

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

AGENDA REQUEST FORM

Name: Elizabeth Wheeler

Department or Entity: Jefferson County Farmland Protection Board

Estimation of amount of time needed for appointment: 5-10 minutes

Date Requested – 1st Choice: November 21, 2013

Date Requested – 2nd Choice: Dec. 5th 2013

If a specific date is needed, please provide reason for specific date: **To confirm Commissioner approval of the amendment of the Jefferson County Farmland Protection Board Program for FY 14 funding cycle applications due December 31, 2013.**

Subject:

1. **Amendment of 2014 Jefferson County Farmland Protection Board Program**
2. **Presentation of JCFPB FY 2013 Annual Report**
3. **Presentation of the JCFPB Strategic Plan**

Please provide the County Commission with a description of your request or presentation, including any background information:

1. Amendment of 2014 Jefferson County Farmland Protection Board Program to 1. defer the mandatory UASFLA appraisal required of landowners until after an easement application has been qualified in the ranking process. This will allow applicants who do not qualify for the program to avoid unnecessary expenses. 2. Incorporate the FY14 deed of easement template required by NRCS matching funding.
2. The FY 2013 Annual Report is presented for the Commission's information.
3. After 10 years of operation, the JCFPB determined it was necessary to assess its program, policy and procedures to establish the Board's goals and formal plan of action for the next 3-5 years. The plan is

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve):

1. That the Jefferson County Commission accept and approve the 2014 Jefferson County Farmland Protection Board Program amended to defer the required UASFLA appraisal required of landowners applying to the Jefferson County Farmland Protection Program until after the application has been qualified in the ranking process.

Attachments: **Amended 2014** Jefferson County Farmland Protection Board Program and
Appendix, FY13 Annual Report, Jefferson County Farmland Protection Board Strategic Plan 2013-2015.

THE
JEFFERSON COUNTY
FARMLAND PROTECTION
PROGRAM
2014

Prepared By

The Jefferson County Farmland Protection Board

TABLE OF CONTENTS

Title Page	1
TABLE OF CONTENTS.....	2
GLOSSARY OF TERMS	4
I. BACKGROUND.....	10
CONSERVATION AND PRESERVATION EASEMENTS ACT	10
VOLUNTARY FARMLAND PROTECTION ACT	10
JEFFERSON COUNTY COMMISSION RESOLUTION	11
FARMLAND PROTECTION BOARD COMPOSITION.....	11
PURPOSE.....	11
GENERAL PRINCIPLES OF LAND PROTECTION.....	13
II. PROGRAM.....	14
ELIGIBILITY REQUIREMENTS	14
FARMLAND PROTECTION RANKING CRITERIA	16
<i>Definitions for Land Evaluation Criteria</i>	16
EASEMENT PURCHASES - RULES AND GUIDELINES.....	20
EASEMENT DONATIONS - RULES AND GUIDELINES.....	20
EASEMENTS: SPECIAL/TARGETED GRANTS	21
NATURE OF DEVELOPMENT RIGHTS ACQUIRED.....	22
<i>A Conservation Easement</i>	22
<i>Easement Holder</i>	22
<i>Duration of the Easement</i>	22
<i>Restrictions Under the Easement-Voluntary Farmland Protection Act</i>	23
<i>Deed of Conservation Easement</i>	23
VALUE OF CONSERVATION EASEMENT	24
<i>Fair Market Value</i>	24
<i>Agricultural Value</i>	25
<i>Maximum Easement Value</i>	26
<i>Offering Price</i>	26
<i>Payment to Landowners</i>	26
<i>An Example</i>	26
<i>Determination of Values</i>	26
OFFERING TO SELL OR DONATE	27
THIRD PARTY MINERAL RIGHTS	27
AMENDMENT POLICY	28
III. ADMINISTRATIVE	29
PROCESS FLOWCHART	29
BASELINE DOCUMENTATION	29
CLOSING.....	30
INSPECTION AND ENFORCEMENT.....	31
IV. OUTREACH AND FUNDING.....	32
OUTREACH.....	32
FUNDING.....	32

APPENDIX

Sale or Donation of Conservation Easement Application Form	Appendix - Page 2 - 5
Baseline Documentation Form and Checklist	Appendix - Page 6 - 11
Easement Monitoring Inspection Form	Appendix - Page 12 - 14
Closing Checklist	Appendix - Page 15
Conservation Easement Requirements for Co-Holding With The Land Trust of the Eastern Panhandle	Appendix - Page 16
Sample Voluntary Stewardship Pledge Agreement	Appendix - Page 17
Sample Deed of Conservation Easement	Appendix - Page 20 - 34
Subordination Agreement and Limited Lien Waiver	Appendix - Page 35 - 36
Administrative Process Flowchart	Appendix - Page 37 - 41
Signature Page	Appendix - Page 42

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 to co-hold with another holder.

Agribusiness “Any business or operation which supports agriculture, either through the production or processing of agricultural products i.e. Farm machinery dealer, food processor, feed mill, dairy coop, etc.”

Agricultural 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 which would include 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 party 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.

Cave An underground passage of at least 50 feet in length. Caves have a unique and fragile ecosystem 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-hold The act of having more than one grantee listed on the Deed of Conservation Easement.

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, stormwater 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.

- AS Ashton Loam
- BaB Benevola Silty Clay Loam, 2-6% slopes
- BrB Braddock Gravelly Loam, 2-6% slopes
- DgB Duffield Silt Loam, 2-6% slopes
- FbB Frankstown Shaly Silt Loam, 2-6% slopes
- HbB Hagerstown Silt Loam, 2-6% slopes
- HfB Hagerstown and Frederick Cherty Silt Loams, 2-6% slopes
- Hn Huntington Silt Loam
- Ho Huntington Silt Loam, Local Alluvium
- Lf Landes Fine Sandy Loam
- Ln Lindside Silt Loam
- Lo Lindside Silt Loam, Local Alluvium
- MhB Monongahela Silt Loam, 2-6% 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. Park

land 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 Jefferson County Farmland Protection Board. Qualifying property must be ranked by the Farmland Protection Ranking Criteria as established by the Jefferson County Farmland Protection 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 and 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 also 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:

- BkB Berks shaly silt loam, 2-6% slopes
- BIB Berks-Weikerrt shaly silt loams, 2-6% slopes
- BrC Braddock gravelly loam, 6-12% slopes
- CdB Chilhowie silty clay, 2-6% slopes
- DcC Dekalb channery fine sandy loam, 6-12% slopes
- FbC Frankstown shaly silt loam, 6-12% slopes
- HbC Hagerstown silt loam, 6-12% slopes
- HfC Hagerstown and Frederick cherty silt loams, 6-12% slopes
- LaC Laidig gravelly loam, 6-12% slopes
- Am Alluvial land, marl substratum
- BnB Blairton silt loam, 2-6% slopes
- Me Melvin consist of deep, nearly level, poorly drained soils
- BcC3 Benevola clay, 6-12% slopes, severely eroded

- DgC3 Duffield silt loam, 6-12% slopes, severely eroded
- FbC3 Frankstown shaly silt loam, 12-25% slopes
- FbD Frankstown shaly silt loam 12-25%
- HeC3 Hagerstown silty loam, 6-12% slopes, severely eroded
- HhC3 Hagerstown and Frederick cherty silty clay loams, 6-12% slopes, severely eroded
- BeC Benevola very rocky, silty clay, 6-12% slopes
- ScC Frankstown very rocky, silty loams, 6-12% 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 not currently usable 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, but in no event may woodland include land used primarily in 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, to a maximum transfer value of \$1 million. 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, 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 Jefferson County Farmland Protection 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 2007 National Agricultural Census (the most recent census), Jefferson County's farmland was 72,091 acres or 53 percent of the 135,680 acres comprising the county.

The industry consists of predominately family owned businesses with 83 percent of farms in 2007 owned by individuals or families. Partnerships and family corporations account for 15 percent of the remaining farms. In 1974, there were 434 farms in Jefferson County. Since that time the number of farms has increased to 546 farms according to the 2007 Census of Agriculture. In that same time period, the average farm size has also decreased from 227 acres to 132. In 1997, over 34 percent of Jefferson County farms were 180 acres or more in size, while only 16 percent were greater than 180 acres in 2007. There was a steady decline from 1974 to 1997 of the number of farms that are 50 to 179 acres. In 2007, farms between 50 and 179 acres were 29 percent of all farms in the county. The agricultural census in 2007 shows an increase in the number of farms between 10 and 49 acres (44% in 2007) and those that are less than 10 acres (11% of the total farms).

The crops grown and the intensity of agricultural land use have changed dramatically between 1974 and 2007, the most recent census. The most dramatic changes occurred in the land in orchards which declined from 3,325 acres to 828 acres and in the number of dairy cows which declined from 6,883 cows to 2,260 cows. Both of these agricultural enterprises are capital intensive. There were fewer farms with beef cows in 2007 than in 1974, but 4,985 cattle were on 165 farms. The acres in pasture have increased from 20,310 in 1974 to 29,127 in 2007 while the crop acreage has increased from 15,045 acres to 42,964 acres. Farms and acres of "truck crops" have also increased since 1974 and in 2007 truck farming occurred on 31 farms with an average size of less than 5 acres. The change that has had a major impact on agriculture services and opportunities for conventional agricultural producers is revitalization of the Charles Town horse race track. In Jefferson County in 2007 there were 237 farms with a total of 2,451 horses.

