

## **Chapter 68**

### **CONSERVATION EASEMENT PROGRAM**

#### **GENERAL REFERENCES**

**Subdivision of land — See Ch. 144.**

**Zoning — See Ch. 165.**

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#### **§ 68-1. Intent.**

To further the goals of the County's Comprehensive Plan and provide a means to assist County landowners in protecting and preserving farm and forest land, open space, scenic vistas, historic sites, water resources and environmentally sensitive lands, and the County's rural character. This chapter establishes a program which will enable the County to acquire voluntary conservation easements either through donation or, should funding be made available, through purchase, as one means of assuring these valuable County resources are protected. It is hoped that this will in turn assist in shaping the character and direction of development, promote tourism through the preservation of scenic and historic resources and assist in preserving the quality of life for the inhabitants of the County.

#### **§ 68-2. Authority/applicability.**

The Frederick County Conservation Easement Program (FCEP) is established under the provisions of the Open Space Land Act, Chapter 17, Title 15.2 (§ 10.1-1700 et seq.), Code of Virginia, and shall be available for all land in the County. The owner shall voluntarily offer any conservation easement acquired pursuant to this chapter.

#### **§ 68-3. Definitions.**

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

**AUTHORITY** — The Frederick County Conservation Easement Authority.

**CONSERVATION EASEMENT** — A nonpossessory interest in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise or bequest imposing limitations of affirmative obligations, the purpose of which include retaining or protecting natural or open space values of real property, assuring its 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 real property.

**DEVELOPMENT RIGHT** — The number of residential building lots that may be created from the parent tract in a given zoning district per the Frederick County Zoning and Subdivision regulations.<sup>1</sup>

**OWNER** — The owner or owners of the freehold interest of the parcel.

PROGRAM ADMINISTRATOR — The Director of Planning and Development.

PARCEL — A lot or tract of land, lawfully recorded in the Clerk's office of the Circuit Court of the County of Frederick. Because 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.

**§ 68-4. Program administrator; powers and duties.**

The Director of Planning and Development, or his designee, shall have the following powers and duties with respect to the program:

- A. Establish reasonable and standard procedures and forms consistent with this chapter for the administration and implementation of the program.
- B. Evaluate all applications to determine their eligibility and their ranking based on their score, and make recommendations thereon to the Authority.
- C. Determine the number of usable development rights existing on each parcel subject to an application.
- D. Where funding is made available for purchase, coordinate the preparation of appraisals.
- E. Provide staff support to the Authority.
- F. Assure that the terms and conditions of all easements are monitored and complied with by coordinating with each easement holder.

**§ 68-5. Authority; powers and duties.**

The Authority shall have the powers and duties to:

- A. Acquire and co-hold easements pursuant to the provisions of this chapter.
- B. Apply for and pursue grants, other funding and gifts from the Virginia Land Conservation Fund, state and federal agencies and private persons and entities for the purchase of easements.
- C. Promote the program, in cooperation with the program administrator, by providing educational materials to the public and conducting informational meetings.
- D. Review the ranking of applications recommended by the program administrator and make a determination as to whether an easement donation offer should be accepted and, subject to funding availability, which, if any, conservation easements should be purchased.

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1. Editor's Note: See Ch. 165, Zoning, and 144, Subdivision of Land, respectively.

- E. Annually review the program's eligibility and ranking criteria and recommend to the Board of Supervisors any changes needed to maintain the program's consistency with the comprehensive plan or to improve the administration, implementation and effectiveness of the program.
- F. Take action to enforce compliance with terms of easements being co-held by the Authority.
- G. Exercise any powers authorized by the Public Recreation Facilities Authorities Act.

#### **§ 68-6. Eligibility criteria.**

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

- A. The use of the parcel subject to the conservation easement must be consistent with the comprehensive plan;
- B. The proposed terms of the conservation easement must be consistent with the minimum conservation easement terms and conditions set forth in § 68-8, Easement terms and conditions; and
- C. The parcel shall obtain at least 15 points under the ranking criteria set forth under § 68-7, Ranking criteria, unless the Authority finds that it is in the best interest of the County to waive this requirement.

#### **§ 68-7. Ranking criteria.**

In order to effectuate the purposes of this chapter, parcels for which FCEP applications for purchase have been received shall be ranked according to the criteria and the point values assigned thereto as set forth herein. Points shall be rounded to the first decimal (e.g., under Subsection A(1), a property with 740 feet of shared boundary with a park would receive 1 point for sharing a boundary, plus 1.48 points for the length of the shared boundary, which when rounded to the first decimal would be 1.5 points, for a total of 2.5 points for that criteria).

