

**BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA**

O-04-06

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 22nd day of May 2006:

Present:	Vote:
Mark W. Hill	Aye
James H. Burrell	Aye
Stran E. Trout	Aye
W. R. Davis, Jr.	Aye
David M. Sparks	Aye

Motion was made by Mr. Burrell, which carried 5:0, to adopt the following ordinance:

**AN ORDINANCE TO ADOPT A PURCHASE OF
DEVELOPMENT RIGHTS (PDR) PROGRAM**

WHEREAS, the New Kent County Comprehensive Plan, *Vision 2020*, adopted in August 2003 contained as an objective, the promotion of conservation easements on private property; and

WHEREAS, the purpose of the proposed ordinance is to establish a program enabling the county to acquire conservation easements voluntarily offered by owners to serve as one means of assuring that New Kent County's resources are protected and efficiently used; and

WHEREAS, the draft Purchase of Development Rights Program Ordinance has been made available for an extended period of public review, such availability having been advertised using both print and electronic media; and

WHEREAS, this application has been advertised for public hearing before the Board in full accord with applicable provisions of the Code of Virginia; and

NOW THEREFORE BE IT ORDAINED this, the 22nd day of May 2006, by the New Kent County Board of Supervisors that the new Chapter 84, Purchase of Development Rights (PDR) Program, New Kent County Code be, and it hereby is, approved and adopted as follows:

CODE OF NEW KENT COUNTY

CHAPTER 84

PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

- Sec. 84-1. Short title.
- Sec. 84-2. Purpose.
- Sec. 84-3. Applicability.
- Sec. 84-4. Definitions
- Sec. 84-5. Designation of program administrator; powers and duties.
- Sec. 84-6. Purchase of development rights committee established; powers and duties.
- Sec. 84-7. Appraisal review committee established; powers and duties.
- Sec. 84-8. Eligibility criteria.
- Sec. 84-9. Ranking criteria.
- Sec. 84-10. Easement terms and conditions.
- Sec. 84-11. Application and evaluation procedure.
- Sec. 84-12. Purchase of Development rights procedure
- Sec. 84-13. Restriction on buy-back; extinguishment and exchange of easements

Sec. 84-1. Short title.

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

Sec. 84-2. 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 New Kent 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 – Va. Code § 10.1-1700 et seq.

Sec. 84-3. Applicability.

The PDR program shall be available for all 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. 84-4. Definitions.

Words, terms and phrases not defined in this section shall be interpreted in accordance with their normal dictionary meaning and customary usage.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Board. The term "Board" means the Board of Supervisors of New Kent County.

Conservation easement. A nonpossessory interest in one or more parcels by one or more qualified easement holders under section 84-10 (d) of the Code of the County of New Kent 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, forestall, 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.

Division rights. The number of parcels into which a parcel could be divided under the rural areas zoning district regulations stated in Chapter 98, Zoning, of the New Kent County Code, where each potential parcel could comply with all applicable subdivision requirements of Chapter 90, Legacy Subdivision Provisions or Chapter 91, Subdivisions, of the New Kent County Code.

Immediate family. Any person who is a natural or legally defined offspring, spouse, parent, sibling, grandchild or grandparent of the owner.

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 County of New Kent. 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 administrator. That person or entity placed in a managerial position over the daily operations of the PDR program. The Program Administrator shall serve as a direct liaison to the program.

Sec. 84-5. Designation of program administrator; powers and duties.

- (a) *Designation.* The program administrator shall report to the County Administrator.
- (b) *Powers and duties.* The program administrator, or his designee, shall administer the PDR program and shall have the powers and duties to:
 - (1) Establish reasonable and standard procedures and forms for the proper 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.
 - (5) Coordinate the preparation of appraisals.
 - (6) Provide staff support to the appraisal review committee, the PDR committee and the board of supervisors.
 - (7) Provide educational materials regarding other land protection programs to the public.
 - (8) For each conservation easement, assure that the terms and conditions of the deed of easement are monitored and complied with by coordinating a monitoring program with each easement holder, and if the other easement holders are either unable or unwilling to do so, monitor and assure compliance with the terms and conditions of the deed of easement.

Sec. 84-6. 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 seven (7) members appointed by the board of supervisors. Each member shall be a resident of New Kent County. The committee should, but is not required to, be comprised of members who are knowledgeable in the fields of conservation, conservation biology, real estate and/or rural 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 of supervisors. The initial term of two (2) members shall be for one (1) year. The initial term of three (3) members shall be for two (2) years. The initial term for two (2) members shall be for three (3) years. Each term after the initial term shall be for (3) years.
 - (3) The members of the committee shall serve without pay, but the board of supervisors may, in its discretion, reimburse each member 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.
- (b) *Powers and duties.* The PDR committee shall have the powers and duties to:
- (1) Promote the program, in cooperation with the program administrator, by providing educational materials to the public and conducting informational meetings.
 - (2) Review the ranking of applications recommended by the program administrator, and make its recommendation to the board of supervisors as to which conservation easements should be purchased.
 - (3) Periodically review the program's regulations, guidelines, administrative procedures and promotion and recommend to the

board of supervisors or the program administrator, as appropriate, 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. 84-7. Appraisal review committee established; powers and duties.

