

**THE
MORGAN COUNTY
FARMLAND PROTECTION
PROGRAM
PLAN**

VOLUME III

**Prepared By:
The Morgan County Farmland
Protection Board**

Amended : 2/2013 & 6/2016

RESOLUTION

WHEREAS, the Morgan County Commission on June 16, 2000 by resolution created the Morgan County Farmland Protection Board; and


WHEREAS, the Morgan County Farmland Protection Board is required by WV Code §8-24-73(2000) to develop a farmland protection program which is consistent with the intention of the Act; and


WHEREAS, the Morgan County Farmland Protection Board approved the Morgan County Farmland Protection Program on December 2nd, 2002; and

THEREFORE BE IT RESOLVED, by the County Commission of Morgan County and the Morgan County Farmland Protection Board that the enclosed Morgan County Farmland Protection Program is hereby adopted and enacted.

Morgan County Commission

Dated this 6th day of December,
2002


Glen R. Stotler, President


Thomas R. Swaim, Commissioner

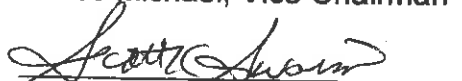

Robert L. Ford, Commissioner

Morgan County
Farmland Protection Board

Dated this 2nd day of December,
2002


Lin Dunham, Chairman


James Michael, Vice Chairman


Scott Swaim, Secretary/
Treasurer


Terry Hovermale, Member


Bill Clark, Member

Table of Contents

- I. Background**
 - Conservation and Preservation Easements Act**
 - Voluntary Farmland Protection Act**
 - Morgan County Commission Resolution**
 - Farmland Protection Board Composition**
 - Purpose**

- II. Program**
 - Eligibility Requirements**
 - Conservation Easements Purchase**
 - Farmland Protection Ranking Factors**
 - Easements: Special/Targeted Grants**
 - Nature of Development Rights Acquired**
 - Value of Conservation Easement**
 - Offering to Sell or Donate**
 - Third Party Mineral Rights**
 - Conservation Easements Donations**

- III. Administrative**
 - Closing**

- IV. Outreach and Funding**
 - Outreach**
 - Funding**

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 or preservation easements; outlined the criteria for acquisition of easements; outlined the use of land after a conservation or preservation easement is acquired; outlined funding for the farmland protection program(s); and authorized the commissioner of agriculture to promulgate rules.

Morgan County Commission Resolution

On June 16, 2000, the Morgan County Commission authorized a resolution creating the Morgan County Farmland Protection Board, (MCFPB), becoming the second county in West Virginia to utilize the Voluntary Farmland Protection Act. The Commission affirmed that the agriculture community of Morgan County provides sources of agriculture 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 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 Morgan County Farmland Protection Program in consultation with the Eastern Panhandle Conservation District, and as approved by the Commission. The copy of resolution itself is included in Appendix.

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 Morgan 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 Morgan County Commissioner, who shall serve in a non-voting, advisory capacity. All members are appointed by the Morgan County Commission and serve at the will and pleasure of the Commission.

The specific composition of the Board is as follows:

- 1) One Morgan County Commissioner.
- 2) Executive Director of the Morgan County Development Authority.
- 3) One farmer who is a member of the Morgan County Farm Bureau.
- 4) One farmer who is a member of the Eastern Panhandle 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

From 1992 through 1997, West Virginia lost at least 100,000 acres of productive farmland, with 40% of the loss came from the three county Eastern Panhandle area. With the loss of farmland there is a loss of the agriculture industry which has been the heartbeat of Morgan 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.

To address the loss of agricultural land and woodland as open-space land the West Virginia legislature passed into law on March 10, 2000 the Voluntary Farmland Protection Act. To implement the program on a local level the Morgan County Commission on June 16, 2000 created the Morgan 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.

This program establishes uniform standards and guidelines for the eligibility of properties and the ranking criteria utilized to prioritize fund allocation to purchase conservation easements or to pay associated costs for 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.

Further, it is the purpose of this program to:

- (1) Encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security of land use;
- (2) Protect normal farming operations in agricultural areas from incompatible non-farming uses that may render farming impracticable; and
- (3) Assure conservation of viable agricultural lands in order to protect the agricultural economy of this County.

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 Morgan County.
2. The property shall be land which meets one or more of the following criteria
(WV Code 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.
(WV Code 8-24-80(b), 2000)
4. Clear title of the easement 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 Morgan 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 or expenses on donated easements shall be ranked in accordance with the program criteria.

CONSERVATION EASEMENTS - PURCHASE

A. Intent

The Morgan County Farmland Protection Board with the approval of the Morgan County Commission intends to acquire only perpetual agricultural conservation easements by purchase or gift. Upon acquisition the MCFPB shall be responsible for the monitoring and enforcement of all easements purchased in the county with public funds.

Applications for sale or donation of conservation easements on qualified land will be reviewed at least annually by September 1 and will be evaluated for compliance regarding soil quality, likelihood of conversion, proximity to other eased lands, land stewardship, and fair and equitable procedures.

Prior to settlement the landowner may elect to receive payment in cash at settlement, in installments of principal and interest over a period of up to five years, or in an Installment Purchase Agreement of principal and tax-exempt interest over a period of up to twenty years or a combination of up-front cash and installment payments over time. The value of principal paid in an Installment Purchase Agreement of more than five years must exceed \$100,000.00. Bargain sales and the escrow of sale proceeds in a Tax Escrow Account to pay property taxes annually are also options.

The donation of a perpetual conservation easement on qualified land may result in federal income tax benefits and other tax benefits to the grantors which will vary according to the nature and value of the property and circumstances of the landowner(s).

B. Description

A conservation easement is a legally binding document, which is filed in the Office of the Clerk of the County Commission (land records) restricting its use to agricultural and directly associated uses which is acquired as set forth herein. As an easement in gross, restrictions are binding upon the owner and future owners, and run with the land.

C. Conservation Easement Sale Options

1. Perpetual (Permanent) Easement: This conservation easement is permanent. The value of the easement as appraised is the maximum which can be paid. If a landowner conducts a second appraisal, the maximum value of the easement

will depend upon the market values and agricultural values of the two appraisals as defined in Section I.4.

- a. **Bargain Sale:** Any offer to sell a perpetual easement at a price less than the appraised value may be considered a bargain sale in which the difference between the easement value and the easement sale price may be eligible as a qualified conservation contribution. Under this approach a Federal income tax deduction may be applicable.
- b. **Tax Escrow Account:** The seller may elect to have the MCFPB escrow all or a portion of the proceeds of an easement sale in a property tax escrow account which is an interest bearing account from which disbursements of annual interest are made to the landowner at least 30 days prior to local property tax due dates. All deferred payments must be completed in a 5 year period.
- c. **Payment Method:** Prior to settlement, the seller may elect to receive payment in cash at settlement, in installment payments of principal and interest over a period of up to five years, or in an Installment Purchase Contract of principal and tax exempt interest over a period of up to 20 years, or a combination of up-front cash and installment payments over time. The value of principal paid in an Installment Purchase Contract with tax exempt interest must exceed \$100,000.00. The period over which tax exempt interest installments will be made may be specified by the seller prior to settlement with the interest rate on installments determined by such period.

