

**Sec. 26-571. - Title.**

This article shall be known as the "Open Space and Agriculture Preservation (OSAP) Program Ordinance of the City of Chesapeake" or as the "OSAP Ordinance".

(Ord. No. 03-O-023, 2-25-03)

**Sec. 26-572. - Purpose.**

The purpose of the open space and agriculture preservation (OSAP) program ordinance is encourage and promote the preservation of open space and agricultural lands throughout the city by means that are voluntary rather than regulatory. The preservation of open space and agricultural lands will:

- (a) Establish and preserve open space and preserve the rural character of Chesapeake;
- (b) Preserve farm and forest lands;
- (c) Conserve and protect water resources and environmentally sensitive lands, waters and other natural resources;
- (d) Conserve and protect biodiversity, wildlife and aquatic habitat;
- (e) Improve the quality of life for the inhabitants of the city;
- (f) Emphasize the redevelopment and infill of older and underutilized areas of the city;
- (g) Promote tourism through the preservation of scenic resources; and
- (h) Reduce and defer the need for major urban infrastructure improvements in the undeveloped portion of the city and the expenditure of public funds for such improvements;
- (i) Ensure long-term revenue resources for the city.

(Ord. No. 03-O-023, 2-25-03)

**Sec. 26-573. - Findings.**

City council finds that the city's remaining open space, agricultural lands and general rural character are in danger of being lost to continued growth. According to the United States Census Bureau, the city's population grew by approximately 31 percent between 1990 and 2000. With 47,250 new residents in the city since 1990, pressure to develop the city's remaining open space and agricultural lands is rising. As a result, there is an ever-increasing demand on city revenues to provide new public infrastructure and services, such as utilities, police and fire protection, and schools. Current zoning regulations would allow roughly 5,000 units in the southern portion of the city alone. Recent studies show that new housing developments generally contribute less money in taxes than the cost of providing these developments with roads, utilities, schools and other public services.

The city comprehensive plan states that the function and visual integrity of rural and agricultural areas should be maintained. Agriculture should be preserved because it is an integral component of the city's economy. Agriculture is currently the largest land use in the city, with approximately 60,667 acres devoted to crops, livestock and other agricultural uses. As of 1997, agriculture was the city's eighth largest industry. Due to a favorable climate, an extended growing season, and high quality soils, agricultural enterprises in the city are among the most productive statewide.

Open space is essential to preserving quality of life for city residents in terms of providing opportunities for recreation, wildlife habitat, pollution removal, flood abatement, and aesthetic enjoyment, as well as providing a conducive environment for agriculture. Many studies document the success and enhanced value of residential development located near open spaces. Recreational fishing and hunting alone generate approximately \$70 billion in annual revenues in the United States. Ecotourism and birdwatching are two of the nation's fastest growing recreational pursuits and both depend on healthy ecosystems supported by intact natural processes and open space.

In order to preserve open space and agricultural lands, control future public infrastructure costs, and protect private property rights, the city council finds that open space and agricultural lands should be preserved through the implementation of a voluntary program.

(Ord. No. 03-O-023, 2-25-03)

#### **Sec. 26-574. - Definitions.**

The words and terms used in this article shall have the following meaning:

*Accessory use* means a lawful use of a parcel of land which is clearly incidental to, and customarily found in connection with, the principal use of the same parcel as an agricultural enterprise. Accessory uses shall be subject to approval by the zoning administrator or designee.

*Agricultural advisory commission* or *commission* means the seven-member Commission established by sections 2-620.34 et seq. of this code. The commission shall have the duties delegated under this article, in addition to those set out in section 2-620.36 of this Code.

*Agricultural lands* means those lands used for the planting and harvesting of crops or plant growth of any kind in the open; pasture; horticulture; dairying; floriculture; or raising of poultry and/or livestock. Such uses must be lawfully established under the city zoning ordinance.

*Agricultural support service* means a commercial operation upon which the agricultural industry generally depends. The term includes, but is not limited to, suppliers of fertilizer, seed and plant protection products, equipment dealers, and large-scale buyers of farm products. Such uses must be lawfully permitted or conditional uses in the A-1 agricultural district under the city zoning district.

*Agricultural use* means the bona fide and lawful use of property for the production of crops, animal or fowl, including but not limited to, the production of fruits, vegetables, honey, grains, meat, poultry and dairy products; the raising of livestock and poultry; and the production and harvest of products from horticultural, silvicultural or aquacultural activity. The term also includes:

- (1) The repair, expansion or replacement of no more than one lawfully existing single-family dwelling per parcel or lot, provided that:

