

Quick Reference Guide to the Upshur County Farmland Protection Program

History of the Program

On March 10, 2000, the West Virginia Legislature unanimously passed WV Code §8A-12; known collectively as the West Virginia Voluntary Farmland Protection Act. The act allowed county commissions in each of West Virginia's 55 counties to decide if farmland protection programs should be pursued in their counties. On May 24, 2012, the Upshur County Commission authorized a resolution creating the Upshur County Farmland Protection Board. The program was created and adapted from similar programs in other areas, by the Upshur County Farmland Protection Board. An update program was approved by the County Commission May 26, 2016.

Goals of the Voluntary Farmland Protection Program, both on the local and the state level, are to partially offset development pressures which have led to rapid loss of farmland and open space all over the nation, to encourage the permanent protection of certain parcels of farmland, to facilitate the awarding of financial compensation for those who are willing to sell development rights on their property, and to assist those who are willing to donate conservation easements.

Answers to Common Questions

What is a conservation easement? A conservation easement is a legal document which becomes a permanent part of a deed, once it is placed on a parcel of real estate. The concept is similar to that of mineral or timber rights ownership, wherein one person may own the land, but another may own rights to the timber or minerals it contains. When a conservation easement is placed on property, the owner agrees to relinquish (either by sale or donation) his or her right to use it for most commercial purposes, other than agriculture. Certain tourism related functions are exempt from this restriction, and the definition of agriculture is broad, including such things as tree farming and aquaculture. The owner may sell the property at any time as a whole, but it cannot be sold in parcels, except as provided for in the original terms of the easement.

Restrictions placed on property by a conservation easement are not limited to the original owner. The easement remains in effect from heir to heir, if the property is passed on in this fashion; and from former owner to new owner, whenever the property is sold. Easements, as such, are considered permanent attachments, and can rarely be reversed.

Is the Upshur County Farmland Protection Board going to force me to place an easement? Absolutely not. The program is entirely voluntary. The local board has neither the desire nor the authority to force anyone to participate against their will. The program is here to assist those persons who, after carefully weighing the pros and cons of such a decision, come to the conclusion that they wish to place a conservation easement on their property.

Must I include all of my property? This is a negotiable topic. If an individual owned 100 acres, and wanted to protect part of the land, but also wanted to keep his or her options open on another parcel, a conservation easement could be placed on any portion of the property. For example, 50 acres could be protected under easement, while the remaining 50 acres was excluded. The deed of conservation easement would have to clearly define which portion was protected under easement, and which was not.

What about my house? A primary home site can be included in property under easement. In fact, a limited number of future home sites can be reserved within the easement area for use by children, grandchildren, etc. If an owner wanted to reserve a larger area for future commercial or residential development, it would be best to follow the example in the above paragraph and simply exclude that area from the easement. The important thing to remember is that the easement should be tailored to meet the owners wishes when it is created. Once the easement is in place, future changes cannot be made.

Can I still use my land? Ownership of the land remains with the property owner. He or she can continue to live on the land, and use it for hunting or fishing, or any other personal, recreational purpose. He or she can farm it in any way they see fit, or not farm it at all, and simply leave it as open space. Farm buildings are generally exempt from the conditions of the easement.

Why would someone want to place a conservation easement on property? There are multiple reasons for considering such a decision. These can probably be grouped into four categories.

For some, it may be a decision based on emotional ties to the property. An individual, for instance, who owns a farm which has been in the family for generations, may simply hate to think that the property could someday be parceled out and divided into residential or commercial lots by a future owner.

For others, the decision may be financially based. A person operating a farm as his or her primary occupation could sell the development rights to the property (i.e. through the placing of an easement), continue to practice agriculture on the land, and use the proceeds of the sale of easement to pay off farm debt or expand operations.

Some may be motivated to place an easement as another way of doing their part for the future of agriculture. Land often brings more at sale when divided in lots for development, rather than as large parcels. In many areas, this phenomenon has driven the selling price of land up to the point where it is difficult for prospective farmers to buy acreage and pay for the same through the proceeds of farming. Land under easement, however, cannot be subdivided, and will theoretically sell for less per acre; making it more likely that persons interested in farming will have parcels of land available at prices which suit their purpose.