- (a) *Establishment.* The appraisal review committee is hereby established, as provided herein:
- (1) The committee shall be created as a subcommittee of the PDR committee and operate directly under its supervision.
 - (2) The subcommittee shall consist of a minimum of three (3) members. The committee shall be comprised of at least one (1) real estate professional, the county assessor, and a member of the PDR committee.
 - (3) The members of the committee 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 committee.
- (b) *Power and duty.* 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, the program administrator.

Sec. 84-8. Eligibility criteria.

In order for a parcel to be eligible for a conservation easement, it must meet the following criteria:

- (1) The use of the parcel subject to the conservation easement must be consistent with the comprehensive plan;
- (2) The proposed terms of the conservation deed of easement must be consistent with the minimum terms and conditions set forth in section 84-10; and

- (3) The parcel must be located in the County of New Kent.

Sec. 84-9. Ranking criteria.

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 community development. The ranking system may be used to prioritize the acquisition of conservation easements.

Sec. 84-10. Easement terms and conditions.

Each conservation easement shall conform to the requirements of the Open-Space Land Act of 1966 (Virginia Code § 10.1-1700 *et seq.*) and of this appendix. 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 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.
- (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.

Sec. 84-11. Application and evaluation procedure.

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

- (a) *Application materials to be provided to owner.* The application materials provided by the program administrator to an owner shall include, at a minimum, a standard application form, a sample deed of easement, and information about the PDR program.
- (b) *Application form.* Each application shall be submitted on a standard form prepared by the program administrator. The application form shall require, at a minimum, that the owner: provide the name of all owners of the parcel, the address of each owner, the acreage of the parcel, the New Kent County tax map and parcel number, the zoning designation of the parcel, and permission for the program administrator 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 that he volunteers to have the parcel be subject to greater restrictions than those contained in the standard sample deed of easement, and to delineate those voluntary, additional restrictions.
- (c) *Additional application information required by program administrator.* The program administrator may require an owner to provide additional information deemed necessary to determine: (i) whether the proposed easement is eligible for purchase; and (ii) the purchase price of the easement.
- (d) *Submittal of application.* Applications shall be submitted to the office of the program 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 program administrator until the next open application period.
- (e) *Evaluation by program administrator.* The program administrator shall evaluate each application received and determine within fifteen (15) days whether the application is complete. If the application is incomplete, the program 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 program

administrator shall determine whether the parcel satisfies the eligibility criteria set forth in section 84-8 and, if it does, shall determine the number of points to be attributed to the parcel by applying the criteria set forth in section 84-9. The program administrator shall then rank each parcel scoring with the parcel scoring the most points being the highest ranked and descending there from and submit the list of ranked parcels to the PDR committee after each open application period.

- (f) *Evaluation and ranking by PDR committee.* The PDR committee shall review the list of ranked parcels submitted by the program administrator. The PDR committee shall forward to the administrator and the board recommendations of which conservation easements should be purchased.
- (g) *Evaluation by board of supervisors.* The board shall review the list of ranked parcels submitted by the PDR committee and identify on which parcels it desires 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 of supervisors if, for good cause, it is shown that urgent circumstances exist to warrant consideration of an otherwise untimely application, or it is shown that the requirements unreasonably restrict the purchase of an easement. Under these circumstances, the board may purchase a conservation easement at any time it deems necessary and subject to only those requirements it deems appropriate.
- (i) *Reapplication.* An owner whose parcel is not selected for purchase of a conservation easement may reapply in any future open application period.

Sec. 84-12. Purchase of development rights procedure.

Each conservation easement shall be purchased as follows:

- (a) *Identification of initial pool.* From the list of applications received under section 84-11, 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 program 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 program 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 offer to sell.* The county administrator shall invite the owner of each parcel included in the initial pool of parcels to submit an offer to sell to the county a conservation easement on that parcel 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 program 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 program administrator by the date contained in the invitation to sell. The offer should include a statement substantially stating the following: "(The owner) offers to sell and/or donate a conservation easement to the County of New Kent, 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 offer 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 supervisors only in writing, and only following an action by the board authorizing acceptance. Nothing in this chapter requires the board to accept an offer to sell a conservation easement.
- (f) *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 County of New Kent. 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 submit an offer elects not to do so, or if his offer to sell is not accepted by the board of supervisors, then the board shall send an invitation to offer to sell to the owner of the next highest ranked parcel remaining on the list of parcels identified in section 84-11 (g).

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

Sec. 84-13. 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 84-8.

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

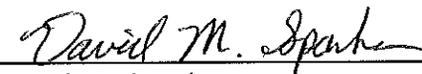
- (A) The extinguishment and exchange is determined to be essential to the orderly development and growth of the county;
- (B) The extinguishment and exchange is in accordance with the comprehensive plan for the county in effect at the time of extinguishment and exchange;
- (C) The extinguishment and exchange does not adversely affect the county's interests in accomplishing the purposes of this ordinance;
- (D) 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.



John A. Budesky
County Administrator



David M. Sparks
Chairman