

THE
BERKELEY COUNTY
FARMLAND PROTECTION
PROGRAM

Prepared By
The Berkeley County Farmland
Protection Board

Title Page	1
-------------------	----------

Table of Contents	3 — 4
--------------------------	--------------

Glossary of Terms	5 — 10
--------------------------	---------------

I. Background	
• Conservation and Preservation Easements Act	11
• Voluntary Farmland Protection Act	11
• Berkeley County Commission Resolution	11
• Farmland Protection Board Composition	12
• Purpose	12 — 13
• General Principles of Land Acquisition	13 — 14

II. Program	
• Eligibility Requirements	15
• Farmland Protection Ranking Criteria	16 — 20
• Easement Purchases: Rules and Guidelines	21
• Easement Donations: Rules and Guidelines	22 — 23
• Easements: Special/Targeted Grants	23
• Nature of Development Rights Acquired	23 — 25
• Value of Conservation Easement	25 — 27
• Offering to Sell or Donate	27
• Third Party Mineral Rights	27 — 28

III. Administrative	
• Process Flowchart	29
• Baseline Documentation	29
• Closing	29
• Inspection and Enforcement	30

IV. Outreach and Funding	
• Outreach	31
• Funding	31 — 32

APPENDIX

A. Application for Conservation Easement Sale	Appendix — Page 3
B. Application for Conservation Easement Donation	Appendix — Page 7
C. Baseline Documentation Form and Checklist	Appendix — Page 9
D. Easement Monitoring Form	Appendix — Page 15
E. Closing Checklist	Appendix — Page 19
F. Sample Deed of Conservation Easement	Appendix — Page 21
G. Subordination Agreement Release Form	Appendix — Page 39
H. Data Collection — Comprehensive Plan	Appendix — Page 41
I. Administrative Process Flowchart	Appendix — Page 43
J. Signature Page	Appendix — Page 48

Glossary of Terms

Acquisition of easement The holding or co-holding of land-use restrictions under a Deed of Conservation Easement, whether obtained through purchase, gift, devise, bequest, grant or contract to co-hold with another holder.

Agricultural 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 and vegetables of all kinds; nursery, floral and greenhouse products; aquaculture; a winery, microbrewery or grain mill; and the primary processing and storage of the agricultural production of the Property.

Agricultural value The agricultural value of land is the price at the valuation date which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property subject to the restrictions placed upon it by the Deed of Conservation Easement.

Archeological significance The parcel of property contains a site which has been designated or determined as significant to understanding past human or animal life. Such designation shall be made by a recognized authority such as the Smithsonian Institute or a qualified archeologist.

Berkeley County Comprehensive Plan The May, 1990 Berkeley County, West Virginia Comprehensive Development Plan and exhibits included therein. If a more recent Comprehensive Plan is developed, the newer version shall be applicable unless similar exhibits are not included.

Biological significance Areas designated in the Berkeley County Comprehensive Plan as containing plants, animals or ecosystems that are rare or unique in the state and/or the nation, as outlined in IV-4-24 through IV-4-31; or an area designated as such by a recognized authority such as the Nature Conservancy or qualified biologist.

Cave An underground passage of at least 50 feet in length. Caves have a unique and fragile ecosystem that provide safe harborage for many species of flora and fauna. They are also unique in that they are direct vectors to the groundwater, and therefore must be protected from opportunities for surface contamination.

Cluster Development A preservation tool intended to allow structures to be grouped on a portion of a development site in order to preserve the remaining open space, agriculture land, forest land, or unique features of the remainder of the site.

Co-hold The act of having more than one grantee listed on the Deed of Conservation Easement.

Commercial (structures) Any wholesale, retail, or service business, or housing activity excluding single residential dwellings, but including apartment buildings, condominiums, or similar housing types. Structures needed for agricultural activities shall not be considered commercial structures.

Commercial forestry The harvesting of timber, whether such trees are naturally present on the property or have been planted and grown for commercial purposes, for profit or trade, or as otherwise defined under the Voluntary Farmland Protection Act or its rules and regulations. The growing of Christmas trees, orchards and nursery stock; or the removal, sale and renewal of such, shall not be deemed to be commercial forestry. In addition, ornamental plants and woodland products grown for human consumption are not considered commercial forestry. Uses of timber products on-site are allowable as permitted under the Deed of Conservation Easement.

Conservation easement A non-possessory interest of a holder in real property, whether appurtenant or in gross, imposing limitations or affirmative obligations, the purposes of which include, but are not limited to, (a) retaining or protecting for the public benefit the natural, scenic or open-space values of real property; (b) assuring its availability for agricultural, forest, recreation or open-space use; (c) protecting natural resources and wildlife; (d) maintaining or enhancing land, air or water quality; and/or (e) preserving the historical, architectural or cultural aspects of real property. Conservation easements under Article 24 — Voluntary Farmland Protection Programs must be perpetual and must be held by at least one holder .

Farm, farmland, or agricultural land A tract, or contiguous tracts of land, of any size, used or useable for agriculture, horticulture or grazing; and includes all real property designated as wetlands that are part of a property used or usable as farmland.

Fair market value The fair market value of the land is the price at the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property was not subject to any restriction imposed under the Deed of Conservation Easement.

Ground water recharge potential Areas that have certain hydro-geologic soil characteristics that contribute to a significant replenishment of the groundwater aquifers, as determined by the Eastern Panhandle Conservation District.

Holder A grantee in the Deed of Conservation Easement defined as (a) a governmental body empowered to hold an interest in real property under the laws of the state of West Virginia; or (b) a charitable corporation, charitable association or charitable trust registered with the secretary of state and exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, or other federal or state statutes or rules, the purposes or powers of which include retaining or protecting the natural, scenic, agricultural or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational or open-space use; protecting natural resources and wildlife; maintaining or enhancing land, air or water quality; or preserving the historical, architectural, archaeological or cultural aspects of real property.

Home-based Businesses Any occupation or business conducted entirely within the single residential structure or allowable accessory buildings, which is clearly incidental to the residential use of the building. Any occupation or business requiring a West Virginia Division of Environmental Protection permit to operate, such as an auto-repair business or a drycleaning business, shall not be considered an allowable home-based business. In addition, any business requiring the on-site use of explosives or highly flammable or extremely hazardous materials as defined by the U.S. Environmental Protection Agency shall be disallowed.

Industrial (structures) Any manufacturing process, material processing, warehousing, research and testing laboratories, product distribution centers, woodworking shops, furniture assembly, machine shops, recycling centers and uses of a similar nature. Structures needed for agricultural activities shall not be considered industrial structures.

