

THE  
JEFFERSON COUNTY  
FARMLAND PROTECTION  
PROGRAM  
2018

Prepared By

The Jefferson County Farmland Protection Board

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## Glossary of Terms

**Acquisition of easement** The holding or co-holding of land-use restrictions under a Deed of Conservation Easement, whether obtained through purchase, gift, devise, bequest, grant or contract.

**Agribusiness** Any business or operation engaged in the producing operations of a farm, the manufacture and distribution of farm equipment and supplies, and the processing, storage, and distribution of farm commodities.

**Agriculture** The production of plants and animals useful to man, including, but not limited to, forage, grain and field crops; pasturage, dairy and dairy products; poultry and poultry products; equestrian uses; livestock and fowl uses and livestock and fowl products; bees and apiary products; fruits and vegetables of all kinds; nursery, floral and greenhouse products; silviculture; aquaculture; viticulture, including grape growing and wine making, microbrewery or grain mill; and the primary processing and storage of the agricultural production of the Property.

**Agricultural value** The agricultural value of land is the price at the valuation date which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property subject to the restriction placed upon it by the Deed of Conservation Easement.

**Agritourism Activities** conducted on a working farm and offered to the public or to invited groups for the purpose of recreation, education, or active involvement in the farm operation. These activities must be related to agriculture or natural resources. This term includes but is not limited to farm tours, hay rides, corn mazes, classes related to agricultural products or skills, picnic and meeting facilities offered in conjunction with the above and similar uses.

**Appraisal** The Jefferson County Farmland Protection Board (Board) has determined that the Uniform Appraisals Standards for Federal Land Acquisitions (UASFLA or Yellow Book) will be used for the purchase of all farmland conservation easements by Jefferson County.

**Bargain Sale** A combination of gift and sale of a property or easement to a governmental or nonprofit entity. The landowner receives the benefit of both cash income and a charitable gift deduction for the difference between the fair market value and the bargain price.

**Cave** An underground passage of at least 50 feet in length. Caves have unique and fragile ecosystems that provide safe harborage for many species of flora and fauna. They are also unique in that they are direct vectors to the groundwater, and therefore must be protected from opportunities for surface contamination.

**Cluster Development** A preservation tool intended to allow structures to be grouped on a portion of a development site in order to preserve the remaining open space, agriculture land, forest land, or unique features of the remainder of the site.

**Co-holder** A holder (also known as a grantee) that jointly holds title to an easement with another holder. Either holder can enforce the easement. (see "Holder")

**Commercial (structures)** Any wholesale, retail, or service business, or housing activity excluding single residential dwellings, but including apartment buildings, condominiums, or similar housing types. Structures needed for agricultural activities shall not be considered commercial structures.

**Commercial forestry** The harvesting of timber, whether such trees are naturally present on the property or have been planted and grown for commercial purposes, for profit or trade. The growing of Christmas trees, orchards and nursery stock; or the removal, sale and renewal of such, shall not be deemed to be commercial forestry. In addition, ornamental plants and woodland products grown for human consumption are not considered commercial forestry. Uses of timber products on-site are allowable as permitted under the Deed of Conservation Easement.

**Conservation easement** A non-possessory interest of a holder in real property, whether appurtenant or in gross, imposing limitations or affirmative obligations, the purposes of which include, but are not limited to, (a) retaining or protecting for the public benefit the natural, scenic or open-space values of real property; (b) assuring its availability for agricultural, forest, recreation or open-space use; (c) protecting natural resources and wildlife; (d) maintaining or enhancing land, air or water quality; and/or (e) preserving the historical, architectural or cultural aspects of real property. Conservation easements under Article 24 - Voluntary Farmland Protection Programs must be perpetual and must be held by at least one "holder".

**Farm, farmland, or agricultural land** A tract, or contiguous tracts of land, of any size, used or useable for agriculture, horticulture or grazing; and includes all real property designated as wetlands that are part of a property used or usable as farmland.

**Fair market value** The fair market value of the land is the price at the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property was not subject to any restriction imposed under the Deed of Conservation Easement.

**Ground water recharge potential** Areas that have certain hydro-geologic soil characteristics that contribute to a significant replenishment of the groundwater aquifers, as determined by the Eastern Panhandle Conservation District.

**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.

**Home-based Business** Any occupation or business conducted entirely within the single residential structure or allowable accessory buildings, which is clearly incidental to the residential use of the building. Any occupation or business requiring a West Virginia Division of Environmental Protection permit to operate, such as an auto-repair business or a dry cleaning business, shall not be considered an allowable home-based business. In addition, any business requiring the on-site use of explosives or highly flammable or extremely hazardous materials as defined by the U.S. Environmental Protection Agency shall be disallowed.

**Industrial (structures)** Any manufacturing process, material processing, warehousing, research and testing laboratories, product distribution centers, woodworking shops, furniture assembly, machine shops, recycling centers and uses of a similar nature. Structures needed for agricultural activities shall not be considered industrial structures.

**Jefferson County Comprehensive Plan** A composite of mapped and written text, the purpose of which is to guide the systematic physical development of the County and is adopted by the County Commission.

**Karst** A type of geology formed over limestone, dolomite, or gypsum resulting in dissolving or solution of the underlying calcareous rock.

**Major stream, marshes and lakes** Defined as the following streams, creeks, marshes, lakes, or rivers in or bordering Jefferson County:

Altona Marsh  
Bullskin Run  
Cattail Run  
Dry Run  
Elk Branch  
Elks Run  
Evitts Run  
Flowing Springs Run  
Forge Run  
Furnace Run  
Hog Run  
Hopewell Run  
Lake Louise  
Long Marsh Run  
North Fork Bullskin Run  
Opequon Creek  
Potomac River  
Rattlesnake Run  
Rocky Branch  
Rockymarsh Run  
Shenandoah River  
Town Run  
Town Run Marsh  
Turkey Run

**Mature forests** Woodlands that have had no significant tree removal for 30 years or more.

**Maximum easement value** The maximum easement value is the difference between the *fair market value* of the land and the *agricultural value* of the land.

**Minor stream** Any stream or creek which runs year round, not listed as a major stream.

**Mountainous terrain** Parcels with at least 20 percent of the parcel comprised of slopes 25 percent or greater.

**Natural Resource Conservation Service Plan** A document that applies to highly erodible cropland and describes the conservation system applicable to the highly erodible cropland and the decisions of the landowner with respect to location, land use, tillage systems and conservation treatment measures and schedules. It is approved by the local soil and conservation district in consultation with the local committees established under the Soil Conservation and Domestic Allotment Act and NRCS.

**Offering price** The amount the landowner is asking to be reimbursed for the sale of the conservation easement to the Jefferson County Farmland Protection Board. The offering price can be the maximum easement value, or it can be some fraction of this value.

**Open Space** Property left undeveloped in order to preserve natural features or scenic qualities. Such property may be held by a private owner or held as common area for the benefit of multiple property owners. Open space may consist of natural areas (meadows, fields or forested areas), agricultural areas, wetlands, streams or bodies of water, storm water management areas, and lawns (with or without trees). Areas requiring an extensive commitment of land resources as required by golf courses, racetracks for uses other than equestrian use, tennis clubs, baseball, soccer and other ball fields and similar uses shall not be considered open space.

**Other farmland** Land defined as farmland not otherwise classified as prime, unique, or of state-wide or local significance.

**Pollution** The introduction of substances in the environment of such character and in such quantities that the quality of the environment is substantially impaired or rendered offensive to life.

