



West Virginia Agricultural Land Protection Authority

Land Protected Forever

WEST VIRGINIA STATE FARMLAND PROTECTION PROGRAM

Prepared By
The West Virginia Agricultural Land Protection
Authority

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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.

Passage of the 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) revised to §8A-12-1 through §8-12-21(2004), 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.

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 (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.

Purpose of the Voluntary Farmland Protection Act

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 40 states have now 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. The USDA program was renewed in 2002 and has been funded each year since.

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.

Authority Board of Trustees Composition

The composition of the Authority is dictated by the Voluntary Farmland Protection Act at WV Code §8A-12-8. (2004).

The Board of Trustees is composed of twelve members, each serving without compensation but eligible for reimbursement of actual expenses while engaged in the discharge of official duties. Except for ex-officio members, all members are required to be appointed by the governor and confirmed by the WV Senate. Each member is a voting member.

The specific composition of the Board of Trustees is as follows:

- 1) Ex-officio member: State Treasurer
- 2) Ex-officio member: State Auditor
- 3) Ex-officio member: Commissioner of Agriculture
- 4) Representative for DNR
- 5) Representative for WV Conservation Agency.
- 6) Representative for 501-c-3 land trusts
- 7) Six representatives of farmers around the state.

Authority Purpose

Like the county Farmland Protection Boards, the Authority seeks to preserve farmland in the state of West Virginia. The Authority is empowered to accept conservation easements from anywhere in the state. The Authority is intended to provide a state-level entity as a dual system in parallel with the county Farmland

Protection Boards. The Authority also serves to assist those landowners in counties that do not have Farmland Protection Boards.

In addition to acquiring conservation easements, the Authority also has state-wide duties to disseminate information, seek funding, and assist county Farmland Protection Boards upon request by them. Specifically, the Voluntary Farmland Protection Act outlines the Authority's duties as follows:

- disseminate information regarding agricultural land protection and promote the protection of agricultural land
- assist county farmland protection boards in applying for and obtaining all available state and federal funding that is consistent with the purposes of the farmland protection programs
- upon request of a farmland protection board, provide technical and legal services necessary to procure, acquire, draft, file, and record conservation and preservation easements
- prepare and file with the governor's office by August 31 of each year a report including, but not limited to, the following information:
 - the cost per easement obtained
 - the identity of all applicants for conservation and preservation easements
 - the identity of all applicants from whom conservation and preservation easements have been acquired
- seek and apply for all available funds from federal, state, and private sources for farmland protection programs

Funding

Under the Voluntary Farmland Protection Act, WV Code §8A-12-17 (2004), the Authority is authorized to receive funds and to disburse such funds for its operations and for the acquisition of conservation easements. The Authority receives funding through an appropriation of the West Virginia legislature each year as a part of its budgeting process. During the 2008 legislative session, a dedicated fund based on a recordation fee on real estate transactions was enacted under WV Code §59-1-10 (2008)

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 Authority 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 donation 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 Authority's means and ability to monitor and enforce, and/or the landowner is willing to provide compensation 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.

Program



Eligibility Requirements

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

- The property shall be located in the State of West Virginia.
- The property shall be land which meets one or more of the following criteria (♣ 8A-12-15, 2004)
 - used or usable for agriculture, horticulture or grazing (qualifying property)
 - wetlands that are part of the qualifying property
 - woodlands that are part of or appurtenant to a qualifying property tract; or held by common ownership of a person or entity owning qualifying property
- No commercial or industrial structure shall be located on the parcel. (♣ 8A-12-16(b), 2004)
- Clear title to the property must be established and the application must be signed by the property owner(s).
- 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 Authority after consideration of all facts and circumstances.

Additional program criteria must be met for acceptance of a donated easement. The Authority may cover expenses on donated easements at its discretion.

Offering to Sell or Donate

An application form for either a sale or donation must be submitted to the Authority 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 program.