- a. The dwelling is occupied by the landowner or tenant as of the date of application for entry in the OSAP program, and
  - b. The dwelling is not subdivided or otherwise separated from the parcel for purposes of sale or conveyance;
- (2) No more than one lawfully existing free-standing mobile home (manufactured home) per parcel or lot, as defined and permitted in section 13-902 of the city zoning ordinance, provided that:
  - a. The mobile home is lawfully occupied as of the date of application for entry in the OSAP program, and
  - b. The mobile home is not subdivided or otherwise separated from the parcel for purposes of sale or conveyance;
- (3) Reservation of one lot or equivalent building area, no less than three acres in size and not more than five acres in size, to be used for a single-family dwelling, other than a mobile home, per parcel of land enrolled in the OSAP program, provided that:
  - a. No single-family dwelling exists on the parcel as of the date of application for entry in the OSAP program;
  - b. No more than one single-family dwelling, including permitted residential accessory structures, shall be constructed or occupied per parcel of land enrolled in the OSAP program;
  - c. The reserved lot or equivalent building area is not wholly or partially located in the Fentress Airfield overlay district;
  - d. The fair market value of the reserved lot or equivalent building area is deducted from the overall value of the development rights to be purchased by the city;
  - e. If the reserved lot is to be subdivided from the parcel, the subdivision must be completed and recorded in the clerk's office of the circuit court of the city within two years of the city's purchase of development rights;
  - f. Upon expiration of the two year period following the city's purchase of development rights, no new or additional subdivision or division of any of the parcels shall occur thereafter for so long as the property is subject to the preservation easement.
  - g. The landowner bears all responsibility and costs associated with any necessary survey, subdivision or improvement relating to the establishment or development of the reserved lot or equivalent building area; and
  - h. The city retains the right to reject a suggested location of the reserved lot or single-family dwelling and appurtenant accessory structures if reasonably deemed to compromise the objectives of the OSAP program.
- (4) Lawfully permitted or conditional principal and accessory uses directly related to agricultural activities conducted on the property, including the sale of agricultural products permitted by section 13-1402 of the city zoning ordinance;

(5) Dog kennels; riding academies; horses for hire; and boarding of horses, to the extent permitted under section 10-600 of the city zoning ordinance;

(6) Recreational and amusement activities permitted under section 10-600 of the city zoning ordinance; and

(7) Septic tanks and drainfields approved by the city health department or if required, by city council, that cannot be located outside the preservation easement dedicated under the OSAP program.

The term "agricultural use" does not include the processing of agricultural, silvicultural, horticultural or aquacultural products, except as a permitted accessory use to livestock, crop, forestry or aquacultural activities.

*Animal unit* as used in the OSAP ranking system, means a unit of measurement equal to 1,000 pounds of live body weight of livestock.

*Batch* means a grouping of contiguous parcels of land for purposes of making application for the sale of development rights.

*City attorney* means the city attorney or his designee.

*City manager* means the city manager or his designee.

*Development right* means the right to develop private property for any permitted use other than agriculture, recreation, or open space. The term includes, but is not limited to, the right to develop property for any commercial, industrial, or residential use, except as may be expressly permitted under this article.

*High-value crops* means crops which require intensive management and greater than normal inputs. Examples include horticultural and nursery crops, greenhouse plants, strawberries, blackberries, sweet corn, sweet potatoes, tomatoes, lima beans, green beans, pumpkins, watermelons, cantaloupes and Christmas trees.

*Landowner* means the equitable owner of the fee simple title to a parcel of land or, with respect to a parcel not encumbered by a deed of trust or mortgage, the legal owner of such title. Where more than one person or entity is the legal or equitable owner, the term refers to all such persons.

*Open space* means any privately owned parcel or batch of land consisting of at least three (3) acres, which is used or preserved for:

- (1) Park or recreational purposes,
- (2) Conservation of land or other natural resources,
- (3) Historic or scenic purposes, or
- (4) Conservation of wetlands as that term is defined in § 62.1-44.3 of the Code of Virginia, as amended.
- (5) Compatibility with U.S. Navy operations in the Fentress Airfield overlay district.

*Open space and agriculture preservation (OSAP) manual or OSAP manual* means the administrative

regulations promulgated by the city manager or if so delegated, by the program administrator, for the implementation, administration and enforcement of the OSAP Program, including form and content of applications; procedures for review of applications; methods of payment; establishment and application of the OSAP ranking system; and form and content of purchase agreements and deeds of easement. The OSAP Manual is adopted as part of this Ordinance but may be amended by the city manager as deemed necessary to revise administrative procedures and the OSAP ranking system, provided that such amendments are consistent with this article.

*Open space and agriculture preservation (OSAP) ranking system or system* means the formula by which applications for the sale of development rights are ranked in order of priority of acquisition of such rights, to be used when more than one application is under consideration for the same funds.

*Ordinance* means this article and the OSAP Manual.

*Parcel* means a lot or tract of land created by recordation of an approved plat in the clerk's office of the circuit court of the city.

*Preservation easement* means a nonpossessory interest in land, perpetual in duration, pursuant to which the exercise of development rights on the subject property is prohibited or expressly limited.

*Program* means the Open Space and Agriculture Preservation (OSAP) program established by this article.

*Program administrator or administrator* means the person or persons designated by the city manager to administer, interpret and enforce this article. The administrator shall provide training programs for the commission; educate the public as to the benefits of the OSAP program; apply for grants; generate and approve forms and agreements; receive, research and evaluate applications; implement staff and commission review procedures; schedule meetings of the commission; prepare staff reports; keep minutes; maintain records; conduct inspections; enforce the terms of preservation easements; and perform any other duties assigned by the city manager.

*Property* means a parcel or grouping of contiguous parcels ("batch") participating in, or under consideration for participation in, the OSAP Program.

*Significant timber harvest* means a merchantable harvest for the commercial market. The term does not include minor harvests for such things as firewood, poles, posts, blind material or greenery, or a surgical removal of trees posing insect infestation problems.