**Preservation easement** A conservation easement which also includes a nonpossessory interest in an historical building.

**Prime farmland/soil** Land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses. It includes cropland, pasture land, range land, and forest land. Properties containing prime or unique soils can be identified through a soils map prepared by the U.S. Geological Survey and maintained by the Eastern Panhandle Conservation District.

Bp	Bigpool silt loam
Cs	Combs fine sandy loam
DsB	Downsville gravelly loam, 3 to 8 percent slopes
EgB	Edgemont gravelly loam, 3 to 8 percent slopes Fk Funkstown silt loam
HbB	Hagerstown silt loam, 3 to 8 percent slopes
La	Lappans (marl) loam
Ln	Lindside silt loam
MhA	Monongahela silt loam, 0 to 3 percent slopes
OaB	Oaklet silt loam, 3 to 8 percent slopes
PmB	Poplimento silt loam, 3 to 8 percent slopes
Sp	Speedwell silt loam
VeB	Vertrees silt loam, 3 to 8 percent slopes
WtB	Whiteford channery silt loam, 3 to 8 percent slopes

**Public property-unimproved parkland, wildlife management areas** Lands including public park lands that are substantially unimproved or state-designated wildlife management areas. Unimproved park land can include open space areas designated for hiking, horseback riding, or general recreation. Parkland shall be considered to be improved, if the park consists primarily of lighted ball fields, skate parks, pool areas, or similar facilities.

**Qualifying property** Property which meets the minimum eligibility requirements and the donation guidelines

(if applicable) to be considered for sale or donation to the Board. Qualifying property must be ranked by the Farmland Protection Ranking Criteria as established by the Board. Status as qualifying property does not guarantee acceptance into the Jefferson County Farmland Protection Program.

**Single residential dwelling** A detached residential dwelling, excluding apartment buildings, townhouses and condominiums. The residential dwelling must appear as a single family home, but may house one or more families or occupants. The residential dwelling shall in no case exceed 12,000 square feet.

**Single residential dwelling, existing at time of sale of easement (§8-24-80(c))** A single residential dwelling which (a) is either completed at the time the conservation or preservation easement is executed; or (b) meets the requirements of a retained development right.

**Sink or sinkhole** A depression in the land surface formed by solution or collapse which directs surface runoff into the subsurface or to an underground drainage flow. They are common in areas of limestone, carbonate rock, or salt beds. The karst areas of Jefferson County have a substantial number of sinkholes.

**Sketch plat** Property layout showing the entire parcel as it exists on the current tax map. Plat can be hand drawn but at an approximate reasonable scale (1 inch = 50 feet, 1 inch = 100 feet or 1 inch = 200 feet). The plat shall have USGS contour lines superimposed on it. It should show in simple form existing improvements, such as structures and driveways, and natural features, such as watercourses, ponds, woods and rock outcrops. The sketch plat should show the area and acreage intended for easement dedication. It should also show all adjoining properties identified by owner and acreage. Sketch plat should be accompanied by a tract location map and a soils report indicating the soil types on the parcel and a map delineating the boundaries of each soil type.

**State-wide or locally-significant farmland/soil** Other productive farmland that is important either locally or to the state. The property must contain at least 50 percent of one or more of the following soil types and land contours, or must be otherwise designated as significant farmland by the Eastern Panhandle Conservation District:

- AmB Airmont cobbly loam, 0 to 8 percent slopes, stony
- BaC Bagtown gravelly loam, 8 to 15 percent slopes, very stony
- CaB Carbo silty clay loam, 3 to 8 percent slopes, very rocky
- CaC Carbo silty clay loam, 8 to 15 percent slopes, very rocky
- DsC Downsville gravelly loam, 8 to 15 percent slopes
- DsD Downsville gravelly loam, 15 to 25 percent slopes
- DyB Duffield-Ryder complex, 3 to 8 percent slopes
- DyC Duffield-Ryder complex, 8 to 15 percent slopes
- DyD Duffield-Ryder complex, 15 to 25 percent slopes
- EgC Edgemont gravelly loam, 8 to 15 percent slopes
- EgD Edgemont gravelly loam, 15 to 25 percent slopes
- Fa Fairplay (marl) silt loam Farmland of unique importance
- HbC Hagerstown silt loam, 8 to 15 percent slopes
- HcC Hagerstown silty clay loam, 8 to 15 percent slopes
- HeB Hagerstown silt loam, 3 to 8 percent slopes, very rocky
- HeC Hagerstown silt loam 8 to 15 percent slopes, very rocky
- MoB Monongahela fine sandy loam, 3 to 8 percent slopes
- OaC Oaklet silt loam, 8 to 15 percent slopes



OeB	Oaklet silt loam, 3 to 8 percent slopes, very rocky
OeC	Oaklet silt loam, 8 to 15 percent slopes, very rocky
OkC	Oaklet silty clay loam, 8 to 15 percent slopes, very rocky
PmC	Poplimento silt loam, 8 to 15 percent slopes
PpB	Poplimento silt loam, 3 to 8 percent slopes, very rocky
PpC	Poplimento silt loam, 8 to 15 percent slopes, very rocky
PpD	Poplimento silt loam, 15 to 25 percent slopes, very rocky
RpC	Ryder-Poplimento complex, 8 to 15 percent slopes
RrC	Ryder-Poplimento complex, 8 to 15 percent slopes, very rocky
RrD	Ryder-Poplimento complex, 15 to 25 percent slopes, very rocky
ThC	Thurmont gravelly loam, 8 to 15 percent slopes
ThD	Thurmont gravelly loam, 15 to 25 percent slopes
Tm	Toms silt loam Farmland of statewide importance
VeC	Vertrees silt loam, 8 to 15 percent slopes
VrB	Vertrees silt loam, 3 to 8 percent slopes, very rocky
VrC	Vertrees silt loam, 8 to 15 percent slopes, very rocky
VsC	Vertrees silty clay loam, 8 to 15 percent slopes, very rocky
WrB	Wharton-Clearbrook channery silt loams, 3 to 8 percent slopes
WrC	Wharton-Clearbrook channery silt loams, 8 to 15 percent slopes
WtC	Whiteford channery silt loam, 8 to 15 percent slopes

**Stewardship** The long-term monitoring and management of conservation easements by the Board and co-holders of easements, including possible enforcement of the terms of the easement.

**Stewardship Funds** Monies set aside by the Board or co-holders of easements to pay for monitoring, management and possible enforcement of easements. A landowner may be asked to make a donation to a stewardship fund .

**Subordinated loan** A loan secured by easement property where the lender has agreed to abide by the terms of the Deed of Conservation Easement in the event of foreclosure of the property.

**Subsurface mineral rights** The right to mine or otherwise extract minerals, oil or gas from below the surface estate. Mineral rights separated from the fee simple ownership of the property are known as third-party mineral rights.

**Title** The person or entity offering land for a conservation easement must have title to the property. A title search will be made by the Jefferson County Farmland Protection Board or its attorney prior to any purchase of an easement. The board will obtain title insurance for all deeds of conservation easement.

**Wetlands** An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that, under normal circumstances, does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. The substratum is predominantly hydric soil.

**Woodland(s)** Areas of substantial tree cover that are currently unusable for farming. Woodland shall be considered land of a farm only if it is part of or appurtenant to a tract of land which is farm or held by common ownership of a person or entity owning a farm. Woodland may not include land used for commercial forestry or the growing of timber for commercial purposes or any other use inconsistent with farm use.

