

CHAPTER 27 – CONSERVATION EASEMENTS; SMALL FARM CONSERVATION EASEMENT PROGRAM

ARTICLE I. – IN GENERAL

Sec. 27-1. Definitions

As used in this chapter, the following terms all have the meaning indicated:

- (1) Small farm shall mean an active farm that is at least 10 but less than 20 acres.
- (2) The terms and definitions of Chapter 26 of the Code of Ordinances, Sec.1 are hereby incorporated by reference.

ARTICLE II – RURAL LAND BOARD

Sec. 27-2. Incorporation of Chapter 26, Article II

- (1) The provisions of Chapter 26 of the Code of Ordinances, Article II are hereby incorporated by reference.

Sec. 27-3. Board; authorization.

- (1) The Rural Land Management Board as described in Chapter 26, Article II is hereby authorized to implement the Small Farm Conservation Easement Program.

Sec. 27-4 Board; officers; quorum; staff

- (1) The officers of the rural land board shall be as provided in Chapter 26, Article II, of the Code of Ordinances.
- (2) The quorum, meeting requirements, voting requirements for action, and staff for the rural land board shall be as provided in Chapter 26, Article II of the Code of Ordinances, with the following exceptions for the Small Farm Conservation Easement Program:

It shall take a vote of eight (8) voting members to:

- i. Propose to the urban county council that section 27-7, relating to criteria to be used to evaluate application for consideration of conservation easements, be changed or amended;
- ii. Approve, pursuant to section 27-11(1), the purchase of conservation easements;
- iii. Approve, pursuant to section 27-11(2)(a), the acceptance of payment for release of a conservation easement which has been included within the urban service area boundary; or

ARTICLE III – SMALL FARM CONSERVATION EASEMENTS; SMALL FARM CONSERVATION EASEMENT PROGRAM

Sec. 27-5. Small farm conservation easements; minimum criteria

- (1) The Rural Land Management Board being charged with, as provided in section 26-8 of the Code of ordinances, administering any program funded for the purpose of acquiring conservation easements or other interests in land designed to conserve and manage agricultural, rural and natural lands, shall administer the Small Farm Conservation Easement Program.
- (2) In order for a small farm conservation easement to be considered for purchase by the rural land board, it must meet the following minimum criteria:
 - (a) The applicant or applicants must have good, marketable, fee simple title to the parcel of land upon which the conservation easement is proposed to be imposed;
 - (b) The parcel of land upon which the conservation easement is proposed to be imposed must be located within the agricultural and rural land category or the natural areas category land use categories as determined by the Rural Land Management Plan;
 - (c) The parcel of land in question shall:
 - i. be at least (10), but less than twenty (20), acres in size; and
 - ii. be an active farm as defined in section 26-1.
- (d) All landowners of the parcel shall agree for the duration of the conservation easement to maintain a conservation plan created by the USDA Natural Resources Conservation Service (NRCS) and/or a forest stewardship plan created by the Kentucky Division of Forestry if more than 50% forested, and shall implement the plan according to the approved schedule.
- (e) Applicant shall demonstrate to the satisfaction of the rural land staff that the parcel is engaged in agricultural activities.

Sec. 27-6. Small farm conservation easements; application procedures and preliminary review.

- (1) In order for a small farm conservation easement to be considered for purchase by the rural land board, a completed application shall be submitted by the landowner. The landowner or a duly authorized representative of the landowner may apply. All landowners shall sign the application. A separate application shall be required for each parcel of land offered for acquisition. The board shall by regulation establish policies and procedures for the rural land staff to follow in assisting landowners with the application process. The following information shall be included in a completed application:
 - (a) Adequate identification by deed reference of the parcel of land to be considered for purchase.
 - (b) A map of the property at a scale of at least 1"=600' showing the land area to be considered for purchase, as well as any contiguous acreage under the same ownership to be excluded, or a copy of a recorded plat of record, if any.