Karst A type of topography formed over limestone, dolomite, or gypsum resulting in dissolving or solution of the underlying calcareous rock.

Major stream Defined as the following streams, creeks or rivers in or bordering Berkeley County:

Back Creek	Mill Creek
Buzzard Run	Opequon Creek
Cold Spring Run	Potomac River
Dry Run	Roaring Run
Duncan Run	Rocky March Run
Eagle Run	Silver Spring Run
East Fork	Specks Run
Evans Run	Sulfer Spring Branch
Goose Creek	Sylvan Run
Harlan Run	Terytown Run
Higgins Run	Three Run
Hokes Run	Tilhance
Little Brush Creek	Tulissus Branch
Meadow Branch	Tuscarara Creek
Middle Creek	Whites Run

Mature forests Woodlands that have had no significant tree removal for 30 years or more.

Maximum easement value The agricultural value of land is the price at the valuation date which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property subject to the restrictions placed upon it by the Deed of Conservation Easement.

Minor stream Any stream or creek which runs year round, not listed as a major stream.

Mountainous terrain Parcels with at least 20 percent of the parcel comprised of slopes 25 percent or greater.

Offering price The amount the landowner is asking to be reimbursed for the sale of the conservation easement to the Berkeley County Farmland Protection Board. The offering price can be the maximum easement value, or it can be some fraction of this value.

Open Space Property left undeveloped in order to preserve natural features or scenic qualities. Such property may be held by a private owner or held as common area for the benefit of multiple property owners. Open space may consist of natural areas (meadows, fields or forested areas), agricultural areas, wetlands, streams or bodies of water, stormwater management areas, and lawns (with or without trees). Areas requiring an extensive commitment of land resources as required by golf courses, racetracks for uses other than equestrian use, tennis clubs, baseball, soccer and other ball fields and similar uses shall not be considered open space.

Other farmland Land defined as farmland not otherwise classified as prime, unique, or of state-wide or local significance.

Pollution The introduction of substances in the environment of such character and in such quantities that the quality of the environment is substantially impaired or rendered offensive to life.

Preservation easement A conservation easement which also includes a nonpossessory interest in an historical building.

Prime farmland/soil Land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses. It includes cropland, pasture land, rangeland, and forest land. Properties containing prime or unique soils can be identified through the most recent soils map prepared by the U.S.D.A. and maintained by the Eastern Panhandle Conservation District. The property must contain at least 50 percent of one or more of these soil types and land contours.

Public property unimproved parkland, wildlife management areas Lands including public parklands that are substantially unimproved or state-designated wildlife management areas. Unimproved parkland can include open space areas designated for hiking, horseback riding, or general recreation. Parkland shall be considered to be improved, if the park consists primarily of lighted ball fields, skateparks, pool areas, or similar facilities.

Qualifying property Property which meets the minimum eligibility requirements and the donation guidelines (if applicable) to be considered for sale or donation to the Berkeley County Farmland Protection Board. Qualifying property must be ranked by the Farmland Protection Ranking Criteria as established by the Berkeley County Farmland Protection Board. Status as qualifying property does not guarantee acceptance into the Berkeley County Farmland Protection Program.

Retained development right The right to construct a single residential dwelling at some point in the future on the parcel of land. Retained development rights must be recorded with the Deed of Conservation Easement by exclusion of a portion of the property from the Deed of Conservation Easement or as otherwise allowable by the Voluntary Farmland Protection Act. In addition, retained development rights must meet the Berkeley County Subdivision Ordinance requirements of a transfer exception or must be approved by the Berkeley County Planning Commission.

Single residential dwelling A detached residential dwelling, excluding apartment buildings, townhouses and condominiums. The residential dwelling must appear as a single family home, but may house one or more families or occupants. The residential dwelling shall in no case exceed 12,000 square feet.

Single residential dwelling, existing at time of sale of easement (8-24-80(c)) A single residential dwelling which (a) is either completed at the time the conservation or preservation easement is executed; or (b) meets the requirements of a retained development right.

Sink or sinkhole A depression in the land surface formed by solution or collapse which directs surface runoff into the subsurface or to an underground drainage flow. They are common in areas of limestone, carbonate rock, or salt beds. The karst areas of Berkeley County have a substantial number of sinkholes.

State-wide or locally-significant farmland/soil Other productive farmland that is important either locally or to the state. The property must contain at least 50 percent of one or more of these soil types and land contours, or must be otherwise designated as significant farmland by the Eastern Panhandle Conservation District.

Subordinated loan A loan secured by easement property where the lender has agreed to abide by the terms of the Deed of Conservation Easement in the event of foreclosure of the property.

Subsurface mineral rights The right to mine or otherwise extract minerals, oil or gas from below the surface estate. Mineral rights separated from the fee simple ownership of the property are known as third-party mineral rights.

Transfer exception Subdivision activity meeting certain requirements that is then exempt from the subdivision approval process by the Berkeley County Planning Commission. The Farmland Protection Transfer Exception of the Berkeley County Subdivision Ordinance must have (a) Health Department approval or a letter of availability of sewer service; (b) a 40-foot right of way; and (c) a West Virginia Department of Highway entrance permit, if applicable. Retained development rights and completed residential dwellings may not exceed an overall density of one unit per twenty acres in order to qualify under this transfer exception.

Unique farmland/soil Land other than prime farmland that is used for the production of specific high value food and fiber crops, such as nuts, citrus, olives, cranberries, fruits, vegetables and herbs. The property must contain at least 50 percent of Fairplay (Marl) Silt Loam (Fa), or must be otherwise designated as unique farmland by the Eastern Panhandle Conservation District.

Wetlands The collective term for marshes, swamps, bogs, and similar areas found in generally flat vegetated areas, in depressions in the landscape, and between dry land and water along the edges of streams, rivers and lakes.

Woodland(s) Areas of substantial tree cover that are not currently usable for farming. Woodland shall be considered land of a farm only if it is part of or appurtenant to a tract of land which is farm or held by common ownership of a person or entity owning a farm, but in no event may woodland include land used primarily in commercial forestry or any other use inconsistent with farm use.

I. Background

Conservation and Preservation Easements Act

In June 1995, West Virginia enacted the Conservation and Preservation Easements Act by amending Chapter 20 of the West Virginia Code through the addition of Article 12. Through this Conservation and Preservation Easements Act, the West Virginia Legislature recognized the importance and significant public benefit of conservation and preservation easements in its ongoing efforts to protect the natural, historic, agricultural, open-space and scenic resources of the state. This enabling legislation was required to allow perpetual conservation and preservation easements to be created within the state. Currently, all fifty states have enacted conservation and preservation easement enabling statutes.

