

Purchase of Agricultural Conservation Easements



An affiliate of the

Kentucky Department of Agriculture

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INTRODUCTION

What is PACE?

The Kentucky General Assembly in 1994 established the Purchase of Agricultural Conservation Easement Corporation (PACE) and authorized the state to purchase agricultural conservation easements in order to ensure that lands currently in agricultural use will continue to remain available for agriculture and not be converted to other uses.

Although PACE was established to purchase conservation easements, landowners also are encouraged to donate easements in order to dedicate their land to agricultural uses. Donors of conservation easements may receive federal and state income tax and estate tax benefits.

Conservation Easements

A Conservation Easement is a legal agreement a property owner makes to restrict the type and amount of development that can take the place on this or her property.

Determining Easement Value

Those wishing to estimate their easement values can use the following example to see how the process works.

First, determine the fair market value of your land according to its development potential. **Next**, estimate the value of your land if its use is restricted to agriculture. The easement value for any given acreage will fall somewhere between the two.

Landowners can use these two figures to help determine an asking price. The landowner and PACE Board will then negotiate the final conservation easement value.

All transactions are subject to negotiations and restrictions established by the Board.

Who is Eligible?

All landowners who hold title to farmland which is being used for, or is available for, agricultural production.

Benefits

- Offers financial incentives to landowners for long term commitment to agriculture.
- Protects normal farming operations in agricultural areas.
- Enhances contribution that agriculture makes to the economy.
- Landowner retains the right of ownership in the land, including the right to sell or transfer title to the property, subject only to the terms of the easement agreement.
- Donation of conservation easement can result in federal, state and local tax benefits.
- By granting the easement in perpetuity, the owner may be assured that the agricultural resource values of his or her property will be protected indefinitely, no matter who the future owners are.
- Provides our children an agriculture legacy

Determining Tax Deduction Value

Landowners may donate a conservation easement, which is tax deductible charitable gift, provided the easement is perpetual and donated exclusively for conservation purposes. Conservation purposes include preserving open space and farmland.

Example: 200 acre farm...

- **Appraised at fair market development value: \$2,500 per acre = \$500,000**
- **Estimated farmland restricted value: \$1,200 per acre = \$240,000**
- **Potential tax deductible charitable gift value: \$1,300 per acre = \$260,000**

The landowner is eligible to deduct an amount equal to 30 percent of adjusted gross income each year for a total of six years or until matching the value of the gift.

For the purposes of this example, the landowner has an annual federal adjusted gross income of \$100,000. Therefore, the landowner may deduct \$30,000 a year for the next six years if the income does not change.

Six years at \$30,000 amounts to \$180,000 total federal tax deduction.

Note: State income tax deductions for charitable gifts follow the same guidelines as for federal tax deductions. Thus, the potential state tax deduction is an additional \$180,000.

Note: The tax code is subject to change, therefore you will need to seek the advice from your tax professional.

Should I Participate?

First, talk to your own legal, financial, and tax advisors. You should make decisions affecting the ownership, use and value of your property only after careful consideration and professional consultation.

Brief History of PACE

- The Kentucky General Assembly in 1994 established the Purchase of Agricultural Conservation Easement Corporation and authorized the state to purchase agricultural conservation easements in order to ensure that lands currently in agricultural use will continue to remain available for agriculture and not converted to other uses.
- Although PACE was established to purchase conservation easements, landowners also are encouraged to donate easements in order to dedicate their land to agricultural uses. Donors of conservation easements may receive federal and state income tax and estate tax benefits. In May 2008, Congress approved a two-year expanded federal tax incentive for conservation easement donations. Farmers can offset up to 100% of their adjusted federal gross income with conservation donations, potentially zeroing out their tax liability for the next 15 years.
- Participation in the PACE program is strictly voluntary. The program enables landowners to realize a portion of the equity in their land without having to sell it. Proceeds from the sale of an easement can be used for any purpose, although studies throughout the U.S. and Kentucky reflect that significant amounts of proceeds are routinely reinvested back into farm operations. Participation can make farming more affordable to children and other young farmers by effectively reducing the value of the land, and program participation can aid in the transition from one generation of farmers to another.
- The Kentucky General Assembly has provided funding in the past to the PACE Corporation to purchase agricultural conservation easements. The lack of funding is responsible for the application backlog and precludes the PACE Corporation from leveraging General Assembly funding to obtain matching grants from the U.S. Department of Agriculture Agricultural Conservation Easement Program (ACEP).
- The PACE program is the most cost effective program available for land-rich and cash poor farmers as the PACE program does not require endowments that most private land trusts do to fund administrative, legal, and annual monitoring costs. The effect is that farmers willing and able to voluntarily donate agricultural easements to the PACE program are unable to execute their desires and may be precluded from realizing significant tax benefits that could be reinvested in on-going farming operations.
- The PACE program is more than an agricultural land conservation program. It also is a key enabler for Kentucky's significant agricultural industry which remains a key economic engine for the Commonwealth. Its farmland serves as the "green factory floor" upon which the industry is dependent to prosper in the future. The PACE program serves to preserve that green infrastructure for future generations, preserves employment opportunities, and ensured a perpetual source of food and fiber for the Commonwealth and the United States.