What is more telling about the status of agriculture in 2007 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 2007, 152 farms had farm sales over \$10,000 and were 28 percent of all farms. These farms also represent 82 percent of the land in farms and have an average size of 398 acres. Over time fewer farmers have full-time employment on the farm. In 2007, the number of farm operators employed was 827 men and women. Of these 51 percent were full-time farmers or farm workers, while 26 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 plan.

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. A traditional farming enterprise that has the potential to be viable, is connected to 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 Profile is an evaluation conducted by the Natural Resource Conservation Service. This profile 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 profile would have 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.

- 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) will be used for the purchase of all farmland conservation easements 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 non profit 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 the boundaries of their property, protecting crops from wandering livestock was an early concern of farmers. A stone wall was 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 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.
 - 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 deepwater 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

- 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 naturally be dissolved by ground water circulating through them. As the rock dissolves, spaces and caverns develop underground. Sinkholes are dramatic because the land usually stays intact for a while until the underground spaces just get too big. If there is not enough support for the land above the spaces then a sudden collapse of the land surface 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 16, which must be multiplied by the weight factor of 12.5% to yield 2 points. If a property contains a sinkhole, look in "F - Historical - e" which contains a sinkhole(s) to see that would be awarded a value of 8 which must be multiplied by 50% for "e - Source Water Protection", then multiplied again by 7.5% weight factor for "Historical". This calculation would net 0.3 points (8 X 50% X 7.5%).

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 is multiplied by 2 for the Final Score which 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 Jefferson County Farmland Protection Board in order to be considered. The Jefferson County Farmland Protection 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 Jefferson County Farmland Protection 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 , however 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 Jefferson County Farmland Protection Board in order to be considered. The Jefferson County Farmland Protection 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 Jefferson County Farmland Protection 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 Jefferson County Farmland Protection 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 Jefferson County Farmland Protection 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 Jefferson County Farmland Protection 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. These easements are also sometimes referred to as open space easements. The Jefferson County Farmland Protection 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 Jefferson County Farmland Protection 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 Jefferson County Farmland Protection 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 Jefferson County Farmland Protection 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 agri-tourism 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 Farmland Protection 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 Jefferson County Farmland Protection 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 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.

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 Jefferson County Farmland Protection 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 (Amendment)

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.

Due to the costs involved, the Jefferson County Farmland Protection Board will require that the landowner-applicant pay for the qualifying USAFLA appraisal completed by a certified appraiser only when the property has been qualified under the Jefferson County Farmland Protection Ranking Criteria for possible county funding and for submission for matching federal funding through the Natural Resources Conservation Service (NRCS). At the time an offer is made by the landowner for purchase of an easement, the Jefferson County Farmland Protection Board shall make an initial estimate of the maximum easement value 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.

An updated appraisal shall be undertaken and paid for by the Jefferson County Farmland Protection 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.

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 Jefferson County Farmland Protection 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. Any unaccepted offers may be re-submitted by the landowner for consideration in any subsequent year, but a new application must be made.

The Jefferson County Farmland Protection 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

Jefferson County Farmland Protection Board (JCFPB) 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 JCFPB 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 JCFPB'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 JCFPB'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 JCFPB 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:
 - To fulfill agreements specified in the conservation easement;
 - To correct an error in original drafting;
 - To clarify an ambiguity in the conservation easement;
 - To adjust a conservation easement to acknowledge a condemnation by a public agency;
 - To add new provisions that strengthen the preservation and protection of conservation values;
 - 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 particular urgency expressed by the Farmland Protection 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 West Virginia Comprehensive Development Plan and exhibits included therein. If a more recent Comprehensive Plan is developed, the newer version shall be applicable unless similar exhibits are not included.

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 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 Jefferson County Farmland Protection 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 gift must be established. In addition, the baseline documentation must be accompanied by

a statement signed by the donor and the Jefferson County Farmland Protection 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 Jefferson County Farmland Protection 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 Jefferson County Farmland Protection 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 Jefferson County Farmland Protection 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 Jefferson County Farmland Protection 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 Farmland Protection 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 Eastern Panhandle Conservation District 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 Jefferson County Farmland Protection 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 donor.

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 Jefferson County Farmland Protection 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 Jefferson County Farmland Protection 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 the annual inspection process.

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 potential 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 Internet 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, for placement at libraries, farm related events, mass mailing, etc.

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 Jefferson County Farmland Protection Board.

The Jefferson County Farmland Protection 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 Jefferson County Farmland Protection 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. Legislative Digest Grants.
3. 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 Jefferson County Farmland Protection 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.

**Jefferson County Farmland Protection Board
P.O. Box 731
Charles Town, West Virginia 25414-0731**

APPENDIX

The forms in this Appendix are samples only, and should not be used for application purposes. Forms are subject to revision by the Jefferson County Farmland Protection Board without prior notice.



P. O. Box 731 • Charles Town, WV 25414

304.724.1414 • farmlandprotection@jcda.net

Sale or Donation of Conservation Easement Application Form FY 2014

ATTENTION: Applicants must have a conservation plan prepared or approved by NRCS to be approved for a conservation easement.

Date: ____ / ____ / ____

General Information

Name of Owner(s): _____

Address: _____

Home Phone: (____) _____

Work Phone: (____) _____

This application is for:

- Purchase of a conservation easement
 Donation of a conservation easement **

Property Information

Physical Address or Location of Property:

Directions to Property:

Deed Reference Information

Magisterial District:

- Charles Town Harper's Ferry Kabletown Middleway Shepherdstown

Deed Book Number: _____

Deed Page Number: _____

Tax Map Number: _____

Tax Parcel Number: _____

Historical features

Please indicate if the property is:

- On the National Register of Historical Places Yes No
- Of national, state or local significance Yes No
- Adjacent to one of the above two properties Yes No
- Adjacent to any state or national park, existing permanent easement or permanently protected open space Yes No

Include documentation for each feature.

Water features

Please indicate of the property:

- Fronts on a major stream, creek or river Yes No
- Contains a stream or tributary Yes No
- Contains a year-round spring Yes No
- Contains a wetland Yes No
- Contains a sinkhole(s) Yes No
- Includes areas in 50 year flood plain Yes No

Include documentation for each feature.

Other natural or manmade features

Please indicate if the property:

- Contains at least 10 acres of mature forest Yes No
- Contains or is contiguous to endangered or threatened habitat Yes No
- Contains a cave Yes No
- Contains stone fences or walls Yes No
- Contains other features targeted by the Nature Conservancy Yes No

Include documentation for each feature.

F. Secured Debts or Liens on the property

Holder 1 Amount: \$ _____

Name: _____

Address: _____

Phone Number: (_____) _____

Will the lender (Holder 1) agree to subordinate the loan? Yes No

If yes, include documentation of agreement to subordinate.

Holder 2 Amount: \$ _____

Name: _____

Address: _____

Phone Number: (_____) _____

Will the lender (Holder 2) agree to subordinate the loan? Yes No

If yes, include documentation of agreement to subordinate.

G. Length of Easement

This conservation easement is in perpetuity.

Yes No

H. Price/Easement

Appraisal Value:	Fair Market Value	\$ _____
	Agricultural Value	\$ _____
	Conservation Easement Value	\$ _____

Price at which Owner agrees to sell Conservation Easement: \$ _____

Owner's Non-cash charitable contribution: \$ _____

A UASFLA(Uniform Appraisal Standards for Federal Land Acquisition) or "Yellow Book" appraisal will be required following the Board's acceptance of your application for matching funds from NRCS.**

Official Contact

Name, address and phone number of the contact person who is authorized by all property owners to receive correspondence from the JCFPB and negotiate the terms of the easement:

Name: _____

Phone Number: _____

Address: _____

Email: _____

Signatures

All owners must sign this application giving consent to make application to the Jefferson County Farmland Protection Board for a conservation easement sale/donation; and if accepted, agree to the terms of the JCFPB Program, including the owners offering price.

Name: _____

Signature: _____ Date: ____/____/____

Name: _____

Signature: _____ Date: ____/____/____

Name: _____

Signature: _____ Date: ____/____/____

Documentation Checklist

The following documents must be attached:

1. Sketch plat of property*
2. Sketch plat of area of property offered for the easement
3. Deed description (legal description included in deed to current owner)
4. Tax map (available from Jefferson County Assessor's Office)
5. Soil map (available from NRCS)
6. Soil profile (available from NRCS)
7. Appraisal must be the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA or "Yellow Book") for compliance with our program.**
8. NRCS letter confirming NRCS-USDA Conservation Plan
9. Letter of subordination from financial institution if applicable
10. All other documents requested herein if applicable:
 - Farm-use valuation from Jefferson County Tax Assessor
 - Sales contract if property is subject to sale
 - Forestry plan from WV Forestry Division if property has 20+ acres forest/woodland
 - Documentation of all historical, natural and manmade features

NOTE: All applications must be completed and signed by all deed holders of the property to be considered. Additional information may be required from the applicant.

