

Chapter 26 - RURAL LAND MANAGEMENT

ARTICLE I. - IN GENERAL

Sec. 26-1. - Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

- (1) *Active farm* shall mean a parcel of land which is currently being used for agricultural production.
- (2) *Agricultural production* shall mean 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 (50) percent of those processed or merchandised products are produced by the farm operator and the raising and stabling of horses for commercial purposes, and shall also include any of the following: dairying, pasturage, growing crops, bee keeping, horticulture, floriculture, orchards, plant nurseries, viticulture, silviculture, aquaculture and animal and plant husbandry; the breeding, raising, training and general care of livestock for uses other than food, such as sport or show purposes; and construction and maintenance of barns, silos and other similar structures, the use of farm machinery, the primary processing of agricultural products and the sale of agricultural products produced on the land where the sales are made.
- (3) *Application* shall mean the documentation and information submitted to the rural land staff by a landowner on the approved application form offering to sell to the rural land board or the Lexington-Fayette Urban County Government a conservation easement in eligible land.
- (4) *Comprehensive plan* shall mean the land use plan, and amendments thereto, adopted by the Lexington-Fayette Urban County Government pursuant to KRS 100.197.
- (5) *Conservation easement* shall mean a non-possessory interest in real property, which is acquired in perpetuity for the purpose of retaining and enhancing agriculture; preserving natural, scenic or open space values of real property; preserving areas or structures of architectural or historical interest; restricting or preventing the development or improvement of the land for purposes other than agricultural production; or other like or similar purposes, but does not include any real property owned or leased by the government for the purpose of or devoted to parks and recreation.
- (6) *Conservation easement value* shall mean the value of a conservation easement on the parcel of land as determined by the difference between the unrestricted value of the tract and its value as restricted by a conservation easement.
- (7) *Development right* shall mean the right held by the property owner having title to a tract of real property to divide the tract into forty (40) acre tracts. Each such right held by the property owner to create a forty (40) acre tract shall create one (1) "development right" in favor of the property owner at the time of application pursuant to section 26-9.
- (8) *Rural service area land management plan* shall mean the element of the comprehensive plan adopted by the planning commission of the Lexington-Fayette Urban County Government on April 8, 1999, and shall include any future portions of the comprehensive plan, and amendments thereto, pertaining to the rural service area.
- (9) *Rural land staff* shall mean the personnel within the office of administrative services charged by the council with the duty to administer this chapter.

(Ord. No. 4-2000, § 1, 1-13-00; Ord. No. 272-2007, §§ 1, 2, 12-6-07)

ARTICLE II. - RURAL LAND BOARD

Sec. 26-2. - Board; organized; purposes.

- (1) Margaret Graves, William M. Lear, Jr., Frank Penn and Pamela G. Miller, all being residents of Fayette County, are hereby authorized and requested to serve as incorporators for and to organize a non-profit, non-stock Kentucky corporation under the provisions of Chapter 273 of the Kentucky Revised Statutes, to be named the "Fayette County Rural Land Management Board, Inc." and hereinafter referred to as the "rural land board."
- (2) The rural land board shall be an agency and instrumentality of the urban county government. It is organized for the purpose of preserving and managing agricultural, rural and natural lands within Fayette County consistent with the Rural Service Area Land Management Plan.

(Ord. No. 4-2000, § 1, 1-13-00)

Sec. 26-3. - Board; membership.

- (1) The rural land board shall consist of thirteen (13) members. Eleven (11) members shall be voting members and two (2) members shall be ex officio non-voting members.
- (2) The eleven (11) voting members shall be residents of Fayette County and shall have demonstrated an interest in farming, farmland preservation, conservation of natural areas, or other agricultural, rural and natural lands preservation and management issues. They shall be appointed by the mayor, subject to confirmation by a majority of the council, from the following:
 - (a) Two (2) members from a list of not less than four (4) names submitted by the Fayette County Farm Bureau, provided that each nominee must be either a landowner or an operator of land, who manages the production of agricultural crops or livestock;
 - (b) Two (2) members from a list of not less than four (4) names submitted by the Kentucky Thoroughbred Association, Inc., provided that each nominee must own a farm in Fayette County;
 - (c) One (1) member from a list of not less than two (2) names submitted by the Home Builders Association of Lexington, Inc.;
 - (d) One (1) member from a list of not less than two (2) names submitted by the Lexington-Bluegrass Association of Realtors, Inc., provided that each nominee must be a licensed realtor;
 - (e) One (1) member from a list of not less than two (2) names submitted by the Greater Lexington Convention and Visitors Bureau established at section 2-170 of this Code;
 - (f) One (1) member from a list of not less than two (2) names submitted by the Fayette County Neighborhood Council, Inc.;
 - (g) One (1) member from names submitted by private non-profit organizations involved in land conservation, such as, but not limited to, the Land & Nature Trust of the Bluegrass, Inc., the Nature Conservancy, the Bluegrass Conservancy, Inc., and the Sierra Club, Inc.;
 - (h) One (1) member from names submitted by governmental entities or private non-profit organizations involved in historic preservation, such as, but not limited to, the Historic Preservation Commission established at article 13-4 of the zoning ordinance, the Bluegrass Trust for Historic Preservation, Incorporated, and the Kentucky Heritage Council established at KRS 171.3801; and
 - (i) One (1) member from a list of not less than two (2) names submitted by the Greater Lexington Chamber of Commerce, Inc., provided that each nominee must have a background in agricultural lending or agricultural finance.
- (3) The two (2) non-voting members shall be ex officio members of the rural land board and shall consist of the individuals holding the following positions:

- (a) The Fayette County extension agent appointed pursuant to KRS 164.605, et seq. or any successor position; and
- (b) The district conservationist for Fayette County appointed by the Natural Resources Conservation Services of the United States Department of Agriculture pursuant to 7 CFR § 600.6, or any successor position.

