

# 2024 Farmland Protection Program

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Received

By: \_\_\_\_\_

Date: \_\_\_\_\_



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

304.724.1414 • farmlandprotection@jcda.net

## Sale or Donation of Conservation Easement Application Form FY 2024

**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: \_\_\_\_\_

Deed Book Number: \_\_\_\_\_

Deed Page Number: \_\_\_\_\_

Tax Map Number: \_\_\_\_\_

Tax Parcel Number: \_\_\_\_\_

Indicate if the property is:

Subject to a sales contract. Yes      No  
*If yes, attach contract.*

Currently listed for sale. Yes      No  
*If yes, attach details.*

Indicate if the property was:

Listed for sale within the last two years. Yes      No  
 In the estate process or was inherited within the last two years. Yes      No

**A. Development Pressure**

Property is located:

In the rural zone. Yes      No

In non-rural zone, but currently being farmed. Yes      No

In non-rural zone and not currently farmed. Yes      No

**B. Acreage**

Total Acreage: \_\_\_\_\_

Acreage offered for easement: \_\_\_\_\_

**C. Agricultural Evaluation**

Please provide:

*A NRCS Conservation Plan Attach letter from NRCS office stating the farm has a working conservation plan.*

Properties must have a conservation plan through the NRCS office to be eligible for a conservation easement.

Does the property have a current farm use valuation for tax purposes? Yes      No

If yes, list current farm-use valuation:      \$ \_\_\_\_\_

If yes, please include a copy of the most recent valuation from the Jefferson County Tax Assessor.

**D. Contiguous Property**

List all adjacent land tracts:

Property Owner	Tax Map	Parcel	Acreage	Check if Ag Use

**E. Historical, Water, and other Natural or Manmade Features of the Property**

*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.*

**I 0 Legal Encumbrances on Property**

Is the property subject to pending, active, threatened or contemplated litigation? Yes No  
*If yes, please provide documentation.*

**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 and Soil Report (available from NRCS)
6. Restricted Use Appraisal prepared by a certified general appraiser \*\*
7. NRCS letter confirming NRCS-USDA Conservation Plan
8. Letter of subordination from financial institution if applicable (failure to obtain loan subordination will disqualify the application)
9. All other documents requested herein if applicable:
  - Approved Farm-use valuation form from Jefferson County Tax Assessor (The landowner must make Application for Farm Use valuation between July 1st through September 1st each year for the upcoming tax year.)
  - Sales contract if property is subject to sale
  - Forestry plan from WV Division of Forestry if property has 20+ acres mature contiguous forest/ woodland
  - Documentation of all historical, natural and man-made features (structures of historic significance, springs, water features, stone walls, endangered species, etc.)

**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.**

For applications requesting matching USDA/NRCS funds, all individuals with real interest in the applicant property agree to establish or maintain the appropriate records with the USDA Farm Service Agency (FSA), and to update these records annually as required by the FSA. Applicant(s) understand that failure to maintain updated FSA records will result in the disqualification of the application for consideration of matching funds by the USDA/NRCS.

\*A current survey of the property must be completed if the existing survey is more than 10 years old. If the owner wishes to take out a parcel or retain a development right or put only a portion of 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. If the application is accepted for funding, the Board 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 commission and pay for the UASFLA or "Yellow Book" appraisal 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 [Jefferson@wvfp.org](mailto:Jefferson@wvfp.org) or call 304-724-1414**

**Thank you!**

## Jefferson County Farmland Protection Board Land Evaluation Criteria

Applicant:							
Legislative Criteria	Weight	Point Description	Points	Value Assessed by Landowner	Value x Weight = Raw Score	Value Assessed by FPB	Value x Weight = Raw Score
<b>A</b>	<b>Development Pressure</b>	<b>16.0%</b>	<b>Section Total</b>		0	0.00	0.00
		The Land is in the Rural Zone	100				
		The Land is in a non rural zone, but is currently being farmed	50				
		The Land is in a non rural zone and not currently farmed	0				
<b>B</b>	<b>Total Acreage</b>	<b>10.0%</b>	<b>Section Total</b>		0	0.00	0 0.00
		Greater than or Equal to 200	100				
		Greater than or Equal to 100 and less than 200	80				
		Greater than or Equal to 75 and less than 100	50				
		Greater than or Equal to 40 and less than 75	20				
		Greater than or Equal to 20 and less than 40	10				
		Less than 20	0				
<b>C</b>	<b>Soils</b>	<b>25.0%</b>	<b>Section Total</b>			0	0.00
		a. Soils Profile (conducted by NRCS)	(0-100)				
<b>D</b>	<b>Contiguous Land</b>	<b>13.0%</b>	<b>Section Total</b>		0	0.00	0 0.00
		76 - 100% of the area of adjacent tracts are assessed as agriculture	100				
		51 - 75% of the area of adjacent tracts are assessed as agriculture	80				
		26 - 50% of the area of adjacent tracts are assessed as agriculture	60				
		1- 25% of the area of adjacent tracts are assessed as agriculture	40				
		No adjacent tracts are assessed as agriculture	0				
<b>E</b>	<b>Price\ Easement</b>	<b>10.0%</b>	<b>Section Total</b>		0	0.00	0 0.00
		Value of the Asking Price vs the Easement					
		Equal to 100 %	13				
		Less than 100% and Greater than or Equal to 85%	38				
		Less than 85% and Greater than or Equal to 70%	63				
		Less than 70% and Greater than or Equal to 50%	88				
		Less than 50%	100				
<b>F</b>	<b>Historical</b>	<b>7.0%</b>	<b>Section Total</b>		0	0.00	0 0.00
		a. Associated with important place, event, or person					
		i Property on National Register	24				
		ii Property is of national, state or local significance	16				
		iii Property is Adjacent to such Area	12				
		b. Adjoins State or National Park, existing permanent easement or Permanently Protected Open Space	24				
		c. Property Contains Unique Natural Features					
		i Contains a cave	6				
		ii Contains other features targeted by the Nature Conservancy	6				
		iii Contains or is contiguous to endangered or threatened habitat	6				
		iv Contains stone fences	6				
<b>G</b>	<b>Source Water</b>	<b>16.0%</b>	<b>Section Total</b>		0	0.00	0 0.00
		a. Property contains important natural features					
		i Includes frontage on major stream	9				
		ii Includes areas in 100 year floodplain	11				
		iii Contains at least 10 acres of mature forest	7				
		b. Source Water Protection					
		i Contains a stream or tributary	25				
		ii Contains a year-round spring	16				
		iii Contains a wetland	16				
		iv Contains a sinkhole(s)	16				
<b>H</b>	<b>Debt</b>	<b>3.0%</b>	<b>Section Total</b>		0	0.00	0 0.00
		Debt on the real estate is less than value of easement	100				
		Debt is greater than the value of the easement	0				
<b>Total:</b>		<b>100.0%</b>	<b>Total Raw Score (100 Possible):</b>		<b>0.00</b>	<b>0</b>	<b>0.00</b>