- (c) A United States Department of Agriculture (USDA) Natural Resources Conservation Services Soil Map and conservation plan and/or forest stewardship plan, if any, for the parcel under consideration.
- (d) A full description of the agricultural activity carried out on the property, including, as applicable, type and quality of crops, number of livestock, and acreage of land leased or used by others for agricultural production.
- (e) A statement by the landowner of any contingencies which the landowner wishes to make the rural land board aware of such as death, health, or retirement of the owner, financial stress, estate settlement, or other circumstances which may affect the property in the future.
- (f) A statement by the landowner agreeing to allow inspection and appraisal of the parcel of land.
- (g) A list of any and all liens and encumbrances on the parcel of land and a letter from the holder of each evidencing willingness to subordinate his or its interests to the conservation easement.
- (h) Existence of any surface or mineral leases or easements.
- (i) All other information requested on the approved application form.

(2) A member of the rural land staff shall review the application to determine if it is complete. If the application is complete, a member of the rural land staff shall make a preliminary evaluation of whether the parcel meets the minimum criteria established in section 27-5. If it is determined by the rural land staff that the parcel of land is eligible for the Small Farm Conservation Easement Program, the staff shall notify the landowner in writing that the conservation easement will be considered for purchase or that, for reasons set forth in writing, the application is being rejected. A landowner who is dissatisfied with the staff's determination may appeal to the rural land board pursuant to section 27-8(3).

Sec. 27-7. Small farm conservation easements; evaluation by staff.

- (1) If the application is complete and the minimum criteria established in section 27-5(2) is met, the rural land board may purchase a conservation easement for the parcel.
- (2) All applications shall be evaluated and scored by the rural land staff using the evaluation criteria established below in Section 27-7(3).
- (3) For purposes of this section, less than one-half (1/2) acre shall be rounded down and one-half (1/2) acre or more shall be rounded up. This evaluation and scoring shall be done in accordance with the following criteria:

(a) LENGTH OF PUBLIC ROAD FRONTAGE (5 possible points)

The purpose of this criterion is to encourage the conservation of parcels with significant road frontage. These points shall be calculated as follows:

1001 feet +	5 points
501 feet-1000 feet	3 points
350 feet-500 feet	1 point

(b) PROXIMITY (15 possible points)

The purpose of this criterion is to encourage the protection of large contiguous blocks of rural land. Distances shall be measured from the parcel's boundary lines and the point from Part B (part of "Batch application") are in addition to any points from Part A (proximity to another property protected with conservation easement). These points shall be calculated as follows:

Adjacent to property with an existing agricultural easement	15 points
Within ½ mile	10 points
Within 1 mile	5 points
More than 1 mile	0 points

(c) QUALITY OF SOILS (30 possible points)

The purpose of this criterion is to examine the quality of soils on the property for agriculture. Soil information will be provided by the landowner in the application and verified by the rural land staff with the assistance of the Natural Resources Conservation Service (NRCS). The NRCS maps will be the basis to decide this question. These points shall be calculated as follows:

At least 80% prime farmland	30 points
At least 70% prime farmland	25 points
At least 60% prime farmland	20 points
At least 50% prime farmland	15 points
At least 50% statewide important	10 points
At least 25% prime farmland & less than 50% statewide important	5 points

(d) AGRICULTURAL IMPROVEMENTS (5 possible points)

The purpose of this criterion is to evaluate the owner's long term commitment to agriculture. It should be noted that the type and amount of on-farm investments will vary depending on the type of agriculture practiced. Each parcel shall be evaluated based on the type of agriculture involved on that particular parcel.