*A current survey of the property must be completed if the current survey is more than 10 years old. If the owner wishes to take out a parcel or retain a development right or only put some of the property into easement there must be a survey. This survey should be done BEFORE the appraisal is done, so that the appraiser has accurate acreages and areas to assess. The JCFPB will pay for the first survey. If the owner makes any changes in the property offered, e.g. additional out-parcels or exceptions, then the owner must pay to have the property re-surveyed.

**If a property is qualified and accepted for conservation easement funding, the Board will require the landowner to provide the UASFLA or "Yellow Book" appraisal by February 1, 2014. The appraisal is required for submission to the NRCS for consideration for matching funds. West Virginia and Federal law prohibit the purchase of a conservation easement for more than the value established by the UASFLA appraisal. A bargain sale (sale of the easement value for below the appraised value) may be tax deductible.

For further information about the Jefferson County Farmland Protection Program, contact FarmlandProtection@jcda.net or call 304-724-1414

Thank you!



Jefferson County Farmland Protection Board
P.O. Box 731
Charles Town, West Virginia 25414-0731

Baseline Documentation Form and Checklist
To be completed by the Jefferson County Farmland Protection Board

Background Information

Property owner(s) _____ Telephone _____

Address _____

City _____ State _____ Zip _____

Property name (if any) _____

Location _____

Deed Reference Book _____ Parcel _____

Tax Map Numbers _____

County _____ Title search _____

Total acreage _____ Acreage offered for easement _____

Other notes _____

PART ONE: ACQUISITION DATA

Parcel Identification

Property Size _____ acres

Determined by: Survey Deed Tax Map Estimate

Parcel A Easement _____ acres

Determined by: Survey Natural Boundaries

Describe _____

Parcel B Easement _____ acres

Determined by: Survey Natural Boundaries

Describe _____

Parcel C Easement _____ acres

Determined by: Survey Natural Boundaries

Describe _____

Other notes _____

Soil types on property: _____

Describe surrounding land uses: (residential development; commercial development; industrial development; highways; farming; logging; water control; drainage; etc.)

History of property's uses: (see building department; local government real estate office; neighbors)

List improvements on property: (buildings; stone walls; barns; shelters; gates; dams bridges; fences; trails; roads; etc.)

Natural Resource Inventory

Natural Features

Scenic quality _____

Vegetation or flora _____

Forested land _____

Mountainous land _____

Caves _____

Sink holes _____

Shale barrens, limestone cliffs _____

Other natural features _____

Agricultural

Farmland _____

Orchards _____

Water Resources

Streams, creeks or rivers _____

Springs _____

Wetlands _____

Ground water recharge potential _____

Other

Size adequate to support wildlife _____

Local wildlife _____

Endangered species _____

Archeological site _____

Historical significance _____

PART THREE: DOCUMENTATION REVIEW

Conservation Easement - Attachments

Deed	o
Title search	o
Assessors map	o
Property survey	o
Easement location survey	o
Highway map	o
USGS map	o
Photographs	o
Professional natural resource evaluation	o
Conservation district evaluation	o

MONITORING INSPECTION FORM

Deed of Conservation Easement _____

Background Information

Inspection date _____

Owner(s) name _____

Owner(s) address _____

Owner(s) telephone # _____

Location of property _____

Conservation Easement Description

Summary of easement provisions _____

Date conservation easement acquired _____

Name and address of conservation easement donor _____

Name and address of current owner (if different) _____

Length of ownership of present owner _____

On-Site Inspection

Names of inspection team _____

Name of owner/representative to whom inspection notice sent _____

Did the owner/representative accompany the inspection team? Yes No

Name _____

Time spent on the property _____

Are the terms of the conservation easement agreement being adhered to? Yes No

Describe _____

Were any violation or potential violations observed? Yes No

Describe _____

Describe acts or uses now taking place permitted under the terms of the conservation easement agreement that were not previously observed _____

Improvements (including structures, pipelines, powerlines, etc.) _____

Present use of the property _____

Uses of surrounding properties _____

Conclusions

Recommended next visit: Next scheduled visit Near future visit

Remarks _____

Inspection team supervisor Name _____

Signature _____

Attachments (check all included)

- Photographs
- Assessor's parcel map
- Local map or direction notes
- Right-of-way, utility or water easements
- Property survey
- U. S. Geological Survey quadrant map
- Other topographical maps

FOR JEFFERSON COUNTY FARMLAND PROTECTION BOARD ONLY

Accepted by Board of Directors _____

Action to be taken (if any) _____

Next inspection date _____

Closing Checklist

Date: _____

Property: _____

Board
Approval: _____

Prior to Settlement

- ✓ Deed of Conservation Easement – Approved by NRCS/Landowner Attorney/JCFPB Attorney (if applicable)
- ✓ Title search and title insurance policy
- ✓ Baseline Documentation/ Stewardship agreement
- ✓ Draft Settlement Sheet
- ✓ NRCS Closing Letter signed by Closing agent (if applicable)*
- ✓ Conservation plan
- ✓ Survey (if partial plat)
- ✓ Form SR-270 Request for Advance or Reimbursement (if applicable)*
- ✓ Subordination Agreements (if applicable)
- ✓ Approval of Deed of Conservation Easement by:
 - JC Prosecuting Attorney
 - JC Planning, Zoning, and Engineering
 - Jefferson County Commission

At Settlement

- ✓ Deed of Conservation Easement*
- ✓ Baseline Documentation Certification*
- ✓ Final Settlement Sheet*
- ✓ Final Appraisal Ordered*

After Settlement

- ✓ Recorded Deed of Conservation Easement and plat*
- ✓ Baseline Documentation (with Recorded Deed)*
- ✓ Recorded Subordination Agreement*
- ✓ Form 8283*
- ✓ Final Appraisal

* Copy to be sent to NRCS (when applicable)

Approval for closing: _____

CONSERVATION EASEMENT REQUIREMENTS FOR CO-HOLDING WITH THE LAND TRUST OF THE EASTERN PANHANDLE

The Land Trust of the Eastern Panhandle shall assure that conservation easements or other interests in land acquired under this agreement:

- run with the land in perpetuity or a minimum of thirty years, in the case where a conservation easement is acquired for a term less than perpetuity, the Land Trust of the Eastern Panhandle must secure approval of the NRCS National Office.
- prevent the land from being converted to nonagricultural uses
- provide for the management and administration of the easement or other interests in land by the Land Trust of the Eastern Panhandle
- require management of the property in accordance with a conservation plan that is developed utilizing the standards and specifications of the NRCS field office technical guide, 7 CFR, Part 12, and is approved by the Conservation District
- where parcels are being enrolled in FPP based on historical and archaeological resources, a paragraph identifying standards and guidelines for treatment and maintenance of these resources is required within the deed. These guidelines should be based on the Secretary of Interior's Standards and Guidelines for Historic Preservation. The Land Trust of the Eastern Panhandle will ensure that title restriction to protect any historical and archaeological structure(s) is appended to the deed and included in any succeeding transfers, and
- include the following "Contingent Right in the United States of America" provision where title is held by the Land Trust of the Eastern Panhandle:

"in the event that the Land Trust of the Eastern Panhandle fails to enforce any of the terms of this easement (or other interests in land), as determined in the sole discretion of the Secretary of the United States Department of Agriculture, the said Secretary of Agriculture and his or her successors and assigns shall have the right to enforce the terms of the easement through any and all authorities available under Federal or State law. In the event that the Land Trust of the Eastern Panhandle attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of this easement (or other interests in land) or extinguish the conservation easement without the prior consent of the Secretary of the United States Department of Agriculture and payment of consideration to the United States, then, at the option of such Secretary, all right, title, and interest in this easement (or other interests in land) shall become vested in the UNITED STATES OF AMERICA"

- include signature of a responsible NRCS official on the Conservation deed, accepting the United States' property interest in the deed

Sample

Voluntary Stewardship Pledge Agreement

This undersigned, collectively, being the intended Grantors of a conservation easement on certain parcels of property in Jefferson County, West Virginia, hereby pledge, pursuant to the conditions contained herein, the sum or THREE THOUSAND DOLLARS (\$3,000.00) to the Land Trust of the Eastern Panhandle, which will be a co-holder of the easement with the Jefferson County Farmland Protection Board, as a fund to be held by the Land Trust for the purpose of maintaining, protecting and enforcing the rights, responsibilities and actions pursuant to the aforesaid Deed of Conservation Easement.

This Pledge Agreement is to be effective commencing with the date on which the Deed of Conservation Easement is recorded with the Clerk of Jefferson County, West Virginia, and payment is to be made immediately thereafter.