To be completed by landowner.

**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 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Public water available  Distance \_\_\_\_\_

Public sewer available  Distance \_\_\_\_\_

Septic constraints: Severe  Moderate

**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**

1. Land use/land cover map (major land uses: cropland pasture, hay land, forest, rangeland, farmstead, buffers along streams, water bodies, sinkholes, and wetlands)
2. Soils map and legend with prime, unique, and important soils designated
3. National wetlands inventory map and legend (if applicable)
4. Floodplain map (if applicable)

5. Field crops grown and rotations
6. Conservation practices (structural practices such as diversions, terraces, and grassed waterways and management practices such as conservation tillage, nutrient management, and integrated pest management)
7. Hay crops grown and condition (for example, 75 percent stand of 70 percent timothy and 30 percent red clover)
8. Pasture and condition (for example, 80 percent stand of 60 percent orchard grass and 40 percent white clover)
9. Grassland or range species and condition (for example, switch grass, big bluestem, indian grass in fair condition)
10. Grasslands of special environmental significance description and location (if applicable)
11. Forest species, average diameter and height (for example, 75 percent red oak and 25 percent shagbark hickory with an average diameter of 12 inches and an average height of 50 feet)
12. Irrigation rights and volume of irrigation water rights to be retained for the easement;
13. Critical nesting habitat for declining grassland bird populations or other designated critical habitat areas
14. Special features for which the parcel is being protected, such as historical or archeological resources
15. All physical structures, infrastructure and improvements, including but not limited to houses, barns, sheds, corrals, fences, ponds, watering facilities, and roads
16. Animal Inventory (for example, 100 mature dairy cows, 25 dairy heifers, and 25 female dairy calves)
17. Animal Waste Storage and Handling (for example, one 100,000-gallon slurry storage for dairy manure applied to cropland, hay land, and pastures through a traveling gun irrigation system)
18. Potential Problem Areas (concentrated flow areas, heavy use areas, pesticide mixing and storage areas, underground storage tanks, septic systems, wetlands, riparian areas, stream banks, shorelines)

**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 \_\_\_\_\_

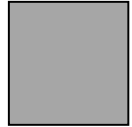
## **PART THREE: DOCUMENTATION REVIEW**

### ***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

**Jefferson County Farmland Protection Board**

P.O. Box 731  
Charles Town, WV 25414



**MONITORING INSPECTION FORM**

**1. Background Information**

Easement Name: \_\_\_\_\_

Inspection Date: \_\_\_\_\_

Owner(s) Name: \_\_\_\_\_

Owners(s) Address: \_\_\_\_\_

Owner(s) Phone: \_\_\_\_\_

Owner(s) Email: \_\_\_\_\_

Date Easement Acquired: \_\_\_\_\_

Co-Holder \_\_\_\_\_

Third Party Holder \_\_\_\_\_

Acreage \_\_\_\_\_

Retained Development Right: \_\_\_\_\_

Location of Property:

\_\_\_\_\_

**2. On-Site Inspection**

Names of inspection team:

Name of owner/representative to whom inspection notice sent: \_\_\_\_\_

Was owner present?

Name: \_\_\_\_\_

Time spent on property:	Arrived:	Left:	Total
Are terms of conservation easement being adhered to?			
Describe:			
General Observations:			
Describe acts or uses now taking place permitted over 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:			
Landowner Comments			

Does NRCS need to update the Conservation or the ALE Plan due to a change in ownership or agricultural management system?

Does the Landowner have a conservation plan?

### 3. Conclusions

Recommended next visit:



Remarks:

Inspection team supervisor

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature/Date:  
\_\_\_\_\_

**4. Attachments (check all included)**

- |                          |                          |                                   |                          |
|--------------------------|--------------------------|-----------------------------------|--------------------------|
| Photographs              | <input type="checkbox"/> | ROW, Utility or water easements   | <input type="checkbox"/> |
| Photo Log                | <input type="checkbox"/> | Property survey                   | <input type="checkbox"/> |
| Assessor's parcel map    | <input type="checkbox"/> | US Geological Survey quadrant map | <input type="checkbox"/> |
| Other topographical maps | <input type="checkbox"/> | Other (specify)                   | <input type="checkbox"/> |
| Field annotated ortho    | <input type="checkbox"/> |                                   |                          |

**Jefferson County Farmland Protection Board Action**

*To be completed ONLY after official action by the Jefferson County Farmland Protection Board.*

Accepted by Board of Directors

Date of Board Meeting

Action to be taken (if any)

Next inspection date

Copy mailed to property owner on:

# Closing Checklist

Date: \_\_\_\_\_

Property: \_\_\_\_\_

Board  
Approval: \_\_\_\_\_

## Prior to Settlement

- ✓ Deed of Conservation Easement – Approved by NRCS or ABPP/WVDACH, 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 (NRCS approval required)
- ✓ Agricultural Land Easement Plan (required if funded by NRCS)
- ✓ Survey (if partial plat)
- ✓ Form SR-270 Request for Advance or Reimbursement (if applicable)\*
- ✓ Subordination Agreements from Lienholder (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 (In the case of a donation of value)\*