(Ord. No. 4-2000, § 1, 1-13-00)

Sec. 26-4. - Board; terms; removal of members.

- (1) The voting members of the rural land board shall serve a term of four (4) years from the date of appointment, provided the terms of those originally appointed shall be staggered in the following manner: three (3) members shall be appointed for one (1) year; three (3) members shall be appointed for two (2) years; two (2) members shall be appointed for three (3) years; and three (3) members shall be appointed for four (4) years.
- (2) Vacancies in the voting membership shall be filled for an unexpired term in the manner prescribed for the original appointment. The membership of the ex officio non-voting members shall be terminated upon leaving the specified offices.
- (3) No voting member who was originally appointed to the rural land board for less than a four (4) year term and who has served two (2) consecutive full terms after his initial term may succeed himself until the lapse of twelve (12) months from the end of said consecutive term. No appointed voting member who has served two (2) consecutive full terms may succeed himself until the lapse of twelve (12) months from the end of said consecutive terms.
- (4) A voting member of the rural land board shall be removed only by a majority vote of the council, and only for cause, except that a member of the board shall automatically be removed by operation of law in the event of three (3) unexcused absences, whether consecutive or non-consecutive, in any two (2) year period or in the event of absence from twenty-five (25) percent of the meetings in any two (2) year period. An unexcused absence is any absence in which the chair of the board or the rural land staff is not notified of the intended absence at least twenty-four (24) hours in advance of a regularly scheduled meeting. In the event of three (3) unexcused absences or the absence from twenty-five (25) percent of the meetings over any two (2) year period, within the meaning of this section, the rural land staff shall notify the mayor and council administrator that a vacancy exists on the rural land board.

(Ord. No. 4-2000, § 1, 1-13-00)

Sec. 26-5. - Board; officers; quorum; staff.

- (1) The officers of the rural land board shall consist of a chair, a vice-chair, and other officers elected from the membership as set forth in the bylaws. They shall take office at the first meeting of the rural land board after their election. The duties of the officers shall be as specified in the bylaws. The rural land board shall determine its own rules and order of business and so provide for keeping a record of its proceedings.
- (2) A majority of the voting members of the rural land board, that is six (6) voting members, shall constitute a quorum for transaction of business at any meeting of the rural land board. The acts of a majority of those voting members present at any regular or special meeting of the rural land board shall be the acts of the rural land board, except as provided below:
 - (a) It shall take a vote of seven (7) voting members to:
 - 1. Propose to the urban county council that section 26-10, relating to criteria to be used to evaluate applications for consideration of conservation easements, be changed or amended;

2. Approve, pursuant to section 26-14(2), the purchase of conservation easements;
 3. Approve, pursuant to section 26-18(2)(a), the acceptance of payment for release of a conservation easement which has been included within the urban service area boundary; or
 4. Approve, pursuant to section 26-18(3), the release of a conservation easement within the rural services area boundary.
- (b) It shall take a vote of six (6) voting members to adopt bylaws or regulations.
- (3) The rural land board shall meet at a minimum on a quarterly basis at a date, place and time to be determined by the board.
- (4) The rural land staff shall serve as staff to the rural land board and shall be responsible for coordinating agendas, preparing minutes and handling logistical matters in order to expedite the board's function. Within the limits of the funds appropriated by the council in the annual budget, the other offices and agencies of the government shall provide the rural land board, either directly or by contract or agreement, with the facilities, materials, supplies, and staff needed for the conduct of its business.

(Ord. No. 4-2000, § 1, 1-13-00)

Sec. 26-6. - Board; powers and duties.

The rural land board shall, as permitted by law:

- (1) Adopt bylaws and regulations which are not inconsistent with this chapter.
- (2) Enter into contracts and agreements with the urban county government, other governmental entities, and also private persons, firms and corporations in furtherance of the purposes of this chapter.
- (3) Solicit, acquire and hold conservation easements pursuant to the provisions of this chapter.
- (4) Enforce the terms and provisions of conservation easements pursuant to the provisions of this chapter.
- (5) Expend funds appropriated to the rural land board by the council or donated or provided to the board from any other source.
- (6) Release or terminate any conservation easement pursuant to the provisions of this chapter.
- (7) Appoint standing and ad hoc committees, which may be comprised of rural land board members, employees of the urban county government, the public, or any combination of the foregoing.
- (8) Hold public forums for the purpose of gauging the will of the public on agricultural, rural and natural lands matters.
- (9) Solicit financial and other contributions to the urban county government or to the rural land board, including donations of conservation easements, for the purposes of agricultural, rural and natural lands preservation and management.
- (10) Assist the government in the following areas:
 - (a) Promoting the preservation and management of agricultural, rural and natural lands in Fayette County;
 - (b) Implementing the specifics of the rural service area land management plan adopted by the planning commission of the urban county government;
 - (c) Implementing the specifics of any other plans adopted by the government or the planning commission relating to the rural service area;

- (d) Evaluating current services and facilities of the government relating to agricultural, rural and natural lands preservation and management;
 - (e) Reviewing fees and charges and alternate sources of funding to the agricultural, rural and natural lands preservation and management program, such as grants, gifts, endowments, etc.; and
 - (f) Developing public relation strategies for stimulating public involvement, promoting services and achieving results;
 - (g) Preparing the agricultural, rural and natural lands preservation and management budget;
 - (h) Securing legislation that will promote the mission, goals, and objectives of this chapter.
- (11) Establish application forms, filing and meeting schedules, and similar items as needed to carry out the provisions of this chapter.
- (12) Prepare and present to the council and planning commission written reports on an annual basis each calendar year. The report shall contain, but not be limited to, the following:
- (a) A listing of all parcels of land on which a conservation easement was purchased or donated during the year;
 - (b) A map or maps showing all parcels of land on which conservation easements have been purchased or donated, including the ones acquired during the preceding calendar year, and showing all parcels of land on which scenic easements, and other interests in land designed to preserve and manage agricultural, rural and natural lands, are to the knowledge of the rural land staff held by entities other than the rural land board; and
 - (c) A listing of all landowners who made unsuccessful applications for purchase or donation of a conservation easement during the preceding calendar year, including the acreage and location of the parcel of land which was the subject of each application, along with the general categories of reasons the applications were not accepted.
- (13) Possess all the powers conferred upon a corporation organized under chapter 273 of the Kentucky Revised Statutes dealing with non-profit non-stock corporations and have all powers necessary, proper, convenient or desirable in order to fulfill and further the purposes of this chapter.

