

A MODEL PURCHASE OF DEVELOPMENT RIGHTS (PDR) PROGRAM FOR VIRGINIA

by the
Virginia Department of Agriculture and Consumer Services

Farmland Preservation Task Force

June 2004



A
MODEL PURCHASE OF DEVELOPMENT RIGHTS (PDR)
PROGRAM FOR VIRGINIA

Part 1: Suggested Components of Local PDR Programs

by the
VIRGINIA DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES'

FARMLAND PRESERVATION TASK FORCE

JUNE 2004
RICHMOND



*VIRGINIA DEPARTMENT
OF AGRICULTURE AND
CONSUMER SERVICES*

TABLE OF CONTENTS

	<u>PAGE</u>
I. Letter to the Commissioner	2
II. Introduction/Purpose	3
III. Virginia's Emerging Agricultural Challenges: Loss of Farm Businesses and Farmlands	3
IV. The Virginia Agriculture Vitality Program and The Office of Farmland Preservation	4
V. Developing the Model PDR Program	4
VI. Part 1: Suggested Components of Local PDR Programs	7
VII. Appendix A: Powers and Duties of the Office of Farmland Preservation	11
VIII. Appendix B: Members – VDACS Farmland Preservation Task Force	12
IX. Appendix C: Resources Available to Assist in the Development of Local PDR Programs	13

I. Letter to the Commissioner

April 1, 2004

The Honorable J. Carlton Courter, III
Commissioner
Virginia Department of Agriculture
& Consumer Services
1100 Bank Street, Suite 210
Richmond, VA 23219

Dear Commissioner:

In the fall of 2001, responding to a mandate from the 2001 Virginia General Assembly, you appointed the VDACS Farmland Preservation Task Force and assigned it the responsibility for, among other things, developing a model purchase of development rights (PDR) program for the preservation of farmlands in Virginia. Since that time the Task Force has had numerous meetings, and, as is documented in the attached paper, have met with officials of every local PDR program in the state as well as representatives of PDR programs in neighboring states and national organizations.

I am writing to convey Part One of our proposed model PDR program. This part, which represents almost two years of work, provides suggested components of PDR programs at the **local** level. We have had extensive input from localities in developing this model. Our proposal, which is outlined on pages five and following of the document is not intended to mandate the shape and contents of local PDR programs, but to provide suggested components for all programs across the state. In 2004 the Task Force will be working on Part Two of this model which includes suggested components for the **state** PDR program.

Because the Governor has included the release of this model in a list of potential actions supporting his efforts to double agricultural net receipts in Virginia, we recommend that you forward this document to the Secretary of Commerce and Trade for ultimate inclusion in the Governor's program. If we can answer questions about this document or our suggested components of model PDR programs, please let us know.

On behalf of the Task Force, I wish to convey our thanks for the opportunity to develop this tool for the preservation of farmland in Virginia.

Sincerely yours,

William P. Dickinson, Jr.
Assistant Commissioner
Chair, Virginia Farmland Preservation Task Force

II. Introduction/Purpose

In the late 1990s, leadership in the Virginia agriculture sector took note of two trends which will shape the future of agriculture in Virginia, namely, loss of farm businesses and the loss of Virginia's working farm and forestlands to development. The purpose of this paper is to briefly describe the challenge posed by these two trends, describe the strategies adopted by the 2000 and 2001 General Assemblies to deal with these challenges and to provide details of a model purchase of development rights (PDR) plan developed at the direction of the General Assembly.

III. Virginia's Emerging Agricultural Challenges: Loss of Farm Businesses and Loss of Farmlands

Statisticians looking at recent trends in the Virginia agricultural economy are struck by two rather dramatic changes, which challenge the future of the Virginia agricultural sector. The first of these challenges relates to the aging of Virginia farmers and the subsequent loss of farm businesses. With the average age of Virginia farmers at more than 56 years, with many of these farmer's assets invested in farmland and buildings and with many farmers counting on these assets to form the core of their retirement income, many of them will have to liquidate these assets and their businesses in order to maintain a minimal lifestyle in retirement. Without programs to help farmers find alternatives to liquidating businesses, farm businesses will disappear at an increasing rate over the next decade.

Contributing to the tenuous prospects for survival of many farm businesses are the extreme development pressures on many Virginia farmlands. Economists at Virginia Tech project that given the current age of Virginia farmers, more than 70% of Virginia farmland and a significant percentage of the farm businesses will be transitioned over the next 15 years to either a new generation of farm businesses or to other businesses seeking to develop farmland for non-agricultural purposes.

