



Conservation Easement Owners Guide

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About The Jefferson County Farmland Protection Board

Who We Are

“Agriculture is an integral and viable part of the County’s economy, landscape, natural resources, and sense of community.” Jefferson County Commission, 2000

The Jefferson County Farmland Protection Board was formed by the County Commission in 2000 to protect and preserve agricultural land in Jefferson County. The Board is a 501(c)3 nonprofit organization and an quasi-autonomous entity of county government.

The mission of the Jefferson County Farmland Protection Board is to protect productive farmland for future generations in order to maintain the long-term viability of agriculture in Jefferson County, the state of West Virginia and the country.

We believe that farmland preservation is an important investment in our economy, farming heritage, and quality of life for all residents. Our scenic working lands and rural character are important assets that make the county a desirable place to live, work, and visit.

We accomplish our work through holding purchased and donated conservation easements, * collaborating with like-minded organizations, and providing community outreach and education to raise awareness about farmland protection.

Members of the Jefferson County Farmland Protection Board

The composition of every West Virginia farmland protection board is dictated by the Voluntary Farmland Protection Act at WV Code §8A-12-1 et seq..

The Jefferson County Farmland Protection Board is composed of seven volunteer members who are county residents. Each is a voting member, except for the Jefferson County Commissioner, who serves in a non-voting, advisory capacity. All members are appointed by the Jefferson County Commission and serve at the will and pleasure of the Commission. The Board employs one full-time program director.

* See defined terms on page 4.

The composition of the Board is as follows:

- 1) One Jefferson County Commissioner.
- 2) Executive Director of the Jefferson County Development Authority.
- 3) One farmer who is a member of the Jefferson County Farm Bureau.
- 4) One farmer who is a member of the Eastern Panhandle Soil Conservation District.
- 5) One farmer who need not be a member of any farm organization.
- 6) One county resident who is not a member of the foregoing organizations.
- 7) One county resident who is not a member of the foregoing organizations.

For our first three years, we were an all-volunteer group. In 2007 the Board hired a part-time staff person, and made the position full-time in 2011. By 2014, the Board had protected 4,023 acres on forty farms in Jefferson County. As of 2016, another three farms totaling 650 acres are in the process of completing their conservation easements.

Farmland Protection Board Staff and Partners

The Board's staff works directly with landowners to create and uphold conservation easements. We are also available as a resource to you to help you understand your easement and how it may or may not affect your management of your land. In addition, the Board works closely with its partners who co-hold its easements, agencies, consultants, and partners, and others who support our work. Contact information for our Board and staff is included at the end of this handbook.

How We Protect Farmland

The Board protects farmland throughout the County by accepting donations of conservation easements and through purchases of conservation easements from landowners.

Funding for the Board was established under a state law passed in 2002 that allows West Virginia counties to levy a transfer tax on real estate to purchase development rights from landowners who wish to protect their land for agricultural use. The Board matches the real estate transfer tax through federal and state grants and private donations as well as landowner donations of easement value.

We receive applications throughout the year from private landowners. Typically we evaluate the applications in the fall, and rank them using criteria based on soil quality, farm acreage, water resources, proximity to protected lands and other farms, and other factors. Then, depending on available local funds, federal matching funds and donations we select top-ranking properties and work with the landowners to tailor the

conservation easement to protect their property. It's also our promise that we will legally defend the conservation of these places -- forever.

Understanding Your Conservation Easement

What is a Conservation Easement?

A conservation easement is a legal agreement between a landowner and the Farmland Protection Board and its co-holding organization to permanently protect the important natural resources, or conservation values, of a property. Conservation easements can protect values that include farmland, water resources, forestland, wildlife habitat, as well as scenic lands.

Each conservation easement is unique and is tailored to reflect the characteristics of the property, the interests of the granting landowner, and the objectives of the Board. By entering into a conservation easement, a landowner retains ownership of the land, while the Farmland Protection Board retains rights to protect agricultural and natural resource functions. The easement typically restricts uses of the land such as clearcutting, development, or mining and other activities that damage the conservation values, thereby protecting the land for agricultural uses. The landowner continues to own and enjoy the property, but agrees to adhere to the conservation terms of the easement.

The conservation easement grants access rights to the Board for monitoring and other property inspections. A conservation easement on private property typically does not make the land accessible to the public.

