

Pendleton County Farmland Protection Program

Voluntary Land Use Options for Our Future



Approved by the Pendleton County Commission

May 22, 2007

Acknowledgements

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Cover Photo
A Pendleton County Farm by Dwight Neff

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I. Introduction

Welcome and thank you for your interest in the Pendleton County Farmland Protection Program. This document explains the process by which landowners in Pendleton County can participate in the Voluntary Farmland Protection

Program. As authorized by West Virginia legislation and a resolution from the County Commission, the Pendleton County Farmland Protection Board has designed a program that is specific to the landscape of Pendleton County.

Through this program, landowners of Pendleton County have an opportunity to donate or receive financial compensation for permanent conservation easements.

A conservation easement is a legally-binding, permanent, and enforceable contract between the property owner and the Pendleton County Farmland Protection Board or other co-holder(s) that places permanent development restrictions on land-use. The property owner(s) continue to have clear ownership title to the property, but agree to the terms of the conservation easement which are customized for each property. Once recorded, the Deed of Conservation Easement "runs with the land" and transfers from owner to owner in perpetuity. Once recorded, the conservation easement cannot be reversed.

More details on conservation easements, eligibility, and how to participate are found in this document.

If you have any questions, please contact one of the Farmland Protection Board Members:

Estelle Wagner, Chairman:	358-7108
Karen Stevens, Vice Chair	567-2189
Charlotte Hoover, Treasurer:	358-3024
Traci Hickson, Secretary	358-2000 or traci@future.org
Carl Hevener	668-9113
Paul Clayton	249-5693

You can also leave a message for the Farmland Protection Board through the Pendleton County Commission office at: 358-7573.

1.1 Purpose: Ensuring that the Agricultural Landscape Continues to Benefit Pendleton County for Generations to Come

The Pendleton County Farmland Protection program provides voluntary land

use options and financial compensation to protect the county's vibrant and commercially productive agricultural landscape.

Nationwide, urban sprawl and second home development are accelerating at a pace that consumes four acres of rural lands every second. West Virginia has not escaped this trend. From 1997-2002, the state lost 719 farms and 113,536 acres of farmland.

Pendleton County is also at the crossroads of change, losing 128 farms and 9,855 acres of farmland in five years between 1997 and 2002. The trend of converting farmland and woodland to residential and commercial sites is accelerating due to the county's proximity to growing urban centers and tourist destinations.

The purpose of this program is to protect the agricultural landscape of Pendleton County and the many economic, cultural, and ecological benefits that this land provides. The program hopes to encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security of land use. It assures conservation of farmland in order to protect the agricultural economy of Pendleton County.

By giving landowners a voluntary option to protect their land through conservation easements, this program aims to:

Sustain the Farming Community

With three major valleys, Pendleton County supports over 540 family-owned farms that for over 150 years have enabled people to earn a living and maintain a rural lifestyle. Over 170,000 acres or 38.2 percent of the county is classified as farmland. According to the 2002 West Virginia Agricultural Statistics, Pendleton County ranks number one in sheep and wool production, third in chickens, fourth in all cattle, and eighth in all hay production. In 2002, the total market value of agricultural products produced in Pendleton County totaled over \$74,000,000 .

Prevent Soil Erosion

Since the 1930s, farmers and landowners of Pendleton County have partnered with government on land-use practices to protect the soil that is essential for preserving the agricultural base in the county. Mr. McFarland, the county's first agricultural extension officer, once emphasized:

“...the Livestock Program can not improve beyond the carrying capacity of the soil....Every problem is a land-use problem after all because

nothing can be better than the soil from which it grows.”

Protect Wildlife

Most farms in Pendleton County serve an important role by providing habitat that is critical to many species of wildlife. Habitat is any area that provides the basic requirements of a given species: food, water, shelter, and/or space. Viable populations of many wildlife species are maintained as a result of the habitat that is associated with farmland. Thus, it is very important that farms be protected from development which results in permanent loss of the basic wildlife requirements.

Protect Historic and Archeological Sites

Pendleton County's agricultural landscape includes many sites of historic and archeological importance. These sites span the county's early history from Native American settlements and the founding of pioneer settlers in 1748, to the county's distinction as a border state during the Civil War of the 1860s, to the Depression and CCC camps of the 1930s, to the greater than one hundred year flood of 1985. Today, oral history and documentation of these nationally and locally significant historic sites provide residents, visitors, and children with an opportunity to appreciate and learn from the county's past.