(Ord. No. 03-O-023, 2-25-03; Ord. No. 05-O-153, 11-22-05; Ord. No. 06-O-075, 6-27-06)

### **Sec. 26-575. - Establishment of the OSAP Program.**

There is hereby established the open space and agriculture preservation (OSAP) program of the city, which shall be a voluntary program by which the city acquires, in accordance with the provisions of this article and to the extent of available funding, the development rights of qualifying parcels in the areas of the city described in section 26-245 below. The acquisition of development rights shall be entirely voluntary on the part of the landowner and shall be accomplished generally by the purchase of preservation easements upon selected property. In conjunction with the program, the city manager is hereby authorized and directed to establish, subject to the approval of city council and applicable

requirements of law, methods of payment for such easements, including, but not limited to, incurring long-term obligations in the nature of installment purchase agreements pursuant to which the city pays to the landowner interest only on an annual basis for a period of years and principal at the expiration of such period. The method of payment and other details of the program shall be set out in the OSAP Manual, which may be amended from time to time by the city manager. The city manager may delegate this function to the program administrator. Notwithstanding the OSAP Manual, city council retains the final authority to approve the purchase of development rights, including the method of payment.

(Ord. No. 03-O-023, 2-25-03)

#### **Sec. 26-576. - Applicability.**

The OSAP program shall apply to the entire city. Nothing in this article shall be construed as a limitation upon the authority of the city, or its boards, commissions, authorities and agencies, to acquire land for other public purposes and by other lawful means in addition to those set forth in this article.

(Ord. No. 03-O-023, 2-25-03)

#### **Sec. 26-577. - Eligibility criteria.**

Development rights, including the acquisition of preservation easements, may only be purchased if the property under consideration meets all of the following criteria:

(a) The property shall be no less than ten (10) acres in area for agricultural lands and no less than three (3) acres in area for open space preservation, or be included in a batch in which the combined area of contiguous parcels is no less than ten (10) acres in area for agricultural lands and no less than three (3) acres for open space.

(b) The property shall not contain any land required to be reserved or set aside for open space, recreation, preservation or similar purposes pursuant to the provisions of any city ordinance, regulation or policy, including without limitation, requirements imposed under a conditional use permit, conditional rezoning, PUD zoning, subdivision approval, site plan approval, variance, or other action by the city council, the planning commission, the board of zoning appeals, or other authorized approval agent;

(c) No uses, buildings, or structures, other than those expressly permitted under the preservation easement, shall be conducted or located upon the property; and

(d) In order to qualify for eligibility for preservation of agricultural lands, no portion of the agricultural lands shall contain any of the following soil types:

- (1) Mixed Alluvial Land;
- (2) Mucky Peat;
- (3) Mucky Peat, shallow over loams;
- (4) Mucky Peat, shallow over sands; and

(5) Tidal Marsh.

These limitations on soil types shall not apply to open space preservation or to property located wholly or partially in the Fentress Airfield overlay district, as established by the city zoning ordinance.

(e) Soil types shall be determined on the basis of the most current U.S. Department of Agriculture soil survey. A soil determination of those soils listed in subsection (d) may be challenged if the accuracy of the current soil survey is in question. In order to challenge a soil survey, the applicant must provide a more recent soil survey conducted by a qualified soil scientist. However, the right to challenge a soil survey shall not apply after the U.S. Department of Agriculture conducts an updated city soil survey, scheduled to be completed in 2005.

(Ord. No. 03-O-023, 2-25-03; Ord. No. 05-O-153, 11-22-05)

**Sec. 26-578. - Application; evaluation by program administrator.**

(a) Applications to sell development rights shall be on a form prescribed by the city and shall be signed by the landowner and submitted to the program administrator. The program administrator may require supporting documentation, including without limitation, deeds, surveys, plats, plans and or other instruments, to be submitted with the application. Landowners may submit an application for each parcel or may submit a single application for more than one contiguous parcel (batch). Applications for a batch of parcels shall be signed by all landowners.

(b) The program administrator shall review each application to determine whether all of the eligibility criteria set forth in section 26-246 of this article are met and all required information is provided, and shall notify the landowner of his initial determination. Incomplete or otherwise deficient applications may be returned to the landowner with a statement of reasons for the returned application. Incomplete or deficient applications may be revised or corrected and resubmitted for reconsideration.

(c) In the event a parcel, or portion thereof, fails to meet one or more of the eligibility criteria set forth in section 26-246 above, such parcel, or portion thereof, shall not be considered for inclusion in the program. In the event the ineligibility of a parcel, or portion thereof, renders the remaining property which is the subject of the application ineligible, none of the property shall be considered for inclusion.

(d) In the event available funding is insufficient to purchase the development rights on all eligible properties that are the subject of pending applications under this article, the program administrator shall evaluate each such application, using the criteria of the OSAP ranking system set forth in OSAP Manual, and shall ascertain all necessary facts and information for ranking the priority of acquisition of the lands included in the application. In performing such evaluation, the program administrator may request the assistance of such other city departments and agencies as may be appropriate and beneficial. The evaluation shall include a recommendation for the number of OSAP ranking system points to be assigned to the application. No later than 90 days after receipt of a complete application, the program administrator shall forward a copy of the evaluation to the commission, the city manager and the landowner.

(e) The submission of an application shall not be deemed to constitute a binding contractual offer to convey any interest in the landowner's property, but shall be revocable at will by the landowner prior to the execution of a purchase agreement, without penalty.

(f) The city is not bound by the submission or acceptance of an application to extend an offer to purchase any interest in the landowner's property. Any evaluation, finding or purchase offer is revocable at will by the city prior to the execution of a purchase agreement, without penalty. In no event shall the acceptance of an application, a finding of eligibility, or any other act by the city, its employees, agents, boards, commissions or council, other than the authorized execution of a purchase agreement, be deemed a binding offer to purchase or give rise to a property interest, right or entitlement.