Between 1992 and 1997, according to data provided in the National Resource Inventory, Virginia lost 23, 260 acres of agricultural land to developed uses each year. Of this land lost to development, more than 10,000 acres (43% of the annual loss) was prime farmland - - the most productive land in the Commonwealth.

IV. The Virginia Agriculture Vitality Program and The Office of Farmland Preservation

The Virginia General Assemblies of 2000 and 2001, taking note of these trends, established the Virginia Agriculture Vitality Program (and subsequently the Office of Farmland Preservation) within the Virginia Department of Agriculture and Consumer Services. In taking these actions the General Assembly assigned VDACS several responsibilities, among which were the administration of the Virginia FarmLink Program and the farmland preservation program. Virginia FarmLink is designed to introduce people who are interested in entering agriculture to those farmers who are leaving the profession. To save farmlands, the VDACS' Office of Farmland Preservation is charged with, among other duties, developing a model PDR program for the state.

All of the other specific powers and duties of the Office of Farmland Preservation are set out in the Code of Virginia §3.1-18.10, which is included in Appendix A of this document.

V. Developing the Model PDR Program

To deal with the farmland preservation challenge, the Commissioner of Agriculture and Consumer Services established the VDACS Farmland Preservation Task Force. This Task Force is comprised of representatives of the Virginia Farm Bureau Federation, the Virginia Association of Counties, pertinent state agencies, Virginia Cooperative Extension, American Farmland Trust, and several land conservation organizations. A complete listing of the membership of the Virginia Farmland Preservation Task Force is included in the Appendix to this paper. In an effort to include existing local Purchase of Development Rights (PDR) Programs, all PDR Program Directors in localities around the state were included as advisors to the Task Force. As a first priority, the Task Force was assigned the responsibility of developing a Model PDR Program for the Commonwealth and its localities.

A PDR Program

Under a PDR program, a landowner voluntarily sells his or her rights to develop a parcel of land to a public agency or a charitable organization charged with the preservation of farmland. The landowner retains all other ownership rights attached to the land, and a conservation easement is placed on the land and recorded on the title. The buyer (often a local unit of government) essentially purchases the right to develop the land and retires that right permanently, thereby assuring that development will not occur on that particular property. In placing such an easement on their farmland, participating landowners often take the proceeds from sale of the development rights to invest in their farming operations or retire from the business, allowing another farmer to purchase the land at lower rates (i.e. rates devoid of development rights).

The Task Force's Process

Responding to expressions of interest and need from Virginia localities, the Task Force first set about developing the local component of its model PDR program. In this process, the group heard from all PDR programs in the Commonwealth as well as programs in Pennsylvania, Maryland and New Jersey. The Task Force also called in representatives of American Farmland Trust to provide an overview of PDR programs across the country.

At the outset of its work, the Task Force set forth several fundamental positions:

1. "Farmland" means working farm and forestlands.
2. No program or group of programs will be able to preserve all farmland in the Commonwealth, with the result that farmland to be preserved must be carefully targeted on a statewide basis and more importantly, on a local and regional basis.
3. PDR programs will succeed only if implemented in tandem with other farmland preservation strategies, such as protective zoning and land use taxation; among others.
4. Model programs should be developed under the premise that they contain elements to make them qualify for protection for funding under the USDA Farmland Protection and Forest Legacy Programs, to the extent possible.
5. Any model developed, would be a model, and the state would not mandate specific requirements for PDR programs.
6. Should state funding become available to supplement local funding for the purchase of development rights, funding would be allocated to those programs and to those easement purchases which most closely meet the elements in the model program.
7. All PDR programs would be voluntary in terms of landowner participation.

After establishing these basic premises, and after receiving extensive input from local governments and PDR programs within and beyond the state, the Task Force developed the suggested components for local PDR programs shown as Part I in Section VI. The material there has not only been exposed to Virginia localities with PDR programs, but it has also been presented to local officials at the 2003 Virginia Association of Counties Annual Meeting. As of this date all of the feedback has been very positive.

Because of the interest in the local model, the Task Force has decided to release this component of the model while it is more fully developing the state level component and meeting the other mandates of §3.1-18.10.