Maintain the Beauty of the County

Pendleton County has often been described as the most beautiful county in West Virginia. “Pendleton County lies almost entirely within in the Valley and Ridge physiographic province with the top of Shenandoah Mountain forming the Eastern border and the Allegheny Front forming the border to the west. The rocks capping the Allegheny Front, such as Spruce Knob, are flat-lying and are the easternmost part of the Appalachian Plateau. Containing some of the most rugged terrain in the state, the county’s elevation varies by 3,707 feet, creating a diversity of terrain and habitat. Spruce Knob is West Virginia’s highest elevation at 4,862 feet, and the valley of the South Branch of the Potomac in the Smoke Hole is the lowest at 1,155 feet.”

“The majority of mountains and valleys trend to the northeast-southwest....The major rivers, which cut through these valleys, flow to the north and ultimately drain into the Chesapeake Bay. The South Branch of the Potomac flows through the center of the county and is joined from the west by the North Fork of the South Branch of the Potomac and from the east by the South Fork of the South Branch of the Potomac.”

Spectacular geological features are formed by the resistant Tuscarora sandstone, which “forms a string of vertical walls of rock that stretch along the North Fork valley, most notably Seneca Rocks, Champe Rocks and Nelson Rocks. These outcrops are highly regarded as some of the most challenging technical rock climbing in the eastern United States. The South Branch cuts deeply through the Smoke Hole region revealing anticlines and thrust faults in the canyon walls. This scenic area is a favorite of kayakers, campers, and fishermen.”

Pendleton County’s scenic ridgelines, rock outcroppings, mountain streams, diverse forests, and agricultural landscape enhance the quality of life for all.

1.2 Authorizing Legislation

Conservation and Preservation Easements Act, 1995 (Chapter 12, Article 12) allows perpetual conservation and preservation easements to be created in West Virginia. Through this statute, the State 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.

The *Voluntary Farmland Protection Act* of 2000 “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 authorizes the creation of county farmland protection board(s) and program(s) with the “intent to provide persons and other entities an opportunity to voluntarily protect agricultural land and woodland in order to:

- 1) Assist in sustaining the farming community;
- 2) Provide sources of agricultural products within the state for citizens of the state;
- 3) Control the urban expansion which is consuming the agricultural land, topsoil, and woodland of the state;
- 4) Curb the spread of urban blight and deterioration;
- 5) Protect agricultural land and woodland as open-space land;
- 6) Enhance tourism; and
- 7) Protect worthwhile community values, institutions, and landscapes

which are inseparably associated with traditional farming."

Pendleton County Commission Resolution

On September 7, 2004, the Pendleton County Commission adopted a resolution creating the Pendleton County Farmland Protection Board. The Board, as appointed by the Commission, is authorized to create and administer the Pendleton County Farmland Protection Program with final approval by the Commission.

1.3 Farmland Protection Board Composition and Responsibilities

The composition and responsibilities of the Farmland Protection Board is prescribed by the Voluntary Farmland Protection Act at WV Code 8A-12-4(2004).

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

The specific composition of the Board is as follows:

1. One farmer who is a resident and a member of the Pendleton County Farm Bureau;
2. One farmer who is a member of the Potomac Valley Conservation District;
3. One farmer who is a county resident;
4. Two county residents who are not members of the foregoing organizations;
5. One Pendleton County Commissioner; and
6. Executive Director of the Pendleton County Economic & Community Development Authority

A copy of the organizational by-laws is included in Appendix XIV. Organizational Bylaws.

II. PROGRAM

This program establishes uniform standards and guidelines for the eligibility of properties. Ranking criteria are used to prioritize fund allocation to purchase conservation easements and pay associated costs for purchased and donated

easements.

2.1 What Land is Eligible ?

Property must meet the following minimum criteria in order to be considered for the purchase or donation of conservation easements:

1. The property shall be located in Pendleton County
2. Qualifying property shall be land that is used or usable for agriculture, horticulture or grazing. Also eligible are:
 - wetlands that are part of the qualifying property
 - woodlands that are a) part of or appurtenant to the qualifying property; 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
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. The Pendleton County Farmland Protection Board shall make such determination after consideration of all the facts and circumstances.
6. In cases where a third party owns the subsurface mineral rights, the Pendleton County Farmland Protection Board will accept easements only if:
 - The third party mineral owner agrees to prohibit any surface mining, and
 - The third party oil and gas owner agrees to construct wellheads as determined by the Board; or
 - 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, and the probable extent of such minerals and the resultant financial attractiveness.