(Ord. No. 4-2000, § 1, 1-13-00)

Sec. 26-7. - Board; conflict of interest.

All members of the rural land board shall be subject to the code of ethics contained in article 16 of the Urban County Charter.

(Ord. No. 4-2000, § 1, 1-13-00)

ARTICLE III. - CONSERVATION EASEMENTS

Sec. 26-8. - Conservation easements; minimum criteria.

- (1) The rural land board shall administer any program funded by appropriations from the urban county government or by grant funds or donations from any source, which are appropriated or given for the purpose of acquiring conservation easements or other interests in land designed to preserve and manage agricultural, rural and natural lands. The rural land board shall adhere to any specialized procedures established by the state, federal, or local government or any grant award for a particular program and, to the extent not inconsistent therewith, to any procedures established in this chapter.

- (2) In order for a conservation easement to be considered for purchase by the rural land board, it must meet the following minimum criteria:
 - (a) The applicant or applicants must have good, marketable, fee simple title to the parcel of land upon which the conservation easement is proposed to be imposed;
 - (b) The parcel of land upon which the conservation easement is proposed to be imposed must be located entirely within either the core agricultural and rural land category (CARL) or the natural areas category (NAT) land use categories as determined by the urban county government's comprehensive plan;
 - (c) The site of any non-conforming or non-agricultural use shall be excluded from the parcel of land upon which the conservation easement is proposed to be imposed;
 - (d) The parcel of land in question must be at least twenty (20) acres in size and must have at least one (1) development right, as defined in section 26-1(7); and
 - (e) All landowners of the parcel shall agree for the duration of the conservation easement to maintain a land conservation plan and/or forest stewardship plan, approved by the local soil conservation district, and shall implement the plan according to the approved schedule.
- (3) It shall not be necessary for an application to cover all land in common ownership in order to be considered for purchase of a conservation easement. Accordingly, a landowner may submit an application for only a portion of his or its land. In such a case, the minimum criteria in subsection (2) of this section shall only apply to the portion of the landowners' land upon which the conservation easement is proposed to be imposed.

(Ord. No. 4-2000, § 1, 1-13-00)

Sec. 26-9. - Conservation easements; application procedures and preliminary review.

- (1) In order for a conservation easement to be considered for purchase by the rural land board, a completed application shall be submitted by the landowner on the approved application form by the deadline established by the board. The landowner or a duly authorized representative of the landowner may apply. All landowners shall sign the application. A separate application shall be required for each parcel of land offered for acquisition except for batch applications as provided for in section 26-10(3)(b). The board shall by regulation establish policies and procedures for the rural land staff to follow in assisting landowners with the application process. The following information shall be included in a completed application:
 - (a) Adequate identification by deed reference of the parcel of land to be considered for purchase.
 - (b) A map of the property at a scale of at least 1"=600' showing the land area to be considered for purchase, as well as any contiguous acreage under the same ownership to be excluded, or a copy of a recorded plat of record, if any.
 - (c) A United States Department of Agriculture (USDA) Natural Resources Conservation Services Soil Map and farm plan and/or forest stewardship plan, if any, for the parcel under consideration.
 - (d) A full description of the agricultural production carried out on the property including type and quality of crops, number of livestock, and acreage of land leased or used from others for agricultural production.
 - (e) A statement by the landowner of any contingencies which the landowner wishes to make the rural land board aware of such as death, health, or retirement of the owner, financial stress, estate settlement, or other circumstances which may affect the property in the future.
 - (f) The landowner's preferred method of payment for the acquisition, including but not limited to, lump sum payment or payout over time.

- (g) A statement by the landowner agreeing to allow inspection and appraisal of the parcel of land.
 - (h) A list of any and all liens and encumbrances on the parcel of land and a letter from the holder of each evidencing willingness to subordinate his or its interests to the conservation easement.
 - (i) Existence of any surface or mineral leases or easements.
 - (j) A filing fee, in an amount established by regulation adopted by the rural land board.
 - (k) All other information requested on the approved application form.
- (2) A member of the rural land staff shall review the application to determine if it is complete. If the application is complete, a member of the rural land staff shall make a preliminary evaluation of whether the parcel meets the minimum criteria established in section 26-8. If it is determined by the rural land staff that the parcel of land is eligible land, the staff shall notify the landowner in writing that the conservation easement will be considered for purchase or that, for reasons set forth in writing, the application is being rejected. A landowner who is dissatisfied with the staff's determination may appeal to the rural land board pursuant to section 26-11(3).

(Ord. No. 4-2000, § 1, 1-13-00)

Sec. 26-10. - Conservation easements; evaluation by staff.

