

Agricultural Conservation Easements

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A major dilemma facing the agricultural community in Pennsylvania, as well as the rest of the country, is the development of agricultural land. Farmland is being converted into housing developments and strip malls at an alarming rate. To combat this irreparable loss of farmland in Pennsylvania, the State legislature passed the Purchase of Agricultural Conservation Easement Act (PACE). This act allows for Commonwealth and county governments to purchase conservation easements to preserve agricultural land.

The Pennsylvania PACE program was created in 1981 to preserve agricultural land by allowing State and county governments to purchase restrictions on agricultural property that will **limit the use of the property to agriculture** and **prevent it from being subdivided** in a manner that would harm its agricultural viability. 3 PS §914.1. Agricultural conservation easements are an important method for State and county governments to preserve farmland. There are benefits for both farmers and the State and county governments from the use of agricultural conservation easements. Farmers get the money from the sale of the easement and a lower tax rate on their property. The benefit to farmers does not come without a cost; the value of the farm is lowered and the use of the farmland is limited. State and county governments have a method to preserve farmland without outright purchasing the land in question. These restrictions make entering into

an agricultural conservation easements unwise without considering the ramifications and consulting with a lawyer.

A conservation easement is a restriction on the use of the property that is attached to the deed to the land. 7 PA Code §138(e).241. The use of the property is restricted by the terms of the conservation easement and **those restrictions apply to all future owners of the property.** There are two important questions that farmers should ask before they enter their farm into a conservation easement program. The first question is “What is the duration of a conservation easement program?” The second question is “Under what circumstances can conservation easements be terminated?” Once a conservation easement is purchased on a piece of property under Pennsylvania’s PACE program, it is very difficult, if not impossible, to remove it from the property.

According to section (c) (1) of the PACE act, the term of an agricultural conservation easement is perpetual. This means that the conservation easement never expires on its own terms. Entering into an agricultural conservation easement program has serious and long range consequences on the present and future owners of a farm. This should be considered along with the benefits that selling an agricultural conservation easement provides.

While an agricultural conservation easement under the Pennsylvania PACE program does not expire on its own terms, there are several ways that an agricultural easement could end. The first is that after a twenty five year period during which conservation easements may not be terminated for any reason, agricultural conservation easement may be sold back from either the Commonwealth of the county to the landowner. 3 PS §914.1(c) This requires the approval of the State board for the Commonwealth or the county board for the county. This is spelled out in PACE section (c) (3). The board will allow this sale if the land has **no viable agricultural use.**

The meaning of this is not spelled out in the statute and no regulation has been made stating what standard of review the board will use. Since Pennsylvania's PACE program has not yet reached the twenty five year period, there have not been any attempts to remove land from the program. The agricultural conservation easement program in Maryland is very similar to Pennsylvania's program. MD §2-501 The first agricultural conservation easements that were purchased under the Maryland program have recently reached the twenty five year mark, but so far there are no reported cases on the subject of terminating agricultural conservation easements. It could be useful to watch Maryland to see how they handle this issue when someone wants to buy back the conservation easement from the state.

A second way for an agricultural conservation easement to be terminated is through condemnation by a governmental body. 3 PS §914.1(c)5. For a governmental body to exercise their eminent domain powers, they need to purchase the conservation easement from the state or county, depending upon who holds the easement. Condemning land that is subject to an agricultural conservation easement is difficult because if a piece of property has a conservation easement it is likely to also be in an agricultural security area, which protects farmland from eminent domain. 3 PS §913(a)

In both of these situations, the purchase price of the conservation easement is determined at the time it is purchased from the state or county. 3 PS § 914.1(c)3. The money the state gets from selling the conservation easement must be placed in a fund to purchase other agricultural conservation easements. This discourages the state from selling the conservation easement unless it is truly good for the program.

The intent of Pennsylvania's PACE program seems to be to create truly permanent restrictions on the development of property. It is likely that the standard for no viable

agricultural use will be set very high. The purpose of the program is to preserve agricultural land as long as some type of agricultural operation is possible. Since there is a wide variety of agricultural businesses that could operate even in suburban areas, it would be possible to argue that most any piece of preserved land can be used for some type of agricultural business.