



**WEST VIRGINIA  
SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

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OFFICE OF  
WEST VIRGINIA SECRETARY OF STATE

**FORM 5 -- NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR  
A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY      Forestry  
RULE TYPE    Procedural                      AMENDMENT TO EXISTING RULE    Yes    TITLE-SERIES    22-05  
RULE NAME   Procedure for the WV Forest Legacy Program

CITE AUTHORITY 19-1A-4(b)(3)

RULE IS LEGISLATIVE EXEMPT

Yes

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

19-1A-4(b)(3)

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

Wednesday, March 01, 2017

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

June H Mandel -- By my signature, I certify that I am the person authorized to file legislative rules, in  
accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 22-05



Rule Id: 10152



Document: 41247

TITLE 22  
PROCEDURAL RULE  
DIVISION OF FORESTRY  
DIRECTOR'S OFFICE

SERIES 5  
RULES ON PROCEDURE FOR THE WEST VIRGINIA FOREST LEGACY PROGRAM

**§22-5-1. General.**

1.1. Scope. -- This rule establishes the procedures for the West Virginia Forest Legacy Program as administered by the West Virginia Division of Forestry (WVDOF) as lead state agency, so designated by Governor and under authority of W. VA. Code §19-1A-1, 2 & 4, under the West Virginia Forest Legacy Program.

1.2. Authority. -- W. Va. Code §19-1A-4(b)(3)

1.3. Filing Date. -- January 30, 2017

1.4. Effective Date. -- February 1, 2017

1.5. Repeal of Former Rule. -- This procedural rule repeals and replaces WV 22CSR5 “Rules on procedure for applying for Conservation Easement Status and Funding under the W. Va. Forest Legacy Program” filed December 3, 2004 and effective January 4, 2005.

1.6. Background. -- Section 1217 of Title XII of the 1990 Farm Bill (P.L. 101-624 stats. 3359; 16 USC 2103c) amended the Cooperative Forestry Assistance Act of 1978 (15 U.S.C 2101) to allow the establishment of a Forest Legacy Program to protect important forest areas believed to be threatened to conversion to non-forest uses. The authority continues indefinitely. The 1996 Farm Bill (P.L. 104-127; Title III – Conservation Subtitle G – Forestry; Section. 374, Optional State Grants for Forest Legacy Program) authorized grants to states for a Forest Legacy Program. The West Virginia Division of Forestry, as lead agency for forestry in the State, administers the West Virginia Forest Legacy Program (FLP).

**§22-5-2. Definitions.**

2.1. “Approved Forest Stewardship Plan” is a written document that is no more than 10 years old, prepared by a West Virginia Registered Professional Forester who is also a West Virginia Division of Forestry certified Stewardship plan writer. The Forest Stewardship Plan and any subsequent revisions will be in accordance with the current revision of the West Virginia Forest Stewardship Operating Plan of the West Virginia Division of Forestry and the Conservation Easement terms. The Forest Stewardship Plan and any subsequent revisions shall be approved by the State Forester, and maintained on file at the headquarters office of the West Virginia Division of Forestry.

2.2. “Assessment of Need (AON)” is the formal assessment developed by the West Virginia Division of Forestry (WVDOF) to document: (1) the need for the Forest Legacy Program in West Virginia; (2) to identify and delineate the boundaries of forest areas meeting the overall eligibility requirements for designation as Forest Legacy Areas; (3) to recommend those areas to the US Forest Service/US Secretary of Agriculture for inclusion in the Forest Legacy Program; (4) to provide instruction to the US Forest Service and WVDOF on how to protect properties; and 5) is hereby

incorporated by reference. The original June 30, 2003 AON was approved by US Department of Agriculture (USDA) and distributed by WVDOF on December 2, 2003.

2.3. "Assessment of Need Amendment" is a document produced by the WVDOF to amend the AON in some fashion.

2.4. "Baseline Documentation Report (BDR)" is a report that includes results of a natural resources inventory of the protected property; US Geological Survey 7.5' quadrangle map with Protected Property boundaries and other contiguous or nearby protected areas; map drawn to scale depicting manmade improvements, flora and fauna, land use history, and distinct natural features; and a most recent aerial photograph (to scale). The Baseline Documentary Report shall be supplemented by additional descriptive detail and onsite photographs. Said Baseline Documentary Report documents the condition of the property at the time of closing and shall meet the requirements of Title 26 CFR §1.170A-14(g)(5)(i). This document shall be prepared, updated, and kept on file by WVDOF.

2.5. "Conservation" is the professional management of forest, soil, and water that produces goods and services for society. Prohibition or extinguishment of timber harvesting or forest management, in whole or in part, shall not constitute conservation.

