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Frequently Asked Questions about the Farmland Protection Program and Conservation Easements

Many landowners in the community are interested to understand how a conservation easement works and if it is right for their farm. The information below is intended to address common questions.

Donating or selling development rights to land requires careful planning and consideration. It often takes years from the initial conversations between a landowner and the Farmland Protection Board before a conservation easement is executed. Landowners considering a perpetual commitment of their land should take the time they need to consult with family members and legal and financial advisors before taking the steps to apply to the Farmland Protection Program.

Our Mission

The mission of the Jefferson County Farmland Protection Board (Board) is to protect productive farmland for future generations in order to maintain the long-term viability of agriculture in Jefferson County in accordance with West Virginia State Code §8A-12-1 et seq.

We accomplish our work through holding purchased and donated conservation easements, collaborating with like-minded organizations, and providing community outreach and education to raise awareness about farmland protection.

As of April 2023, the Jefferson County Farmland Protection Board has helped 56 landowners protect 6,540 acres of farmland.

What is an agricultural conservation easement? A Deed of Conservation Easement is a voluntary legal agreement between a landowner and a land trust or county farmland protection board that permanently retires the development rights on a property in order to protect the scenic and natural features of the land. The landowner sells or donates the easement and retains the title to the property and the right to farm it, subject to certain, specific restrictions that prohibit future real estate development or commercial or industrial use.

The goal of an agricultural conservation easement is to maintain agricultural land in active production by removing the development pressures from the land. Such an easement prohibits practices which would damage or interfere with the agricultural use of the land. Because the

easement is a restriction on the deed of the property, the easement remains in effect when the land changes ownership.

How are agricultural conservation easements different from other types of conservation easements? Agricultural conservation easements are created specifically to support agriculture and prevent development on the protected property. While other benefits may exist because the land is not developed (scenic and habitat values, for example), the primary use of the land is agricultural. Easements funded by the Board must be of a size and nature suitable for viable commercial agriculture.

Why should I consider putting my property into a conservation easement? Landowners can use easements to help reach important goals. The most common reasons are to keep their family land intact, to prevent future owners from subdividing the property, or to use the payment for the conservation easement to meet financial goals.

How can a landowner place an agricultural conservation easement on his or her property? The landowner would make an application to the Farmland Protection Board) which evaluates the property's characteristics such as size, soil quality and agricultural viability. If the property qualifies, the Board will negotiate terms with the landowner, including price (unless the easement is to be donated) and restrictions. The initial application must be accompanied by a Restricted Use Report prepared by a qualified certified general appraiser.

Who else besides the Farmland Protection Board is involved with the easement? If you are seeking the full value of the easement, the Board may apply for matching funds from other partners. Federal partners are the Natural Resources Conservation Service (NRCS) and the American Battlefield Protection (ABPP). The West Virginia Agricultural Land Protection Authority also offers matching funds. Landowners may consider an easement with other organizations such as the Potomac Conservancy, the Nature Conservancy, and the Land Trust of the Eastern Panhandle. These organizations typically accept donations of easements.

What is the difference between easements with NRCS and ABPP? NRCS easements, called Agricultural Land Easements, focus on protecting productive agricultural land as well as natural resources such as water, woodland, and wildlife. NRCS easements permit construction of agricultural buildings in identified areas, building of ponds, and other activities that enhance farm operations.

ABPP easements are focused on protecting the landscape and the integrity of the land in Jefferson County's five Civil War battlefield areas. Because ABPP easements prohibit any structures or ground disturbance, they are most appropriate for tracts of land that will remain undeveloped as pasture, cropland, or woodland.

How does the process work? Land is eligible for the Farmland Protection Program if it meets the Board's minimum eligibility criteria (at least 20 acres and at least 50% qualifying soils), qualifies for farm use tax assessment, and has a Conservation Plan through NRCS. Our scoring sheet is available on the Board's website or office. An applicant must provide a **restricted use appraisal** with the application (the applicant pays for this initial appraisal).

The Board is responsible for approving applications to the Farmland Protection Program. The Board reviews and approve applications, and then forwards them to federal funding partners, if applicable. A final funding offer is sent to applicants when the JCFPB and the agency with matching funds agree to jointly fund the application. The County Commission must approve the purchase prior to the completion of the easement.

