

# Rural Legacy Program Manual

## Section One

### A. MISSION, AUTHORITY AND STRUCTURE

#### 1. Mission

To protect Rural Legacy Areas, which are regions rich in a multiple of agricultural, forestry, natural and cultural resources that, if conserved, will promote resource-based economies, protect green belts and greenways, and maintain the fabric of rural life. The Rural Legacy Program provides the focus and funding necessary to protect large contiguous tracts of land and other strategic areas from sprawl development and enhance natural resource, agricultural, forestry and environmental protection through cooperative efforts among State and local governments and land trusts. Protection is provided through the acquisition of easements and fee estates from willing landowners and the supporting activities of Rural Legacy Sponsors and local governments.

#### 2. Statutory Authority

Natural Resources Article, § 5, Subtitle 9A - Rural Legacy Program, Annotated Code of Maryland.

#### 3. Structure

The Rural Legacy Board administers the Rural Legacy Program with assistance and advice from an Advisory Committee. Rural Legacy Board members include:

- The Secretary of the Department of Natural Resources (Chair)
- The Secretary of the Department of Agriculture
- The Secretary of the Department of Planning

Advisory Committee members are appointed by the Governor with the advice and consent of the Senate and include:

- a Trustee of the Maryland Agricultural Land Preservation Foundation
- a Trustee of the Maryland Environmental Trust
- a representative of the agriculture industry
- a representative of a non-profit land conservation organization
- a representative of a non-profit environmental organization
- a representative of the forest industry
- a representative of a county government Department of Parks and Recreation
- a representative of a business organization
- a private land owner
- a representative of the mineral resources industry
- a representative of a municipal corporation

Staff for the Rural Legacy Program is provided by the Department of Natural Resources with assistance from the Department of Agriculture and the Department of Planning. Staff contact information and the names of the members of the Rural Legacy Board and Advisory Committee may be found on the new Rural Legacy website at: <http://www.dnr.state.md.us/land/rurallegacy/index.asp>

## **B. DEFINITIONS**

The following is a list of key words that will appear throughout this document.

**“Program”** - The Rural Legacy Program established by §5-9A, Natural Resources Article, Annotated Code of Maryland.

**“Board”** - The Rural Legacy Board.

**“BPW”** - The Board of Public Works.

**“Sponsor”** - The organization that submits an application, which could be a local government or group of governments, a land trust or both a government and a land trust applying as co-sponsors.

**“Local Government”** - Any county or municipal government.

**“Land Trust”** - A qualified conservation organization that is a qualified organization under § 170(H)(3) of the Internal Revenue Code and regulations adopted under § 170 (H)(3) and has executed a cooperative agreement with the Maryland Environmental Trust.

**“State Land Conservation Organization (SLCO)”** - The Maryland Agricultural Land Preservation Foundation (MALPF), the Maryland Environmental Trust (MET), Program Open Space (POS), or another State organization approved by the Rural Legacy Board.

**“Application”** - An application to the Rural Legacy Board to designate a Rural Legacy Area or to request continued funding for an existing Area.

**“Rural Legacy Area” (Area)** - A region designated by the Rural Legacy Board as rich in a multiple of agricultural, natural, forestry, and cultural resources.

**“Rural Legacy Plan” (Plan)** – The proposed acquisitions list included in the application, which will later become Attachment C of the Grant Agreement. This acquisition plan is illustrated with the accompanying map of the Area (which is Attachment B of the Grant Agreement).

**“Grant Agreement” (Grant)** - An agreement between the Rural Legacy Board and the Sponsor to implement a Rural Legacy Plan in a designated Rural Legacy Area. The

Rural Legacy Program staff will prepare a standard Grant Agreement based upon an approved Rural Legacy Area and Plan. The Grant Agreement will indicate the total amount of Rural Legacy Program funds that the Board will submit to the BPW for final approval. It will also specify the duration of the Grant Period within which this funding shall be available and all work to be completed by the Sponsor.

**“Grant Period”** - Each Grant Agreement shall establish a Grant Period, determined by the Board and approved by the BPW. The beginning date of the Grant Period shall be when the Chairman of the Board approves the Grant Agreement, which is first signed by the Sponsor. The ending date of the Grant Period shall be established in the Grant Agreement.

**“Project Agreement”** - An agreement between the Board and an approved Sponsor for the acquisition of a specific parcel of land or a conservation easement on a property identified in Attachment C of an approved Grant Agreement. This form should be completed in its entirety, signed by the appropriate authority in the Sponsor’s organization, and submitted to the Program for BPW approval of an acquisition.

**“Project Period”** - A project must be completed within the project period. The beginning and ending dates for a project period will be identified in the Project Agreement.

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**Section Two**  
**OVERVIEW OF THE RURAL LEGACY PROCESS**

**1.) The Sponsor submits an application to the Rural Legacy Board to designate a Rural Legacy Area or to request continued funding for an Area.**

The Staff of the Rural Legacy Program of the Department of Natural Resources will accept and process all applications. Applications are accepted once a year to determine grants based on the funding for that fiscal year. Deadlines for applications will be posted on the Rural Legacy website. Applications are then forwarded to designated review staff of each of the agencies represented on the Board, appropriate State agencies as determined by the Board, and to the Maryland State Clearinghouse at the discretion of the Department of Planning. Additional information may be requested from a Sponsor. Interagency staff will evaluate the degree to which an application addresses Rural Legacy criteria as well as summarize the applications and compare them to each other. The applications, with staff comments, will be forwarded to the Board and the Advisory Committee for their review.

The Board may screen out applications that do not meet the basic purposes and criteria of the program and may choose not to forward these to the Advisory Committee for review. The Board will provide a brief description of any Application not forwarded, together with their reasons for not asking for Advisory Committee review. With a request from the Chairman and at least one other member, the Advisory Committee may review an Application not forwarded by the Board.

The Advisory Committee will review the applications, staff summary, and comparisons. The Advisory Committee may choose, either as a Committee or together with the Board, to ask Sponsors to give oral presentations explaining their proposed Areas and Plans. In addition, with the approval of the Board and the Sponsor, the Advisory Committee may choose, either as a Committee or together with the Board and the Sponsor, to hold the meeting within the proposed Area or visit the proposed Area as part of their review. Upon completion of their review, the Advisory Committee may summarize their comments about each of the applications, rank or prioritize applications in the order that best meet the criteria and requirements of the Program, and/or make their recommendations to the Board.

The Board, prior to making its decision, shall review any comments from staff and State agencies and the recommendations of the Advisory Committee. The Board, with or without the presence of the Advisory Committee, may make site visits or receive Sponsor presentations. Visits by the Board or the Committee to any private property within an Area shall require consent of the owners. The Board may negotiate with the Sponsor to make revisions to the application, including changes to the proposed Area and Plan. The Board may amend the boundaries to respond to comments from the Advisory Committee or to focus Rural Legacy funds consistent with the criteria. The Board may

not approve or amend an application without local government approval. Each local government whose jurisdiction is encompassed in whole or in part by the Area shall approve each application or any proposed amendment. Local government approval of amendments may be in the form of approval of the Grant Agreement.

Following any changes negotiated with the Sponsor, the Board may do the following: approve or reject Area designations, approve or reject Plans for these Areas, or recommend that applications not selected or funded in the year proposed be submitted for consideration in future years (subject to available funds). In addition, the Board will determine the grant amount for each new or existing Area.

See Section Three of this Manual for detailed instructions on application criteria. Application forms may be downloaded from the Rural Legacy website or requested from Rural Legacy Staff.