PACE Easement Restrictions

The following is a summary of the statutes and regulations.

Conservation Plan Requirement

To retain the agricultural viability of the property, the PACE Board shall require, and the owner of the restricted land shall implement, a conservation plan developed with the United States Department of Agriculture - Natural Resources Conservation Service (NRCS) in accordance with the NRCS Field Office Technical Guide and approved by the local conservation district. This plan shall be updated every ten (10) years and any time the basic farming operation conducted on restricted lands is changed. All farming operations shall be conducted in accordance with the plan.

The PACE Board requires that the owner of primarily forested land to have a forest management plan equivalent to those described in the Forest Stewardship Program as determined by the Kentucky Department of Natural Resources Division of Forestry. The Division of Forestry offers the Forest Stewardship Program free of charge to qualifying landowners. For more information and an application go to <http://www.forestry.ky.gov/programs/stewardship/>. A land owner may choose to participate in this program, or utilize a competent professional forester to create a forest management plan.

Restrictions on Use

Land

- The subdivision of the property, whether by physical or legal process, is prohibited without the advance written approval of the PACE Board. Additionally, no property shall be allowed more single subdivision action during its duration in the program.
- Properties less than 100 acres may not be subdivided to “302 KAR 100:030. Procedures for determination of agricultural productivity diminishment in subdivision.”
- The property shall be used solely for the production of crops, livestock and livestock products, and nursery and greenhouse products including the processing or retail marketing of these crops, livestock and livestock products, and nursery and greenhouse products if more than fifty percent (50%) of the processed or merchandised products are produced on the subject land, and for the raising and stabling of horses for commercial purposes.
- Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the restricted land. Trees may also be cut to clear land for cultivation or use of livestock, but only if done in accordance with the conservation plan required by this section. Any commercial timber harvesting on the restricted land shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester.
- The mining or extraction, using any method, of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance is prohibited. However, notwithstanding the foregoing, the Grantee

may, in its sole discretion, authorize specific mining activities, if the Grantee determines that the mining activities are in direct furtherance of the agricultural operations being conducted on the property.

- The granting of right-of-ways through restricted land for the installation of, transportation of, or use of, lines for water, sewage, electric, telephone, gas, oil, or oil products is permitted but only for the benefit of the property. The term “granting of rights-of-way” includes the right to construct or install the lines. The construction or installation of utility lines other than the types specified in the statutes are prohibited on the restricted land.

Structures

- Existing fences may be repaired and replaced, and new fences may be built anywhere on the restricted land for purposes of reasonable and customary management of livestock and wildlife.
- The construction or reconstruction of any building or structure, except those existing on the date of this Easement or previously approved by the PACE Board is prohibited except in accordance with the statutes.
- New buildings, other structures and improvements may not be built on the restricted land without the advance approval of the PACE Board. Existing agricultural structures may be repaired or replaced at their current locations without permission of the PACE Board.
- Existing single-family residential dwellings may be repaired, reasonably enlarged, and replaced at their current locations without permission of the PACE Board. No new single-family residential dwellings may be built on the property without the advance approval of the PACE Board.
- No portion of the restricted land shall be paved or otherwise be covered with concrete, asphalt, gravel, or any other paving material, nor shall any road for access or other purposes be constructed without the advance written approval of the PACE Board.
- The construction of ponds or reservoirs shall be permitted only upon the prior written approval of the PACE Board.
- Grantee, with the permission of Grantor, may erect and maintain signs designating the property as land under the protection of the Grantee.

Permission of the Grantee

Grantee shall grant approval or permission to Grantor only where Grantee, acting in the Grantee's sole discretion and in good faith, determines that the proposed action will not diminish or impair the agricultural conservation values of the property. Grantee shall not be liable for any failure to grant permission or approval to Grantor. Grantee shall make decisions on Grantor requests within sixty (60) days of receiving Grantor's request.

Recording and Effective Date

Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the land records of the County in which the land sits. Grantor and Grantee intend that this document and the restrictions arising under this Easement shall take effect on the day of execution.

Notice of Proposed Sale

Grantor shall promptly notify Grantee in writing of any proposed sale of the property and provide the opportunity for Grantee to explain the terms of the Easement to potential new owners prior to sale closing. Additionally, upon closing and recording of the new deed, PACE should be contacted with the deed book and page number of the deed as well as contact information for the new owners.