VI. A MODEL PDR PROGRAM FOR VIRGINIA
Part 1: Suggested Components of Local Programs

Note: The intent of this part of the model is to provide local governments with a template for local PDR programs as well as to present information which will facilitate the development and implementation of such programs. A comprehensive list of resources available to assist localities with this effort as well as examples of a model ordinance and program application are presented in Appendix C to this paper.

Part I: Suggested Components of Local PDR Programs

A. Clearly defined goals & purpose

1. Voluntary program for landowners
2. Areas of farmland concentration
3. Areas of natural resource concentration
4. Defined target areas, such as but not limited to century farms, bicentennial farms, or agricultural and forestal districts.
5. Other

B. Action plan for education/outreach to landowners, public officials, and the public
Suggested methods for public education effort, pre and post adoption

1. Brochures
2. Article placement, i.e. Press Releases
3. Web Page, all documents available on web or links
4. Public meetings, i.e. seminars, ongoing speaking engagements, informational meetings, Virginia Cooperative Extension educational programs.
5. Partnership development, i.e. land conservation organizations, local Soil and Water Conservation Districts, etc.
6. CD or Video
7. Mailings to landowners (specific target group area)

C. Adopted ordinance/resolution establishing a PDR program

Administrative process needs to be: consistent, replicable, transparent, non-discriminatory, fair, objective, and equitable.

1. Adopted ordinance lays out clearly articulated process identifying all elements and clearly assigning responsibilities (i.e. farmland selection process, recordation, monitoring, funding, applications, valuation, etc.)

OR

2. Adopted resolution lays out clearly articulated process identifying all elements and clearly assigning responsibilities (i.e. farmland selection process, recordation, monitoring, funding, applications, valuation, etc.)

D. Valuation process

Standards for selection of an appraiser must be consistent with Commonwealth procurement and Uniform Standards of Professional Appraisal Practice. A certified general appraiser is recommended.

1. Market approach appraisal
 - a. Before and after valuation
 - b. Comparable sales
2. Income approach appraisal
3. Rent Amortization appraisal
4. Flat rate
5. Other methods, such as a points system

E. Components of an Agricultural Enhancement Strategy

1. Comprehensive plan reviewed as required by Code of Virginia.
2. Comprehensive plan internally consistent and promotes the goals and objectives of retaining agricultural land
3. Implementing ordinances (zoning, subdivision, etc.) consistent with and promote the agricultural goals of the comprehensive plan
4. An agricultural land retention strategy should
 - a. Recognize agriculture as a vital element of the community and the local economy
 - b. Define agricultural/forestral areas in the locality. Suggested criteria include: agricultural/forestral districts; land-use taxation; prime, unique and locally important soils; Land Evaluation Site Assessment (LESA); etc.
 - c. Designate soils of local importance pursuant to Code of Virginia §3.1-18.4-5.
 - d. Delineate an area sufficient for agriculture and support of agribusinesses
 - e. Define goals for retaining productive agricultural land
5. Agricultural development office/program in county/city of interest.

F. Deed of Easement

Consistent with administrative process and Agricultural Enhancement Strategy

1. Qualities:
 - a. Clearly delineates the process for review of an application to amendment of the deed so long as they are consistent with the stated goals and objectives of the purchase of development rights program
 - b. Recognizes and allows for the dynamic, changing nature of agriculture and not unduly restricting agricultural practices and products
 - c. Cites, applicable federal, state, and county enabling legislation
 - d. Contains recitation clauses (“Whereas”)
 1. Statement of easement purpose
 2. Defined specific agricultural resource being protected
2. Content:
 - a. Legal description of property
 - b. Identifies easement holders
 - c. Delineates restrictions

- d. Provision for resource management plan (optional, but required for properties planning to qualify for Federal Farm and Ranchlands Protection Program funds and Forest Legacy)
- e. Perpetual in duration
- f. Monitoring provision, including the right of holder to monitor
- g. Enforcement provision
- h. Easement copy filed with appropriate county and state departments
- i. Easement recorded at the appropriate office of the Clerk of the Circuit Court
- j. Compiled baseline documentation
- k. Clearly delineated the process for review of an application to amend an easement