The decision to place a conservation easement on a property is strictly voluntary. However, once an easement is established, it "runs with the land," meaning it is legally binding on all future landowners of the encumbered property. As with any real property interest, the easement is recorded and becomes part of the chain of title for the property. The conservation values of the land are protected for future generations.

What is a Holder? A grantee in the Deed of Conservation Easement defined as (a) a governmental body empowered to hold an interest in real property under the laws of the state of West Virginia; or (b) a charitable corporation, charitable association or charitable trust registered with the Secretary of State and exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, or other federal or state statutes or rules, the purposes or powers of which include retaining or protecting the natural, scenic, agricultural or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational or open-space use; protecting natural resources and wildlife; maintaining or enhancing land, air or water quality; or preserving the historical, architectural, archaeological or cultural aspects of real property.

What is a Co-holder? A co-holder jointly holds title to an easement with another holder; the easement can be enforced by either holder. Each are legally responsible for upholding the easement's conservation objectives. In Jefferson County, the Board partners with private land trusts such as the Land Trust of the Eastern Panhandle, The Potomac Conservancy and The Nature Conservancy.

Who Manages Easement Protected Land? You, as a landowner, retain full rights to control and manage your property within the terms of the easement. The Board and its co-holders monitor the property annually to ensure compliance with the easement terms.

The landowner is responsible for maintaining the conservation values of the property and continues to bear all costs and liabilities associated with owning the property.

The Board is available as a resource to provide feedback or advice on conservation issues and to assess whether or not activities are permitted under the terms of the easement. In addition, we can often provide connections to partners, contractors, and funding sources, when appropriate, to support your management of your property.

What is a Baseline Documentation Report? A Baseline Documentation Report is created for every conservation easement. It includes a legal description of the area, documents the conservation values protected by the easement and the natural and manmade conditions of the easement area at the time the easement is conveyed. It includes a narrative description, maps showing the geographic location of the easement, the location of any improvements, and established locations on the property where we take photos over the years — what we call photo way points.

The Baseline Documentation Report serves as the foundation for future monitoring and documentation in the event a compliance issue arises. When landowners engage in a new use of the property, or as other changes to the property occur over time, the Board records descriptions and photos in our permanent records to maintain a continual record of changes to the protected property.

Can an Easement be Changed or Removed? Since conservation easements are designed to be perpetual, changing or revoking them is difficult. The Board and its co-holders have an amendment policy that describes the limited situations in which an easement might be amended. The Board may consider an amendment if the overall conservation values of the property are enhanced or increased. Due diligence shall be observed that

there is no actual or perceived insider benefit, private inurement or impermissible profits from any changes in the easement.

In rare cases, an amendment will be considered to clarify easement language or to correct an administrative or technical error, provided there is no loss of the property's conservation values by doing so. The amendment process can be time intensive, and any request by a landowner to amend an easement may require payment by the landowner to cover the related costs.

If circumstances arise that render the purpose of the easement impossible to accomplish, the easement can only be terminated or extinguished, in whole or in part, upon approval of the Board, the co-holders and the United States (if there is a Federal interest). The termination must be by judicial proceedings in a court of competent jurisdiction.

Easement Stewardship

The Jefferson County Farmland Protection Board believes that landowner relationships are the foundation of our stewardship program. We are always available to help and you can contact us at any time. Often, a simple phone call or an email from you to ask about the easement terms can help prevent problems before they happen, so please contact us at any time with your questions. We welcome your feedback at any time.

The Board has adopted numerous policies to guide our organization in a sound manner. In 2012, the Board reviewed these policies and procedures in accordance with the Standards and Practices established by the national Land Trust Alliance. The policies related to our stewardship of conservation easements include the following:

Conservation Easement Stewardship Policies

- *Funding Easement Stewardship*
- *Baseline Documentation*
- *Monitoring Policy*
- *Landowner Relations*
- *Enforcement Policy*
- *Reserved and Permitted Rights and Approvals*
- *Contingency Plans for Backup Holder*
- *Conservation Easement Amendment Policy*

A copy of any of these or our other policies is available upon request.

The Annual Site Visit and Monitoring Process

The Board and its co-holding partner organizations are responsible for insuring that that the terms of the conservation easement are upheld. This is done through an annual site visit (also called a monitoring visit) that is coordinated with the landowner in advance.

Approximately a month before we plan to visit your property, we will contact you to schedule a mutually convenient time for the site visit. The Board typically visits the program's protected properties in the spring in March and April and the fall in October and November. In some cases we may visit at other times of the year.