IN WITNESS THEREOF, the undersigned have undertaken this Pledge Agreement:

Name

Signature

Date

**Jefferson County Farmland Protection Board
P.O. Box 731
Charles Town, West Virginia 25414-0731**

Model Conservation Easement Checklist

CAPTION

- 1** Title of Document
- 2** Identification of Parties

RECITALS

- 3** Title Representation and Legal Description of Property
- 4** Specific Conservation Values
- 5** Baseline Documentation
- 6** Affirmative Purpose of the Conveyance: Conservation Values
- 7** Purpose or Directive of the Grantee/Co-holder
- 8** Grantee's Commitment

GRANT

- 9** Grant

PURPOSE

- 10** Purpose

TERMS, CONDITIONS AND RESTRICTIONS

- 11** Terms, Conditions and Restrictions

GENERAL PROVISIONS

- 12** Access
- 13** Rights of the Grantee
- 14** Grantee Notification/ Approval
- 15** Grantee's Remedies

GENERAL PROVISIONS (continued)

- 16** Multiple Grantees
- 17** Acts Beyond the Grantor's Control
- 18** Costs, Legal Requirements and Liabilities
- 19** Control
- 20** Taxes
- 21** Hold Harmless
- 22** Extinguishment
- 23** Condemnation
- 24** Assignment
- 25** Subsequent Transfers
- 26** Estoppel Certificates
- 27** Notices
- 28** Recordation
- 29** Amendment
- 30** Other Provisions

- Controlling Law
- Severability
- No Forfeiture
- Successors
- Captions

SIGNATURES, ACKNOWLEDGMENTS, AND EXHIBITS

- 31** Signatures, Acknowledgments, and Exhibits

Model Conservation Easement

1 Title of Document

DEED OF CONSERVATION EASEMENT

2 Identification of Parties

This **DEED OF CONSERVATION EASEMENT** (“Easement”) is made this _____ day of _____, 20__, by LANDOWNER, Husband and Wife, having an address at _____, _____ (“Grantors”), to the YOUR FPB (“FPB” or “Grantee”) having its mailing address at _____, and the United States of America (“United States”), by and through the Commodity Credit Corporation, and the acquiring agency, the U.S. Department of Agriculture-Natural Resources Conservation Service (“NRCS”), with its mailing address is 1550 Earl Core Road, Morgantown, WV 26505 as its interest appears herein. For purposes of this agreement, references to the rights, duties and obligations of Grantors and Grantee apply equally and in full force to any successors to the parties to this agreement.

3 Title Representation and Legal Description of the Property

WITNESSETH:

WHEREAS, Grantors are the sole owners in fee simple of certain real property in _____ County, West Virginia, consisting of ____ acres of land, more or less, and more particularly described in Exhibit A, incorporated herein by reference (the “Property”). The Property is also described in a deed of record in the office of the Clerk of the County Commission, _____ County at Deed Book _____, Page ____;

4 Specific Conservation Values

WHEREAS, the Property possesses agricultural, including prime, unique and significant soils; open space and natural values (collectively, “Conservation Values”) of great importance to Grantors, the people of _____ County, and the people of the State of West Virginia, and all current and future generations of mankind;

WHEREAS, the Farm and Ranch Lands Protection Program (16 USC 3838h and 3838i) purchases conservation easements to protect prime, unique, and other productive soils from conversion to non-agricultural uses. Under the authority of the Farm and Ranch Lands Protection Program, the United States Department of Agriculture’s Natural Resources Conservation Service has provided \$ _____ to Grantors for the acquisition of this conservation easement, entitling the United States to the rights identified herein;

WHEREAS, Grantee has provided \$ _____ under the _____ County Farmland Protection Program to purchase a conservation easement on ____ acres of the Property, and has accepted a donation of a conservation easement on the remaining ____ acres of the Property.

5 Baseline Documentation

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, on file at the offices of Grantee and incorporated by reference (“Baseline Documentation”), which consists of reports, maps, photographs, and other documentation that the parties agree provide an accurate representation of the Property at the time of this contract and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement;

6 Affirmative Purpose of the Conveyance: Conservation Values

WHEREAS, Grantors and Grantee have the exclusive common purpose of preserving the agriculture and open space character of the Property;

WHEREAS, Grantors further intend, as owners of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity;

7 Purpose or Directive of the Grantee/ Co-holder

WHEREAS, the Legislature of the State of West Virginia (“Legislature”) has 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 of West Virginia;

WHEREAS, the Legislature has declared that agriculture is a unique life support industry, and recognizes the need to support the irreversible loss of agricultural land. The legislature authorizes the State of West Virginia and its counties so desiring to protect agricultural land and woodland as open-space land, to develop programs and to accept qualifying properties voluntarily entered into the program;

WHEREAS, the County Commission of _____ County, West Virginia (“County Commission”) has declared that the agriculture community of _____ County provides sources of agricultural 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 urban expansion which is consuming land, topsoil and woodland of the county;

WHEREAS, the County Commission has resolved to provide persons of _____ County an opportunity to voluntarily protect agricultural land by creating the YOUR FPB and authorizing it to create and administer the _____ County Farmland Protection Program;

WHEREAS, Grantee is a public agency established to provide landowners with an opportunity to voluntarily protect agricultural land in _____ County by the voluntary placement of conservation or preservation easements on eligible property;

WHEREAS, the Trust is a publicly supported, tax-exempt nonprofit corporation, under Section 501(c)(3) and Section 509 (a) (2) of the Internal Revenue Code of 1986 as amended (“the Code”), qualified under section 170(h) of the Code to receive qualified conservation contributions, is authorized

under West Virginia law to accept and hold conservation easements in the State of West Virginia, and has as its primary purpose to promote the preservation, protection, or enhancement of land for conservation purposes in its natural, scenic, agricultural, forested, and/or open space condition; and

8 Grantee's Commitment

WHEREAS, Grantee affirms that this Easement represents a unique and valuable asset to the quality of life in _____ County and that by the acceptance of this Easement that it will act in good faith to uphold the conservation easement and not seek to benefit from its conversion or elimination. It agrees by accepting this grant to honor the intentions of Grantors stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come in the future.

9 Grant and Purpose **10**

NOW, THEREFORE, in consideration of the above and the mutual covenants, good and valuable consideration, terms, conditions and restrictions contained herein, and pursuant to the laws of West Virginia, Grantors hereby voluntarily grant, bargain, and convey to Grantee and the United States a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth in this Easement. It is the purpose of this Easement to assure that the Property will be retained forever in its natural, agricultural, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, including its prime, unique, and important soils.

To achieve these objectives, the terms, conditions, and restrictions of this Easement are hereinafter set forth. The parties agree that the United States is granted the same rights as the Grantee under the terms of this Easement. However, the United States will only exercise its rights set forth below at section II 4 (e). Until such time, if ever, the United States exercises its rights under this Easement, Grantee is the primary manager and enforcer of this Easement.

I. TERMS, CONDITIONS AND RESTRICTIONS

11 Terms, Conditions and Restrictions

Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. The following terms, conditions and restrictions clarify and govern the intent of Grantors and Grantee:

1. Use and Quiet Enjoyment. Grantors have the right to reside on the property and to benefit from all aspects of the quiet enjoyment of the Property. Grantors have the right to engage in any and all

personal recreational uses of the property, including but not limited to hiking; touring; swimming; camping, biking; hunting and fishing; that require no development of the land and are consistent with the Conservation Values.

2. Agricultural Uses of the Land. Grantors may engage in any and all agricultural uses of the Property. For example, 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 nuts and vegetables of all kinds; nursery, floral and greenhouse products; aquaculture; a grain mill; and the processing and storage of the agricultural products produced principally on the Property are permitted. Any secondary agricultural activity, including but not limited to farm mechanics, blacksmithing, or related activities, shall be considered an agricultural activity. However, such activities or businesses must be undertaken in the permitted agricultural or residential structures and must be consistent with the Conservation Values.

3. Agricultural Structures. Grantors have the right to maintain, construct, and place agricultural structures contributing to the production, primary processing, direct marketing and storage of agricultural products produced principally on the Property Agricultural structures shall be constructed or placed within the area described in Exhibit C (“Farmstead Complex Area”), and shall be limited by the maximum square footage as described in *Terms, Conditions and Restrictions-Maximum Impervious Surface Coverage*.

4. Retail Sale of Farm Products. Businesses directly related to the retail sale of farm products produced primarily on the Property that are supportive and agriculturally compatible may be established on the Property. Such businesses include roadside stands or structures to facilitate the direct sale to the public of agriculture products, as long as not more than 2,000 square feet of structures are erected to facilitate such retail sales.

5. Activities for Religious, Charitable or Educational Purposes or to Foster Tourism. Activities or businesses undertaken for charitable or educational purposes or to foster tourism may be conducted on the Property in order to foster rural economic uses while protecting the rural character of the Property. Such activities or businesses must be compatible with and supportive of the rural character of the Property, and must remain incidental to the agricultural and open space character of the Property.

- (a) Non-agricultural commercial and industrial structures and uses are prohibited. Activities or businesses undertaken for charitable or education purposes or to foster tourism must be undertaken in the agricultural structures permitted under *Agricultural Structures* or *Residential Dwellings*; no other structures are permitted on the Property.
- (b) The stables, horseback riding arenas both within and outside the barn, and supporting pavilion(s) and buildings are considered agricultural buildings. Such buildings shall be located within the Farmstead Complex Area described in Exhibit C, and shall be limited by the maximum square feet as described in *Terms, Conditions and Restrictions-Maximum Impervious Surface Coverage*.
- (c) Accommodation of tourists and visitors is permitted but only within permitted residential structures and appurtenances, and/or agricultural structures, except for rural recreational activities such as hayrides, corn mazes, etc.
- (d) Accommodation of overnight guests is permitted, but only within permitted residential structures.

- (e) Commercial operation of dune buggies, motorcycles, all-terrain vehicles, hang gliders, aircraft, jet skis, motorized boats or any other types of mechanized vehicles whether or not considered to foster tourism is prohibited.
- (f) Extensive commitment of land resources as required by golf courses, racetracks, tennis clubs, baseball, soccer and other ball fields and similar uses whether or not considered to foster tourism is prohibited.