Amendment

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Easement, provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the Commonwealth of Kentucky. Any such amendment shall be consistent with the protection of the conservation and preservation values of the property and the purpose of this Easement; shall not affect its perpetual duration; shall not permit additional residential development on the property other than the residential development permitted by this Easement on its effective date; shall not permit any private inurnment to any person or entity; and shall not adversely impact the overall agricultural and open space values protected by this Easement. Any such amendment shall be recorded in the land records of the County in which the land sits. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

Termination

A Grantor may terminate the Easement, in whole or in part, only by filing an action in the Franklin Circuit Court, and demonstrating by clear and convincing evidence that conditions on or surrounding the land subject to an Agricultural Conservation Easement have changed so much that agriculture is no longer viable and it has become impossible to fulfill any of the Easement's conservation purposes.

Commercial Timber Harvest

Commercial timber harvest is permissible on PACE protected farmland provided the following criteria, as set forth in KRS 262.910, are met:

262.910 (4) (g) Use of restricted land during term of easement.

Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the restricted land. Trees may also be cut to clear land for cultivation or use of livestock, but only if done in accordance with the conservation plan required by subsection (3) of this section. Any commercial timber harvesting on the restricted land shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester.

1. The Pace Board requires that the owner of PACE protected farmland must have a forest management plan equivalent to those described in the Forest Stewardship Program as determined by the Kentucky Department of Natural Resources Division of Forestry.

The Division of Forestry offers the Forest Stewardship Program free of charge to qualifying landowners. For more information and an application go to

<http://www.forestry.ky.gov/programs/stewardship/>. A landowner may choose to participate in this program, or utilize a competent professional forester to create a forest management plan. All forest management plans must be sent to the PACE Board for compliance review.

2. All timber harvest must be conducted on a sustainable yield basis, which is in accordance with the abovementioned forest management plan.
3. The PACE Board strongly recommends that land owners utilize the services of a certified professional forester, in order to maximize the profitability of the harvest operation and to ensure compliance with all state and federal regulations relating to timber harvest. Utilization of a Kentucky Master Logger satisfies the Kentucky statutory requirement for commercial timber harvests.
4. All state and federal regulations concerning timber harvest must be met; including adherence to the Kentucky Forest Conservation Act and the Kentucky Agriculture Water Quality Act.



Checklist of Required Information For Building a New Structure on Eased Property

All requests should be in letter form addressed to the PACE Board answering the following:

- Reason new structure is needed.
- Description of proposed structure and accessories.
 - square footage, style, garage, driveway, fencing
- Footprint of proposed building site including any accessory buildings/driveway drawn to approximate scale. (Should be at least on 8 ½ x 11 paper.)
- Relationship of footprint to entire easement. (Should be at least on 8 ½ x 11 paper.)
- Exact amount of land used for structure and lot in square feet.
- Impact of structure on agriculture viability of farm.
- Will the structure contribute positively to farm production?
- Utility requirements of new structure, including wastewater.
- Will Utility Poles/Lines to Structure Diminish Agricultural Value?
- Is this project being funded with any cost-share programs?
Yes or No, Please Explain

PACE Statutes

KRS Chapter 262.00 Agricultural Conservation Easements 262.900 Definitions for KRS 262.900 to 262.920.

(1) As used in KRS 262.900 to 262.920, unless the context clearly indicates otherwise:

- (a) "Agricultural conservation easement" or "easement" means an interest in land, less than fee simple, which represents the right to restrict or prevent the development or improvement of the land for purposes other than agricultural production. The easement may be granted by the owner of the fee simple to the Commonwealth or to a qualified organization described in Section 170(c) of the Internal Revenue Code. It may be granted in perpetuity, as the equivalent of the covenants running with the land.
- (b) "Agricultural district" means a land use category created by voluntary agreement between the Commonwealth and one (1) or more landowners under Kentucky's agricultural district law, KRS 262.850, where the primary use of land is and will remain to be agriculture.
- (c) "Agricultural production" means the production for commercial purposes of crops, livestock and livestock products, and nursery and greenhouse products, including the processing or retail marketing of these crops, livestock and livestock products, and nursery and greenhouse products, if more than fifty percent (50%) of those processed or merchandised products are produced by the farm operator, and the raising and stabling of horses for commercial purposes.
- (d) "Applicant" means a person or qualified organization described in Section 170(c) of the Internal Revenue Code offering to sell to the PACE Corporation under the PACE Program an easement on a tract of land which is in or available for agricultural use.
- (e) "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.
- (f) "Bargain sale" means the sale of an easement by a landowner at a price below appraised market value, when a portion of the value of the easement is donated by the landowner in a properly executed document as a charitable contribution to a qualified organization described in Section 170(c) of the Internal Revenue Code.
- (g) "Capability class" means a group of soils that have similar characteristics when used for field crop production.
- (h) "Comparable sales" means market sales of similar land. In locating comparable sales, first priority shall be given to parcels located in the same general vicinity. The second priority shall be given to farms located in other areas.
- (i) "Conservation plan" means a plan describing best land management practices, including an installation schedule and maintenance program, which, when completely implemented, will improve and maintain soil, water, and related plant and animal resources of the land.