# **I. Background**

## **Conservation and Preservation Easements Act**

In June 1995, West Virginia enacted the Conservation and Preservation Easements Act by amending Chapter 20 of the West Virginia Code through the addition of Article 12. Through this Conservation and Preservation Easements Act, the West Virginia Legislature recognized the importance and significant public benefit of conservation and preservation easements in its ongoing efforts to protect the natural, historic, agricultural, open-space and scenic resources of the state. This enabling legislation was required to allow perpetual conservation and preservation easements to be created within the state. Currently, all fifty states have enacted conservation and preservation easement enabling statutes.

Within the Conservation and Preservation Easements Act, conservation and preservation easements are defined, and the basics are outlined as to how easements are to be created and the various rights and duties concerning the easement. The Voluntary Farmland Protection Act first incorporates the concepts created under this Conservation and Preservation Easements Act, and then expands upon them to allow the creation of the state and county Voluntary Farmland Protection Programs.

## **Voluntary Farmland Protection Act**

On March 10, 2000, the West Virginia Legislature unanimously passed into law WV Code §8-24-72 through §8-24-84(2000), known as the Voluntary Farmland Protection Act. The Act went into effect on June 8, 2000 and amended a 1982 statute of similar code location that once allowed the creation of Farmland Preservation Committees. This statute has since been amended and is now included in WV Code §8A-12-1 et seq.

Through this Act, the legislature declares that agriculture is a unique “life support” industry and that a need exists to assist those agricultural areas of the state which are experiencing the irreversible loss of agricultural land. The Act further authorized the creation of county farmland protection board(s) and program(s) and creation of the WV Agricultural Land Protection Authority; detailed the contents and requirements of the farmland protection program(s); outlined the powers and duties of the farmland protection boards and the authority; detailed the methods of farmland protection; detailed the value of a conservation easements; outlined the criteria for acquisition of easements; outlined the use of land after a conservation easement is acquired; outlined funding for the farmland protection program(s); and authorized the commissioner of agriculture to promulgate rules.

On March 9, 2002, the West Virginia Legislature modified the Voluntary Farmland Protection Act to allow each county with a farmland protection program to provide funding for such program through a real estate transfer tax. The County Commission of each eligible county may enact an additional tax on the privilege of transferring real estate to be used solely to fund the county’s farmland protection program. The maximum rate allowable is \$1.10 per \$500 (\$2.20 per \$1,000) or fraction thereof of the real estate transfer value. These monies must be used exclusively for the purpose of funding farmland preservation.

## **Jefferson County Commission Resolution**

On July 13, 2000, the Jefferson County Commission authorized by resolution the creation of the Jefferson County Farmland Protection Board (Board), becoming one of the first counties in West Virginia to utilize the Voluntary Farmland Protection Act. The Commission affirmed that the agriculture community of Jefferson County provides sources of agriculture products for the citizens of the state; enhances tourism, protects worthwhile community values, institutions and landscapes which are inseparably associated with traditional farming; and controls the urban expansion which is consuming land, topsoil and woodland of the county. The Board, as appointed by the Commission, was authorized to create and administer the Jefferson County Farmland Protection Program in consultation with the Eastern Panhandle Conservation District, and as approved by the Commission.

## **Farmland Protection Board Composition**

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

The Board is composed of seven members, each serving without compensation but eligible for reimbursement of actual expenses while engaged in the discharge of official duties. All members are required to be county residents. Each member is a voting member, except for the Jefferson County Commissioner, who shall serve 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 specific 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.

## **Purpose of Farmland Protection in Jefferson County**

Nationwide, America is losing farmland. According to the American Farmland Trust, the United States is losing 2.2 million acres of rural lands to urban sprawl every year. This means that, across the United States, over 4 acres of rural lands are consumed every single second.

In an effort to address the loss of farmland, over 20 states have implemented farmland protection programs. In 1996, the U.S. Department of Agriculture funded a farmland protection effort with a 6-year goal of protecting between 170,000 and 340,000 acres of farmland.

West Virginia has not escaped the loss of farmland. From 1964 to 1997, The U.S. Department of Agriculture reports that West Virginia lost an incredible 17,732 farms and 1,823,060 acres of farmland. From 1982 through 1997, 25 of the most productive counties in West Virginia had a combined loss of 103,519 acres of productive farmland – and 40% of the loss came from the three county Eastern Panhandle area. The U.S. Department of Agriculture also reports that West Virginia lost 21,676 acres of orchard land from 1964 to 1997. To address the loss of agriculture land and woodland as open space, the West Virginia legislature passed into law on March 10, 2000 the Voluntary Farmland Protection Act.

Agriculture is an integral part of Jefferson County's economy, landscape and natural resource base. In the 2012 National Agricultural Census (the most recent census), Jefferson County's farmland was 66,965 acres or 49 percent of the 135,680 acres comprising the county.

The industry consists of predominately family owned businesses with 95 percent of farms in 2012 owned by individuals or families. Partnerships and family corporations account for 5 percent of the remaining farms. In 1974, there were 434 farms in Jefferson County. Since that time the number of farms has increased to 501 farms according to the 2012 Census of Agriculture. In that same time period, the average farm size has also decreased from 227 acres to 134. In 1997, over 34 percent of Jefferson County farms were 180 acres or more in size, while only 17 percent were greater than 180 acres in 2012. There was a steady decline from 1974 to 2012 of the number of farms that are 50 to 179 acres. In 2012, farms between 50 and 179 acres were 22 percent of all farms in the county. The agricultural census in 2012 shows an increase in the number of farms between 10 and 49 acres (37% in 2012) and those that are less than 10 acres (15% of the total farms).

The crops grown and the intensity of agricultural land use have changed dramatically between 1974 and 2012, the most recent census. The most dramatic changes occurred in the land in orchards which declined from 3,325 acres to 585 acres and in the number of dairy cows which declined from 6,883 cows to 2,373 cows. Both of these agricultural enterprises are capital intensive. There were fewer farms with beef cows in 2012 than in 1974, but 15,596 cattle were on 239 farms. The acres in pasture have decreased from 20,310 in 1974 to 18,903 in 2012 while the crop acreage has increased from 15,045 acres to 41,372 acres. Farms and acres of "truck crops" have also increased since 1974 and in 2012 truck farming occurred on 28 farms with an average size of less than 5 acres. The revitalization of the Charles Town horse race track has had a major impact on agriculture services and opportunities for conventional agricultural producers. In Jefferson County in 2012 there were 176 equine farms with a total of 1,769 horses.

What is more telling about the status of agriculture in 2012 in Jefferson County are the characteristics of those farms that have farm sales over \$10,000. In 1997 this was 151 farms or 42 percent of the farms; in 2012, 184 farms had farm sales over \$10,000 and were 37 percent of all farms. Over time fewer farmers have full-time employment on the farm. In 2012, the number of farm operators employed was 767 men and women. Of these 46 percent were full-time farmers or farm workers, while 27 percent reported full-time off-farm employment (i.e. 200 days/annum or more).

## **Purpose of this Program for Farmland Protection**

This program establishes uniform standards and guidelines for the eligibility of properties and the ranking criteria utilized to prioritize funds allocation to purchase conservation easements, or to pay associated costs for the purchased or donated easements. The guidelines established by this program outline the various methods of farmland protection available to prospective participating property owners, and the procedures to be followed in applying for program consideration (WV Code §8A-12-3b).