If the application is complete and the minimum criteria established in section 26-8 is met, the application shall be evaluated and scored by the rural land staff. For purposes of this section, less than one-half (½) acre shall be rounded down and one-half (½) acre or more shall be rounded up. This evaluation and scoring shall be done in accordance with the following criteria:

- (1) SIZE OF PARCEL (12 possible points plus 8 potential bonus points)

The purpose of this criterion is to assist in building a critical mass of agricultural land. These points shall be calculated as follows:

- (a) Basic:

Over 350 acres	12 points
251-350 acres	10 points
121-250 acres	8 points
41-120 acres	6 points
20-40 acres	2 points

- (b) Bonus: Additional points will be assigned to parcels of eighty (80) or more acres if the landowner agrees not to subdivide the parcel and build residences on those parcels. The property owner shall receive one (1) bonus point for each right to develop a forty (40) acre tract which is extinguished up to a maximum of eight (8) bonus points.

- (2) LENGTH OF PUBLIC ROAD FRONTAGE (5 possible points)

The purpose of this criterion is to encourage the preservation of parcels with significant road frontage. These points shall be calculated as follows:

1001 feet +	5 points
501 feet-1000 feet	3 points
350 feet-500 feet	1 point

(3) PROXIMITY AND/OR "BATCH" APPLICATION (15 possible points)

The purpose of this criterion is to encourage the protection of large contiguous blocks of rural land. Distances shall be measured from the parcel's boundary lines and the points from Part B (part of "batch application") are in addition to any points from Part A (proximity to another property protected with conservation easement). These points shall be calculated as follows:

(a) Proximity:

Adjacent	10 points
Within ½ mile	5 points
Within 1 mile	3 points
More than 1 mile	0 points

(b) Batch application: The purpose of this criterion is to encourage landowners of contiguous parcels to apply to the program as a joint batch of applications. A "batch" of applications is defined as two (2) or more applications submitted by two (2) or more property owners of contiguous parcels with a total acreage of at least one hundred twenty (120) acres. Each application submitted as a "batch" application will be individually evaluated and the batch will be given five (5) additional points for being part of a batch application.

(4) QUALITY OF SOILS (30 possible points)

The purpose of this criterion is to examine the quality of soils on the property for agriculture. Soil information will be provided by the landowner in the application and verified by the rural land staff with the assistance of the Natural Resources Conservation Service (NRCS). The NRCS maps will be the basis to decide this question. These points shall be calculated as follows:

At least 80% prime farmland	30 points
At least 70% prime farmland	25 points

At least 60% prime farmland	20 points
At least 50% prime farmland	15 points
At least 50% statewide important	10 points
At least 25% prime farmland & less than 50% statewide important	5 points

(5) FARM ACTIVITY (5 possible points)

The purpose of this criterion is to evaluate whether the parcel is actively farmed. In evaluating whether the parcel is actively farmed, consideration will be given to the percentage of cropland and/or pasture and the tobacco base of the property. These points shall be calculated as follows:

Actively farmed more than five (5) of last ten (10) years	5 points
Not actively farmed more than five (5) of last ten (10) years	0 points
Potential to be farmed	1 point

(6) AGRICULTURAL IMPROVEMENTS (5 possible points)

The purpose of this criterion is to evaluate the owner's long term commitment to agriculture. It should be noted that the type and amount of on-farm investments will vary depending on the type of agriculture practiced. Each parcel shall be evaluated based on the type of agriculture involved on that particular parcel. There shall be no preference for one (1) type of agricultural operation over another. Factors to be considered would include the presence of substantial and well-maintained on-farm investments such as barns, other agricultural buildings and equipment, fencing, waterways or other conservation measures, and similar items. These points shall be calculated as follows:

High amount of on-farm investment (multiple permanent agricultural and agricultural related structures & equipment)	5 points
Moderate amount of on-farm investment (at least some agricultural structures & equipment)	2 points

No on-farm investment (zero (0) improvements or equipment)	0 points

(7) ENVIRONMENTALLY SENSITIVE AREAS (5 possible points)

The purpose of this criterion is to protect environmentally sensitive areas. If the parcel includes environmentally sensitive areas (ESA) as determined by the rural service area land management plan, it will receive up to five (5) points. These points shall be calculated as follows:

At least 50% environmentally sensitive areas	5 points
Some, but under 50% environmentally sensitive areas	2 points
No environmentally sensitive areas	0 points

(8) DESIGNATED RURAL GREENWAY (5 possible points)

The purpose of this criterion is to protect designated rural greenways. If any part of the parcel is located within one (1) of the rural greenways, as determined by the rural service area land management plan, it will receive five (5) points.

(9) DESIGNATED FOCUS AREAS (10 possible points)

The purpose of this criterion is to protect the designated focus areas, as determined by the rural service area land management plan. If any part of the parcel is located within one (1) of the focus areas, the application receives ten (10) points.

(10) NATURAL PROTECTION AREAS (5 possible points)

The purpose of this criterion is to protect the special natural protection areas. These points shall be calculated as follows:

Parcel is included in "A" list of special natural protection areas in the rural service area land management plan	5 points
Parcel is included in "B" list special natural protection areas in the rural service area land management plan	2 points

Alternatively, applicants will be eligible to demonstrate the parcel contains special natural protection areas not identified in the rural service area land management plan. The landowner who indicates on his or its application that the property includes rare or unusual flora or fauna, special indigenous plant sites, wildlife habitat or provides wildlife ecosystem linkages necessary to ensure biodiversity will need to provide background information relating to the existence of these resources on the property. The existence of these items should be independently verified by the rural land staff or an independent non-profit conservation organization such as the Nature Conservancy. If the landowner can document that the parcel includes special natural protection areas not identified in the rural land management plan, the application would receive not to exceed five (5) points.