## After Settlement

- ✓ Recorded Deed of Conservation Easement and plat\*
- ✓ Baseline Documentation (with Recorded Deed)\*
- ✓ Recorded Subordination Agreement\*
- ✓ IRS Form 8283\* (required for donation deduction)
- ✓ Final Appraisal for IRS form 8283, paid for by landowner

\* Copy to be sent to NRCS or ABPP(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 \_\_\_\_\_ THOUSAND DOLLARS (\$\_\_\_\_\_.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

- Title of  1 Document
- 2 Identification of Parties

RECITALS

- Title  3 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

- Grant  9

PURPOSE

- 10 Purpose

TERMS, CONDITIONS AND RESTRICTIONS

- Terms,  11 Conditions and Restrictions

GENERAL PROVISIONS

	<b>12</b>	Preserving Agricultural uses
	<b>13</b>	Access
Rights	<b>14</b>	of the Grantee
	<b>15</b>	Grantee Notification/ Approval
	<b>16</b>	Grantee's Remedies

GENERAL PROVISIONS (continued)

	<b>17</b>	Multiple Grantees
Acts	<b>18</b>	Beyond the Grantor's Control
Costs,	<b>19</b>	Legal Requirements and Liabilities
Control	<b>20</b>	
Taxes	<b>21</b>	
Hold	<b>22</b>	Harmless
	<b>23</b>	Extinguishment
	<b>24</b>	Condemnation
	<b>25</b>	Assignment
	<b>26</b>	Subsequent Transfers
	<b>27</b>	Estoppel Certificates
Notices	<b>28</b>	
	<b>29</b>	Recordation
	<b>30</b>	Amendment
Other	<b>31</b>	Provisions
		<ul style="list-style-type: none"> <li>• Controlling Law</li> <li>• Severability</li> <li>• No Forfeiture</li> <li>• Successors</li> </ul>

- Captions

## SIGNATURES, ACKNOWLEDGMENTS, AND EXHIBITS

[32](#) Signatures, Acknowledgments, and Exhibits

**1** Title of Document

**DEED OF CONSERVATION EASEMENT**

**2** Identification of Parties

This **DEED OF CONSERVATION EASEMENT** (“Easement” or “Easement Deed”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, having an address at \_\_\_\_\_ (“Grantor”), to the **[YOUR] COUNTY FARMLAND PROTECTION BOARD** (“**[YCFPB]**”, “Grantee”**[\*DELETE ALL ORANGE TEXT IF NO CO-HOLDER\*, or “Holder”]**), having its mailing address at \_\_\_\_\_, to the **West Virginia Agricultural Land Protection Authority**, a public board authorized under West Virginia Code §8A-12-1, et seq. and a 501-c-3 organization (“**Authority**”, “Grantee” or “Co-holder”) having a mailing address of **1900 Kanawha Boulevard East, Charleston, WV 25313**, and with a right of enforcement to the United States of America (“**United States**”), acting by and through the United States Department of Agriculture (USDA), Natural Resources Conservation Service (“**NRCS**” or “**USDA-NRCS**”) with its mailing address at 1550 Earl Core Road, Morgantown, WV 26505, acting on behalf of the Commodity Credit Corporation (CCC), as its interest appears herein, for the purpose of protecting the agricultural use and future viability, and related Conservation Values (hereinafter defined), by limiting nonagricultural uses. For purposes of this agreement, references to the rights, duties and obligations of Grantor 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, Grantor is the sole owner in fee simple of certain real property in **[Your]** County, West Virginia, consisting of \_\_\_\_\_ acres of land, more or less, and more particularly described in Exhibit A **[\*Legal description of the Easement attached hereto\*]**, incorporated herein by reference (the “Protected Property”). The Protected Property is also described in a deed of record in the office of the Clerk of the County Commission, **[Your]** County at Deed Book \_\_\_\_, Page \_\_\_\_, **[\*Explain Source of Protected Property here\*]**;

**4** Specific Conservation Values

WHEREAS, the Protected Property possesses agricultural, including prime, unique, statewide or locally important soils; open space and natural values (collectively, “Conservation Values”) of great importance to Grantor, the people of **[Your]** County, and the people of the State of West Virginia, and all current and future generations of mankind;

WHEREAS, this Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP), 16 U.S.C Section 3865 et seq., and 7 CFR Part 1468 et



seq. for the purpose of protecting the agricultural use and future viability, and related Conservation Values, by limiting nonagricultural uses of the Protected Property;

WHEREAS, under the authority of the Agricultural Conservation Easement Program, the United States Department of Agriculture’s Natural Resources Conservation Service has provided \$\_\_\_\_\_ to Grantee for the acquisition of this conservation easement, entitling the United States to the rights identified herein;

WHEREAS, [the Authority has provided \$\_\_\_\_\_ and] [YCFPB] has provided \$\_\_\_\_\_ to purchase a conservation easement on \_\_\_\_\_ acres of the Protected Property; [\*DELETE UNLESS DONATED PORTION\* and has accepted a donation of a conservation easement on the remaining \_\_\_\_ acres of the Protected Property;]

**5 Baseline Documentation**

WHEREAS, the specific Conservation Values of the Protected Property are documented in an inventory of relevant features of the Protected Property, on file at the office 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 Protected 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, Grantor and Grantee have the common purpose of protecting the agricultural use and future viability, and related Conservation Values;

WHEREAS, Grantor further intends, as owner of the Protected Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Protected Property in perpetuity;

WHEREAS, the Legislature of the State of West Virginia (“Legislature”) has recognized in West Virginia Code §8A-12-1 et seq. 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;

**7 Purpose or Directive of the Grantee/ Co-holder**

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 Jefferson County, West Virginia (“County Commission”) has declared that the agriculture community of Jefferson 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 Jefferson County an opportunity to voluntarily protect agricultural land by creating the Jefferson County Farmland Protection Board and authorizing it to create and administer the Jefferson County Farmland Protection Program;

WHEREAS, the Jefferson County Farmland Protection Board is a public agency established to provide landowners with an opportunity to voluntarily protect agricultural land in Jefferson 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, Grantees affirm that this Easement represents a unique and valuable asset to the quality of life in Jefferson County and the state of West Virginia 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. They agree by accepting this grant to honor the intentions of Grantor 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, Grantor hereby voluntarily grants, bargains, and conveys to Grantees 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 Grantees 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, Grantees are the primary manager and enforcer of this Easement.

The Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:

## I. TERMS, CONDITIONS AND RESTRICTIONS

### **11** Terms, Conditions and Restrictions

1. **Agricultural Land Easement Plan.** As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Protected Property are subject to an Agricultural Land Easement Plan (ALE Plan), as approved by NRCS, to promote the long-term viability of the land to meet the ALE purposes. The ALE Plan must also be approved by the Grantor and the Grantee. Grantor agrees that the use of the Protected Property will be subject to the ALE Plan on the Protected Property.

The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this ALE. The Grantee and Grantor agree to update the ALE Plan in the event the agricultural uses of the Protected Property change. A copy of the current ALE Plan is kept on file with the Grantee.

The Grantee must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NRCS may notify the Grantee. NRCS will give the Grantee and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Grantee fails to enforce the terms of the ALE, including, but not limited to, compliance with the ALE Plan, the United States may exercise its right of enforcement.

2. **Use and Quiet Enjoyment.** Grantor has the right to reside on the Protected Property and to benefit from all aspects of the quiet enjoyment of the Protected Property. Grantor has the right to engage in any and all personal recreational uses of the Protected Property, including but not limited to hiking, touring, swimming, camping, biking, horseback riding, hunting, and fishing, so long as said personal recreational uses require no development of the Protected Property and are consistent with the Conservation Values.

Grantor reserves to itself, and to grantor's personal representatives, heirs, successors, and assigns, all rights accruing from grantor's ownership of the Protected Property, including the right to engage in or permit or invite others to engage in all uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement; provided, however, that any activities inconsistent with the purposes of this Easement are prohibited.

3. **Agricultural Uses of the Land.** Any activities inconsistent with the purposes of the Easement are prohibited. Grantor may engage in any and all agricultural uses of the Protected

Property provided it is conducted in a manner consistent with the terms of this Easement. Examples of permitted agricultural uses include 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 Protected Property. Any secondary agricultural activity, including but not limited to farm mechanics, blacksmithing, or related activities, shall be considered an agricultural activity. However, such secondary agricultural activities must be undertaken in the permitted agricultural or residential structures and must be consistent with the Conservation Values.

**4. Agricultural Structures.** Grantor has 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 Protected Property. Agricultural structures shall be constructed or placed within the area described in **Exhibit C** [\*must clearly identify farm structure area(s) and attached hereto\*] attached hereto and made a part hereof (“Farmstead Complex Area”), and shall be limited by the maximum square footage as described in Paragraph I. 11. (*Maximum Impervious Surface Coverage*).

**5. Retail Sale of Farm Products.** Businesses directly related to the retail sale of farm products produced primarily on the Protected Property that are supportive and agriculturally compatible may be established on the Protected 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. Structures permitted under this paragraph (5) shall be subject to Paragraph I. 11. (*Maximum Impervious Surface Coverage*).

**6. 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 Protected Property in order to foster rural economic uses while protecting the rural character of the Protected Property. Such activities or businesses must be compatible with and supportive of the rural character of the Protected Property, and must remain incidental to the agricultural and open-space character of the Protected 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 Paragraph I. 4. (*Agricultural Structures*) or Paragraph I. 8. (*Construction on the Protected Property*); no other structures are permitted on the Protected Property.
- (b) [\*OPTIONAL LANGUAGE\* 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 Areas described in Exhibit C, and shall be limited by the maximum square feet as described below in Paragraph I. 11. (*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) Non-agricultural 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.
- (g) “More than a *de minimus* use for commercial recreational activity,” as such phrase is used in Section 2031(c)(8)(B) of the Code, is prohibited. Grantor agrees that the preceding sentence is intended as a limiting condition and not as a reservation of rights by the Grantor, and the prohibition in the preceding sentence does not allow more commercial activity than may otherwise be allowed under the other provisions of this instrument.

**7. Industrial or Commercial Uses.** Industrial or commercial activities on the Protected Property are prohibited except the following:

- (a) agricultural production and related uses conducted as described in the ALE Plan;
- (b) temporary or seasonal outdoor activities or events that do not harm the agricultural use, future viability, and related Conservation Values of the Protected Property herein protected;
- (c) commercial enterprises related to agriculture or forestry including but not limited to agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and small-scale farm wineries; and
- (d) home-based businesses that do not require a Department of Environmental Protection permit to operate, provided that:
  - (a) the occupation or business use is conducted entirely within the Single Residential Dwelling(s) (as described in Exhibit B) or appurtenances allowable under Paragraph I. 8. (*Construction on the Protected Property*); and
  - (b) the use of the dwelling for the home-based business is clearly incidental and subordinate to the use of the dwelling for residential purposes.