(Ord. No. 03-O-023, 2-25-03)

**Sec. 26-579. - Review of applications by commission.**

(a) Where funding appears to be sufficient to purchase the development rights of a property, the commission shall, at a regular or special meeting called for such purpose, review the application to confirm eligibility and to make recommendations to the city manager based on public welfare and convenience.

(b) In the event available funding is insufficient to purchase the development rights on all properties which are the subject of pending applications, the commission shall, at a regular or special meeting called for such purpose, review applications and evaluations provided by the program administrator and shall make a determination of OSAP ranking system points to be assigned to each application. Findings and recommendations of the commission shall be final and unappealable.

(c) In the event of disagreement among the members of the commission as to the number of points to be assigned to a given application, each member shall state the number of points he or she believes should be assigned and the average number of points so obtained, rounded upwards to the nearest point, shall constitute the decision of the commission. The commission shall promptly transmit a report of its findings and recommendations to the city manager.

(d) In the event of a tie ranking, the commission shall re-evaluate the tying applications, giving consideration to the following:

(1) Preference shall be given to land under immediate threat of development.

(2) Preference shall be given to land located wholly or partially in the Fentress Airfield overly district, as established in the city zoning ordinance.

(3) Preference shall be given the land located wholly or partially in the Northwest River watershed protection district, as established in this chapter.

If the tie is not resolved, the chairman of the agricultural advisory committee shall cast the deciding vote.

(e) The commission shall promptly transmit a report of its findings and recommendations to the city manager.

(f) If the commission finds that an application is not to be recommended for purchase of development rights due to insufficient ranking system points or other reason, nothing herein shall prohibit the landowner from resubmitting the application for consideration at a future time.

(g) All discussion and deliberations concerning the evaluation of applications and assignment of



points shall be conducted in an open meeting, notwithstanding allowable exemptions for property acquisitions in the Virginia Freedom of Information Act. All other exemptions from the open meeting requirements of the Virginia Freedom of Information Act shall continue to apply.

(Ord. No. 03-O-023, 2-25-03; Ord. No. 05-O-153, 11-22-05)

**Sec. 26-580. - Procedure for acquisition of development rights.**

(a) Upon reviewing the findings and recommendations of the commission, the city manager may ascertain the value of the development rights of the property, which value shall be equal to the difference between the value of the property without encumbrance by a preservation easement and the value of the property so encumbered. In all cases, the fair market value of each lot reserved for a future single-family dwelling, as permitted under the definition of "agricultural use" in section 26-574, shall be deducted from the overall value of development rights.

(b) The city manager shall contract with a qualified, independent appraiser ascertaining the value of the development rights, using the premises stated in subsection 26-579(c). Based on the independent appraisal, the city manager may make a written offer to purchase the development rights of the property. Prior to communicating any such offer, however, the city manager may first elect to seek city council's preliminary approval of the offer. In no event shall the offer be binding on the city or the applicant.

(c) All offers shall be subject to available funding, final approval of city council, and such terms and conditions as the city council or the city manager may deem appropriate. The offer shall also be conditioned upon the absence of any defects in title or other restrictions or encumbrances which may, in the opinion of the city attorney, adversely affect the city's interests in accomplishing the purposes of this article.

(d) All written offers made to a landowner shall clearly state that:

- (1) The offer is contingent on city council approval, funding and appropriation;
- (2) The funds used to purchase development rights may include federal and state monies subject to restrictions on use;
- (3) The offer is revocable by the city at any time prior to the authorized execution of a purchase agreement;
- (4) The offer is contingent on the landowner's execution of a purchase agreement and preservation easement acceptable to the city attorney;
- (5) The acceptance of the offer by the landowner may be revoked at any time prior to execution of the purchase agreement; and
- (6) The preservation easement will be perpetual and nonrevocable.

(e) In the event the offer is accepted by the landowner, the city manager shall place the matter before the city council for approval. The city council may approve the purchase of development rights only with respect to such applications for which there is available funding, in a priority determined by points assigned under the OSAP ranking system, and only upon finding that the proposed terms and

conditions of purchase, including the purchase price and manner of payment, are fair and reasonable and in furtherance of the purposes of this article. In the event there is sufficient available funding for the purchase of only a portion of the development rights included in the application, the landowner shall be given the opportunity to submit a revised application for a lesser amount of development rights equivalent in value to the amount of funding deemed available.

(f) Consideration of applications for eligible properties, but for which there is insufficient funding in the then-current fiscal year, shall be deferred to the next fiscal year or until such other time as available funding is sufficient, unless the landowner withdraws the application. No preference shall be given to deferred or resubmitted applications except as indicated by the OSAP ranking system.

(g) Within ten days of the landowner's execution of a perpetual preservation easement, the zoning administrator shall make a notation on the official zoning map to indicate the city's acquisition of development rights and the date thereof. No building permits shall be issued for such areas unless the zoning administrator verifies with the city attorney that the proposed building or structure is permitted under the preservation easement.

(Ord. No. 03-O-023, 2-25-03; Ord. No. 05-O-153, 11-22-05)

#### **Sec. 26-581. - Rights acquired; repurchases; exchanges.**

(a) No interest in land other than a perpetual preservation easement shall be acquired by the city pursuant to the provisions of this article. The city shall not exercise the power of eminent domain to acquire any preservation easement being offered to the city under this program.

(b) The acquisition of a preservation easement by the city shall not extinguish any rights of the landowner except for the right to develop, improve or use the property for any purpose other than open space or agricultural uses, and shall not by right confer upon the public any right of entry or access, or any other rights, express or implied, unless expressly stated in the preservation easement signed by the landowner.