(11) LINKAGES (4 possible points)

The purpose of this criterion is to protect linkages within the rural areas. This criterion examines whether the parcel is located near or has the ability to be linked to parks, nature preserves, nature sanctuaries, historic sites or other lands that have been specifically designated for long term natural resource use, conservation or preservation purposes. Distance is measured from parcel boundaries. These points shall be calculated as follows:

Contiguous or provide direct linkage	4 points
Within 1/2 mile or provide a buffer	2 points
Within 1 mile	1 point

(12) HISTORIC/CULTURAL RESOURCES (11 possible points)

The purpose of this criterion is to protect the historic/cultural resources of the rural area. Points in subsections (c) through(e) are in addition to any points accumulated from subsection (a) or (b), and shall be calculated as follows:

- (a) If any part of the property is listed in the National Register of Historic Places, or is designated a local historic landmark (H-1), it would receive three (3) points, or if the property is determined eligible for the National Register it would receive two (2) points.
- (b) If any part of the property is located in a National Register Historic District, or is located in a locally designated historic district, it would receive two (2) additional points.
- (c) If the property includes stone fences including, but not limited to, those stone fences documented in *The Stone Fences of Fayette County* (1990), the property would receive two (2) additional points. A minimum of one hundred (100) linear feet of stone fence is necessary.
- (d) If any part of the property is designated as a national historic landmark, it would receive two (2) additional points.

- (e) If the property contains any registered or significant archeological sites, it would receive two (2) additional points.

(13) SCENIC RESOURCES (11 possible maximum points)

The purpose of this criterion is to protect the scenic resources of the rural area. Points in subsections (d) through (f) are in addition to any points accumulated from subsections (a), (b) or (c).

- (a) If the property is located on one (1) of the scenic rural roads identified in rural service area land management plan, the property would receive two (2) points; or
- (b) If the property is located on a local/state designated scenic or historic byway or highway, it would receive three (3) points, or;
- (c) If the property is located on a federally designated scenic or historic byway or highway, it would receive five (5) points.
- (d) If the property is adjacent to I-64 or I-75 and/or is part of the scenic viewshed visible from I-64 or I-75, it would receive two (2) additional points.
- (e) If the property is part of the scenic viewshed visible from publicly owned land such as parks, nature preserves, sanctuaries, historic sites, the property would receive two (2) additional points.
- (f) If the property contains other scenic features, such as tree-lined canopy, or significant viewsheds, it would receive two (2) additional points. The scenic features of the property must be documented and independently verified.

(14) ELIMINATION OF UNDEVELOPED NONCONFORMING TRACTS (10 possible points)

The purpose of this criterion is to encourage consolidation/elimination of nonconforming tracts of less than twenty (20) acres. Such tracts may be part of a platted property or part of a larger parcel.

For each nonconforming tract of less than twenty (20) acres which is consolidated/eliminated, add one (1) point up to maximum of 10 points.

(15) URBAN SERVICE AREA BOUNDARY (Subtract 15 total possible points)

The following point reductions shall be applied except for (a) rare cases of overwhelming importance as a community icon; (b) location of the site within one (1) of the five (5) designated focus areas; or (c) location of the site within a wellhead protection area. The rural land board shall define what is a community icon, recognizing that community icons will change over time. A community icon should be a recognized symbol of Lexington-Fayette County, including, but not limited to, National Register properties and local, state or federal landmarks. The rural land board shall retain the discretion to determine whether a particular parcel is a community icon.

- (a) If the property is contiguous to the existing urban service area boundary, subtract fifteen (15) points unless the property is important as a community icon, within a well head protection area or is located in one (1) of the designated focus areas.
- (b) If the property is within one-half ($\frac{1}{2}$) mile of the existing urban service area boundary, subtract ten (10) points unless the property is important as a community icon, within a wellhead protection area or is located in one (1) of the designated focus areas.
- (c) If the property is within one (1) mile of existing urban service area boundary, subtract five (5) points unless the property is important as a community icon, within a wellhead protection area or is located in one (1) of the designated focus areas.

(16) URBAN DEVELOPMENT (subtract 30 total possible points)

Any points from subsections (c) through (e) are in addition to any points accumulated in subsection (a) or (b):

- (a) If the property is located within sewerability categories I, II or III as shown in the rural service area land management plan, deduct twenty (20) points, unless the property is within a designated focus area, is considered a community icon, or is within a wellhead protection area.
- (b) If the property is located within sewerability category IV as shown in the rural service area land management plan, deduct fifteen (15) points, unless the property is within a designated focus area, is considered a community icon, or is within a wellhead protection area.
- (c) If the property is located within sewerability categories I, II, III or IV as defined above and adjacent to or within 1 mile of an interstate interchange, deduct ten (10) points, unless the property is within a designated focus area, is considered a community icon, or is within a wellhead protection area.
- (d) If the property is located within sewerability categories I, II, III or IV as defined above and adjacent to or within one-half ($\frac{1}{2}$) mile of a federal highway, deduct eight (8) points, unless the property is within a designated focus area, is considered a community icon, is within a wellhead protection area or located on a state designated scenic byway.
- (e) If the property is located within sewerability categories I, II, III or IV as defined above and adjacent to or within one-half ($\frac{1}{2}$) mile of a roadway with a functional classification of an arterial highway, deduct six (6) points, unless the property is within a designated focus area, is considered a community icon, is within a wellhead protection area or located on a state designated scenic byway.

(Ord. No. 4-2000, § 1, 1-13-00)

Sec. 26-11. - Conservation easement; evaluation by board.

