AN ORDINANCE TO AMEND THE CODE OF
THE COUNTY OF WASHINGTON, VIRGINIA TO ADD CHAPTER 47
TO ESTABLISH A PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

WHEREAS the County Comprehensive Plan states the conclusion that a primary
interest of the citizens of the County of Washington, Virginia is to preserve the rural and
natural character of the County;

WHEREAS continuous pressure from development for residential, commercial,
and industrial uses threatens the rural and natural character so prized by the County’s
residents;

WHEREAS the legislature of the Commonwealth has empowered local
governments to establish a Purchase of Development Rights Program to allow voluntary
safeguarding of land used for agricultural, forest, open space, or other conservation
purposes; and

WHEREAS the Board of Supervisors of the County of Washington, Virginia, has
fully considered the proposed program, the interests of the citizens, and its long-term
vision for the future of the County.

NOW, THEREFORE, BE IT ORDAINED, that the Board of Supervisors of the
County of Washington, Virginia, finds it in the best interests of the public health, safety,
and welfare to establish a Purchase of Development Rights Program and, on the basis
of that finding, directs the following:

1. The Code of the County of Washington, Virginia shall be amended to include
   Chapter 47, “Purchase of Development Rights Program,” as set forth below. The
   Editor is requested to assign section and subsection numbers consistent with the
   codification system in place for other chapters.

2. Should any section or provision of this ordinance be decided to be invalid or
   unconstitutional by a court of competent jurisdiction, such decision shall not
   affect the validity or constitutionality of any other section or provision of this
   ordinance or the Code of the County of Washington, Virginia (2002, as
   amended).

3. This ordinance shall become effective immediately.

4. The text of Chapter 47, “Purchase of Development Rights,” shall be, as follows:
Chapter 47

PURCHASE OF DEVELOPMENT RIGHTS PROGRAM*

*Cross references:

State law references: Code of Virginia, § 10.1-1700 et seq.

Sec. 1. Short title.

Sec. 2. Description and purpose.

Sec. 3. Applicability.

Sec. 4. Definitions.

Sec. 5. Designation of program director; powers and duties.

Sec. 6. Purchase of development rights committee established; powers and duties.

Sec. 7. Eligibility criteria.

Sec. 8. Ranking system.

Sec. 9. Conservation easement terms and conditions.

Sec. 10. Application and evaluation procedure.

Sec. 11. Purchase of development rights procedure.

Sec. 12. Restriction on buy-back; extinguishment and exchange of easements.

Sec. 13. Program funding.

Sec. 1. Short title.

This chapter shall be known and may be cited as the “Purchase of Development Rights (PDR) Program.”

Sec. 2. Description and purpose.

The PDR program compensates property owners who voluntarily agree to sell the right to develop their land. Every property comes with certain rights including but not limited to the right to sell, mortgage, or bequeath the property. In the PDR program, the right to develop is separated and sold so that the land remains undeveloped.

The purposes of this chapter include, but are not limited to:

(1) Establishing a program enabling the county to acquire conservation easements voluntarily offered by owners to serve as one means of assuring that Washington County’s resources are protected and efficiently used;

(2) Establishing and preserving open-space and the rural character of the county;

(3) Preserving farm and forest land;
(4) Conserving and protecting water resources and environmentally sensitive lands, waters and other natural resources;

(5) Conserving and protecting biodiversity and wildlife and aquatic habitat;

(6) Assisting in shaping the character and direction of the development of the community;

(7) Improving the quality of life for the inhabitants of the county; and

(8) Promoting recreation and tourism through the preservation of scenic and historical resources.

Sec. 3. Applicability.

The PDR program shall be available for all qualifying lands in the county, except those lands under the ownership or control of the United States of America, the Commonwealth of Virginia, or an agency or instrumentality thereof. Any conservation easement acquired pursuant to this chapter shall be voluntarily offered by the owner.

Sec. 4. Definitions.

The following definitions shall apply in the interpretation and implementation of this chapter.

Active farmland means cropland or pastureland that has been harvested or grazed during the preceding year or in three out of five previous years.