No minimum property size has been established, but priority for the purchase of conservation easements and the allocation of costs associated with donated easements will be based on the Farmland Protection Ranking Criteria (see Appendix II for Ranking Criteria).

2.2 What is a Conservation Easement ?

A conservation easement is the mechanism by which West Virginia law and this

program enable the voluntary protection of farmland. The conservation easement is a legally-binding, permanent, and enforceable contract between the property owner and the easement holder, in this case, the Pendleton County Farmland Protection Board, and/or other co-holder(s).

The property owner(s) continue to have clear ownership title to the property, but are legally bound to the terms set forth in the conservation easement. In the case of Conservation Easements for Farmland Protection, it is the open, undeveloped, farmable character of the land that is to be protected, but each easement is customized to be specific to each parcel of land.

The conservation easement is recorded as a Deed of Conservation Easement in the Office of the County Clerk of Pendleton County. The Deed of Conservation Easement “runs with the land” and transfers from owner to owner in perpetuity.

The easement holder, in this case the Pendleton County Farmland Protection Board, has the affirmative obligation and legal authority to prevent or reverse any development, use, or man-made changes to the land that are inconsistent with the Deed of Conservation Easement. Once recorded, the Deed of Conservation Easement cannot be reversed.

The Easement Holder

The Pendleton County Farmland Protection Board is the grantee or easement holder under the Deed of Conservation Easement, and agrees to protect the property according to its mandate and the desires of the property owner(s) as spelled out in the easement.

The Deed of Conservation Easement is upheld by the Pendleton County Farmland Protection Board. With the approval of the Pendleton County Farmland Protection Board, a landowner may designate another qualified co-holder. Typically, private land trusts may be utilized to co-hold easements with the Farmland Protection Board as desired by the landowner. The landowner may also grant the easement to a private land trust as the grantee and apply to have the Pendleton County Farmland Protection Board act as a co-holder.

Deed of Conservation Easement

Through the Deed of Conservation Easement, the landowner and the Pendleton County Farmland Protection Board outline the terms, conditions, and restrictions on the property to protect both the grantor and grantee, and to clarify the understanding of each party. Certain portions of this contract are negotiable and subject to change, while others are mandated by either Federal income tax laws, state laws, or land trust industry practice. The Deed of Conservation Easement is developed and legalized with the assistance of an informed attorney. A sample Deed of Conservation Easement is included in Appendix XI and XII.

Restrictions of a Conservation Easement

The Voluntary Farmland Protection Act establishes certain restrictions and

prohibitions regarding easement property accepted into any county program, but also allows the county programs flexibility to establish their own specific criteria within this framework. The restrictions set forth by the Act are as follows:

- The landowner may not develop the land placed under easement for any commercial, industrial, residential, or other non-farm purposes. Current residences at the time of the easement purchase are allowable. Future or anticipated residence sites may also be identified and placed outside of the conservation easement.
- The landowner must agree not to further subdivide the property aside from the agreed terms in the Deed of Conservation Easement.
- Woodland included in the easement must not be used primarily in commercial forestry or the growing of timber for commercial purposes or any other use inconsistent with farm use. In Pendleton County, farm woodlots are often used as a place to hunt, harvest firewood or fence stakes and for personal enjoyment. Since sustainable timber harvest is consistent with farm use in our county, a conservation easement in Pendleton County can be written to allow such harvest or to exclude it depending on the preference of the landholder. If sustainable harvests are to be permitted, a forest management plan must be in place and approved by the Pendleton County Farmland Protection Board prior to any timber harvesting. Timber harvests must be monitored by a state certified forester and the monitoring will be paid by the landholder. The growing of Christmas trees, orchards and nursery stock; or the removal, sale, and renewal of such, shall not be deemed to be commercial forestry. In addition, ornamental plants and woodland products grown for human consumption are not considered commercial forestry. Uses of timber products on-site are allowable as permitted under the Deed of Conservation Easement.
- Under state law, home-based businesses not requiring a West Virginia Division of Environmental Protection Permit to operate are allowable.