6. Home-based Businesses. Any home-based business that does not require a Division of Environmental Protection permit to operate may be conducted on the Property, provided that:

- (a) The occupation or business use must be conducted entirely within the single residential dwelling or appurtenances allowable under *Terms, Conditions and Restrictions—Residential Dwellings*.
- (b) The use of the dwelling for the home occupation shall be clearly incidental and subordinate to the use of the dwelling for residential purposes.

7. Residential Dwellings. Grantors and Grantee acknowledge that existence of _____ single residential dwelling(s) on the Property as more fully described in Exhibit B. In addition, Grantors may construct _____ additional single residential dwellings on the Property, each to be located within a building envelope as indicated in Exhibit D (the “Retained Development Rights”). No other single residential dwellings shall be constructed or placed on the Property.

- (a) Each single residential dwelling shall be contained in a building envelope (“Residential Area”) no greater than two (2) acres per each dwelling. The Retained Development Rights may be constructed anywhere within the building envelopes described in Exhibit D.
- (b) Grantors have the right to maintain, repair, enlarge or replace each allowed single residential dwelling as they may so desire, except that the impervious surface of each such single residential dwelling is limited to 5,000 square feet.
- (c) Grantors have the right to construct appurtenances such as garages, sheds and recreational facilities within each building envelope, except that the total allowed impervious surface within each building envelope, including the single residential dwelling(s), shall not exceed 9,000 square feet.
- (d) The single residential dwelling may house one or more families or occupants, but shall not be converted to a multi-family dwelling.

8. Transfer of Development Rights. All other development rights not specifically reserved under this Easement are hereby extinguished and shall not be transferred to any other property pursuant to a transfer of development rights program or any other means or used to calculate permitted development density.

The Protected Property and any portion thereof shall not be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open spaces requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise; provided, however, that with prior written permission of Grantees, this paragraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Protected Property.

Subdivision. It is the intention of Grantor to protect the open space values of the Property. Accordingly, subdivision of land is prohibited except the single residential dwellings permitted above in *Terms, Conditions and Restrictions – Residential Dwellings*, may be subdivided to create the Residential Areas as described in Exhibits B and D, attached. The Residential Areas may not be conveyed separately from the remainder of the property.

10. Maximum Impervious Surface Coverage. The total surface coverage of impervious surfaces on the Property shall be subject to the limitations defined below.

- (a) Impervious surfaces shall be defined as any material which covers land and inhibits the percolation of stormwater directly into the soil, including, but not limited to, buildings, roofs, the area covered by permanent or nonpermanent structures, macadam and pavement, gravel and stone driveways and parking areas.
- (b) The total surface coverage of the Property by all impervious surfaces, including all single residential dwellings, structures considered as an appurtenance to such dwellings, structures associated with agricultural uses, driveways and parking areas, shall not exceed _____ square feet, which is less than 2% of the total Conservation Easement area.

11. Removal of Natural Resources. Ditching, draining, diking, filling, excavating, removal of topsoil or sand, gravel or rock on the Protected Property is prohibited, except when such activities are conducted in order to carry out activities permitted under this Easement, are in accordance with a conservation plan, do not exceed one (1) acre in total area and are restored within a reasonable time period. The exploration, development, mining or extraction of minerals, oil, gas or any other hydrocarbon substance from the surface of the Property is prohibited.

12. Management of Woodland Resources.

Easement property with contiguous forest that exceeds the greater of 40 acres or 20 percent of the easement area will have a forest management plan. The agricultural use of timber and woodland products on the Property is permitted under a current forest management plan subject to approval by the Grantees and the United States of America.

Forest management plan shall not be required for the following permitted non-commercial activities and do not require prior approval of the Grantees or the United States of America:

- (a) removal of trees posing an imminent hazard to the health or safety of persons or livestock;
- (b) cutting of trees for firewood, or for other domestic uses of Grantor;
- (c) cutting of trees for the construction or maintenance of permitted structures or landscaping within the Residential Area or for access otherwise permitted in this Easement;
- (d) removal of trees for the maintenance or the improvement to existing pastures or fence lines
- (e) removal of invasive species both plant and insect
- (f) To remove, destroy and cut horticultural species (orchard, Christmas trees, etc.) which may include the cutting thereof for firewood for use on the Property or for sale;

Forest management and timber harvesting activities must be carried out in accordance with all applicable local, State, Federal, and other governmental laws and regulations and be consistent with this Deed of Conservation Easement and the protection of Conservation Values of the Property.

Such forest management and timber harvesting must be performed in accordance with a written forest management plan consistent with this Conservation Easement Deed prepared and signed by a licensed professional forester. The United States of America and the Grantees will approve the plan to ensure it is consistent with the agricultural conservation value of the easement. Said plan must have been prepared not more than 10 years prior to the date any harvesting is expected to commence.

13. Other Construction. Except as specifically permitted above,, there shall be no constructing or placing of any buildings; manufactured homes; swimming pools or other recreational facilities; commercial lighting or any other temporary or permanent structure or facility on or above the premises. Existing roads as identified in the Baseline Documentation Report may be maintained and repaired in their current state. New roads may be constructed only if they are necessary for agricultural operations or access to the retained development rights (Exhibit D) on the Property. Paved roads are subject to the impervious surface limitations referenced above.

14. Fences. Existing fences may be repaired and replaced and new fences may be built on the Property as necessary for agricultural operations on the Property, including customary management of livestock and to delineate the boundary of the Property.

15. Signs. Except for no trespassing signs, for-sale signs, signs identifying this Easement, and signs to advertise an on-site activity or business, all other signs, advertisements and billboards of any nature are prohibited. The permitted signs may not exceed 15 square feet per sign.

16. Wastes. Dumping or storage of trash, garbage, hazardous substances, abandoned vehicles or machines or other material on the Property is prohibited. However, composting of biodegradable material used or produced on the Property to improve gardens and pastures on the Property is permitted so long as composting and its application is consistent with a conservation plan.

17. Utilities. Grantors shall not sell, lease or grant an easement covering any portion of the Property where such sale, lease or easement is for the purpose of construction and installation of underground or above-ground utility systems, including, but not limited to, water, sewer, power, fuel, sewerage pumping stations, and cellular telephone or other communication towers. Grantors may install utilities necessary for the permitted residential and agricultural structures.

18 Streams, Wetland and Water Bodies. There shall be no pollution, alteration, depletion of surface water, natural water courses, lakes, ponds, marshes, wetlands, springs, subsurface water or any other water bodies, nor shall there be activities conducted on the Property which would be detrimental to water purity or which could alter natural water level and/or flow in or over the Property. Nothing in this paragraph shall prohibit the creation or dredging of farm ponds and allow the reasonable use of the available water of the property for agricultural purposes permitted by this easement. Structures and facilities associated with irrigation, farm pond impoundment, and soil and water conservation on the Property shall be considered an agricultural use. Expansion and construction of ponds and structures outside the Farmstead Complex Area shall in accordance with the conservation plan. Farm ponds both inside and outside the Farmstead Complex Area shall not exceed two (2) acres in area.

II. GENERAL PROVISIONS

12 Access

1. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement.

13 Rights of the Grantee

2. **Rights of the Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee or their agent by this Easement:

- (a) To preserve and protect the Conservation Values of the Property;
- (b) To enter upon the Property on a yearly basis (or more frequently if violations are observed or suspected) in order to monitor Grantors' compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantors, and Grantee shall not unreasonably interfere with Grantors' use and quiet enjoyment of the Property; and
- (c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to *General Provision—Grantee's Remedies*.

14 Grantee Notification/Approval

3. **Grantee Notification/Approval.** Grantors reserve for themselves the right to engage in any and all activities not expressly prohibited herein and not inconsistent with the purpose of this Easement without seeking the approval of Grantee.

15 Grantee's Remedies

4. Grantee's Remedies.

(a) **Notice of Violation; Corrective Action.** If Grantee determines that Grantors are in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action within 60 days sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

(b) **Injunctive Relief.** The Grantee, its successors or assigns, jointly or severally shall have the right to enforce these restrictions by injunction and other appropriate proceedings, including, but not limited to, the right to require Grantors to restore the Property to the condition existing at the time of this Easement in order to correct any violation(s) of this Easement. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantors agree that Grantee shall be entitled to the injunctive relief in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

(c) **Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including without limitation costs of suit and attorneys' fees, and costs or restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in action to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee. Costs incurred by Grantee in enforcing the terms of this Easement against third party shall be borne by Grantee. The preceding two sentences shall not apply to the United States should the United States exercise its rights under (e) below.

(d) **Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

(e) **Rights of Enforcement.** Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary) or his assigns, on behalf of the United States, may exercise these rights under the following circumstances: In the event that the Grantees fail to enforce any terms of this Conservation Easement, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of this Conservation Easement through any all authorities available under Federal or State Law. The notice will set forth the nature of the noncompliance by the Grantee and a 60-day period to cure. If Grantee fails to cure within the 60-day period, NRCS will take the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in the land it seeks to protect.

(f) **Conservation Plan.** As required by section 12381 of the Food Security Act of 1985, as amended, the Grantors, their heirs, successors, or assigns, shall conduct all agricultural operations on the highly erodible lands within the Protected Property in a manner consistent with a conservation plan prepared in consultation with the NRCS and approved by the Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on the date of this Easement. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. The NRCS shall have the right to enter upon the Property, with advance notice to the Grantor and Grantee, in order to monitor compliance with the conservation plan.

