

BYLAWS OF THE WEST VIRGINIA AGRICULTURAL LAND PROTECTION AUTHORITY

ARTICLE I - NAME

The name of the organization shall be "West Virginia Agricultural Land Protection Authority", hereinafter referred to as the "Authority".

ARTICLE II - PURPOSE

The Authority is a public agency established to:

- 1) Provide landowners an opportunity to voluntarily protect agricultural land in the State of West Virginia by the voluntary placement of conservation or preservation easements on farmland as defined under *Farm, farmland or agricultural land* (West Virginia Code §8A-12-11(c), 2004); and
- 2) Promote protection of agriculture within the state by offering information and assistance to landowners with respect to the acquisition of easements; and
- 3) Seek and apply for all available funds from federal, state, and private sources to accomplish the purposes of the voluntary farmland protection programs; and
- 4) Promote and support public policy, laws and action toward farmland protection and the improvement of agriculture.

ARTICLE III- ESTABLISHMENT AND POWERS

Section 1: Establishment. The Authority is established under *Voluntary Farmland Protection Programs – Legislative findings and purpose* (West Virginia Code §8A-12-1, 2004) et. Seg.

Section 2: Powers. The Members of the Authority (Members) shall operate and manage the affairs, funds and property of the Authority and disburse the Authority's monies and dispose of property in fulfillment of its legislative purpose. In accordance with *West Virginia agricultural land protection authority – powers* (West Virginia Code §8A-12-9, 2004), the Authority affirms its powers to sue; to contract; to acquire and co-hold easements in gross, fee or other rights to restrict the use of land; to implement rules under its Farmland Protection Program; to disseminate information; and to seek funding.

ARTICLE IV - SEAL

The official seal of the Authority shall be circular in form and shall have inscribed thereon the name of the Authority and the year of its creation. Said seal may be used by causing it or a facsimile thereof to be impressed on, affixed to or otherwise reproduced on any document, instrument or writing.

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ARTICLE V - MEETINGS

Section 1: Regular Meetings. The Authority shall meet a minimum of two (2) times annually at predetermined fixed dates, times and places as the Members may determine.

Section 2: Order of Business. At the regular meetings of the Authority the following shall be the order of business:

- (a) Call to Order
- (b) Roll Call
- (c) Meeting Notice/Agenda
- (d) Approval of Minutes of Previous Meeting(s)
- (e) Reports
- (f) Business Items
- (g) Other Business Items
- (h) Public Comment
- (i) Adjournment

In all other respects not otherwise specifically provided for in these Bylaws, Roberts' Rules of Order shall generally govern the conduct of all meetings of the Authority. The Chairman will rule on points of order and may consult with any person with knowledge of Roberts' Rules of Order.

Section 3: Special/Emergency Meetings. Special and/or Emergency meetings of the Authority may be called at anytime by the Chairman. Upon the written or verbal request of any three Members of the Authority, the Chairman shall call a special and/or an emergency meeting to be held not more than seven days after the receipt of such request. Notice of the special/emergency meeting shall set forth the purpose(s) of such meeting.

Section 4: Adjournment. Any regular, special or emergency meeting of the Authority shall be adjourned to the predetermined date, hour and place of the next regular meeting.

Section 5: Quorum. Unless provided for to the contrary elsewhere in these Bylaws, a majority, of the Board serving, shall constitute a quorum for the transaction of all business of the Authority.

In the absence of a quorum, a majority of the Members present may, without giving notice other than announcement of the meeting, adjourn the meeting until such time when a quorum is present. At any such reconvened meeting at which a quorum is then present, any business may be transacted which might have been transacted at the meeting as originally called.

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Section 6: Voting. Every voting Member of the Authority present in person or telephonic presence at such meeting shall be entitled to one vote and, except as otherwise provided by law or by these Bylaws, the act of a majority of the Members present in person at any meeting at which a quorum is present shall be the act of the Authority.

