West Virginia Agricultural Land Protection Authority

Forest Easement Policy November 14, 2014

 This policy on the easing of forestland as part of a farmland protection easement is intended as the operating guidelines for the West Virginia Agricultural Land Protection Authority (Authority). This policy shall apply to all easements held or co-held by the Authority. Background information outlining Internal Revenue Service regulations; West Virginia state law; and industry guidance is attached (see West Virginia Agricultural Land Protection Authority Forest Easement Guidelines – Analysis).

**Policy Summary**

**Acceptance of Forestland into the Farmland Protection Program**

The Authority encourages the easing of entire legal parcels of land, including agricultural land; forestland; and wetlands. Forestland/woodland shall be considered for easing as part of a farm if it is[[1]](#footnote-1):

1. Included within the legal parcel of the farm which has applied to a state or local farmland protection program for easement consideration;
2. Appurtenant to a track of land which is a farm; or
3. Held by common ownership of a person or entity owning a farm, except that parcels not appurtenant to the farm parcel must be submitted under a separate application to be evaluated and ranked.

**Forest Management and Timber Harvesting Activities**

If a property owner wishes to harvest and sell trees, the Authority will require a Forest Stewardship Plan approved by the West Virginia Division of Forestry prior to the harvest and sale which shall protect the Conservation Values outlined in the baseline documentation and Deed of Conservation Easement. Forest Stewardship Plans shall also be reviewed for acceptance by the Authority board at any regular or special meeting to ensure that it is consistent with the Deed of Conservation Easement and the baseline documentation, and protects the stated Conservation Values. The Authority shall typically require an approved plan at the time an easement is closed, but the landowner or the other Grantees may request a waiver from the Authority. Forest Stewardship Plans being utilized for a forest harvest must be less than 10 years old.

Forest management activities and timber harvesting must be conducted in accordance with the Forest Stewardship Plan as approved by the Division of Forestry and accepted by the Grantees, with the exception of easements which have less than 40 forested acres for which a Forest Stewardship Plan is not required. The Forest Stewardship Plan should include a provision to have a licensed, registered forester or technician to advise the landowner at the time of harvest. The intent of the hiring of any such consulting forester is to assist the landowner to obtain the best result under the Forest Stewardship Plan. In addition, the consulting forester or technician should work with the West Virginia Division of Forestry to obtain their inspection reports for compliance with Best Management Practices (BMPs) under WV law to prevent erosion and sedimentation.[[2]](#footnote-2) Reports, if any, along with the WV Division of Forestry Inspection Reports, shall be distributed to all Grantees on the Deed of Conservation Easement by the consulting forester or technician. Alternate procedures in place by local Grantees to provide assistance to the landowner regarding forest harvesting shall be considered in the acceptance of the Forest Stewardship Plan by the Authority.

The timber sale provisions are at the option of the applying landowner. The Authority policy is in no way intended to require that timber harvesting or forest management be conducted on the Protected (eased) Property.

**Timber Activities Not Requiring a Management Plan or Approval**

 On-site, non-commercial farm usage of trees of not more than one percent (1%) in any two-year period is allowable without a Forest Stewardship Plan, and will not require approval by the Authority.

In addition, the following activities related to timber harvesting shall not require prior approval of the Authority:

1. removal of trees posing an imminent hazard to the health or safety of persons or livestock;
2. cutting of trees for the construction or maintenance of permitted structures or landscaping within the Residential Area or for access otherwise permitted in this Easement;
3. removal of trees for the maintenance or the improvement to existing pastures or fence lines as noted in the baseline documentation
4. removal of invasive species both plant and insect
5. removal of storm-damaged trees

**Priority of Agricultural Conservation Values**

The Internal Revenue Service Code[[3]](#footnote-3) does not allow the protection of one Conservation Value while permitting the destruction of another unless such destruction is necessary for the protection of the Conservation Value that is the subject of the easement/contribution. In addition, the West Virginia Code[[4]](#footnote-4) states that farmland protection boards or the Authority may acquire interests in easements to restrict the use of agricultural and woodland to maintain the character of the land as agriculture land or woodland.

If a parcel to be eased has qualifying soil (soil of prime, statewide, unique, or locally significant value) and that soil is also forest covered, the landowner may reserve the right to completely remove the trees and convert the land into agricultural land. This should be done through clear indication in the baseline documentation of qualifying soil that is forested prior to the recording of the easement. Soil will be identified as the protected Conservation Value on that portion of the property rather than the forest Conservation Value. The removal of the trees must be done through a conservation plan that protects the soil, rather than through a Forest Stewardship Plan.