(c) The preservation easement shall be perpetual; however, the landowner or successor in interest to the property that is subject to the easement may petition the city council to repurchase the development rights on such property upon the expiration of a minimum of 25 years from the date on which the preservation easement is recorded. The city council may, by vote of no less than three-fourths of all its members, and in accordance with all other procedural requirements then governing the sale of municipal interests in land, authorize the sale of such development rights to the petitioning party at the then-current fair market value of such development rights and upon such terms and conditions as deemed by city council to be fair and reasonable. No such sale shall be authorized, however, unless the city council determines by ordinance that:

(1) The sale of such development rights is essential to the orderly development and growth of the city; and

(2) The development of the property for nonagricultural uses would not be in conflict with the city zoning ordinance or the comprehensive plan in effect at the time of sale.

(d) In each instance in which development rights to property are sold by the city back to the landowner or successor in interest, the purchaser shall dedicate to the city preservation easements that

are:

- (1) At least equal in fair market value to the development rights conveyed by the city;
- (2) Of greater value as permanent open space or agricultural lands; and
- (3) Of equivalent usefulness and location for use as permanent open space or agricultural lands as the property for which development rights are being conveyed.

(e) The requirement for new preservation easements in subsection (d) may be waived by a three-fourths vote of city council, provided city council determines by ordinance that:

- (1) The preservation easement upon the property that is the subject of the petition to repurchase development rights is no longer needed;
- (2) Substitution of other preservation easements is not feasible; and
- (3) No state or federal funds were used in connection with the acquisition of the development rights upon the property.

(Ord. No. 03-O-023, 2-25-03)

**Sec. 26-582. - Open space and agriculture preservation (OSAP) ranking system.**

(a) The OSAP ranking system shall be included in the OSAP Manual adopted and incorporated into this article. The system shall be the means by which the priority of acquisition of development rights under the program is determined when available funding is insufficient to purchase the development rights on all available and qualifying property. The number of OSAP ranking system points shall not be used in determining the value of development rights or the amount of any offer to purchase such rights.

(b) The OSAP Manual shall contain two sets of ranking criteria for two categories:

- (1) Agricultural lands; and
- (2) Open space (non-agricultural).

In each category, certain factors descriptive of the characteristics of property sought to be preserved in the OSAP program are included. Each factor is assigned a numerical weight signifying its importance relative to all other factors in that category. Property having the highest total scores shall rank highest in priority of acquisition. In addition, in the event of tie rankings, consideration shall be given to certain factors set out in section 26-579.

(c) The OSAP ranking system and administrative procedural provisions in the OSAP Manual may be amended from time to time by the city manager or if so delegated, by the program administrator, provided that all such amendments are consistent with this article.

(Ord. No. 03-O-023, 2-25-03; Ord. No. 05-O-153, 11-22-05)

**Sec. 26-583. - Administration and enforcement.**

This article shall be administered, interpreted and enforced by the OSAP program administrator. The OSAP program administrator is authorized to inspect property participating in the program to ensure compliance with the terms of this article, including the specification manual, and the preservation easement and to issue notices of correction. After notice of violation and failure to correct within a specified reasonable amount of time, the OSAP program administrator may pursue judicial remedies, including without limitation, criminal proceedings and injunctive relief. Any violation of one or more terms of the preservation easement shall be deemed a violation of this article. A violation of this article or the preservation easement shall be punishable as a class 3 misdemeanor. Each day of the violation shall constitute a separate offense.

(Ord. No. 03-O-023, 2-25-03; Ord. No. 06-O-075, 6-27-06)

**Sec. 26-584. - Open Space and Agriculture Preservation (OSAP) Manual.**

(a) *Purpose and effect.* This open space and agriculture preservation (OSAP) manual is adopted pursuant to article XI of chapter 26 ("OSAP Ordinance"). This manual is intended to supplement the OSAP Ordinance by providing for the administration and enforcement of the provisions contained therein. This manual shall be considered a part of the OSAP ordinance but in no event shall it supercede the provisions of the City Code. This manual shall be interpreted and applied in a manner consistent with the terms, purpose and intent of the OSAP ordinance.

(b) *Amendment.* This manual may be amended from time to time by the city manager or if the city manager so delegates this authority, by the OSAP program administrator. All amendments shall be consistent with the OSAP ordinance.

(c) *Definitions.* The words and phrases used in this manual shall have the same meaning as set out in section 26-574

(d) *Administration.* The OSAP program shall be implemented and enforced by the program administrator appointed by the city manager. The program administrator shall have the following duties:

- (1) Interpret, administer and enforce the OSAP ordinance, including this manual.
- (2) Generate, approve and make available applications, forms, agreements and deeds. All agreements and deeds shall be approved by the city attorney.
- (3) Receive, research and evaluate applications for eligibility to participate in the OSAP program.
- (4) Implement review procedures for city staff and the agricultural advisory commission ("commission").
- (5) Provide training programs for the commission.
- (6) Schedule commission meetings, prepare staff reports, keep minutes at all open meetings and maintain all records relating to the OSAP program.
- (7) Provide reports to the city manager setting forth staff and commission recommendations as to the purchase of development rights pursuant to voluntary application of the landowner.

(8) Conduct inspections to evaluate property under consideration for the purchase of development rights and as otherwise may be necessary to administer and enforce the OSAP ordinance.

(9) Take steps to educate the public as to the benefits and availability of the OSAP program.

(10) Research and apply for grants to be used in support of the OSAP program.

(11) Undertake any other duties assigned by the city manager under the OSAP ordinance.