How long does it take to place property into a conservation easement? There are several stages:

1. You must apply to the program, and your property is ranked in comparison to other applications in the same funding cycle. Because funding is limited, only the highest-ranked applications will be considered. Selections are usually made in late October or early November.
2. If you are accepted, and you seek full funding, the Farmland Protection Board will apply for matching federal funds (usually from the NRCS, or from the ABPP.) The NRCS and ABPP may take 6 months to announce their funding decisions. It can take several years to close an easement with federal funds. If only local funds are used it generally takes 12 months.

How is the program funded? Currently the program in Jefferson County is funded through the county's real estate transfer tax. These funds can be matched by the Natural Resources Conservation Service (NRCS), the American Battlefield Protection Program (ABPP) and occasionally other conservation organizations.

How is an easement valued? How much will I be paid? Easements are valued using a restricted use appraisal prepared by a state certified general appraiser. This industry-accepted appraisal establishes 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 as if encumbered by a perpetual easement. The difference between these two amounts is the development value and that is the value of the conservation easement. Once a value has been determined and agreed upon, and an application has been approved, the sale can proceed.

Under West Virginia law, the Board cannot pay more than the appraised value of the easement. It important to remember that **the sale of the easement is subject to federal and state taxes.** The

tax rate depends on your income and other factors, and it is important to consult with your financial advisor to understand your financial options.

If the landowner **donates** all or part of the value of the easement, and wishes to deduct the donation, the IRS requires an appraisal to IRS standards to be made within 60 days (before or after) of closing. Make sure the appraiser knows this appraisal is for the IRS and that the appraiser completes and signs the IRS forms. The NRCS will NOT accept an appraisal done to IRS specifications and vice-versa, even though much of the information is similar.

What are the requirements for appraisals? The value of a conservation easement is established through two independent appraisals.

The Board and NRCS and ABPP require appraisals to Uniform Appraisal Standards for Federal Land Acquisition (UASFLA or “Yellow Book”) for compliance with our programs. If the Board accepts the application and it is accepted by NRCS or ABPP, the Board will commission, and pay for a full appraisal prior to closing on the property. The appraisal is then reviewed by an independent review appraiser. An appraisal cannot be more than twelve months old at the time of closing, i.e., a “qualifying appraisal” under the WV Code and NRCS rules is less than twelve months old at the time of closing. The Board will pay for any updates to the appraisal if it expires before closing.

Why didn't my farm appraise for more? Many factors affect a property's value. Limited road frontage, a narrow access, or being largely in a flood plain will lower the market value of land. Often, folks figure that if a 2-acre lot in the neighborhood is worth \$40,000 per acre, then their 100-acre farm will be worth \$4,000,000. Land prices don't work that way. Smaller lots are more desirable and have higher market values. Larger parcels can cost a developer millions to build a subdivision, so they will only pay so much for a large tract.

Do I pay tax on the money I receive from selling the easement on my land? Yes. When you sell the easement, you are receiving funds from the sale of real estate value. This is taxed at the federal and state level. You are strongly urged to seek financial and legal advice to determine your tax situation.

Why would I consider donating any of the easement value that I could receive? As mentioned above, you will be taxed on the sale of your easement. If you donate some or all of the easement value, you may use some or all of that contribution against your federal income tax and carry it forward for 15 years. Again, consult your financial advisor to understand how a donation may affect your finances.

What are the tax implications for a landowner placing an agricultural conservation easement on his or her property? A property protected under a conservation easement will be taxed at agricultural value. Depending upon each situation, the placement of an agricultural conservation easement on land may provide income, property, and estate tax benefits. In most cases the degree of benefit is influenced by a landowner's willingness and ability to make charitable donations on all or a portion of an easement's value. Rules related to these donations have changed over time, starting with the Federal Taxpayers Relief Act of 1997. In 2015, Congress enacted and made permanent the enhanced federal tax incentive for conservation easement donations.

How the Enhanced Conservation Tax Incentive Works

If you own land with important natural, agricultural or historic resources, donating all or part of a conservation easement can be a prudent way to both save the land you love forever and to realize significant federal tax savings. For more information, consult a tax advisor. The permanent incentive increases the benefits to landowners by:

- A landowner can use the value of the conservation easement donation to deduct up to 50% of his or her annual income.
- Qualifying farmers and ranchers can use the value of the conservation easement donation to deduct up to 100% of their income.
- The carry-forward period for a donor to take a tax deduction for a conservation agreement is now 15 years.

