

Agricultural Conservation Easement Purchase Program



A Pennsylvania Tool for Preserving Farmland

The Pennsylvania Agricultural Conservation Easement Purchase Program enables state and county governments to purchase conservation easements on productive farms. The easements protect the farmland from non-agricultural development.

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Introduction

The Pennsylvania Agricultural Conservation Easement Purchase Program (ACEPP) is a voluntary program that enables county governments to protect active farmland by purchasing agricultural [conservation easements](#) from willing landowners. (This is sometimes referred to as “purchase of development rights.”) These easements limit the use of farmland to activities compatible with agriculture, while keeping the land in the landowner’s ownership and control. Currently, [57 counties](#) participate in the program.

Farmers in counties with an agricultural land preservation board may apply to the board to have one or more of their farm parcels considered for easement purchase. The farm must be located in a qualifying [agricultural security area](#). With farmer demand far exceeding available government funding, only farms with the best soils and other key characteristics (such as stewardship practices and likelihood of development) rank high enough to receive easement purchase offers. To purchase easements, counties may use

county funds or seek state funds through the state program.

ACEPP has been tremendously successful, making Pennsylvania a national leader in farmland preservation. In addition to saving the land necessary for food production, it has encouraged soil and water conservation, and maintained the rural heritage of communities. Since 1989, the program has purchased easements on more than 5,000 farms, permanently preserving more than 530,000 acres. The program is overseen by the Pennsylvania Agricultural Land Preservation Board and managed by the Pennsylvania Department of Agriculture Bureau of Farmland Preservation.

Private Conservation Alternative

Rather than going through ACEPP, farmers can instead permanently protect their farms by donating or selling conservation easements to private charitable land trusts. The ACEPP and private alternative have different features and pros and cons, which are compared and contrasted in the guide [Farm Preservation Options for Landowners](#).

County Agricultural Land Preservation Programs

A county that contains one or more agriculture security areas may establish an agricultural land preservation board and program to purchase agricultural conservation easements on farms within these areas using state funding. The county program must be approved by the state.

The county agricultural land preservation board, which oversees the program, is composed of 5-9 members appointed by the county governing body. A

program administrator, typically employed by the county conservation district or planning commission, assists the board.

The board establishes standards and procedures, within the parameters set by state law, to guide the selection of properties for preservation.

Basic Requirements for Property Eligibility

Properties must meet the state's basic requirements for the purchase program, listed below:

- The property must be located in an agriculture security area, which is comprised of at least 500 acres of viable agricultural land in one or more ownerships.
- The property must be at least 50 acres in size. However, parcels as small as 10 acres may be preserved *if* they are adjacent to existing preserved farmland or used for the production of crops unique to the area.
- At least 50% of the property must be either harvested cropland, pasture, or grazing land, and it must contain at least 50% of soils of land capability classes I-IV, as defined by USDA-NRCS.

Ranking of Farms for Easement Purchase

Each county board establishes a ranking system for properties based on the state's minimum requirements and subject to approval by the state board. Counties must make purchase offers to farmers strictly in accordance with the ranking of applications under the county's ranking system. A county must offer to purchase the highest scoring farm(s) first.

Though the state board mandates much of the ranking system, each county makes a number of decisions regarding the scoring and weighting of different property factors. Counties are required to use the [Land Evaluation and Site Assessment](#) system. This assessment is based on a land evaluation, which examines the quality of soils, and a site assessment, which evaluates the development potential, farmland

potential, and the potential to create a clustering of preserved farmland. The weighted values of the factors must total 100% and fall within the following ranges:

	Minimum	Maximum
Land Evaluation	40%	70%
Development Potential	10%	40%
Farmland Potential	10%	40%
Clustering Potential	10%	40%

Land Evaluation

During the land evaluation process, counties must designate the source of the soils data and measure the value of the soil based on a 100-point scale, with 100 points indicating the best soils for agricultural production.

Either or both of the following may be used for soils data: (1) The county soil survey, as published by the USDA-NRCS in cooperation with the Pennsylvania State University and the Department of Agriculture; or (2) *The Soil and Water Conservation Technical Guide* published and updated by the USDA-NRCS.

Site Assessment

The three general factors comprising the site assessment are described in detail below.

Development Potential: factors that identify the extent to which development pressures are likely to cause conversion of farmland to non-agricultural uses. County boards must use the three factors specified below and may use as many as seven additional factors.

- Availability of sewer/water services and/or proximity to sewer/water infrastructure.
- Access of property to public roads and road frontage of property.
- Impact of nonagricultural use on other farming operations in the area.

Farmland Potential: factors that measure the potential agricultural productivity and farmland stewardship practiced on a property. County boards must use the four factors specified below and may use as many as six additional factors.

- Percentage of harvested cropland, pasture, and grazing land on a specific tract of land.
- Stewardship of the land, including the use of conservation practices and best land management practices.
- Size of property.
- Designation of a property by local, state, or federal authorities as an historically or culturally-significant location, scenic area, or open space.

