

## ARTICLE III. - CONSERVATION EASEMENTS

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### **Sec. 26-8. - Conservation easements; minimum criteria.**

(1) The rural land board shall administer any program funded by appropriations from the urban county government or by grant funds or donations from any source, which are appropriated or given for the purpose of acquiring conservation easements or other interests in land designed to preserve and manage agricultural, rural and natural lands. The rural land board shall adhere to any specialized procedures established by the state, federal, or local government or any grant award for a particular program and, to the extent not inconsistent therewith, to any procedures established in this chapter.

(2) In order for a 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 entirely within either the core agricultural and rural land category (CARL) or the natural areas category (NAT) land use categories as determined by the urban county government's comprehensive plan;

(c) The site of any non-conforming or non-agricultural use shall be excluded from the parcel of land upon which the conservation easement is proposed to be imposed;

(d) The parcel of land in question must be at least twenty (20) acres in size and must have at least one (1) development right, as defined in section 26-1(7); and

(e) All landowners of the parcel shall agree for the duration of the conservation easement to maintain a land conservation plan and/or forest stewardship plan, approved by the local soil conservation district, and shall implement the plan according to the approved schedule.

(3) It shall not be necessary for an application to cover all land in common ownership in order to be considered for purchase of a conservation easement. Accordingly, a landowner may submit an application for only a portion of his or its land. In such a case, the minimum criteria in subsection (2) of this section shall only apply to the portion of the landowners' land upon which the conservation easement is proposed to be imposed.

(Ord. No. 4-2000, § 1, 1-13-00)

**Sec. 26-9. - Conservation easements; application procedures and preliminary review.**

(1) In order for a conservation easement to be considered for purchase by the rural land board, a completed application shall be submitted by the landowner on the approved application form by the deadline established by the board. 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 except for batch applications as provided for in section 26-10(3)(b). 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 farm plan and/or forest stewardship plan, if any, for the parcel under consideration.
- (d) A full description of the agricultural production carried out on the property including type and quality of crops, number of livestock, and acreage of land leased or used from 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) The landowner's preferred method of payment for the acquisition, including but not limited to, lump sum payment or payout over time.
- (g) A statement by the landowner agreeing to allow inspection and appraisal of the parcel of land.
- (h) 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.
- (i) Existence of any surface or mineral leases or easements.
- (j) A filing fee, in an amount established by regulation adopted by the rural land board.
- (k) 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 26-8. If it is determined by the rural land staff that the parcel of land is eligible land, 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

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to the rural land board pursuant to section 26-11(3).

(Ord. No. 4-2000, § 1, 1-13-00)

**Sec. 26-10. - Conservation easements; evaluation by staff.**

If the application is complete and the minimum criteria established in section 26-8 is met, the application shall be evaluated and scored by the rural land staff. For purposes of this section, less than one-half (½) acre shall be rounded down and one-half (½) acre or more shall be rounded up. This evaluation and scoring shall be done in accordance with the following criteria:

(1) SIZE OF PARCEL (12 possible points plus 8 potential bonus points)

The purpose of this criterion is to assist in building a critical mass of agricultural land. These points shall be calculated as follows:

(a) Basic:

Over 350 acres	12 points
251-350 acres	10 points
121-250 acres	8 points
41-120 acres	6 points
20-40 acres	2 points

(b) Bonus: Additional points will be assigned to parcels of eighty (80) or more acres if the landowner agrees not to subdivide the parcel and build residences on those parcels. The property owner shall receive one (1) bonus point for each right to develop a forty (40) acre tract which is extinguished up to a maximum of eight (8) bonus points.

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

The purpose of this criterion is to encourage the preservation 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

(3) PROXIMITY AND/OR "BATCH" APPLICATION (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 points 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:

(a) Proximity:

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Adjacent	10 points
Within ½ mile	5 points
Within 1 mile	3 points
More than 1 mile	0 points

(b) 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 with a total acreage of at least one hundred twenty (120) acres. 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.