D. Minimum Eligibility Criteria

The following criteria are prerequisite to conservation easement sales:

1. **Quality Of The Farmland:** MCFPB program shall consider the quality of the farmland, including USDA-SCS soil classification and productivity.
2. **Likelihood Of Conversion To Non-Farm Use:** The MCFPB will target easement purchases in areas which are under considerable development pressure, and are in close proximity to properties with easement restrictions. In determining the likelihood that a farm will be converted to non-farm use, consideration shall be given to the following factors:
 - a. The developmental pressures in the area;
 - b. The financial equilibrium of the farm;
 - c. Suitability for development because of soil capabilities, location, configuration, and access to utilities;
 - d. Pre-existing perpetual restrictions against development; and

- e. Location in an area identified by the MCFPB or the County Comprehensive Plan as desirable for agricultural use.
3. Stewardship Of The Land: To determine the extent to which stewardship of the land has been exercised, an applicant farm must demonstrate history of operating under good management practices. The applicant farm:
 - a. Will operate under a conservation plan; approved by EPCD Cooperator.
 - b. Should not be in violation of any pollution standards.

The following criteria are prerequisite to conservation easement donations:

1. The MCFPB will consider each offer of a donation on a case-by-case basis on its individual merits considering such factors as the property's relation to adopted plans, surrounding land use and development needs and potential.

At minimum, farm properties must be:

- a. In agricultural and open space use and
- b. Primarily consisting of productive agricultural soils (U.S.D.A. Soil Classifications I, II, and III.).

In addition, the requisites for eligibility of property to be purchases shall be considered.

E. Procedure For Purchasing or Accepting Donations of Easements:

1. Owners of qualified land may offer to sell or donate a conservation easement by applying through the application procedures of MCFPB.
2. A separate application shall be required for each farm parcel under separate ownership. The application shall consist of a completed application form, locational maps, a soils report, and a crop report.
3. Application Form: The MCFPB will provide an application form. The application form shall ask for the following information:
 - a. Name, address, telephone number of the owner(s) of the property with signature of all titleholders.
 - b. Tax district in which the farm is located and identification of the Agricultural Priority Area.
 - c. Total acreage of farm. Number of acres proposed for protection.
 - d. The acreage and types of crops grown on the land proposed for protection.
 - e. Numbers and kinds of livestock on the farm.
 - f. Street location of farm with directions from the nearest State route.

- g. Deed reference book and page.
- h. Tax map and parcel information
- i. Provide date of approved Conservation Plan.

- j. Name, address, and telephone number of person to be contacted to view the property.
- k. Crop Report - The applicant shall provide crop production information for the prior two growing seasons. The report shall be as follows:

<u>Acres Grown/or</u>	<u>Yield Per Acre</u>
<u>Commodity</u> <u>Animal Units</u>	

4. Location Maps:

- a. A USGS topographical map showing the location of the farm shall be provided.
- b. A tax map of the farmland proposed for protection, with map reference and tax parcel number clearly indicated shall be provided.

5. Soils Report: A soils report and soils map for the farmland proposed for protection shall be provided and a table showing the capability class and use of land.

6. The maximum easement value shall be determined by MCFPB. That value should then be offered to the landowner in payment for the easement. This will enable the landowner to understand the appraised maximum value for purposes of his sale price or for purposes of federal income tax deductibility. Under special circumstances, such as location and prime quality of the land, the MCFPB with the approval of the County Commission, may pay the costs of appraisals, on a case-by-case basis. The landowner shall reimburse the MCFPB for the cost of the appraisal, if the donation or sale is not completed within one year.

F. Evaluation And Ranking Applications:

- 1. The MCFPB shall review each application to determine if it is complete and meets the minimum eligibility criteria.

2. The MCFPB shall rank all timely applications, which meet the minimum eligibility criteria, according to the MCFPB numerical ranking system.
3. The MCFPB shall determine whether to appraise the farmland tract that is the subject of an application.
4. The Farmland Ranking System shall be maintained by the MCFPB.
5. The MCFPB shall approve the ranking prior to the disbursement of County funds for appraisals and the purchase of conservation easements. The availability of allocated funds from the MCFPB will be determined.
6. All applications that have been received and accepted by the MCFPB shall be ranked according to the ranking system in the program.
7. The MCFPB should make a recommendation to the County Commission, which shall accept or reject the conservation easement sale or donation. The easement, if accepted, should then be recorded in the Office of the Clerk of the County Commission.

Local Funding Only

If for some reason, the application is not selected by NRCS (Natural Resources Conservation Service) or selected by the WV State Authority for funding, the MCFPB may decide whether to purchase the easement with local funds depending on the availability of funds.

The decision is at the discretion of the board and depends on the scoring of the application. To be qualified for local funding, the application must score at least 275 points out of the total 615 points using the local ranking score sheet.

**MORGAN COUNTY
FARMLAND PROTECTION
RANKING FACTORS**

Has the application been submitted for federal funding with NRCS? (circle one)

Yes No

If yes, when? _____ If no, why? _____

Has the application been submitted for state funding with the WV State Authority?

(circle one) Yes No If yes, when? _____ If no, why?

Does the Morgan County Farmland Protection Board have enough funds to purchase the easement locally without the contribution of federal funds? (circle one) Yes

No

CONDITION OF FARMLAND

Soil productivity factor based on local productivity index developed by NRCS	
Agricultural value group 1 - 2	150
Agricultural value group 3 - 5	100
Agricultural value group 6 - 8	50
Agricultural value group 9 - 10	25

Size of parcel	
201 acres or Greater	100
Between 151 acres 200 acres	75
Between 76 acres and 150 acres	50
Between 51 acres and 75 acres	25
50 acres or Less	0

Percent of parcel in active agriculture	
91 percent or Greater	100
Between 76 percent and 90 percent	75
Between 51 percent and 75 percent	50
50 percent or Less	25

Stewardship of land and resources	
Resource inventory indicates all resources protected and documented in an EPCD approved conservation plan	30
Resource inventory indicates resources that are at a moderate level of risk are scheduled for improvement under an EPCD approved plan	20
Resource inventory indicates resources that are at a high level of risk are scheduled for improvement under an EPCD approved plan	10
Resource inventory indicates resources that are at a moderate to high level of risk are behind schedule in EPCD approved plan	0

SECURED DEBT AND EASEMENT VALUE

Existence and amount of secured debt or mortgage	
No secured debt or mortgage	20
Between 1% and 25% of easement value	15
Between 26% and 50% of easement value	10
Between 51% and 75% of easement value	5
Between 76% and 100% of easement value	0

