



Washington State Conservation Commission

Policy #19-02	Agricultural Conservation Easement Sponsorship and Liability
Applies to:	Washington State Conservation Commission
Effective Date:	This policy supersedes existing State Conservation Commission (WSCC) policy #13-24 Agricultural Conservation Easement Sponsorship.

PURPOSE

The purpose of this policy is to establish the process by which the Washington State Conservation Commission (WSCC) would seek funding and hold an interest in certain real property rights for the purposes of agricultural land conservation. In addition, this policy establishes the process by which WSCC would administer funds to entities to acquire certain interests in real property.

BACKGROUND

Agriculture is a substantial contributor to our state's economy. Maintaining an adequate agricultural land base is important to preserve and enhance our state's agricultural economy, protect natural resources and ensure we can feed future populations of our state and the world.

Population growth is expected to continue and bring pressure to agricultural land. In 2018, the state's population was 7.4 million residents. Between 2010 and 2040, Washington's population is expected to grow by 2,511,000 persons, reaching 9,235,600 in 2040.

Farmland loss occurs throughout Washington for a variety of reasons. Several tools are employed to reduce farm loss including land transition planning for farmers, new farmer education programs, land linking services and more. One of the tools intended to keep farmland intact is an agricultural conservation easement.

An agricultural conservation easement is a legally recorded deed restriction held for a set term or in perpetuity by an entity committed to upholding the rights conveyed by the landowner. Landowners can donate or sell a right for certain benefits. This right is held by an entity that will hold in trust. An easement is an acquisition of a real property right with the intended purpose to hold that right and prevent the conversion of land to uses not consistent with agriculture.

WSCC is responsible for the implementation of the Office of Farmland Preservation (OFP) and those activities identified in the OFP statute (RCW 89.10). WSCC has identified agricultural conservation easements as an important tool to assist in farmland protection and advancing conservation with willing landowners. As a state agency, the WSCC is explicitly authorized by RCW 64.04.130 to acquire and hold an interest in land for conservation purposes.

WSCC is an eligible applicant to the Washington Wildlife and Recreation Program (WWRP) Farm and Forest Preservation category. (Chapter 79A.15, RCW). Eligible lands for this program must be devoted primarily to the production of livestock or agricultural commodities for commercial purposes. If WSCC applies for and receives funds to acquire an easement through WWRP, it assumes the legal liability as primary holder of the real property right.

WSCC has been allocated funding from the legislature to fund agricultural easement acquisition for land trusts and conservation districts. In addition, WSCC has assumed third party right of enforcement to uphold the terms of the easement. This allows WSCC the right to intervene and if necessary enforce the terms of the easement. It also provides authority to re-assign the agricultural easement to a qualifying entity committed to upholding the terms.

POLICY

It will be the policy of WSCC to work with conservation district and land trust partners (collectively Cooperating Partners), to identify and where appropriate, seek funding to purchase development rights on farmland conveyed as an “Agricultural Conservation Easement”. The purpose of the easement will be to prevent conversion of agricultural land to non-agricultural uses through a restriction of certain real property rights including the right to sub-divide and develop.

If WSCC is a successful applicant to the WWRP Farm and Forest program, the agency will be the primary holder of real property rights and assume the legal obligation to monitor and enforce the terms of the easement. WSCC may only transfer the easement to an eligible entity under the WWRP program. The Recreation and Conservation Office assumes certain third party right of enforcement in WWRP Farm and Forest funded easements.

If WSCC is provided funding for acquisition of certain real property rights, to assure public funds are appropriately stewarded, WSCC will utilize appropriate policies and processes consistent with other state agency programs intended to protect agricultural lands and ensure that legal requirements are met, the program results are real and genuine, and that the responsibilities of the state can be carried out per the terms of the recorded document. In order to assure the easement is in good standing, the agricultural conservation easement requires that each easement include a provision to provide access to the project sponsor and WSCC to conduct a general inspection of the easement area and to monitor compliance with the easement terms. To assure public investment is maintained, for WSCC funded easements, WSCC must be either named as third party beneficiary, or an agreed upon qualified entity named as a third party beneficiary, with the entities designee signing the easement before closing. Funds will be awarded on a match or no match basis.

In stewardship of acquired easements, the WSCC, as a Land Trust Alliance (LTA) government member, will as appropriate, utilize guidance from the Standards and Practices guidance developed by LTA. If WSCC is the primary holder of the easement, WSCC will work with the local conservation districts or land trust partners if necessary to assist in monitoring.

It will be the policy of the WSCC to:

- Maintain an updated landowner questionnaire to assist in project identification;
- Maintain updated guidance intended to inform project development and responsibilities,
- Maintain an updated model agricultural conservation easement
- Maintain updated guidance and forms necessary for baseline documentation
- Maintain updated guidance and forms necessary for monitoring,
- Maintain updated guidance for when WSCC is a third party beneficiary.
- Ensure that all aspects of the easement process are sufficiently addressed for each property
- Work collaboratively and cohesively with the cooperating partner on all aspects of the process, including property evaluation, acquisition, due diligence, deed restriction, access, stewardship, monitoring, and recordkeeping.

Priorities for consideration of an agricultural conservation easement shall be:

1. The parcel proposed for preservation is expected to continue to be used for, and is large enough to sustain, commercial agricultural production.
2. The land is also in an area that possesses the necessary market, infrastructure, agricultural support services, and the surrounding parcel sizes and land uses that will support long-term commercial agricultural production.
3. Without preservation, the land proposed for protection is likely to be converted to nonagricultural use in the foreseeable future.

WSCC will ensure that the following standards are met regarding agricultural conservation easement content:

1. Provisions of an accurate legal document that prohibits any activity that substantially impairs or diminishes the agricultural productivity of the land.
2. Protection of any existing water rights necessary to maintain agricultural uses and retain such water rights for ongoing use on the agricultural land.

As provided for in the agricultural conservation easement, if WSCC is awarded funds through WWRP or if funds are appropriated to WSCC, the agency will assume certain legal rights to assure the terms of the easement are maintained. If the agency is primary holder of the easement, all duties and rights will be upheld in protection of the land.

CONSERVATION EASEMENT SUB-COMMITTEE

WSCC will establish a Conservation Easement Sub-Committee (Sub-Committee) to guide and inform WSCC activities related to management of easements.

The Sub-Committee will include the Executive Director or designee of WSCC; the Executive Director or designee of the Washington Association of Land Trusts; the Executive Director or designee of the Washington Association of Conservation Districts; the Pacific Northwest Director or designee of the American Farmland Trust; and a conservation district supervisor or manager from an interested district, one from east of cascades and one from west of cascades selected by the Commission at a regular business meeting.

The Sub-Committee will meet annually or as necessary to review agency policy for monitoring conservation easements as well as hear reports on agency held and WSCC third party easements. In addition, the Sub-Committee will assist in reviewing applications based on ranking developed by SCC staff with input from the Sub-Committee and provide a referral to WSCC on whether to proceed or not proceed should funds become available. The Sub-Committee may recommend whether WSCC be primary holder of easement or hold an interest as third party beneficiary.

The Sub-Committee will also work with WSCC staff to provide Cooperating Partners and WSCC staff with information related to current best practices related to stewardship and monitoring of agricultural conservation easements.