**8. Construction on the Protected Property.** Grantor and Grantee acknowledge the existence of \_\_\_\_ Single Residential Dwelling(s) on the Protected Property as more fully described in Exhibit B [\*surveyed legal description attached hereto\*]. In addition, Grantor may construct \_\_\_\_ additional Single Residential Dwelling(s) on the Protected Property, each to be located within a separate Building Envelope as indicated in Exhibit D [\*surveyed legal description attached hereto\*](the “Retained Development Rights”). No other Single Residential Dwellings shall be constructed or placed on the Protected Property. [\*If there is no Exhibit B or D utilize following language:\* Grantor and Grantee acknowledge the existence of no single residential dwelling on the Property. No single residential dwellings shall be constructed on the property. \*Then proceed with deleting paragraphs a-e below.\*] All new or relocated structures and improvements must be

located within the Building Envelopes, except for agricultural structures permitted herein under Paragraph I. 4. (*Agricultural Structures*). The following conditions and restrictions shall apply:

- (a) Each Building Envelope shall contain no greater than two (2) acres each.
- (b) Grantor has the right to maintain, repair, enlarge, or replace all structures and improvements, including Single Residential Dwellings, as grantor may so desire, except that the impervious surface of each Single Residential Dwelling is limited to 5,000 square feet.
- (c) Grantor has 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 Single Residential Dwellings, shall not exceed 9,000 square feet.
- (d) The boundaries and location of the Building Envelopes may be adjusted if Grantee and the Chief of NRCS provide prior written approval of the adjusted boundaries and location. The Building Envelopes may not increase in size and the adjusted Building Envelopes must provide equal or greater protection of the agricultural use and future viability and related Conservation Values of the Protected Property.
- (e) The Single Residential Dwellings may house one or more families or occupants but shall not be converted to apartments, townhomes, condos, or any other commercial multi-family dwelling.

**9. 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.

[\*DELETE FOR COUNTIES OTHER THAN JEFFERSON COUNTY\* 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 Grantee, 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.]

**10. Subdivision.** Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited. Notwithstanding the fact that, as of the Conservation Easement Date, the Protected Property might consist of more than one parcel for real estate tax or any other purpose or if it may have been acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole



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

- (a) Impervious surfaces shall be defined as any material that covers land and inhibits the percolation of stormwater directly into the soil, including, but not limited to, buildings, roofs, any area covered by permanent or nonpermanent structures, macadam and pavement, and gravel and stone driveways and parking areas.
- (b) The total surface coverage of the Protected 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, but excluding NRCS-approved conservation practices, shall not exceed [REDACTED] square feet, which is less than 2% of the total Conservation Easement area. This limitation shall not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this Easement.

**12. Surface Alteration.** Grading, blasting, filling, sod farming, excavating, removal of topsoil, earth, sand, gravel, or rock, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

- (a) dam construction to create ponds for agricultural use, fire protection, or wildlife enhancement, or wetland restoration, enhancement or creation, in accordance with an ALE Plan;
- (b) erosion and sediment control pursuant to a plan approved by the Grantee;
- (c) as required in the construction of approved buildings, structures, roads, or utilities, provided that the required alteration has been approved in writing by Grantee as being consistent with the Conservation Values; or
- (d) agricultural activities conducted in accordance with the ALE Plan.

Provided, however, that activities permitted under this paragraph (12) are conducted in accordance with the ALE Plan, disturbed land does not exceed one (1) acre in total area, and all disturbed land is restored within a reasonable time period.

13. **Oil, Gas, or Mineral Exploration and Extraction.** The exploration, development, mining, or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Easement or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited.

**[\*Include the following subparagraph if a limited allowance for agricultural purposes\*]**  
Provided however, limited mining activities for materials (e.g., sand, gravel, or shale) used to facilitate the agricultural operations on the Protected Property is allowed where the extraction of such materials facilitating agricultural operations is limited, localized, and small with a defined area and acreage identified in Exhibit E and does not harm the Conservation Values or the agricultural uses of the Protected Property.

If a third party owns or leases the oil, natural gas, or any other mineral substance at the

time this Easement is executed, and their interests have not been subordinated to this Easement, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph (13). Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Easement are subordinate to the terms of this Easement and must incorporate by reference this Easement,

**[\*Include the following if an active non-developmental mineral lease may be authorized\*]**

Subsurface mineral development on the Protected Property is allowed in accordance with this Paragraph (13), if approved by Grantee and Chief of NRCS. Grantee and Grantor must demonstrate prior to the initiation of mineral development activity that such subsurface mineral development shall—

- (a) be conducted in accordance with applicable State Law;
- (b) accomplished by a method of extraction, production, and transport that has no more than a limited and localized impact that does not harm the agricultural use or conservation values of the Protected Property;
- (c) not harm the purpose of this Easement;
- (d) not materially alter or affect the existing topography, as determined by Grantee and the Chief of NRCS;
- (e) comply with a subsurface mineral development plan that includes a plan for the remediation of impacts to the purpose of this Easement, which includes reclaiming and restoring all areas of the Protected Property that are impacted by the subsurface mineral development and such plan is approved by Grantee and the Chief of NRCS prior to the initiation of mineral development activity;
- (f) not be accomplished by any surface-mining method;
- (g) be within the impervious surface limits of this Easement;
- (h) employ practices and technologies that minimize the duration and intensity of impacts to the purpose of this Easement.

All areas of the Protected Property that are impacted by subsurface mineral development pursuant to this section must be reclaimed and restored within a reasonable time, as determined by Grantee and the Chief of NRCS, at cessation of subsurface mineral development activities.

Impervious surfaces as defined in the above Paragraph (11) of this Easement will include any surface disturbance or impervious surfaces associated with subsurface mineral development allowed by this paragraph.

**14. 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 current forest management plan that is subject to approval by the Grantee and the NRCS. The agricultural use of timber and woodland products on the Protected Property is permitted, provided it is carried out to the extent practicable in accordance with current, generally accepted, best management practices for the site's soils and the terrain of the Protected Property.



A forest management plan shall not be required for the following activities and do not require prior approval of the Grantee or NRCS:

- (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 the Retained Development Areas or for access otherwise permitted in this Easement;
- (d) removal of trees for the maintenance or the improvement to existing pastures or fence lines;  
or
- (e) removal of invasive species both plant and insect

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 Easement and the protection of Conservation Values of the Protected Property.

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

**15. Roads.** New roads may be constructed if they are within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property, including providing access to the Retained Development Rights (Exhibit D) on the Protected Property. Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property. Paved roads are subject to the impervious surface limitations referenced above.