Within the Conservation and Preservation Easements Act, conservation and preservation easements are defined, and the basics are outlined as to how easements are to be created and the various rights and duties concerning the easement. The Voluntary Farmland Protection Act first incorporates the concepts created under this Conservation and Preservation Easements Act, and then expands upon them to allow the creation of the state and county Voluntary Farmland Protection Programs.

Voluntary Farmland Protection Act

On March 10, 2000, the West Virginia Legislature unanimously passed into law WV Code /8-24-72 through /8-24-84(2000), known as the Voluntary Farmland Protection Act. The Act went into effect on June 8, 2000 and amended a 1982 statute of similar code location that once allowed the creation of Farmland Preservation Committees.

Through this Act, the legislature declares that agriculture is a unique life support industry and that a need exists to assist those agricultural areas of the state which are experiencing the irreversible loss of agricultural land. The Act further authorized the creation of county farmland protection board(s) and program(s) and creation of the WV Agricultural Land Protection Authority; detailed the contents and requirements of the farmland protection program(s); outlined the powers and duties of the farmland protection boards and the authority; detailed the methods of farmland protection; detailed the value of a conservation easements; outlined the criteria for acquisition of easements; outlined the use of land after a conservation easement is acquired; outlined funding for the farmland protection program(s); and authorized the commissioner of agriculture to promulgate rules.

On March 9, 2002, the West Virginia Legislature modified the Voluntary Farmland Protection Act to allow each county with a farmland protection program to provide funding for such program through a real estate transfer tax. The County Commission of each eligible county may enact an additional tax on the privilege of transferring real estate to be used solely to fund the county s farmland protection program. The maximum rate allowable is \$1.10 per \$500 (\$2.20 per \$1,000) or fraction thereof of the real estate transfer value, to a maximum transfer value of \$1 million. These monies must be used exclusively for the purpose of funding farmland preservation.

Berkeley County Commission Resolution

On June 15, 2000, the Berkeley County Commission authorized a resolution creating the Berkeley County Farmland Protection Board, becoming the first county in West Virginia to utilize the Voluntary Farmland Protection Act. The Commission affirmed that the agriculture community of Berkeley county provides sources of agriculture products for the citizens of the state; enhances tourism, protects worthwhile community values, institutions and landscapes which are inseparable associated with traditional farming; and controls the urban expansion which is consuming land, topsoil and woodland of the county. The Board, as appointed by the Commission, was authorized to create and administer the Berkeley county Farmland Protection Program in consultation with the Eastern Panhandle Conservation District, and as approved by the Commission.

Farmland Protection Board Composition

The composition of every farmland protection board is dictated by the Voluntary Farmland Protection Act at WV Code 8-24-73b(2000).

The Berkeley County Farmland Protection Board is composed of seven members, each serving without compensation but eligible for reimbursement of actual expenses while engaged in the discharge of official duties. All members are required to be county residents. Each member is a voting member, except for the Berkeley County Commissioner, who shall serve in a non-voting, advisory capacity. All members are appointed by the Berkeley County Commission and serve at the will and pleasure of the Commission.

The specific composition of the Board is as follows:

- 1) One Berkeley County Commissioner.
- 2) Executive Director of the Berkeley County Development Authority.
- 3) One farmer who is a member of the Berkeley County Farm Bureau.
- 4) One farmer who is a member of the Eastern Panhandle Soil Conservation District.
- 5) One farmer who need not be a member of any farm organization.
- 6) One county resident who is not a member of the foregoing organizations.
- 7) One county resident who is not a member of the foregoing organizations.

Purpose

Nationwide, America is losing farmland. According to the American Farmland Trust, the United States is losing 2.2 million acres of rural lands to urban sprawl every year. This means that, across the United States, over 4 acres of rural lands are consumed every single second.

In an effort to address the loss of farmland, over 20 states have implemented farmland protection programs. In 1996, the U.S. Department of Agriculture funded a farmland protection effort with a 6-year goal of protecting between 170,000 and 340,000 acres of farmland.

West Virginia has not escaped the loss of farmland. From 1964 to 1997, The U.S. Department of Agriculture reports that West Virginia lost an incredible 17, 732 farms and 1,823,060 acres of farmland. From 1982 through 1997, 25 of the most productive counties in West Virginia had a combined loss of 103,519 acres of productive farmland — and 40% of the loss came from the three county Eastern Panhandle area. The U.S. Department of Agriculture also reports that West Virginia

lost 21,676 acres of orchard land from 1964 to 1997. To address the loss of agriculture land and woodland as open — space, the West Virginia legislature passed into law on March 10, 2000 the Voluntary Farmland Protection Act.

Berkeley County undoubtedly has and continues to lose farmland. For example, in 1927, Berkeley County had over 17,000 acres of orchard land and by 1997 orchard land has been reduced to 7,045 acres. Just between 1992 and 1997, Berkeley County lost 1,087 acres of orchard land. With the loss of farmland, there is a loss of the agriculture industry, which has been the heartbeat of Berkeley County s economy for over 100 years. Agriculture is a unique life support industry, providing sources of agricultural products for the citizens of the state.

Fortunately today, Berkeley County still has a thriving agriculture industry with 72,603 acres in farmland. Only 10 West Virginia counties have more farms that meet the Federal definition than Berkeley. In an effort to create a local program to provide farm owners a voluntary land conservation option, the Berkeley County Commission on June 15, 2000 created the Berkeley County Farmland Protection Board. The farmland protection board is charged under the Act with creating a document proposing a farmland protection program consistent with the Legislature s intent and to seek funding to implement such a program.

This program establishes uniform standards and guidelines for the eligibility of properties and the ranking criteria utilized to prioritize funds allocation to purchase conservation easements, or to pay associated costs for the purchased or donated easements. The guidelines established by this program outline the various methods of farmland protection available to prospective participating property owners, and the procedures to be followed in applying for program consideration.

General Principles of Land Protection

Every land trust or farmland protection board in the United States operates under well-established industry principles. Some of these principles are designed to meet legal or Federal tax requirements, while others are in keeping with sound, time-tested principles of land protection. The following principles have been used by the Berkeley County Farmland Protection Board in its program design where possible, and will be used in any decision-making process:

- The property owner is willing to sell or donate the conservation easement over the property through a legally binding agreement that is perpetual and enforceable.
- The property owner(s) have clear title to the property.
- The property is either free of any mortgage, lien or tax assessment, the lender is willing to subordinate the loan to conservation easement, or the loan is not in excess of the agricultural value. If a secured loan exists, the donor understands that Federal tax benefits are not available.
- The conservation easement donation preserves open space, natural resources, an ecosystem, forestland, farmland, and/or native plants or animals.
- The property is either farmland or is in a relatively undisturbed natural condition, or contains natural features that need to be preserved.
- The property is not unduly subject to pollution or adverse influences from surrounding sources. The property itself is not polluted or subject to liability for any pollution clean up.