## **2.) The Grant Agreement is approved and signed**

The Rural Legacy Program Staff shall notify the Sponsors within the selected Areas of the Board's decisions. The Program Director of Land Acquisition and Planning will submit the Board's decisions for Grants and for any new Area designations to the BPW for approval. After the BPW approves the Grant, the Board, through Program Staff, will transmit a Grant Agreement to the Sponsor for approval. The Chairman of the Board will sign the Grant Agreement upon approval by the Sponsor. The Program will not reimburse costs incurred before the start of the grant period. The Board reserves the right to monitor the timely expenditure of funds within the Grant period and to reallocate any unused funds. Any requests for reimbursement after the expiration of such a time limit may be denied.

The Sponsor shall comply with the terms of the Grant Agreement, carry out the Plan, and adhere to the regulations adopted by the Board. During the term of the grant agreement, the Sponsor shall submit an annual report to the Program. Submission dates of the reports are based on execution of the Grant Agreement or may be requested at the end of the State fiscal year.

## **3.) Sponsors submit projects to the Rural Legacy Program**

After receipt of the signed Grant Agreement, the Sponsor can begin negotiations with interested landowners for conservation easements or fee simple purchases. All of the project completion responsibilities listed in Section Five of this Manual must be completed and then turned in to Rural Legacy Program Staff, who will be responsible for reviewing the project and submitting it for approval by the BPW. After BPW approval, Program staff will process the project for payment (checks or wire transfers will come directly from the Comptroller's Office) and the Sponsor may go to settlement with the landowner.

#### **4.) Sponsors apply for funding to continue progress in existing Rural Legacy Areas**

Once an Area has been designated, Sponsors may apply for funding each fiscal year to continue land protection activities in their Area. See Section Three for information on how to apply for continued funding.

#### **5.) General Obligations**

- Local governing bodies applying for Program grant assistance, or the holder of real property interests on behalf of the Sponsor, must conform to all environmental, cultural and planning laws applicable to the implementation of Program assisted projects. If the right of public access is provided, the Sponsor or the holder of real property interests must also comply with State and federal laws regarding disabled persons.
- Property interests acquired with Program funds shall be retained and used for those purposes as described in the Grant Agreement, Project Agreement, conservation easement, or restrictive covenants to the project. Any property interest acquired shall be in perpetuity and may not be amended or modified without the approval of the Grantee, the Board, and the Board of Public Works.
- The Sponsor agrees to protect, indemnify and save harmless DNR, its officers, agents, and employees from and against any and all claims, demands, causes of action, and liability of any kind arising out of the operation and use of the project.
- Local governments are encouraged to reflect Rural Legacy Plans in their comprehensive land use plans as updated and revised.

#### **6.) Certification - the Sponsor certifies to the following:**

- That the information contained in the Plan, Grant, and Project Agreements are true and correct.
- That all costs for which Grant assistance is requested will be incurred during the Grant period.
- That the project conforms to the intent of the Program as provided in § 5-9A of the Natural Resources Article of the Annotated Code of Maryland.

#### **7.) Monitoring responsibilities of the Sponsor**

The Sponsor is responsible for adequate monitoring, stewardship, and enforcement of conservation easements. The Sponsor assumes this responsibility regardless if program compliance costs from the Rural Legacy Program are accepted.

In holding Rural Legacy conservation easements, Sponsors have a responsibility that is of the greatest importance. Conservation easements are an investment made by the taxpayers of Maryland, and Sponsors are responsible for monitoring and enforcing easements so that they remain a meaningful way to protect land. Currently, there are relatively few court cases involving conservation easement violations. Since court cases are often largely determined by precedence, proper stewardship of easements insures the integrity of conservation easements throughout the country. See the Rural Legacy Monitoring Manual for the policy on how DNR monitors its easements.

# Rural Legacy Program Manual

## Section Three

### How to Apply

#### **A. Criteria for the evaluation of applications**

The Board shall evaluate and compare applications in accordance with the criteria in order to select those that best carry forward the goals and objectives of the Program set forth in The Annotated Code of Maryland, Natural Resources Article, § 5-9A-01. Applications for continued funding of existing Areas will be reviewed and evaluated primarily on the basis of Program criteria and progress made in protecting resources in the Area with prior grants and complementary programs.

#### **B. Pre-Application Process**

Before submitting an application to the Board, potential Sponsors of Areas should:

- Review law and regulations (including The Annotated Code of Maryland, Natural Resources Article, § 5-9A-01) and any information provided by the Board.
- Initiate public participation procedures and determine the anticipated level of initial landowner participation in the Program. A Sponsor shall assure adequate public participation in the development of an application and provide the Board with a brief summary of that participation. After initial selection of a potential Area, a sponsor should use an inventory of landowner interest to assist in selecting and focusing the final boundaries for the proposed Area. After determining the Area boundaries and identifying the properties to be protected to implement the Plan for this Area, the sponsor shall describe in the application the anticipated level of initial landowner participation in the Plan. The options the Sponsor may use to determine this level of participation are not limited, but include: 1.) Identification of properties enrolled in recorded Agricultural Preservation Districts, as defined by MALPF, if the owners of these properties express an interest in writing (described below) in protecting multiple resources on the property, 2.) Affirmative responses from individual landowners to written questionnaires explaining the purpose of the Program and asking if the landowner is willing to sell an interest in real property. The response should describe the nature of the real property interest to be acquired (attached to a copy of the standard easement, where appropriate) and a range of values expected to be offered for the real property interests as determined by an approved point system, prevailing rates for MALPF easements, or other methods used in estimating the total grant request. Landowners may condition their initial expression of interest in participating in the Program on specific easement terms, purchase values, government approvals, and family or co-owner decisions, which may only be available after a Grant Agreement is approved.

Initial landowner interest is not intended to be binding on either the Sponsor or the landowner. It will be used by the Board in assessing the likelihood of success, especially in relationship to applications submitted by other Sponsors. The anticipated level of initial landowner participation in the Program shall be documented as part of the Grant Application by the date that applications are due. Sponsors are not required or expected to identify Area boundaries solely on the basis of where landowners express interest in participating in selling interests in their land. Parcels owned by interested property owners should be identified as part of the lists or maps of potential acquisition properties submitted with the application. While Sponsors should maintain files of documentation obtained pursuant to this subsection, they should submit with their applications only a summary of landowner interest with the maps or lists of properties to be protected, not detailed survey forms, letters or petitions. Sponsors may also identify separately other properties where they have reasonable confidence that landowner interest will develop later during the grant period. Sponsors may identify properties for protection in the Plan even though the landowners have not expressed an interest in participating in the Program by the time the application is due if they have reasonable confidence that they will obtain the landowner's interest during the Grant period.

- Develop partnerships as needed among federal, State and local governments and land trusts for implementing a Plan. The Board does not wish to restrict local government planning outside of Area boundaries or prevent the delineation of areas that in some way support the purposes of the Area or Plan by applying land-use policies or incentives that protect or buffer the Rural Legacy acquisitions. However, these areas should avoid the use of the term "Rural Legacy" to minimize confusion with the designated Rural Legacy Area.
- Consult with each local government in the proposed Area. If an application proposes that an Area be located within one mile of the boundary of a municipality, then the municipality shall have forty-five days to review and comment on the application before it is submitted to the Board. The Sponsor shall submit to the Board with the completed application a summary of comments from the municipality, together with a copy of the Sponsor's response to these comments. The Board reserves the right to exclude from an Area land within a municipal growth boundary or Priority Funding Area or other parts of a proposed Area objected to by a municipality. This provision does not otherwise restrict the Board's general authority to designate the size or location of an Area.
- Identify existing protected lands in the proposed Area. Protected lands may include, among others, those protected by easements held by the Maryland Environmental Trust, MALPF, or other local, State or federal agencies or private land conservation organizations, or lands held in fee estate by federal, State or local organizations or private land conservation organizations for agricultural, forestry, natural or cultural resource, or educational uses. A proposed Area may include both existing protected lands and unprotected lands for which the Sponsor may seek Rural Legacy funds to acquire real property interests.
- Prepare a Plan for the proposed Area (see below).
- Prepare a monitoring protocol.

