

WASHINGTON COUNTY AGRICULTURAL LAND PRESERVATION PROGRAM

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<https://www.washingtoncopa.gov/planning/farmland-preservation>

Frequently Asked Questions

What is an agricultural conservation easement?

An agricultural conservation easement is the property owner's right to prevent the development or improvement of the land for any purpose other than agricultural production. It is a legally binding contract that runs with the land. By selling the "development rights", it prevents that land from ever being developed.

What is an Agricultural Security Area?

Authorized through PA Act 43, P.L. 128, No. 43, the Agricultural Security Area Law, as amended. ASAs are legally recorded areas whose members receive special consideration regarding local ordinances affecting normal farming practices, state agency rules and regulations, and in eminent domain condemnation proceedings. Members are eligible to sell their development rights to the County and/or State through the agricultural conservation easement program. The ASA is a voluntary, non-restrictive land use program to strengthen agricultural communities and provide limited protection against nuisance suits and condemnation hearings.

The ASA is administered at the township level and proposals to join should be sent to your township office by certified mail, return receipt requested. ASAs are formed by local municipalities when individual landowners jointly agree to place at least 250 acres of their land in such an area.

ASAs provide three main benefits to landowners:

- Local municipalities may not impose on an ASA member a nuisance ordinance that would interfere with normal farming activities.
- Use of eminent domain to condemn farmland for projects such as schools or highways is restricted in an ASA.
- If the ASA is composed of at least 500 contiguous acres, landowners may be able to acquire greater protection from development by applying to sell an agricultural conservation easement, or their developmental rights, to the Commonwealth of Pennsylvania and/or the County of Washington.

Who is eligible to apply for an agricultural conservation easement?

Applicants interested in having their farms considered by the Board for agricultural conservation easement purchase must provide information verifying that their farm property meets the state and county minimum criteria. In Washington County, the farmland tract must:

1. Be enrolled in an Agricultural Security Area consisting of 500 acres or more.
2. Be at least 50 contiguous acres; or 10 contiguous acres and utilized for a crop unique to the area; or 10 contiguous acres and adjoins another farm that is subject to an agricultural conservation easement.
3. Contain at least 50% harvested cropland, pasture, or grazing.
4. Contain at least 50% soils available for ag production and of Land Capability Classes I-IV as defined by the USDA- NRCS.
5. Have a current conservation plan.
6. The entire parcel as identified on the county assessment maps must be submitted for easement purchase. The landowner may exclude up to five (5) acres for future home sites. The five (5) acre exclusion is a one-time only exclusion and must be noted when making application to the program.
7. Enrollment is voluntary and requires permission by all the owners of record of the farmland tract, as well as your lender.

Priorities for purchasing agricultural conservation easements are determined by the County and State Boards, but programs must consider the following: quality of farmland, the likelihood of conversion within the next 20 years, proximity to preserved farmland tracts, stewardship of the land, and fair, equitable, objective, and non-discriminatory procedures.

Who determines the value of an agricultural conservation easement?

State-certified general real estate appraisers are retained by the county land preservation board to estimate the conservation easement value of the subject property. The conservation easement value is the difference between the unrestricted Market Value of the property and the Farmland or restricted Value of the property. The appraisal of the market value and farmland value is based on an analysis of comparable sales. A farmer who disagrees with the appraised value has the right to retain, at applicants' expense, an independent State-certified general real estate appraiser to determine the easement value. The appraiser must be qualified, and the appraisal shall be completed in accordance with the procedure in the county program policies and bylaws. Differences between the two appraisals are recalculated according to a state formula worksheet which will allow the County Board to offer a second easement purchase offer, or the original offer. **Washington County cap is set at \$3,000 per acre.**

If the appraised value is greater than \$3,000 per acre, the difference may be considered a charitable contribution to the program, which may be eligible for a tax credit (landowners are strongly encouraged to speak with an accountant or tax advisor.) However, donations of entire easements are always accepted.

Must I apply every year?