(4) 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

(5) FARM ACTIVITY (5 possible points)

The purpose of this criterion is to evaluate whether the parcel is actively farmed. In evaluating whether the parcel is actively farmed, consideration will be given to the percentage of cropland and/or pasture and the tobacco base of the property. These points shall be calculated as follows:

Actively farmed more than five (5) of last ten (10) years	5 points
Not actively farmed more than five (5) of last ten (10) years	0 points
Potential to be farmed	1 point

(6) 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

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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

(7) 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

(8) DESIGNATED RURAL GREENWAY (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.

(9) DESIGNATED FOCUS AREAS (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.

(10) 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:

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Parcel is included in "A" list of special natural protection areas in the rural service area land management plan	5 points
Parcel is included in "B" list special natural protection areas in the rural service area land management plan	2 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. If the landowner can document that the parcel includes special natural protection areas not identified in the rural land management plan, the application would receive not to exceed five (5) points.

(11) 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	1 point

(12) 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 (c) through(e) are in addition to any points accumulated from subsection (a) or (b), and shall be calculated as follows:

- (a) If any part of the property is listed in the National Register of Historic Places, 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.
- (b) If any part of the property is located in a National Register Historic District, or is located in a locally designated historic district, it would receive two (2) additional points.
- (c) If the property includes stone fences including, but not limited to, those stone fences

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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.

(d) If any part of the property is designated as a national historic landmark, it would receive two (2) additional points.

(e) If the property contains any registered or significant archeological sites, it would receive two (2) additional points.

(13) SCENIC RESOURCES (11 possible maximum points)

The purpose of this criterion is to protect the scenic resources of the rural area. Points in subsections (d) through (f) are in addition to any points accumulated from subsections (a), (b) or (c).

(a) 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

(b) If the property is located on a local/state designated scenic or historic byway or highway, it would receive three (3) points, or;

(c) If the property is located on a federally designated scenic or historic byway or highway, it would receive five (5) points.

(d) 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.

(e) 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.

(f) 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.

(14) ELIMINATION OF UNDEVELOPED NONCONFORMING TRACTS (10 possible points)

The purpose of this criterion is to encourage consolidation/elimination of nonconforming tracts of less than twenty (20) acres. Such tracts may be part of a platted property or part of a larger parcel.

For each nonconforming tract of less than twenty (20) acres which is consolidated/eliminated, add one (1) point up to maximum of 10 points.

(15) URBAN SERVICE AREA BOUNDARY (Subtract 15 total possible points)

The following point reductions shall be applied except for (a) rare cases of overwhelming importance as a community icon; (b) location of the site within one (1) of the five (5) designated focus areas; or (c) location of the site within a wellhead protection area. The rural land board shall define what is a community icon, recognizing that community icons will change over time. A community icon should be a recognized symbol of Lexington-Fayette County, including, but not limited to, National Register properties and local, state or federal

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landmarks. The rural land board shall retain the discretion to determine whether a particular parcel is a community icon.

(a) If the property is contiguous to the existing urban service area boundary, subtract fifteen (15) points unless the property is important as a community icon, within a well head protection area or is located in one (1) of the designated focus areas.

(b) If the property is within one-half ( $\frac{1}{2}$ ) mile of the existing urban service area boundary, subtract ten (10) points unless the property is important as a community icon, within a wellhead protection area or is located in one (1) of the designated focus areas.

(c) If the property is within one (1) mile of existing urban service area boundary, subtract five (5) points unless the property is important as a community icon, within a wellhead protection area or is located in one (1) of the designated focus areas.

(16) URBAN DEVELOPMENT (subtract 30 total possible points)

Any points from subsections (c) through (e) are in addition to any points accumulated in subsection (a) or (b):

(a) If the property is located within sewerability categories I, II or III as shown in the rural service area land management plan, deduct twenty (20) points, unless the property is within a designated focus area, is considered a community icon, or is within a wellhead protection area.