- Protection of the property will be consistent with established public policy. (For instance, it may be inappropriate to accept a conservation easement on a piece of property already indicated for intended public roads.)
- The property is of sufficient size that the conservation resources of the property are likely to remain intact.
- The conditions required to be agreed to by the property owner do not contain provisions which are unworkable or inconsistent with the overall intent of the conservation easement. (The provisions, for instance, could not diminish the property's primary conservation value or be unenforceable.)
- The conservation easement is within the Berkeley County Farmland Protection Board's means and ability to monitor and enforce, and/or the landowner is willing to provide compensation to assist in this effort to make the effort financially feasible.
- The acceptance of the conservation easement will not create an unusual or special liability exposure.
- Adequate and permanent access to the property is available.
- A survey has been completed on the property at some point in time, and current property lines can be verified by this survey.

II. Program

Eligibility Requirements

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

1. The property shall be located in Berkeley County.
2. The property shall be land which meets one or more of the following criteria (§ 8-24-75, 2000)
 - used or usable for agriculture, horticulture or grazing (qualifying property)
 - wetlands that are part of the qualifying property
 - woodlands that are
 - (a) part of or appurtenant to a qualifying property tract; or
 - (b) held by common ownership of a person or entity owning qualifying property
3. No commercial or industrial structure shall be located on the parcel. (§ 8-24-80(b), 2000)
4. Clear title to the property must be established and the application must be signed by the property owner(s).
5. The property shall not have any current or past uses that would render the establishment of a conservation easement inconsistent with the intent of the Act or this Program. Such determination shall be made by the Berkeley County Farmland Protection Board after consideration of all facts and circumstances.

Additional program criteria must be met for acceptance of a donated easement. Purchased easements and expenses on donated easements shall be ranked in accordance with the program criteria.

Farmland Protection Ranking Criteria

Imminence of Residential, Commercial or Industrial Development

	Points
1. Sales potential	
(a) Property is offered by buyer who holds a current sales contract on the property	25
(b) Property is listed for sale	20
(c) Property has been listed for sale at any time during the last two years	15
(d) Property is in the estate process or has been inherited within the last two years	10
2. Area development	
(a) Intensive development (10 lots or more) in the adjacent properties	15
(b) Extensive scattered development (20 lots or more) within 2,500 feet	10
(c) Scattered non-agriculture development (20 lots or more) within 5,000 feet	5
3. Availability of public water and sewer characteristics	
(a) Public water and/or sewer available at the property	15
(b) Public water and/or sewer within 2,500 feet of the property	10
(c) Public water and/or sewer within 5,000 feet of the property	9
4. Septic constraints	
(a) Severe septic constraints, no public sewer available	25
(b) Moderate septic constraints, no public sewer available	20
5. Road or rail frontage	
(a) Extensive developable road frontage (1,300 feet or more)	
1. Federal or state road	15
2. County primary road	10
3. County secondary road	8
(d) Moderate developable road frontage (less than 1,300 feet)	
1. Federal or state road	10
2. County primary road	9
3. County secondary road	8
(e) Rail frontage	25

Total Acreage Offered for Conservation or Preservation Easement

	Points
1. Size of parcel(s) offered for easement	
(a) 200 acres or more	50
(b) 100 to 199.99 acres	45
(c) 75 to 99.99 acres	40
(d) 40 to 74.99 acres	35
(e) 25 to 39.99 acres	30
(f) 10 to 24.99 acres	15
(g) Less than 10 acres	0
2. Entire fee simple property to be placed under easement	15

Presence of Prime or Unique Farmland; Farmland of State-Wide Importance; or Locally-Significant Farmland; Productive Capacity

	Points
1. Farmland categorized as one of the following:	
(a) Prime or unique soils	50
(b) State-wide or locally significant farmland	40
(c) Other farmland	10
2. Property currently has a farm-use valuation for ad valorem tax purposes	20
3. Property currently has a conservation plan	10

Property is Contiguous or Appurtenant to Working Farms

Points

1. Proximity of working farms

- (a) Contiguous with properties under easement with the Berkeley County Farmland Protection Board 25
- (b) Contiguous with properties that have a farm-use valuation for ad valorem tax purposes 20
- (c) Within 2,500 feet of properties under easement with the Berkeley County Farmland Protection Board 20
- (d) Within 2,500 feet of properties that have a farm-use valuation for ad valorem tax purposes 10

2. Proximity of protected property

- (a) Contiguous with other property with a perpetual conservation easement, or public property (unimproved parkland, wildlife management area) 25
- (b) Within 2,500 feet of other property with a perpetual conservation easement, or public property (unimproved parkland, wildlife management area) 20

Ratio of the Asking Price of the Easement to the Fair Market Value of the Easement

Points

1. Relationship of asking price to the fair market value

For each 1 percent ratio is below 100%, _ point
(Asking price of easement divided by fair market value of easement)

2. Asking price is leveraged with grants, donations, or funding*

For each 1 percent ratio is matched, _ point
(Grant/donation/funding divided by asking price)

* Funding sources can include Federal, state, foundation, or private grants, donations, or other funding sources.

Historical, Architectural, Archaeological, Cultural, Recreational, Natural, Scenic, Source Water Protection, or Unique Value of the Easement

	Points
1. Property is associated with an important historic place, event, person, or activity	
(a) Property is on the National Register of Historic Places	15
(b) Property is of national, state or local significance	10
(c) Property is adjacent to such an area	5
2. Property is a familiar visual feature that is part of an historic landscape	
(a) Symbol of West Virginia's identity or reflects the state's settlement or development patterns	15
(b) Symbol of the Eastern Panhandle	10
3. Property contains a structure with unique architectural/historical value	
(a) The structure is on the National Register of Historic Places	20
(b) The structure has value on a national or state level	10
(c) The structure has value to the Eastern Panhandle	5
4. Property contains an archaeological site	
(a) Property has documented archaeological significance	20
(b) Property has potential archaeological significance based on its history or past uses	10
5. Property contains important natural features (cumulative to maximum 75 points)	
(a) Includes frontage on a major stream	50
(b) Contains mountainous terrain or scenic ridgelines	45
(c) Contains mature forests	40
(d) Property is within 2,500 feet of properties listed above	30
6. Property contains unique natural features or habitat (cumulative to maximum 75 points)	
(a) Contains a cave	50
(b) Contains limestone cliffs	40
(c) Contains a shale barren	40
(d) Is an area of biological significance	40
(e) Contains or is contiguous to endangered or threatened species habitat	40
7. Source water protection (cumulative to maximum 75 points)	
(a) Fronts on a major stream	50
(b) Fronts on a minor stream	45
(c) Contains a year-round spring	35
(d) Contains a seasonal or wet-weather spring	30
(e) Contains wetlands	50
(f) Contains a sink or a sink hole	40
(g) Property has significant ground water recharge potential	45