There shall be no preference for one (1) type of agricultural operation over another. Factors to be considered would include the presence of substantial and well-maintained on-farm investments such as barns, other agricultural buildings and equipment, fencing, waterways or other conservation measures, and similar items. These points shall be calculated as follows:

High amount of on-farm investment (multiple permanent agricultural and agricultural related structures & equipment)	5 points
Moderate amount of on-farm investment (at least some agricultural structures & equipment)	2 points
No on-farm investment (zero (0) improvements or equipment)	0 points

(e) ENVIRONMENTALLY SENSITIVE AREAS (5 possible points)

The purpose of this criterion is to protect environmentally sensitive areas. If the parcel includes environmentally sensitive areas (ESA) as determined by the rural service area land management plan, it will receive up to five (5) points. These points shall be calculated as follows:

At least 50% environmentally sensitive areas	5 points
Some, but under 50% environmentally sensitive areas	2 points
No environmentally sensitive areas	0 points

(f) DESIGNATED RURAL GREENWAYS (5 possible points)

The purpose of this criterion is to protect designated rural greenways. If any part of the parcel is located within one (1) of the rural greenways, as determined by the rural service area land management plan, it will receive five (5) points.

(g) DESIGNATED FOCUS AREA (10 possible points)

The purpose of this criterion is to protect the designated focus areas, as determined by the rural service area land management plan. If any part of the parcel is located within one (1) of the focus areas, the application receives ten (10) points.

(h) NATURAL PROTECTION AREAS (5 possible points)

The purpose of this criterion is to protect the special natural protection areas. These points shall be calculated as follows:

Parcel is included in "A" list of special natural protection areas in the rural service area land management plan and includes rare or unusual flora or fauna, special indigenous plant sites, wildlife habitat or ensures biodiversity	5 points
Alternatively, applicants will be eligible to demonstrate the parcel contains special natural protection areas not identified in the rural service area land management plan. The landowner who indicates on his or its application that the property includes rare or unusual flora or fauna, special indigenous plant sites, wildlife habitat or provides wildlife ecosystem linkages necessary to ensure biodiversity will need to provide background information relating to the existence of these resources on the property. The existence of these items should be independently verified by the rural land staff or an independent non-profit conservation organization such as the Nature Conservancy.	2 points

(i) **LINKAGES** (4 possible points)

The purpose of this criterion is to protect linkages within the rural areas. This criterion examines whether the parcel is located near or has the ability to be linked to parks, nature preserves, nature sanctuaries, historic sites or other lands that have been specifically designated for long term natural resource use, conservation or preservation purposes. Distance is measured from parcel boundaries. These points shall be calculated as follows:

Contiguous or provide direct linkage	4 points
Within 1/2 mile or provide a buffer	2 points
Within 1 mile	2 points

(j) **HISTORIC CULTURAL RESOURCES** (11 possible points)

The purpose of this criterion is to protect the historic/cultural resources of the rural area. Points in subsections (iii) are in addition to any points accumulated from subsection (i) or (ii), and shall be calculated as follows:

- (i) If any part of the property is listed in the National Register of Historic Places, is located in a National Register Historic District, is located in a locally designated historic district, or is designated a local historic landmark (H-1), it would receive three (3) points, or if the property is

determined eligible for the National Register it would receive two (2) points.

- (ii) If the property includes stone fences including, but not limited to, those stone fences documented in The Stone Fences of Fayette County (1990), the property would receive two (2) additional points. A minimum of one hundred (100) linear feet of stone fence is necessary.
- (iii) If the property contains any registered or significant archeological sites, it would receive two (2) additional points.

(k) SCENIC RESOURCES (11 possible maximum points)

The purpose of this criterion is to protect the scenic resources of the rural area. Points in subsections (iv) through (vi) are in addition to any points accumulated from subsections (i), (ii) or (iii).

- (i) If the property is located on one (1) of the scenic rural roads identified in rural service area land management plan, the property would receive two (2) points; or
- (ii) If the property is located on a local/state designated scenic or historic byway or highway, it would receive three (3) points, or;
- (iii) If the property is located on a federally designated scenic or historic byway or highway, it would receive five (5) points.
- (iv) If the property is adjacent to I-64 or I-75 and/or is part of the scenic viewshed visible from I-64 or I-75, it would receive two (2) additional points.
- (v) If the property is part of the scenic viewshed visible from publicly owned land such as parks, nature preserves, sanctuaries, historic sites, the property would receive two (2) additional points.
- (vi) If the property contains other scenic features, such as tree-lined canopy, or significant viewsheds, it would receive two (2) additional points. The scenic features of the property must be documented and independently verified.