- A. Open space resources.
  - (1) The parcel adjoins an existing permanent conservation easement, a national, state or local park: one point, plus one point for every 500 feet of shared boundary.
  - (2) The number of usable development rights on the parcel as determined by the program administrator based on the applicable Frederick County Zoning Ordinance regulations: 1/2 point per usable development right.
- B. Threat of development.
  - (1) The parcel is zoned for a nonagricultural use: three points.

- (2) The parcel is deemed to be threatened due to its proximity to the County's Urban Development Area or Sewer and Water Service Area boundary or to property that has been developed for a nonagricultural use within the last three years: two points.
- C. Natural, cultural, recreational and scenic resources.
- (1) The parcel adjoins a state maintained road: one point for each 500 feet of road frontage along a designated Virginia scenic highway or byway; one point for each 1,000 feet of road frontage on a nondesignated public road.
  - (2) The parcel contains or fronts a public trail or is identified as part of a planned trail network: two points; an adjoining parcel contains or fronts on a public trail or is identified as part of a planned trail network: one point.
  - (3) The parcel contains historic resources:
    - (a) Three points if:
      - [1] The parcel is within or adjoins a national or state historic park or Civil War battlefield;
      - [2] Is listed on the State or National Register of Historic Places; or
      - [3] Is subject to a permanent easement protecting a historic resource.
    - (b) Two points if the parcel contains or adjoins a parcel containing a historic structure identified by the Frederick County Rural Land Mark Survey or otherwise documented as being over 100 years old. An additional one point if the parcel contains identified archaeological resources.
  - (4) The parcel is within a watershed or subwatershed identified as impaired on the Virginia Department of Environmental Quality's Impaired Waters List: three points.
  - (5) The parcel fronts on a perennial stream as identified by the USGS 7.5 minute series quad maps or other reliable source: one point for every 1,000 linear feet of stream frontage.
  - (6) The parcel is within a sensitive groundwater recharging area as demonstrated by the presence of sinkholes or karst topography: one point.
  - (7) The parcel contains perennial springs or wetlands: one point for each occurrence.
- D. Farm or forestland protection.

- (1) The parcel contains prime farm land as identified by the 1987 USDA Soil Survey of Frederick County: 1/2 point for each 10 acres containing such soils, for up to a total of five points.
  - (2) The parcel is currently designated as part of an agricultural or forestal district: four points; The parcel qualifies for land use taxation under the provision for agricultural land but is not in an agricultural or forestal district: three points; the parcel qualifies for land use taxation under the provision for forestal land but is not in an agricultural or forestal district: two points.
  - (3) The parcel has an approved nutrient management plan and/or employs agricultural best management practices as approved by the Lord Fairfax Soil and Water Conservation District or Natural Resources Conservation Service: one point.
  - (4) The property owner can document that he/she has in place a conservation plan or participates in a recognized program that restores and/or protects stream channels, riparian zones and wetlands: one point.
- E. Fund leveraging. Nonlocal government funding has been identified to leverage the purchase of the conservation easement: one point for each 10% of the total purchase price for which those funds can be applied. Donation of all or a portion of the easement by the owner shall be considered fund leveraging and points awarded at the same rate.

**§ 68-8. Easement terms and conditions.**

Each conservation easement shall conform with the requirements of the Open-Space Land Act and of 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. 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 may include, but not necessarily be limited to, restrictions pertaining to:
- (1) The accumulation of trash and junk;
  - (2) The display of billboards, signs and advertisements;
  - (3) The management of forest resources;
  - (4) Grading, blasting or earth removal;
  - (5) The number of new dwellings and the number and size of outbuildings and farm buildings or structures;
  - (6) The conduct of industrial or commercial activities on the parcel; and

- (7) Monitoring of the easement.
- B. Designation of easement holders. The Authority and the Frederick County Board of Supervisors shall be the co-holders of all easements acquired under this program. The Authority shall seek one or more public bodies, as defined in Virginia Code § 10.1-1700, or private holder, as defined in Virginia Code § 10.1-1009, to be additional co-holders in the deed of easement or added by the Board of Supervisors and the Authority later, unless the Authority finds additional co-holders to be not feasible or not advisable.

**§ 68-9. Application and evaluation procedure.**

Each application for a conservation easement shall be processed 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 FCEP program.
- B. Application form.
  - (1) 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:
    - (a) Provide the name and address of all owners of the parcel;
    - (b) The acreage of the parcel;
    - (c) The Tax Map and parcel number;
    - (d) The zoning designation of the parcel;
    - (e) Permission for the program administrator to enter the property after reasonable notice to the owner to evaluate the parcel and for the County's assessor or an independent appraiser to appraise the property;
    - (f) Identification of all lien holders on the parcel, including, without limitation, holders of deed of trust liens and judgement liens; and
    - (g) Identify whether it is his desire to donate or sell an easement.
  - (2) The application form shall also include a space for an owner to indicate whether he volunteers to have his parcel be subject to greater restrictions than those contained in the standard sample deed of easement, and to state those voluntary, additional restrictions.
- C. Submittal of application. Applications shall be submitted to the office of the program administrator. An application may be submitted at any

time. However, applications involving an easement purchase received after June 1 shall be evaluated in the following fiscal year.