## **General Principles of Land Protection**

Every land trust or farmland protection board in the United States operates under well-established industry principles. Some of these principles are designed to meet legal or Federal tax requirements, while others are in keeping with sound, time-tested principles of land protection. The following principles have been used by the Jefferson County Farmland Protection Board in its program design where possible, and will be used in any decision-making process:

The property owner is willing to sell or donate the conservation easement over the property through a legally binding agreement that is perpetual and enforceable.

The property owner(s) have clear title to the property.

The property is either free of any mortgage, lien or tax assessment, the lender is willing to subordinate the loan to conservation easement, or the loan is not in excess of the agricultural value. If a secured loan exists, the donor understands that Federal tax benefits are not available.

The conservation easement preserves open space, natural resources, an ecosystem, forestland, farmland, and/or native plants or animals.

The property is either farmland or is in a relatively undisturbed natural condition, or contains natural features that need to be preserved.

The property is not unduly subject to pollution or adverse influences from surrounding sources. The property itself is not polluted or subject to liability for any pollution clean-up.

Protection of the property will be consistent with established public policy. (For instance, it may be inappropriate to accept a conservation easement on a piece of property already indicated for intended public roads.)

The property is of sufficient size that the conservation resources of the property are likely to remain intact.

The conditions required to be agreed to by the property owner do not contain provisions which are unworkable or inconsistent with the overall intent of the conservation easement. (The provisions, for instance, could not diminish the property's primary conservation value or be unenforceable.)

The conservation easement is within the Jefferson County Farmland Protection Board's means and ability to monitor and enforce, and/or the landowner is willing to provide compensation to a stewardship fund to assist in this effort to make the effort financially feasible.

The acceptance of the conservation easement will not create an unusual or special liability exposure.

Adequate and permanent access to the property is available.

A survey has been completed on the property at some point in time, and current property lines can be verified by this survey.

## II. Program

### Eligibility Requirements

Property must meet the following minimum criteria in order to be considered for either a purchased or donated conservation easement:

1. The property shall be located in Jefferson County, and the existing use and development of the land shall be in conformance with the Jefferson County Comprehensive Plan and all applicable land use and development ordinances. This provision shall not be construed to prevent continued use of structures that are non-conforming to setback requirements, provided that the continued use complies with applicable requirements of the zoning ordinance.
2. A property in the non-rural zone is eligible. This factor is reflected in the ranking criteria.
3. The property shall be at least 20 acres of land which meets one or more of the following criteria (§ 8A-12-15)
  - used or usable for agriculture, horticulture or grazing (qualifying property)
  - wetlands that are part of the qualifying property
  - woodlands that are
    - (a) part of or appurtenant to a qualifying property tract; or
    - (b) held by common ownership of a person or entity owning qualifying property
4. No commercial or industrial structure shall be located on the parcel. (§ 8A-12-16-4b)
5. Clear title to the property must be established and the application must be signed by the property owner(s).
6. The property shall not have any current or past uses that would render the establishment of a conservation easement inconsistent with the intent of the Act or this Program. Such determination shall be made by the Jefferson County Farmland Protection Board after consideration of all facts and circumstances.
7. An easement may be acquired on a designated portion of a parcel, allowing the remainder to be unencumbered for residential development or other use. In such cases, the easement shall be so worded that residential density that may have been permitted as a permitted or conditional use on the portion of the property that is encumbered by the easement is extinguished and cannot be applied toward development of the portion of the parcel that is unencumbered.
8. Properties which have current deeds of conservation easements are not eligible for Farmland Protection Board conservation easements.
9. Any application for inclusion into the easement program must include an application and other information found on page 5 of the Appendix. This includes a sketch plat defined on p. 8 of this document.

Additional program criteria must be met for acceptance of a donated easement. Purchased easements and expenses on donated easements shall be ranked in accordance with the program criteria.

# Farmland Protection Ranking Criteria

## Definitions for Land Evaluation Criteria

This criterion was developed following the criteria set forth in West Virginia State Code, Section 8A-12-15, *Criteria for Acquisition of Conservation and protection easements by county farmland protection boards and the Authority*. Each of the following major and minor criteria have been "weighted" as to their importance to viable farming/open space. This criterion will be applied to each deeded parcel separately.

### A. Development Pressure

- a. Compatibility with the Comprehensive Plan - Points are awarded based on the location of the land and its potential uses based on the Jefferson County Comprehensive Plan. Greater weight will be given to land in the agricultural zone. Points are awarded using the following:

The Land is in the Rural Zone - 20 points

The Land is in a non-rural zone, but is currently being farmed - 10 points

The Land is in a non-rural zone and not currently farmed - 0 points

### B. Total Acreage

- a. The potential viability of a traditional farming enterprise is connected directly to the acreage used in that operation. The rationale applied to this criteria is that the larger the farm, the better the chance for it to remain an economically viable farm.

### C. Soils

- a. A Soils Report is an evaluation conducted by the Natural Resource Conservation Service. This report is based on the types of soil on the land and its relative productivity of corn. This is an objective method of farm productivity developed by NRCS in the early 1980's. This section has a scoring range between 0 and 100.
- b. NRCS Conservation Plan - Any farm that wishes to participate in Federal Programs must have an approved plan on how the land will be used over a period of time. These plans can be revised annually and ensure that measures are in place to minimize soil erosion and maintain water quality.
- c. Agricultural Land Easement Plan – Any farm entering into the NRCS Agricultural Land Easement Program created in the 2014 Farm Bill must develop an NRCS-approved plan for the agricultural operation, and land management. Changes in the plan must be approved by NRCS.

- D. **Contiguous to other Land Used for Agriculture** - This criterion takes into account what percentage of the contiguous tracts of land are being assessed by the County Assessor as agriculture use. This will be calculated by adding up the acres in contiguous tracts, categorizing the tracts, and calculating the percentage of the acreage that is assessed as being used for agriculture. Farming activities are sometimes seen as a nuisance and can create unwanted noises, smells and exposure to neighbors that are not familiar with accepted farming practices. The more the farm is surrounded by like uses, the better opportunity there is not to be impeded through nuisance law suits.

- E. **Value of the Asking Price Versus the Value of the Easement-** Through appraisal procedures established by the Board, the value of the land will be determined for its use for agriculture and its value for other uses such as commercial or residential development. The difference between those two values is the value of the easement. The owner of the easement must

determine if the full value is required to complete the transaction or some more or less amount is required.

Limited dollars for the purchase of easements can be spread out over more acres if the landowner is willing to take less than the appraised value of the easement. The board has determined that the Uniform Appraisals Standards for Federal Land Acquisitions (UASFLA or Yellow Book) shall be used for the valuation of all farmland conservation easements purchased by Jefferson County.