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

**17. 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.

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

**19. Granting of Easements.** The granting or modification of easements for utilities or roads is prohibited when the utility or road will adversely affect the Conservation Values of the Protected Property as determined by the Grantee in consultation with the Chief of NRCS.

**20. Utilities.** Grantor shall not sell, lease, or grant an easement covering any portion of the Protected Property where such sale, lease, or easement is for the purpose of construction or 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, except where such easement is for the sole purpose of serving approved buildings or structures on the Protected Property. Utilities to serve approved buildings or structures on the Protected Property that neither individually nor collectively have an adverse impact on the agricultural use and future viability and related conservation values of the Protected Property may be built or installed outside of the Building Envelopes with prior written approval of the Grantee and NRCS provided that said utilities are consistent with the ALE Plan. Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Property. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the Conservation Values of the Protected Property and consistent with the purposes of the Easement.

**21. 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 Protected Property that would be detrimental to water purity or that could alter natural water level and/or flow in or over the Protected Property. Nothing in this paragraph shall prohibit the creation or dredging of farm ponds or the reasonable use of the available water of the Protected Property for agricultural purposes permitted by this Easement. Structures and facilities associated with irrigation, farm pond impoundment, or soil and water conservation on the Protected Property shall be considered to be intended for agricultural purposes. Expansion and construction of ponds and structures outside the Farmstead Complex Area shall be conducted in accordance with Paragraph I. 12. (*Surface Alteration*) and the ALE Plan. Farm ponds both inside and outside the Farmstead Complex Area shall not exceed two (2) acres in area.

## II. GENERAL PROVISIONS

### **12** [Preserving Agricultural Uses](#)

**1. Preserving Agricultural Uses.** The provisions of this Easement Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long term viability of the Protected Property, ALE Plan and ALE purposes, and do not violate Federal laws, including Federal drug laws. No uses will be allowed that decrease protection for the agricultural use and future viability, and related Conservation Values, of the Protected Property.

### **13**

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

**14** Rights of the Grantee

**3. Rights of the Grantees.** To accomplish the purpose of this Easement the following rights are conveyed to Grantees 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 Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantees shall not unreasonably interfere with Grantor's 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—Grantees' Remedies*.

**15** Grantee Notification/Approval

**4. Grantee Notification/Approval.** Grantor reserves for himself 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 Grantees.

**16** Grantee's Remedies

**5. Grantees' Remedies.**

(a) **Notice of Violation; Corrective Action.** If Grantees determine that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to Grantor 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 Grantees.

(b) **Injunctive Relief.** The Grantees, their 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 Grantor to restore the Property to the condition existing at the time of this Easement in order to correct any violation(s) of this Easement. Grantees' rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantees shall be entitled to the injunctive relief in addition to such other relief to which Grantees 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 Grantees in enforcing the terms of this Easement against Grantor, including without limitation costs of suit and attorneys' fees, and costs or restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantees. Costs incurred by Grantees in enforcing the terms of this Easement against third party shall be borne by Grantees. 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 Grantees to exercise their rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantees of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantees' rights under this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any breach by Grantor 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 and 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.

## **17** [Multiple Grantees](#)

(g) **Holder's and Co-holder's 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 its agent or the Holder may arrange to have the Co-holder fulfill these duties. Holder will share with the Co-holder 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 this Easement, including any attorney's fees and any costs of the suit. Holder can recover costs from Grantor or third party as described in Grantees' Remedies above. The Holder and Co-holder shall make every

good faith effort to determine a unified course of action should a potential or actual violation of this Easement arise.

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

**18** [Acts Beyond the Grantor's Control](#)

**5. Acts beyond the Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantees to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor 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 Grantor could not reasonably have anticipated or prevented, Grantor agrees that Grantees have the right to pursue enforcement action against the responsible parties.

**19** [Costs, Legal Requirements and Liabilities](#)

**6. Costs, Legal Requirements and Liabilities.** Grantor, his 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.

**20** [Control](#)

**7. Control.** Nothing in this Easement shall be construed as giving rise to any right or ability of Grantees 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.).

**21** [Taxes](#)

**8. Taxes.** Grantor 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.

**22** [Hold Harmless](#)

**9. Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantees 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 he 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 attorney 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 Grantees to Grantor with respect to the Property or any restoration activities carried out by Grantees at the Property; provided, however, that Grantees shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantees.

## **23** [Extinguishment](#)

**4. Extinguishment, Termination, and Condemnation.** The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this Easement, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Protected Property.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the Easement is [REDACTED] percent, hereinafter the “Proportionate Share,” of the fair market value of the land unencumbered by this Easement. The Proportionate Share will remain constant over time.

**24** **Condemnation**

If this Easement is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this Easement. The fair market value will be determined at the time all or a part of this Easement is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, [REDACTED] percent of the Proportionate Share; and (b) to the United States, [REDACTED] percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor’s successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

Grantor, upon receipt of notification of any pending condemnation action brought by any government entity affecting and/or relating to the Protected Property, shall notify the Grantee and the United States, in writing, within fifteen (15) days of receipt of said notification.

In making this Easement, Grantor has 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. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of continuation of this Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement.

The conveyance of this Easement gives rise to a property right immediately vested in the Grantee and the United States with a fair market value equal to the proportionate value that this Easement at the effective date hereof bears to the value of the Property as a whole at that time. The interests and rights under this Easement may only be extinguished or terminated with written approval of the Grantee and the United States and by judicial proceedings in a court of competent



jurisdiction. Any proceeds received by the Grantee shall be used in a manner consistent with the conservation purposes of the Easement.

## **25** [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 1986, 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.

## **26** [Subsequent Transfers](#)

**14. Subsequent Transfers.** Grantor agrees 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 Protected Property, including, without limitation, a leasehold interest. Notwithstanding any failure of the Grantor to comply with this requirement, all the Grantor's heirs, successors, and assigns shall be bound by the terms of this Easement.

