WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #5

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2004 DEC -3 P 4:42

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: West Virginia Division of Forestry TITLE NUMBER: 22

CITE AUTHORITY: W.Va. Code §19-1A-4(d)

RULE TYPE: PROCEDURAL X INTERPRETIVE ____

EXEMPT LEGISLATIVE RULE ____

CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES ____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ____

TITLE OF RULE BEING AMENDED: ____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: Rules on Procedure for Applying for Conservation Easement Status and Funding Under the W.Va Forest Legacy Program

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS January 4, 2005

CRD

Authorized Signature

TITLE 22
PROCEDURAL RULE
DIVISION OF FORESTRY
DIRECTOR'S OFFICE

FILED

2004 DEC -3 P 4: 42

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 5
RULES ON PROCEDURE FOR APPLYING FOR CONSERVATION EASEMENT STATUS AND FUNDING UNDER THE WEST VIRGINIA FOREST LEGACY PROGRAM

§22-5-1. General.

1.1.Scope. This rule establishes the method for applying for assistance to the West Virginia Division of Forestry as lead state agency, so designated by the Governor and under authority of §19-1A-1, 2 & 4, under the West Virginia Forest Legacy Program.

1.2.Authority. W. Va. Code §19-1A-4(d).

1.3.Filing Date December 4, 2004.

1.4.Effective Date January 4, 2005.

§22-5-2. Definitions.

2.1."Assessment of Need (AON)" is defined as a report developed through contract by the West Virginia Division of Forestry (WVDOF) to assess the status of West Virginia forestland as it might relate to development for other purposes, thereby reducing forest sustainability probabilities for timber; water quality; fisheries; wildlife habitat; rare, threatened and endangered species; outdoor recreation and aesthetics. The Assessment of Need for the state of West Virginia Forest Legacy Program, as approved and distributed on December 2, 2003, by the West Virginia Division of Forestry and available at 304-558-2788, is hereby incorporated by reference.

2.2."Assess ment of Need Amendment" is defined as a document produced by the WVDOF to amend the AON in some fashion; i.e., add or delete Forest Legacy Areas or to modify the Eligibility Criteria.

2.3."Baseline Documentation Report (BDR)" is defined as an accurate natural resource inventory of the property at the time of donation or purchase attested to by the owner and the WVDOF and consisting of maps, photographs, and a description of all manmade structures or modifications, prominent vegetation types, flora and fauna, land use history and distinct natural features, sufficient to document the condition of the property at the time of the gift or sale and to provide all information critical to later monitoring and enforcement.

2.4."Conservation" is defined as sound scientific management that produces goods and services for humans without depleting natural ecosystem diversity while operating within given social and economic constraints.

2.5 "Conservation Easement (CE)" is defined as a legal document under which a current owner prohibits, through perpetual sale of rights, the development of specified forestland for other than traditional forest uses. Conservation easements may be donated or sold.

2.6."Cost Sharing" is defined as proportionate 75-25 percent funding by federal and non-federal sources for a parcel or tract included in a Forest Legacy Program Project. The federal share is always cash. The state share can be landowner donated land or interests in land and documented non-federal program costs or associated program costs.

2.7."Environmentally Important Forest Area (EIFA)" is defined as forestland property that possesses characteristics over and beyond those generally accepted as being forestland benefits; i.e., necessary municipal drinking water source; proven rare, threatened or endangered species locality; unusual wildlife habitat locality; unusual scenic resources not occurring elsewhere; unusual proven fish and wildlife habitat; significant springs; seeps, wetlands or other water or riparian associated entities; or will expand a tract already protected by providing additional protection for the originally designated purpose.

2.8."Forestland" is defined as a unit of land occupied by naturally occurring trees, shrubs and associated plants, the crowns of which touch to form a continuous canopy. Forestland units with commercial disturbances, including residential housing, are not eligible for the Forest Legacy Program although cultivated farmland up to 25 percent of the total acreage to be placed under easement is acceptable, but not fundable.