Existence and Amount of Secured Debt on the Property

	Points
1. Property has no secured debt or the mortgage loan has been subordinated	50
2. Property has non-subordinated, secured debt in relationship to agricultural value (as defined in \S 8-24-78(c), 2000)	
(a) From 1% to 10% of agricultural value	20
(b) From 11% to 20% of agricultural value	15
(c) From 21% to 30% of agricultural value	10
(d) From 31% to 40% of agricultural value	9
(e) From 41% to 50% of agricultural value	8
(f) From 51% to 60% of agricultural value	7
(g) From 61% to 70% of agricultural value	6
(h) From 71% to 80% of agricultural value	5
(i) From 81% to 100% of agricultural value	

NOTE: Secured debt on the property in excess of the agricultural value shall disqualify the property from consideration under this program unless the loan amount in excess of the agricultural value has been subordinated by the lending institution.

Length of Protective Easement

The program shall only consider offers of perpetual conservation easements.

Applicants that request the five-year opt out provision (as described in \S 8-24-75(f), 2000) under which the easement selling price is placed in an escrow account for a period of five years, must fund all easement preparation costs (including survey, appraisal, legal costs, etc). These easement closing costs may be reimbursed to the applicant upon the closing of the Deed of Conservation Easement, but shall be forfeited if the applicant exercises the opt-out right.

Easement Purchases — Rules and Guidelines

The Berkeley County Farmland Protection Board may purchase conservation easements. The following considerations are applicable for any purchases:

1. Funds for purchasing conservation easements must be available and allocated
2. A completed application must be submitted by the landowner(s)
3. The property must meet all eligibility requirements
4. All application submissions shall be scored using the Farmland Protection Ranking Criteria
5. The purchase must be approved by the Berkeley County Farmland Protection Board
6. The purchase must be approved by the Berkeley County Commission

A sale of conservation easement application form must be submitted to the Berkeley County Farmland Protection Board in order to be considered. The Berkeley County Farmland Protection Board, in its sole discretion, may reject an offer for sale if the property has any current or past uses that would render the establishment of a conservation easement inconsistent with the intent of the Act or this program. Such circumstances include, but are not limited to, possible contamination on the subject property, surrounding land uses, conservation values of the property, and the scope and difficulty of the protection and monitoring of the property. A written confirmation of the rejection, if applicable, shall be provided to the applicant, including the reasons for rejection.

The Berkeley County Farmland Protection Board may allocate funds to offset any or all costs associated with the conservation easement, including, but not limited to, legal fees, closing costs, survey fees and appraisal costs. Reimbursement policies will be established on a yearly basis, no later than June 30, for the following fiscal year by the Berkeley County Farmland Protection Board. Any costs to be the responsibility of the landowner(s) will be clearly indicated.

The Farmland Protection Ranking Criteria is used to evaluate the characteristics of properties offered into the program. In the event that the offering price of properties voluntarily offered to the program in any given year exceeds the funding available for the purchase of those conservation easements, the priority of acquisition shall be determined by relative ranking of the property. The Farmland Protection Ranking Criteria consists of a number of factors and criteria descriptive of the characteristics of the property. Each criteria is assigned numerical points signifying its importance relative to all other criteria. Once the score for each property has been calculated, all properties shall be ranked. Those properties ranked the highest will be given priority to purchase.

In the event that matching funds of 50 percent or more are available, and the successful securing of these funds requires a re-prioritization of properties offered into the program, such re-prioritization may be undertaken by the Berkeley County Farmland Protection Board. Such re-prioritization to meet the programmatic funding requirements may be made or rejected by the Berkeley County Farmland Protection Board at its discretion on a year-to-year basis.

Easement Donations — Rules and Guidelines

Donations of conservation easements meeting the following guidelines may be accepted by the Berkeley County Farmland Protection Board:

1. Property forty (40) acres or larger in size with (A) not more than one (1) retained development right or completed unit per twenty (20) acres; or (B) fifty (50) percent of the parcel retained as open space with cluster development on the residual not to exceed one (1) retained development right or completed unit per ten (10) acres or fraction thereof.

Example: A property of 52 acres would be allowed (A) two development rights on any portion of the property; or (B) six development rights (52 divided by 10 = 5.2 or 6 development rights) on 26 acres with 26 acres left as open space.

2. Property at least twenty-five (25) acres in size but less than forty (40) acres in size with (A) one (1) retained development right or completed unit or (B) fifty (50) percent of the parcel retained as open space with cluster development on the residual not to exceed one (1) retained development right or completed unit per ten (10) acres or fraction thereof.
3. Property at least ten (10) acres in size but less than twenty-five (25) acres in size with (A) one (1) retained development right or completed unit; or (B) fifty (50) percent of the parcel retained as open space with cluster development on the residual not to exceed one (1) development right or completed unit per ten (10) acres.
4. Property less than ten (10) acres in size will normally not be accepted by the Berkeley County Farmland Protection Board. Such properties may be considered on a case-by-case basis, however, particularly if they contain unique features or are otherwise considered worthy of protection.
5. Notwithstanding the above, property of planned unit developments in the form of common area open space or residential subdivisions developed on a portion of a parcel or tract including any portions subdivided after March 10, 2000, shall have open space (A) at least twenty-five (25) acres in size, and (B) at least fifty (50) percent of the planned unit development or residential subdivision of the parcel or tract as defined. In addition, the overall development density of the developable fifty (50) percent shall be no more than one single residential dwelling per five acres.

A donation application form must be submitted to the Berkeley County Farmland Protection Board in order to be considered. The Berkeley County Farmland Protection Board, in its sole discretion, may accept or reject an offer for donation after considering all facts and circumstances. Such circumstances include, but are not limited to, possible contamination on the subject property, surrounding land uses, conservation values of the property, and the scope and difficulty of the protection and monitoring of the property. A written confirmation of the acceptance or rejection shall be provided to the applicant, including the reasons for rejection, if applicable.