The United States, acting by and through the Natural Resources Conservation Service its successors or assigns, shall have the right to enter the Property after notifying Grantor for the purposes of ensuring that the Conservation Plan is being implemented appropriately. All notices to the Grantor under this Section may be made either in writing or verbally, at the discretion of the party providing the notice.

In the event of noncompliance with the conservation plan, the NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, the NRCS will inform Grantee of the Grantor's noncompliance. The Grantee shall take all reasonable steps

(including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

Grantor shall be liable for any costs incurred by NRCS as a result of the Grantor's negligence or failure to comply with the Conservation Easement's requirements as it relates to conservation plan violations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant Based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the grantor may be or become subject.

The conservation plan described above, and all provisions of this section, apply only to the highly erodible land and wetlands conservation requirements. Such highly erodible land and wetlands, if any, is described in the Baseline Documentation and incorporated here by reference. The Grantor agrees that the NRCS shall share, through written communication with the Grantee, information related to monitoring for compliance with the conservation plan; findings of compliance or noncompliance; and any proceedings under appeal rights applicable under NRCS regulations related to a violation of the conservation plan.

In addition, as of the date of this Easement, the Grantor and NRCS certify that the Grantor is in compliance with all highly erodible land and wetland conservation provisions.

16 Multiple Grantees

(g) **Holder and Co-holders Rights and Obligations.** Holder shall have the primary responsibility for the stewardship and monitoring of this easement, determining if a violation has occurred, and for approving any amendments to the Deed of Conservation Easement. These duties may be fulfilled directly by Holder or their agent or the Holder may arrange to have the Co-holder fulfill these duties. Holder will share with the Co-holders monitoring and stewardship information, including but not limited to written notices to Holder and monitoring reports.

The Holder is responsible for any costs incurred in enforcing the terms of the easement, including any attorney's fees and any costs of the suit. Holder can recover costs from Grantor or third party as described in Grantee's Remedies above. The Holder and Co-holders shall make every good faith effort to determine a unified course of action should a potential or actual violation of the easement arise.

Co-holder shall have the right to enforce the terms of the Easement if Grantee becomes unable or refuses to enforce the Easement, or if Co-holder in its sole discretion finds that the Grantee's enforcement action or consent fails to protect the conservation purposes of the Easement. In such case, the provisions of paragraph 4(c) above apply equally to the co-holder.

17 Acts Beyond the Grantor's Control

5. **Acts beyond the Grantors' Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantors could not reasonably have anticipated or prevented, Grantors agree that Grantee has the right to pursue enforcement action against the responsible parties.

18 Costs, Legal Requirements and Liabilities

6. **Costs, Legal Requirements and Liabilities.** Grantors, their heirs, successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

19 Control

7. **Control.** Nothing in this Easement shall be construed as giving rise to any right or ability of Grantee or the United States to exercise physical or managerial control over the day-to-day operations of the Property, or any responsibility to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (42 U.S.C. §§ 9602 et seq.).

20 Taxes

8. **Taxes.** Grantors shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property or residences contained thereon by competent authority, including any taxes imposed upon, or incurred as a result of, this Easement.

21 Hold Harmless

9. **Hold Harmless.** Grantors shall hold harmless, indemnify, and defend Grantee and the United States and its members, directors, officers, employees, agents, and contractors (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: an injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties and only that negligent party shall be deprived of this protection.

10. **Environmental Warranty.** "Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous

materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

Grantor warrants that it is in compliance with and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property.

Grantor warrants that it has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property exceeding regulatory limits. Moreover, Grantor hereby promises to indemnify and hold harmless the United States against all costs, claims, demands, penalties and damages, including reasonable attorneys= fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor=s indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

22 Extinguishment

11. Proceeds for Extinguishment. The conveyance of this Easement gives rise to a property right immediately vested in the Grantees and the United States. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, upon approval by the USDA-NRCS or its successors and by judicial proceedings in a court of competent jurisdiction. The United States shall receive, at the time of the Conservation Easement is extinguished or terminated, its share of the Conservation Easement based on the appraised fair market value of the Conservation Easement at the time the Conservation Easement is extinguished or terminated. The United States’ share shall be proportionate to its percentage of its original investment. At the date the Conservation Easement was purchased, the proportionate values were as follows: Grantor(s) is ___% of the appraised fair market value of the subject property. Grantee(s) and United States’ is ___% of the appraised fair market value of the subject property. The Grantee(s) and United States’ proportionate investment of the subject property are as follows: Land Trust ___ %, YCFPB ___ %, and United States ___ %.

In making this Easement, Grantors have considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. Grantors believe that any such changes in the use of neighboring properties will increase the benefit to the public of continuation of this Easement, and Grantors and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement.

23 Condemnation

12. Condemnation. Due to the federal interest in this Easement, the United States must consent to any condemnation action. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantor shall be entitled to compensation at not less than the fair market value of the Property determined without regard to the existence of the Easement. Grantor, upon receipt of notification of any pending condemnation action brought by any government entity affecting and/or relating to the Property, shall notify the Grantee and the United States, in writing, within fifteen (15) days of receipt of said notification.

24 Assignment

13. Assignment. This Easement is not transferable by the Grantee to any other local, county or state department, board, agency, commission or successor. In the event that the YOUR FPB ceases to operate or exist, and the United States declines to take sole title as set forth above at under II. 4. (e) herein, the rights of the Grantee under this Easement shall be transferred to an organization that is qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and is a West Virginia-domiciled organization authorized to acquire and hold conservation easements under the West Virginia Conservation and Preservation Easements Act, (WV Code 20-12-1, et seq., 1995). The USDA-NRCS or its successor must approve any such transfer in advance.

This Easement is not transferable by the Grantee to any other local, county or state department, board, agency, commission or successor. The Co-Holders may, upon notice to Grantor and with approval of USDA-NRCS or the United States, assign their rights under this Conservation Easement to any organization that is qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and is a West Virginia-domiciled organization authorized to acquire and hold conservation easements under the West Virginia Conservation and Preservation Easements Act, (WV Code 20-12-1, et seq., 1995). In the event that the Holder ceases to operate or exist, and the United States declines to take sole title as set forth above at under II. 4. (e) herein, the rights of the Holder under this Easement shall be transferred to Authority and Trust, or an organization that is qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and is a West Virginia-domiciled organization authorized to acquire and hold conservation easements under the West Virginia Conservation and Preservation Easements Act, (WV Code 20-12-1, et seq., 1995). The USDA-NRCS or its successor must approve any such transfer in advance.

The Grantees further covenant and agree that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the Easement was originally intended to advance. The transfer of the easement to a new or successor transferee or assignee will not create a financial obligation of any kind on the Grantor.

25 Subsequent Transfers

14. Subsequent Transfers. Grantors agree to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest.

26 Estoppel Certificates

15. Estoppel Certificates. Upon request by Grantors, Grantee shall within thirty (30) days execute and deliver to Grantors any document, including an estoppel certificate, which certifies Grantors' compliance with any obligation of Grantors contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantors.

27 Notices

16. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt, addressed as follows:

To Grantors: LANDOWNER

To Grantee: _____ FPB

United States: Natural Resources Conservation Service
1550 Earl Core Road
Morgantown, WV 26505

or to such other address as either party from time to time shall designate by written notice to the other.

28 Recordation

17. Recordation. Grantee shall record this instrument in timely fashion with the Office of the Clerk of _____ County, West Virginia and may re-record it at any time as may be required to preserve its rights in this Easement.

29 Amendment

18. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantors, Grantee and the United States are free to jointly amend this Easement; provided that no amendment shall be allowed that will invalidate this Easement or be inconsistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded as above specified. No such amendment shall be effective unless in writing and signed by all parties hereto.

30 Other Provisions

19. Other Provisions.

(a) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of West Virginia and the United States.

(b) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(c) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of the Grantors' title in any respect.

(d) **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

(e) **Captions.** The captions herein have been inserted solely for convenience of reference and are not a part of this Easement and shall have no effect upon construction or interpretation.

(f) **Subordination.** Any mortgage or lien arising after the date of this Easement shall be subordinated to the terms of this Easement.

(g) **Title Warranties.** Grantors warrant that Grantors have good title to the Property; that Grantors have the right to convey this Easement, and that the Property is free and clear of any encumbrances.

(h) **Merger.** If Grantees at some future time acquire the underlying fee title in the Property, the interest conveyed by this Easement will not merge with fee title but will continue to exist and be managed as a separate estate. The Grantor and Grantee explicitly agree that it is their express intent, forming an part of the consideration hereunder, that the provisions of the conservation easement deed set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to the local grantee, the United States, or any successor or assignee will be deemed to eliminate these conservation easement terms, or any portion thereof, pursuant to the doctrine of "merger" or any other legal doctrine.

(i) **Boundary Line Adjustments.** Boundary line adjustments are permitted in the case of technical errors made in the survey or legal description. In such cases, boundary line adjustments cannot exceed two (2) acres for the entire Property.