Application period is the interval of time during which the committee will accept applications for consideration for purchase of development rights.

Batch means a grouping of contiguous parcels for purposes of making application for purchase of development rights.

Board means the board of supervisors of the county.

Commission means the planning commission of the county.

Committee means the purchase of development rights committee.

Conservation easement means a nonpossessory interest in one or more parcels by one or more qualified easement holders under subsection 10(d) of this Code, acquired under the Open-Space Land Act (Code of Virginia, § 10.1-1700 et seq.), whether the easement is appurtenant or in gross, voluntarily offered by an owner and acquired by purchase or donation pursuant to the PDR program, imposing limitations or affirmative obligations for the purpose of retaining or protecting natural or open-space values of the parcel or
parcels, assuring availability for agricultural, forest, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of the parcel or parcels.

*County* means the County of Washington, Virginia.

*Director* is the person designated by the Soil & Water Conservation District, who is placed in a managerial position over the daily operations of the program. The director shall serve as a direct liaison to the program.

*District means* the Holston River Soil & Water Conservation District.

* Dwelling means any structure which is designed for use for residential purposes, except hotels, boardinghouses, lodging houses, tourist cabins, apartments and automobile trailers.

*Easement and/or Conservation Easement* means the property interest conveyed pursuant to the provisions of this chapter for the purpose to conserve the rural, agricultural, forest, and/or open space quality of the real property burdened by the easement.

*Foundation means* the Virginia Outdoors Foundation.

*Owner* means the owner or owners of the freehold interest of the parcel.

*Parcel* means a lot or tract of land or portion thereof, lawfully recorded in the clerk’s office of the circuit court of the county. A conservation easement may contain one or more parcels, for purposes of this chapter the term “parcel” shall include all parcels covered by, or proposed to be covered by, the conservation easement.

*Program* means the purchase of development rights program as operated pursuant to the terms of this ordinance in the county.

*Ranking system* means the formula by which applications for the sale of development rights are ranked in order of priority of acquisition of such rights.

**Sec. 5. Designation of program director; powers and duties.**

*Powers and duties.* The director shall administer the program and shall have powers and duties to:

1. Establish reasonable and standard procedures and forms consistent with this chapter for the administration and implementation of the program.

2. Promote the program, in cooperation with the committee, by providing educational materials to the public and conducting informational meetings.
(3) Investigate and pursue, in conjunction with the county, state, federal and other programs available to provide additional public and private resources to fund the program and to maximize private participation.

(4) Evaluate all applications to determine their eligibility and their ranking score, rank applications based on their ranking score, and make recommendations thereon to the PDR committee.

(5) Determine easement value by subtracting the County’s land-use based taxation value from the most the recent County general reassessment value.

(6) Receive owner-provided easement value appraisal report performed and prepared by a certified general appraiser if the applicant volunteers to provide such appraisal report.

(7) Negotiate with owner relating to conservation easement terms and value.

(8) Provide staff support to the committee.

(9) Make report and recommendations to committee, which shall include, without limitation, the easement value as derived from the calculation stated in this section and from results of negotiation with owner.

(10) For each conservation easement accepted into the program, establish baseline data and assure that the terms and conditions of the easement are monitored and complied with by coordinating a monitoring program with each easement holder.

Sec. 6. Purchase of development rights committee established; powers and duties.

(a) Establishment.

(1) The board shall appoint a committee that consists of five voting members, which shall include one member of the commission, one member of the board, one member who also serves on the district board of directors, and two additional members. Each member shall be a resident of the county. In addition to the voting members of the committee, the board shall identify individuals, who are knowledgeable in the fields of conservation, conservation biology, farming, forestry, planning, real estate, and rural land appraisal, to support the work of the committee. The board shall invite, without limitation, the district, agricultural extension office, department of forestry, and the foundation to provide representative(s) to fill these supporting personnel roles.
(2) The members of the PDR committee shall serve at the pleasure of the board. Each member shall serve two-year terms that begin on July 1st and expire on June 30th, with the exception that two of the five members appointed, effective July 1, 2010, shall serve for a one-year term, to be followed by two-year terms.