The Berkeley County Farmland Protection Board may allocate funds to offset any or all costs associated with the conservation easement, including, but not limited to, legal fees, closing costs, survey fees and appraisal costs. Costs not funded by the Berkeley County Farmland Protection Board shall be the responsibility of the landowner making the donation offer, including stewardship funds for the perpetual monitoring of the property. Reimbursement policies will be established on a yearly basis no later than June 30 for the following fiscal year by the Berkeley County Farmland Protection Board after consideration of the funds available to it. Donation properties shall be ranked for potential reimbursement according to the Farmland Protection Ranking Criteria .

Easements: Special/Targeted Grants

In the event private, local, state or Federal monies become available to purchase a particular category of property, or properties with certain characteristics, the Farmland Protection Ranking Criteria may be waived by the Berkeley County Farmland Protection Board. This procedure shall be undertaken only when the grant terms render other than the targeted properties ineligible to apply for the grant.

Nature of Development Rights Acquired

A Conservation Easement

The ownership of property is often characterized as a bundle of rights. Typically, a landowner owns all of these rights through the deed; possession of all of these rights is called fee simple ownership. A landowner can sell or donate some of these rights and still retain ownership of the land. For instance, a landowner might sell the timber rights on the property, but still retain all other rights over the property. Under the Berkeley County Farmland Protection Program, the landowner agrees to give up certain development rights and specific commercial uses of the property. The protection of farmland all over the country typically is accomplished by limiting the risk that the farmland is converted into a commercial development or a residential subdivision. The Berkeley County Farmland Protection Program also utilizes this method of protection. The possession of the property, maintenance, right of access, and the right to sell the property or to leave it to heirs remains with the landowner.

The mechanism for acquiring these development rights is called a conservation easement. These easements are also sometimes referred to as open space easements. The Berkeley County Farmland Protection Board may acquire these rights by purchasing the easement or through the acceptance of a donation. The sale or donation of development rights is accomplished through a Deed of Conservation Easement, which is recorded with the original deed to the land.

Easement Holder

The Berkeley County Farmland Protection Board is the grantee under the Deed of Conservation Easement, and agrees to protect the property according to its mandate and the desires of the property owner executing the easement. The Berkeley County Farmland Protection Board is a quasi-governmental board established by the Berkeley County Commission. State law mandates the background of appointees that must serve on the board, and the Berkeley County Commission appoints the candidates. All appointees must live in Berkeley County.

The Deed of Conservation Easement is held and administered locally, here in Berkeley County. In addition, with the approval of the Berkeley County Farmland Protection Board, a landowner may designate a co-holder under the Deed of Conservation Easement. Typically, private land trusts may be utilized to co-hold easements with governmental and quasi-governmental entities as desired by the landowner. For instance, The Land Trust of the Eastern Panhandle and The Nature Conservancy are examples of private land trusts. The landowner may also grant the easement to a private land trust as the grantee and apply to have the Berkeley County Farmland Protection Board act as co-holder.

Duration of the Easement

A conservation easement must be perpetual in order to qualify for potential Federal income tax and estate tax benefits. The Berkeley County Farmland Protection Program will only consider offers of perpetual conservation easements. Under a perpetual easement, even though you may sell or bequeath the land, subsequent owners will be bound by the terms of the easement. Although there is a common law rule against perpetuities which otherwise prevents any agreement from being recorded as perpetual, conservation easements have become an exception to this rule. Almost all 50 states have passed state laws to allow for perpetual conservation easements. West Virginia passed its own Conservation and Preservation Easements Act (Article 12, Chapter 20) in 1995. Perpetual easements have been accepted into farmland protection programs and by land trusts all over the United States for over 30 years. To date, the courts have upheld the legitimacy of perpetual conservation easements and have acted against those who would seek to undo them.

Applicants that request the five-year opt out provision (as described in [§ 8-24-75\(f\), 2000](#)) under which the easement selling price is placed in an escrow account for a period of five years, must fund all easement preparation costs (including survey, appraisal, legal costs, etc). These easement costs may be reimbursed to the applicant upon the closing of the Deed of Conservation Easement, but shall be forfeited if the applicant exercises the opt-out right.

Restrictions Under the Easement Voluntary Farmland Protection Act

The Voluntary Farmland Protection Act passed by the State of West Virginia in 2000 establishes certain restrictions and prohibitions regarding easement property accepted into any county program, but also allows the county programs flexibility to establish their own specific criteria within this framework. The restrictions set by the Act are as follows:

- The landowner may not develop the land for any commercial, industrial, residential or other non-farm purposes. (Current residences and retained development rights as defined under the Berkeley County Farmland Protection Program are allowable.)
- The landowner must agree not to further subdivide the property aside from the residential development rights agreed to under the Deed of Conservation Easement.
- Woodland included in the easement must not be used in commercial forestry.

Under state law, home-based businesses not requiring a West Virginia Division of Environmental Protection Permit to operate are allowable. Each residential dwelling provided for under the Deed of Conservation Easement is allowed two acres for all residential activities. In addition, activities performed for religious, charitable or educational purposes or to foster tourism are allowable on the eased property.

Deed of Conservation Easement

Through the Deed of Conservation Easement, the Berkeley County Farmland Protection Program outlines the terms, conditions and restrictions on the property under easement to protect both the grantor and the grantee, and to clarify the understanding of each party. Certain portions of the Deed of Conservation Easement are negotiable and subject to change, while others are mandated by either Federal income tax laws, state laws or practice, or land trust industry practice. Typically, each conservation easement is unique and the Deed of Conservation Easement should reflect this uniqueness.

The Berkeley County Farmland Protection Program has incorporated the broad prohibitions under the Voluntary Farmland Protection Act into its program, as outlined above. In addition, the Berkeley County Farmland Protection Programs has enacted additional guidelines on the extent of residential development that will be allowable based on the property size. All residential construction, including accessory buildings, is allowed two acres for residential activities. (See **Easement Purchases: Rules and Guidelines** and **Easement Donations: Rules and Guidelines**.)

Generally, the Deed of Conservation Easement allows the property owner the full right to reside and enjoy the property. This quiet enjoyment as it is termed allows hunting, touring, swimming, fishing, biking and like activities. At the same time, the Deed of Conservation Easement ensures that the property is protected from obvious destructive activities such as dumping, polluting, mining, and removal of natural resources. The Deed of Conservation easement incorporates the state prohibitions on commercial forestry and unlimited subdivision.

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

In addition, the Berkeley County Farmland Protection Board encourages each landowner participating in the program to protect any other unique, historic, scenic, or natural resource value on the property through specific provisions in the Deed of Conservation Easement. See **Appendix: Deed of Conservation Easement** for a model of a conservation easement. Again, the Deed of Conservation Easement can be modified to fit the circumstances and characteristics of each property.