31 **Signatures, Acknowledgments, and Exhibits**

DECLARATION OF CONSIDERATION OF VALUE. The undersigned hereby declare under penalty of fine and imprisonment as provided by law, that the conveyance made by this document is a transfer of property right to Federal and county governmental entities, and therefore, is exempt from the West Virginia excise tax due on the transfer of real property.

IN WITNESS WHEREOF Grantors and Grantee have set their hand:

GRANTOR:

Landowner Name

Signature

Date

GRANTOR:

Landowner Name

Signature

Date

GRANTEE:

_____ **FPB**

Signature

Date

STATE OF WEST VIRGINIA

COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, _____ by LANDOWNER.

My commission expires: _____

Notary Public

STATE OF WEST VIRGINIA

COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, _____ by _____, Chairman on behalf of the YOUR FPB.

My commission expires: _____

Notary Public

**ACCEPTANCE OF PROPERTY INTEREST BY THE NATURAL RESOURCES
CONSERVATION SERVICE**

The Natural Resources Conservation Service, an agency of the United States Government, hereby accepts and approves the foregoing conservation easement deed, and the rights conveyed therein, on behalf of the United States of America.

Authorized Signatory for the NRCS

State of West Virginia
County of **YOUR**

On this _____ day of _____, before me, the undersigned, a Notary Public in and for the State, personally appeared _____ known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that s/he is the _____ (title) of the Natural Resources Conservation Service, United States Department of Agriculture, is authorized to sign on behalf of the agency, and acknowledged and accepted the rights conveyed by the deed to be her/his voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

Notary Public for the State of _____
Residing at _____

My Commission Expires _____

SCHEDULE OF EXHIBITS

- A.** Legal Description of Property Subject to Easement
- B.** Residential Dwelling(s)
- C.** Farmstead Complex Area
- D.** Retained Development Rights

Subordination Agreement and Limited Lien Waiver

This Subordination Agreement and Limited Lien Waiver effective _____, _____ is signed by _____ (Subordinating Party) who hereby grants, to the extent specified in part II of this document, the following subordination and limited lien waiver to the Jefferson County Farmland Protection Board. The Property described below is encumbered with a farmland protection easement as described in the Deed of Conservation Easement. The Subordinating Party has loaned or has agreed to loan _____ (Borrower) certain funds secured by a deed of trust.

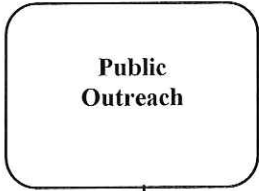
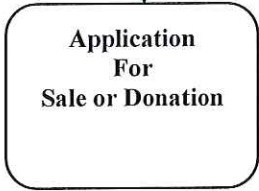

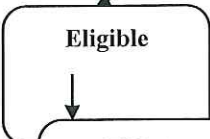
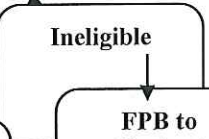




The easement property is located in Jefferson County, West Virginia and is identified as follows:

(Legal description of the eased property
or recordable plat.)

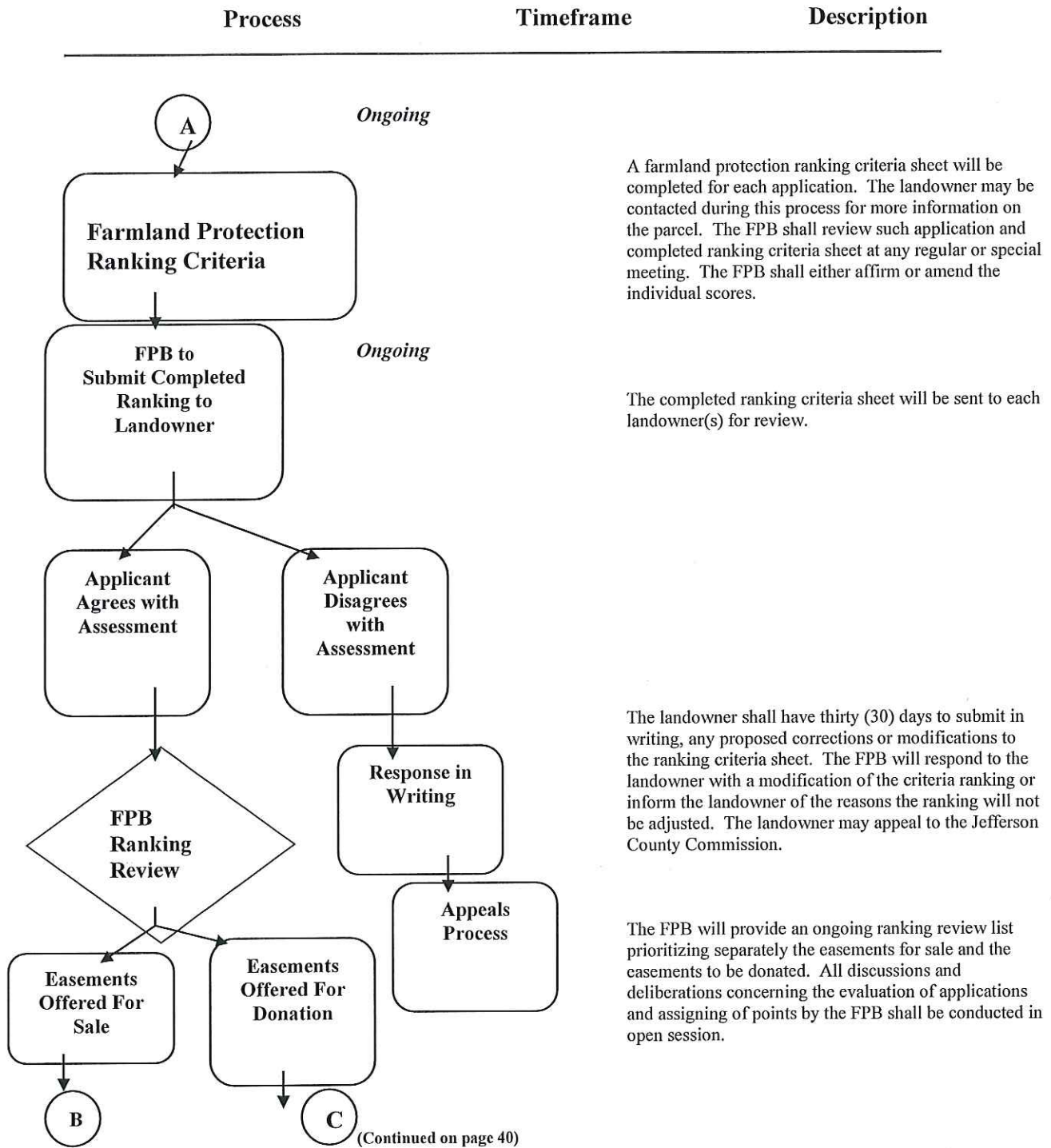
PART I – GENERAL TERMS

- A. The Subordinating Party is the holder of a note secured by a Deed of Trust recorded in the Land Records of Jefferson County, West Virginia, which constitutes a lien against the Property, hereinafter called the “Deed of Trust.” Such Deed of Trust may be modified, supplemented, extended, or removed from time to time.
- B. The Subordination Agreement and Limited Lien Waiver is required to ensure that the farmland protection easement on the Property, as described in the Deed of Conservation Easement, is upheld in the event of loan foreclosure.
- C. The farmland protection easement shall continue in perpetuity. The subordination and limited lien waiver shall be effective during any such time that the Subordinating Party or its heirs, agents, assigns, or successors has any Deed of Trust outstanding against the Property.

Administrative Process Flowchart

Process	Timeframe	Description
	<i>Ongoing</i>	Funds appropriated for the administration of this program shall include a component for public education and information program.
	<i>Ongoing</i>	Applications for sale or donation of easements will be accepted by the FPB on an ongoing basis with funding cycle deadlines of January 15th and July 15th. All applications must be dated. Those properties not accepted for sale or donation at the end of the fiscal year must be re-submitted for consideration during the next fiscal year.
	<i>Ongoing</i>	The FPB shall review each application and make an initial determination if the eligibility criteria have been met. Only completed applications will be considered.
		Written notice shall be given to any landowner if a determination that the property is ineligible for consideration is made. The FPB will review each property offered for donation for acceptability into the program based on the donation guidelines as outlined in the program and also after consideration of all facts and circumstances.
		Owners with accepted applications will receive such notice of acceptance from the FPB with any further information regarding the program for that fiscal year.
		Landowners of parcels determined to be ineligible or unacceptable may appeal such decision within thirty (30) days with the FPB, and if such outcome is not satisfactory to the landowner, to the Jefferson County Commission.
		