- A Land Trust shall consult with each local government in an Area prior to filing an application.

In evaluating potential Areas, Sponsors should seek to limit the size of the Area to those lands that are protected and can reasonably be protected within the proposed implementation time frame with Rural Legacy purchases, other State, local and private land conservation programs, the local jurisdiction's land use controls, and other measures to manage growth and protect resources. The Area should be large enough to provide significant protection for multiple resource values, yet small enough to achieve preservation objectives within the proposed implementation time frame. The Sponsor should be able to clearly document how the lands within the Area are to be preserved and in what time frame. In general, Areas may be relatively larger in jurisdictions with large expanses of existing protected lands, less development pressure, and stronger local land and resource preservation programs, including planning and zoning controls to prevent development that is incompatible with or detrimental to the purposes of the Area.

Sponsors should seek to focus or target their easement or fee purchases with Rural Legacy funds to protect the location, proximity, and size of contiguous blocks of lands, greenbelts or greenways, or agricultural, forestry, or natural resource corridors, rather than scattered parcels of land that may be individually significant, but which could be surrounded or otherwise adversely affected (e.g., agricultural production may be compromised) in the future by development on unprotected lands.

The Board has not established a limit on the number of Areas that may be approved in the State or in any local jurisdiction. No limits have been placed on the number of applications that may be submitted by a Sponsor or within any region or local jurisdiction. When more than one application has been submitted within the same local jurisdiction, the elected government of that jurisdiction shall state their recommended priority for which applications should be funded. No limits have been placed on the number of Grant Agreements that may be approved for a single Sponsor or within a designated Area. All applications submitted each grant cycle will be reviewed on a competitive basis.

Applications may be developed and submitted by co-sponsors. If an application has co-sponsors, they must select a lead Sponsor for administration of the program, including communication and correspondence with the Board, distribution of written agreements, guidelines or information from the Board or staff, organization of presentations to or meetings with the Board or Advisory Committee, and submission of easement or fee purchase contracts for approval. Each co-sponsor of the application will assume legal responsibility under the Grant Agreement for the grant conditions and implementation in their own local jurisdictions. In developing partnerships, Sponsors should consider that the strength and quality of partnerships created for land conservation are not more important than other criteria established for the Program. A partnership should be a means to implement land preservation rather than a goal of the Sponsor's application. The number and role of co-sponsors or partners should be determined by the resources,

location and desired size of the Area and by the degree to which additional partners will help to achieve the objectives of the Plan.

### **C. Applications for continued grant funds for existing approved Areas.**

The Program is designed to provide continued funding for protection of the resources of Maryland's Areas until the contiguous blocks of land identified by the Sponsors are permanently protected with Rural Legacy grants, complementary land conservation programs, or other federal, State and local contributions of matching funds. Until this level of protection is achieved, protection through local planning, zoning and other growth management policies is important to prevent sprawl development within and around parcels targeted for protection and development that would threaten the integrity of the Area and jeopardize the State's investment.

Each request for a new grant will be reviewed by Rural Legacy staff and the Advisory Committee and forwarded to the Board and the BPW for approval. Sponsors will be required to enter into a new Grant Agreement for each approved grant. In their decisions to award Grant Agreements, the Board will consider how well the application meets the goals of the program as well as the progress made by Sponsors in completing their earlier Grant Agreements, together with the progress made by Sponsors and participating local governments in addressing all criteria of the law.

During the review of repeat funding requests, the Advisory Committee and Board may choose not to schedule formal presentations from Sponsors or make site visits to these Areas, except for the benefit of new members of the Advisory Committee or Board or to fully assess progress being made by existing Sponsors. The process for review of Grant Renewal Applications will generally follow the same process as described above for new Areas.

An application and other requirements for an existing Area are slightly different than for a new Area. The forms may be downloaded from the Rural Legacy Program website.

### **D. How to Apply**

Application forms and instructions for both new and existing Areas may be found on the Rural Legacy Website at <http://www.dnr.state.md.us/land/rurallegacy/index.asp> with updates and deadlines provided for each fiscal year. Forms may be emailed on request. It should be understood that all applications are reviewed competitively and that funding or designation are not guaranteed.

Sponsors shall submit all required documentation using the forms provided on the website, maps completed to specifications, and any GIS information in the proper format to the following address.

Rural Legacy Program  
Department of Natural Resources,  
Tawes State Office Building, E-4  
580 Taylor Avenue  
Annapolis, MD 21401

Submissions may be mailed or delivered by hand. A receipt of the application will be provided.

A Sponsor may obtain information or ask questions about the Program with the Rural Legacy Program Staff. The staff will facilitate direct technical assistance from various offices of the Departments of Natural Resources, Agriculture and Planning to potential Sponsors of applications. Information or technical assistance provided from staff will not influence or bind any agency staff in reviewing applications or limit the Board or Advisory Committee in ranking or prioritizing applications or selecting Areas for approval.

*Submission of Applications or additional information, including maps and enhanced parts of the application, will be prohibited after the due date, unless specifically requested by the Board or Advisory Committee.*

**E. Expansions or changes to the boundary of an Area**

Sponsors requesting an expansion to an Area may do so as part of their yearly application. However, Sponsors may also request expansions or other boundary changes outside of the application process. To do so, the Sponsor should send a formal letter to the Rural Legacy Program. The Sponsor will need to provide a written description of the expansion or change, maps, reasoning for the change, the amount of land already preserved in the existing and expanded sections of the Area, if the expanded Area is reflective of the existing Area, and other such pertinent information.

**E. Developing a Plan for the Area**

The Plan for an Area is the “list of proposed acquisitions” in the Application, which later is modified to become Attachment C of the Grant Agreement. The Plan reflects the properties that will be protected and their priority for protection. The Plan should take into consideration factors such as landowner interest and should be geared towards larger parcels. The priority level of the property can be determined based on factors such as the creation of large contiguous blocks of protected land, size of the property, the natural or agricultural resource values of the property, protection of scenic viewsheds, development threat and other factors. Many Sponsors simply use their Easement Valuation System to rank all properties in the Area (the properties that receive the highest value are given the highest priority for protection). See Section Four for additional information on developing an Easement Valuation System. The prioritization of the properties in the Plan should be reflective of the goals of the Application, and will

be illustrated by the accompanying map of the Area. All properties listed in the Plan must be completely within the boundaries of the Area.

**F. Developing a Monitoring Protocol**

The Sponsor must submit a monitoring protocol to the Rural Legacy Program for review and approval, which must include:

- A form for performing site visits to an eased property.
- A schedule for how often monitoring will take place.
- A protocol statement on who will monitor, how decisions are made, how violations will be addressed, and how enforcement will take place.
- A protocol statement on how the easement co-holders will work cooperatively to monitor and make joint decisions.

**G. Changes to the Rural Legacy Plan – Adding a Property**

A Sponsor may wish to make changes to the Plan by adding a property to Attachment C of the Grant Agreement. To do so, the Sponsor should send a formal letter to the Rural Legacy Program requesting the addition of the property to Attachment C. The letter should state the property name, provide the reasoning for including the property for protection (such as new threat of development, change in ownership, new landowner interest), and should come with a map of the Area showing the location of the property.

# Rural Legacy Program Manual

## Section Four

### Acquisition Procedures

This section deals with the acquisition process once a Grant Agreement has been approved. It provides guidelines and procedures for the negotiation of acquisition contracts between Sponsors.