Value of Conservation Easement

A landowner may make an offer to sell a conservation easement on qualifying property. Such offers shall be ranked utilizing the Berkeley County Farmland Protection Ranking Criteria in order to fairly allocate any available funds for purchasing easements. Offers may be made by the landowner from one dollar up to the maximum value of the easement as defined under the Voluntary Farmland Protection Act (8-24-78). The *fair market value* and the *agricultural value* of the property are defined under the Voluntary Farmland Protection Act:

Fair Market Value

The fair market value of the land is the price at the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property was not subject to any restriction imposed under the Deed of Conservation Easement.

Agricultural Value

The agricultural value of land is the price at the valuation date which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property subject to the restrictions placed upon it by the Deed of Conservation Easement.

Maximum Easement Value

The maximum easement value is the difference between the *fair market value* of the land and the *agricultural value* of the land.

Offering Price

The offering price is the amount the landowner is asking to be reimbursed for the sale of the conservation easement to the Berkeley County Farmland Protection Board. The offering price can be the maximum easement value, or it can be some fraction of this value. Landowners gain points in the ranking criteria by offering to sell the easement for less than the maximum value.

Payment to Landowners

Subject to the availability of funds, payments made to landowners shall be the smaller of the offering price or the maximum easement value, but in no case shall exceed the maximum easement value.

An Example

The fair market value of a 100-acre parcel of unrestricted land in Berkeley County is \$5,000 an acre or \$500,000 for the entire parcel. The land is suitable for a housing subdivision and is in an area that is currently being developed. The agricultural value of the land is \$2,000 an acre or \$200,000 for the entire parcel. Under the proposed Deed of Conservation Easement, the property owner wishes to build two future residences in addition to the residence already on the property. The remainder of the property would remain open for farming. The maximum value of the conservation easement on this parcel is \$300,000 (\$500,000 fair market value less \$200,000 agricultural value).

The offering price is \$100,000, or one-third of the full easement value. The landowner gains 33 points under the Berkeley County Farmland Protection Ranking Criteria system. Subject to the availability of funds, the owner would be compensated \$100,000 for the conservation easement.

Determination of Values

At the time an offer is made by the landowner for purchase of an easement, the Berkeley County Farmland Protection Board shall make an initial estimate of the maximum easement value for the purpose of allowing the easement offer to move forward in the process. Due to the costs involved, a professional appraisal shall be undertaken by the Berkeley County Farmland Protection Board only when such an appraisal would affect the outcome of the comparison of various properties under the Berkeley County Farmland Protection Ranking Criteria; when a probable acceptance into the Berkeley County Farmland Protection Program is at or close to the maximum value; and/or as a part of the closing process for easements accepted into the program.

The landowner may submit an appraisal completed by a qualified appraiser for consideration in the ranking process. In addition, in order for the landowner to take advantage of potential Federal income tax and estate tax benefits, an appraisal must be completed. While the appraisal may be done at any point in time, it must be updated to within 60 days of the easement sale in order to comply with Federal tax requirements. The Berkeley County Farmland Protection Board highly recommends that a landowner have an appraisal completed prior to the completion of the Deed of Conservation Easement.

In the unlikely event that differing appraisal values would affect the outcome of the ranking of properties, or would affect the actual purchase value of the property, the landowner and/or the Berkeley County Farmland Protection Board may request that the value determination be submitted to arbitration.

Offering to Sell or Donate

An application form for either a sale or donation must be submitted to the Berkeley County Farmland Protection Board in order to be considered. Such application must be complete, including all documents as required by the application. A landowner may offer all, or part, of their land into the Berkeley County Farmland Protection Program. Additional points are gained under the Berkeley County Farmland Protection Ranking Criteria system by offering the entire parcel into the program.

A landowner may make an offer and rescind it up until the time of the closing of the Deed of Conservation Easement. Any fees or costs of closing incurred by the Berkeley County Farmland Protection Board shall be the responsibility of the landowner if an offer is made and then rescinded. A landowner may also submit a new offer in order to increase the points under the farmland protection ranking criteria, and possible acceptance into the program. An offer made during the fiscal year (July 1 through June 30 of the following year), shall expire at the end of the fiscal year. Certain deadlines for submissions may apply. Any unaccepted offers may be re-submitted by the landowner for consideration in any subsequent year, but a new application must be made.

The Berkeley County Farmland Protection Board may make a counter-offer to the landowner in order to secure the property or properties in the event that adequate funds are not available to purchase all properties with outstanding offers. Such counter-offers shall be made in writing to the applicant. The applicant shall have sixty days to accept the offer through the submission of a revised offer in the form of a revised application. The absence of a revised application within the sixty days shall be deemed as a rejection of the counter-offer.

A written confirmation of the acceptance or rejection of any offer shall be provided to the applicant, including the reasons for rejection, if applicable.

Third Party Mineral Rights

Properties where the subsurface mineral rights are owned by a third party are subject to special requirements. A tax deduction for the easement may be taken only if:

1. Ownership of the surface estate was separated from ownership of the mineral right before June 13, 1976; and
2. The probability of surface mining occurring on the property is so remote as to be negligible.¹

The Berkeley County Farmland Protection Board will accept easements on such properties only if:

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

1. The third party mineral owner agrees to prohibit any surface mining; and
2. The third party oil and gas owner agrees to construct a maximum number of wellheads as determined by the Board; or
3. The probability of surface mining is considered to be extremely unlikely as determined by the Board after consideration of all facts and circumstances. Such considerations shall include, but shall not be limited to:
 - Past or current surface mining in the vicinity
 - The identity of the third part owner and whether they are still in existence
 - The probable extent of such minerals and the resultant financial attractiveness

III. Administrative

Process Flowchart

See the **Appendix** for an outline of the administrative process and timing for completing a conservation easement.

Baseline Documentation

Baseline documentation is the record of the condition of the property and features that are to be protected at the time the conservation easement is donated. Prior to the actual sale or donation of the easement, the baseline documentation must be completed. The purpose of the documentation is to create a record for administration of the easement and protection of natural features contained in the Deed of Conservation Easement. Such documentation is very helpful in future years in documenting the original condition of the property. In addition, baseline documentation is required under IRS regulations for donated easements claimed as a charitable deduction.

Baseline documentation may include:

- Survey maps from the U. S. Geological Service
- A map of the property showing all existing man-made improvements, vegetation, land use history and distinct natural features
- An aerial photograph of the property
- On-site photographs taken at appropriate locations
- GIS maps

See **Appendix Baseline Documentation Form and Checklist** for the form that will be completed by the Berkeley County Farmland Protection Board.