There are certain tax advantages to easements as well. On particularly large or valuable holdings which exceed current inheritance tax thresholds, heirs hoping to keep the property often find themselves in the dilemma of having to sell part of it to pay the tax. Eliminating the “development value” of the property by placing a conservation easement may reduce or eliminate this problem. Also, easements which are donated, or sold for less than the maximum easement value, can sometimes be considered as an income tax deduction. Interested persons should talk with their accountant to find out how and when such deductions can be claimed.

How is the local board set up? The seven members of the Upshur County Farmland Protection Board are appointed by the Upshur County Commission. They serve four year terms, and cannot serve more than two terms, consecutively. Guidelines of who may be appointed to these positions are set by the state through the WV Farmland Protection Act. Members must include: one farmer who is a member of the local Soil Conservation District, one farmer who is a member of the local Farm Bureau, one additional farmer, one county commissioner, the director of the local economic development authority, and two at large appointees who are not members of any of the above groups. All are required to be county residents, with the exception of the economic development authority director. In Upshur County, the official economic development group is the Upshur County Development Authority.

Responsibilities of board members include: efforts to raise funds for the local program; assisting county residents who wish to sell or donate conservation easements, decisions on which easements to accept, public education, and monitoring of easements which have been acquired to see that they are not being violated. The local board is the legal holder, or co-holder, of easements granted through the Upshur County program.

What are my options in applying for an easement? A person interested in placing an easement on their property may offer to donate the easement, or sell it; receiving an amount up to, but not exceeding the maximum easement value (see easement value below). The local board will make every effort to assist with either option.

How is the easement value set, when easements are sold? The maximum easement value is the *difference* between the fair market value of the land (if sold for any purpose), and the value of the land if it were to be sold purely for agricultural purposes. As such, the maximum value will vary, as real estate values change. The following is offered as an example of how this works:

A landowner offers to sell a conservation easement on 100 acres of property. The land is determined to be worth \$1,500 an acre as farmland, giving it a total agricultural value of 100 x \$1,500; or \$150,000. Other land in the area is selling for an average of \$3,000 an acre for development, so the fair market value of the land can be set at 100 x \$3,000; or \$300,000. The maximum easement value (the most that a person could ask for in selling an easement) is the difference between the two values. In the case of this example, \$300,000 less \$150,000 gives the maximum easement value as \$150,000. The person placing the easement on this property could donate it; they could ask to sell it for up to \$150,000; or they could agree to sell it for any amount less than \$150,000.

Will all offers to sell easements be accepted? If the Upshur County Farmland Protection Board had unlimited financial resources, it is likely that most offers to sell easements would be accepted. Money available for the program, however, is limited. In the next few years, it is likely that the local transfer tax will generate about \$75,000 a year for the program. Public and private grants and contributions can be sought to supplement this amount. Some properties may qualify for 50/50 matching funds. This is a 50% match from the local board, and 50% from federal and/or state funding sources. Landowners offering to sell easements will compete for the funding available; and decisions on which applications are approved will be made by the local board. Landowners offering to sell easements under sole-source funding from the local board will receive 50% of the easement value describe above.

How will applications for sale of easement be ranked? The local board will use a point system based on about 30 characteristics of the properties offered. The system includes such things as stream access, quality of the farmland, historic or scenic attributes, size of the parcel offered, and degree of development in the surrounding area. Those agreeing to sell for less than the maximum value also receive additional points. Each year, applications will be compared and those with the highest total points will be given priority for available funding. Offers of sale which are not funded in any given year can be resubmitted for funding the following year. The point system is used to reduce personal bias, and ensure that all applicants are treated fairly.

Will all offers to donate easements be accepted? When a landowner is willing to donate a conservation easement on their property (for sentimental or tax purposes), acceptance of this easement by the board is very likely. If funding is available, the board may offer to cover legal and survey expenses in these cases, since there will not be a cost involved for purchase of the easement.

How do I apply? Persons interested in participating in the program should obtain the appropriate application (Sale or Donation), complete it, and return it with required attachments (listed on the application) to:

The Upshur County Farmland Protection Program
Upshur County Commission – Assistant County Administrator
91 W Main Street, Suite 101
Buckhannon, WV 26201

You may call or e-mail for an application too:

Amy Moloney: 304-667-4877 - amy@saddlebackservices.org
Lowell Peterson: 304-924-5037 - jameslpeterson215@gmail.com