Worth of easement offer (Relationship of accepted price to fair market value)	
Between 1% and 25% of market value	75
Between 26% and 50% of market value	50
Between 51% and 75% of market value	25
Between 76% and 100% of market value	0

Easement Offer as Donation	
Entire parcel- (no points needed)	-----
Between 76% and 100% of market value	100
Between 51% and 75% of market value	75
Between 26% and 50% of market value	50
Between 10% and 25% of market value	25
Less than 10%	0

UNIQUE, NATURAL FEATURES

Property has natural resources that will be conserved and improved	
Property includes frontage on a blue line stream	25
Property contains a spring	20
Property contains a mature forest	15
Property contains a pond (minimum size of ½ acre)	15
Property has significant ground water recharge potential	10
Property is in the view shed of an important area:	
Good - 20 Fair - 10 Minimum - 5	

HISTORIC, CULTURAL, ARCHEOLOGICAL, RECREATIONAL, AND SCENIC FACTORS

Property is associated with an important historic place, event, person, or activity	
Property is on the National Register of Historic Places (Documentation provided)	15
Property is of national, state, or local significance (Board Discretion)	10
Property contains an archaeological site	10
Property is adjacent to one of the above	5
Property has a potential to contain an important archaeological site	5

MAXIMUM SCORE POSSIBLE	615
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TOTAL SCORE OF APPLICATION	
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PERCENTAGE OF MAXIMUM SCORE	
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Note: Total score must be at least 275 to be considered for local funding

Easements: Special/Targeted Grants

In the event private, local, state or Federal monies become available to purchase an easement with certain stipulations, the Farmland Protection Ranking Criteria may be waived by the MCFPB.

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 all other rights over the property. Under the Morgan 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 Morgan County Farmland Protection Program also utilizes this method of protection. The possession of the property, maintenance, right of access, and the right to sell 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 MCFPB 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 MCFPB 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 MCFPB is a quasi-governmental board established by the Morgan County Commission. State law mandates the background of appointees that must serve on the board, and the Morgan County Commission appoints the candidates. All appointees must live in Morgan County. A majority of the voting members of the board must be active farmers in Morgan County.

The Deed of Conservation Easement is held and administered locally, here in Morgan County. In addition, with the approval of the MCFPB, 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.

Duration of the Easement

A conservation easement must be perpetual in order to qualify for potential Federal income tax and estate tax benefits. The Morgan County Farmland Protection Program will only consider offers of perpetual conservation easements. Under a perpetual easement, even through 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 WV 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 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.

Restrictions Under the Easement

The Voluntary Farmland Protection Act passed by the State of West Virginia in 2000 establishes certain restrictions and prohibitions on 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 nonfarm purpose.

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.

The MCFPB has incorporated these broad prohibitions into its program, and has enacted additional guidelines on the extent of residential development that will be allowable. (See Easement Purchases: Rules and Guidelines and Easement Donations: Rules and Guidelines.) Through the Deed of Conservation Easement, the Morgan County Farmland Protection Program also ensures that the property is protected from obvious destructive activities such as dumping, polluting, mining, etc. (See Appendix: Deed of Conservation Easement.)

In addition, the MCFPB 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.

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 Morgan 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 (WV Code 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, or the asking price of the easement whichever is lower.

Offering Price

The offering price is the amount the landowner is asking to be reimbursed for the sale of the conservation easement to the MCFPB. 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 Morgan 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 scores 40 points under the Morgan 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 sale of an easement, the MCFPB 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 Morgan County Farmland Protection Board only when such an appraisal would affect the outcome of the comparison of various properties under the Morgan County Farmland Protection Ranking Criteria; when a probable acceptance into the Morgan 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 certified general appraiser for consideration in the ranking process. However, 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 MCFPB 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 MCFPB 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 MCFPB 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 Morgan County Farmland Protection 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 shall be the responsibility of the landowner if an offer is made and then rescinded. 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 resubmitted by the landowner for consideration in any subsequent year, but a new application must be made.

The MCFPB 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 provided that such counter offer may not exceed the definition of Maximum value found at WV Code 8-24-78. 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." *

The MCFPB will accept easements on such properties only if:

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 party owner and whether they are still in existence
 - >The probable extent of such minerals and the resultant financial attractiveness

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

CONSERVATION EASEMENTS - DONATIONS

A. Intent

In order to preserve agricultural land within Morgan County, it is the intent of the MCFPB and Morgan County Commissioners to accept voluntary donations or bequests of conservation easements as easements in gross on a perpetual basis. Such grants or easement constituting restrictions on the use or land are designed to preserve and protect the agricultural and open space character of the land. Acceptance of conservation easements will be determined by the MCFPB and Commissioners through minimum eligibility criteria.

The donation of a perpetual conservation easement on qualified land may result in federal income tax benefits and other tax benefits to the grantors which will vary according to the nature and value of the property and the circumstances of the landowner(s).

B. Description

A conservation easement is a legal document which is filed in the land records with the property deed, restricting the farm property to agricultural and directly associated uses. As an easement in gross, the restrictions are binding upon the owner and future owners. The Conservation easement carries with the land.

Morgan County will accept only donations of perpetual conservation easements. Donated conservation easements held by Morgan County in perpetuity and the County is responsible for enforcing the deed restrictions contained in the conservation easement.

C. Minimum Eligibility Criteria

The MCFPB will consider each offer of a donation on a case-by-case basis on its individual merits considering such factors as the property's relation to adopted plans, surrounding land uses and development needs and potential. At minimum, farm properties must be:

- a. In agricultural and open space use and
- b. Primarily consisting of productive agricultural soils (U.S.D.A. Soil Classifications I, II, and III).

D. Procedures For Acceptance

The following procedures are necessary prior to recording a donated conservation easement:

- a. The MCFPB accepts the completed application & all necessary documents according to the application checklist.
- b. The MCFPB ranks and determines eligibility of the property.
- c. The MCFPB works with the landowner to develop an easement document.

The easement value shall be submitted by the landowner to determine the value for federal income tax deductibility. Under special circumstances, such as location and prime quality of the land, the MCFPB with approval of the County Commissioners, may pay the costs of appraisals, on a case-by-case basis. The landowner shall reimburse the MCFPB for the cost of the appraisal, if the donation is not completed within one year.

- d. The MCFPB makes a recommendation to the County Commissioners.
- e. The County Commissioners accept the conservation easement.
- f. Recordation of the conservation easement in the Office of the Recorder of deeds.
- g. MCFPB assumes responsibility for on-going monitoring and conservation easement enforcement.

A donation application form must be submitted to the MCFPB in order to be considered. The MCFPB, 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 MCFPB 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 MCFPB shall be the responsibility of the landowner making the donation offer including stewardship funds for the perpetual monitoring the property. Reimbursement policies will be established on a yearly basis no later than June 30 for the following fiscal year by the MCFPB after consideration of the funds available to it. Donation properties shall be ranked for potential reimbursement according to the "Farmland Protection Ranking Criteria".