#### **A. Choosing the property**

Sponsors shall begin negotiations with the landowners listed as Priority One on Attachment C of the Grant Agreement. Once a Sponsor has made offers to Priority One landowners that have either been accepted or rejected, then the Sponsor can go on to contacting Priority Two landowners. If the property is not on Attachment C of the Grant Agreement, then the Sponsor may request its addition (see Section Three, “Changes to the Rural Legacy Plan – Adding a Property,” for details).

#### **B. How to protect the property**

Rural Legacy funds may be used to acquire interests in real property by any method approved by the Board, including but not limited to the following:

Conservation easement purchase – This is by far the preferred method to protect land using Rural Legacy funds. A conservation easement is a recorded land use agreement in which the property owner conveys to a governmental unit or a qualified charitable conservation organization (the Grantees) certain rights to be enforced by the Grantees for public benefit. The easement assures that the agricultural, forestry, natural, scenic or other resources that make the property significant are identified and protected against destruction by specific restrictions in the deed of conservation easement. A conservation easement acquired under the Program must be perpetual and may not be extinguished or released. All easement acquisitions must be recorded among the land records of the county where the real property is located. A Land Trust may not hold a conservation easement alone; a qualified local government or State Land Conservation Organization must co-hold with a Land Trust.

Fee simple purchase – The Sponsor should limit the number of fee simple purchases in an Area. Fee simple purchase involves the acquisition by the Grantee of title, structures, and all development rights associated with real property. Fee simple purchases may be done to provide public use for passive recreation but the Sponsor should only purchase land that fits Rural Legacy criteria. Properties and facilities acquired with Rural Legacy funds shall be available for inspection by Rural Legacy staff at reasonable times. If a conservation easement is placed on the property, the fee title and easement title may not be held by the same entity.

Fee simple purchase and resale with conservation easement - Occasionally, a landowner may be unwillingly to place a conservation easement on their property, instead preferring to sell the property outright. The Sponsor may also need to protect a property from imminent development. In these cases, the Sponsor may purchase the property in fee simple, place a conservation easement on the property, and then resell it to a conservation minded buyer. The proceeds of the sale of the property shall be used towards protection of a property listed on Attachment C of a Grant Agreement.

Donation of fee simple or easement rights - Both easements and fee simple interests in real property may be voluntarily donated by property owners to Sponsors or the State. For the purposes of this Program, a donation is a gift given by the donor with charitable intent, and not a dedication of land required by subdivision ordinance or other government regulation. Donations of land to the State will follow existing gift acceptance procedures. The value of donations of interests in real property may be applied toward the Sponsor's financial support for the Plan, as provided in § 5-9A-05(C)(6).

Installment purchase - An installment purchase agreement ("IPA") is entered into with a landowner to buy a conservation easement, whereby the Sponsor pays annual or semi-annual payments for a period of time, such as thirty years. The Sponsor shall be responsible for administration of an IPA. The Sponsor must notify the Program of its intent to use an IPA with Rural Legacy funds, as some limitations apply and additional documentation may be required.

Leveraging Encouraged – Use of other funds (for example, County or Federal funds) in combination with Rural Legacy funds to purchase easements is encouraged. The Sponsor must notify the Program of its intent to leverage the Rural Legacy funds.

### **C. Limitations on acquisition**

The use of Rural Legacy funds is limited by the following factors:

Condemnation authority - State or local condemnation authority may not be used to acquire real property interests.

Right of Public Access - The right of public access may not be required by a Sponsor or the Board as a condition of the purchase of a conservation easement, but a landowner may voluntarily agree to provide public access as part of an easement agreement, and Rural Legacy funds may be used to acquire such interests in the property.

Acquisition of historic or archaeological sites - Funds may only be used for the protection of land that contains historic sites or significant archaeological areas as long as the property meets the goals of this Program and only if the Sponsor is acquiring real property rights through a fee simple purchase. While easements may be purchased with Rural Legacy funds on properties of historical or archaeological significance, and on property with historic structures, no part of the value paid for these easements may be

attributable to the historic structures or archaeological assets of the property or to any restrictions on these assets voluntarily included in the deed of easement.

Reservation of rights not acquired - A land or mineral owner who participates in the Program may reserve mineral rights for extraction in accordance with applicable law and the terms of the conservation easement, so long as the Board determines that the natural and agricultural resources of the property would not be adversely affected by the extraction. Any method for appraisal established by the Board may not include a value for any resource used or reserved by the owner for private economic benefit. Any rights retained by the landowner shall be recorded, at the landowner expense, in the land records prior to recordation of the conservation easement. The Sponsor shall notify Program staff of this action before presenting the Program with the Project Agreement.

#### Negotiation and inspection

The Sponsor has the primary responsibility for negotiating contracts (Agreements of Sale) for real property interests within the Area, but may be aided by a participating local unit of government or by land trusts. Contracts for real property interests will be negotiated in a timely manner in the order of priority proposed in the Plan.

The Sponsor is responsible for negotiations and correspondence with the landowner, and is also responsible for coordinating activities with any co-holder of a conservation easement. An inspection of the property must be performed by the Sponsor to determine the appropriateness of the property for protection, which will include an environmental assessment, a survey of the condition of the property, and inventory of existing structures (see Section Five for further details).

#### **D. Holding the conservation easement**

At least one governmental entity must co-hold a Rural Legacy conservation easement. If the Sponsor is a local government, then that local government may hold title to the conservation easement by itself or it may be a co-grantee with a land trust. If the Sponsor is a Land Trust, then the Sponsor must seek a government agency to co-hold the conservation easement with the Land Trust, such as the county government or the Department of Natural Resources. The conservation easement must be approved by all of the co-holders before submission to the Rural Legacy Program (which may require approval of the Land Trust Board, or the county commissioners or county executive). Projects that have not received formal approval by the easement co-holders will not proceed to the BPW.

#### **E. Baseline Documentation**

Grantees and co-grantees of conservation easements acquired with Rural Legacy funds shall maintain baseline documentation with a copy of the recorded easement deed in a secure file. The purpose of baseline documentation is to describe and illustrate the condition of the property at the time of the signing of the easement. This information

may become helpful in future monitoring efforts and is vitally important in remediation of violations and for enforcement. Baseline documentation should include, but is not limited to, maps showing the soil types on the property, aerial photos of the property, photos of the property with a map showing the photo points, information gathered for the EVS worksheet, and a description of the current agricultural uses of the property. Any information on special habitats or rare species should also be included. See Section Five of this Manual for further information on additional required due diligence.

#### **F. Fee simple purchases**

Land purchased with Rural Legacy funds in fee simple by a Land Trust shall be co-owned by a qualified federal, State, county, or municipal conservation unit. Any subsequent sale of the property shall either include a restrictive covenant on the property limiting its use to the original purpose of the Program or be encumbered by a conservation easement approved by the Program. A Sponsor that is a government entity may purchase land in fee simple may choose to place a conservation easement on the property. A conservation easement holder and the fee simple owner of the property may not be the same entity. Again, any subsequent sale of the property shall either include a restrictive covenant on the property limiting its use to the original purpose of the Program or be encumbered by a conservation easement approved by the Program.

#### **G. Submission of the Project**

Once the project responsibilities and due diligence detailed in Section Five have been completed, then the project may be submitted to the Rural Legacy Program for submission to the BPW.

### **EASEMENT VALUATION AND APPRAISAL FORMAT**

All fee simple properties must be valued by an appraisal. Rural Legacy conservation easements may be valued by either an appraisal or by the Easement Valuation System (EVS) method. Neither option may include a value for any resource used or reserved by the owner for private economic benefit. For example, if an appraisal gives value for the timber on the property, then the conservation easement must contain the no-cut optional language provisions.