Agricultural activities and agricultural construction are allowed on any portion of the property. In addition, the Pendleton County Farmland Protection Board encourages each landowner participating in the program to protect any other unique, historic, scenic, or natural resource value on the property through specified provisions in the Deed of Conservation Easement. Other proposed uses shall be considered on a case-by-case basis by the Farmland Protection Board before the purchase of an easement.

The Duration of the Easement

Once recorded, the Deed of Conservation Easement is perpetual and cannot be reversed. Under a perpetual easement, even though a landowner may sell or bequeath the land, subsequent owners will be bound by the terms of the easement in perpetuity.

The Pendleton County Farmland Protection Board has reviewed and declined the option of adding a five-year opt-out provision to this program. This option was declined because it may restrict the program's limited available funds to

properties that may opt out of the program within five years.

The Monetary Value of the Easement

A landowner may make an offer to donate or sell a conservation easement on a qualifying property. Both donations and purchases of conservation easements provide financial incentives for property owners. A landowner may also choose to donate a percentage of the value of their conservation easement.

In the case of donations, the donated value of the conservation easement may provide the landowner with Federal income tax and other tax benefits, which will vary according to the nature and value of the property and circumstances of the landowner(s). The Board recommends that applicants consult their personal tax advisors.

In the case of the purchase of easements, the landowner(s) will indicate the asking price on their application form. Offers may be made by the landowner from one dollar up to the maximum value of the conservation easement as defined under the Voluntary Farmland Protection Act.

Maximum Value of the Conservation Easement

The maximum easement value is the difference between the *fair market value* of the land and *the agricultural value* of the land. The maximum easement value is determined by a licensed appraiser.

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 by 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.

Offering Price

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

See Appendix VI for an example of how a conservation easement is valued.

Payment of Funds

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.

Determination of Values

At the time a landowner offers to sell an easement, the Pendleton County Farmland Protection Board shall make an initial estimate of the maximum easement value for the purpose of allowing the property to move forward in the ranking process.

The Pendleton County Farmland Protection Board highly recommends that a landowner agree to an appraisal prior to the completion of the Deed of Conservation Easement. And, in order for the landowner to take advantage of potential Federal income tax and estate tax benefits, an appraisal must be completed.

The Pendleton County Farmland Protection Board will contract with a certified appraiser to complete property appraisals. 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.

In the unlikely event that the landowner has a previous or a second appraisal and the 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 Pendleton County Farmland Protection Board may request that the value determination be submitted to arbitration.

2.3 Offering to Sell or Donate an Easement

An application form for either a sale or donation of a conservation easement must be submitted with all required documents to the Pendleton County Farmland Protection Board. (See all Application Documents in the Appendix)

A landowner may make an offer to donate or sell an easement and rescind that offer up until the time of the closing of the Deed of Conservation Easement. If an offer is made and then rescinded any fees and/or costs of closing shall be the responsibility of the landowner. 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, such as those lands with prime soils qualifying for NRCS Federal government matching funds, may apply. In the event that the offer is not accepted due to lack of available funding, the landowner may submit a new application in any subsequent year.

The Pendleton County Farmland Protection Board may make a counter-offer to the landowner in order to secure the easement or easements in the event that adequate funds are not available to purchase all easements. Such counter-offers shall be made in writing to the applicant. The applicant shall have 60

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 60 days shall be deemed as a rejection of the counter-offer.

2.4 Process for the Donation of Easements

The Pendleton County Farmland Protection Board encourages landowners interested in this program to consider the donation of conservation easements.

Decisions to accept donated easements will be made on a case by case basis. Given the management resources and associated costs that it takes to accept donated conservation easements, the Pendleton County Farmland Protection Board will prioritize offers with their associated costs to donate easements based on the Farmland Protection Ranking Criteria. (See Appendix II)

As a general rule and as per the ranking criteria, donations of smaller parcels will be given less priority unless they exhibit high historic, archeological, or recreational value, or unless other special circumstances prevail.

Steps for Donating a Conservation Easement

1. The Landowner submits a completed application form for donated easements.
2. The Pendleton County Farmland Protection Board ranks and prioritizes easement for acceptance into the program. The Pendleton County Farmland Protection Board, in its sole discretion, may accept or reject an offer for donation after considering all facts and circumstances. Such circumstances include, but are not limited to, possible contamination on subject property, surrounding land uses, conservation values of the property and the scope and difficulty of protection and monitoring.