## **27** [Estoppel Certificates](#)



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

**28** [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 Grantor: LANDOWNER  
ADDRESS  
CITY, STATE, ZIP CODE

To Grantees: Jefferson County Farmland Protection Board  
P.O. Box 731  
Charles Town, WV 25414

To 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.

**29** [Recordation](#)

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

**30** [Amendment](#)

**18. Amendment.** This Easement may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this Easement and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended Easement Deed, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

**31** [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 Grantor's 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.** Grantor warrants that Grantor has good title to the Property; that Grantor has 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.

**32** [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, state and county governmental entities, and therefore, is exempt from the West Virginia excise tax due on the transfer of real property.

IN WITNESS WHEREOF Grantor and Grantees have set their hand:

GRANTOR:

Landowner name here

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

GRANTEES:

**Jefferson County Farmland Protection Board**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

STATE OF WEST VIRGINIA

COUNTY OF Jefferson, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by LANDOWNER NAME.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by NAME HERE, President on behalf of the Jefferson County Farmland Protection Board

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF WEST VIRGINIA

COUNTY OF Jefferson, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_ on behalf of the (NAME of Co-Holder)

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 Jefferson

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

Intentionally Omitted

## 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.





## LANDOWNER DISCLOSURE

West Virginia state law<sup>1</sup> allows landowners to exclude any portion of their property from easement. All residential dwellings, including retained development rights, must have a survey and separate legal parcel.

Under the language prohibiting the parcels from being conveyed separately, multiple home parcels can no longer be owned separately by family members. In addition, financial institutions that participate in the secondary mortgage market typically loan only on a residence and a limited number of acres. The prohibition against separate conveyance may cause title issues. In the event of a foreclosure, the financial institution may be in a position of not being able to foreclose and sell the house and separate parcel apart from the larger easement parcel in which they may have no legal interest.

I acknowledge that I have read this statement and agree that any surveyed residential areas, even if legally considered to be subdivided, may not be conveyed separately.

I further acknowledge and agree that I am responsible for obtaining my own legal counsel and financial counsel to guide my decisions regarding the deed of conservation easement that I am establishing for my property through the Jefferson County Farmland Protection Board.

(Name)

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Signature

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Date

(Name)

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Signature

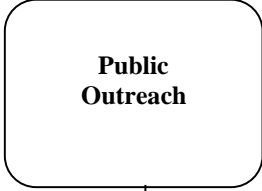

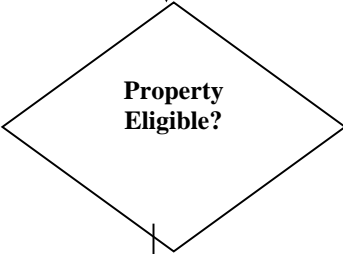
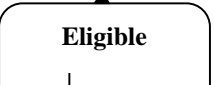