E. Sample Conservation Easement Document For A Donation

A sample perpetual easement document is available upon request.

III. Administrative

Closing

Once the easement purchase or donation has been negotiated with the landowner(s) and agreed to through formal action of the MCFPB, several steps remain to be completed. All purchases and donations must be approved by the Morgan 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 MCFPB'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.

IV. Outreach and Funding

Outreach

The WV Voluntary Farmland Protection Act at WV Code 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 MCFPB 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 Morgan 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 Morgan Messenger, The Journal, Buyer's Guide, etc.).
5. The development of a MCFPB Internet web page with links from the Morgan County Commission Web page and other associated farm agency web pages.

6. The development of handouts and flyers for placement at libraries, farm related events, mass mailing, etc.

Funding

The MCFPB has established a fund to carry out the purposes of this Farmland Protection Program. The fund is called the Morgan County Farmland Protection Fund and is authorized to accept money or property from general or special fund appropriations from county, state or Federal sources; a distribution from the WV Agricultural Land Protection Authority as detailed below; private or governmental grants; private contributions, fundraising or gifts; earnings from investments, interest, dividends, distributions or other reputable sources.

The WV Voluntary Farmland Protection Act authorizes the MCFPB 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 MCFPB 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 MCFPB.

Funding for the actual compensation for the placement of conservation easements must be secured. Federal Funding opportunities may exist from time to time, however, many of these Federal grant opportunities require some degree of state or local match. To that end, the MCFPB, will evaluate the feasibility of obtaining such local or state matching funds from several sources. Examples of those sources include:

1. Governor's Contingency Fund.
2. Legislative Digest Grants.
3. Private foundation gifts or grants.
4. Any future county impact fee dedicated to farmland protection.
5. Any future county transfer tax fee 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 MCFPB's in applying for and obtaining all state and federal funding available consistent with the purposes of the farmland protection program.

This funding, similar to the county farmland protection fund, is authorized by WV Code 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; money appropriated by the Legislature. In addition, the Authority is authorized to seek and apply for all available funds from Federal, state and private sources.

Morgan County Farmland Protection Board

Application Checklist

- _____ Completed Application
- _____ Copy of Deed
- _____ Property plat
- _____ Soil map
- _____ Tax map
- _____ Mortgage Subordination Agreement and Limited Lien Waiver
- _____ Soil Conservation Plan (available from the USDA Farm Service Agency)
- _____ Aerial photograph showing the entire property, proposed easement Area and a legend of land use (available from the USDA Farm Service Agency)

*** These documents must be attached with the completed application to be considered.***

*** Additional information may be required. ***

I, _____ understand that all the items on the checklist must be submitted before the application will be considered.

Date: _____

Steps for Consideration for acceptance of an application to the Morgan County Farmland Protection Board

1. Application will be submitted to the NRCS for federal funding.
2. If denied by NRCS, application will be submitted to the WV State Authority for state funding.
3. If denied by WV State Authority, application will be submitted to the Morgan County Farmland Protection board for possible local funding **only if application scored 275 points or higher on local ranking form**
4. If denied by Morgan County Farmland Protection Board for local funding, application can possibly be considered for donation only or recommended to contact the Land Trust Authority for possible consideration.

*** If the applicant should decide to pull their application, once the board has obtained expenses such as survey, appraisal, baseline or legal fees, the Board will seek reimbursement from the applicant for the expenses paid by the Board.**

I, _____ have read and understand the checklist and steps for applying for the Morgan County Farmland Protection Board and I understand if I decide to pull my application for consideration once it is selected and the Morgan County Farmland Protection Board has obtained any expenses, I am responsible and will reimburse the Morgan County Farmland Protection Board for the expenses paid.

Signature

Signature

Signature

Morgan County Farmland Protection Board
77 Fairfax Street, Room 101, Berkeley Springs, WV 25411
Phone: 304-867-3134 E-Mail: gingerljohnson@gmail.com

APPLICATION FOR LOCALLY FUNDED CONSERVATION EASEMENTS

DATE: _____

NAMES OF ALL PERSONS ON THE DEED OF THE OFFERED PARCEL OF LAND

1. _____
2. _____
3. _____

DISTRICT _ _____ TAX MAP & PARCEL _____ TOTAL ACREAGE _

DEED BOOK _____ PAGE _____ DATE OF RECORD _____

MAILING ADDRESS OF APPLICANT _____

PROPERTY ADDRESS IF DIFFERENT _____

PHONE : HOME - _____ CELL _____ WORK _____

EMAIL ADDRESS : _____

PARCEL OWNERS OFFERING PRICE FOR CONSERVATION EASMENT \$ _____

Is this parcel for sale or under a sales contract? _____ Asking price _____

Public water available? _____ Public Sewer available? _____

Parcel front on a Federal, State or County road? _____ Route Name

Number of acres in crops: _____, hay _____, woodland _____

MORTGAGES

Mortgage or lien holder _____ Amount \$ _____

Will the lender agree to subordinate the loan or will the loan be paid in full at closing?

NOTE: Those persons whose signatures appear below understand that this application is for a locally funded program of the Morgan County Farmland Protection Board. (MCFPB). It will not be applied to any other programs in which the MCFPB participates. There will be no United States government agencies or West Virginia state agencies involved in the funding of any parcels covered by this program.

SIGNATURES

All owners of record on the current deed must sign, giving consent to make application to convey a conservation easement to the Morgan County Farmland Protection Board.

Name _____

Signature _____

Name _____

Signature _____

Morgan County Farmland Protection Board
77 Fairfax Street, Room 101, Berkeley Springs, WV 25411
Phone: 304-867-3134 E-Mail: gingerjohnson@gmail.com

Offer to Convey Conservation Easement

General Information

Name(s) of Owner(s): _____
(As recorded on Deed)

Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone Number Home: _____ Work: _____
Cell: _____

Email: _____

Property Information

Property Address: _____

City: _____ State: _____ Zip: _____

Deed Reference: Book _____ Page: _____
(attach copy of deed)

Tax Map Numbers _____

Is the property:

- Subject to a sales contract? (attach contract)
- Currently listed for sale? (attach details)
- Listed for sale within the last two years?
- In the estate process or inherited within the last 2 years (attach details)

Check the applicable water/sewer characteristics:

- Public water and/or sewer available at the property
- No public sewer available, moderate septic constraints

Farm Use and Acreage:

- Property is adjacent to property(s) under easement to Morgan County Farmland Protection Board (MCFPB)
- Property has a current farm-use valuation for property tax purposes
- Property has a conservation plan

Total Acres: _____ Acres Offered for Easement: _____

Crops: _____ Acres

Orchard: _____ Acres

Pasture: _____ Acres
Hay: _____ Acres
Forest- wetland: _____ Acres
Forest- Non-wetland: _____ Acres

Soils (attach map)

___ Prime: _____ Acres
___ Unique: _____ Acres
___ State Wide importance: _____ Acres
___ Locally significant: _____ Acres