The voting on all questions at meetings of the Authority shall be by yeas or nays. A Member shall abstain from a vote if a conflict of interest, as defined by law, exists; or the Member states a substantive reason for the abstention. The vote of each Member present and voting shall be announced by the Chairman and entered upon the minutes of such meeting, except that the election of officers need not be accompanied by entry of the individual votes upon the minutes.

The Chairman shall protect his impartial position by exercising his voting right only when his vote would affect the outcome, that is, he can vote to break or to cause a tie; or in a case where a two-thirds or greater vote is required.

Section 7: Proxy Voting. Voting by proxy shall only be permitted by the ex officio members.

Section 8: Member Notice. Written notice of the time and place of the regular meetings along with the agenda shall be delivered to each Member personally, by first class mail, facsimile or electronic mail, at least ten (10) days prior to the date of such meetings.

Notice shall be addressed to each Member at the physical, facsimile, and/or electronic address of record by the Authority, or, in default of such address, to a public Member at his official office and to a private Member at his residence or usual place of business. Such notice shall be deemed given at the time when the same shall be deposited in the United States mail, sent via facsimile, and/or sent via electronic mail.

Section 9: Public Notice. The agenda of each Authority meeting shall be printed on a document and advertised in accordance with the laws of West Virginia. At a minimum, the meeting agenda shall include the date; time, place, and purpose of said meeting. Notice of said meetings shall be made available to the public according to following schedule.

REGULAR MEETINGS: The meeting notice and agenda shall be posted to the public two weeks in advance with the Secretary of State.

SPECIAL MEETINGS: The agenda shall be posted to the public a minimum of 24 hours in advance. Discussion can only include matters specifically designated on the agenda.

EMERGENCY MEETINGS: The agenda shall include only the item(s) of emergency. Public notice shall be posted no later than at the initiation of the meeting.

Each agenda shall devote time to items from the public. Except in emergency situations, the Authority shall not take official action on an issue raised in the public comment period unless the issue is specifically on the agenda. If the issue is not on the agenda nor deemed an emergency and official action is desired, the issue shall be placed on the agenda of the next meeting and addressed at the subsequent meeting.

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After the posting of the agenda to the public or the 10-day written notice to each Member before a regular meeting, no amendment to the agenda shall be made on which a decision or official action is to be taken. Emergency matters shall be handled through emergency amendment to a regular meeting agenda, or the calling of a special or emergency meeting. Emergency amendments to a regular meeting agenda shall be approved by a majority vote of the Authority and the meeting minutes shall explain the facts and circumstances of the emergency. Notwithstanding such majority vote at a regular meeting, and for all special or emergency meetings, all Members shall be given the opportunity to sign or reject a Waiver of Notice under Section 10. Rejection of such Waiver of Notice by any Member shall cause a re-vote of such emergency item(s).

Discussion of any topic not on the agenda shall take place under “Other business Items”, but no decision or official action shall be taken until such item is placed on the agenda at a subsequent meeting.

Any agenda item may be tabled by majority vote of the Authority without prior notification of the public. Tabling of an agenda item shall not be considered an emergency matter. In addition, the Chairman may revise the order in which agenda items are discussed. Such revision of the order of the agenda shall not be considered an amendment to the agenda.

Section 10: Waiver of Notice. Unless otherwise provided for by law or in the provisions of these Bylaws, whenever notice is required to be given to the Members under the provisions of these Bylaws or under law, a waiver therein in writing, signed by the person entitled to such notice, whether before or after the time stated therein, shall be deemed to be the equivalent to the giving of such notice and attendance of the person at a meeting shall constitute a waiver of notice, unless such person attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Waiver of notice shall be recorded in the minutes of such meeting.

ARTICLE VI - STATUTORY OFFICERS AND MEMBERS

Section 1: Election of Principal Officers. The principal officers of the Authority shall be a Chairman, Vice-Chairman, a Treasurer and a Secretary. The Chairman is appointed by the Governor and the Vice-Chairman, Secretary and Treasurer shall be elected by the Members. The first election of the Authority officers shall occur immediately after the adoption of the Authority Bylaws. The annual election of the Vice-Chairman, Secretary and Treasurer of the Authority shall be held at the regular meeting occurring in, or closest to the month of July. No person may serve in more than one office.