(e) *Applications.* The program administrator shall evaluate applications for purchase of development rights, determine eligibility and report to the agricultural advisory commission concerning each application. Where more than one qualifying property is eligible for consideration, and funding is insufficient to purchase all such qualifying properties, the program administrator shall refer the applications to the agricultural advisory commission for ranking under the OSAP ranking system set out below.

(f) *OSAP ranking system.* In determining rankings of priority for land competing for available funding, the agricultural advisory Commission shall apply the ranking criteria set out below. There are two sets of ranking criteria for two categories:

(1) Agricultural lands, and

(2) Open space (non-agricultural).

In each category, certain factors descriptive of the characteristics of property sought to be preserved in the OSAP program are included. Each factor is assigned a numerical weight signifying its importance relative to all other factors in that category. Property having the highest total scores shall rank highest in priority of acquisition.

#### CATEGORY 1: AGRICULTURAL RESOURCES

A. *Quality of farmland (productivity capability).* Constitutes 33 percent of the number of points in the system. Factors and points are as follows:

	Factor	Points
1	Size of Farm	
	(a) 100 acres or more	15
	(b) 60	10

	—9 9 acr es	
	(c) 20 —5 9 acr es	6
	(d) 10 —1 9 acr es	3
	(e) Les s tha n 10 acr es	0
2	Soils - Percentage in United States Department of Agriculture Natural Resources Conservation Service Land Capability Classification System Land Capability Class 1, 2E, 2W, 3W and 4W undrained, 3E, 2S, and 3S:	
	(a) 80 % or mo re	15
	(b) 60 —7 9%	10
	(c) 40 —5 9%	6
	(d) 20 —3 9%	3
	(e) Les s	0

	tha n 20 %	
3	Percentage of farm in cropland or pasture:	
	(a) 80 % or mo re	15
	(b) 60 —7 9%	10
	(c) 40 —5 9%	6
	(d) 20 —3 9%	3
	(e) Les s tha n 20 %	0
4	Percentage of farm in high-value crops:	
	(a) 80 % or mo re	15
	(b) 60 to 79 %	10
	(c) 40 to 59	6

	%	
	(d) 20 to 39	3
	(e) Les s tha n 20 %	0
5	Amount of animal units produced on the farm:	
	(a) 150 ani mal unit s or mo re	15
	(b) 100 —1 50 ani mal unit s	10
	(c) 50 —1 00 ani mal unit s	6
	(d) 25 —5 0 ani mal unit s	3
	(e) Les	0



	s tha n 25 ani mal unit s	
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B. Likelihood of conversion to non-farm use (development pressure) constitutes 27 percent of the number of points in the system. Factors and points are as follows:

	Fac tor	Points
1	Urgency of circumstances favoring conversions	
	(a) Far m sub ject to pot enti al forc ed sal e	10
	(b) Far m sub ject to est ate sett lem ent sal e	8
	(c) Far m acti vel	6

	y ma rket ed for vol unt ary sal e	
	(d) Oth er	0
2	Farm suitability for residential conversion—Percentage of well or moderately well-drained soils on the farm:	
	(a) 80 % or mo re	10
	(b) 60 —7 9%	8
	(c) 40 —5 9%	6
	(d) 20 —3 9%	3
	(e) Les s tha n 20 %	0
3	Percentage of farm offered to preservation program:	
	(a) 90 or gre ate r	10

	(b) 70 —8 9%	6
	(c) Les s tha n 70	0
4	Amount of public road contiguous to a farm:	
	(a) Mo re tha n 1,0 00 line ar feet	10
	(b) 601 —1 ,00 0 feet	8
	(c) 301 —6 00 feet	7
	(d) 150 —3 00 feet	4
	(e) Les s tha n 150 feet	0
5	Percentage of farm in upland forest (excluding swamp):	
	(a)	10

	80 % or mo re	
	(b) 60 —7 9%	8
	(c) 40 —5 9%	6
	(d) 20 —3 9%	3
	(e) Les s tha n 20 %	0
6	Pur cha se pric e is lev era ged usi ng oth er fun din g sou rce s incl udi ng but not limi ted	Up to 6

<p>to state, federal, foundation funding or private donations (0.12 points for each one percent of purchase price leveraged, up to 50%)</p>	
<p>7. Purchase price is below ma</p>	<p>Up to 6</p>

	market value (0. 12 poi nts for eac h one per cen t bel ow ma rket val ue up to 50 %)	
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C. Circumstances supporting agriculture constitutes 18 percent of the number of points in the system.

	Fac tor	Points
1	Number of non-farm rural residences within one-half mile of the farm:	
	(a) 0 to 3 dw elli ng unit s	10
	(b) 4 to 7 dw elli ng unit s	8

	(c) 8 to 12 dwelling units	5
	(d) 13 to 18 dwelling units	3
	(e) More than 18 units	0
2	Proximity of parcel or batch to other farms with agriculture reserve program or other perpetual easements:	
	(a) Co ntig uou s	10
	(b) Wit hin ¼ mil e	8
	(c) Wit hin ½ mil e	5
	(d) Wit hin 1	3

	mil e	
	(e) Gre ate r tha n 1 mil e	0
3	Proximity to significant or unique agricultural support services:	
	(a) Co ntig uou s	10
	(b) Wit hin 1 mil e	8
	(c) Wit hin 2 mil es	5
	(d) Wit hin 3 mil es	3
	(e) Gre ate r tha n 3 mil es	0
4	On-farm agricultural infrastructure and improvements:	
	(a) Uni que	10



	regional services	
	(b) Headquarters farm	9
	(c) Good farm buildings	7
	(d) Adequate farm buildings	3
	(e) No farm buildings	0