(b) If the property is located within sewerability category IV as shown in the rural service area land management plan, deduct fifteen (15) points, unless the property is within a designated focus area, is considered a community icon, or is within a wellhead protection area.

(c) If the property is located within sewerability categories I, II, III or IV as defined above and adjacent to or within 1 mile of an interstate interchange, deduct ten (10) points, unless the property is within a designated focus area, is considered a community icon, or is within a wellhead protection area.

(d) If the property is located within sewerability categories I, II, III or IV as defined above and adjacent to or within one-half ( $\frac{1}{2}$ ) mile of a federal highway, deduct eight (8) points, unless the property is within a designated focus area, is considered a community icon, is within a wellhead protection area or located on a state designated scenic byway.

(e) If the property is located within sewerability categories I, II, III or IV as defined above and adjacent to or within one-half ( $\frac{1}{2}$ ) mile of a roadway with a functional classification of an arterial highway, deduct six (6) points, unless the property is within a designated focus area, is considered a community icon, is within a wellhead protection area or located on a state designated scenic byway.

(Ord. No. 4-2000, § 1, 1-13-00)

**Sec. 26-11. - Conservation easement; evaluation by board.**

(1) A member of the rural land staff shall view each parcel of eligible land and a written report shall be made to the rural land board prioritizing the applications according to the selection criteria established



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pursuant to section 26-10

(2) The rural land board members, as well as the members of any standing or ad hoc committees appointed by the board, may also view each parcel of eligible land.

(3) The rural land board may by majority vote of those voting members present determine to hear appeals from those landowners who are dissatisfied either with determinations of the rural land staff as to their eligibility pursuant to section 26-9(2) or as to the evaluation and scoring of their application pursuant to section 26-10. The board shall determine by majority vote of those voting members present (a) how appeals will be heard, unless it has adopted a specific bylaw or regulation to govern those proceedings, and (b) whether remedial action will be taken.

(4) After consideration of the written report of the rural land staff, as well as the inspections of the parcels of land and the determinations made on appeals, if any, the rural land board shall upon a vote of seven (7) voting members determine with which landowners the rural land staff shall begin negotiations for purchase of a conservation easement. This determination shall be made in accordance with the goal of purchasing conservation easements from as many rural landowners as possible in order to accumulate a critical mass of land to be retained in the future for agricultural, rural and natural lands preservation and management purposes, without overlooking the future urban needs of the community. The board shall not be required to purchase conservation easements in the exact order of priority of applications as determined by the selection criteria established pursuant to section 26-10, so long as it proceeds in compliance with this section, pursues the purchase of highest priority conservation easements first, gives due consideration to each application, and gives consideration to all of the goals of the rural service area land management plan.

(Ord. No. 4-2000, § 1, 1-13-00)

**Sec. 26-12. - Conservation easements; negotiation.**

(1) If the rural land board determines to authorize the rural land staff to begin negotiations for purchase of a conservation easement from a particular landowner, the staff shall submit a written offer to purchase to the landowner. The offer shall be accompanied by a proposed deed of easement, whereby the conservation easement would be conveyed to the board or to the urban county government, as determined by the landowner.

(2) Within a time period specified by the rural land staff, the landowner and staff must come to an agreement regarding the terms of the deed of easement. At a minimum, the deed of easement shall:

(a) Convey a perpetual non-possessory interest in the parcel of land, which shall be consistent with the purposes of this chapter;

(b) Require the preservation of historic/cultural resources on the parcel of land if the application received points pursuant to section 26-10(12);

(c) Require the preservation of scenic resources on the parcel of land if the application received points pursuant to section 26-10(13);

(d) Provide that the landowner shall be liable for the costs of any successful enforcement action brought in the event of breach of any of the terms of the deed of easement and that a lien shall be filed against the parcel of property if the costs are not paid;

(e) Require the landowner to maintain a land conservation plan and/or forest stewardship plan,

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approved by the local soil conservation district, and to implement the plan according to the approved schedule; and

(f) Require the landowner to permit inspection of the parcel of land and/or structures which are subject to the conservation easement by the rural land staff at reasonable times.