Section 2: Chairman. The Chairman shall be the Chief Executive Officer of the Authority, preside at all meetings of the Authority, sign the rules and regulations of the Authority, and appoint any committees of the Authority and serve on such committees as an Ex-officio Member. The Chairman shall create the meeting agenda and forward to the Authority Secretary for distribution.

Section 3: Vice-Chairman. The Vice-Chairman, in the absence of the Chairman, shall act as and assume the duties of the Chairman of the Authority.

Section 4: Secretary. The Secretary shall keep the minutes of all meetings of the Authority, in accordance with the West Virginia Open Governmental Proceedings Act, Chapter 6-9A et seq.; give notice of meetings of the Authority as and when required by these Bylaws, give notice of adjourned meetings of the Authority and certify, when necessary, the records, proceedings, documents and

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resolutions of the Authority. The Secretary shall tape record all Authority meetings and retain those tapes for at least one year. The Secretary shall have charge of the seal, attested by their signature, to such instruments as may require the same. The Secretary shall provide for each Member an orientation packet, including, but not limited to, the Bylaws, statutory regulations concerning the operation of the Authority, rules, and other materials necessary to facilitate education and ease of reference of the Members. The Secretary shall have charge of the minute records and records of the proceedings of the Authority; maintain a separate record containing the Bylaws, rules and regulations, and resolutions of the Authority and shall perform such other duties as may be conferred upon them from time to time by the Authority.

Section 5: Treasurer. The Treasurer shall act under the supervision of the Authority. The Treasurer shall have charge and custody of, and be responsible for, all the funds of the Authority and shall keep or cause to be kept, and shall be responsible for the keeping of, accurate and adequate records of the assets, liabilities, and transactions of the Authority. The Treasurer shall deposit, or cause to be deposited, all monies and other valuable effect of the Authority in the name of and to the credit of the Authority in the State Treasury. The Treasurer shall disburse, or cause to be disbursed; the funds of the Authority based upon proper vouchers for such disbursement or such conservation or preservation easement purchase as approved by the Authority.

The Treasurer shall prepare a written financial report to the Authority at such times as the Authority may require. The Treasurer shall annually prepare and submit to the Authority at the close of each fiscal year a full and complete report in writing or statement of all monies received and expended and of the existing condition of the funds and assets of the Authority for such year. The Treasurer's books, accounts and records shall be subject to the inspection of the Members of the Authority as a body at any time.

Section 6: Terms of Office. The Authority shall be composed of twelve (12) Members in accordance with – *West Virginia agricultural land protection authority—board of trustees—composition; chairman; quorum; qualifications* (West Virginia Code §8A-12-8(a), 2004). Members of the Authority shall serve a term of four (4) years except for the initial appointments of two (2) years. No Member may serve for more than two consecutive terms.

Section 7: Appointments. The Authority may appoint persons, who need not be a Member of the Authority, to fulfill the functions and duties of the Secretary and/or Treasurer. Any non-Authority designee appointed to fulfill the duties of Treasurer shall be bonded.

Section 8: Resignation of Members. Any Member may resign by giving written notice of his or her resignation to the Authority or to the Chairman or Secretary of the Authority. Such resignation shall take effect at the time specified in such notice and the acceptance of such resignation shall not be necessary to make it effective.

Section 9: Vacancies and Removal of Members. The Chairman shall through written request, immediately notify the governor of any vacancies in the Members of the Authority and any Member skills or qualification needed by the Authority.

Section 10: Compensation and Reimbursement. Members shall receive no compensation for their services. By resolution of the Authority, each Member shall be reimbursed for out-of-pocket expenses.

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ARTICLE VII – CONTRACTORS, CONSULTANTS AND EMPLOYEES OF THE AUTHORITY.

Section 1: Contractors and Consultants. The Authority may contract with such individuals or organizations or engage such consultants as it deems advisable at such compensation and with such duties and for such times as the Authority may from time to time prescribe.