G. Mandatory Monitoring Program

- 1. Identified monitoring entity (Local Government, Purchase of Development Rights Administrator, Soil & Water Conservation District, Agricultural Statistics, Non-Governmental Organization, etc.)
- 2. Regular/frequent monitoring schedule with compliance checklist tailored to the individual properties
- 3. Identified enforcement entity and procedure;
- 4. Baseline documentation, including but not limited to:
 - a. Description of site and conservation values
 - b. Photos
 - c. Map(s)
 - d. Property sketch

H. Perform Periodic Program Evaluation

- 1. Establish frequency of program review
- 2. Identify responsible agency
- 3. Solicit citizens and landowner input
- 4. Evaluate consistency with program goals
- 5. Implement findings of program evaluation

I. Reporting as Required

Part II: Components of the State PDR Program– To Be Developed

A. Goals & Objectives

B. Education/Outreach Plan

- 1. Legislative Action for Permanent Funds / Transfer Tax
- 2. Inform localities of this Program and Federal Farmland Protection Programs

C. Administrative Process

1. Authority
2. Appeals Process

D. Money Distribution System

(To be defined)

E. Certification/Recertification Process

1. Periodic Review of local program, which allows the locality reporting on progress
2. Formal Recertification Process

F. Periodic State program evaluation

G. Allow for program flexibility

Part III: Appendices - To Be Developed

- A. Funding Sources
- B. Examples of Virginia localities' Purchase of Development Rights Programs
- C. Other farmland protection programs

Appendix A

§ 3.1-18.10. Powers and duties of Office of Farmland Preservation.

The Office of Farmland Preservation shall have the following powers and duties:

1. To develop, in cooperation with the Department of Business Assistance, the Virginia Farm Bureau Federation, the American Farmland Trust, the Virginia Land Conservation Foundation, the Virginia Outdoors Foundation, the Virginia Association of Counties, and the Virginia Cooperative Extension, (i) model policies and practices that may be used as a guide to establish local purchase of development rights programs; (ii) criteria for the certification of local purchase of development rights programs as eligible to receive grants, loans or other funds from public sources; and (iii) methods and sources of revenue for allocating funds to localities to purchase agricultural conservation easements;
2. To create programs to educate the public about the importance of farmland preservation to the quality of life in the Commonwealth;
3. To provide technical, professional, and other assistance to farmers on matters related to farmland preservation; and
4. To administer the Virginia Farm Link program established pursuant to § 3.1-18.11.

(2001, c. 521.)

Appendix B

Members: Virginia Farmland Preservation Task Force

Leon App, Department of Conservation & Recreation
Robins Buck, Department of Agriculture & Consumer Services
Louis Cullipher, Farmer/Landowner
Mike Foreman, Department of Forestry
Joe Guthrie, Farmer/Landowner
Michael Kane, Loudoun County PDR Program
Rachel Morris, Virginia Farm Bureau
Reggie Nelson, Farmer/Landowner
Scott E. Parsons, Department of Business Assistance
Ray Pickering, Office of Agricultural Development, Fauquier County
Jesse Richardson, Dept. of Urban Affairs & Planning, Virginia Tech
James Riddell, Virginia Cooperative Extension
Kevin Schmidt, American Farmland Trust
Estie Thomas, Virginia Outdoors Foundation
Mary Heinrich, Ag Prospects

William Dickinson, Chair, Department of Agriculture & Consumer Services

Advisors:

Melvin Atkinson, City of Virginia Beach
Gray Coyner, Piedmont Environmental Council
McChesney Goodall, County of Albemarle
Scott Haley, Department of Environmental Quality
Chuck Johnston, County of Clarke
Lance Metzler, County of Northampton
Ed Overton, County of James City

Appendix C

Resources Available to Assist in the Development of Local PDR Programs

Local working groups and committees charged with developing a PDR program for their particular county or city can access, through the internet, a vast array of resources to assist them. These resources range from works in scholarly journals assessing the effectiveness of various PDR programs and websites for the PDR programs operating around the United States to national farmland preservation websites such as that for American Farmland Trust (www.farmland.org).

Virginia

Among the best resources available to assist developing PDR programs in Virginia are the PDR program administrators around the state and the program materials posted on their respective county/city websites. As of January 1, 2004, six Virginia localities had operating PDR programs. The primary contacts, phone numbers and website addresses for each of these programs is given in the table below.