## **F. Historical and Natural Features**

- a. Land is Associated with an Important Place, Person or Event
  - i. Property on National Register - The National Register of Historic Places is the Nation's official list of cultural resources worthy of protection. Authorized under the National Historic Protection Act of 1966, the National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archeological resources. Properties listed in the Register include districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, engineering, and culture. The National Register is administered by the National Park Service, which is part of the U.S. Department of the Interior. National Register properties are distinguished by having been documented and evaluated according to uniform standards. These criteria recognize the accomplishments of all peoples who have contributed to the history and heritage of the United States and are designed to help state and local governments, Federal agencies, and others identify important historic and archeological properties worthy of protection and of consideration in planning and development decisions.
  - ii. Property is of National, State or Local Significance - These properties are of importance as defined by the Jefferson County Historic Landmarks Commission or the Jefferson County Historical Society and may not be on the National Register.
  - iii. Property is Adjacent to Such Area - The significance and historical value of such properties is only enhanced if neighboring lands are kept open.
- b. Adjoins State or National Park, Existing Permanent Easement or Permanently Protected Open Space.
- c. Contains Important Natural Features
  - i. Includes Frontage on Major Stream - The major streams of Jefferson County include the Potomac and Shenandoah Rivers and its tributaries in Jefferson County as identified by the Jefferson County Watersheds Coalition. This nonprofit organization monitors streams in Jefferson County including Bullskin Run, Elk Run, Evitts Run, Flowing Springs Run, Rattlesnake Run, Rocky Marsh Run and Town Run.
  - ii. Includes Area in 100 Year Flood Plain - The 100 year plain is determined by maps developed by the Federal Emergency Management Agency.
  - iii. Contains at Least 10 Acres of Mature Forest - This will be determined by an onsite evaluation by the State Service Forester.
  - iv. Contains Stone Fences - Along with marking property boundaries, protecting crops from wandering livestock was a concern of early farmers. Stone walls were one of the first methods of marking boundaries and is a historical reminder of the past.
- d. Property Contains Unique Natural Features
  - i. Contains a Cave - Caves alone have their own unique and fragile ecosystem and shelter many species of flora and fauna. They are also direct vectors to the groundwater and therefore must be protected from opportunities for surface contamination.
  - ii. Contains a Year-round Spring - This is defined as a spring that has flow through the normal course of the year under normal rainfall conditions.
  - iii. Contains a Wetland - The National Wetlands Inventory (NWI) of the U.S. Fish & Wildlife Service produces information on the characteristics, extent, and status of the Nation's



wetlands and deep water habitats. The National Wetlands Inventory Center information is used by Federal, State, and local agencies, academic institutions, U.S. Congress, and the private sector. The NWIC has mapped 90 percent of the lower 48 states, and 34 percent of Alaska. Maps are provided to the NRCS or can be obtained to identify wetlands in the county. These sensitive areas provide havens for many species of wildlife and plants.

- iv. Contains a Sinkhole(s) - Sinkholes are direct links between surface water and groundwater. They are common where the rock below the land surface is limestone, carbonate rock, salt beds, or rocks that can be dissolved by ground water circulating through them. As the rock dissolves, spaces and caverns develop underground. If there is not enough support for the land above the spaces then a sudden collapse of the surface land can occur. Since these are ever changing, a visual inspection of the farm will be required to determine if there is one or more on the land.
- G. Debt** - These two critical measurements of debt relate to the practical involvement of the lending institutions carrying the first and possibly second mortgages. If the value of the easement is less than the value of what is owed on the real estate then the lending institution may not accept the purchase of easements.
- H. Length of Easement** - While the Senate Bill requires that this be a part of the criteria, the bill also states that easements will be for perpetuity.
- I. Land Evaluation Criteria: How to Evaluate Your Property** - Referring to the Land Evaluation Criteria Chart (see application), the landowner can make a preliminary calculation of the points his property would accumulate. There is no point limit or threshold that automatically grants a landowner acceptance into the FPB program. The points serve as a method for the Board to fairly evaluate each property. The point total for each property would be used to rank all offered properties; properties with the highest total numbers of points would gain priority for funding and acceptance into the program.

All criteria on the chart are weighted, which reflect the value that the Board has placed on that item. In addition, the subsets of criteria associated with "F - Historical" are also weighted. Consequently, points must be multiplied by their respective weight factor before a total is calculated. For example, under "B - Total Acreage", a 150 acre tract would be awarded a value of 80, which must be multiplied by the weight factor of 10% to yield 8 points. If a property contains a sinkhole, look in "H – Source Water – iv - which contains a sinkhole(s) to see that would be awarded a value of 16 which must be multiplied by 16% for "e - Source Water Protection" to yield .48 points.

A Total Raw Score is the sum of the complete evaluation of a property by awarding values for certain features and characteristics and multiplying these values by the weight factors. The Total Raw Score could conceivably approach 100. The Final Score is then used by the Board to prioritize properties.

## **Easement Purchases - Rules and Guidelines**

The Jefferson County Farmland Protection Board may purchase conservation easements. The following considerations are applicable for any purchases:

1. Funds for purchasing conservation easements must be available and allocated
2. A completed application must be submitted by the landowner(s)
3. The property must meet all eligibility requirements
4. All application submissions shall be scored using the Farmland Protection Ranking Criteria
5. The purchase must be approved by the Jefferson County Farmland Protection Board
6. The purchase must be approved by the Jefferson County Commission
7. Properties at least twenty acres in size, in which the purchase or donation of the easement would extinguish future subdivision potential of the property, except conveyances as specifically allowed and limited by the appropriate zoning ordinances.

A sale of conservation easement application form must be submitted to the Board in order to be considered. The Board, in its sole discretion, may reject an offer for sale if the property has any current or past uses that would render the establishment of a conservation easement inconsistent with the intent of the Act or this program. Such circumstances include, but are not limited to, possible contamination on the subject property, surrounding land uses, conservation values of the property, and the scope and difficulty of the protection and monitoring of the property. A written confirmation of the rejection, if applicable, shall be provided to the applicant, including the reasons for rejection.

The Board may allocate funds to offset any or all costs associated with the conservation easement, including, but not limited to, legal fees, closing costs, survey fees and appraisal costs. Reimbursement policies will be established on a yearly basis, no later than June 30, for the following fiscal year by the Jefferson County Farmland Protection Board. Any costs to be the responsibility of the landowner(s) will be clearly indicated.

The Farmland Protection Ranking Criteria are used to evaluate the characteristics of properties offered into the program. In the event that the offering price of properties voluntarily offered to the program in any given year exceeds the funding available for the purchase of those conservation easements, the priority of acquisition shall be determined by relative ranking of the property. The Farmland Protection Ranking Criteria consist of a number of factors and criteria descriptive of the characteristics of the property. Each criterion is assigned numerical points signifying its importance relative to all other criteria. Once the score for each property has been calculated, all properties shall be ranked. Those properties ranked the highest will be given priority to purchase.

## **Easement Donations - Rules and Guidelines**

Donations of conservation easements meeting the following guidelines may be accepted by the Jefferson County Farmland Protection Board:

1. Properties at least twenty acres in size, in which the purchase or donation of the easement would extinguish future subdivision potential of the property, except conveyances as specifically allowed and limited by the appropriate zoning ordinances.
2. Subdivision residue lots and designated open space areas that retain no further development rights.
3. Properties less than twenty (20) acres in size shall not normally be accepted by the Jefferson County Farmland Protection Board. Such properties may be considered on a case-by-case basis, particularly if they contain unique features or are otherwise considered worthy of protection.

A donation application form must be submitted to the Board in order to be considered. The Board, in its sole discretion, may accept or reject an offer for donation after considering all facts and circumstances. Such circumstances include, but are not limited to, possible contamination on the subject property, surrounding land uses, conservation values of the property, and the scope and difficulty of the protection and monitoring of the property. A written confirmation of the acceptance or rejection shall be provided to the applicant, including the reasons for rejection, if applicable. Any residential construction on a conservation easement property must comply with Jefferson County Comprehensive Plan and its ordinances.

