



Washington State Conservation Commission

Policy #	13-24 - Agricultural Conservation Easement Sponsorship
Applies to:	All Conservation Districts
Effective Date:	December 9, 2013

PURPOSE

The purpose of this policy is to establish the process by which the Conservation Commission would seek or hold an interest in real property for the purposes of farmland preservation.

The Conservation Commission is responsible for the implementation of the Office of Farmland Preservation and those activities identified in the Office of Farmland Preservation statute. The Conservation Commission has also identified agricultural conservation easements as a valuable tool to assist in farmland preservation and advancing conservation with willing landowners. In addition, the Conservation Commission is authorized to sponsor acquisition proposals from conservation districts for funding from the state's Washington Wildlife and Recreation Program.

For these reasons the Conservation Commission has determined it advisable to have a policy on when it would be appropriate to seek or support the proposals of others for funding agricultural conservation easements. The Conservation Commission is also proposing this policy to identify the issues associated with the agency's acquisition of an interest in real property and how the commission would manage these acquisitions into the future.

BACKGROUND

It is the intent of the Conservation Commission to protect viable agricultural lands in Washington State by partnering with conservation districts to acquire agricultural conservation easements on suitable agricultural land with the intended purpose to prevent conversion of the land to any purpose other than agricultural uses.

Agricultural land includes crop land, working range land, and other working landscapes suitable to the production of food and fiber. For the purposes of Washington Wildlife and Recreation Program, agricultural land is defined using RCW 84.34.020 (definition of farmlands). Eligible lands must be devoted primarily to the production of livestock or agricultural commodities for commercial purposes.

This also supports the Conservation Commission's interest in agricultural conservation easements and the Conservation Commission's strategic direction for natural resource priorities which in part is to guide and assist conservation districts that have identified farmland preservation in annual and long range planning.

The Conservation Commission, as an eligible applicant to the Washington Wildlife and Recreation Program under the Farmland Preservation Program, is currently partnering with conservation districts to provide landowners in conservation district service areas access to a farmland preservation program which provides funding to purchase development rights on viable farmland in an effort to preserve existing agricultural and conservation values in perpetuity.

Agricultural Conservation Easements are a legally recorded deed restriction placed in a set term or perpetuity. As a grantee, the Conservation Commission will be included within this document and thereby assume an interest in property. This means the Conservation Commission has an interest in preserving this land and includes duties to fulfill this obligation in partnership with the local conservation district. It is the intent of SCC and partnering conservation districts to assure these easements remain in perpetuity. If land is sold, the easement runs with the land. SCC and the partnering conservation district will work directly with the new landowner to assure the conditions of the agricultural conservation easement continue.

By holding an interest in property through an agricultural conservation easement, the Conservation Commission will assume some legal liability as a co-grantee along with the local conservation district. The Conservation Commission's role will be secondary with the local conservation district assuming the rights and duties as detailed in the easement document. This will be evidenced and captured through a contract with the funding agency (Recreation and Conservation Office), a Memorandum of Understanding between the Conservation Commission and local conservation district and the recorded agricultural conservation easement filed with the local county authority.

Legal liabilities for the Conservation Commission will include following procedures for notification (inspection, site visits), dispute resolution (preventive discussions, etc.), remedies (in the event of non-compliance), mediation (if parties disagree), enforcement (responding to violations), and extinguishment (in the even the easement is terminated). The recorded agricultural conservation easement document will reflect the roles, with the local conservation district being the lead.

POLICY

It will be the policy of the Conservation Commission to partner with conservation districts and agricultural property owners to purchase development rights legally recorded and conveyed as an "Agricultural Conservation Easement" funded from a variety of fund sources.

An "Agricultural Conservation Easement" means a voluntary, legally recorded deed restriction that is placed on a specific property used for agricultural production in perpetuity and held by the local conservation district.

AGRICULTURAL CONSERVATION EASEMENT

Projects for consideration of an agricultural conservation easement shall meet all of the following eligibility criteria:

- a) The parcel proposed for preservation is expected to continue to be used for, and is large enough to sustain, commercial agricultural production. The land is also in an area that possesses the necessary market, infrastructure, and agricultural support services, and the surrounding parcel sizes and land uses will support long-term commercial agricultural production.
- b) The conservation district has a general plan that demonstrates a long-term commitment to agricultural land conservation.
- c) Without preservation, the land proposed for protection is likely to be converted to nonagricultural use in the foreseeable future.