<u>County/City</u>	<u>Contact</u>	Phone Numbers	Web Address (www.)
Albemarle	Department of Planning and Community Development (Acquisition of Agriculture Conservation Easement Program Coordinator)	(434) 296-5823 - ext. 3084	albemarle.org
Clarke	Planning Administrator	(540) 955-5132	co.clarke.va.us
Fauquier	Agricultural Development Officer	(540) 349-5314	fauquiercounty.gov
James City	PDR Administrator	(757) 259-3161	james-city.va.us
Loudoun	Manager, PDR Program	(703) 737-8868	co.loudoun.va.us
Virginia Beach	Director, Agriculture Reserve Program	(757) 427-8886	vbgov.com

The websites for each of these programs contain general information on the programs as well as their specific features and, in some cases, very technical information such as applications to participate and the ordinances establishing the program.

James City County

Among the information found, for example, on the James City County PDR website is the following:

A Brochure

The Ordinance:

CHAPTER 16A

PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

Sec. 16A-1. Short title.

Sec. 16A-2. Purpose.

Sec. 16A-3. Applicability.

Sec. 16A-4. Definitions.

Sec. 16A-5. Designation of program administrator; powers and duties.

Sec. 16A-6. Purchase of development rights committee established; powers and duties.

Sec. 16A-7. Appraisal review committee established; powers and duties.

Sec. 16A-8. Eligibility criteria.

Sec. 16A-9. Ranking system.

Sec. 16A-10. Conservation easement terms and conditions.

Sec. 16A-11. Application and evaluation procedure.

Sec. 16A-12. Purchase of development rights procedure.

Sec. 16A-13. Restriction on buy-back; extinguishment and exchange of easements.

Sec. 16A-1. Short title.

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

(Ord. No. 194, 11-27-01)

Sec. 16A-2. Purpose.

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 James City 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.

(Ord. No. 194, 11-27-01)

State law reference – Code of Va., §10.1-1700 et seq. 16A-2 Supp. No. 8, 2-02

Sec. 16A-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.

(Ord. No. 194, 11-27-01)

Sec. 16A-4. Definitions.

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

Administrator. Administrator is that person placed in a managerial position over the daily operations of the PDR program. The administrator shall serve as a direct liaison to the program.

Board. The Board of Supervisors of James City County.

Conservation easement. A nonpossessory interest in one or more parcels by one or more qualified easement holders under section 16A-10(d) of the Code of the County of James City acquired under the Open-Space Land Act (Code of Va., §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, forestal, 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.

Dwelling. Any structure which is designed for use for residential purposes.

Owner. The owner or owners of the freehold interest of the parcel.

Parcel. A lot or tract of land, lawfully recorded in the clerk's office of the circuit court of the City of

Williamsburg and County of James City. 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.

(Ord. No. 194, 11-27-01)

Sec. 16A-5. Designation of program administrator; powers and duties.

(a) *Designation.* The administrator shall report to the assistant manager of community services.

(b) *Powers and duties.* The administrator shall administer the PDR 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 PDR 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. 16A-3 Supp. No. 8, 2-02
- (5) Coordinate the preparation of appraisals.
- (6) Negotiate with owner relating to conservation easement terms and value.
- (7) Provide staff support to the board, the PDR committee, and the appraisal review committee.
- (8) 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. (Ord. No. 194, 11-27-01)

Sec. 16A-6. Purchase of development rights committee established; powers and duties.

(a) *Establishment.* The PDR committee is hereby established, as follows:

- (1) The committee shall consist of five members appointed by the board. Each member shall be a property owner in and of James City County. The committee should, but is not required to be, comprised of members who are knowledgeable in the fields of conservation, conservation biology, planning, real estate, land appraisal, farming and forestry and may also include members of conservation easement holding agencies and conservation organizations.
- (2) The members of the committee shall serve at the pleasure of the board. The initial terms of the members shall be as follows: two members shall be for one year; two members shall be for two years; and one member shall be for three years. Each term after the initial term shall be for three years.
- (3) 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.
- (4) The committee shall elect a chairman, vice chairman and secretary at its first meeting each calendar year. The secretary need not be a member of the committee.
- (5) The administrator shall be an ex officio member of the committee.

(b) *Powers and duties.* The PDR committee shall have the powers and duties to:

- (1) Promote the program, in cooperation and under the guidance of the administrator, by providing educational materials to the public and conducting informational meetings.
- (2) Review the ranking of applications recommended by the administrator, and make recommendations to the administrator and the board as to which conservation easements should be purchased.
- (3) Annually review the program's eligibility and ranking criteria and recommend to the administrator any changes needed to maintain the program's consistency with the comprehensive plan, or to improve the administration, implementation and effectiveness of the program.
- (4) A quorum shall consist of three members present and the committee shall operate on a "majority rule" basis. (Ord. No. 194, 11-27-01)

Sec. 16A-7. Appraisal review committee established; powers and duties.