2.6. "Cost Sharing" is the proportionate amount of non-federal funding that accompanies federal Forest Legacy Program funding. The federal Forest Legacy Program share is always cash. To meet the non-federal share, WVDOF may use cash or donations in the interests in land or fee parcels, in accordance with US Forest Service Requirements. Conservation Easements funded without any federal Forest Legacy Program Funding are only subject to cost sharing requirements of the funding source.

2.7. "Forestland" is real estate inhabited by trees and other woody plants capable of producing timber, other wood products and commonly associated organisms.

2.8. "Forest Legacy Area (FLA)" is a portion of the state delineated, described, mapped and listed in the AON as suitable for Forest Legacy Projects.

2.9. "The Forest Legacy Program (FLP)" is a cooperative program between the United States Forest Service (USFS) of the United States Department of Agriculture and the WVDOF of the West Virginia Department of Commerce that identifies and protects significant forestland threatened by conversion to non-forest uses. WVDOF is provided the opportunity but not the obligation to protect such forestland through WVDOF approved fee acquisitions or Working Forest Conservation Easements.

2.10. "FLP Forester" is the Forest Legacy Program Forester of the West Virginia Division of Forestry.

2.11. "Forest Legacy Program Project (FLPP)" is a federally funded, non-federally funded, or donated tract that has received prior approval by the FSCC and WVDOF in accordance with sections §22-5-3, §22-5-4, and §22-5-5 of this rule.

2.12. "Forms" are data sheets provided by the WVDOF on which relevant information has to be submitted for consideration under the FLP.

2.13. "Grantee" is defined as the entity receiving title to the rights named in a conservation easement or fee purchase for forestland; in the case of the FLP, the Grantee is the WVDOF.

2.14. "Grantor" is a landowner conveying forestland in fee or as a working forest conservation easement to the Grantee.

2.15. "Interest In Land" is a legal ownership or right in property that is less than a full title.

2.16. “Forest Stewardship Coordinating Committee” (FSCC) is the committee, 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.

2.17. “State Attorney General” is the elected Attorney General of the State of West Virginia or his designee.

2.18. “State Forester” is the Director/State Forester of the West Virginia Division of Forestry.

2.19. “Threat” is the degree of probability that forestland is in danger of being converted to non-forest uses or subdivided into smaller tracts.

2.20. “Traditional Forest Uses” are 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.

2.21. “Working Forest Conservation Easement (WFCE)” is a conservation easement that provides the opportunity for: (1) for professional forestry to be practiced; (2) forest management to occur with pre-commercial as well as commercially feasible silvicultural practices; (3) for timber harvesting to occur; and (4) for conservation as defined in subsection 22CSR5-2.5 of this rule, to occur. Development and further subdivision of the protected property, not counting excluded areas shall be prohibited. All management activities on the protected property shall be in compliance with an Approved Forest Stewardship Plan.

### **§22-5-3. Submission of Applications.**

3.1. All applications for a proposed sale in fee or of a conservation easement, shall be submitted to the State Forester at the address given on the forms.

3.2. The landowner shall submit only one application per property.

3.3. To allow time to meet the US Forest Service application deadline during the current calendar year, applications shall be received by WVDOF, at the address listed on the form, by February 1. If an application is received by WVDOF after February 1, it shall be considered for the federal application deadline during the next calendar year. After applications have been submitted to WVDOF, applicants do not have to re-submit new applications year after year.

### **§22-5-4. Application Evaluation.**

4.1. The FLP Forester shall provide applications to the FLP Subcommittee who will perform an initial screening of the applications. The subcommittee shall score the applications to perform the initial screening. The purpose of the initial screening is to determine the applications that due diligence will be conducted on and to provide a number of applications that can be efficiently ranked and/or visited on site. The preliminary screening will prioritize the applications that due diligence is to be conducted on. The FLP Subcommittee’s preliminary screening will be submitted to the FSCC for approval/disapproval.

4.2. Once the initial screening has been approved by the FSCC, due diligence is to be conducted on the applications. Due diligence is to be conducted to identify potential problems with the applications. Due diligence, shall at a minimum, include: preliminary courthouse work, review of deed calls and boundaries, review of access, review of mineral rights issues, inspection of the property for open dumps, and review of any documentation in the possession of the landowner.

4.3. If a potential problem is found, the landowner shall be notified of the potential problem, in writing with a description of the curative work that will be necessary before the application can receive further consideration, along with the necessary deadlines.

**§22-5-5. Application Ranking.**

5.1. Applications found to be free of potential problems and applications for which curative work has been completed shall be submitted to the Forest Legacy Subcommittee to be prioritized and organized into proposed FLP projects. The resulting proposed FLP projects shall be submitted to the FSCC for approval / disapproval.

5.2. Projects shall be evaluated based on criteria identified in the AON or subsequent amendments, whichever is most current.

**§22-5-6. Easement Acquisition.**

6.1. The DOF shall negotiate all FLP WFCE's using its template that has been approved by the USFS and approved as to form by the Attorney General. The approved WFCE template is maintained by WVDOT and is included in the WVDOT Forest Legacy Procedures Manual.