2.9."Forest Legacy Area (FLA)" is defined as a portion of the state delineated, described, mapped and listed in the AON as encompassing an EIFA like no other. Lands and interests in lands can only be acquired within approved FLA's.

2.10. "Forest Legacy Program (FLP)" is defined as a cooperative program between the United States Forest Service (USFS) of the United States Department of Agriculture and the WVDOF of the West Virginia Bureau of Commerce that identifies and protects environmentally important private forestlands that are threatened by conversion to non-forest uses. It offers private forestland owners the opportunity to voluntarily sell conservation easements that prohibit development on their wholly owned property to the state of West Virginia. In general, however, the landowner is allowed to continue to live on and manage the property, sell it, or will it to others.

2.11. "Forest Legacy Program Project (FLPP)" is defined as the tract or tracts suggested by the WVDOF for funding in a particular fiscal year.

2.12. "Forest Stewardship Management Plan (FMP)" is defined as a written document,

prepared by a registered professional forester, that guides the practical application of silvicultural, physical, economic, managerial, social and policy principles to the regeneration, management, utilization and conservation of forestland to meet specialized goals and objectives of the forestland owner while providing for continual sustainable production of forest products.

2.13. "Forms" is defined as application forms provided by the WVDOF on which relevant forestland data has to be submitted for consideration under the FLP.

2.14. "Grantee" is defined as entity receiving title to the rights named in a conservation easement for forestland.

2.15. "Grantor" is defined as entity deeding forestland or a conservation easement for forestland.

2.16. "In-Kind Contributions" is defined as non-cash contributions, such as expenses necessary to carry out program activities or to offset necessary cost-sharing as described in OMB Circular A-102 "Grants and Cooperative Agreements with State and Local Governments" or successive documents.

2.17. "Interests In Land" is defined as a legal ownership or right in property that is less than a full title.

2.18. "Market Value" is defined as the sum for which a knowledgeable willing owner, not having to sell, would transfer a tract to a knowledgeable willing buyer, with no obligation to purchase.

2.19. "Pass-Through Lands" is defined as lands or interests in lands specifically acquired by a third party for full or partial donation or sale at market price to the WVDOF through the FLP. Pass-through lands have least priority unless the transaction is approved in advance by the WVDOF and the SFSCC.

2.20. "State Forest Stewardship Coordinating Committee" is defined as the committee, with members from specified agencies and organizations or individuals from the profession of forestry, appointed by the State Forester, to coordinate forest stewardship planning and other forest-based activities as prescribed in the Cooperative Forest Assistance Act of 1978 as amended.

2.21. "Threat" is defined as degree of probability that forestland is in danger of being converted to non-traditional forestland uses or that a continuous tract of forestland in excess of 100 acres will be subdivided into smaller tracts.

2.22. "Traditional Forest Uses" is defined as actions historically associated with forest lands; i.e., timber production and harvest, wildlife production, forest-based recreation, such as hunting, fishing and hiking and historically specialized aesthetics.

§22-5-3. Submission Deadlines.

3.1.All applications for proposed sale in fee or of a conservation easement, for the next federal fiscal year, shall be submitted to the State Forester at the address given on the forms for the WVDOF by February 1.

§22-5-4. Submission Protocol - Landowner.

4.1.Basic data for the application must be submitted on the forms prescribed by and available from the WVDOF.

4.2.Related data intended as part of the application shall be typed single spaced in 12 point Times New Roman or equivalent font on 8.5- x 11-inch, white 20-pound paper with double spacing between headings and paragraphs and with one-inch margins on all four sides.

4.3.The application shall be signed and attested to by the landowner(s).

4.4.Only one complete copy of the application shall be submitted. Copies will be prepared by the WVDOF.

§22-5-5. Acceptance Protocol - WVDOF.

5.1.Submitted complete applications will be consecutively numbered in order of receipt, with each application number being preceded by the two-number citation for the year and a hyphen; i.e., 04-7 (example signifies the seventh application received during 2004). Notification of the assigned number shall be forwarded immediately to the landowner. All applications, regardless of source, shall follow this acceptance protocol.

5.2.Submitted complete applications shall be checked through a property visit and landowner interview by WVDOF personnel.