An EVS is the greatly preferred option for placing value on conservation easements. An EVS can be tailored for a specific Area, geared for the protection priorities of the Area, give appropriate value for that region, give landowners incentives for protection of certain resources, and strongly encourage landowners to minimize development. In addition, once the system has been approved, completing an EVS worksheet is quick and inexpensive and requires no further review or approval. If a Sponsor has an approved EVS for an Area, then appraisals for conservation easements may not be used without the prior approval of the Rural Legacy Program.

## A. Requirements of the Appraisal Report for Fee Simple Acquisitions

The Board reserves the right to have appraisals reviewed by the Department of General Services (DGS) prior to submission of Project Agreements to the BPW for approval. Acquisition of land in fee simple with Rural Legacy Funds shall be appraised with the following requirements:

- The total land cost of an acquisition project is determined by the sum total of the Fair Market Value (FMV) of each parcel of land to be acquired. The FMV for each parcel must be substantiated by two original appraisal reports. If the project contains one or more parcels whose individual value is \$25,000 or more, then the following format for the formal appraisal must be followed. However, if the individual parcel value is less than \$25,000, the appraiser should use the abbreviated appraisal report guidelines (see below).
- The Appraisal Report must be prepared by a qualified appraiser and be an analytical narrative report following current professional appraisal practices involving the application of standard techniques, such as comparative or market value, cost less depreciation, and income approaches to value. A qualified appraiser is one listed by the Department of General Services for use in state land acquisitions. The Appraisal Report must have been dated within the twelve-month period prior to the project's submission to the BPW.
- The Sponsor will supply two independent appraisal reports. The Program may request an original of the reports if they will be reviewed by DGS. The Sponsor must calculate the percent difference between the value determined by the two appraisals using the following formula:  $\frac{\text{higher value} - \text{lower value}}{\text{higher value}}$ . If the appraisals vary by more than twenty percent or if they are not independent, the Program may require a third appraisal. A third appraisal may only be obtained with the prior approval of the Rural Legacy Program.
- The incidental cost relating to appraisal fees will be eligible for reimbursement under the Program.

**Formal Appraisal Report Requirements :** The following outlines the format that the formal appraisal must follow. Acquisitions costing \$25,000 or more must cover all items below. It is important that each appraiser be given a copy of the following format:

- **Qualifications:** Statement of qualifications of all appraisers and/or technicians contributing to the report.
- **Statement of Limiting Conditions:** The appraiser should state that he/she assumes the title to be marketable, that he/she assumes no responsibility for legal matters, that all data furnished by others are presumed to be correct, and that any other assumptions made are correct.

- **Purpose of the Appraisal:** This shall include a definition of all values required and appraised.
- **Identification of Property**
- **City and Area Data:** This data (mostly social and economic) should be kept to a minimum and should include only such information as directly affects the property being appraised.
- **Property Data**
- **Site:** Describe soil, topography, mineral deposits, easements, etc. If there is an indication that mineral deposits have more than a nominal commercial value, this fact shall be clearly stated.
- **Improvements:** This shall be by narrative description including dimensions of principal buildings and/or improvements.
- **Equipment:** This shall be by narrative description, including the condition.
- **Condition:** The current physical condition and relative use and obsolescence shall be stated for each item or group appraised and, whenever applicable, the repair or replacement requirements to bring the property to useable condition.
- **Assessed Value and Annual Tax Load:** Include the current assessment and dollar amount of real estate taxes. If the property is not taxed, the appraiser shall estimate the tax.
- **Utilities:** Availability of water, sewer, electricity, etc.
- **Zoning:** Describe the zoning for subject and comparable properties and, if rezoning is imminent, discuss the consequences.
- **Analysis of Highest and Best Use:** The report shall state the highest and best market use that can be made of the property (land and improvements and, where applicable, machinery and equipment) for which there is a current market. The valuation shall be based on this use. There can be **only one** highest and best use.
- **Land Value:** The appraiser's opinion of the value of the land shall be based upon its highest and best use, regardless of any existing structures, and shall be supported by confirmed current factual data (sales and offerings) of comparable, or nearly comparable, lands having like optimum uses. Differences shall be weighed and explained to show how they influence the value of the land being appraised.

- **Value Estimates by Cost Approach** (Optional): This section shall be in the form of computed data, arranged in sequence, beginning with reproduction or replacement cost, and shall state the source (book and page if a national service) of all figures used. The dollar amounts of physical deterioration and functional economic obsolescence, or the omission of same, shall be explained in narrative form. This procedure may be omitted on improvements, with real and potential for which only a salvage or scrap value is estimated.
- **Value Estimate by Income Approach** (Optional): This shall include adequate factual data to support each figure and factor used and shall be arranged in detailed form to show at least (a) estimated gross rent or income; (b) allowance for vacancy and credit losses; and an itemized estimate of total expenses, including reserves for replacements. Capitalization of net income shall be at the rate prevailing for this type of property and location. The capitalization technique, method, and rate used shall be explained in narrative form supported by a statement of sources of rates and factors.
- **Value Estimate by Comparative (Market Approach):** All comparable sales used shall be confirmed by the buyer, seller, broker, or other person having knowledge of the price, terms, and conditions of sale. Each comparable shall be weighed and explained in relation to the subject property to indicate the reasoning behind the appraiser's final value estimate from this approach.
- **Interpretation and Correlation of Estimates:** The appraisal shall interpret the foregoing estimate and shall state the reasons why one or more of the conclusions reached are indicative of the market value.
- **Tabulation of History of Conveyance** (Property sales and transfers): A history of transactions is required for each project. The history shall include the following items for the prior five year period:
  - Parties to the transactions
  - Dates of purchase
  - The amounts of consideration.

This tabulation may be submitted separately or incorporated by the appraiser in his/her report. The State would prefer the tabulation as a part of the appraiser's report. Similar information for sales between the date of appraisal and the acquisition date shall be ascertained by the Sponsor.

- **Certification of Appraiser, to wit:**
  - Has personally inspected the property,
  - Has no present or contemplated interest in the property,
  - That in his/her opinion the market value of the property is of a particular value at the time of acquisition, and

- Is licensed in the State of Maryland.

**Abbreviated Appraisal Report Requirements:** An abbreviated appraisal report compiled by a qualified appraiser and adequately related to comparable sales, is acceptable for parcels with a value estimate up to \$25,000. The abbreviated report must include all six items listed below:

- An adequate description of the real property and a plat
- The date the value estimate applies
- Supporting data, including three comparable real property sales, a brief analysis of those sales, and a map showing their location relative to the land appraised
- An analysis and statement of the property's highest and best use
- A statement of the appraiser's experience and qualifications
- The appraiser's license and signature.

## **B. Requirements of the Appraisal Report for Conservation Easement Acquisitions**

If a Sponsor has an approved EVS for the Area, then an appraisal for a conservation easement shall only be completed with the prior approval of the Rural Legacy Program. Obtaining an appraisal when there is an approved EVS for the Area may be approved in rare circumstances for high priority properties that are significantly different than the typical property in the Area. Significant differences include factors such as an unusually large size, different zoning (allowing commercial development or a much higher density of houses than rural zoning), or a particularly scenic and centrally located property. A landowner that does not accept the EVS value is not an adequate reason to obtain an appraisal to get a higher price. The Sponsor should give great thought before obtaining appraisals, as it is very likely that the appraisals will determine a much higher per acre price than the EVS allows. This may result in a prohibitively expensive project or may create dissatisfaction with nearby landowners.

