage over each twenty (20) acres rounded down. The District Agreement/Easement residential use does not supersede County Planning and Zoning requirements, DNREC site limitations or DeIDOT highway entrance requirements. For Ag Preservation purposes, if there are less than sixty (60) acres and the residential use is limited to two (2) acres or less, there would still be three (3) locations for the residential use which could be allocated in any manner desired by the landowner, as long as the residence could fit on the designated residential lot. However, the number of new residences would be subject to the referenced County Planning and Zoning, DNREC and DeIDOT requirements.

If there is a desire to designate or change the allotted residential acreage or locations, a review time for Ag Preservation approval of approximately four (4) weeks would be involved.

4. Residential Use—Transition from the prior standard to the current standard.

Prior to August 23, 2004, District Agreements and Preservation Easements limited the residential use of covered property to the landowners, relatives of the landowner and permanent and seasonal farm labor services. Such provision was subject to amendment so that a conversion of the prior District Agreements and Preservation Easements can be made and the property in a District Agreement or Preservation Easement can then be conveyed to anyone. To make the change it is necessary to allow approximately six (6) weeks for review and approval.

5. Interpretations.

For any interpretations of the requirements of District Agreements and Preservation Easements, allow for two (2) weeks from the date of written submission of the question to the Foundation staff.

It is recognized that you have participated in the Ag Preservation program on a voluntary basis, and to the extent it is possible given the program's limited resources, every effort will be made to address your needs and the needs of the program as soon and effectively as possible. To the extent that timeframes are frequently involved, timely requests for assistance in dealing with program requirements would be helpful.