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

3. The Pendleton County Farmland Protection Board works with the landowner to develop the Deed of Conservation Easement, which will require a property appraisal, property surveys, and baseline documentation.

The Pendleton County Farmland Protection Board may allocate funds to offset any or all costs associated with the conservation easement including, but not limited to, legal fees, closing costs, survey fees and appraisal costs. Costs not funded by the Pendleton County Farmland Protection Board shall be the responsibility of the landowner making the donation offer. Any costs to be the responsibility of the landowner(s) will be clearly indicated. Donated properties shall be ranked for potential reimbursements according to the Farmland

Protection Ranking Criteria.

4. The Pendleton County Farmland Protection Board submits the conservation easement to the County Commission for acceptance.
5. The County Commission accepts the conservation easement.
6. The Deed of Conservation Easement is recorded in the Office of the County Clerk.
7. The Pendleton County Farmland Protection Board and, if applicable, other co-holders assume responsibility for ongoing monitoring and conservation easement enforcement. Landowners may be asked to allocate funds for the long-term monitoring and enforcement of conservation easements on their properties.

A sample application form for a conservation easement donation, the Farmland Protection Ranking criteria, and a sample of a perpetual Deed of Conservation Easement are available in the appendix.

2.5 Process for the Purchase of Easements

The Pendleton County Farmland Protection Board may purchase conservation easements. Given the management resources and costs that it takes to purchase a conservation easement, the Pendleton County Farmland Protection Board will prioritize offers based on the Farmland Protection Ranking Criteria. (See Appendix II)

The steps for offering a conservation easement for purchase are as follows:

1. Funds for purchasing conservation easements must be available and allocated
2. A sale of conservation easement application form must be submitted to the Pendleton County Farmland Protection Board in order to be considered. The Pendleton County Farmland Protection Board, in its sole discretion, may accept or reject an offer for sale after considering all facts and circumstances. Such circumstances include, but are not limited to, possible contamination on subject property, surrounding land uses, conservation values of the property and the scope and difficulty of protection and monitoring.

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

3. The Pendleton County Farmland Protection Board ranks and prioritizes easements for purchase. The Farmland Protection Ranking Criteria (see Appendix II) are used to evaluate the characteristics of properties offered into the program. In the event that the offering price of conservation easements

offered into the program in any given year exceeds the available funds in any given year, priority for purchase shall be determined by the relative ranking of the property.

The Farmland Protection Ranking Criteria consist of factors and criteria descriptive of the characteristics of the property. Criteria are assigned numerical points signifying their importance relative to all other criteria. Once the score for each property has been calculated, all properties shall be ranked. Properties ranked highest will be prioritized for purchase.

In the event that matching funds of 50 percent or more are available through special or targeted grants, the Pendleton County Farmland Protection Board reserves the rights to re-prioritize properties for purchase when necessary to secure matching funds.

4. The Pendleton County Farmland Protection Board works with the landowner(s) to develop the Deed of Conservation Easement, which will require a property appraisal, property surveys, and baseline documentation. The Pendleton County Farmland Protection Board may allocate funds to offset any or all costs associated with the conservation easement including, but not limited to, legal fees, closing costs, survey fees and appraisal costs. Costs not funded by the Pendleton County Farmland Protection Board shall be the responsibility of the landowner. Any costs to be the responsibility of the landowner(s) will be clearly indicated.

5. The Pendleton County Farmland Protection Board submits the conservation easement to the County Commission for acceptance.

6. The County Commission accepts the conservation easement.

7. The Deed of Conservation Easement is recorded in the Office of the County Clerk.

8. The Pendleton County Farmland Protection Board and, if applicable, other co-holders assume responsibility for ongoing monitoring and conservation easement enforcement. Landowners may be asked to allocate funds for the long-term monitoring and enforcement of conservation easements on their properties.

A sample application form for the sale of a conservation easement and a sample of a perpetual Deed of Conservation Easement are available in the appendix.

2.6 Other Opportunities

As a 501(c)3 non-profit organization, the Pendleton County Farmland Protection Board can also accept the donation of farmland itself. Acceptance of such a donation will be based on the feasibility of preservation and the monitoring of a conservation easement. If such a donation is accepted, the land would be resold with a conservation easement attached. The funds from the sale of the property

would be deposited into the farmland protection program to support the purchase of more easements.