6.2. The DOF may contract for any and all property surveys necessary for closing on Conservation Easements.

6.3. The Attorney General shall certify the title and provide a letter of title assurance to the DOF before closing on Conservation Easements.

6.4. If there is more than one property owner, WVDOT reserves the right but not the obligation to require one owner to obtain power of attorney to negotiate and sign documents on behalf of all other owner(s).

**§22-5-7. Baseline Documentation.**

7.1. All Baseline Documentation Reports (BDR) shall be Prepared by a WVDOT Registered Professional Forester in compliance with Title 26 CFR §1.170A-14(g)(5)(i). This document shall be prepared, updated and kept on file by WVDOT.

**§22-5-8. Federal Forest Legacy Program Funded Appraisals and Appraisal Reviews.**

8.1. The appraisal shall be conducted after the WVDOT has negotiated the WFCE with the landowner and after the WFCE has been approved by the USFS and Attorney General.

8.2. The appraisal must be prepared in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions ("Yellow Book / UASFLA") and the Uniform Standards for Professional Appraisal Practice of the Appraisal Foundation (USPAP). The UASFLA requirements supersede USPAP, and will require the citing of jurisdictional exception under USPAP.

8.3. The appraisal review shall be a technical review under USPAP SR-3. The reviewer is required to prepare a written, narrative review report, without an independent opinion of value, which evaluates the appraisal's compliance with UASFLA, USPAP and Task Assignment instructions.

8.4. The FLP Forester and USFS shall jointly prepare task assignments for all federal Forest Legacy Program funded appraisals and appraisal reviews. The appraiser and review appraiser shall be provided with the task assignments with appropriate maps, and backup documentation prior to the start of the appraisal.

8.5. A pre-work meeting of the FLP Forester, appraiser and review appraiser is required before the start of the appraisal.

8.6. In accordance with USFS requirements, WVDOF may not pay grantors more than 75% of the appraised value of the conservation easement or property with federal Forest Legacy Program Funds.

8.7. For conservation easements where federal Forest Legacy Program funds are not involved at all, appraisals and appraisal reviews shall be conducted in accordance with the requirements of the funding source, are not subject to §22-5-8.1, 8.2, 8.3, 8.4, 8.5, and 8.6 of this rule, and USFS approvals are not required.

8.8. Regardless of the funding source, WVDOF may not pay more than the appraised value for any conservation easement or fee acquisition.

**§22-5-9. Closings.**

9.1. The Attorney General shall handle all closings for the DOF. Further the Attorney General shall coordinate payment of any liens and establishment of subordination of deeds of trust prior to closing.

**§22-5-10. Monitoring.**

10.1. The objectives of DOF easement monitoring are: 1) to meet the US Forest Service FLP Guidelines which state that the Governmental entity holding the interest in land acquired under the FLP shall monitor and manage these interests in perpetuity; and 2) to build and maintain partnerships with landowners.

10.2. The DOF shall annually monitor each of its conservation easements.

10.3. The FLP Forester will file a monitoring report after each monitoring visit.

10.4. Monitoring shall be conducted in accordance with the most recent revision of the WVDOF Conservation Easement Stewardship Policy.

**§22-5-11. Record Keeping.**

11.1. The DOF will maintain permanent records in accordance with the most recent revision of WVDOF Conservation Easement Stewardship Policy.

11.2. Documents that are to be retained include but are not limited to:

- 11.2.a. Application
- 11.2.b. Minerals Determination
- 11.2.c. USFS approval of easement
- 11.2.d. Recorded easement with survey plats
- 11.2.e. Recorded subordination deeds of trust
- 11.2.f. Appraisal task assignment
- 11.2.g. Appraisal
- 11.2.h. Appraisal review
- 11.2.i. Appraiser qualifications
- 11.2.j. Review appraiser qualifications
- 11.2.k. Survey task assignment
- 11.2.l. Surveyor qualifications

- 11.2.m. Baseline report
- 11.2.n. Stewardship Plan and Stewardship Amendments
- 11.2.o. Title report with copies of recorded documents
- 11.2.p. Title assurance letter
- 11.2.q. Amicable agreement/offer letter
- 11.2.r. Payment information
- 11.2.s. Correspondence
- 11.2.t. Monitoring reports
- 11.2.u. Easement amendments
- 11.2.v. Grant agreement
- 11.2.w. Written approvals / disapprovals

**§22-5-12. Approvals.**

12.1. The FLP Forester shall review Stewardship Plans, Stewardship Plan Revisions, and other requests for approval from landowners and provide recommendations to the State Forester, who will approve or disapprove the request in writing. On other than routine requests, the FLP Forester, if necessary, shall consult with the USFS, Attorney General and/or Stewardship Committee before providing a recommendation to the State Forester.