(a) *Establishment.* The appraisal review committee is hereby established, as provided herein:

(1) An appraisal review committee shall be created as a subcommittee of the PDR committee and operate directly under its supervision. 16A-4 Supp. No. 8, 2-02

(2) The subcommittee shall consist of a minimum of three members. The subcommittee shall be comprised of at least one real estate professional, one member of the PDR committee, and the county assessor. The members shall be appointed by the PDR committee.

(3) The members of the subcommittee shall serve at the pleasure of the PDR committee. Each member, other than the county assessor, shall serve a one year term. The county assessor shall be a permanent member of the subcommittee.

(4) The county assessor shall be the chairman of the subcommittee.

(b) *Powers and duties.*

The appraisal review committee shall have the power and duty to review appraisals to assure they are consistent with appropriate appraisal guidelines and practices, and to make recommendations thereon to the PDR committee, and provide final approved appraisal results to the PDR committee, and the administrator.

(Ord. No. 194, 11-27-01)

Sec. 16A-8. Eligibility criteria.

In order for a parcel to be eligible for a conservation easement, it must meet the following criteria: (i) the use of the parcel subject to the conservation easement must be consistent with the comprehensive plan; (ii) the proposed terms of the conservation easement must be consistent with the minimum conservation easement terms and conditions set forth in section 16A-10, unless modified by the board; and (iii) the parcel must be located in the County of James City.

(Ord. No. 194, 11-27-01)

Sec. 16A-9. 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 the county administrator and the director of development management. The ranking system may be used to prioritize the acquisition of conservation easements.

(Ord. No. 194, 11-27-01)

Sec. 16A-10. Conservation easement terms and conditions.

Each conservation easement shall conform with the requirements of the Open-Space Land Act of 1966 (Code of Va., §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:

(a) *Restriction on new dwellings.* No new dwellings may be constructed on a parcel except as provided hereafter; the deed of easement may allow one new dwelling per 100 acres, with the dwelling location specified by plat on or before the conservation easement is established.

(b) *Conservation easement duration.* A conservation easement acquired under the terms of this chapter shall be perpetual.

(c) *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: (i) accumulation of trash and junk; (ii) display of billboards, signs and advertisements; (iii) grading, blasting or earth removal; (iv) conduct of industrial or commercial activities on the parcel; and (v) monitoring of the easement. 16A-5 Supp. No. 8, 2-02

(d) *Designation of easement holders.* The county shall be the easement holder, and if designated by the board, one or more other public bodies, as defined in Section 10.1-1700 of the Code of Virginia, 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, shall also be an easement holder.

(Ord. No. 194, 11-27-01)

Sec. 16A-11. Application and evaluation procedure.

Each application for a conservation easement shall be processed and evaluated as follows:

(a) *Application; program materials to be provided to owner.* The application materials provided by the administrator to an owner shall include, at a minimum, a standard application form and information about the PDR program.

(b) *Application form.* Each application shall be submitted to the administrator on a standard form prepared by the administrator. The application form shall require, at a minimum, that the owner provide: the names of all owners of the parcel, the address and telephone number of each owner, the acreage of the parcel, the James City County tax map and parcel number, the zoning designation of the parcel, and permission for the administrator and an independent appraiser and such other staff as may be appropriate to enter the property after reasonable notice to the owner to evaluate the parcel, and for the county assessor or an independent appraiser to appraise the property. 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.

(c) *Additional application information required by administrator.* The administrator 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; and (iii) the value of such easement.

(d) *Submittal of application.* Applications shall be submitted to the administrator. An application fee may be required. An application may be submitted at any time during an open application period. However, applications received after an open application period deadline, shall be held by the administrator until the next open application period.

(e) *Evaluation by administrator.* The administrator shall evaluate each application received and determine whether the application is complete. If the application is incomplete, the administrator shall inform the owner in writing of the information that must be submitted in order for the application to be deemed complete. When an application is deemed complete, the administrator shall determine whether the parcel satisfies the eligibility criteria set forth in section 16A-8 and, if it does, shall determine the number of points to be attributed to the parcel by applying the ranking system in accordance with section 16A-9. The administrator shall then rank each parcel with the parcel scoring the most points

being the highest ranked and descending there from. The administrator shall submit the list of ranked parcels to the PDR committee after each open application period.