Existing impervious surface area: _____ Square Feet
(any material which covers land and inhibits the percolation of storm water directly into the soil, including, but not limited to, buildings, roofs, the area covered by permanent or nonpermanent structures, macadam and pavement, gravel and stone driveways and parking areas)

Site Evaluation (check all that apply)

- ___ Property is on National Register of Historic Places
- ___ Property is of national, state or local significance
- ___ Property is adjacent to a historic property
- ___ Property is a symbol of the Eastern Panhandle
- ___ Property contains a historic structure
- ___ Property contains an archeological site
- ___ Property fronts on a major stream, creek or river
- ___ Property fronts on a minor stream, creek or river
- ___ Property contains mountainous terrain or scenic ridgelines
- ___ Property contains mature forests
- ___ Property contains a cave
- ___ Property contains limestone cliffs
- ___ Property contains a shale barren
- ___ Property is in an area of biological significance
- ___ Property contains endangered or threatened species habitat
- ___ Property contains a year-round spring
- ___ Property contains a seasonal or wet-weather spring
- ___ Property contains wetlands
- ___ Property contains a sink or sink hole
- ___ Property has significant ground water recharge potential

Valuation

Fair Market Value: \$ _____

Agricultural Value: \$ _____
___ An appraisal has been done (Date: _____)

Owner(s) offer to:

___ Donate the easement

___ Sell the easement- Offering Price: \$ _____

Mortgages

The information concerning any and all debt which may affect this property needs to be true and accurate. In the event of any withheld or falsely reported information any cost incurred by the Morgan County Farmland Protection for appraisal, baseline documentation, surveys, and legal processing will be the responsibility of the applicant.

Secured debt and/or liens:

Holder: _____ Amount \$ _____

Holder: _____ Amount \$ _____

Will the lender agree to subordinate the loan? Yes _____ No _____

Owner(s) intent for the property:

___ Owner(s) will farm the property

___ Owner(s) will lease the property

___ Owner(s) will reside on the property

___ Owner(s) will place existing residence(s) under easement

___ Owner(s) wish to retain development rights for additional residence(s)

Other: _____

Signatures

All owners of record on the current deed must sign, giving consent to make applicant to convey a conservation easement to the Morgan County Farmland Protection Board.

Name: _____

Signature: _____ Date: _____

Name: _____

Signature: _____ Date: _____

Name: _____

Signature: _____ Date: _____

The following documents must be attached:

___ Copy of Deed including legal description and property plat

___ Tax Map (available from Morgan County Clerk's Office)

___ Aerial photograph showing the entire property, the proposed easement area and a legend of land use, i.e., crops, orchard, pasture, hay, forest, etc. (available from the USDA Farm Service Agency)

___ Soil map with legend identifying acres of prime, unique, state-wide and locally significant soils (available from the USDA Natural Resources Conservation Service.

___ Mortgage Subodination Agreement

NOTE: Applications must be complete and signed to be considered. Additional information may be required.

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 Morgan 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 Morgan County, West Virginia and is identified as follows:

(Legal description of the eased property
or recordable plat.)

F. 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 Morgan 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.

G. PART II – SUBORDINATION AND LIMITED LIEN WAIVER FOR DEED OF TRUST

The Subordinating Party: (1) subordinates its interest in the Property to the Deed of Conservation Easement held by the Morgan County Farmland Protection Board; (2) acknowledges that the Property is burdened by the right of access granted to the Morgan County Farmland Protection Board and agrees that this right of access shall be superior to any rights of the Subordinating Party; (3) subordinates its financial interest in the Property to the conservation purposes outlined in the Deed of Conservation Easement; and (4) agrees that the Morgan County Farmland Protection Board or its agent may make payments in regard to the recorded Deed of Trust for such Property in order to prevent foreclosure.

This Subordination Agreement and Limited Lien Waiver is limited to the amount actually loaned by the Subordination Party to the Borrower.

This Subordination Agreement and Limited Lien Waiver (1) binds the Subordinating Party and its heirs, agents, assigns, and successors with respect to the interest that the Subordinating Party and such other persons have, or may have, in the Property or against any persons having an interest in the Property, and (2) inures in favor of the Morgan County Farmland Protection Board, its co-holders, if any, agents, successors, or assigns of any kind.

_____ (Name of Subordinating Party)

Phone Number _____

Signature

Date

Title

STATE OF WEST VIRGINIA

COUNTY OF _____, TO WIT:

The foregoing Agreement was acknowledged before me this _____
day of _____, _____, by _____, a
corporation, by _____, its _____
, for an on behalf of said corporation.

My Commission expires: _____

Notary Public

Morgan County Farmland Protection Board
77 Fairfax Street, Room 101
Berkeley Springs, WV 25411
Phone: 304-867-3134 E-Mail: gingerljohnson@gmail.com

As an applicant to the Morgan County Farmland Protection Board, I acknowledge that information provided in this application may be subject to disclosure under the public records laws of the State of West Virginia, including the Open Government Proceedings Act, WV Code 6-9A-1 et seq. and the West Virginia Freedom of Information Act, WV Code 29B-1-4 et seq.

I further acknowledge that the Morgan County Farmland Protection Board (MCFPB) will examine all applicants for funding and decide which applications will be sent to the Natural Resources Conservation Service (NRCS) a division of the United States Department of Agriculture (USDA) for ranking and consideration for federal matching funds. The MCFPB reserves the right to hold any application for local consideration only and does not guarantee that all applications will be forwarded to the NRCS for ranking.

Name (s)

Signature

Date _____

Signature

Date _____

Model Conservation Easement

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") is made this _____ day of _____, _____, by _____ and _____, (Husband and Wife/Owners) OR _____ a [type of legal entity] _____ having an address at _____

_____ ("Grantors"), the Morgan County Farmland Protection Board having its mailing address at P. O. Box 28, Berkeley Springs, WV 25411 ("Grantee"), and _____ having the same rights conveyed to the Grantee, and having its mailing address at _____ ("Co-holder"). For purposes of this agreement, references to the rights, duties and obligations of the Grantors and Grantees apply equally and in full force to any successors to the parties to this agreement.