Two independent appraisals shall be obtained and should be reviewed by the appropriate person in the county, such as the MALPF administrator, easement coordinator, or an appraisal reviewer in the real estate or county roads department. Appraising conservation easements is much more difficult and problematic than fee simple acquisitions. The appraisals will require approval by the Rural Legacy Program, and should be sent in for review before an offer is made to the landowner. The Board reserves the right to have appraisals reviewed by the Department of General Services (DGS) prior to submission of Project Agreements to the BPW for approval. The appraisals must contain the following:

- **Determination of value:** The monetary value of the conservation easement shall be determined by the following formula:

$$\text{Easement Value} = \text{Before Value} - \text{After Value}$$

The appraiser shall determine the value of the property before the easement is placed on it and the value of the property after the easement is placed on it. The difference between these two numbers is the value of the easement. How the before and after value is determined is up to the appraiser, who must provide backup documentation of how he/she determined the values.

- **Conservation Easement:** The terms of the conservation easement (i.e., the number of residences allowed on the property) should be negotiated before the appraisal is done. The conservation easement itself shall be reviewed by the appraiser and included in the actual appraisal report. This is done so that the appraiser can place a correct value to the property. If the terms change after the appraisal has been completed, then the appraisers shall add an addendum to the report.
- **Qualifications:** Statement of qualifications of all appraisers and/or technicians contributing to the report.
- **Statement of Limiting Conditions:** The appraiser should state that he/she assumes the title to be marketable, that he/she assumes no responsibility for legal matters, that all data furnished by others is presumed to be correct, and that any other assumptions are correct.
- **Purpose of the Appraisal:** This shall include a definition of all values required and appraised.
- **Identification of Property**
- **City and Area Data:** This data (mostly social and economic) should be kept to a minimum and should include only such information as directly affects the property being appraised.
- **Property Data**
- **Site:** Describe soil, topography, mineral deposits, easements, etc. If there is an indication that mineral deposits have more than a nominal commercial value, this fact shall be clearly stated. If the appraisal gives value for timber, then no-cut language must be in the conservation easement.
- **Utilities:** Availability of water, sewer, electricity, etc.

- **Zoning:** Describe the zoning for subject and comparable properties and, if rezoning is imminent, discuss the consequences.
- **Analysis of Highest and Best Use:** The report shall state the highest and best market use that can be made of the property for which there is a current market. The valuation shall be based on this use. There can be only one highest and best use.
- **Fair Market Value:** The appraiser's opinion of the value shall be based upon its highest and best use, regardless of any existing structures, and shall be supported by confirmed current factual data (sales and offerings) of comparable, or nearly comparable, lands having like optimum uses. Differences shall be weighed and explained to show how they influence the value of the land being appraised.
- **Value Estimates by Cost Approach** (Optional): This section shall be in the form of computed data, arranged in sequence, beginning with reproduction or replacement cost, and shall state the source (book and page if a national service) of all figures used.
- **Value Estimate by Comparative (Market Approach):** All comparable sales used shall be confirmed by the buyer, seller, broker, or other person having knowledge of the price, terms, and conditions of sale. Each comparable shall be weighed and explained in relation to the subject property to indicate the reasoning behind the appraiser's final value estimate from this approach.
- **Interpretation and Correlation of Estimates:** The appraisal shall interpret the estimate and shall state the reasons why one or more of the conclusions reached are indicative of the market value.
- **Tabulation of History of Conveyance** (Property sales and transfers): A history of transactions is required for each project. The history shall include the following items for the prior five year period.
  - Parties to the transactions
  - Dates of purchase
  - The amounts of consideration.

This tabulation may be submitted separately or incorporated by the appraiser in his/her report. The State would prefer the tabulation as a part of the appraiser's report. Similar information for sales between the date of appraisal and the acquisition date shall be ascertained by the Sponsor.

- **Certification of Appraiser, to wit:**
  - Has personally inspected the property,
  - Has no present or contemplated interest in the property,

- That in his/her opinion the market value of the property is of a particular value at the time of acquisition,
- Is licensed in the State of Maryland.

**Appraisals CANNOT do the following:**

- Include properties purchased by governments or non-profit organizations in the sales comparisons. These purchases may not be fair market value.
- Appraise the property as portions. The entire property is being eased and should be appraised as such. If the property consists of two or more parcels that can be conveyed separately under current zoning, then each parcel may be appraised separately.
- Base values on conditional zoning.

**C. Developing an EVS**

An Easement Valuation System (EVS) is a method of awarding points to determine the value of a conservation easement. Points are given to a property based on the physical and resource aspects of the property (soil types, agricultural use, potential development rights, scenic values, etc) and for protections that the landowner is willing to undertake (stream buffers, management plans, limit residences). The points are correlated with monetary value, and can be used to determine a per-acre value and to prioritize properties for protection. Sponsors should ask Rural Legacy Program staff for a copy of the model EVS and for examples before developing an EVS. The EVS must be submitted to the Rural Legacy Program for approval before it is used.

**Purposes of an Easement Valuation System:** The following purposes must be served by an easement valuation system used to purchase easements under the Program:

- To pay for easements commensurate with the resource qualities of the property and the easement conditions necessary to preserve them.
- To identify the most desirable properties for easement acquisition.
- To streamline the easement acquisition process relative to traditional appraisal-based systems.

**Easement Values:**

Easement values must:

- Reflect the agricultural, forestry and natural resource qualities the easement is designed to protect.
- Reflect fair market values (FMVs) of properties in the Area. This may be accomplished through the procurement of two (2) appraisals in the absence of MALPF or other easement purchase program activity in the area.
- Relate to the range of easement values paid by MALPF and other easement purchase programs.

- Have backup information that justifies the prices.

**Easement valuation methodologies:** An easement valuation methodology approved by the Program must:

- Place value on the following characteristics of a property and the associated easement restrictions and requirements necessary to preserve them:
  - Real estate development rights
  - Agricultural and commercial forestry qualities (may include stewardship of these resources and a measure of the contribution of the property to agricultural or forest resource-based economies)
  - Natural resource qualities
  - Features unique or specific to the objectives of and conditions within the Area. These may include, for example:
    - Measures of the contributions of a property to resource-based economies other than agriculture and forestry
    - Measures of development pressure on properties
    - Location within an Area
- Reflect each of these property attributes or features based on their relative importance in the Area or to the Plan.

**D. Alternative Sponsor methodologies:** If a Sponsor chooses to submit an easement valuation system that is not adapted from the Board’s model system, the Sponsor must demonstrate or explain the following:

- How their proposed methodology ensures that easement values will reflect:
  - The property characteristics and the associated easement restrictions necessary to protect the resource attributes of the property.
  - Prevailing fair market values in the Area of the principal types of land use and land cover comprising the property.
- How the easement values resulting from their proposed methodology will relate to easement purchase prices paid by the MALPF or other easement purchase programs active in the Area.
- How upper and lower limits for easement values will be established and maintained.
- How the easement valuation system will reflect contributions of the property to the resource-based economy in the area.
- How the easement valuation system will reflect stewardship of agricultural, natural, or other resources or attributes of the property.

- How the easement valuation methodology will ensure that easement restrictions that will protect more than one resource quality or attribute on the same acreage are not double-counted for purposes of easement valuation.

#### **E. Rural Legacy Program Policies on Reserved Development Rights**

Before easement values and documents are finalized, landowners must declare the number of development rights and the number of subdividable lots they wish to retain (the landowners should be made aware of the density and lot policy before making their decision). The cost to landowners of retaining development rights must be reflected in the easement value paid to the landowner at settlement. If easement value is determined through an EVS, the value of a reserved right or a lot must be deducted from the calculated easement value to determine the easement value paid at settlement. If easement value is determined through appraisals, the appraisals must reflect the rights retained.