The Board may allocate funds to offset any or all costs associated with the conservation easement, including, but not limited to, legal fees, closing costs, survey fees and appraisal costs. Costs not funded by the Board shall be the responsibility of the landowner making the donation offer, including stewardship funds for the perpetual monitoring of the property. Reimbursement policies will be established on a yearly basis no later than June 30 for the following fiscal year by the Board after consideration of the funds available to it. Donation properties shall be ranked for potential reimbursement according to the "Farmland Protection Ranking Criteria".

### **Easements: Special/Targeted Grants**

In the event private, local, state or Federal monies become available to purchase a particular category of property, or properties with certain characteristics, the Farmland Protection Ranking Criteria may be waived by the Board. This procedure shall be undertaken only when the grant terms render other ranked properties ineligible to apply for the grant.

# **Nature of Development Rights Acquired**

## **A Conservation Easement**

The ownership of property is often characterized as a bundle of rights. Typically, a landowner owns all of these rights through the deed; possession of all of these rights is called fee simple ownership. A landowner can sell or donate some of these rights and still retain ownership of the land. For instance, a landowner might sell the timber rights on the property, but still retain all other rights over the property. Under the Jefferson County Farmland Protection Program, the landowner agrees to give up certain development rights and specific commercial uses of the property. The protection of farmland all over the country typically is accomplished by limiting the risk that the farmland is converted into a commercial development or a residential subdivision. The Jefferson County Farmland Protection Program also utilizes this method of protection. The possession of the property, maintenance, right of access, and the right to sell the property or to leave it to heirs remains with the landowner.

The mechanism for acquiring these development rights is called a conservation easement. The Board may acquire these rights by purchasing the easement or through the acceptance of a donation. The sale or donation of development rights is accomplished through a Deed of Conservation Easement, which is recorded with the original deed to the land.

## **Easement Holder**

The Jefferson County Farmland Protection Board is the grantee under the Deed of Conservation Easement, and agrees to protect the property according to its mandate and the desires of the property owner executing the easement. The Board is a quasi-governmental board established by the Jefferson County Commission. State law mandates the background of appointees that must serve on the board, and the Jefferson County Commission appoints the candidates. All appointees must live in Jefferson County. A majority of the voting members of the board must be active farmers in Jefferson County.

The Deed of Conservation Easement is held and administered locally, here in Jefferson County. In addition, with the approval of the Board, a landowner shall designate a co-holder under the Deed of Conservation Easement. Typically, private land trusts may be utilized to co-hold easements with governmental and quasi-governmental entities as desired by the landowner. For instance, The Land Trust of the Eastern Panhandle and The Nature Conservancy are examples of private land trusts; to ensure the ability of the co-holder to maintain, protect and enforce the rights, responsibilities and actions pursuant of the Deed of Conservation Easement, the private land trust organization appreciates a voluntary stewardship payment. A sample of the Voluntary Stewardship Agreement is attached in Appendix 6. The landowner may also grant the easement to a private land trust as the grantee and apply to have the Board act as co-holder.

## **Duration of the Easement**

A conservation easement must be perpetual in order to qualify for potential Federal income tax and estate tax benefits. The Jefferson County Farmland Protection Program will only consider offers of perpetual conservation easements. Under a perpetual easement, even though you may sell or bequeath the land, subsequent owners will be bound by the terms of the easement. Although there is a common law “rule against perpetuities” which otherwise prevents any agreement from being recorded as perpetual, conservation easements have become an exception to this rule. Almost all 50 states have passed state laws to allow for perpetual conservation easements. West Virginia passed its own Conservation and Preservation Easements Act (Article 12, Chapter 20) in 1995. Perpetual easements have been accepted into farmland protection programs and by land trusts all over the United States for over 30 years. To date, the courts have upheld the legitimacy of perpetual conservation easements and have acted against those who would seek to undo them.

## **Restrictions Under the Easement –Voluntary Farmland Protection Act**

The Voluntary Farmland Protection Act passed by the State of West Virginia in 2000 establishes certain restrictions and prohibitions regarding easement property accepted into any county program, but also allows the county programs flexibility to establish their own specific criteria within this framework. The restrictions set by the Act are as follows:

The landowner may not develop the land for any commercial, industrial, residential or other non-farm purposes. (Current residences and retained development rights as defined under the Jefferson County Farmland Protection Program are allowable.)

The landowner must agree not to further subdivide the property aside from the residential development rights agreed to under the Deed of Conservation Easement.

Woodland included in the easement must not be used in commercial forestry or the growing of timber for commercial purposes.

Under state law, home-based businesses not requiring a West Virginia Division of Environmental Protection Permit to operate are allowable. Each residential dwelling provided for under the Deed of Conservation Easement is allowed two acres for all residential activities. In addition, activities performed for religious, charitable or educational purposes or to foster tourism are allowable on the eased property.

## **Deed of Conservation Easement**

Through the Deed of Conservation Easement, the Jefferson County Farmland Protection Program outlines the terms, conditions and restrictions on the property under easement to protect both the grantor and the grantee, and to clarify the understanding of each party. Certain portions of the Deed of Conservation Easement are negotiable and subject to change, while others are mandated by either Federal laws, state laws or practice, or land trust industry practice. Typically, each conservation easement is unique and the Deed of Conservation Easement should reflect this uniqueness.

The purpose of this program is to preserve land for farm use. As such, the Jefferson County Farmland Protection Program has incorporated the broad prohibitions under the Voluntary Farmland Protection Act into its program, as outlined above. In addition, the Jefferson County Farmland

Protection Program has enacted additional guidelines addressing specific conditions and limitations under which new residential building lots may be created (e.g. parent to child conveyances). Also, uses that are not compatible with or conducted in support of the agriculture industry or agritourism uses are not permitted within the terms of the easement, regardless of whether the proposed use is permitted by the Zoning Ordinance. Proposed uses shall be considered on a case-by-case basis by the Board.

Generally, the Deed of Conservation Easement allows the property owner the full right to reside and enjoy the property. This “quiet enjoyment” as it is termed allows hunting, touring, swimming, fishing, biking and like activities. At the same time, the Deed of Conservation Easement ensures that the property is protected from obvious destructive activities such as dumping, polluting, mining, and removal of natural resources. The Deed of Conservation easement incorporates the state prohibitions on commercial forestry and unlimited subdivision.

Agricultural activities and construction are allowed on any portion of the property with up to a two percent overall (does not exceed a total of two percent) impervious limitation. Activities for religious, charitable, or education purposes, or to foster tourism are allowed to the extent they are compatible with and supportive of the rural character of the property.

In addition, the Board encourages each landowner participating in the program to protect any other unique, historic, scenic, or natural resource value on the property through specific provisions in the Deed of Conservation Easement. See **Appendix: Deed of Conservation Easement** for a model of a **conservation easement**. **Again, the Deed of Conservation Easement can be modified to fit the circumstances and characteristics of each property.**

## **Value of Conservation Easement**

A landowner may make an offer to sell a conservation easement on qualifying property. Such offers shall be ranked utilizing the Jefferson County Farmland Protection Ranking Criteria in order to fairly allocate any available funds for purchasing easements. Offers may be made by the landowner from one dollar up to the maximum value of the easement as defined under the WV Code§8-12-14). The *fair market value* and the *agricultural value* of the property are defined:

### ***Fair Market Value***

The fair market value of the land is the price at the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property was not subject to any restriction imposed under the Deed of Conservation Easement.

### ***Agricultural Value***

The agricultural value of land is the price at the valuation date which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property subject to the restrictions placed upon it by the Deed of Conservation Easement.