WITNESSETH:

WHEREAS, grantors are the sole owners in fee simple of certain real property in Morgan County, West Virginia, consisting of ___ acres of land, more or less, being Tax Map Parcel # ___ and more particularly described in Exhibit A, incorporated by reference (the "Property"). The Property is also described in a deed record in the Office of the Clerk of the Morgan County Commission at ___ [deed book page number] and

WHEREAS, the property possesses agricultural, open space and natural values (collectively, "conservation values") of great importance to the Grantors, the people of Morgan County, and the people of the State of West Virginia, and all current and future generations of mankind; and

WHEREAS, in particular, _____ [describe specific conservation values] _____ ; and

WHEREAS, the specific conservation values of the Property are documented in an inventory of relevant features of the Property, dated _____, _____, on file at the offices 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 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; and

WHEREAS, Grantors, Grantee and Co-holder have the exclusive common purpose of preserving the agriculture and open space character of the Property; and

WHEREAS, Grantors further intend, as owners of the Property, to convey to Grantee and Co-holder the right to preserve and protect the conservation values of the Property in perpetuity; and

WHEREAS, the Legislature of the State of West Virginia (“Legislature”) has 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 of West Virginia; and

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; and

WHEREAS, the County Commission of Morgan County, West Virginia (“County Commission”) has declared that the agriculture community of Morgan County provides sources of agriculture 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 the urban expansion which is consuming land, topsoil and woodland of the county; and

WHEREAS, the County Commission has resolved to provide persons of Morgan County an opportunity to voluntarily protect agricultural land by creating the Morgan County Farmland Protection Board and authorizing it to create and administer the Morgan County Farmland Protection Program; and

WHEREAS, the Grantee is a public agency established to provide landowners with an opportunity to voluntarily protect agricultural land in Morgan County by the voluntary placement of conservation or preservation easements on eligible property; and

WHEREAS, the Co-holder is a non-profit corporation incorporated under the laws of the State of West Virginia and a tax-exempt public charity under Section 501(c) (3) of the Internal Revenue Code and qualified under Section 170(h) of the Internal Revenue Code to receive qualified conservation contributions, whose purpose is to preserve land for natural, historic, open space, scenic, recreational, environmental, agricultural, scientific, charitable, educational and aesthetic purposes; and

WHEREAS, Grantee affirms that this Easement represents a unique and valuable asset to the quality of life in Morgan County 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. It agrees by accepting this grant to honor the intentions of Grantors 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;

NOW, THEREFORE, in consideration of (amount of consideration, if any), the receipt of which is hereby acknowledged, the above recitals and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of West Virginia, Grantors hereby voluntarily grant, bargain, and convey to Grantee 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.

To achieve these objectives, the terms, conditions, and restrictions of this Easement are hereinafter set forth.

I. TERMS, CONDITIONS AND RESTRICTIONS

Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns (Property Owner), all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. The following terms, conditions and restrictions clarify and govern the intent of the Grantor and Grantee:

1. Use and Quiet Enjoyment. The Property Owner has the right to reside on the property and to benefit from all aspects of the quiet enjoyment of the Property. The Property Owner has the right to engage in any and all personal

recreational uses of the property, including but not limited to hiking; touring; swimming; biking; hunting and fishing; that require no development of the land.

2. Agricultural Uses of the Land. The Property Owner may engage in any and all agricultural uses of the Property.

- (a)** These 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 winery, microbrewery or grain mill; and the primary processing and storage of the agricultural production of the Property.
- (b)** Any structures contributing to the production, primary processing, direct marketing and storage of agricultural products produced principally on the Property shall be considered an agricultural use of the land.
- (c)** Structures and facilities associated with irrigation, farm pond impoundment, and soil and water conservation on the Property shall be considered an agricultural use.

3. Retail Sale of Farm Products. Businesses directly related to the retail sale of farm products that are supportive and agriculturally compatible may be established on the 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 two thousand (2,000) square feet of structures are erected to facilitate such retail sales.

4. Activities for Religious, Charitable or Education Purposes or to Foster Tourism. Activities or businesses undertaken for religious, charitable or education purposes or to foster tourism may be conducted on the Property in order to foster rural economic uses while protecting the rural character of the Property. Such activities or businesses must be compatible with and supportive of the rural character of the Property, and must remain incidental to the agricultural and open space character of the Property.

- (a)** Non-agricultural commercial and industrial structures are prohibited.
- (b)** Accommodation of tourists and visitors shall take place within permitted residential structures and appurtenances, and/or agricultural structures.
- (c)** Accommodation of overnight guests shall take place within permitted residential structures.
- (d)** Any 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 shall be prohibited.

- (e) 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 whether or not considered to foster tourism shall be prohibited.

5. **Home-based Businesses.** Any home-based business that does not require a Division _____ of Environmental Protection permit to operate may be conducted on the Property, except that:

- (a) The occupation or business use must be conducted entirely within the single residential dwelling or appurtenances allowable under *Terms, Conditions and Restrictions—Residential Dwellings*.
- (b) The use of the dwelling for the home occupation shall be clearly incidental and subordinate to the use of the dwelling for residential purposes.
- (c) Notwithstanding the above, any secondary agricultural activity, including but not limited to farm mechanics, blacksmithing, riding instructions or related activities, shall be considered an agricultural activity under *Terms, Conditions and Restrictions—Agricultural Uses of the Land*.

6. **Residential Dwellings.** The Grantors and Grantee acknowledge the existence of a _____ residential dwelling currently existing on the property, as more fully described in Exhibit A.

- (a) Each existing single residential dwelling and Retained Development Right shall be contained in a building envelope no greater than two (2) acres per each dwelling or Retained Development Right.
- (b) The Property Owner has the right to maintain, repair, enlarge or replace such single residential dwellings as they so desire, except that single residential dwelling shall not exceed 12,000 square feet.
- (c) The Property Owner has the right to construct appurtenances such as garages, sheds and recreational facilities within the two-acre building envelope, except that such structures shall be subject to the impervious surface restrictions under *Terms, Conditions and Restrictions—Maximum Impervious Surface Coverage*.
- (d) Notwithstanding the above, each single residential dwelling may house one or more families or occupants.

- (e) Development rights which have been extinguished through this Easement shall not be transferred to any other properties pursuant to a transfer of development rights program.

7. **Subdivision.** It is the intention of the Grantors to protect the open space values of the Property. Accordingly, subdivision of land shall not be permitted

except for each single residential dwelling, existing at the time of sale of the easement. The subdivision herein referenced is for exclusion of the two acre tracts per each single residential dwelling on the easement property at the time of the conveyance of said easement. It does not contemplate additional subdivision of such property.

- (a) The Property Owner shall obtain the written approval, which shall not be unreasonably withheld, of the Grantee prior to filing any sketch, preliminary plat or final plat for such subdivision.
- (b) Grantee may refuse such written approval if such subdivision of the Property is inconsistent with or potentially detrimental to the expressed purposes of this Easement.
- (c) All terms, conditions and restrictions under this Easement, including the impervious surface restrictions under *Terms, Conditions and Restrictions—Maximum Impervious Surface Coverage*, shall continue to apply to the Property as a whole and not independently to each subdivided portion of the Property.

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

- (a) Impervious surfaces shall be defined as any material which covers land and inhibits the percolation of storm water directly into the soil, including, but not limited to, buildings, the area covered by permanent or nonpermanent structures, macadam and pavement, gravel and stone driveways and parking areas.
- (b) The impervious surface area for single residential dwellings and structures considered as appurtenance to such dwellings, and structures associated with agricultural uses shall not exceed _____ square feet.
- (c) The total surface coverage of the Property by impervious surfaces for all driveways and parking areas shall not exceed _____ square feet.