The cost of retaining rights for residential lots that can be subdivided should approximate a percentage of the prevailing fair market value of marketable residential lots in the area (equal to the percentage of the EVS fair market reference or fair market value, whichever is used for easement valuation of the easement), minus the typical development costs (site preparation, percolation tests, etc.) for such lots. The Sponsor may use whatever means to calculate values for retained lot rights. However, Sponsors must show the Board how these values compare to this guideline. Residential lots allowed in Rural Legacy conservation easements that can be subdivided should be small enough to have a negligible effect on resource integrity of the mother parcel and conform to local zoning.

The cost of retaining rights for residential dwellings that cannot be subdivided should be less than the lot penalty, and the easement must prohibit subdivision of these residential units from the easement property. The Model EVS approved by the Board includes a deduction of the current value of reserved development rights from the easement purchase price. Sponsors shall include in their application or EVS policies an explanation of how current values of reserved development rights are determined.

#### **F. Density and Lot Policy**

All Sponsors shall develop a density and lot policy that will be applied to all conservation easement purchases with no exceptions. The intent of this policy is to insure that a standard is consistently applied to all easements and that all landowners are treated fairly. The policies should answer the following questions:

- What is the overall density of residences (existing and permitted) that will be allowed on an eased property (for example, one house per fifty acres)? This number should include the number of residences allowed as either development rights on the property or allowed to be subdivided off as lots.

- Are houses allowed on portions or full acreage (for example, if a property is eighty acres and the density is 1:50, then are there one or two houses allowed on the property?)
- Are primary and tenant houses to be treated differently in the density policy?
- How many subdividable lots are allowed in each conservation easement? Is this based on the size of the property or is each property allowed a certain number of lots regardless of size?
- What is the minimum/maximum size of a subdividable lot (should conform to county zoning)?
- What is the penalty for a subdividable lot?

Sponsor policies for residential lots permitted on easement properties acquired through the Program must limit the number, size, type, location, and any other relevant features of such lots so that they do not adversely affect the rural character of the property, the natural, agricultural or cultural resources on the property, or any resource-based uses of the property.

# Rural Legacy Program Manual

## Section Five

### Completing a Project

This section deals with how to complete an acquisition of a Rural Legacy property, either in fee simple or a conservation easement. The documents needed for submitting the project to the BPW are covered, as well as other requirements for completing a project. The acquisition (fee simple or conservation easement) of a property is termed a “project” for the purposes of this Manual.

#### A. **PERMITTED PROJECT COSTS**

##### **Overview**

Allowable project costs include the direct (or land) cost for purchase of real estate interests, incidental costs associated with each project transaction and administrative costs for each project. Program compliance costs for the monitoring and stewardship of easements are allowed for conservation easements. The Sponsor is eligible for assistance of up to one hundred percent of the allowable project costs as further specified below (see also the Grant Agreement and Project Agreement).

##### **Types of Costs**

- **Direct Cost** - Direct cost (also called land cost) is the actual cost of the real property interests acquired in accordance with the appraisal or EVS methodology approved by the Board.
- **Incidental Costs** - Incidental costs are costs relating to the acquisition of real property and interests in real property, such as the costs of surveys, appraisals, title search and legal fees, settlement costs, where applicable. These costs may be eligible for reimbursement if they are obtained during the Grant Agreement period. The Sponsor shall make every effort to include all incidental costs for a project on the Project Agreement for that property, since all incidental costs must be approved by the BPW (the Sponsor will receive reimbursement as part of a lump sum check for the entire project). Any supplemental cost not included in the BPW project approval requires separate action by the BPW.
- **Administrative Costs** - A portion of the Grant, not to exceed three percent of the Grant amount, may be used to pay for administrative costs. Administrative costs are requested with each Project Agreement, and may include:
  - Actual time spent working on a project, including negotiating with landowners, site visits to the property, researching the property for the EVS, travel to the properties, working with title attorneys/appraisers/surveyors/lawyers, preparing documents and other time spent completing the documents and requirements to submit the project to the BPW. Administrative costs will be reimbursed for the salaries for the

easement coordinator, his/her assistant, GIS support, secretarial support, and the real estate lawyer who reviews documents for the county or land trust (these documents must be related to actual projects, not other requirements such as the Grant Agreement).

- Costs for mileage, photocopying, phone bills, parking, and other costs that can be documented.
  - Time spent building and maintaining partnerships, and communicating or negotiating with property owners who are interested selling interests in their property.
  - All administrative costs must be incurred within the Grant Period, prorated among the projects and included as part of the three percent of costs for administration in the Project Agreement (Sponsors generally compute the administrative costs in each Project Agreement as three percent of the land cost). The Sponsor is reimbursed as one lump sum check given for the entire project.
- **Program Compliance Costs** - A portion of the Grant, not to exceed one and a half percent of each easement purchase cost, may be used to pay for program compliance costs for monitoring easements as stated in the Grant Agreement. Sponsors may contribute all or a portion of these costs as part of their financial support for an application. Easements purchased with Program funds and held in perpetuity by a Sponsor as a Grantee must be administered and enforced by the Sponsor. Sponsors must document that program compliance costs will be placed in an endowment or other special account to be made available only to the Grantee and only for the purpose of monitoring the specific easements acquired with Rural Legacy funds. The program compliance costs for easement monitoring must be invested in a long-term managed investment program where the principal will never be withdrawn without the approval of the Rural Legacy Board. The funds cannot be used as collateral. The interest funds may be used by the Sponsors to pay for salaries and supplies for monitoring costs, but the Sponsor is highly encouraged to save the funds for possible litigation.

The Rural Legacy Board will allow program compliance costs for monitoring easements held by State or county conservation organizations as Grantees or co-grantees, including MET and MALPF, if they deposit the funds in a long-term managed investment program as required above, and the interest on the principal is only used to monitor the easements acquired with Rural Legacy funds. No part of the principal of any endowment established with such program compliance fees may be used to pay for litigation expenses without the prior approval of the Board.

Failure of a Grantee organization to adequately monitor the easements purchased with Rural Legacy funds will be cause for repayment of the easement monitoring fees to the Board for reassignment to a successor organization willing to carry out the monitoring responsibilities for the easements.

Co-grantees of easements may share program compliance fees for easement monitoring proportional to their respective duties and responsibilities for stewardship defined in their protocol (see Section Two “Monitoring responsibilities of the Sponsor” for details). Each share of the fees shall be administered consistent with the above guidelines.

## **B. PROJECT COMPLETION RESPONSIBILITIES**

This section outlines the responsibilities and obligations that an applicant should expect to fulfill once the Board has approved an application and the Sponsor submits a project for approval to the BPW.

### **1. Obligations that exist in perpetuity**

#### **Maintain, operate, or repair fee simple properties**

For all fee simple properties, the Sponsor assumes the liability and maintenance for the property. The Sponsor shall be responsible for preventing encroachments, keeping the property in an open-space condition, complying with any management plans, maintenance of any structures/roads/trails, and liability for public use of the property.

#### **Stewardship**

The Sponsor is required to be a good steward of properties that it owns as well as the easements that it holds. Fee simple properties can be managed for passive recreation as well as scenic and open-space value. All easements shall be monitored according to the stewardship protocol that has been written by the Sponsor and approved by the Rural Legacy Program (see Section Two). The Sponsor must immediately address any violations. Any unresolved violations are to be enforced by the Sponsor (working in conjunction with other easement co-holders).