- (1) A member of the rural land staff shall view each parcel of eligible land and a written report shall be made to the rural land board prioritizing the applications according to the selection criteria established pursuant to section 26-10.
- (2) The rural land board members, as well as the members of any standing or ad hoc committees appointed by the board, may also view each parcel of eligible land.
- (3) The rural land board may by majority vote of those voting members present determine to hear appeals from those landowners who are dissatisfied either with determinations of the rural land staff as to their eligibility pursuant to section 26-9(2) or as to the evaluation and scoring of their application pursuant to section 26-10. The board shall determine by majority vote of those voting members present (a) how appeals will be heard, unless it has adopted a specific bylaw or regulation to govern those proceedings, and (b) whether remedial action will be taken.
- (4) After consideration of the written report of the rural land staff, as well as the inspections of the parcels of land and the determinations made on appeals, if any, the rural land board shall upon a vote of seven (7) voting members determine with which landowners the rural land staff shall begin negotiations for purchase of a conservation easement. This determination shall be made in accordance with the goal of purchasing conservation easements from as many rural landowners as possible in order to accumulate a critical mass of land to be retained in the future for agricultural, rural and natural lands preservation and management purposes, without overlooking the future urban needs of the community. The board shall not be required to purchase conservation easements in the exact order of priority of applications as determined by the selection criteria established pursuant to section 26-10, so long as it proceeds in compliance with this section, pursues the purchase of

highest priority conservation easements first, gives due consideration to each application, and gives consideration to all of the goals of the rural service area land management plan.

(Ord. No. 4-2000, § 1, 1-13-00)

Sec. 26-12. - Conservation easements; negotiation.

- (1) If the rural land board determines to authorize the rural land staff to begin negotiations for purchase of a conservation easement from a particular landowner, the staff shall submit a written offer to purchase to the landowner. The offer shall be accompanied by a proposed deed of easement, whereby the conservation easement would be conveyed to the board or to the urban county government, as determined by the landowner.
- (2) Within a time period specified by the rural land staff, the landowner and staff must come to an agreement regarding the terms of the deed of easement. At a minimum, the deed of easement shall:
 - (a) Convey a perpetual non-possessory interest in the parcel of land, which shall be consistent with the purposes of this chapter;
 - (b) Require the preservation of historic/cultural resources on the parcel of land if the application received points pursuant to section 26-10(12);
 - (c) Require the preservation of scenic resources on the parcel of land if the application received points pursuant to section 26-10(13);
 - (d) Provide that the landowner shall be liable for the costs of any successful enforcement action brought in the event of breach of any of the terms of the deed of easement and that a lien shall be filed against the parcel of property if the costs are not paid;
 - (e) Require the landowner to maintain a land conservation plan and/or forest stewardship plan, approved by the local soil conservation district, and to implement the plan according to the approved schedule; and
 - (f) Require the landowner to permit inspection of the parcel of land and/or structures which are subject to the conservation easement by the rural land staff at reasonable times.

(Ord. No. 4-2000, § 1, 1-13-00)

Sec. 26-13. - Conservation easements; appraisal.

- (1) If the rural land staff and the landowner reach an agreement as to the terms of the proposed deed of easement, the staff shall secure an appraisal to determine the conservation easement value. The cost of the appraisal shall be paid for from funds held by the rural land board and the methodology shall be determined by the board in accordance with the following:
 - (a) The appraisal shall be conducted by a licensed real estate appraiser who is qualified to appraise property for easement purchase. The appraisal shall to the extent possible be based on an analysis of comparable sales.
 - (b) The appraisal shall include, at a minimum, a legal description of the appraised parcel of land, description of improvements, photos of the parcel of land, sketch of the subject parcel of land, pertinent data for each comparable sale, whether the parcel of land has public or private land use restrictions, any attributes which limit the development of the parcel of land and a description of the area or neighborhood in which the parcel of land is located.
 - (c) The appraisal shall contain an analysis of the highest and best use of the parcel of land, the valuation methodology used by the appraiser to determine value, the market value, and the conservation easement value of the parcel of land. The value of any buildings or other improvements shall appear separately in the appraisal report.

- (2) The rural land staff shall send a copy of the appraisal to the landowner with a letter advising that within thirty (30) days the landowner must:
- (a) Signify agreement with the conservation easement value determined by the rural land board appraisal;
 - (b) Withdraw his or its application; or
 - (c) Advise that he or it is securing an independent appraisal at his expense within the next thirty (30) days.

The letter shall also advise the landowner of the additional points which may be secured pursuant to section 26-14(1), if he or it timely notifies the rural land staff that he or it will sell the conservation easement for less than the conservation easement value, as determined by the rural land board appraisal.

(Ord. No. 4-2000, § 1, 1-13-00)

Sec. 26-14. - Conservation easements; purchase.

- (1) After each parcel of land has been appraised, a landowner who is willing to sell a conservation easement for less than the appraised value shall be awarded not to exceed ten (10) additional points which shall be calculated as follows:

10-24% of appraised value	10 points
25-49% of appraised value	6 points
50% of appraised value	4 points

These points shall be in addition to those calculated pursuant to section 26-10 and may be considered by the rural land board in determining from which landowners to purchase conservation easements in the event funds are not sufficient within the current fiscal year to make purchases from all landowners with which it has begun negotiations pursuant to section 26-11(4).

- (2) After receipt of all information relating to an application, the rural land board may, upon a vote of seven (7) voting members authorize its chair to enter into a contract of sale with a landowner for purchase of a conservation easement on a parcel of land at a specified price. In making this decision, the board may consider the application, the report of the rural land staff, any inspection of the parcel of land by its members, appraisals made both at the expense of the board and at the expense of the landowner, and any additional points awarded pursuant to subsection (1) of this section. In no case shall the board pay more than fair market value for a conservation easement.
- (3) Any contract of sale entered into by the rural land board shall be subject to the ability of the landowner to provide good title to the parcel of land, free of encumbrances such as liens, mortgages and other encumbrances which would adversely affect the rural land board's interest in the parcel of land. This provision shall be satisfied if the lienor, mortgagor or other holder of an encumbrance subordinates its interests to the terms of the conservation easement.

(Ord. No. 4-2000, § 1, 1-13-00)

Sec. 26-15. - conservation easements; recording.

