

CHAPTER 75

PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

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Sec. 75-1. Short title.

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

Sec. 75-2. 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 Cumberland 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.

State law reference B Va. Code § 10.1-1700 et seq.

Sec. 75-3. 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. 75-4. Definitions.

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

Active farmland. Cropland or pastureland that has been harvested or grazed during the preceding year or in 3 out of 5 previous years.

Director. Director is the County Administrator or that person designated by the County Administrator who is placed in a managerial position over the daily operations of the PDR program. The Director shall serve as a direct liaison to the program.

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

Board. The Board of Supervisors of Cumberland County.

Conservation easement. A nonpossessory interest in one or more parcels by one or more qualified easement holders under Section 75-10(d) of the Code of the County of Cumberland County acquired under the Open-Space Land Act (Virginia Code § 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, except hotels, boardinghouses, lodginghouses, tourist cabins, apartments and automobile trailers.

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

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

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. 75-5. Designation of program Director; powers and duties.

(a) *Powers and duties.* The Director 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 PDR Program.

(2) Promote the PDR Program, in cooperation with the PDR Committee (as established below), 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) Coordinate the preparation of appraisals.

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

(7) Provide staff support to the Board and the PDR Committee.

(8) For each conservation easement accepted into the PDR 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. 75-6. Purchase of development rights committee established; powers and duties.

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

(1) The PDR Committee shall consist of five (5) members appointed by the Board and shall include one (1) member of the Planning Commission. Each member shall be a resident of Cumberland County. The PDR Committee should be, but is not required to be, comprised of members who are knowledgeable in the fields of conservation, conservation biology, farming, forestry, planning, real estate, rural land appraisal, and may also include members of conservation easement holding agencies or other applicable organizations.

(2) The members of the PDR Committee shall serve at the pleasure of the Board. Each member shall serve two (2) year terms that begin on July 1st and expire on June 30th.

(3) Absences caused by illness or personal matters of importance are excusable. If a member has two unexcused absences, the Secretary of this Committee shall notify the Board with a copy to the represented party.

(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 PDR 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 PDR Committee shall elect a chairman at its first meeting and henceforth at the beginning of each County fiscal year (July 1st). The secretary need not be a member of the PDR Committee.

(7) The Director shall be an ex officio, non-voting member of the PDR Committee and shall serve as secretary thereto.

(8) The PDR Committee shall establish bylaws for its meetings and shall use Roberts Rules of Order for small boards.

(9) A quorum shall consist of three (3) members present and the PDR Committee shall operate on a "majority rule" basis.

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

(1) Promote the PDR Program, in cooperation and under the guidance of the Director, by providing educational materials to the public and conducting informational meetings.

(2) 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.

(3) Annually review the PDR 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 County's program.

Sec. 75-7. Eligibility criteria.

Conservation easements may be purchased only upon property meeting the following criteria:

- (a) All or a portion of the parcel must be located in Cumberland County;
- (b) The property shall be wholly located within an agricultural, recreational access or residential zoning district, or any combination of such zoning districts;
- (c) The use of the parcel subject to the conservation easement must be consistent with the comprehensive plan;
- (d) The proposed terms of the conservation easement must be consistent with the minimum conservation easement terms and conditions set forth in Section 75-9, unless modified by the Board; and
- (e) The County must have funding available to purchase the development rights of the property.

Sec. 75-8. 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 the Board. 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 PDR Committee for negotiation, selection, invitation to purchase or purchase of conservation easements.

Sec. 75-9. Conservation easement terms and conditions.

Each conservation easement shall conform with the requirements of the Open-Space Land Act of 1966 (Virginia Code § 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 division.* The parcel shall be restricted from division as follows:

- (i) If the parcel is less than one hundred (100) acres it shall not be divided;
- (ii) If the parcel is one hundred (100) acres or larger but less than two hundred (200) acres, it may be divided into two (2) lots; and
- (iii) If the parcel is two hundred (200) acres or larger, it may be divided into as many lots so as to maintain an average lot size of at least one hundred (100) acres, plus one (1) additional lot for any acres remaining above the required minimum average lot size (e.g., an eight hundred fifty (850) acre parcel may be divided into as many as nine (9) parcels, eight of which must maintain an average size of at least one hundred (100) acres, and the ninth of which consists of the remaining acres.

(b) *Conservation easement duration.* A conservation easement acquired under the terms of this chapter shall be perpetual except as provided in Section 75-12.

(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) the management of forest resources;
- (iv) grading, blasting or earth removal;
- (v) the number and size of residential outbuildings and farm buildings or structures;
- (vi) conduct of industrial or commercial activities on the parcel;
- (vii) all County zoning and use restrictions; and
- (viii) the monitoring of the easement.

(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 Virginia Code Section 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, shall also be an easement holder.

Sec. 75-10. Application and evaluation procedure.

Each application shall be processed and evaluated as follows:

(a) *Application; program materials to be provided to owner.* The application materials provided by the Director 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 Director on a standard form prepared by the Director. 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 Cumberland County tax map parcel number, the zoning designation of the parcel, and permission for the Director and a certified 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 a certified 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 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.

(d) *Submittal of application.* Applications shall be submitted to the Director. 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 Director until the next open application period.

(e) *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 90 days shall be deemed withdrawn. When an application is deemed complete, the Director shall determine whether the parcel satisfies the eligibility criteria set forth in Section 75-7 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 75-8. 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 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 Director. The PDR Committee shall forward to the Director recommendations of which conservation easements should be purchased. The Director shall present such recommendations to the Board.

(g) *Evaluation by Board.* The Board shall review the list of ranked parcels 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 and shall be subject to available funds, reasonably anticipated.

(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.

(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.

Sec. 75-11. 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 75-10, 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 Director. Upon completion of these negotiations, the Director shall arrange for an appraisal of the properties by a certified independent appraiser who may consult with the County Tax Commissioner. The Director shall ascertain the value of the development rights of the property, which value shall be equal to the difference between the fair market value of the property without encumbrance by a conservation easement and the fair market value of the property so encumbered. The certified independent appraiser shall provide the Director with an appraisal of the parcel both unencumbered and encumbered. This information will be used by the Director to determine the value of the right to develop the property. The Director is hereby authorized to contract with qualified and certified independent appraisers in ascertaining the value of development rights.

(c) *Invitation to sell.* The Director 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 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.

(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 Director 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 Cumberland County, 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 Cumberland County. 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 75-10(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 any other expenses or fees in connection with the release and subordination of liens to the easement purchased by the County.

Sec. 75-12. 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 75-7.

(2) *Requirements.* No such extinguishment and exchange of easement shall be authorized, unless a majority of the Board finds 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, (Virginia Code §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.

Sec. 75-13. Program funding.

The PDR Program may be funded annually by the Board in the county budget or by special appropriation. The county shall endeavor to seek funds from federal, state and private sources to effectuate the purposes of the PDR Program.