(4) Vacancies in membership shall be filled by appointment by majority vote of the board for an unexpired term only. The appointed member shall represent the same field of knowledge and serve in the same position and capacity as the previous member.

(5) The members of the committee shall serve without pay, but the board may, in its discretion, reimburse members for actual and necessary expenses incurred in the performance of his/her duties.

(6) The committee shall elect a chairperson and appoint a secretary at its first meeting and henceforth at the beginning of each county fiscal year (July 1st). The secretary need not be a voting member of the committee.

(7) The director shall be an ex officio, non-voting member of the committee.

(8) The committee shall establish bylaws for its meetings and may defer to Roberts Rules of Order for small boards.

(9) A quorum shall consist of three voting members present and the committee shall operate on a “majority rule” basis.

(10) A majority of the voting members shall be required to accept an invitation to sell.

(b) **Powers and duties.** The committee shall have the following powers and duties.

(1) Establish and advertise the application period.

(2) Promote the program, in cooperation and under the guidance of the director, by providing educational materials to the public and conducting informational meetings.

(3) Review the ranking of applications recommended by the director, and make recommendations to the director who will present such recommendations to the board as to which conservation easements should be purchased.

(4) Annually review the program’s eligibility and ranking criteria and recommend to the director any changes needed to maintain the program’s consistency with the comprehensive plan, or to improve the administration, implementation and effectiveness of the program.
Sec. 7. Eligibility criteria.

Property is eligible for consideration for purchase of a conservation easement only upon meeting the following criteria:

1. A conservation easement may extend beyond the jurisdictional limits of the county, but the conservation easement to be purchased pursuant to the program must be entirely within the jurisdictional limits of the county;
2. The use of the parcel subject to the conservation easement must be consistent with the comprehensive plan; and
3. The proposed terms of the conservation easement must be consistent with the minimum conservation easement terms and conditions set forth in this chapter, unless modified by the board.

Sec. 8. Ranking system.

In order to effectuate the purposes of this chapter, parcels for which conservation easement applications have been received shall be evaluated by utilizing a ranking system. The initial ranking system and changes to the ranking system shall be approved by resolution of the committee. The ranking system may be used to prioritize the acquisition of conservation easements. Notwithstanding any other provision of this chapter, the ranking system is non-binding on the county, the board, its staff and the committee for negotiation, selection, invitation to purchase or purchase of conservation easements.

Sec. 9. Conservation easement terms and conditions.

Each conservation easement shall conform with the requirements of the Open-Space Land Act of 1966 (Code of Virginia, § 10.1-1700 et seq.) and this chapter. The deed of easement shall be in a form approved by the county attorney, and shall contain, at a minimum, the following provisions:

1. Restriction on division. The parcel shall be restricted from division as follows:
   a. If the parcel is less than 100 acres it shall not be divided;
   b. If the parcel is 100 acres or larger but less than 200 acres, it may be divided into two lots; and
   c. If the parcel is 200 acres or larger, it may be divided into as many lots so as to maintain an average lot size of at least 100 acres, plus one additional lot for any acres
remaining above the required minimum average lot size (e.g., an 850-acre parcel may be divided into as many as nine parcels, eight of which must maintain an average size of at least 100 acres, and the ninth of which consists of the remaining acres).

(2) **Conservation easement duration.** A conservation easement acquired under the terms of this chapter shall be perpetual except as provided in section 12.

(3) **Other restrictions.** In addition to the foregoing, the parcel shall be subject to standard restrictions contained in conservation easements pertaining to uses and activities allowed on the parcel. These standard restrictions shall be delineated in the deed of easement and shall include, but not necessarily be limited to, restrictions pertaining to:

a. Accumulation of trash, junk, and inoperable vehicles;
b. Display of billboards, signs and advertisements;
c. The management of natural resources including, without limitation, forest, water, minerals, natural gas, and wind and/or solar (for purposes of electric power generating equipment);
d. Grading, blasting or earth removal;
e. The number and size of residential structures, outbuildings, artificial lighting fixtures, farm buildings, and other structures;
f. Conduct of industrial or commercial activities on the parcel;
g. All county zoning and use restrictions; and
h. Monitoring of the easement.