- (1) The purchase price shall be paid for from funds held by the rural land board. Prior to closing, a title search shall be completed by the government's department of law which determines that the landowner has clear, marketable, fee simple title to the parcel of land. The landowner shall execute a deed which shall be recorded by the department of law.
- (2) A conservation easement may also be acquired by an exchange of the interest which the government owns in other than eligible lands for eligible lands, upon approval by the urban county council.
- (3) Within ten (10) working days of recording the conservation easement, the rural land staff shall notify the divisions of planning, building inspection, computer services, engineering and historic preservation; the department of finance; and other appropriate government offices, of the conservation easement acquisition.
- (4) Any applications which fulfill the criteria set forth in this chapter and in the regulations adopted by the rural land board, but which are not offered a contract to purchase because available funds are not sufficient within the current fiscal year, shall be considered in the next application cycle, provided that the landowner updates the information on the application. These applications shall not be given any preference or priority at that time, but will be considered under the terms and conditions of this chapter along with all other applications submitted at that time. However, payment of a new application fee shall not be required.

(Ord. No. 4-2000, § 1, 1-13-00)

ARTICLE IV. - MISCELLANEOUS

Sec. 26-16. - Donations.

- (1) The provisions of this chapter shall not apply to a donation of any interest in land to the rural land board or the government by a gift or a bequest, except in the case of section 26-17 and this section.
- (2) An application shall be required to be filed containing only materials specified under section 26-9(1)(a), (b) and (k).
- (3) The rural land staff will review the application and issue a recommendation to the rural land board.
- (4) The rural land board shall decide whether to accept the offer by vote of a simple majority of those voting members present. If accepted, the rural land staff shall notify the landowner of the acceptance.
- (5) The deed shall be executed as specified under section 26-15(1) except for the payment of the purchase price. Upon recording, the rural land staff will provide notice as specified under section 26-15(3).
- (6) The rural land staff shall provide as much assistance and advice as prudent regarding donation of interests in land, but shall not be permitted to offer individual tax advice. The staff shall maintain professionally prepared resource and reference materials and standard deed restriction and easement documents to assist landowners wishing to donate conservation easements or other interests in land.

(Ord. No. 4-2000, § 1, 1-13-00)

Sec. 26-17. - Conservation easements; enforcement.

- (1) The rural land staff, under the administrative supervision of the chief administrative officer, shall administer and enforce this chapter. The rural land staff shall promptly investigate all complaints of violation of conservation easements. Additionally, the rural land staff shall use its best efforts to prevent violations by inspecting the land and structures to which each conservation easement

applies at least once annually in order to ascertain whether the landowner is complying with all of the conditions of the deed of conservation easement and this chapter. In the case of any investigation or inspection, the rural land staff shall record all findings and actions in the official records which shall be available in the office of administrative services. If the rural land staff finds that the provisions of any conservation easement are being or have been violated, an order may be issued on behalf of the rural land board to require that the landowner take the action necessary to correct the violation.

- (2) If an order of the rural land board is disregarded, the department of law may seek by appropriate proceedings an injunction against any threatened construction or other development or activity on the parcel of land which would violate the conservation easement and shall seek a mandatory injunction requiring the removal of any structure erected in violation of a conservation easement and the restoration of the land and structures to their original character insofar as possible. The department of law shall also seek to recover the costs of any successful enforcement proceeding and damages, if appropriate, and pursuant to the terms of the conservation easement record a lien against the property until paid.
- (3) From and after the time when a conservation easement has been acquired by the rural land board or the government, whether by purchase or donation, no building permit shall be issued for any structure nor any certificate of occupancy for any use which would violate the terms of the conservation easement.
- (4) Those deeds of scenic easement of record in Deed Book 1161, page 610; Deed Book 1265, page 821; Deed Book 1285, page 782; and Deed Book 1426, page 756, shall also be enforced pursuant to the terms and conditions of subsections (1) through (4) of this section.

(Ord. No. 4-2000, § 1, 1-13-00)

Sec. 26-18. - Conservation easements; release.

- (1) All conservation easements or other interests in land which are purchased pursuant to this chapter shall be perpetual, unless released by the rural land board pursuant to the provisions of this section.
- (2) At any time fifteen (15) years or more after a conservation easement has been purchased on a parcel of land, the then current landowner may file a written request with the rural land staff for release of any part of the parcel of land which has been included within the urban service area boundary, as determined by the then most recent comprehensive plan. The rural land board shall approve the request and authorize the chair to execute a release of the conservation easement in recordable form, upon the following conditions:
 - (a) The landowner conveys to the rural land board or the urban county government a conservation easement of equal or greater Fayette County acreage and of an equal or greater numerical score determined pursuant to section 26-10; or at the option of the board, upon a vote of seven (7) voting members thereof, the landowner pays to the board a sum determined by appraisal to be equal to the then current fair market value of the conservation easement being released;
 - (b) The landowner conveys to the urban county government, for use as a public park, twenty (20) percent of the useable acreage, i.e., land exclusive of greenways and floodplains, of the parcel of land upon which the conservation easement is released;
 - (c) The landowner pays to the rural land board a sum equal to the costs incurred by the board pursuant to subsection (a) of this section, including, but not limited to, survey and engineering fees, title search and title insurance fees, appraisal costs and recording fees; and
 - (d) The landowner pays to the rural land board a sum equal to the amount, if any, by which the actual sum paid by the board for the original conservation easement exceeds the actual sum paid by the landowner for the new conservation easement, in the event the landowner conveys to the board a new conservation easement.