D. Historic, scenic, and application frequency constitutes 13 percent of the number of points in the system.

	Factor	Points
1	Proximity to historic or cultural feature:	
	(a) On-	10

far m exc epti ona l feat ure s fav ora ble to pre ser vati on, as not ed in the Re con nai ssa nce Arc hite ctur al Sur vey Re por t, Cit y of Ch esa pea ke	
(b) Exc epti ona l feat ure	8

s fav ora ble to pre ser vati on wit hin ¼ mil e	
(c) Exc epti ona l feat ure s wit hin ½ mil e	7
(d) Exc epti ona l feat ure s furt her tha n ½ mil e	0
2	Frequency of application submittal:
(a) Thi rd or mo re	10

	time	
	(b) Second time	5
	(c) First time	0
3	Aesthetic value of forest on the farm:	
	(a) No significant timber harvest within last 20 years from the date of applica	10

	tion	
	(b) Significant timber harvest within last 10 to 20 years	4
	(c) Significant timber harvest within last 5 to 10 years	2
	(d) Significant timber harvest within last	0

<p>5 yea rs, lan d cut ove r wit hin 10 yea rs and not ref ore ste d, or lan d cut ove r wit hin 5 yea rs and not ref ore ste d</p>	
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E. Environmental quality constitutes 9 percent of the number of points in the system.

Fac tor	Points
1	Proximity to areas identified as having high environmental value, such as state or federal parks, areas within the Dismal Swamp National Wildlife Refuge designated expansion boundary, exemplary wetlands, critical areas, medium density conservation corridor and endangered species habitat as shown in the "Natural Areas Inventory of the City of Chesapeake," (DCR, Natural Heritage, 1998), and the "Conservation Plan for the Southern Watershed Area," (DCR, Natural Heritage, 2001).

	(a) Co ntig uou s	10
	(b) Wit hin ½ mil e	8
	(c) Wit hin 1 mil e	5
	(d) Wit hin 1½ mil es	2
	(e) Gre ate r tha n 1 ½ mil es	0
2	Proximity of farm to perennial stream or waterway	
	(a) Far m eith er incl ude s or is adj ace nt to per enn	10

	ial wat erw ay	
	(b) All oth er	0
3	Location of areas are not compatible with development	
	(a) Fe ntr ess Airf ield Ov erla y Dis trict	10
	(b) Nor thw est Riv er Wa ters hed Pro tect ion Dis trict	10
	(c) Oth er	0

CATEGORY 2: OPEN SPACE RESOURCES (NON-AGRICULTURAL) - NATURAL, HISTORIC, AND SCENIC RESOURCES, AND CHARACTER OF URBAN DEVELOPMENT (MAXIMUM OF 100 points)

	Fac tor	Points
1	Size of parcel or batch	
	(a)	6



	10 acr es or mo re	
	(b) 3 to 10 acr es	5
	(c) Les s tha n 3 acr es	0
2	Pro xim ity to any of the foll owi ng criti cal env iron me ntal are as: Nor thw est Riv er Wa ters hed Pro tect ion Dis trict	

<p>wetlands, major floodplains, woodlands, perennial streams, and stream headwaters:</p>	
<p>(a) Property contains critical environmental areas</p>	<p>7</p>
<p>(b) Property is within</p>	<p>4</p>

<p>¼ mile of critical environmental area</p>	
<p>(c) Property is further than ¼ mile</p>	<p>0</p>
<p>3. Proximity to special natural habitat:</p>	
<p>(a) Property contains or is contiguous to endangered or</p>	<p>6</p>

<p>threatened species habitat or is part of a designated conservation corridor</p>	
<p>(b) Within ¼ mile of such areas</p>	3
<p>(c) Further than ¼ mile of such areas</p>	0
<p>4 . Pro</p>	6

<p>ty con tain s Re sou rce Pro tect ion Are as or Re sou rce Ma nag em ent Are as</p>	
<p>5 . Pro per ty affo rds an opp ort unit y to link ope n spa ce or rec rea tion al res our ces</p>	<p>7</p>
<p>6 .</p>	<p>Property is associated with an important historic place, event, person or activity, and included in the Virginia Department of Historic Resources, "Reconnaissance and Intensive Survey of Architectural Resources in the City of Chesapeake, Virginia," or the History Store's, "Reconnaissance Survey of the City of Chesapeake, Virginia."</p>

(a) National, state or local signifi- cance	7
(b) Property is adjacent to such areas	4
7 Property contains an archeologi- cal site:	
(a) Designated archeologi- cal site	6

(b) Arc hae olo gic al site elig ible for des ign atio n	3
8 Proximity to designated scenic byway or river:	
(a) Incl ude s fro nta ge alo ng des ign ate d sce nic by wa y and /or por tion of sce nic rive r	7
(b) Is loc ate d wit	4

<p>hin ¼ mil e or adj ace nt to the buff er of a des ign ate d sce nic by wa y or rive r</p>	
<p>(c) Fur the r tha n ¼ mil e</p>	<p>0</p>
<p>9 Pro per ty con tain s dist inct sce nic res our ces suc h as mat</p>	<p>6</p>



<p>ure for est, sta nds of tre es, ope n fiel ds, wat erw ays , can abr ake s, etc.</p>	
<p>1 0 . Pur cha se pric e is lev era ged usi ng oth er fun din g sou rce s incl udi ng but not limi ted to stat e,</p>	<p>Up to 6</p>