- D. Evaluation by program administrator. The program administrator shall evaluate each complete application received and determine whether the parcel satisfies the eligibility criteria set forth in § 68-6 and shall make recommendations thereon to the Authority.
- E. Evaluation by Authority. The FCEP shall review the list of parcels submitted by the program administrator and identify on which parcels, if any, it desires conservation easements.
- F. Board of Supervisors approval. The program administrator shall forward to the Board of Supervisors for their review and approval any parcel which is located within the bounds of the County's Sewer and Water Service Area or Urban Development Area prior to the Authority pursuing acquisition of an easement.
- G. Application. An owner of a parcel not selected by the Authority for purchase or acceptance of a conservation easement may reapply in any future year.

#### **§ 68-10. Acceptance of easements.**

Upon approval of an easement by the Authority pursuant to the terms of this chapter, the proposed easement shall be forwarded to the Board of Supervisors for its approval. No easement shall be accepted unless approved by both the Authority and the Board of Supervisors. Upon approval by the Authority and the Board of Supervisors, and by any additional co-holder if applicable, the deed of easement shall be executed by all parties and recorded in the Frederick County land records. Nothing in this chapter shall obligate the Authority to purchase or accept a conservation easement on any property.

#### **§ 68-11. Purchase of conservation easement.**

Should the Authority desire to purchase an easement, the following procedures shall apply.

- A. Identification of initial pool. For applications received under § 68-9, in which the owner has indicated a desire to sell an easement, the program administrator shall determine the number of points to be attributed to each parcel by applying the criteria set forth in § 68-7. The program administrator shall rank each parcel scoring at least 15 points with the parcel scoring the most points being the highest ranked and descending therefrom. The program administrator shall submit the list of ranked parcels to the Authority. The Authority shall designate the initial pool of parcels identified for conservation easements to be purchased. The purchase price may be supplemented by non-County funding as discussed in § 68-7E above. The size of the pool shall be

based upon the funds available for easement purchases in the current fiscal year.

- B. Additional application information required by program administrator. The program administrator may require an owner to provide additional information deemed necessary to determine:
- (1) Whether the proposed easement is eligible for purchase; and
  - (2) The purchase price of such easement.
- C. Appraisal of conservation easement value. Each conservation easement identified by the Authority to be purchased shall be appraised either by the County's Assessor or by an independent qualified appraiser chosen by the Authority. Each completed appraisal shall be submitted to the program administrator and the owner. The program administrator shall forward each appraisal to the Authority, which shall review each appraisal.
- D. Invitation of offer to sell. The Authority shall invite the owner of each parcel included in the initial pool of conservation easements to submit an offer to sell to the Authority a conservation easement on that parcel, subject to the terms and conditions of a proposed deed of easement. The invitation to sell shall be in writing and shall include the desired 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 considered. The invitation may contain an offer form to be returned if the owner desires to sell a conservation easement.
- E. Offer to sell.
- (1) Each owner who desires to sell a conservation easement shall submit a written offer that must be received by the program administrator by the date contained in the invitation to offer to sell. The offer should include a statement that substantially states the following:  
  
"(The owner) offers to sell a conservation easement to the Authority 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."
  - (2) Nothing in this chapter shall compel an owner to submit an offer to sell.
- F. Acceptance. Nothing in this chapter requires the Authority to accept an offer to sell a conservation easement.
- 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 Authority, then the Authority may send an invitation to offer to sell to other owners on the list.



- H. Costs. If the Authority accepts an offer to sell a conservation easement, the Authority may pay all costs, including environmental site assessments, surveys, recording costs, grantor's tax, if any, and other charges associated with closing; provided, however, the Authority shall not pay fees incurred for independent appraisals or legal, financial or other advice, or fees in connection with the release and subordination of liens to the easement purchased by the Authority.
- I. Application. An owner for whose parcel a conservation easement is not purchased may reapply in any future year.
- J. Special consideration. The Authority shall give special consideration and take immediate action to review applications in the special case where private funding is available to cover 100% percent of the cost of the purchase, or the owner is willing to donate the conservation easement at no cost to the County, provided that such parcel meet the eligibility requirements of this chapter.

**§ 68-12. Program funding.**

The FCEP program may, but is not required to, be funded annually by the Board of Supervisors in the County budget or by special appropriation. The Authority shall endeavor to seek funds from federal, state and private sources to effectuate the purposes of this chapter. Nothing in this chapter shall require the Board of Supervisors to fund this program.