(Ord. No. 4-2000, § 1, 1-13-00)

**Sec. 26-13. - Conservation easements; appraisal.**

(1) If the rural land staff and the landowner reach an agreement as to the terms of the proposed deed of easement, the staff shall secure an appraisal to determine the conservation easement value. The cost of the appraisal shall be paid for from funds held by the rural land board and the methodology shall be determined by the board in accordance with the following:

(a) The appraisal shall be conducted by a licensed real estate appraiser who is qualified to appraise property for easement purchase. The appraisal shall to the extent possible be based on an analysis of comparable sales.

(b) The appraisal shall include, at a minimum, a legal description of the appraised parcel of land, description of improvements, photos of the parcel of land, sketch of the subject parcel of land, pertinent data for each comparable sale, whether the parcel of land has public or private land use restrictions, any attributes which limit the development of the parcel of land and a description of the area or neighborhood in which the parcel of land is located.

(c) The appraisal shall contain an analysis of the highest and best use of the parcel of land, the valuation methodology used by the appraiser to determine value, the market value, and the conservation easement value of the parcel of land. The value of any buildings or other improvements shall appear separately in the appraisal report.

(2) The rural land staff shall send a copy of the appraisal to the landowner with a letter advising that within thirty (30) days the landowner must:

(a) Signify agreement with the conservation easement value determined by the rural land board appraisal;

(b) Withdraw his or its application; or

(c) Advise that he or it is securing an independent appraisal at his expense within the next thirty (30) days.

The letter shall also advise the landowner of the additional points which may be secured pursuant to section 26-14(1), if he or it timely notifies the rural land staff that he or it will sell the conservation easement for less than the conservation easement value, as determined by the rural land board appraisal.

(Ord. No. 4-2000, § 1, 1-13-00)

**Sec. 26-14. - Conservation easements; purchase.**

(1) After each parcel of land has been appraised, a landowner who is willing to sell a conservation easement for less than the appraised value shall be awarded not to exceed ten (10) additional points

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which shall be calculated as follows:

10-24% of appraised value	10 points
25-49% of appraised value	6 points
50% of appraised value	4 points

These points shall be in addition to those calculated pursuant to section 26-10 and may be considered by the rural land board in determining from which landowners to purchase conservation easements in the event funds are not sufficient within the current fiscal year to make purchases from all landowners with which it has begun negotiations pursuant to section 26-11(4).

(2) After receipt of all information relating to an application, the rural land board may, upon a vote of seven (7) 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, appraisals made both at the expense of the board and at the expense of the landowner, and any additional points awarded pursuant to subsection (1) of this section. In no case shall the board pay more than fair market value for a conservation easement.

(3) 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.

(Ord. No. 4-2000, § 1, 1-13-00)

**Sec. 26-15. - conservation easements; recording.**

(1) The purchase price shall be paid for from funds held by the rural land board. Prior to closing, a title search shall be completed by the government's department of law which determines that the landowner has clear, marketable, fee simple title to the parcel of land. The landowner shall execute a deed which shall be recorded by the department of law.

(2) A conservation easement may also be acquired by an exchange of the interest which the government owns in other than eligible lands for eligible lands, upon approval by the urban county council.

(3) Within ten (10) working days of recording the conservation easement, the rural land staff shall notify the divisions of planning, building inspection, computer services, engineering and historic preservation; the department of finance; and other appropriate government offices, of the conservation easement acquisition.

(4) Any applications which fulfill the criteria set forth in this chapter and in the regulations adopted by the rural land board, but which are not offered a contract to purchase because available funds are not sufficient within the current fiscal year, shall be considered in the next application cycle, provided that the landowner updates the information on the application. These applications shall not be given any preference or priority at that time, but will be considered under the terms and conditions of this chapter along with all other applications submitted at that time. However, payment of a new application fee shall

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not be required.

(Ord. No. 4-2000, § 1, 1-13-00)