5.3.A copy of the current Forest Stewardship Management Plan (prepared by a registered professional forester eligible to work in West Virginia) for the property is provided the WVDOF interviewee or plans are made to have such a plan prepared. A plan shall be submitted regardless of whether the proposed acquisition is in fee or for a conservation easement.

5.4.The landowner will have a baseline report (item 2.3, these regulations) prepared by a registered professional forester eligible to work in West Virginia. Alternately, the WVDOF may, if time is available, assist the landowner in this regard. Part of this report will be an appraisal of the property on which the value of the easement is appraised by one who is certified to appraise under the *Uniform Appraisal Standards for Federal Land Acquisitions.*

5.5.Completed applications shall be provided to the FLP subcommittee of the SFSCC

for the purpose of conducting a public hearing on the application. Hearings shall be scheduled no less than three weeks after appearing in the State Register and shall be held in the county in which the property is located.

5.6.At quarterly intervals, the subcommittee will present a prioritized list of acceptable applications to the WVDOF for value determination. This submission shall be for the quarter terminating before the then current quarter so as to allow time for procedural action.

5.7.Applications incomplete for any reason will be assigned a secondary number at the end of each quarter for use in reprioritizing the application at a level below complete applications received in the process interval.

5.8.The landowner will be notified that the procedures for placing the property under a forest conservation easement have been completed when the WVDOF submits the appraisal to the USFS as part of a FLPP with a request for funding.

5.9.When the USFS notifies the WVDOF that the Congress has approved funding for a FLPP, the WVDOF will notify the landowner and arrange for the development of a BDR and then a CE.

5.9.a. The WVDOF shall provide a fact sheet discussing conservation easements and minimum acceptable requirements to each landowner applying to donate or sell an easement.

5.9.b. Once prepared, the CE shall be analyzed by a SFSCC FLP subcommittee, and the WVDOF and the landowner shall be apprised of perceived problems. The minutes of this meeting shall become a part of the permanent file on the property.

5.9.c. After final negotiations and amiable approval by both parties (three if a third parties name has been entered in the document), a signing and payment ceremony shall be scheduled. The WVDOF will issue a news release discussing the easement immediately after the signing ceremony.

§22-5-6. Priorities.

6.1.Pr iority shall be based on the initially assigned number unless incompleteness necessitated the assignment of a subsequent number and lowering of priority or unless property uniqueness or limited window of availability raised the priority. Raising or lowering of the initially assigned priority or assigning a priority number out of rotation by the SFSCC shall be justified in writing to the WVDOF.

6.2.It is assumed that complete criteria fulfilling applications will be handled within six months. Size, technical or non-technical characteristics or politically correct grantor or grantee desires shall not be accorded special priority.

§22-5-7. Monitoring.

7.1. The WVDOF shall monitor and periodically enforce the CE in perpetuity. Monitoring shall be conducted periodically, but not less than annually. The WVDOF shall contract for monitoring only with the landowner's approval. The Forest Stewardship Management Plan for the tract shall be part of the review, and it shall be caused to be updated as needed.

§22-5-8. Record Keeping.

8.1.Permanent records shall be kept by the WVDOF for all Forest Legacy properties . The following shall be minimal requirements for each file:

8.1.a. Landowner name, address(s), phone.
8.1.b. Application form.
8.1.c. Landowner inspection consent agreement.
8.1.d. SFSCC recommendation and prioritization.
8.1.e. Appraisal and appraisal review.
8.1.f. Proposal for 25 percent share and cost share calculations, if any.
8.1.g. Forest Stewardship Management Plan.
8.1.h. Title search.
8.1.i. Baseline documentation.
8.1.j. Copy of easement.
8.1.k. Closing statements.
8.1.l. Documentation of payment.
8.1.m. Press release.
8.1.n. Monitoring reports.

Summary:

The proposed rule establishes the method for applying for assistance to the West Virginia Division of Forestry as lead state agency, so designated by the Governor and under authority of §19-1A-1, 2 & 4, under the West Virginia Forest Legacy Program.

Comments:

No comments were received.