(l) CONSOLIDATION OF SMALL TRACTS

The purpose of this criterion is to encourage consolidation of nonconforming tracts of less than ten (10) acres to achieve up to, but not including, 19.99 total acres. Such tracts may be part of a platted property or part of a larger parcel.

For each nonconforming tract of less than ten (10) acres which is consolidated, add one (1) point up to a maximum of 5 points.

(m) BATCH APPLICATION

The purpose of this criterion is to encourage landowners of contiguous parcels to apply to the program as a joint batch of applications. A "batch" of applications is defined as two (2) or more applications submitted by two (2) or more property owners of contiguous parcels. Each application submitted as a "batch" application will be individually evaluated and the batch will be given five (5) additional points for being part of a batch application.

Sec. 27-8. Conservation easement. Evaluation by board; negotiation; appraisal; recording.

(1) The evaluation of applications and the negotiation, appraisal, and recording of conservation easements shall be processed as provided in sections 26-11, 26-12, 26-13, and 26-15 of the Code of Ordinances.

Sec. 27-9. Conservation easements; purchase.

(1) After receipt of all information relating to an application, the rural land board may, upon a vote of eight (8) voting members authorize its chair to enter into a contract of sale with a landowner for purchase of a conservation easement on a parcel of land at a specified price. In making this decision, the board may consider the application, the report of the rural land staff, any inspection of the parcel of land by its members, and appraisals made at the expense of the board. In no case shall the board pay more than fair market value for a conservation easement.

(2) Any contract of sale entered into by the rural land board shall be subject to the ability of the landowner to provide good title to the parcel of land, free of encumbrances such as liens, mortgages and other encumbrances which would adversely affect the rural land board's interest in the parcel of land. This provision shall be satisfied if the lienor, mortgagor or other holder of an encumbrance subordinates its interests to the terms of the conservation easement.

ARTICLE IV. - MISCELLANEOUS

Sec. 27-10. Donations; Enforcement.

(1) The rural land board shall accept the donation of an interest in land, including a conservation easement, and enforce or release the provisions of a conservation easement only pursuant to the process established in sections 26-16 and 26-17 of the Code of Ordinances.

Sec. 27-11. Conservation easements; release.

(1) All conservation easements or other interests in land which are purchased pursuant to this chapter shall be perpetual, unless released by the rural land board pursuant to the provisions of this section.

(2) At any time after any part of the parcel of land has been included within the urban service area boundary, as determined by the then most recent comprehensive plan, the then current landowner may file a written request with the rural land staff for release of that part of the parcel of land which has been included within the urban service area boundary. The rural land board shall approve the request and authorize the chair to execute a release of the conservation easement in recordable form, upon the following conditions:

(a) The landowner conveys to the rural land board or the urban county government a conservation easement of equal or greater Fayette County acreage and of an equal or greater numerical score determined pursuant to section 27-7; or at the option of the board, upon a vote of eight (8) voting members thereof, the landowner pays to the board a sum determined by appraisal to be equal to the then current fair market value of the conservation easement being released; and

(b) The landowner pays to the rural land board a sum equal to the costs incurred by the board pursuant to subsection (a) of this section, including, but not limited to, survey and engineering fees, title search and title insurance fees, appraisal costs and recording fees; and

(c) The landowner pays to the rural land board a sum equal to the amount, if any, by which the actual sum paid by the board for the original conservation easement exceeds the actual sum paid by the landowner for the new conservation easement, in the event the landowner conveys to the board a new conservation easement.

(3) A request pursuant to this subsection shall be considered for the same parcel of land not more often than once every three (3) years.

(4) The rural land board shall place the proceeds realized from subsections (2) or (3) of this section in an account dedicated to the purchase of conservation easements and shall use the proceeds for the purchase of conservation easements consistent with the provisions of this chapter.