### ***Appraisal***

The Uniform Appraisals Standards for Federal Land Acquisitions (UASFLA or Yellow Book) will be used for the purchase of all farmland conservation easements by Jefferson County.

## **Maximum Easement Value**

The maximum easement value is the difference between the *fair market value* of the land and the *agricultural value* of the land.

## **Offering Price**

The offering price is the amount the landowner is asking to be reimbursed for the sale of the conservation easement to the Board. The offering price can be the maximum easement value, or it can be some fraction of this value. Landowners gain points in the ranking criteria by offering to sell the easement for less than the maximum value.

## **Payment to Landowners**

Subject to the availability of funds, payments made to landowners shall be the smaller of the offering price or the maximum easement value, but in no case shall exceed the maximum easement value.

## **An Example**

The hypothetical fair market value of a 100-acre parcel of unrestricted land in Jefferson County is \$5,000 an acre or \$500,000 for the entire parcel. The land is suitable for a housing subdivision and is in an area that is currently being developed. The agricultural value of the land is \$2,000 an acre or \$200,000 for the entire parcel. The maximum value of the conservation easement on this parcel is \$300,000 (\$500,000 fair market value less \$200,000 agricultural value).

If the offering price was \$100,000, or one-third of the full easement value, the landowner would gain points under the Jefferson County Farmland Protection Ranking Criteria system. Subject to the availability of funds, the owner would be compensated \$100,000 for the conservation easement.

## **Determination of Values**

The Uniform Appraisals Standards for Federal Land Acquisitions (UASFLA or Yellow Book) appraisal will be used for the purchase of all farmland conservation easements by Jefferson County. A qualifying appraisal is one completed within twelve months of the date of closing.

The Board requires that the landowner-applicant submit their application with a restricted use report appraisal completed by a certified appraiser. At the time an offer is made by the landowner for purchase of an easement, the Board shall make an initial estimate of the maximum easement value based on the restricted use report for the purpose of allowing the easement offer to move forward in the process. This initial estimate of value will be non-binding and made expressly subject to the review and approval of the USAFLA appraisal.

The Board will order and pay for a UASFLA appraisal when the property has been qualified under the Jefferson County Farmland Protection Ranking Criteria for possible county funding and/or for submission for matching federal funding through the Natural Resources Conservation Service (NRCS), or the American Battlefield Protection Program. The appraisal will be subject to review by NRCS and the ABPP.

An updated appraisal shall be undertaken and paid for by the Board only when such an

updated appraisal is a part of the closing process for easements accepted into the program.

In addition, in order for the landowner to take advantage of potential Federal income tax and estate tax benefits, an appraisal to Internal Revenue Service (IRS) standards must be completed within 60 days of the easement sale in order to comply with Federal tax requirements. The landowner is responsible for the cost of the IRS appraisal.

In the unlikely event that differing appraisal values would affect the outcome of the ranking of properties, or would affect the actual purchase value of the property, the landowner and/or the Jefferson County Farmland Protection Board may request that the value determination be submitted to arbitration.

## **Offering to Sell or Donate**

An application form for either a sale or donation must be submitted to the Jefferson County Farmland Protection Board in order to be considered. Such application must be complete, including all documents as required by the application. A landowner may offer all, or part, of their land into the Jefferson County Farmland Protection Program.

A landowner may make an offer and rescind it up until the time of the closing of the Deed of Conservation Easement. Any fees or costs of closing incurred by the Board shall be the responsibility of the landowner if an offer is made and then rescinded. A landowner may also submit a new offer in order to increase the points under the farmland protection ranking criteria, and possible acceptance into the program. An offer made during the fiscal year (July 1 through June 30 of the following year), shall expire at the end of the fiscal year. Certain deadlines for submissions may apply. The landowner may re-submit any unaccepted offers for consideration in any subsequent year, but a new application must be made.

The Board may make a counter-offer to the landowner in order to secure the property or properties in the event that adequate funds are not available to purchase all properties with outstanding offers. Such counter-offers shall be made in writing to the applicant. The applicant shall have sixty days to accept the offer through the submission of a revised offer in the form of a revised application. The absence of a revised application within the sixty days shall be deemed as a rejection of the counter-offer.

A written confirmation of the acceptance or rejection of any offer shall be provided to the applicant, including the reasons for rejection, if applicable.



## **Third Party Mineral Rights**

Properties where the subsurface mineral rights are owned by a third party are subject to special requirements. A tax deduction for the easement may be taken only if:

1. Ownership of the surface estate was separated from ownership of the mineral right before June 13, 1976; and
2. The probability of surface mining occurring on the property is “so remote as to be negligible.”

The Jefferson County Farmland Protection Board will accept easements on such properties only if:

1. The third party mineral owner agrees to prohibit any surface mining; and
2. The third party oil and gas owner agrees to construct a maximum number of wellheads as determined by the Board; or
3. The probability of surface mining is considered to be extremely unlikely as determined by the Board after consideration of all facts and circumstances. Such considerations shall include, but shall not be limited to:

Past or current surface mining in the vicinity  
The identity of the third part owner and whether they are still in existence  
The probable extent of such minerals and the resultant financial attractiveness

## **Amendment Policy**

The Board acquires and holds conservation easements on Jefferson County farmland in behalf of the Jefferson County Commission and the residents of the County. The purpose of these easements is to conserve the agricultural resources of the County for the future use and enjoyment of them by County residents, to provide green spaces and other amenities that benefit the quality of life, and to assist in ensuring the future economic well-being of County residents engaged in agriculture and agriculture-related businesses. By holding conservation easements the Board is accepting an obligation to monitor and enforce those agreements. Though easements are written to last in perpetuity, we understand that in rare circumstances it may be necessary or beneficial to amend an easement to clarify vague language, correct oversights or errors in the original document, allow an unanticipated but acceptable use, or add new provisions to strengthen the easement.

It is the Board’s policy to amend conservation easements only in a manner that complies with applicable state and federal law and only for uses that have a beneficial effect on the conservation values protected by the conservation easement. It is the Board’s policy also that the Board must approve conservation easement amendments with a 5/6 majority of voting members after consultation with co-holders and grantees with the Board in an easement.

**Any amendment under consideration by the JCFPB must meet the following provisions:**

An amendment must have a beneficial effect on the conservation values protected by the easement. No amendment will provide private inurement for members of the JCFPB, staff or private benefit to the landowner or other parties as prohibited by IRS Regulations. Any action that requires a change in the terms of the conservation easement or affects the protected conservation values will require a written and recorded amendment.

Conservation easements may be amended under the following circumstances:

- o To fulfill agreements specified in the conservation easement;
- o To correct an error in original drafting;
- o To clarify an ambiguity in the conservation easement;
- o To adjust a conservation easement to acknowledge a condemnation by a public agency;
- o To add new provisions that strengthen the preservation and protection of conservation values;
- o Amendments may be considered for other reasons provided they have a beneficial effect on the conservation values protected by the conservation easement.

### **III. Administrative**

#### **Process Flowchart**

Priority for the timing of submissions under this program to the funding sponsor will be determined by deadline dates published by the funding sponsor or by a particular urgency expressed by the Board or funding sponsor. Requests for support under this program will be considered as they are received until the maximum commitment to awarded projects and those pending award notification is reached during the fiscal year. See the Appendix for an outline of the administrative process and timing for completing a conservation easement.