#### **Penalties**

Failure to comply with the provisions of this section shall be cause for the Board to take one or more of the following actions to rectify the situation and bring the project back into compliance, in addition to those specified in the restrictive covenants or deed of easement recorded for the project:

- **Withhold approval** - The Board may withhold approval of any grant request submitted by the Sponsor to the Program.
- **Withhold payment** - The Board may withhold funds for the costs of any or all outstanding approved projects of the Sponsor until the project is brought into compliance.

- **Maintain, operate, or repair** - The Board may assume responsibility to maintain, operate or repair a project to protect it from further damage and then charge the cost to the Sponsor as a debt due the State.
- **Enforce compliance** - The Board may initiate legal action in order to enforce the terms of the Grant Agreement, the conservation easement, or the restrictive covenants on property acquired with Rural Legacy funds (as specified in the third party rights in the Rural Legacy conservation easement).

## C. DOCUMENTS REQUIRED TO SUBMIT A PROJECT TO THE BPW

This section gives details about what documents are required to be submitted to Program staff before the project can be placed on a BPW agenda (referred to here as the “BPW package”). The requirements below are not listed in a particular order. They can be submitted to the Program individually or as one package. However, it is highly encouraged that appraisals be submitted early for review. If a state agency is to be an easement co-holder, then drafts of the conservation easement must be submitted to the state agency for review.

### 1. Maps

A map showing the location of the property and a copy of the tax map with the property boundary outlined should be provided.

### 2. Contract of Sale (Agreement of Sale)

Sponsors shall use the Rural Legacy model contract for either fee simple or conservation easement purchases. The conservation easement should be attached to the contract as an exhibit (this means that the easement should be negotiated before the contract is finally signed). A copy of the contract shall be provided to the Program.

### 3. Deed

Fee Simple Deed: Sponsors shall provide a copy of the final draft of the unsigned fee simple deed. This should be in the form of the Rural Legacy model. All fee simple deeds shall include a restrictive covenant on the property limiting its use to the original purpose of the Program. The deed to any tract of land purchased with Program funds shall contain the following clause setting forth such restrictions on use:

*“Land acquired under a State grant from the Rural Legacy Program may not be converted without written approval of the Rural Legacy Board from that use indicated in its respective approved Project Agreement. Any conversion in land use may be approved only after the Sponsor, cosponsor or titleholder replaces the land with land in the same Rural Legacy Area of at least equivalent area capable of supporting the originally*

*intended use. The appraised monetary value of the land proposed for acquisition shall be equal to or greater than the appraised monetary value of the land to be converted under the proposed new use of the converted land.”*

Deed of Conservation Easement: Sponsors shall use the Rural Legacy model easement, and early drafts shall be submitted to the Program for review. Sponsors may use the optional provisions without prior approval and shall direct any other requests to Program staff before further discussion with landowner. The conservation easement shall be in final form before the project is submitted to the BPW. If a state agency is to be a co-holder, then the Sponsor must follow the procedures for that agency.

#### **4. Monetary Value**

Copies of each of the two appraisals shall be provided to Program staff for review, preferably before the project is submitted. The appraisers shall be on the DGS approved list.

If an EVS is used to assign value to the conservation easement, then the EVS worksheet should be submitted as part of the BPW package (prior approval is not needed). All figures used to compute the value of the easement should be shown on the worksheet, as well as pertinent background information used in determining the EVS worksheet. Program staff should be able to follow the assigning of points in the EVS worksheet and derive the same value.

If monetary value is given in the EVS, then there must be corresponding provisions in the conservation easement to ensure that the resources that the Program is paying for are actually being protected. For example, if the EVS worksheet gives points for a certain type of forest protection or management plan, then there should be language in the conservation easement specifying the appropriate plan (see Rural Legacy optional provisions). If the EVS worksheet gives points for endangered species protection, then the conservation easement shall have language in it requiring their protection (as determined by Heritage Division of DNR). If the EVS worksheet gives points for a special protection area, then the area must be surveyed and the survey included in the conservation easement as an exhibit with language in the conservation easement stating what activities are restricted from the special protection area.

#### **5. Environmental Assessment**

An environmental assessment shall be performed for every Rural Legacy property, fee simple or conservation easement, and submitted as part of the BPW package. The Rural Legacy form may be used or the Sponsor may submit a model form for approval before use. Although it is not required, Program funds may be used to pay for an environmental assessment to be completed by a consultant. All problems found by the environmental assessment shall be taken care of by the landowner before settlement (as required in the Agreement of Sale). If there are any unresolved problems found by

the environmental assessment, then they should be discussed with the Program before the Sponsor proceeds with the project.

## **6. Title Commitment**

A title policy is required for all Rural Legacy projects, and a title commitment must be submitted to Program staff as part of the BPW package. If the Sponsor is a Land Trust co-holding with a state agency, then a lawyer for the Office of the Attorney General in DNR will review and approve the title commitment. If the Sponsor is a county (and the easement holder is the county government) then the Sponsor shall provide a letter from the county attorney stating that he/she has reviewed the title commitment and found it acceptable.

## **7. Survey/Boundary Requirements**

After the landowner has signed the Agreement of Sale, the Sponsor can proceed with determining if the property needs a survey. A surveyor (or the appropriate person in the county government) should review the deeds to the property and plot them to see if they close. If the deeds close then the surveyor should write a letter stating that. The deeds may not close but the surveyor may determine that there is still an acceptable description of the property. The surveyor should then write a letter stating that and provide details. The letter from the surveyor should be submitted as part of the BPW package. However, the surveyor may determine that a survey needs to be completed in order to have an adequate legal description of the property boundary. If so, then a copy of the survey and legal description should be included as part of the legal description.

A Sponsor and landowner may wish to incorporate certain restrictions or provisions into the conservation easement that require a survey in order to make the conservation easement enforceable. These include but are not limited to building envelopes, CREP areas, habitat protection areas, and certain types of forest protections. If there are certain restrictions or requirements that apply to a very specific area, then a survey of that area needs to be included in the conservation easement as an exhibit. These surveyed areas need to be tied into the boundary of the property by at least one point (the surveyor should determine if another point is needed). An exhibit should be created showing the area and should contain the legal description for the special area, and the restrictive language in the easement should reference this exhibit. Sponsors should ask Program Staff for additional information and examples.

## **8. Project Agreement and Request for Payment forms**

A Project Agreement form must be completed and submitted as part of the BPW package. The Request for Payment form must be submitted in order for the Program to process the project for payment.

## **Submitting a project to the BPW**

Once the Sponsor has submitted all the necessary documents for the BPW package, Program staff can begin review of the documents and preparation of the BPW item and highlights. Program staff will schedule the project for a BPW agenda and work with the Sponsor if there is additional information needed. Once the BPW has approved the project, then it can be processed for payment. The Sponsor will receive the money and can proceed to settlement.

### **D. CLOSING OUT A FILE**

Once a project has gone to settlement, the Sponsor should collect the documents needed to close out the file and justify the expenditures listed in the Project Agreement. When all the documents have been assembled, then the Sponsor should send them all to Program staff. The following are required in order to completely close out the file:

- Deed of conservation easement: A copy of the recorded easement should be provided to the Program. The original signed document should go to the appropriate co-holder and be filed in a secure location.
- Title Policy: A copy of the title policy should be provided to the Program. The original should go to the appropriate co-holder. The final title policy shall match the title commitment and any endorsement and shall not contain any changes. If there are changes, this is a breach in contract by the title company and the state may require the company to correct the final policy.
- Settlement sheet: A copy of the settlement should be provided to the Program.
- Incidental Costs: All the incidental costs requested in the Project Agreement and not shown on the settlement sheet must be justified by copies of invoices (i.e., appraisals, surveys, plans).

The Sponsor should begin a monitoring file according to their protocol (see Section Two about establishing a monitoring and stewardship protocol).

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