Yes. With the initial application, a one-time fee of \$50.00 is due, payable to Washington County. If a landowner decides to reapply in future application cycles, the fee is waived if the parcel/s submitted are the same as the initial application. Applications are accepted annually January 2 – September 30.

Can acreage be withheld from the easement?

Yes. The entire tax parcel as identified on the county tax assessment maps must be submitted for easement, however the landowner may exclude up to, but no more than, five (5) acres from the easement to provide for future home sites. This is a one-time only exclusion and must be noted when making application to the program. The property owner is required to have the excluded acres surveyed and defined off the farm tract with a separate legal description prior to the purchase of the easement. This permitted exclusion will not be included in the easement purchase. Landowners are strongly encouraged to ensure acre exclusion perks, because there is no way to modify excluded area once preserved.

How long are agricultural conservation easements?

In Pennsylvania, agricultural conservation easements are held in perpetuity. They run with the land.

How are farms chosen?

Farms are ranked using a two-part Land Evaluation Site Assessment (LESA) System. The LESA ranking process has four different categories that are considered when ranking a farm: soils, farmland potential, development potential, and clustering potential. The farms with the highest scores are selected for easement purchase, thus, easement selection is made without bias, discrimination, or political ties.

Do I need a conservation plan?

All farms are required to develop and implement a written conservation plan. A conservation plan is a written plan that identifies conservation practices and includes site specific Best Management Practices (BMPs). The conservation plan may need updated when there is a change in production. A change in production includes a new operator, or a change in the operation. For example, the addition of livestock to the farm, or a change in management practices on the farm such as transitioning to organic from a no-till system, and so forth.

What payment methods are available? Landowners are strongly encouraged to consult with a tax attorney or financial advisor prior to signing the Agreement of Sale. Landowners may elect to receive payment for the easement in lump sum, short-term installment, long-term installment, or like-kind exchange.

How long does it take to preserve a farm?

The estimated time to preserve a farm is approximately 18-24 months. This estimation depends greatly on the landowner's ability to clear their third-party mineral rights. To ensure that the surface is not disturbed by surface mining, the landowner is required to conduct a search of all coal ownership affecting the proposed eased property. The applicant is responsible for identifying third party mineral owners (generally deep coal) and procuring documents that state the third-party mineral right owner/s have no right to disturb the surface in extracting those minerals.

What are the farmer's rights after selling the conservation easement?

The right to develop, or prevent development, is only one of the many rights in a property owner's "bundle of right's". Some of the rights in the bundle are the right to sell, lease, mortgage, leave to heirs, mineral rights, air, and surface right's, etc. After selling a conservation easement, the landowner retains ownership of the farm and all other rights of ownership, however, the farm must continue to be used for commercial agricultural production. The landowner also is permitted to construct one additional residential structure for himself, an immediate family member, or an employee of the farm. Note with the adoption of Act 33 of 2019, landowners may subdivide off an existing house located on a preserved farm. However, this removal of a house, which predates preservation, is in lieu of subdividing for the construction of the additional residential structure granted by the conservation easement.

Selling the conservation easement would not prevent the construction of buildings for agricultural purposes. Note all Township Ordinances regarding building and construction must be followed. Customary part-time and off-season rural enterprises may not be affected. In addition, coal (by underground mining methods), oil, and gas exploration, as well as, granting rights-of-way for utilities or transporting coal (for underground mining methods), oil, and gas would be unaffected by the easement sale. Granting a private right-of-way is strictly prohibited.

Who will ensure that the deed restrictions are maintained?

The County Board has the primary responsibility of ensuring that the easement restrictions are maintained. Inspections are required every year on State and County funded easements. Inspections are conducted by County Agricultural Land Preservation Staff. Landowners will be notified by certified mail prior to an inspection visit. The State has the option of conducting additional inspections of easements if a violation is suspected. The County must complete an inspection report for each farm inspected, which is submitted to the landowner and the state, as well as a year-end report.

Do I have to pay taxes on the easement funds?

Yes. The easement money received will be viewed as income by the IRS and capital gains tax must be declared for the year due. Landowners are strongly encouraged to seek tax advice from an accountant or legal counsel to determine tax liability.