#### **Baseline Documentation**

Baseline documentation is the record of the condition of the property and features that are to be protected at the time the conservation easement is donated. Prior to the actual sale or donation of the easement, the baseline documentation must be completed. The purpose of the documentation is to create a record for administration of the easement and protection of natural features contained in the Deed of Conservation Easement. Such documentation is very helpful in future years in documenting the original condition of the property. In addition, baseline documentation is required under IRS regulations for donated easements claimed as a charitable deduction.

Baseline documentation may include:

- Survey maps from the U. S. Geological Service
- A map of the property showing all existing man-made improvements, vegetation, land use history and distinct natural features
- An aerial photograph of the property
- On-site photographs taken at appropriate locations
- GIS maps
- A survey by a WV licensed Surveyor or Engineer and/or a legal description by metes and bounds needs to be completed

See **Appendix-Baseline Documentation Form and Checklist** for the form that will be completed by the Board.

If the Deed of Conservation Easement contains restrictions with regard to a particular natural resource to be protected, such as water quality, the condition of the resource at or near the time of the closing of the easement must be established. In addition, the baseline documentation must be accompanied by a statement signed by the donor and the Board clearly referencing the documentation and affirming that it is an accurate representation of the property.

Any selective timber cutting for personal use, subsurface mineral rights, etc., must be clearly documented in the baseline documentation.

## **Closing**

Once the easement purchase or donation has been negotiated with the landowner(s) and agreed to through formal action of the Board, several steps remain to be completed. All purchases must be approved by the Jefferson County Commission. Important paperwork and procedures as indicated by the closing checklist (see **Appendix - Closing Checklist**) must be completed. Finally, the Deed of Conservation Easement must be closed much like any other real estate transaction. A date and time shall be agreed upon with the Board's closing attorney. The landowner(s) may have an attorney present for the closing, but this is not a requirement. All landowners will need to be present at the closing to sign the Deed of Conservation Easement and the closing documents.

## **Inspection and Enforcement**

An important part of any easement program involves periodic inspections to ensure that the conservation restrictions agreed to by the donor and the Board are adhered to. Such inspections are normally done on an annual basis. Easement violations typically occur with owners subsequent to the original owner of the property who enacted the easement. Even though the original landowner enacting the easement has sold or bequeathed the land, subsequent owners are bound by the terms of the easement. The easement is said to "run with the land." The Board has a duty, as evidenced in the Deed of Conservation Easement, and as desired by the original landowner grantor, to enforce the easement restrictions so that the easement property remains protected. Subsequent owners are bound by the conservation restrictions, and are put on notice at the time of purchase of the property through the recorded Deed of Conservation Easement. The current owner shall be required by the Deed of Conservation Easement to provide annual access to the property for monitoring purposes by the Board or its designated agent.

Where the conservation easement is jointly held by a private land trust, the responsibility for the easement monitoring and coordinated enforcement efforts shall be clearly delineated. The Jefferson County Farmland Protection Board may complete the easement monitoring through its staff, or may subcontract this work through an appropriate agent. The Natural Resources Conservation Service currently assists landowners to prepare and implement soil and water conservation plans. It also assists in the design of Best Management Practices and verifies compliance with farm management plans. The Board shall ensure that the periodic inspection program is carried out, and work closely with all involved parties for a consistent and coordinated inspection program that is satisfactory to the landowner.

Generally there are three keys to preventing an easement violation:

1. A good relationship with the property owner
2. A Deed of Conservation Easement with clear restrictions
3. A program of regular, systematic, and well-documented monitoring

In the event of an easement violation, the Board would make every attempt to work with the landowner to rectify the easement violation. In the event that a satisfactory resolution cannot occur, the Board may work through the Jefferson County Attorney or through private attorneys to meet its perpetual obligation to protect the property. See **Appendix-Easement Monitoring Form** for a sample of the form completed during an annual inspection.

## **IV. Outreach and Funding**

### **Outreach**

The WV Voluntary Farmland Protection Act at §8-24-73d (c) requires each farmland protection board to promote the protection of agriculture within the county by offering information and assistance to landowners with respect to the acquisition of easements.

Therefore, the Jefferson County Farmland Protection Board will evaluate and utilize, on a continual basis, the development of several methods of outreach within each annual budget. Such methods of outreach might include:

1. The development of articles within the Eastern Panhandle Conservation District quarterly newsletter.
2. The development of articles within the Jefferson County Farm Bureau Newsletter.
3. The development of articles within the USDA - Farm Service Agency quarterly newsletter.
4. The development of articles within local media venues (The Journal, Morning Herald, Buyer's Guide, etc.).
5. The development of a Jefferson County farmland protection web page with links from the Jefferson County Commission Web page and other associated farm agency web pages.
6. The development of handouts, flyers and other promotional materials as appropriate.

## **Funding**

The Jefferson County Commissioners created a special Farmland Protection Fund to carry out the purposes of the Jefferson County Farmland Protection Program. The Farmland Protection Fund will hold money or property from general or special fund appropriations by the county or state, a distribution from the West Virginia Agricultural Land Protection Authority, private or governmental grants, private contribution, fund raising or gifts, earnings from investments, interest, dividends or distributions. The Farmland Protection Fund monies shall not be commingled with other public funds.

All payments or withdrawals of Farmland Protection Funds shall be based upon proper vouchers, invoices or documentation for such disbursements; or shall be a conservation or preservation easement purchase approved by the Jefferson County Farmland Protection Board. All disbursements shall be signed and/or countersigned as directed by the Jefferson County Farmland Protection Board.

The Jefferson County Farmland Protection Fund is a special fund managed by the Jefferson County Administrator.

The West Virginia Voluntary Farmland Protection Act authorized the Jefferson County Farmland Protection Board to seek out any and all county, state, Federal and private funding available, consistent with the purpose of the Farmland Protection Program, to establish and operate the program. However, the Jefferson County Farmland Protection Board is also authorized to decline, reject, or deny private grants, contributions or gifts that represent or have the appearance of representing an impropriety which could result in the temporary or permanent loss of public faith and trustworthiness in the Farmland Protection Program or the Board.

The Board clearly recognizes for this program to succeed at its fullest, funding for the actual compensation for the placement of conservation easements must be secured and this funding level will need to be substantial. However, many of these Federal grant opportunities require some degree of state or local match. To that end, the Board will evaluate the feasibility of obtaining such local matching funds from several sources. Examples of those sources include:

1. Governor's Contingency Fund.
2. Private foundation gifts or grants.
4. Any future county impact fee dedicated to farmland protection.
5. Any future county transfer tax fee dedicated to farmland protection.

In addition, the WV Voluntary Farmland Protection Act requires the establishment of a state level WV Agriculture Land Protection Authority. This Authority is required to assist the Board in applying for and obtaining all state and federal funding available consistent with the purposes of the Farmland Protection Program.

To accomplish that function, WV Code §8A-12-1 et seq. requires the WV Department of Agriculture to include within its budget funding for the Authority for the next fiscal year. The Authority is then required to distribute within 60 days after the end of its fiscal year at least 80% of that fiscal year's remaining budget to county farmland protection boards that have certified to the Authority that there is pending an application for one or more conservation easements. This state level funding is called the WV Farmland Protection Fund.

This funding, similar to the county Farmland Protection Fund, is authorized by §8A-12-1 et seq. to be comprised of any money made available to the fund by general or special fund appropriations; grants or transfers from governmental or private sources; money realized by investments, interests, dividends or distributions; monies appropriated by the Legislature. In addition, the Authority is authorized to seek and apply for all available funds from Federal, state and private sources