- (3) At any time twenty-five (25) years or more after a conservation easement has been purchased on a parcel of land, the then current landowner may file a written request with the rural land staff asking for review of his or its request for release of any part of the parcel of land which is within the rural service area boundary, as determined by the then most recent comprehensive plan. A request pursuant to this subsection shall be considered for the same parcel of land not more often than once every three (3) years. Upon receipt of a timely request, an investigation shall be made by the rural land staff to assist the rural land board in determining both the viability of farming on the subject parcel of land and whether it has become impossible to fulfill any of the conservation purposes of the easement. In deciding whether to approve the request, the rural land board shall also consider whether the termination of the easement would have an adverse impact upon other properties for which a conservation easement or other interests in land designed to preserve and manage agricultural, rural and natural lands has been purchased or donated, or upon other farmland. The rural land board may, upon a vote of seven (7) voting members, approve the request and authorize the chair to execute a release of the conservation easement in recordable form, upon the following conditions:
 - (a) The rural land board determines that conditions on or surrounding the parcel of land have changed so much that both farming is no longer viable and it has become impossible to fulfill any of the conservation purposes of the easement;
 - (b) The landowner conveys to the rural land board or the urban county government a conservation easement of equal or greater Fayette County acreage and of an equal or greater numerical score determined pursuant to section 26-10; or, at the option of the board, the landowner pays to the board a sum determined by appraisal to be equal to the then current fair market value of the conservation easement being released;
 - (c) The landowner pays to the rural land board a sum equal to the costs incurred by the board pursuant to subsection (b) of this section, including, but not limited to, survey and engineering fees, title search and title insurance fees, appraisal costs and recording fees; and
 - (d) The landowner pays to the rural land board a sum equal to the amount, if any, by which the actual sum paid by the board for the original conservation easement exceeds the actual sum paid by the landowner for the new conservation easement, in the event the landowner conveys to the board a new conservation easement.
- (4) The rural land board shall place the proceeds realized from subsections (2) or (3) of this section in an account dedicated to the purchase of conservation easements and shall use the proceeds for the purchase of conservation easements consistent with the provisions of this chapter.
- (5) If the rural land board receives any appropriations, bequests or donations of funds to purchase interests in land, which may by the terms of the appropriation, bequest or donation not be used for purchase of interests in land that are subject to release pursuant to the provisions of this section, the board may only use those funds for parcels of land for which no negative points are subtracted under any of the criteria established at section 26-10(15) and (16). The provisions of this section shall not apply to donations of easements.

(Ord. No. 4-2000, § 1, 1-13-00)

Sec. 26-19. - Planning commission duties.

- (1) During every five-year update of the comprehensive plan, and at any other time that the planning commission reviews the location of the urban and rural service area boundaries, the planning commission shall consider the following matters with regard to the inclusion within the urban service area boundary of any property for which a conservation easement or other interests in land designed to preserve and manage agricultural, rural and natural lands has been purchased or donated:

- (a) Whether the inclusion of the property in the urban service area is consistent with the goals of the rural service area land management plan;
 - (b) Whether the inclusion of the property in the urban service area is in the public interest because development of the property is necessary to accommodate growth and to encourage development in a more contiguous pattern than might otherwise occur; and
 - (c) Whether inclusion of the property in the urban service area is likely to have an adverse impact upon other properties from which a conservation easement has been purchased under the program or upon surrounding farmland.
- (2) In reviewing these issues, the planning commission shall consult with and receive recommendations from the rural land board and other entities holding interests in land designed to preserve and manage agricultural, rural and natural lands.

(Ord. No. 4-2000, § 1, 1-13-00)

Sec. 26-1. - Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

- (1) *Active farm* shall mean a parcel of land which is currently being used for agricultural production.
- (2) *Agricultural production* shall mean 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 (50) percent of those processed or merchandised products are produced by the farm operator and the raising and stabling of horses for commercial purposes, and shall also include any of the following: dairying, pasturage, growing crops, bee keeping, horticulture, floriculture, orchards, plant nurseries, viticulture, silviculture, aquaculture and animal and plant husbandry; the breeding, raising, training and general care of livestock for uses other than food, such as sport or show purposes; and construction and maintenance of barns, silos and other similar structures, the use of farm machinery, the primary processing of agricultural products and the sale of agricultural products produced on the land where the sales are made.
- (3) *Application* shall mean the documentation and information submitted to the rural land staff by a landowner on the approved application form offering to sell to the rural land board or the Lexington-Fayette Urban County Government a conservation easement in eligible land.
- (4) *Comprehensive plan* shall mean the land use plan, and amendments thereto, adopted by the Lexington-Fayette Urban County Government pursuant to KRS 100.197.
- (5) *Conservation easement* shall mean a non-possessory interest in real property, which is acquired in perpetuity for the purpose of retaining and enhancing agriculture; preserving natural, scenic or open space values of real property; preserving areas or structures of architectural or historical interest; restricting or preventing the development or improvement of the land for purposes other than agricultural production; or other like or similar purposes, but does not include any real property owned or leased by the government for the purpose of or devoted to parks and recreation.
- (6) *Conservation easement value* shall mean the value of a conservation easement on the parcel of land as determined by the difference between the unrestricted value of the tract and its value as restricted by a conservation easement.
- (7) *Development right* shall mean the right held by the property owner having title to a tract of real property to divide the tract into forty (40) acre tracts. Each such right held by the property owner to create a forty (40) acre tract shall create one (1) "development right" in favor of the property owner at the time of application pursuant to section 26-9.

- (8) *Rural service area land management plan* shall mean the element of the comprehensive plan adopted by the planning commission of the Lexington-Fayette Urban County Government on April 8, 1999, and shall include any future portions of the comprehensive plan, and amendments thereto, pertaining to the rural service area.
- (9) *Rural land staff* shall mean the personnel within the office of administrative services charged by the council with the duty to administer this chapter.

(Ord. No. 4-2000, § 1, 1-13-00; Ord. No. 272-2007, §§ 1, 2, 12-6-07)