The Commission shall ensure that the following standards are met regarding agricultural conservation easement content:

- a) Provisions of an accurate legal document that prohibits any activity that substantially impairs or diminishes the agricultural productivity of the land.

- b) Protection of any existing water rights necessary to maintain agricultural uses and retain such water rights for ongoing use on the agricultural land.
- c) Interests in the agricultural land shall be held in trust by a Conservation District in perpetuity.

PROJECT DEVELOPMENT

The Conservation Commission requires the interested local conservation district board to approve their conservation district to hold and steward an Agricultural Conservation Easement and through this action allow conservation district staff to dedicate a portion of their time to the development of project proposals in partnership with the Conservation Commission.

The Office of Farmland Preservation, a program within the Conservation Commission is prepared to participate in board meetings, answer questions, provide information, meet with landowners, and assist in project preparations.

The local conservation district manager will notify the Office of Farmland Preservation of the conservation district board's approval to hold and utilize agricultural conservation easements as a way to preserve farmland in their district.

Once a project has been identified, the conservation district will submit a Conservation Easement Worksheet as provided for at <http://goo.gl/TuoegU> or by requesting from the Office of Farmland Preservation. This document will serve as an intake form for the Office of Farmland Preservation and will allow staff the ability to gauge whether the project meets the goals and outcomes identified by the Conservation Commission.

At a minimum, the Conservation Easement Worksheet will include:

- Conservation District name and staff contact
- Preferred easement name
- Total acreage under consideration for easement
- Location – county, address
- Ownership
- Purpose of Easement
- Desired landowner reserved rights
- Description of Agricultural activities
- Viability of farming activity
- Description of development patterns in the general vicinity
- Nature of habitat or ecological functions
- Description of any conservation practices or projects implemented
- Description of how the agricultural activity fits the landscape and culture of the county.
- Description of succession planning activity or actions

Once a project has been identified to meet all parties interest, the Conservation Commission and the conservation district will follow the Recreation and Conservation Office guidelines as provided for in *Manual 10 of Farmland Preservation Program* and *Manual 3 Acquisition Policies* and develop and enter into an agreement through a Memorandum of Understanding (MOU). This MOU will detail roles and responsibilities of project development and post funding actions. In general, the MOA follows the requirements of the Recreation and Conservation Office acquisition process and provides for the monitoring and reporting requirements should funding become available.

The MOU will include roles and duties for submitting projects as per Recreation and Conservation Office for ranking and scoring including but not limited to presentation

development, landowner contact, and participation in evaluation by farmland advisory committee.

As a best practice, the Conservation Commission recommends to the district board that they communicate to the landowner the benefits of seeking legal advice on utilizing an agricultural conservation easement.

POST FUNDING

If an allocation to the Washington Wildlife and Recreation Program Farmland Preservation Category is made and provides funds to the conservation district and Conservation Commission project based on rank and score, the Conservation Commission and the conservation district will be required to enter into contract with the Recreation and Conservation Office.

The Conservation Commission and the conservation district will both be signatories to the contract with the conservation district and Conservation Commission being identified as co-sponsors. This action allows the conservation district and Conservation Commission to legally take title of the Agricultural Conservation Easement and the obligations therein.

The Conservation Commission and the conservation district will develop an Agricultural Conservation Easement which meets the intent and desire of the landowner, the goals of the conservation district, the requirements of the Conservation Commission as outlined under the heading **Agricultural Conservation Easement** within this policy and the requirements of the Recreation and Conservation Office.

Once the easement is in place, as detailed in the MOA, regular annual inspections will be required.

MANAGING LIABILITY

As provided for in the model agricultural conservation easement found in [insert location], the conservation district and Conservation Commission (Co-sponsors) will be responsible for legal liabilities as described in the Liability section of the easement document.

It is highly recommended that the conservation district board establish a stewardship fund to manage, and if necessary, defend the terms as provided for in the agricultural conservation easement document. In the event a stewardship fund is not established or funding to steward the easement not available, the Conservation Commissions involvement in the project itself may be abandoned. This will be determined by the Executive Director of the Conservation Commission in consultation with the local conservation district manager and conservation district chair.

If the conservation district board has established a suitable stewardship fund based on best available information, and in the event legal proceedings are undertaken to enforce the provisions of the agricultural conservation easement, the Conservation Commission, in consultation with the State Attorney General's Office will confer and determine how best to support the provisions of the agricultural conservation easement including but not limited to entering into suit to enforce the terms of the easement.