(j) "Contract of sale" means a legally enforceable agreement in a form provided by the PACE Board obligating the owner of a farmland tract to sell and the

Commonwealth to purchase an easement or other less-than-fee interest on the farmland tract.

(k) "Commonwealth funds" means money appropriated to the PACE Corporation for the purchase of agricultural conservation easements.

(l) "Development" means the carrying out of any material change in the use or appearance of land, or dividing into two (2) or more parcels.

(m) "Easement value" means the value per acre as determined by a numerical point system or, if an appraisal is used, the difference between the unrestricted value of a farm and its value as restricted by an easement. If only one (1) appraisal is used, unrestricted value is equal to market value and restricted value is equal to the value of the farm, subject to an agricultural conservation easement. If the landowner obtains an independent appraisal, easement value shall be calculated according to the average between the landowner's appraisal and the numerical point system, or if the Commonwealth also obtains an appraisal, the average between the landowner's appraisal and the Commonwealth's appraisal.

(n) "Eligible land" means a farmland tract in which the Commonwealth may acquire an agricultural conservation easement or other property interest as provided by this section.

(o) "Farm" means land in the Commonwealth which is being used for or is available for agricultural production as defined in this section.

(p) "Farmland tract" means land constituting all or part of a farm that is proposed for the purchase of an agricultural conservation easement.

(q) "Farmland value" means the price as of the valuation date for property used for normal farming operations, subject to the terms of an agricultural conservation easement, which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.

(r) "Fund" means the agricultural enhancement fund created by KRS 262.920.

(s) "Grantor" means the person or entity holding title to the farmland tract on which an easement is conveyed.

(t) "Grazing or pasture land" means land used for horse paddocks or the growing of grasses and legumes which are consumed by livestock in the field, and at least ninety percent (90%) of which is clear of trees, shrubs, vines, or other woody growth not consumed by livestock.

(u) "Harvested cropland" means land used for the commercial production of field crops, fruit crops, vegetables, and horticultural specialties, such as flowers, nursery stock, and ornamentals.

(v) "Horse paddock" means an enclosed area used for pasturing and exercising horses.

(w) "Landowner" means a person holding title to land.

- (x) "Market value" means the price as of the valuation date for the highest and best use of the property which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.
- (y) "Nonprofit land conservation organization" means nonprofit organization dedicated to land conservation purposes recognized by the Internal Revenue Service as a tax-exempt organization under Section 170(c) of the Internal Revenue Code.
- (z) "PACE Corporation" means the Purchase of Agricultural Conservation Easement Corporation created by KRS 262.906(1).
- (aa) "PACE board" means the board of directors of the Purchase of Agricultural Conservation Easement Corporation created by KRS 262.906(2).
- (ab) "Qualified organization" means a tax-exempt organization described in Section 170(c) of the Internal Revenue Code.
- (ac) "Reserved life estate" means property deeded to a nonprofit organization during an owner's lifetime with the owner retaining full use of and responsibility for the property until the death of the last survivor of those retaining life estates, whereupon, the responsibility of the property falls to the nonprofit organization. The property owner is entitled to an income tax deduction based on an appraised value and Internal Revenue Service actuarial tables, and the taxable estate may also be reduced.
- (ad) "Restricted land" means land and buildings, the use of which is subject to the terms of an agricultural conservation easement.
- (ae) "Restricted value" means the price as of the valuation date for property subject to an agricultural conservation easement which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is not obligated to buy would pay for the property.
- (af) "Soils report" means a report which sets forth the amount and description of each soil type and class found on a specific farm.
- (ag) "Title report" means a report prepared by a person authorized by the state to engage in the sale of title insurance or an attorney setting forth the existence of any liens, restrictions, or other encumbrances on a farmland tract.
- (ah) "Unrestricted value" means the current market value of a property.
- (ai) "USDA" means the United States Department of Agriculture.
- (aj) "USDA-SCS" means the Soil Conservation Service of the United States Department of Agriculture.
- (ak) "Viable agriculture land" means land suitable for agricultural production and which will continue to be economically feasible for use if real estate taxes, farm use restrictions, and interference with and constraints on normal farming operations are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of urban and related nonagricultural development.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 390, sec. 21, effective July 15, 1994.

262.902 Legislative findings.

(1) The General Assembly hereby finds and declares that it is a policy of the Commonwealth to retain agriculture and enhance the contribution that agriculture makes to its economy. A program to retain and enhance agriculture is in the economic best interests of the Commonwealth and, consequently, constitutes a public benefit that contributes to the health, safety, and general welfare of the residents of the Commonwealth and the nation.