If the Deed of Conservation Easement contains restrictions with regard to a particular natural resource to be protected, such as water quality, the condition of the resource at or near the time of the gift must be established. In addition, the baseline documentation must be accompanied by a statement signed by the donor and the Berkeley County Farmland Protection Board clearly referencing the documentation and affirming that it is an accurate representation of the property.

Any retained development rights, selective timber cutting for personal use, subsurface mineral rights, etc., must be clearly documented in the baseline documentation.

Closing

Once the easement purchase or donation has been negotiated with the landowner(s) and agreed to through formal action of the Berkeley County Farmland Protection Board, several steps remain to be completed. All purchases must be approved by the Berkeley County Commission. Important paperwork and procedures as indicated by the closing checklist (see **Appendix — Closing Checklist**) must be completed. Finally, the Deed of Conservation Easement must be closed much like any other real estate transaction. A date and time shall be agreed upon with the Berkeley County Farmland Protection Board's closing attorney. The landowner(s) may have an attorney present for the closing, but this is not a requirement. All landowners will need to be present at the closing to sign the Deed of Conservation Easement and the closing documents.

Inspection and Enforcement

An important part of any easement program involves periodic inspections to ensure that the conservation restrictions agreed to by the donor and the Berkeley County Farmland Protection Board are adhered to. Such inspections are normally done on an annual basis. Easement violations typically occur with owners subsequent to the original owner of the property who enacted the easement. Even though the original landowner enacting the easement has sold or bequeathed the land, subsequent owners are bound by the terms of the easement. The easement is said to run with the land. The Berkeley County Farmland Protection Board has a duty, as evidenced in the Deed of Conservation Easement, and as desired by the original landowner grantor, to enforce the easement restrictions so that the easement property remains protected. Subsequent owners are bound by the conservation restrictions, and are put on notice at the time of purchase of the property through the recorded Deed of Conservation Easement. The current owner shall be required by the Deed of Conservation Easement to provide annual access to the property for monitoring purposes.

Where the conservation easement is jointly held by a private land trust, the responsibility for the easement monitoring and coordinated enforcement efforts shall be clearly delineated. The Berkeley County Farmland Protection Board may complete the easement monitoring through its staff, or may subcontract this work through an appropriate agent. The Eastern Panhandle Conservation District currently assists landowners to prepare and implement soil and water conservation plans. It also assists in the design of Best Management Practices and verifies compliance with farm management plans. The Berkeley County Farmland Protection Board shall ensure that the periodic inspection program is carried out, and work closely with all involved parties for a consistent and coordinated inspection program that is satisfactory to the donor.

Generally there are three keys to preventing an easement violation:

1. A good relationship with the property owner
2. A Deed of Conservation Easement with clear restrictions
3. A program of regular, systematic, and well-documented monitoring

In the event of an easement violation, the Berkeley County Farmland Protection Board would make every attempt to work with the landowner to rectify the easement violation. In the event that a satisfactory resolution cannot occur, the Berkeley County Farmland Protection Board may work through the Berkeley County Attorney or through private attorneys to meet its perpetual obligation to protect the property. See **Appendix Easement Monitoring Form** for a sample of the form completed during the annual inspection process.

IV. Outreach and Funding

Outreach

The WV Voluntary Farmland Protection Act at 8-24-73d (c) requires each farmland protection board to promote the protection of agriculture within the county by offering information and assistance to landowners with respect to the acquisition of easements.

Therefore, the Berkeley County Farmland Protection Board will evaluate and utilize, on a continual basis, the development of several methods of outreach within each annual budget. Such potential methods of outreach might include:

1. The development of articles within the Eastern Panhandle Conservation District quarterly newsletter.
2. The development of articles within the Berkeley County Farm Bureau Newsletter.
3. The development of articles within the USDA - Farm Service Agency quarterly newsletter.
4. The development of articles within local media venues (The Journal, Morning Herald, Buyer s Guide, etc.).
5. The development of a Berkeley County farmland protection Internet web page with links from the Berkeley County Commission Web page and other associated farm agency web pages.
6. The development of handouts, flyers and other promotional materials as appropriate, for placement at libraries, farm related events, mass mailing, etc.

Funding

The Berkeley County Farmland Protection Board has established a fund to carry out the purposes of this Farmland Protection Program. The fund is called the Berkeley County Farmland Protection Fund and is authorized to accept money or property from general or special fund appropriations by the county or state; a distribution from the WV Agricultural Land Protection Authority as detailed below; county real estate transfer tax fees; private or governmental grants; private contributions, fundraising or gifts; or earnings from investments, interest, dividends or distributions.

The WV Voluntary Farmland Protection Act authorizes the Berkeley County Farmland Protection Board to seek out any and all county, state, Federal and private funding available, consistent with the purpose of the Farmland Protection Program to establish and operate the program. However, the Berkeley County Farmland Protection Board is also authorized to decline, reject or deny private grants, contributions or gifts that represent or have the appearance of representing an impropriety which could result in the temporary or permanent loss of public faith and trustworthiness in the Farmland Protection Program or the Berkeley County Farmland Protection Board.

The Berkeley County Farmland Protection Board clearly recognizes for this program to succeed at its fullest, funding for the actual compensation for the placement of conservation easements must be secured and this funding level will need to be substantial. In addition, Federal opportunities require up to a 50 percent state or local match. The Berkeley County Farmland Protection Board intends to use funding from all available sources:

1. Governor s Contingency Fund.
2. Legislative Digest Grants.
3. Private foundation gifts or grants.
4. Any county real estate transfer tax fee under WV Code §8-24-85.
5. Any future county or state taxes or funding dedicated to farmland protection.

In addition, the WV Voluntary Farmland Protection Act requires the establishment of a state level WV Agriculture Land Protection Authority. This Authority is required to assist the county Berkeley County Farmland Protection Board s in applying for and obtaining all state and federal funding available consistent with the purposes of the farmland protection program.

To accomplish that function, WV Code /8-24-81(f) requires the WV Department of Agriculture to include within its budget funding for the Authority for the next fiscal year. The Authority is then required to distribute within 60 days after the end of its fiscal year at least 80% of that fiscal year s remaining budget to county farmland protection boards that have certified to the Authority that there is pending an application for one or more conservation easements. This state level funding is called the WV Farmland Protection Fund.

This funding, similar to the county farmland protection fund, is authorized by /8-24-81(c) to be comprised of any money made available to the fund by general or special fund appropriations; grants or transfers from governmental or private sources; money realized by investments, interests, dividends or distributions; monies appropriated by the Legislature. In addition, the Authority is authorized to seek and apply for all available funds from Federal, state and private sources.