

Berkeley County Farmland Protection Board

Frequently Asked Questions

These are some of the most frequent questions we receive, both from prospective applicants and owners of land protected by a conservation easement.

Why should I even consider putting my property into a conservation easement?

The short answer is that the program is voluntary and you'd only place your property into an easement if you have a good reason. What we often hear from other property owners is that they wish to keep their ancestor's land together, prevent children or future owners from subdividing the farm, or because the payment for the conservation easement helps with their finances.

Are easements forever or do they expire when I sell the property?

A conservation easement under West Virginia Law (and US IRS regulations) must be perpetual. They run with the land forever.

Can I continue to build on my land with an easement?

It depends upon the specific terms and conditions of the easement. Nearly all easements have a 2.0-acre residential envelope around an existing residence (or planned for a future residence) and within this area you may continue to build residential structures, up to a specific impervious surface area cap. Agricultural structures may also be built (again, up to a specific impervious surface area cap) and their location depends upon whether a farmstead area is noted on the survey associated with the easement. Some recent, locally-held easements permit agricultural structures anywhere on the easement. In general, the overall impervious surface area cap is 2% of the total easement area.

Can I sell my property once the easement is in effect?

Yes. When an easement goes into effect, the property owner still owns the land and is free to convey it by any means. The Farmland Protection Board (and any other named co-holders or entities with third-party interests) only own the subdivision/development rights on the property.

I'd like to give my children a place to build – can I do that once the easement is in effect?

It depends upon whether a retained development right and/or areas exempt from the easement were created and surveyed prior to the easement taking effect. If no such areas were previously created, you may not subdivide the easement property.

Can I buy the easement back?

No. Under both West Virginia Law and US IRS regulations, easements are perpetual. They may only be voided by judicial action and then, only for government condemnations.

How long does it take to place property into a conservation easement?

It depends upon whether the Farmland Protection Board is seeking matching federal funds (usually from the NRCS/USDA). It can take several years to close an easement with federal funds. If only local funds are used it generally takes 12 months.

I've heard of 30-year conservation easements – are these legal in West Virginia?

They are not. Some states allow for time-specific easements (Maryland is one of them). Under West Virginia law all conservation and preservation easements must be perpetual.

Can my easement be changed?

Under both West Virginia law and US IRS regulations, an easement may be changed or modified for very specific reasons: (1) to correct a defect or mistake in the original easement, or (2) to substantially strengthen the easement (for example, to merge more land into the easement). No other reason is valid or legal.

How is an easement valued? How much will I be paid?

Easements are valued using a restricted use appraisal. This industry-accepted appraisal returns two values – the current fair market value and the current restricted use value. The former is the value of your property to a willing buyer at competitive market prices while the latter is the value of your land if it were already encumbered by a perpetual easement. The difference between these two amounts is the development value and that is the value of the conservation easement. Under West Virginia law, the board must pay the *lower* of either the asking price or the appraised value of the easement.

Why didn't my farm appraise for more?

There can be many reasons why a property doesn't appraise higher (in terms of fair market value). Limited road frontage, a narrow pipestem access, or being substantially in a flood plain will all lower the market value of land. Often, folks equate a high-valued small lot in the neighborhood with their land. For example, figuring that an \$80,000 acre 2-acre lot nearby makes a 100 acre farm worth \$4,000,000. Land prices don't work that way. Smaller lots are more desirable and thus bear higher market values. Larger parcels can cost a developer millions to fully develop into a subdivision, so they are willing to only pay so much for a large tract.