		
		

Administrative Process Flowchart



(Continued on page 40)

Administrative Process Flowchart

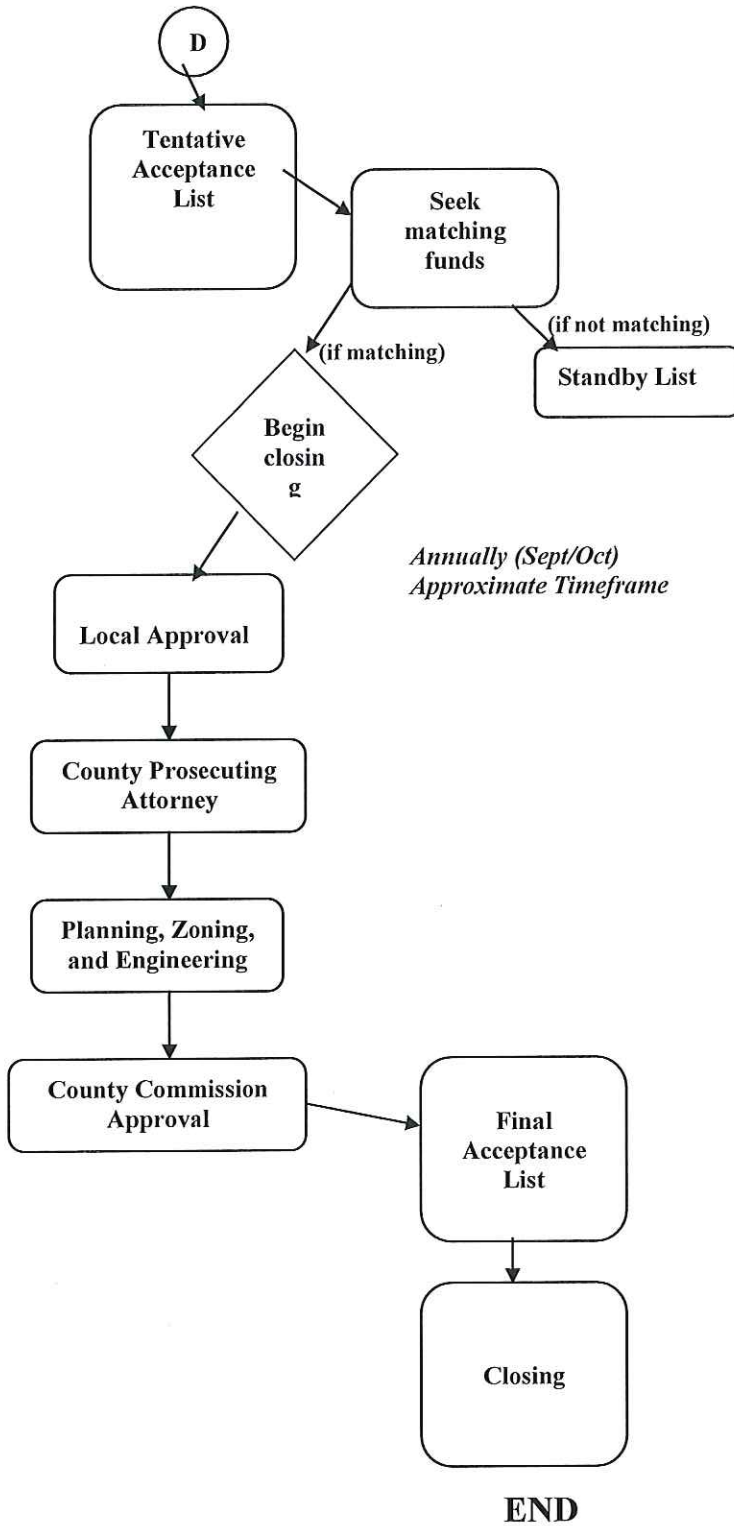
Process	Timeframe	Description
<pre> graph TD B((B)) --> A[Easements Offered For Sale] A --> C{Initial List Based on} C --> D{Counter-Off} D -- NO --> E[Tentative Acceptance List] D -- YES --> F{Counter-Offer Accepted} F -- YES --> E F -- NO --> G[Standby List] E --> D2((D)) </pre>	<p><i>Annually (June/July)</i> <i>Approximate Timeframe</i></p>	<p>Easements offered for sale will be summarized and prioritized according to the farmland protection ranking criteria, and an initial ranking list produced.</p> <p>All discussions and deliberations concerning the evaluation of applications and assigning of points by the FPB shall be conducted in open session.</p> <p>JCFPB and/or landowner seek matching funds through various organizations.</p> <p>Counteroffers shall be fair and proportionate.</p> <p>Counteroffers must be accepted within 60 days by providing written notice to the FPB. Rejection of the counteroffer shall cause the related easement sale application to be placed on the standby list for the next fiscal year.</p> <p>A tentative purchase acceptance list will be prepared based on the application offers and/or for accepted counteroffers.</p>

Administrative Process Flowchart

Process

Timeframe

Description



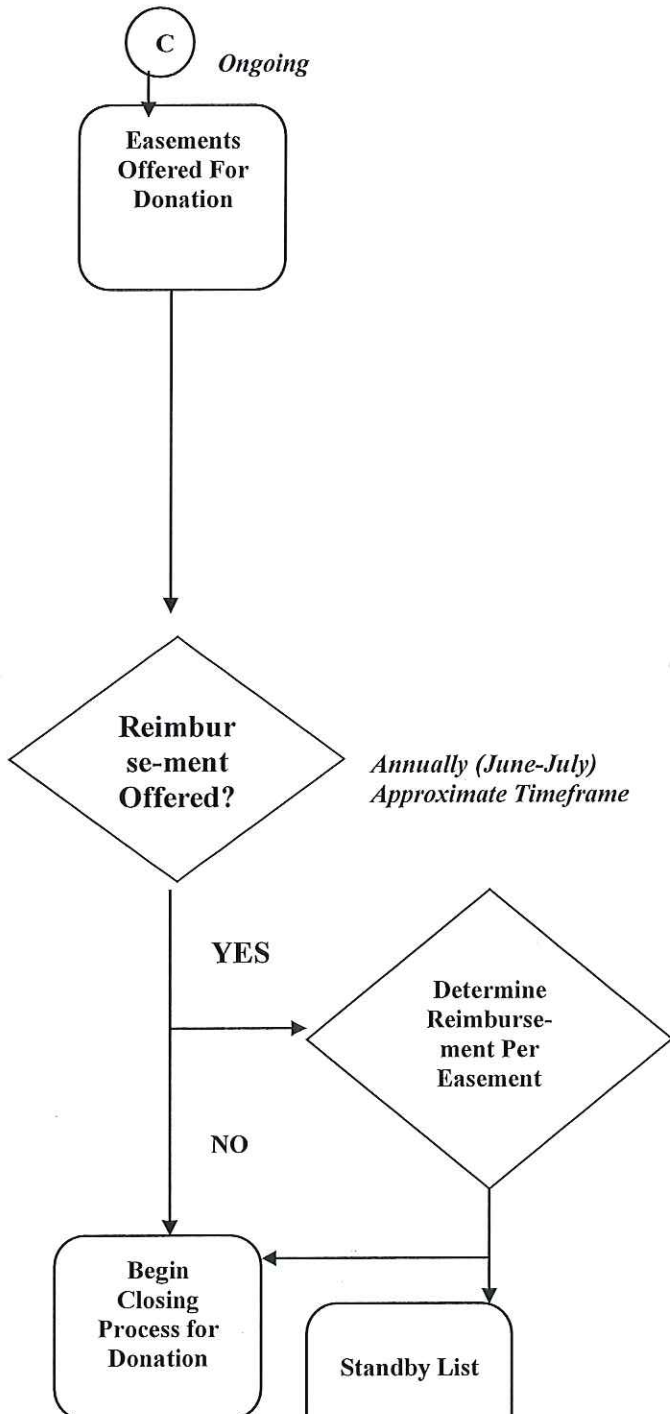
*Annually (Sept/Oct)
Approximate Timeframe*

The FPB will make a formal motion to endorse the tentative acceptance list. The list will then be submitted to the Jefferson County Commission for approval.

Once the final acceptance list has been approved, the closing process for each easement sale may begin. If closure is not made on approved easement purchases within two (2) years of approval, funds allocated will be returned to the available pool for other easement purchases. The FPB may grant an extension if appropriate extenuating circumstances exist.

Administrative Process Flowchart

Process	Timeframe	Description
---------	-----------	-------------



Easement donations not requiring cost reimbursement may immediately begin the closing process.

If easement donations are to be accepted with reimbursement for costs incurred by the landowner during the easement closing process, funds will be allocated, as they are available. Such donations will be prioritized annually during approximately June or July. Landowners conditioning the donation on cost reimbursement where adequate funds are not available will be put on a standby list.

Landowners on the standby list will be asked in subsequent years if they wish to re-apply.

WHEREAS, the [redacted] County Commission on June 15, 2000 by resolution created the Jefferson County Farmland Protection Board; and

WHEREAS, the Jefferson County Farmland Protection Board is required by WV Code §8-24-73(2000) to develop a farmland protection program which is consistent with the intention of the Act; and

WHEREAS, the Jefferson County Farmland Protection Board approved the Jefferson County Farmland Protection Program on _____; and

THEREFORE BE IT RESOLVED, by the County Commission of Jefferson County and the Jefferson County Farmland Protection Board that the enclosed Jefferson County Farmland Protection Program is hereby adopted and enacted.

Jefferson County Commission

**Jefferson County
Farmland Protection Board**

Dated this ___ day of _____, 201__

Dated this ___ day of _____, 201__

Jane Tabb, Commissioner

Elizabeth McDonald, President

Patricia Noland, Commissioner

Russell Quinn, Secretary

Lyn Widmyer, Commissioner

Nicholas Kercheval

Dale Manuel, Commissioner

John Reisenweber, Treasurer

Walt Pellish, Commissioner

Jane Tabb, Commissioner

Robert Glenn IV