(4) **Designation of easement holders.** The District shall hold the easement jointly with one or more other public bodies, as defined in Code of Virginia, § 10.1-1700, or one or more organizations then qualifying as an eligible donee as defined by section 170(h)(3) of the Internal Revenue Code of 1986, as amended, as such joint holder is approved by the committee. Notwithstanding the foregoing, the District shall jointly hold the easement together with the Foundation without requiring specific prior approval of the committee, whenever the Foundation shall agree to do so.

(5) **Taxation of burdened property.** Taxation of real property burdened by an easement shall be governed by Va. Code section 10.1-1011 or as otherwise set forth in the Code of Virginia in the event of recodification or amendment.
Sec. 10. Application and evaluation procedure.

Each application shall be processed and evaluated as follows:

(1) Application; program materials to be provided to owner. Upon request, the
director shall provide to an owner a standard application form and additional information
about the program, as such is available to or created by the director.

(2) Application form. The director shall provide a standard application form for
owners to use for consideration of a property for a conservation easement. The
application form shall require, at a minimum, that the owner provide: the names of all
owners of the parcel and adjacent parcels, the address and telephone number of each
owner and adjacent owner, the acreage of the parcel, the county tax map parcel
number, the zoning designation of the parcel, a copy of the deed or other instrument by
which the current owner(s) obtained title to the parcel, a copy of any applicable deed
covenants and/or restrictions, tax assessed value of the parcel, land-use based value of
the property, an affidavit of liens that encumber the title, and permission for the director
and such other staff as may be appropriate to enter the property after reasonable notice
to the owner to evaluate the parcel. When such exists on record in the land records of
the Clerk of the Circuit Court of the County, the applicant shall include a copy of the
most recent plat of the boundary lines for the parcel. The application form shall also
include a space for an owner to indicate whether he/she volunteers to have his parcel be
subject to greater restrictions than those contained in the standard deed of easement,
and to delineate those voluntary, additional restrictions, and a space for the owner to
specify any uses that the owner wished to continue on the parcel or to reserve the right
to add.

(3) Additional application information required by director. The director may require
an owner to provide additional information deemed necessary to determine: (i) whether
the proposed easement is eligible for purchase; (ii) the ranking of the parcel; (iii) the
value of such easement; and (iv) such other information deemed necessary for the
processing of an application.

(4) Submittal of application. Applications shall be submitted to the director. An
application fee, as established by the committee, may be required. An application may
be submitted at any time during an open application period. However, the director shall
notify owner(s) who submitted applications received after an application period deadline
that their applications shall not be considered and, if owner desires consideration in a
subsequent application period, then resubmittal shall be required.

(5) Evaluation by director. The director shall evaluate each application received and
determine whether the application is complete. If the application is incomplete, the
director shall inform the owner in writing of the information that must be submitted in
order for the application to be deemed complete. Any application remaining incomplete
for 15 days after the cutoff date for the application period shall be deemed withdrawn.
When an application is deemed complete, the director shall determine whether the
parcel satisfies the eligibility criteria and, if it does, shall determine the number of points
to be attributed to the parcel by applying the ranking system. The director shall then rank
each parcel with the parcel scoring the highest percentage score being the highest
ranked and descending there from. The director shall submit the list of ranked parcels to
the committee after each application period.

(6) Evaluation by committee. The committee shall review the list of ranked parcels
submitted by the director and identify on which parcels it desires conservation
easements. The committee shall then prioritize the parcels on which it will seek to
purchase conservation easements. Nothing in this chapter shall obligate the committee
to purchase a conservation easement on any property.

(8) Requirements and deadlines may be waived. Any requirement or deadline set
forth in this chapter may be waived by the committee if, for good cause, it is shown that
circumstances exist that warrant consideration of an application. Under such
circumstances, the committee may purchase a conservation easement at any time it
deems necessary.

(9) Reapplication. An owner of a parcel not selected by the committee for purchase
of a conservation easement may reapply in any future open application period.