III. Administrative Tasks and Guidelines

Process Flowchart

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

Baseline Documentation

Baseline documentation records the condition and features of the property that are to be protected by Deed of Conservation Easement. The baseline documentation must be completed prior to the actual donation or sale of the easement. Baseline documentation is necessary for the long-term monitoring and enforcement of the Deed of Conservation Easement and is required under IRS regulations for donated easements claimed for charitable deduction.

Baseline documentation may include:

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

See Appendix VIII Baseline Documentation Form and Checklist for the form that will be completed by the Pendleton County Farmland Protection Program.

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

Any retained development rights, selective timber cutting, subsurface mineral rights, parcels left outside the easement for residences, and etc., must be clearly documented in the baseline survey.

Closing

Once the easement purchase or donation has been negotiated with the landowner(s) and agreed to through formal action of the Pendleton County Farmland Protection Board, several steps remain to be completed.

The Pendleton County Commission must approve all purchases and donations. Important paperwork and procedures as indicated by the closing checklist (See Appendix X- Closing Checklist) must be completed. A date and time shall be

agreed upon with the Pendleton County Farmland Protection Board's closing attorney. The landowner(s) may have an attorney present for the closing, but this is not a requirement. All landowners will need to be present at the closing to sign the Deed of Conservation Easement and the closing documents.

Inspection and Enforcement

Through the Deed of Conservation Easement, the Pendleton County Farmland Protection Board and, if applicable, other co-holders will assume the legal responsibility to monitor and enforce the easement.

The Pendleton County Farmland Protection Board will conduct annual inspections and more frequent monitoring if necessary. The current and all subsequent property owners shall be required by the Deed of Conservation Easement to provide annual access to the property for monitoring purposes.

Easement violations typically occur with property transfers to new owners. Subsequent owners are bound by the terms of the Deed of Conservation Easement in perpetuity.

The Pendleton County Farmland Protection Board has a duty, as evidenced in the Deed of Conservation Easement, and as desired by the original grantor, to enforce the easement restrictions. Subsequent owners are bound by the conservation restrictions, and are informed of the development restrictions through the Deed of Conservation Easement at the time of property transfer or purchase.

To prevent easement violations, the Pendleton County Farmland Protection Board will work to uphold the standard land trust practices which emphasize:

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

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

IV. Public Outreach and Participation

The WV Voluntary Farmland Protection Act 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 Pendleton County Farmland Protection Board will evaluate and utilize on a continual basis the development of several methods of outreach within each annual budget. Outreach may include:

- 1 The placement of articles within the Pendleton Times and other local media venues
- 2 The promotion of the program and advertisement of deadlines through the television station WHSV and local radio stations.
- 3 The development of a Pendleton County Farmland Protection Board Internet web page with links from the Pendleton County Commission Web page and other associated farm agency web pages.
- 4 An annual information booth at county fairs and events, including the Pendleton County Fair and Treasure Mountain Festival
- 5 Presentations for local organizations and school groups including the Agricultural Extension Office, Pendleton County Future Farmers of America, 4-H clubs, Watershed Associations, and others.
- 6 The development of handouts and flyers for placement at libraries, farm related events, mass mailing, etc.

V. Funding

The Pendleton County Farmland Protection Board is a legal 501(c)3 non-profit organization. To carry out the purposes of the Farmland Protection Program, the Board is authorized to accept money or property from private donors as well as appropriations from county, state, and federal sources; private or governmental grants; private contributions, fundraising or gifts; earnings from investments, interest, dividends, distributions or other reputable sources; and a distribution from the WV Agricultural Land Protection Authority as detailed below.

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

Funding for the actual compensation for the purchase of conservation easements must be secured. Federal funding opportunities may exist from time to time; however, many of these federal grant opportunities are matching funds that require some degree of state or local match. To that end, the Pendleton County Farmland Protection Board will evaluate the feasibility of obtaining such local or state matching funds from several sources.

Examples of funding sources include:

- A county transfer tax dedicated to farmland protection (approved by the Pendleton County Commission on August 16, 2005)
- NRCS Matching Funds for Eligible Properties
- Governor's Contingency Fund
- Private foundation gifts or grants

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 Pendleton County Farmland Protection Board in applying for and obtaining all available state and federal funding consistent with the purposes of the Farmland Protection Program.