Clustering Potential: factors that emphasize the importance of preserving blocks of farmland to support normal farming operations and help to shield the agricultural community from conflicts with incompatible land uses. County boards must use the three factors specified below and may use as many as seven additional factors.

- Consistence with county planning office’s designation of important agricultural areas.
- Proximity to land already under agricultural conservation easement, regardless of who holds the easement(s).
- Percentage of a tract’s boundary that adjoins land in an agricultural security area.

Easement Appraisal and Purchase

The county board appraises the value of proposed conservation easements on farms with the highest ranked applications.

The appraisal must be based on an analysis of comparable sales and be in accordance with the most recent edition of the [Uniform Standards of Professional Appraisal Practice](#) that estimate both the market value and the farmland value of the land. County boards may choose to refer to one or more appraisal reports conducted by a state-certified general real estate appraiser.

The *value* of an easement is the difference between the market value and the appraised farmland value. The *purchase price offered* for the purchase of an easement may not exceed, but may be less than, the value of the easement.

County Funding

A county may fund the purchase of agricultural easements in various ways. The county may use county general funds, proceeds from a bond or other form of indebtedness, funding from municipalities and private sources. Additionally, the county board may seek state funding through the [Agricultural Conservation Easement Purchase Fund](#) and/or federal reimbursement from the USDA [Agricultural Conservation Easement Program](#). Counties may also use the 6% interest repaid by landowners on rollback taxes of properties removed from the [Clean & Green](#) program to fund their easement purchase programs.

Demand for the program has consistently exceeded funding, resulting in long county backlog lists of farms that have been selected for easement purchases but have not yet been preserved. Some county planning commissions and conservation districts also experience staffing shortages, making it more difficult to administer the program effectively.

What is Being Purchased?

People often refer to the county boards “purchasing development rights” instead of “purchasing conservation easements.” The latter term is the far more accurate description. The counties do not actually obtain development rights; rather, they obtain a right to block development. Specifically, the following happens in the purchase of an agricultural conservation easement: The landowner places a restrictive covenant on their land that restricts the land’s use to agricultural production and certain other activities; this is accomplished by recording a “Deed of Agricultural Conservation Easement.” In the deed, the landowner grants the relevant government units the right to enforce the restrictive covenant. For this, the government pays the landowner.

State Administration

The [Pennsylvania Department of Agriculture Bureau of Farmland Preservation](#) manages ACEPP and oversees county board activity.

The Pennsylvania Agricultural Land Preservation Board reviews, approves, or denies recommendations of county boards to purchase agricultural conservation easements, and executes the purchase of agricultural conservation agreements on behalf of the state. The board consists of five members appointed by the Governor and nine members appointed by the House and Senate leadership. In addition, the board has eight ex officio members: the Secretary of Agriculture, who serves as the board chairman; the Secretary of Community Affairs; the Secretary of Environmental Resources; the chairperson and the minority chairperson of the House Agriculture and Rural Affairs Committee; the chairperson and the Minority chairperson of the Senate Agriculture and Rural Affairs Committee; and the dean of the College of Agriculture of The Pennsylvania State University.

Enabling Act and Legislative History

The program was created through [Act 149 of 1988](#), which amended Act 43 of 1981. Act 43, last updated in 2013, enables the state and participating counties to protect farmland by purchasing agricultural conservation easements on eligible properties.

In the initial iteration of the law, there was a provision that allowed ACEPP easements to be extinguished after 25 years under certain, very particular, conditions. [Act 44 of 2011](#) repealed the provision, the repeal applying to all ACEPP easements established after the repeal.

2008 Program Audit by LBFC

In 2008 the Legislative Budget and Finance Committee conducted a [program audit](#) of ACEPP per Senate Resolution 2007-195. The audit report's 67 pages (and nine-page summary) covered a wide array of issues and concluded that:

Pennsylvania has one of the most successful, if not the most successful, farmland preservation programs in the country. The ACEPP program, with its emphasis on quantitative rankings and local land use decision-making, is widely viewed as a model for selecting and preserving agriculturally important farms.

The audit report noted concerns about the program related to Internal Revenue Code requirements for federal charitable tax deductions for farmers who sell their easements for less than fair market value:

The Pennsylvania Land Trust Association (PALTA) has expressed concern about several aspects of the ACEPP program and the applicability of the federal charitable contribution deduction to a bargain sale easement. Specifically, PALTA cites the lack of restrictions on agricultural buildings' size, quantity, or location as possibly running afoul of the "conservation purposes" test of Internal Revenue Code §170(h).

Resources at ConservationTools.org

To find experts and additional information on the topics covered in this guide, see the right-hand column of the online addition at:

<http://conservationtools.org/guides/47>

Related Guides

[Agricultural Security Areas](#)

[Conservation Easement](#)

[Farm Preservation Options for Landowners](#)

Submit Comments

Help improve this guide. Email your suggestions to the Pennsylvania Land Trust Association at aloza@conserveland.org. Thank you.

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