(2) The General Assembly further finds and declares that the use of the Commonwealth's funds for the purpose of paying in whole or part the cost of acquiring agricultural conservation easements as set forth in KRS 262.900 to 262.920, including any costs necessarily incident to the acquisition, sale, issuance, and delivery of the funds, and the monitoring and enforcement of agricultural conservation easements, or to the participation of any party for these purposes, will promote the public health, safety, and general welfare of the people of the Commonwealth.

(3) Further, it is the purpose of KRS 262.900 to 262.920 to:

(a) Establish procedures for the acquisition of agricultural conservation easements in order to ensure that lands currently in agricultural use will continue to remain available for agriculture and not be converted to other land uses, and that landowners who participate in this program will be fairly compensated for their agreement to accept deed restrictions limiting the use of their property;

(b) Encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security that land use will remain stable;

(c) Protect normal farming operations in agricultural areas from incompatible nonfarming uses that may render farming impracticable;

(d) Protect normal farming operations from complaints of public nuisance against normal farming operations; and

(e) Maximize the use of agricultural conservation easement purchase funds and protect the investment of taxpayers in agricultural conservation easements.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 390, sec. 19, effective July 15, 1994

262.904 Acquisition of agricultural conservation easements by Commonwealth.

(1) The Commonwealth is hereby authorized to acquire agricultural conservation easements or other property interests. The property interest acquired may be any less-than-fee-simple interest, including an easement, life estate, covenant, or other contractual right. Acquisition may be accomplished by purchase, gift, grant, bequest, devise, covenant, or contract but only at a price that is equal to or less than the

appraised value as provided in this section. The Commonwealth shall purchase these property interests only upon voluntary application of the landowner.

(2) If the landowner so elects, the Commonwealth is authorized to pay the purchase price in a lump-sum single payment at the time of closing, to enter into contracts for pay outs over a term of years against the purchase price, or to enter into installment purchase agreements. When pay outs over time are made, the Commonwealth is authorized to pay interest consistent with prevailing market conditions at the time of the execution of the contract.

(3) The interest which the Commonwealth owns in property other than eligible lands may be exchanged for property interests in eligible lands on an equivalent appraised value basis. If the property exchanged is not exactly equal in appraised value, cash payments may be made to provide net equivalent value in the exchange.

(4) After the Commonwealth acquires an agricultural conservation easement or some property interest less than full ownership in any eligible land, the Commonwealth may purchase the remaining agricultural rights or other property interest in the land when the acquisition is necessary to maintain the agricultural uses of the property.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 390, sec. 20, effective July 15, 1994.

262.906 Purchase of Agricultural Conservation Easement (PACE) Corporation -- Board of directors.

(1) There is hereby created the Purchase of Agricultural Conservation Easement Corporation which shall oversee all issues involving purchases of agricultural conservation easements. The corporation shall be a de jure municipal corporation and political subdivision of the Commonwealth. The corporation shall be a public agency within the meaning of KRS 61.805 and 61.870 and shall be attached for administrative purposes to the Department of Agriculture.

(2) (a) The corporation shall be governed by a board of directors, consisting of the following eleven (11) members: four (4) public directors who shall be the Commissioner of the Department of Agriculture, the secretary of the Energy and Environment Cabinet, the dean of the University of Kentucky College of Agriculture, and the chair of the Soil and Water Conservation Commission, or their designees; and seven (7) private directors who shall be appointed by the Governor, as follows:

1. One (1) private director from each of the six (6) congressional districts; and
2. One (1) private director from a list of three (3) persons suggested by the Kentucky Farm Bureau Federation, Inc.

(b) Initial appointment of the private directors by the Governor shall be for staggered terms.

(c) No more than four (4) of the private directors shall be from the same political party. Members shall serve a term of four (4) years, with the exception of the initial members, and may be reappointed. Vacancies shall be filled in the same manner as the appointment is made.

(3) (a) Any member who has an ownership interest in any of the lands eligible for the purchase of an agricultural conservation easement or other property interest and who wishes to apply to sell an easement while serving on the board of directors shall withdraw himself from all board activities prior to application and until the transaction is complete. The Governor shall appoint an interim member to fill the vacancy until the transaction is complete.

(b) Any person who has previously applied for or sold an agricultural conservation easement may serve on the board.

(4) Members shall not be compensated for their services but shall be reimbursed for expenses incurred in the performance of their duties.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 604, effective July 15, 2010. -- Created 1994 Ky. Acts ch. 390, sec. 22, effective July 15, 1994.

262.908 Responsibilities of board.

(1) The PACE board shall have the following responsibilities:

(a) Implementing a Purchase of Agricultural Conservation Easement Program in the Commonwealth as provided by this section, including the development and promulgation of any administrative regulations required;

(b) Making decisions in connection with each specific easement purchase to be made with Commonwealth funds from the agricultural enhancement fund;

(c) Evaluating, as necessary, potential sites within the Commonwealth on which agricultural conservation easements or other property interests are to be acquired, applying the criteria set forth in this section and administrative regulations; and

(d) Employing the staff necessary to implement the provisions of this section.