Sec. 11. Purchase of development rights procedure.
Each purchase of a conservation easement shall proceed as follows:

(1) Invitation to sell. After the committee ranks the pool of properties proposed for
conservation easements, the committee shall, by majority vote of the voting members,
instruct the director as to initial pool of parcels to be considered for acquisition of
easements and assign a value to be considered for acquisition of each easement so
identified. In accordance with the board’s instruction, the director shall invite the owner of
each parcel included in the initial pool of parcels to sell to the district a conservation

easement on that parcel for an amount based upon the assigned value of such

conservation easement, subject to the terms and conditions of a proposed deed of

easement. The invitation to sell shall be in writing and shall include the proposed

purchase price, the proposed deed of easement, and the date by which the written offer

must be received by the director in order to be accepted. The invitation may contain a

firm offer to be returned by the owner if the owner desires to sell a conservation

easement.

(2) Offer to sell. Each owner who desires to sell and/or donate a conservation

 easement shall submit to the director a written offer that must be received by the date

 contained in the invitation to sell. The offer should include a statement that substantially

states the following: “(The owner) offers to sell and/or donate a conservation easement

to the district for the sum of (purchase price), subject to the terms and conditions set

forth in the proposed deed of easement enclosed with the invitation to sell.” Nothing in

this chapter shall compel an owner to submit an offer to sell.

(3) Acceptance. An offer to sell a conservation easement may be accepted by the

committee.,

(4) Conservation easement established. A conservation easement shall be

established when the owner and authorized representatives of the holders of the

easement have each signed the deed of easement. The deed shall be recorded in the

office of the clerk of the circuit court of the county. A single conservation easement may

be established for more than one parcel under the same ownership.

(5) Offers not made; offers not accepted; invitation to other owners. If an owner

invited to sell elects not to do so, or if the offer to sell is not accepted by the committee,

then the director may send an invitation to sell to the owner(s) of the next highest

prioritized parcel(s) remaining on the list.

(6) Costs. If the committee accepts an offer to sell a conservation easement, the

committee may pay the grantor’s tax, if any, and the committee may pay all other costs,

including environmental site assessments, surveys, recording costs, if any, and other

charges associated with closing. However, the committee shall not pay expenses or fees

incurred by the property owner for independent appraisals or legal, financial, or other

advice, or any other expenses or fees in connection with the release and subordination

of liens to the easement.
Sec. 12. Restriction on buy-back; extinguishment and exchange of easements.

(1) Restriction on buy-back. The owner shall not have the option to reacquire any property rights relinquished under the conservation easement, except as provided hereafter.

(2) Petition to board. Upon the expiration of 25 years from the date on which a conservation easement was recorded, the owner or successor in interest to the property that is subject to the easement may petition the board for the extinguishment of such easement in exchange for the conveyance to the district of a conservation easement on a different parcel of property meeting all of the eligibility requirements as set forth in section 7. The committee may establish a fee schedule to be paid upon application for extinguishment and exchange of easement.

(3) Requirements. No such extinguishment and exchange of easement shall be authorized, unless a majority of the voting members of the committee finds that:

a. The extinguishment and exchange is determined to be essential to the orderly development and growth of the county;

b. The extinguishment and exchange is in accordance with the comprehensive plan for the county in effect at the time of the extinguishment and exchange;

c. The extinguishment and exchange does not adversely affect the county’s interests in accomplishing the purposes of this chapter;

d. There is substituted other real property that is (a) of at least equal fair market value and at least equal acreage; (b) of greater value as permanent open-space land than the land upon which the easement is extinguished, (c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land upon which the easement is extinguished and (d) is in accordance with the Virginia Open-Space Land Act, (Code of Virginia, § 10.1-1700 et seq.).

(4) Expenses. The petitioner shall bear all expenses and fees in connection with the exchange, including, but not limited to, purchase of the substituted easement, site assessments, surveys, closing costs, recording fees and taxes, title search, and title insurance if required.

Sec. 13. Program funding.

The program may be funded annually by the board in the county budget or by special appropriation. The committee shall endeavor to seek funds from federal, state, local and private sources to effectuate its purposes.