A landowner may make an offer and rescind it up until the time of the closing of the Deed of Conservation Easement. Certain deadlines for submissions may apply as announced by the Authority. Unaccepted offers may be reapplied by the landowner in a following fiscal year through the filing of appropriate forms.

The Authority 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 the ranking property(ies). Such counter offers shall be made in writing to the applicant with any deadlines for acceptance.

Easement Donations – Rules and Guidelines

Donations of conservation easements meeting the following guidelines may be accepted by the Authority:

1. Property with at least forty (40) acres of land. Additionally, such land must:
 - contain some farmland consisting either prime/unique/ or significant soil or must be cleared acres utilized for farming
 - retain not more than one (1) retained development right or completed unit per twenty (20) acres or fraction thereof.

Example: A property of 52 acres would be allowed three residential structures on any portion of the property.

2. Property donation may include prime, unique and significant farmland as well as accompanying woodlands and wetlands.

A donation application form must be submitted to the Authority in order to be considered. Applications may be made and accepted at any time. The Authority, 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.

The Authority 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 Authority 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 Authority after consideration of the funds available to it.

Easement Donations: Special/Targeted Properties

The Authority may waive the forty (40) acre minimum requirement for special or targeted properties. Designation of properties eligible for such consideration may include, but not be limited to:

- Properties which have secured funding for an easement purchase.
- Properties which have been selected by another conservation organization for protection.
- Properties which, due special circumstances or unique features, are considered by the Authority to be worth of protection.
- Contiguous parcels to lands already under conservation easement, protection, or public ownership.

Easement Purchases

The Authority may purchase conservation easements.

Applicants to the Authority

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) from a county without a funded (real estate transfer tax funding) county farmland protection board
3. Landowners in counties with funded county farmland protection boards are not eligible to apply directly to the Authority; the local county farmland protection board must apply
4. The property must meet all eligibility requirements
5. All application submissions shall be scored and prioritized using the Ranking Criteria following
6. The purchase must be approved by the Authority

A sale of conservation easement application form must be submitted to the Authority in order to be considered. Only contiguous land titled in the same name(s) may be submitted under an application. The Authority, 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, severed mineral rights or developmental gas leases, 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 Authority typically covers all costs associated with the conservation easement, including, but not limited to, legal fees, closing costs, survey fees and appraisal costs. Any costs to be the responsibility of the landowner(s) will be clearly indicated.

The Ranking Criteria is 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. If available funds are not available in that funding cycle to meet the asking price, a counter offer may be made to the landowner by the Authority. Such counter offer may be accepted or rejected by the landowner. The Ranking Criteria consists of a number of factors and criteria descriptive of the characteristics of the property. Each criteria 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.

The Authority may establish a funding cycle on other than a yearly basis in order to provide adequate funds to purchase easements. In addition, the Authority reserves the right to establish pools of funds for direct landowner applicants from counties without farmland protection boards and for county farmland protection boards that may apply or to establish a minimum amount of points in order for a property to be funded.

In the event that matching funds are available for an easement purchase (i.e., county farmland protection board monies, Federal Farm and Ranchland Protection monies, Department of Highway mitigation monies, U. S. Fish and Wildlife matching funds, land trust monies, National Park Service monies, etc.) a re-prioritization may be undertaken by the Authority to fund those properties even though they may have a lower ranking. Such re-prioritization may be made or rejected by the Authority at its discretion on a year-to-year basis.