Section 2: Employees. The Authority may prescribe personnel guidelines, establish salary levels, by duly adopted general or special resolution, to hire employees of the Authority. All personnel promotions, salary increases, suspension, and dismissals shall be authorized by the Authority, unless it empowers others to fulfill this function by duly adopted, joint or special resolution.

Section 3: Professional and Other Services. The Authority may contract with outside entities, public or private, to perform any duty over which the Authority has an obligation. This includes, but is not limited to, such professional activities as annual property reviews; legal defense enforcing easement restrictions; and preparation of baseline documentation.

ARTICLE VIII – STATE OF WEST VIRGINIA VOLUNTARY FARMLAND PROTECTION PROGRAM

Section 1: Purpose of Protection Program. The Authority shall develop the Farmland Protection Program to enable landowners to voluntarily protect agricultural land and woodland and to control the urban expansion, which is consuming the agricultural land, topsoil and woodland of the state of West Virginia. The program goals are to protect agricultural land and woodland as open-space land; enhance tourism; and protect worthwhile community values, institutions and landscapes that are inseparably associated with traditional farming.

Section 2: Criteria for Purchase of Easements. The Authority shall develop uniform standards and guidelines in order to rank applications for the purchase of easements. Criteria to be considered shall be in accordance with *Criteria for acquisition of conservation and preservation easements by county farmland protection boards and the authority* (West Virginia Code §8A-12-15, 2004). Prioritization of the program criteria may be changed by the Authority from time to time to reflect the conservation emphasis within the state of West Virginia.

Section 3: Donation and co-holding of easements. The Authority shall adopt policies and procedures for the donation of easements into the Farmland Protection Program; and for the co-holding of purchased or donated easements with county farmland protection boards, private land conservation organizations, or the United States Department of Agriculture.

ARTICLE IX – FARMLAND PROTECTION FUND

Section 1: Farmland Protection Fund. The Authority shall create a Farmland Protection Fund (Protection Fund) to carry out the purposes of the Farmland Protection Program. The Protection Fund is authorized to accept 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 contributions, fundraising or gifts; or earnings from investments, interest, dividends or distributions. The Authority shall seek or shall authorize the seeking of any and all state, Federal and private funding available, consistent with the purpose of the Farmland

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Protection Program. However, the Authority is 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 Authority.

Section 2: Deposits. All funding and other sources of income of the Farmland Protection Program shall be deposited in the State Treasury. Such monies shall not be commingled with other public funds, except as provided under Article XI, Section 3 of these Bylaws.

Section 3: Disbursements. All payments or withdrawals of 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 Authority. All disbursements shall be signed and/or countersigned as directed by the Authority.

Section 4: Facsimile Signatures. Facsimile signatures of any Officer or Officers of the Authority may be used whenever and as authorized by the Authority.

Section 5: Funding through Bonds. The Authority may act on its own authority or in cooperation with another governmental authority to issue general or special revenue bonds or other funding to facilitate the purchase of conservation or preservation easements.

ARTICLE X – CONFLICTS OF INTEREST

Section 1: Voting. No Member may vote for any expenditure for a conservation or preservation easement pursuant to any program established under *Voluntary Farmland Protection Programs* (West Virginia Code; Chapter 8-A, Article 12, 2004) in which the person, a member of the person's family or extended family, or an organization with whom the person is affiliated has a financial interest. Members with a potential conflict shall obtain a written opinion from the West Virginia Ethics Commission prior to the casting of any vote.

Section 2: Protected Properties. Properties protected by a conservation or preservation easement represent a unique and valuable asset to the quality of life in the state of West Virginia. The Authority shall hold the conservation of such properties as its highest duty, and shall not entertain or engage in any agreement, contract or transaction which could diminish these intangible conservation values. The Authority or its designee(s) shall monitor, defend, and protect, in perpetuity, these conservation values as recorded through the deed of conservation easement, against any and all actual or potential violations or encroachments.