**Conservation Easement Deed Language**

The following is suggested Deed of Conservation Easement language intended to support the Authority’s policy:

***Management of Woodland Resources.*** *The sale of timber and woodland products from the Property, or any on-site use for trade or profit, is permitted under a Forest Stewardship Plan (or a similar plan meeting the same requirements) approved by the West Virginia Division of Forestry and accepted by the Grantees. Forest management and timber harvesting activities must be carried out in accordance with all applicable local, State, Federal, and other governmental laws and regulations; be consistent with this Deed of Conservation Easement and the protection of Conservation Values of the Property; and be in compliance with the approved Forest Stewardship .*

*The use of timber and woodland products of not more than one percent (1%) in any two-year period on site is permitted without a Forest Stewardship Plan and will not require acceptance by the Grantees. A Forest Stewardship Plan shall not be required for the following permitted activities and do not require prior acceptance by the Grantees:*

1. *removal of trees posing an imminent hazard to the health or safety of persons or livestock;*
2. *cutting of trees for the construction or maintenance of permitted structures or landscaping within the Residential Area or for access otherwise permitted in this Easement;*
3. *removal of trees for the maintenance or the improvement to existing pastures or fence lines as noted in the baseline documentation*
4. *removal of invasive species both plant and insect*
5. *removal of storm-damaged trees*

*The Grantor reserves the right to remove all trees on a portion of the Protected(eased) Property as indicated in the Baseline Documentation that has a Conservation Value of qualifying soil (soil of prime, unique, or locally significant value) but was forested at the time this Deed of Conservation Easement was recorded. Such tree removal shall be carried out under a Conservation Plan as described in* Grantees Remedies – Conservation Plan *below.*

**Federal Policy from USDA-NRCS**

The Federal guidelines for forest management and timber harvesting on conservation easements are as follows[[5]](#footnote-5):

Forest management and timber harvesting can only be carried out under strictly controlled guidelines as set forth in the example below. A separate section on forest management and timber harvest is not required in every conservation easement deed, but it should be developed for protected properties with a large percentage of the area in forest and protected properties on which active forest management is planned.

Forest management and timber harvesting must be performed in a manner not detrimental to the Purposes of this Conservation Easement.

1. Such forest management and timber harvesting must be performed in accordance with a written forest management plan consistent with this Conservation Easement Deed, prepared by a licensed professional forester, or by some other qualified person approved in advance and in writing by the Local Grantee. Said plan must have been prepared not more than 10 years prior to the date any harvesting is expected to commence or must have been reviewed and updated as required by such a forester or other qualified person at least 30 days prior to said date.

2. At least 30 days prior to timber harvesting, Grantor must submit to Local Grantee a written certification, signed by a licensed professional forester or by some other qualified person approved in advance and in writing by the Local Grantee, that such plan has been prepared in compliance with the terms of this Conservation Easement. Local Grantee may request the Grantor to submit the plan to the Local Grantee within 10 days of such request but acknowledges that the plan’s purpose is to guide forest management activities in compliance with this Conservation Easement and that the actual activities will determine compliance therewith.

3. Forest management activities and timber harvesting must be conducted in accordance with the forest management plan and be supervised by a licensed professional forester or by another qualified person approved in advance and in writing by the Local Grantee.

4. Such forest management activities must be carried out in accordance with all

applicable local, State, Federal, and other governmental laws and regulations and to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property.

The Authority policy is consistent with the current Federal policy under FRPP/ACEP.

**County Farmland Protection Board Forestry Policy**

Each county farmland protection board has the right and the duty to adopt a policy regarding forest harvesting. This policy should be well thought out, approved in advance by the county commission, written *into* the program, clearly communicated to landowners, and applied consistently. The Authority will attempt to honor local farmland protection board policy in regards to forest harvesting when partnering on conservation easements, but will under no circumstances knowingly or willingly violate or ignore regulations under the Internal Revenue Service Code; Federal Register regulations under the USDA-NRCS Agricultural Conservation Easement Program; or the laws of the state of West Virginia.

*This document was adopted by the WV Agricultural Land Protection*

*Authority at their meeting on April 23, 2015. This is not meant*

*to be a legal document, and the WV Agricultural Land Protection*

*Authority takes no responsibility for its use or application. Each*

*county Farmland Protection Board, with the approval of their County*

*Commission, has a right to adopt policies for the easing of*

*forestland and any subsequent fiduciary duties concerning the*

*Conservation Values inherent in such forestland.*

1. Voluntary Farmland Protection Act, WV Code §8A-12-11(e) [↑](#footnote-ref-1)
2. Logging Sediment Control Act, West Virginia Code 19-1B, enforced by the WV Dept of Environmental Protection under West Virginia Code Chapter 22C. [↑](#footnote-ref-2)
3. IRS Reg. Sec. 1.170A-14(e) [↑](#footnote-ref-3)
4. WV Code §8A-12-5 [↑](#footnote-ref-4)
5. Title 440—Conservation Programs Manual, 519 Subpart G, September 2010 [↑](#footnote-ref-5)