We encourage you to participate in the visit, but you are not required to be there. If you choose not to be at the site visit, all we require is to have access to the property. Please advise our staff about any access issues such as locked gates, dogs on the premises, or cautions regarding livestock in the area. Depending on the size of your property, site visits may last from under an hour to several hours. We will speak to you in person or on the phone to ask you about any changes to the property, or future plans.

If we find that all of the terms of the conservation easement are being followed, we will send you a "compliance letter." This letter will state that we visited your property and that you are in compliance with the terms of the conservation easement. If we have any concerns about compliance with one or more of the conservation easement provisions, we will discuss the concern with you and work with you to determine the best way to resolve the issue.

Easement Enforcement

The phrase "an ounce of prevention is worth a pound of cure" is especially pertinent for maintaining the conservation values of your property. Fortunately, easement violations are a rare event. In most cases, easement violations are not caused by the original easement grantor, but by third parties, or by subsequent landowners who are unaware of the terms of the easement.

As stated earlier, the Board has established *Conservation Easement Stewardship Policies*. To help prevent violations, we ask you to do your part by staying familiar with the terms of your conservation easement, informing your neighbors about your conservation easement, maintaining the easement area boundary lines, and notifying the Board about any change in ownership.

Our primary responsibility with regard to conservation easements is to ensure that the terms of the easement are upheld. If a violation is identified on a protected property, the Board and its co-holders are obliged to enforce the terms of the conservation easement, in order to protect the conservation values of the land and to meet our legal obligations under the easement terms. Our *Enforcement Policy* helps to guide our enforcement actions once a violation has been identified.

Should a violation occur, you can expect to hear from the Board's staff and/or co-holder. We will want to schedule a visit to the property with you to review the issue together and determine the nature, extent, and significance of the violation. Each violation is reviewed on a case-by-case basis. We are always willing to work with landowners to find a reasonable plan to resolve the violation.

Although uncommon, a third party, such as a neighbor or contractor, may do something on your property that violates the easement. If you discover that something questionable is underway, please notify us as soon as possible so we can help you determine a positive course of action. Landowners are expected to respond in a timely manner to stop the violation and to seek remediation for any damage to the resources protected by the easement. We understand the importance of maintaining positive relationships with whoever is responsible and will assist you as much as we can.

When to Contact the Farmland Protection Board

Your conservation easement details the permitted and prohibited activities and uses on your property. Some allowable activities may need our approval prior to being undertaken. If you have any question about whether your proposed project is allowed, please do not hesitate to contact us. The following examples of activities and uses would call for notification beforehand:

- Construction of improvements including residential, agricultural, and other structures.
- Changes in your Agricultural Land Easement Plan (only for NRCS-funded properties under the 2014 Farm Bill).
- Construction of ponds or other water diversion.
- Granting of an easement, including right of way, utility, or access easements.
- Developing renewable energy.
- Habitat improvements, for example, stream restoration, timber management, and invasive tree species removal.
- Water rights- leasing your water rights or notices regarding your water rights
- You plan on selling your property.

When prior notification or approval is required, it is very important that you notify the Board as soon as possible and submit any required documentation, as outlined in your easement document. If your planned activity is allowed under the terms of the conservation easement, Farmland Protection Board will send written approval by mail or email. If the activity is not permitted, Board staff will work with you to find a mutually agreeable solution.

We encourage you to stay in touch. Even if you're not sure about a notification requirement, just give us a call or send us an email. Our staff is happy to help you sort through the easement terms.

Resource Management Plans

All easements accepted by the Jefferson County Farmland Protection Board must maintain a current **Conservation Plan** that has been developed by the Natural Resources Conservation Service with the landowner. The Conservation Plan is a management plan for best practices for the landowner's use. While the Board does not enforce the Conservation Plan, it is our policy to confirm that landowners demonstrate that they maintain a current plan, typically during the annual site visit.

Conservation easements that are funded in part by NRCS and that have been established under the 2014 Farm Bill are required to develop and maintain an **Agricultural Land Easement Plan**. Like the Conservation Plan, it is a best practices management plan that is developed with NRCS. The Board is required to confirm that this plan is being followed, and the landowner is required to inform the Board and NRCS if substantially different agricultural practices will be implemented.

Some conservation easements identify a resources management plan, such as a Forest Management Plan or other conservation activity which the landowner and the Board develop together to help guide the management of the property, including restoration and enhancement activities. While these plans are often prepared at the time the easement is established, the plan can be updated or amended later, with agreement from both the Board and the landowner.