Section 3: Non-profit status. No part of the net earnings of the West Virginia Agricultural Land Protection Authority shall inure to the benefit of, or be distributable to, its members, trustees, officers or other private persons, except that the State of West Virginia Farmland Protection shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth under the State of West Virginia Farmland Protection Program. No substantial part of the activities of the West Virginia Agricultural Land Protection Authority shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the West Virginia Agricultural Land Protection Authority shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this document or the State of West Virginia Farmland Protection Program, the West Virginia

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Agricultural Land Protection Authority shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or (b) by an organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.

ARTICLE XI - MISCELLANEOUS

Section 1: Fiscal Year. The fiscal year of the Authority shall commence on the first day of July and shall end on the next thirtieth day of June.

Section 2: Standing and Special Committees. The Members may, by duly adopted resolution, designate standing and/or special Committees of the Authority. Each such Committee shall have power to the extent delegated to it by the Members and in accordance with the laws of the State of West Virginia. Each Committee shall keep minutes of proceedings and report to the Members of the Authority.

Section 3: State Controlled Monies. The Chairman or the Treasurer are hereby empowered to act on behalf of the Authority in all matters and transactions relating to any monies granted or appropriated to the Authority by the Governor or legislature of the State of West Virginia but held by the State in accounts subject to the State's fiscal responsibility and control, in such manner as shall be prescribed by resolution of the Authority.

Section 4: Contracts. By resolution of the Authority, all agreements, deeds, instruments, contracts, documents, certificates and other writings of the Authority shall be signed by the Chairman or the Vice-Chairman, under the seal of the Authority, attested by the Secretary or the Treasurer, unless, by resolution of the Authority, other officers of the Authority are authorized to execute contracts or other obligations of the Authority.

Section 5: Telephonic Attendance/Voting. Not notwithstanding anything to the contrary, one or more Members may participate and vote in a meeting of the Authority or a Committee of the Authority by means of conference telephone or similar electronic communications equipment by means of which all persons participating in the meeting can hear each other.

Section 6: Indemnification. The Authority shall, to the fullest extent permitted by law, indemnify any person or entity made, or threatened to be made, a party to any action or proceeding, other than a criminal action, by reason of the fact that such person or entity, his executor or administrator, was a Member, officer, or employee of the Authority; or a coholder of an easement against judgments, fines, amounts paid in settlement and reasonable expenses, including attorney's fees, actually and necessarily incurred as a result of such action or proceeding (including any appeal therein), if (a) such Member, officer or employee of the Authority; or coholder of an easement acted in good faith for a purpose which he reasonably believed to be in the best interests of the Authority, and (b) it is not determined in such action or proceeding that such Member, officer or employee of the Authority; or coholder of an easement acted with willful or gross negligence.

Section 7: Public Access to Minutes. Copies of minutes of the Authority shall be kept at a secure public location in order to permit access by the public. Copies may be obtained by the public for a reasonable fee.

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Section 8: Distribution of Assets. Upon the dissolution of the West Virginia Agricultural Land Protection Authority, all of the assets and property of the corporation shall be distributed to the State of West Virginia government, if exempt within the meaning of section 501(c)(3) at the time of dissolution, for a public purpose. If named beneficiary is not qualified, or not in existence, or unwilling to unable to accept the assets, then assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) if the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

ARTICLE XII- BYLAWS

Section 1: Amendments. The Authority shall have power to make, alter, amend, suspend or repeal Bylaws in whole or in part, by a vote of not less than a majority of Members of the Authority after two duly organized meetings of the Members of the Authority. Any proposal to amend these Bylaws shall be included with the Notice to Authority Members at which the amendment is proposed.

Section 2: Inconsistency. Whenever a provision of these Bylaws is inconsistent with West Virginia law, the provisions of the law shall be controlling.

Section 3: Severability. Whenever a section, subsection, subdivision, sentence or clause of these Bylaws is adjudged to be invalid, such adjudication shall not affect the validity of the remaining portions of these Bylaws, and, to this end, each provision of these Bylaws are hereby declared to be severable.

Adopted: October 17, 2005

BY _____ Chairman,

West Virginia Agricultural Land Protection Authority

BY _____ Secretary,

West Virginia Agricultural Land Protection Authority