(2) (a) The PACE board shall establish fair, equitable, objective, nondiscriminatory procedures for determining easement purchase priorities.

(b) The board shall promulgate administrative regulations establishing policies and procedures for determining easement purchase priorities and for purchasing easements.

(c) The program criteria shall be designed to ensure that land is selected for easement purchase because it will make a significant contribution to agricultural production.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 390, sec. 23, effective July 15, 1994.

262.910 Use of restricted land during term of easement.

(1) During the term of an easement, the restricted land shall be used solely for the production of crops, livestock and livestock products, and nursery and greenhouse products including the processing or retail

marketing of these crops, livestock and livestock products, and nursery and greenhouse products if more than fifty percent (50%) of the processed or merchandised products are produced on the subject land, and for the raising and stabling of horses for commercial purposes. For the purposes of this section and administrative regulations promulgated under its provisions, "crops, livestock and livestock products, and nursery and greenhouse products" include, but are not limited to:

- (a) Tobacco;
- (b) Wheat, soybeans, corn, and all commercially-produced fruits and vegetables;
- (c) Horticultural specialties, including nursery stock ornamental shrubs, ornamental trees, and flowers;
- (d) Livestock and livestock products, including horses, cattle, poultry, milk, swine, and eggs; and
- (e) Aquatic plants and animals and their by-products.

(2) (a) During the term of an easement the landowner and the landowner's assigns, agents, or leases shall not perform, nor knowingly allow others to perform, any act on or affecting the restricted land that is inconsistent with the provisions of this section. The landowner shall be deemed to have authorized the PACE board to enforce these provisions.

(b) Unless otherwise specified, the landowner shall not be required to take any action to restore the condition of the restricted land after any act of God or other event over which the landowner had no control.

(c) Nothing in the PACE Program shall relieve the landowner of any obligation or restriction on the use of the property imposed by law.

(d) The Commonwealth shall not locate landfills, sewage treatment plants, or other public service facilities that are not compatible with or complimentary to agricultural production on restricted lands.

(3) (a) To retain the agricultural viability of the restricted land, the PACE board shall require, and the owner of the restricted land shall implement, a conservation plan approved by the soil and water conservation district. This plan shall be updated every ten (10) years and any time the basic farming operation conducted on restricted lands is changed. All farming operations shall be conducted substantially in accordance with the plan.

(b) In addition to the requirements established by the soil and water conservation district, the conservation plan shall require that:

1. The use of the land for growing sod, nursery stock, and ornamental trees and shrubs does not remove excessive soil from the restricted land;

2. The excavation of soil, sand, gravel, stone, or other materials for use in agricultural production on the restricted land is consistent with

subsection (4)(h) of this section and is conducted in a location and manner that retains the viability of the restricted land for agricultural production; and

3. The mining of minerals is consistent with subsection (4)(h) of this section and is conducted only through the use of methods which will not interfere with the viability of the restricted land for agricultural production.

(4) The construction or reconstruction of any building or other structure, except those existing on the date of the easement or previously approved by the PACE board, is prohibited except in accordance with this subsection.

(a) Existing fences may be repaired and replaced, and new fences may be built anywhere on the restricted land for purposes of reasonable and customary management of livestock and wildlife, without approval of the PACE board.

(b) New buildings and other structures and improvements to be used solely for agricultural purposes including the processing or sale of farm products predominantly grown or raised on the restricted land, but not including any dwelling or farm labor housing, may not be built on the restricted land without the advance approval of the PACE board. The PACE board shall give approval within a reasonable time, unless it determines that the proposed building, structure, or improvement would not be properly located or would significantly diminish the agricultural production capacity of the restricted land.

(c) All existing single-family residential dwellings may be repaired, reasonably enlarged, and replaced at their current locations without further permission of the PACE board. No new single-family residential dwellings may be built on the restricted land without the advance approval of the PACE board. The PACE board shall give approval within a reasonable time, unless it determines that a proposed dwelling would not be properly located or would significantly diminish the agricultural production capacity of the restricted land.

(d) The subdivision of the restricted land, whether by physical or legal process, is prohibited without the advance written approval of the PACE board. The PACE board shall give approval within a reasonable time, unless it determines that the proposed subdivision will diminish or impair the agricultural productivity of the restricted land.

(e) The granting of rights-of-way through restricted land for the installation of, transportation of, or use of, lines for water, sewage, electric, telephone, gas, oil or oil products is permitted. The term "granting of rights-of-way" includes the right to construct or install the lines. The construction or installation of utility lines other than the types stated in this paragraph is prohibited on the restricted land.