Changes in Ownership

As with any property, land subject to a perpetual conservation easement will change hands over time. To ensure protection of conservation easements, please notify all potential owners and leaseholders about the easement on your property. It is very important that prospective landowners of an easement property, as well as leaseholders, understand the significance of the easement: why it exists, how it works, the specific restrictions and allowances, and the Board's monitoring procedures.

We are available to speak to prospective owners or leaseholders regarding the terms of the easement, and we are sensitive to the delicate nature of the buying and selling process. It is our experience that prospective owners often feel better about buying a protected property when they understand the easement and have a chance to meet the people they will be interacting with for easement-related business.

If you sell your property or if you transfer ownership to another party, we ask that you notify the Board. We will contact the new landowner to introduce our organization and explain the conservation easement terms, our stewardship program and answer any questions the new owners may have. Establishing contact immediately with the new landowners helps us to minimize misunderstandings and prevent violations of easement terms.

Jefferson County Farmland Protection Board and Staff

Robert Glenn, Esq.

County resident

Nick Kercheval

Farmer, member Soil Conservation District

Elizabeth D. McDonald

County resident

David Ober

Farmer

Russ Quinn

Farmer, member county Farm Bureau

John Reisenweber

Director, Jefferson County Development Authority

Jane Tabb

County Commissioner

Elizabeth B. Wheeler

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Our Conservation Partners:

- Berkeley County Farmland Protection Board
- Civil War Preservation Trust
- Land Trust Alliance
- Land Trust of the Eastern Panhandle
- National Park Service/American Battlefield Protection Program
- Potomac Conservancy
- The Nature Conservancy
- USDA/Natural Resources Conservation Service
- West Virginia Agricultural Lands Protection Authority
- West Virginia Association of Farmland Protection Boards

Jefferson County Partners

- Jefferson County Development Authority
- Jefferson County GIS Office
- Jefferson County Historic Landmarks Commission
- Jefferson County Planning and Zoning Office
- Jefferson County Prosecuting Attorney's Office

Monitoring Report Form

Date of Visit

Time spent on property - time in, time out

Lead Reviewer name

Other reviewer names

Original Deed of Conservation Name (property name or owner name)

Deed of Conservation Number, or code

Property Address

Property Location: Directions from nearest municipality

Name(s) of current property owner

owner residential address

owner mailing address

owner telephone

owner email

name of person to whom monitoring notice was sent

mode of communication: surface mail, email, phone

Length of ownership of current owner (date of purchase)

Was owner/representative present?

Y/N

If yes, name(s) of owner/representative accompanying visit

Easement Description

Summary of property description, easement provisions (ie, agricultural, battlefield, etc)

On-site Monitoring Report

Present use of the property

Uses of abutting properties: describe changes, if any

Are terms of easement being observed/upheld, as observed by the inspection team? Y/N

If yes, Describe:

Were any violations or potential violations observed: including dumping, excavation, prohibited tree removal, prohibited impervious surface, encroachment, infrastructure, etc) Y/N

If yes, Describe: NRCS check-off list: Infrastructure, roads (new or improvements), additional impervious surface (area), Structures, illegal activities, Dumps, Energy production, Mining, Encroachment, Other

NRCS: Evidence/knowledge of environmental hazards: oil leaks from cars/equipment, toxic fluids, materials not contained or improperly stored. If yes, locate on map, indicate action to be taken to remediate/remove

Describe any permitted uses not previously observed, such as fenceline clearing, invasive species removal, etc.

Describe any improvements:

Describe any planned future improvements

Describe any changes in Agricultural Land Easement Plan (FY14 and on)

Remarks, recommendations:

Recommended next visit (next annual or followup)

Attachments checklist: Each report includes the aerial photo w/ location of photo stations. Use other maps as needed for documentation.

Photos:

Plan rotation of GPS photo stations so that all boundaries and areas are covered every 4 years

Photo log: Individual photos should be dated, and tied to waypoints on the aerial (google-earth) map.

Assessor's parcel map

Topographical map

Right of Way, utility or water easements

Property survey

USGS Quadrant map

Other

Record of Board Action

Accepted by Board of Directors, Name of Chair, signature

Date of Board meeting

Action to be taken, if any

Next Monitoring date:

Monitoring report copy mailed to landowner on (date)