9. Removal of Natural Resources. The commercial extraction of minerals by surface mining and the extraction and removal from the Property of topsoil, either by bulk or sod-farming practices, shall be prohibited. The commercial extraction of subsurface or deep-mined minerals shall be prohibited. With the prior written approval of the Grantee, the Property Owner may extract natural gas and oil, limestone, shale, and similar resources for private use. Such permitted use may occupy no more than one percent (1%) of the total surface acreage of the Property.

10. Commercial Forestry. The harvesting of timber is acceptable by an approved Timber Management Plan utilizing best timber management practices.

The growing of Christmas trees, orchards and nursery stock; or the removal, sale and renewal of such, is permitted.

11. Other Construction. Except for the single residential dwellings and appurtenances allowable under *Terms, Conditions and Restrictions—Residential Dwellings*, and the agricultural structures allowable under *Terms, Conditions and Restrictions—Agricultural Uses of the Land*, there shall be no constructing or placing of any buildings; manufactured homes; swimming pools or other recreational facilities; commercial lighting or signs, except for sign(s) the combined area not to exceed twenty-five (25) square feet to advertise an on-site activity or business; or any other temporary or permanent structure or facility on or above the premises.

12. Hazardous Wastes. There shall be no storage or dumping of garbage or other unsightly or offensive material, hazardous substance or toxic waste, nor any placement of underground storage tanks in, on or under the Property; there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils.

13. Utilities. The Property Owner shall not sell, lease or grant an easement covering any portion of the Property where such sale, lease or easement is for the purpose of construction and installation of underground storage tank or above-ground public utility systems, including, but not limited to, water, sewer, power, fuel, sewerage pumping stations and cellular telephone or other communication towers.

14. 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 Property which would be detrimental to water purity or which could alter natural water level and/or flow in or over the Property. Nothing in this paragraph shall prohibit the dredging of farm ponds. Water may be extracted for agricultural operations from the on-site _____ not to exceed _____ gallons per day.

15. Open Space of Planned Unit Developments (or Residential Subdivisions). The Property subject to this Easement is designated as common area in the _____ planned unit development or residential subdivision (Planned Unit Development). As required by this Easement, property consisting of _____ acres or fifty (50) percent of the Planned Unit Development must remain as open

space, designated as the Property under this Easement. For the purposes of this Easement, open

space shall be defined as property left undeveloped in order to preserve natural features or scenic qualities. Portions of the Property designated as common area and consisting of areas which are natural (meadows, fields or forested areas), agricultural areas, wetlands, streams or bodies of water, storm water management areas, and common area lawns (with or without trees). Uses of the Property requiring an extensive commitment of land resources as required by golf courses, racetracks for uses other than equestrian use, tennis clubs, pools and recreational facilities, baseball, soccer and other ball fields and similar uses shall not be allowed on the Property.

II. GENERAL PROVISIONS

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

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

3. Grantee Notification/Approval. The Grantors reserve for themselves 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 the Grantee.

4. Grantee's Remedies.

(a) **Notice of Violation; Corrective Action.** If Grantee determines that Grantors are in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action 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 Grantee

(b) Injunctive Relief. The Grantee, its 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 the Grantors to restore the Property to the condition existing at the time of this Easement in order to correct any violation(s) of this Easement. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantors agree that Grantee shall be entitled to the injunctive relief in addition to such other relief to which Grantee 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 Grantee and/or Co-Holder in enforcing the terms of this Easement against Grantors, including without limitation costs of suit and attorneys' fees, and any costs or restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in any action to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee and/or Co-Holder. Any costs incurred by Grantee and/or Co-Holder in enforcing the terms of this Easement against any third party shall be borne by Grantee and/or Co-Holder.

(d) Forbearance. Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

5. Grantee and Co-holder's Rights and Obligations. The Grantee shall have the primary responsibility for 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 the Grantee or its agent, or the Grantee may arrange to have the Co-holder fulfill these duties. Grantee will share with the Co-holder monitoring and stewardship information, including but not limited to written notices to Grantee and monitoring reports, in the event that the Co-holder is not acting to complete these duties through an arrangement with the Grantee.

Subject to the terms set forth hereinabove, in 15 (C), the Grantee is responsible for any costs incurred in enforcing the terms of the Easement, including any attorney's fees and any costs of a suit. The Grantee and Co-holder shall make every good faith effort to determine a unified course of action should a potential or actual violation of the Easement arise.

The Co-holder shall have the right to enforce the terms of the easement if the Grantee becomes unable or refuses to enforce the Easement, or if the Co-holder in its sole discretion finds that Grantee's enforcement action or consent fails to protect the conservation purposes of this Easement. In such case where the Co-holder individually enforces the terms of the Easement without the agreement or consent of the Grantee, then the Co-holder shall be individually responsible for its own costs, except that the Co-Holder may exercise its rights as set forth in 15 (C) above.

6. Acts Beyond the Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee or the Co-holder to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors 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 Grantors could not reasonably have anticipated or prevented, Grantors agree that Grantee and/or Co-Holder has the right to pursue enforcement action against the responsible parties.

7. Costs, Legal Requirements and Liabilities. Grantors, their 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.

8. Control. Nothing in this Easement shall be construed as giving rise to any right or ability of Grantee or Co-holder 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.) and the Hazardous Waste Management Act (§ 22-18-1 et seq.).

9. Taxes. Grantors 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.

10. Hold Harmless. Grantors shall hold harmless, indemnify, and defend Grantee and Co-holder 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

(a) 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;

(b) the result of a violation or alleged violation of, the enforcement of an/or any contribution action relating to any state or Federal environmental statute or regulation including, but not limited to, the Hazardous Waste Management Act (§ 22-18-1 et seq.) and statutes or regulation concerning the storage or disposal of hazardous or toxic chemicals or materials;

(c) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any Federal, state, or local law, regulation or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, water or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties and only that negligent party shall be deprived of this protection;

11. Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which the Grantor, Grantee, and Co-holder shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined in accordance with the formulas below.

This Easement constitutes a real property interest immediately vested in Grantee and the Co-holder, which, for the purpose of extinguishment, the parties stipulate to have a fair market value determined as the difference in the Property's fair market value on a before and after easement basis. An appraisal made on the Before and After Method is to be obtained from a qualified appraiser, as defined under Section 155 of the Tax Reform Act of 1984. The Grantor, Co-holder and Grantee shall select a single appraiser. If the parties are unable to agree on the selection of a single appraiser, then each party shall name one appraiser and the three appraisers thus selected shall select a fourth appraiser.

(1) The value to be paid to the Grantee:

- Reimbursements for the value of payments previously made to purchase the Easement, or amounts previously expended in order to complete the Easement acquisition process.

(2) The value to be **paid to the Grantor** is to be based upon the following formula:

- [Fair market value of the Property as encumbered by the Easement divided by Fair market value of the Property unencumbered by the Easement] **multiplied by**

- Sale price of the Property **Minus** payments to the Grantee under (1) above.

