WEST VIRGINIA CODE: §8A-12-16

§8A-12-16. Use of land for which conservation or preservation easement acquired.

(a) Provisions to be included in conservation or preservation easement and county farmland protection board rules, or the authority rules. -- Farmland upon which a conservation or preservation easement has been recorded may be used for the following:

(1) Farm use;

(2) Businesses directly related to the retail sale of farm products;

(3) Any activity performed for religious, charitable or educational purposes or to foster tourism; and

(4) Any home-based business that does not require a Division of Environmental Protection permit to operate.

Notwithstanding any of the exceptions in this subsection, any use of land under preservation or conservation easement must be consistent with the purpose of the farmland protection programs.

(b) Use for commercial, industrial or residential purposes. -- Excepting existing and future uses described in subsections (c), (d) and (e) of this section, a landowner whose land is subject to a conservation or preservation easement may not develop the land for any commercial, industrial, residential or other nonfarm purpose. Nonresidential, noncommercial, nonindustrial farm support buildings or structures are permitted.

(c) Exclusion for single residential dwelling. -– On request to a county farmland protection board or the authority, an owner may exclude two acres per each single residential dwelling, which existed at the time of the sale of the easement, from the easement prohibitions on residential development. A land survey and recordation identifying each single residential dwelling shall be provided at the expense of the owner. However, before any exclusion is granted, an owner shall agree with the county farmland protection board or the authority not to subdivide further for residential purposes any acreage allowed to be excluded. This agreement shall be recorded among the land records where the land is located and shall bind all future owners.

(d) Exclusion for certain existing and future uses. -- This article neither abrogates nor creates any preexisting rights in the land owned by any person not joining as a grantor of a conservation or preservation easement. Neither the creation nor the existence of a conservation or preservation easement shall prevent existing or future use of the land based on a preexisting right, or prevent any existing or future use consistent with state law with respect to transmission and telecommunications facilities' rights-of-way, easements and

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licenses.

(e) Condemnation of private property for public use. -- This article neither abrogates nor creates any rights inconsistent with state or federal law respecting the power of condemnation of private property for public use. Any person or entity exercising the power of eminent domain must pay compensation at not less than the fair market value of the land to the court having jurisdiction of the proceeding or as directed by the court. The term "fair market value" as used in this subsection shall be determined without regard to the existence of the conservation or preservation easement. Neither the creation nor the existence of a conservation or preservation easement shall prevent acquisition of real property, or any right or interest in the property, for public use.

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