Other questions:

How long do you have to own the property to be eligible for the program? For NRCS there is no requirement for length of ownership.

When do applications need to be submitted? The Jefferson County Farmland Protection Board typically accepts applications up until October 15 of each year. This may be subject to change according to the federal funding cycle.

What is the estimated timeframe from acceptance by NRCS or ABPP to closing on the easement? Approximately 18 months to two years.

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

Once the easement is placed on the property, you cannot subdivide the protected property, even if it is composed of several tax parcels. If you wish to have residential parcels for the future, they must be created and surveyed BEFORE applying for the conservation easement. The removal of parcels from the total acreage offered for application may reduce the eligibility of the property.

A landowner may create a limited number of residential parcels on the property that are subject to the easement or exclude land from the easement. Exception parcels that are not part of the easement may be created, but the program strongly discourages “doughnut holes” that increase impervious surface and reduce agricultural use. It is essential to check with your Planning and Zoning office to confirm your subdivision rights.

Can I change my mind after I apply to the Farmland Protection Program? Yes. If circumstances cause you to withdraw your application, the Board appreciates plenty of notice. Once we accept an application, we invest a great deal of time and resources including legal, appraisal and surveying services to complete the easement. We may request reimbursement of these costs if you withdraw.

I’ve heard of 30-year conservation easements – are these legal in West Virginia? No, 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.

Are easements forever or do they expire when I sell the property? A conservation easement under West Virginia Law (and U.S. IRS regulations) must be perpetual. Once an easement is placed on a property it will run with the land forever.

Can I buy the easement back? No. Under both West Virginia Law and U.S. IRS regulations, easements are perpetual. They may only be voided by judicial action and then, only for government condemnations.

Can my easement be changed? Under both West Virginia law and U.S. IRS regulations, an easement may be changed or modified only 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 include more land in the easement). No other reason is valid or legal.

Can I sell my property once the easement is in effect? Yes. After the easement is established, 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) own the subdivision/development rights on the property, not the property itself.

Can I continue to build on my land with an easement? It depends upon the terms of the Deed of Easement. Most easements have a 2.0-acre residential envelope around an existing residence (or planned for a future residence). Within this area you may continue to build residential and accessory structures, up to a specific impervious surface area limit. Agricultural structures may also be built (again, up to a specific impervious surface area limit). NRCS easements require a defined farmstead area for agricultural structures. Easements held by the Board alone may permit

agricultural structures anywhere on the easement. In general, the overall impervious surface area cap is 2% of the total easement area.

Can the easement restrict what I can grow? The easement does not dictate what you grow. It does require that your property has a Conservation Plan, and that the agricultural and natural resources are protected. Your local NRCS District Conservationist works with landowners to create a Conservation Plan to guide best practices for managing their land. The Farmland Protection Board does not regulate what you produce or your Conservation Plan.

Can I apply for other conservation funds while under the farmland protection program?

Yes. Landowners who enroll in NRCS' Agricultural Conservation Easement Program (ACEP) are eligible to participate in USDA's conservation cost-share programs, including:

- (i) Agricultural Management Assistance Program (AMA).
- (ii) Agricultural Water Enhancement Program (AWEP).
- (iii) Chesapeake Bay Watershed Initiative (CBWI).
- (iv) Conservation Reserve Enhancement Program (CREP) (long-term contracts only).
- (v) Conservation Reserve Program (CRP).
- (vi) Conservation Stewardship Program (CSP).
- (vii) Grassland Reserve Program (GRP) (long-term contracts only).
- (viii) Environmental Quality Incentives Program (EQIP).
- (ix) Wildlife Habitat Incentives Program (WHIP).
- (x) Wetlands Reserve Program (WRP) (long-term contracts only).

Is there funding for restoring old barns and farmhouses? In West Virginia, the State Historic Preservation Office is a source of limited funding. The Office administers both the state and federal historic preservation programs and aids federal and state agencies, local governments and the general public in identifying and preserving the physical historic and prehistoric resources of West Virginia. www.wvculture.org/shpo/ (304)558-0240

Who should I talk with to discuss financial and estate planning questions involved with placing my property in the farmland protection program? Seek qualified attorneys and financial advisors with experience in conservation, tax planning and estate planning. The Center for Rural Affairs provides articles on these topics. www.cfra.org