Ranking Criteria:

Size of Farm (choose one)	Points Awarded
300 acres or more	200
200 – 299 acres	150
100 – 199 acres	100
Less than 100 acres	50

Quality of soil (including prime, statewide important and locally significant soils) based on percent of total acres of the legal parcel(s)

85 to 100 percent	200
50 to 84 percent	150
25 to 49 percent	100
10 to 24 percent	50

Currently operated as a working farm

1. Ag use valuation for property tax	50
2. At least \$5,000 gross income per year from the farm	50
3. Infrastructure present, including agricultural buildings and farm machinery	50
4. Principal residence exists on property or contiguous property	50

Only in the event of a tie in points:

1 point awarded for each acre of prime soil

Special Grants

In the event that grant monies are available to either the state of West Virginia, or to a county or farmland protection entity, and adequate local monies are not available or sufficient to secure the grant, the Authority may, at its sole discretion and on a case by case basis on a finding of good cause, allocate state monies to complete the needed funding. Such exception funding may be made even though the landowner applicant is not an applicant to the Authority.

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 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 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 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 Authority is the grantee or co-holder 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 Authority is a quasi-governmental board established by the West Virginia state legislature. State law mandates the background of appointees that must serve on the board, the governor appoints the candidates, and the West Virginia Senate confirms all appointees.

The Deed of Conservation Easement is held and administered by the Authority or its designee. In addition, with the approval of the Authority, a landowner may designate a co-holder under the Deed of Conservation Easement where the Authority

is the grantee. 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 West Virginia Land Trust and The Nature Conservancy are examples of private land trusts. The landowner may also grant the easement to a private land trust as the grantee and apply to have the Authority act as co-holder. It is the general policy of the Authority to be a grantee or co-holder on any easement in which it has a financial interest.

Duration of the Easement

A conservation easement must be perpetual in order to qualify for potential Federal income tax and estate tax benefits. The 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 farmland protection program, but also allows a great deal of 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 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.

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 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 income tax 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 Program has incorporated the broad prohibitions under the Voluntary Farmland Protection Act into its program, as outlined above. In addition, the Program has enacted additional guidelines on the extent of residential development that will be allowable based on the property size. All residential construction, including accessory buildings, is allowed two acres for residential activities.

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.

Agricultural activities and construction are allowed on any portion of the property. Activities for religious, charitable, or education purposes, or to foster tourism are allowed to the extent they are compatible with and supportive of the rural character of the property.

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

Value of a Conservation Easement

A landowner may make an offer to sell a conservation easement on qualifying property. Such offers shall be ranked utilizing the Ranking Criteria outlined above 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 Voluntary Farmland Protection Act (WV Code §8A-12-14). The *fair market value* and the *agricultural value* of the property are defined under the Voluntary Farmland Protection Act:

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.

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. Such value shall be established by a certified general appraiser hired by the Authority using commonly accepted appraisal methods.

Offering Price

The offering price is the amount the landowner is asking to be reimbursed for the sale of the conservation easement to the Authority. Under state law, the offering price can be the maximum easement value, or it can be some fraction of this value. If an offer is made that exceeds either the value allowed to be paid under state law, or the maximum as set by the Authority, the applicant must sign a revised application to be considered for funding.

Payment to Landowners

Subject to the availability of funds, payments made to landowners shall be the smaller of:

1. the offering price;
2. the maximum easement value;
3. For applying landowners, the easement purchase shall be limited to the larger of \$2,000 per acre or fifty (50) percent of the fair market value of the conservation easement. For applying county farmland protection boards, the matching funds awarded shall be limited to twenty-five (25) percent of the asking price.

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."¹

The 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

¹ Internal Revenue Code Section 170A-14(g)(4)

Administrative



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

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 Authority clearly referencing the documentation and affirming that it is an accurate representation of the property.

Closing

Once the easement donation has been negotiated with the landowner(s) and agreed to through formal action of the Authority, several steps remain to be completed. A survey may be necessary and an appraisal 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 Authority'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 Authority 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 Authority 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.

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 Authority may complete the easement monitoring through its staff, or may subcontract this work through an appropriate agent. It also assists in the design of Best Management Practices and verifies compliance with farm management plans. The Authority 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 Authority would make every attempt to work with the landowner to rectify the easement violation. In the event that a satisfactory resolution cannot occur, the Authority may work through either state or through private attorneys to meet its perpetual obligation to protect the property.