<p>federal , foundation funding or private donations (0.12 points for each one per cent of purchase price leveraged , up to 50 per cent)</p>	
<p>1 1 . Purchase price is below market</p>	<p>Up to 6</p>

value (0.12 points for each one per cent t below market value up to 50 per cent t)	
1 2 .	Urgency of circumstances favoring conversions:
(a) Land subject to potential forced sale	7
(b) Land subject to estate	5

	sett lem ent sal e	
	(c) Lan d acti vel y ma rket ed for vol unt ary sal e	3
	(d) Oth er	0
1 3 .	Lan d suit abil ity for resi den tial con ver sio n - per cen tag e of wel l or mo der atel y wel l-dr ain	

	ed soil s on the lan d:	
	(a) 80 % or mo re	8
	(b) 60 to 79 %	6
	(c) 40 to 59 %	4
	(d) 20 to 39	2
	(e) Les s tha n 20 %	0
1 4 .	Percentage of land offered to preservation program:	
	(a) 90 or gre ate r	7
	(b) 70 to 89 %	4

	(c) Less than 70	0
15.	Land Suitable for development in the Fentress Airfield Overlay District:	
	(a) Located in AP Z-I	8
	(b) Located in noise contour 75 DNL or greater	7
	(c) Located in noise contour 70-75 DNLL	6
	(d) Located in	5

AP Z-2 and /or noi se con tou r 65 —7 5 DN L	
1 6 .	Amount of public road contiguous to land:
(a) Mo re tha n 1,0 00 line ar feet	8
(b) 601 to 1,0 00 feet	6
(c) 301 to 600 feet	4
(d) 150 to 300 feet	2
(e) Les s tha n 150	0

feet	
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The ranking system points shall not be used in determining the value of development rights or the amount of any offer to purchase. Findings and recommendations of the commission shall be final and unappealable. In the event of disagreement among the members of the commission as to the number of points to be assigned to a given application, each member shall state the number of points he or she believes should be assigned and the average number of points so obtained, rounded upwards to the nearest point, shall constitute the decision of the commission. In the event of a tie ranking, the commission shall re-evaluate the tying application and shall give consideration to the factors listed in section 26-579. The commission shall promptly transmit a report of its findings and recommendations to the city manager.

(g) *Offer to purchase.* Upon recommendation of the commission to purchase development rights, the city manager shall order an independent appraisal of the value of the development rights using the density assumptions in section 26-580. The city manager may extend an offer to purchase development rights based on the appraisal. All such offers shall be contingent on:

- (1) Available funding;
- (2) City council approval;
- (3) Appropriation of funds;
- (4) Execution of a purchase agreement;
- (5) Absence of defects in title or other encumbrance that may adversely affect the city's interest in accomplishing the purpose of the OSAP program; and
- (6) Conveyance of a perpetual preservation easement to the City.

All written offers made to a landowner shall clearly state that:

- (1) The offer is contingent on city council approval, funding and appropriation;
- (2) The funds used to purchase development rights may include federal and state monies subject to restrictions on use;
- (3) The offer is revocable by the city at any time prior to the authorized execution of a purchase agreement;
- (4) The offer is contingent on the landowner's execution of a purchase agreement and preservation easement acceptable to the city attorney;
- (5) The acceptance of the offer by the landowner may be revoked at any time prior to execution of the purchase agreement; and
- (6) The preservation easement will be perpetual and nonrevocable.

(h) *Acceptance of offer by landowner/ council approval.* In the event the offer is accepted by the landowner, the city manager shall place the matter before the city council for approval. The city council may approve the purchase of development rights only with respect to such applications for which there



is available funding, in a priority determined by points assigned under the OSAP ranking system, and only upon finding that the proposed terms and conditions of purchase, including the purchase price and manner of payment, are fair and reasonable and in furtherance of the purposes of this division.

(i) *Rights acquired by city.* The acquisition of a preservation easement by the city shall not extinguish any rights of the landowner except for the right to develop, improve or use the property for any purpose other than open space or agricultural uses, and shall not by right confer upon the public any right of entry or access, or any other rights, express or implied, unless expressly stated in the preservation easement signed by the landowner.

The preservation easement shall be perpetual; however, the landowner or successor in interest to the property that is subject to the easement may petition the city council to repurchase the development rights on such property upon the expiration of a minimum of 25 years from the date on which the preservation easement is recorded. Such petition shall be considered pursuant to the criteria in section 26-581.

The program administrator shall immediately notify the zoning administrator and the director of planning upon a landowner's execution of the perpetual preservation easement. Within ten days of such execution, the zoning administrator shall make a notation on the official zoning map to indicate the city's acquisition of development rights and the date thereof. No building permits shall be issued for such areas unless the zoning administrator verifies with the city attorney that the proposed building or structure is permitted under the preservation easement.

(j) *Enforcement.* The OSAP ordinance, including this manual, shall be administered, interpreted and enforced by the program administrator. The administrator is authorized to inspect property participating in the program to ensure compliance with the terms of the preservation easement and to issue notices of correction. Any violation of one or more terms of the preservation easement shall be deemed a violation of this article and shall be punishable as a class 3 misdemeanor. Each day of the violation shall constitute a separate violation.

(Ord. No. 05-O-153, 11-22-05)

**Editor's note—** Ord. No. 05-O-153, adopted November 22, 2005, did not specify manner of inclusion for the OSAP Manual; hence, inclusion as § 26-584 is at the discretion of the editor.