(f) No portion of the restricted land shall be paved or otherwise be covered with concrete, asphalt, gravel, or any other paving material, nor shall any road for access or other purposes be constructed, without the advance written approval of the PACE board. The PACE board shall give approval within a reasonable time, unless it determines that the proposed paving or covering of the soil, or the location of any road, will substantially diminish or impair the agricultural productivity of the restricted land.

(g) Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the restricted land. Trees may also be cut to clear land for cultivation or use of livestock, but only if done in accordance with the conservation plan required by subsection (3) of this section. Any commercial timber

harvesting on the restricted land shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester.

(h) The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance, using any method that disturbs the surface of the land, is prohibited without the advance written approval of the PACE board. The PACE board shall give approval within a reasonable time, unless it determines that the proposed mining or extraction will substantially diminish or impair the agricultural productivity of the restricted land.

(i) The dumping or accumulation of any kind of trash or refuse on the restricted land is prohibited. However, this shall not prevent the storage of agricultural products and by-products on the restricted land, so long as it is done in accordance with all applicable laws, administrative regulations, and ordinances.

(j) Golf courses are prohibited on the restricted land. Buildings and facilities for any other public or private recreational use may not be built on the restricted land without the advance written approval of the PACE board. The PACE board shall not give approval unless it determines that the proposed use or facilities will not substantially diminish or impair the agricultural productivity of the restricted land.

(5) Landowners shall retain the right to perform any act not specifically prohibited or limited by this section and administrative regulations promulgated under its provisions. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the restricted land and the right to sell or otherwise transfer the restricted land to anyone of the landowner's choice.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 390, sec. 24, effective July 15, 1994

262.912 Responsibilities of landowner during term of easement.

Other than as specified within this section, this section and administrative regulations promulgated under its provisions are not intended to impose any legal or other responsibility on the PACE board or in any way to affect any existing obligation of the landowner as owner of the restricted land. Accordingly:

(1) The landowner shall continue to be solely responsible for payment of all taxes and assessments levied against the restricted land.

(2) The landowner shall continue to be solely responsible for the upkeep and maintenance of the restricted land, to the extent it may be required by law. The PACE board and the Commonwealth shall have no obligation for the upkeep or maintenance of the restricted land.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 390, sec. 25, effective July 15, 1994.

262.914 Contents of deed conveying interest in restricted land.

A deed conveying an interest in the restricted land shall set forth the language of the assessment restrictions verbatim. Within thirty (30) days of a change in ownership of the restricted land, the prior owner shall

notify the PACE board in writing of the name and address of the new owner, together with the volume and page of the deed book in which the transfer has been recorded.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 390, sec. 26, effective July 15, 1994.

262.916 Legal action by board for violation of easement.

(1) If the PACE board finds what it believes is a violation of the terms of any easement by the property owner, it may take appropriate legal action. Except when an ongoing or imminent violation could irreversibly diminish or impair the agricultural productivity of the restricted land, the PACE board shall give the landowners written notice of the violation and sixty (60) days to correct it, before taking legal action.

(2) The owner of the restricted land shall bear all costs associated with the correction of a violation of the easement, including:

(a) Costs of work required and materials used to correct the violation and restore the restricted land to its condition prior to the violation;

(b) Administrative costs incurred by the PACE board; and

(c) Court costs and reasonable attorney's fees incurred by the PACE board in enforcing the easement.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 390, sec. 27, effective July 15, 1994.

262.918 Legal action by grantor for termination of easement.

(1) (a) A grantor may terminate an easement, in whole or in part, only by filing an action in the Franklin Circuit Court, and demonstrating by clear and convincing evidence that conditions on or surrounding the land subject to an agricultural conservation easement have changed so much that agriculture is no longer viable and it has become impossible to fulfill any of the easement's conservation purposes. The grantor shall name the PACE Corporation as the defendant in the action.

(b) In the event that a finding is made by the court that a portion of the land subject to the agricultural conservation easement is no longer suitable for agricultural purposes, the owner shall, at the owner's expense, provide a survey of the land area on which the agricultural conservation easement is to be terminated.

(2) (a) No agricultural conservation easement or portion thereof which has been purchased with Commonwealth funds shall be terminated by the court except upon payment by the grantor to the PACE Corporation of its then fair value. The value of the easement shall be established by one of the following two methods, as determined by the court:

1. The owner shall pay the PACE Corporation an amount equal in current dollars to the full cost of acquiring and monitoring the easement during its full duration, plus reasonable interest as determined by court; or

2. The owner shall pay the PACE Corporation an amount equal to the easement's current market value as determined by independent appraisal, performed at the owner's expense and satisfactory to the Commonwealth.

(b) The PACE Corporation shall place the proceeds from the termination of the easement in the agricultural enhancement fund and use the proceeds consistent with the purposes of KRS 262.900 to 262.920.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 390, sec. 28, effective July 15, 1994.