(f) *Evaluation by PDR committee.* The PDR committee shall review the list of ranked parcels submitted by the administrator. The PDR committee shall forward to the administrator and the board recommendations of which conservation easements should be purchased.

(g) *Evaluation by board.* The board shall review the list of ranked parcels submitted by the PDR committee and identify on which parcels it desires conservation easements. The board shall then prioritize the parcels on which it will seek to purchase conservation easements. Nothing in this chapter shall obligate the board to purchase a conservation easement on any property that is eligible for purchase.

(h) *Requirements and deadlines may be waived.* Any requirement or deadline set forth in this chapter may be waived by the board if, for good cause, it is shown that urgent circumstances exist that warrant consideration of an application. Under such circumstances, the board may purchase a conservation easement at any time it deems necessary. 16A-6 Supp. No. 8, 2-02

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

(Ord. No. 194, 11-27-01)

Sec. 16 A-12. Purchase of development rights procedure.

Each purchase of a conservation easement shall proceed as follows:

(a) *Identification of initial pool.* From the list of parcels received under section 16A-11, the board shall designate the initial pool of parcels identified for conservation easements to be purchased.

(b) *Determining purchase price.* Negotiations with the property owners regarding the easement terms shall be coordinated by the administrator. Upon completion of these negotiations, the administrator shall arrange for an appraisal of the properties by the county assessor or an independent appraiser. Each completed appraisal shall be submitted to the administrator. The results of the appraisal shall be reviewed by the appraisal review committee which shall review and approve each appraisal. Final approved appraisal results shall be provided to the PDR committee and the administrator.

(c) *Invitation to sell.* The county administrator shall invite the owner of each parcel included in the initial pool of parcels to sell to the county a conservation easement on that parcel for an amount based upon the appraised 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 purchase price, the proposed deed of easement, and the date by which a written offer must be received by the administrator in order to be accepted. The invitation may contain a form offer to be returned by the owner if the owner desires to sell a conservation easement.

(d) *Offer to sell.* Each owner who desires to sell and/or donate a conservation easement shall submit a written offer that must be received by the administrator 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 County of James City, Virginia 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.

(e) *Acceptance.* An offer to sell a conservation easement shall be accepted by the board in writing, following an action by the board authorizing acceptance.

(f) *Conservation easement established.* A conservation easement shall be established when the owner and an authorized representative of the holder 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 City of Williamsburg and County of James City. A single conservation easement may be established for more than one parcel under the same ownership.

(g) *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 board, then the county administrator may send an invitation to sell to the owner(s) of the next highest prioritized parcel(s) remaining on the list of parcels identified in section 16A-11(g).

(h) *Costs.* If the board accepts an offer to sell a conservation easement, the county shall pay the grantor's tax, if any, and the county may pay all other costs, including environmental site assessments, surveys, recording costs, if any, and other charges associated with closing. However, the county shall not pay expenses or fees incurred by the property owner for independent appraisals or legal, financial, or other advice, or expenses or fees in connection with the release and subordination of liens to the easement purchased by the county.

(Ord. No. 194, 11-27-01)

16A-7 Supp. No. 8, 2-02

Sec. 16A-13. Restriction on buy-back; extinguishment and exchange of easements.

(a) *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, the deed of easement may allow an exchange of easements as follows:

(1) *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 which is subject to the easement may petition the board for the extinguishment of such easement in exchange for the conveyance to the county of a conservation easement on a different parcel of property meeting all of the eligibility requirements as set forth in section 16A-8.

(2) *Requirements.* No such extinguishment and exchange of easement shall be authorized, unless a majority of the board find that:

(i) The extinguishment and exchange is determined to be essential to the orderly development and growth of the county;

(ii) The extinguishment and exchange is in accordance with the comprehensive plan for the county in effect at the time of the extinguishment and exchange;

(iii) The extinguishment and exchange does not adversely affect the county's interests in accomplishing the purposes of this ordinance;

(iv) There is substituted other real property which 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 Va., §10.1-1700 et seq.).