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Date

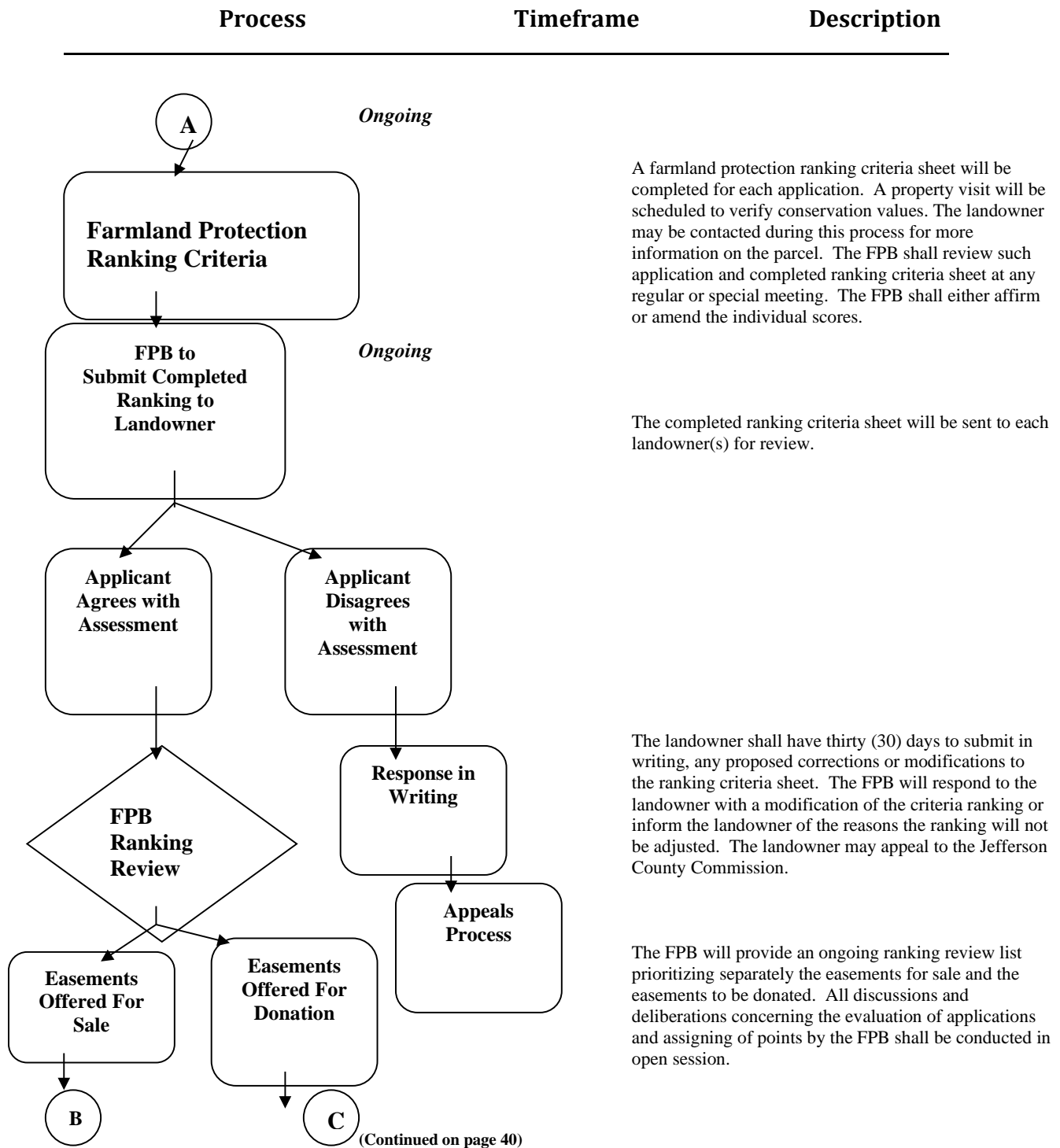
<sup>1</sup> **WV Code 8A-12-16c**

(c) Exclusion for single residential dwelling. -- On request to a county farmland protection board or the authority, an owner may exclude two acres per each single residential dwelling, which existed at the time of the sale of the easement, from the easement prohibitions on residential development. A land survey and recordation identifying each single residential dwelling shall be provided at the expense of the owner. However, before any exclusion is granted, an owner shall agree with the county farmland protection board or the authority not to subdivide further for residential purposes any acreage allowed to be excluded. This agreement shall be recorded among the land records where the land is located and shall bind all future owners.

## 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 <u>approximate</u> funding cycle deadlines of January 15th and July 15th. Funding deadlines will be published in the local newspaper of record. All applications must be dated.
	<i>Ongoing</i>	Those properties not accepted for sale or donation at the end of the fiscal year must be updated and re-submitted for consideration during the next fiscal year.
		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



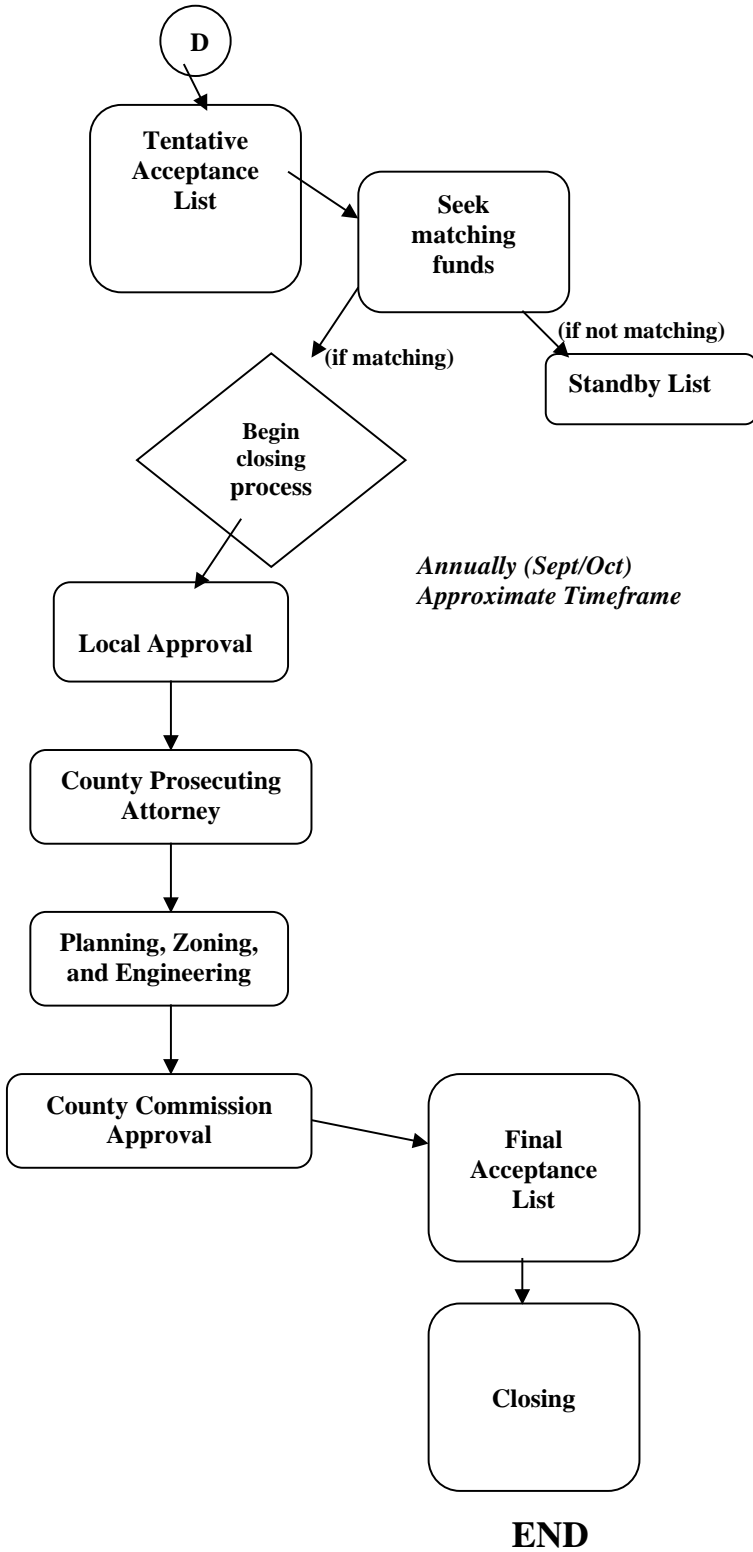
All easement applications will be handled either as an offer to sell or an offer to donate by the landowner.

## Administrative Process Flowchart

Process	Timeframe	Description
<pre> graph TD     B((B)) --&gt; A[Easements Offered For Sale]     A --&gt; C{Initial List Based on Ranking}     C --&gt; D{Counter-Offer?}     D -- NO --&gt; E[Tentative Acceptance List]     D -- YES --&gt; F{Counter-Offer Accepted?}     F -- YES --&gt; E     F -- NO --&gt; G[Standby List]     E --&gt; 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
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*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