262.920 Agricultural Enhancement Fund.

(1) (a) There is hereby created by this section a special fund in the State Treasury which shall be known as the "Agricultural Enhancement Fund." There shall be deposited in the fund:

1. Moneys received by the Commonwealth, from whatever source and by whatever means, as gifts for purposes of retaining agricultural lands and supporting and abetting agricultural practices and activities which shall improve conservation and natural resource protection practices, enhance the viability of the agriculture industry, and expand the economic contribution that agriculture makes to the Commonwealth;

2. Moneys received by the Commonwealth, from whatever source and by whatever means, as grants or loans for purposes of retaining agricultural lands and supporting and abetting agricultural practices and activities which shall improve conservation and natural resource protection practices, enhance the viability of the agriculture industry, and expand the economic contribution that agriculture makes to the Commonwealth;

3. Moneys received by the Commonwealth including proceeds of bonds issued for the purpose of funding the PACE Program as dedicated sources of revenue for the fund; and

4. Moneys appropriated to the fund.

(b) The fund shall be in the custody of the Commonwealth. All or any part of these funds may be invested in any securities in which public funds may lawfully be invested. All income derived from investments shall be paid into the fund and become a part thereof. The moneys so invested shall at all times be subject to withdrawal from investment for use as provided in this subsection.

(c) Upon authorization of the PACE board, the moneys in the fund may be used for:

1. The acquisition of agricultural conservation easements on eligible lands within the Commonwealth;

2. The acquisition of options to purchase agricultural conservation easements on eligible lands within the Commonwealth;

3. The costs of appraisal, engineering, surveying, planning, financial, legal, and other services, and applicable personnel costs lawfully incurred incident to the acquisition of agricultural conservation easements in eligible lands and for monitoring and enforcing easements on restricted lands;

4. The costs incident to the sale, issuance, and delivery of bonds, and to securing funds from other revenue sources for the fund;

5. The provision of guarantees for loans that farmers participating in the PACE Program may need to seek from lending institutions in order to carry out agricultural operations, including loans for annual agricultural production, agriculture- and conservation-related improvements, and

changes in the types of and methods employed for agricultural production on farmland tracts enrolled in the PACE Program; and

6. Other expenditures as specified by the PACE board, providing that the expenditures are consistent with KRS 262.900 to 262.920 and administrative regulations promulgated by the PACE board and are for the express purpose of retaining agricultural lands, supporting and abetting agricultural lands, and supporting and abetting agricultural practices and activities which shall improve conservation and natural resource protection practices, enhance the viability of the agriculture industry, and expand the economic contribution that agriculture makes to the Commonwealth.

(d) No more than ten percent (10%) of the moneys in the fund shall be expended in any one (1) fiscal year to administer KRS 262.900 to 262.920.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 390, sec. 29, effective July 15, 1994.

Administrative Regulations

TITLE 302 DEPARTMENT OF AGRICULTURE

Chapter 100 Purchase of Agricultural Conservation Easement Corporation

302 KAR 100:030. Procedures for determination of agricultural productivity diminishment in subdivision.

RELATES TO: KRS 262.900, 262.908, 262.910

STATUTORY AUTHORITY: KRS 262.908, 262.910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 262.908 requires the Purchase of Agricultural Conservation Easement Corporation to implement a Purchase of Agricultural Conservation Easement Program, including the development and promulgation of necessary administrative regulations. KRS 262.910 requires the Purchase of Agricultural Conservation Easement Corporation to approve proposed subdivisions of land restricted by an agricultural conservation easement unless the subdivision will diminish or impair the agricultural productivity of the restricted land. This administrative regulation creates a minimal acreage deemed by the PACE Board beyond which further subdivision would harm the agricultural value of the restricted land.

Section 1. Minimum Acreage Requirement. Any division of land restricted by an agricultural conservation easement that will result in any remaining parcel being less than fifty (50) acres shall be deemed to impair the agricultural productivity of the restricted land.

Section 2. Limit on Number of Divisions. Any further division of restricted land after an approved initial request shall be deemed to impair the agricultural productivity of the restricted land.

Section 3. Election to Waive Subdivision Rights. (1) Any owner of land may elect to expressly waive subdivision rights when the property enters into the Purchase of Agricultural Conservation Easement Program. This election shall be filed with the conservation easement. This election shall be irrevocable once recorded. The PACE Board shall not grant subdivision requests in the future if this express waiver is recorded.

(2) Any owner of restricted lands may record an amendment to his or her easement to expressly waive subdivision rights of property in the Purchase of Agricultural Conservation Easement Program. This election shall be irrevocable once recorded. The PACE Board shall not grant subdivision requests in the future if this express waiver is recorded with the amendment to the conservation easement.

(3) Any subsequent owner of restricted land shall take ownership subject to the recorded election to waive subdivision rights, and that election by the prior owner shall remain valid and binding on the PACE Board. (35 Ky.R. 2836; Am. 36 Ky.R. 324; eff. 8-28-2009)