(3) The value to be **paid to the Co-holder** is to be based upon the following formula:

- [Fair market value of the Property unencumbered by the Easement minus Fair market value of the Property as encumbered by the Easement] **divided by** [Fair market value of the Property unencumbered by the Easement] **multiplied by**

- Sale price of the Property **Minus** payments to the Grantee under (1) above.

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

12. Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantors shall be entitled to compensation at not less than the fair market value of the Property determined without regard to the existence of the Easement. The Grantee and the Co-holder shall be entitled to no compensation under the exercise of eminent domain.

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 Morgan County Farmland Protection Board ceases to operate or exist, the rights of the Grantee under this Easement shall be transferred to the Co-holder. If there is no Co-holder, or the Co-holder has ceased to exist, 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 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).

Any Co-holder to the Easement may assign its rights and obligations under the Easement only with the written approval of both the Grantee and the Grantor.

The Grantee and Co-holder 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 Grantors.

14. Subsequent Transfers. Grantors agree 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 Property, including, without limitation, a leasehold interest.

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

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 Grantors _____

To Grantee Morgan County Farmland Protection Board
77 Fairfax Street Rm 101
Berkeley Springs, WV 25411

To Co-holder _____

or to such other address as either party from time to time shall designate by written notice to the other.

17. Recordation. Grantee shall record this instrument in timely fashion in the official records of Morgan County, West Virginia and may re-record it at any time as may be required to preserve its rights in this Easement.

18. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantors and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will invalidate this Easement or be inconsistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Morgan County, West Virginia.

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.

(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.

IN WITNESS WHEREOF Grantors and Grantee have set their hand:

GRANTOR:

GRANTEE:

Name

Morgan County Farmland Protection

Signature

Signature

Date

Date

GRANTOR:

CO-HOLDER:

Name

Name

Name

Name

Name

Name

STATE OF _____

COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ___ day of _____, _____ by _____.

My commission expires: _____

Notary Public

STATE OF _____

COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ___ day of

_____, _____ by _____,
Chairman on behalf of the Morgan County Farmland Protection Board.

My commission expires: _____

Notary Public

STATE OF _____

COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ___ day of
_____, _____ by _____,
President on behalf of the _____.

My commission expires: _____

Notary Public

SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement**
- B. Legal Description of Area of Retained Development Rights**
- C. Site Descriptions/Map**

Closing Checklist

Date: _____

Property: _____

**Board
Approval:** _____

Application

Copy of deed

Property plat

Soil map

Soil Conservation Plan

Tax map

Subordination agreement (if applicable)

Deed of Conservation Easement

Appraisal

Survey

Title search

Environmental assessment

Baseline documentation report

Internal Revenue Service Form 8038-G or Form 8038-GC

Internal Revenue Service Form 1099-S (if applicable)

Disclosure Statements

Approval of County Commission for purchase transactions

Approval for closing: _____

Morgan County Farmland Protection Board
77 Fairfax St Rm 101
Berkeley Springs, WV 25411

Valuation

Owner's Estimate: Fair market value _____ Per Acres

Agricultural value _____ Per Acres

Has an appraisal been completed? Yes _____ No _____

Offering Price: _____

Secured Debt/Liens Holder _____ Amount _____

Holder _____ Amount _____

Will the lender agree to subordinate the loan? Yes _____ No _____

Briefly describe the owner(s) intent for the property. Include intended uses of property, protections to be applied to various portions of property, residential sites and reserved residential sites, etc.

Name _____ Signature _____ Date _____

Name _____ Signature _____ Date _____

Name _____ Signature _____ Date _____

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 Morgan 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 Morgan County, West Virginia and is identified as follows:

(Legal description of the eased property
or recordable plat.)

PART I – GENERAL TERMS

- D. The Subordinating Party is the holder of a note secured by a Deed of Trust recorded in the Land Records of Morgan 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.**
- E. 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.**
- F. 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.

PART II – SUBORDINATION AND LIMITED LIEN WAIVER FOR DEED OF TRUST

The Subordinating Party: (1) subordinates its interest in the Property to the Deed of Conservation Easement held by the Morgan County Farmland Protection Board; (2) acknowledges that the Property is burdened by the right of access granted to the Morgan County Farmland Protection Board and agrees that this right of access shall be superior to any rights of the Subordinating Party; (3) subordinates its financial interest in the Property to the conservation purposes outlined in the Deed of Conservation Easement; and (4) agrees that the Morgan County Farmland Protection Board or its agent may make payments in regard to the recorded Deed of Trust for such Property in order to prevent foreclosure.

This Subordination Agreement and Limited Lien Waiver is limited to the amount actually loaned by the Subordination Party to the Borrower.

This Subordination Agreement and Limited Lien Waiver (1) binds the Subordinating Party and its heirs, agents, assigns, and successors with respect to the interest that the Subordinating Party and such other persons have, or may have, in the Property or against any persons having an interest in the Property, and (2) inures in favor of the Berkeley County Farmland Protection Board, its co-holders, if any, agents, successors, or assigns of any kind.

_____	_____	_____
(Name of Subordinating Party) Signature	Date	Title

STATE OF WEST VIRGINIA
COUNTY OF MORGAN, TO WIT:

The foregoing Agreement was acknowledged before me this _____
day of _____, _____, by _____, a
corporation, by _____, its _____
, for an on behalf of said corporation.

My Commission expires: _____

Notary Public

Morgan County Farmland Protection
Policies and Procedures
Policy: Amendments to Farmland Protection Program
Current as of: May 21, 2015

Applications will not be accepted from Sitting Board Members

- Purchase offers will not be accepted by sitting Board members or County Commissioners, Board Staff or contractors, or their immediate families (related parties) for a period of **90 days** after the member vacates his/her Board seat, or staff leaves employment. Immediate family members includes parents, children, and siblings. Applications previously submitted (as of May 21, 2015) by related parties shall be grandfathered in and exempted from this policy. Donations are acceptable at any time from related parties.

The member can only return back on the board once the easement has closed.

Amendment to Farmland Protection Program



Bradley J. Close, Commission President



Robert L. Ford, Commissioner



Joel R. Tuttle, Commissioner


Morgan County Farmland Protection
Policies and Procedures
Policy: **Farmland Protection Ranking Factors**
Current as of: June 16, 2016

Ranking Factors

- The Morgan County Farmland Protection Board have met and performed a workshop to revise the scoring/ranking factors to meet the minimum eligibility criteria, according to the Morgan County Farmland Protection Board numerical ranking system. The board revised the ranking system to score applications for the purchase of easements using NRCS funds and/or purchasing easements locally, without using NRCS funds if funds are available and the application meets the board requirements.

Amendment to Farmland Protection Program

Approved, this 16th day of June, 2016


Bradley J. Close, Commission President


Robert L. Ford, Commissioner


Joel R. Tuttle, Commissioner

