



Donation properties shall be ranked for potential reimbursement according to the Farmland Protection Ranking Criteria, page 35 of this report.

Farmland Protection Ranking Criteria may be waived by the Jefferson County Farmland Protection Board. This procedure shall be undertaken only when the terms of the grant render other ranked properties ineligible to apply for the grant. ♦

C. 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



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 Jefferson 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 Jefferson 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 Jefferson 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.

See Appendix – 6. Deed of Conservation Easement

Easement Holder

The Jefferson 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 Jefferson County Farmland Protection Board is a quasi-governmental board established by the Jefferson County Commission. State law mandates the background of appointees that must serve on the board, and the Jefferson County



Commission appoints the candidates. All appointees must live in Jefferson County. A majority of the voting members of the board must be active farmers in Jefferson County.

The Deed of Conservation Easement is held and administered locally, here in Jefferson County. In addition, with the approval of the Jefferson 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 Jefferson 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 Jefferson 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. More than 50 states have passed

state laws to allow for perpetual conservation easements. West Virginia passed its own *Conservation and Preservation Easements Act, §20-12, 1995*. Perpetual easements have been accepted into farmland protection programs and by land trusts all over the United States for more than 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, *West Virginia Code §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.

See Index to Citations

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 Jefferson 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 or the growing of timber for commercial purposes.

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 Jefferson 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 purpose of this program is to preserve land for farm use. As such, the Jefferson County Farmland Protection Program has incorporated the broad prohibitions under the Voluntary Farmland Protection Act into its program, as outlined above. In addition, the Jefferson County Farmland Protection Program has enacted additional guidelines addressing specific conditions and limitations under which new residential building lots may be created (e.g. parent to child conveyances). Also, uses that are not compatible with or conducted in support of the agriculture industry or agritourism uses are not permitted within the terms of the easement, regardless of whether the proposed use is permitted by the Zoning Ordinance. Proposed uses shall be

considered on a case-by-case basis by the Farmland Protection Board.



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 Jefferson 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. ♦

See Appendix – 6. Deed of Conservation Easement