(3) *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. (Ord. No. 194, 11-27-01)

An Application:

JAMES CITY COUNTY
COMMUNITY SERVICES
5249 Olde Towne Road
Williamsburg, Virginia 23188
Tel. (757) 259-3161
Fax (757) 259-3188

APPLICATION FORM
PURCHASE OF DEVELOPMENT RIGHTS PROGRAM
JAMES CITY COUNTY

(Please type or print in dark ink)
(02-11-02)

•Owner/Contact Person: _____ Phone Number: _____

Mailing Address: _____

•Parcel Address: _____

•Tax Map & Parcel Number: _____

•FSA Tract & Farm Number: _____

•Parcel Acreage: _____

•Parcel Zoning Designation: _____

•Include All Owners of Record:

Name: _____ Phone Number: _____

Mailing Address: _____

•Include any representative the owners give permission to receive information on their behalf (attorney, accountant, etc.):

Name: _____ Phone Number: _____

Mailing Address: _____

•Entity Owning Parcel (sole owner, husband and wife, partnership, corporation, limited liability company, etc.): _____

•List all Deeds of Trust against the parcel:

Date and Instrument Number: _____

Trustee Name and Address: _____

Beneficiary Name and Address: _____

•List all present or pending liens, judgments or court proceedings against the parcel (by date, parties involved, instrument number, legal reference or case number):

•Is the parcel subject to any leases (type of lease, leaseholder)?

•Is the parcel subject to any easements (utilities, pipeline, historic, environmental, etc.)?

•What are the present principal uses of the parcel (crops, pasture, livestock, timber, recreation, etc.)?

•Does the parcel contain cropland or pastureland that has been harvested or grazed during the preceding year or in 3 out of previous 5 years? ____ yes; ____ no; ____ don't know.

•Approximate acreage in open areas (pasture, cropland, fallow land):

•Have the owners implemented any of the following Soil and Water Quality Conservation Plan Categories? ____ Nutrient Management Plan; ____ Conservation Tillage; ____ Grazing Land Protection; ____ Cover Crops; ____ Structural Practices; ____ Streambank Protection; ____ don't know.

•Has a Soil and Water Quality Conservation Plan that meets James City County Code and Chesapeake Bay Act requirements been approved on the parcel? ____ yes; ____ no; ____ don't know.

•List the number of dwellings on the parcel and their use:

•List the number of structures on the parcel and their use:

•Is the parcel within a national or state historic / archaeological district or contain a natural or state historic landmark? ____ yes; ____ no; ____ don't know. If yes, explain:

•Does the parcel contain areas of archaeological significance identified by an archaeologist? ____ yes; ____ no; ____ don't know.

If yes, explain: _____

•Are the owners interested in donating a portion of the conservation easement value? ____ yes; ____ no; ____ We would like to discuss with the PDR Administrator.

- Are the owners interested in any of the following restrictions applying to the parcel?
 timber harvesting restrictions or timber buffers; no new dwellings to be located on the parcel; no further division of parcel; no option to reacquire any property rights given. We would like to discuss with the PDR Administrator.
- Are the owners interested in including additional restrictions in the Deed of Easement beyond those described in the PDR Ordinance and sample Deed? If so, please describe:

I/We hereby make application to James City County for the sale of development rights on the tax parcel(s) identified above on this application form pursuant to the Code of James City County, Chapter 16A, Purchase of Development Rights Program. I/We understand and acknowledge that I/We incur no obligation by completing this application, and that James City County incurs no obligation by its acceptance of this application. I/We hereby certify that, to the best of my/our knowledge, the information contained in this application and attached materials is true and correct. I/We grant permission to the PDR Administrator or his designee, County staff, and an independent appraiser to enter the property, after reasonable notice to the contact person identified above on this application form, for the purposes of evaluating the parcel(s). Furthermore, I/We grant permission for the County Assessor or an independent appraiser to appraise the property, and for the PDR Administrator or his designee to have access and obtain information from the Colonial Soil and Water Conservation District, and from the USDA Farm Service Agency for the purposes of ranking and evaluating the parcel(s).

ALL OWNERS OF RECORD MUST SIGN AND DATE THIS APPLICATION.

_____ Signature	_____ Date
_____ Printed Name	
_____ Signature	_____ Date
_____ Printed Name	
_____ Signature	_____ Date
_____ Printed Name	

Disclaimer: This Application Form is not a legally binding agreement between the Applicant(s) and James City County. It is strictly for informational purposes in processing the application.