

APPENDIX C

AN ORDINANCE ESTABLISHING THE PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS PROGRAM

WHEREAS, the County Board of Supervisors desires to establish a program which will enable the County to acquire agricultural conservation easements voluntarily offered by property owners as a means of assuring that the County's agricultural and silvicultural resources are protected and efficiently used; and

WHEREAS, the Open Space Land Act of Virginia expressly authorizes public bodies to acquire property for such a purpose as designated herein;

NOW, THEREFORE, BE IT AND IT IS HEREBY ORDAINED by THE BOARD OF SUPERVISORS OF ISLE OF WIGHT COUNTY, VIRGINIA:

APPENDIX C

PURCHASE OF AGRICULTURE CONSERVATION EASEMENTS PROGRAM STATE LAW REFERENCE SECTION 10.1-1700 et. seq.

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Sec. C-1. Short title.

This chapter shall be known and may be cited as the "Purchase of Agricultural Conservation Easements ("PACE") Program."

Sec. C-2. Purpose.

The purposes of this chapter include, but are not limited to:

- (1) Establishing a program enabling the County to acquire agricultural conservation easements voluntarily offered by owners to serve as one means of assuring that Isle of Wight County's resources are protected and efficiently used;

- (2) Establishing and preserving the rural character of the County;
- (3) Preserving farm and forest land;
- (4) Assisting in shaping the character and direction of the development of the community; and
- (5) Improving the quality of life for the inhabitants of the County.

Sec. C-3. Applicability.

The PACE program shall be available for all qualifying lands in the County, except those lands under the ownership or control of the United States of America, the Commonwealth of Virginia, Isle of Wight County or an agency or instrumentality thereof. Any agricultural conservation easement acquired pursuant to this chapter shall be voluntarily offered by the owner.

Sec. C-4. Definitions.

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

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

Board. The Board of Supervisors of Isle of Wight County.

Agricultural Conservation Easement. A nonpossessory interest in one or more parcels by one or more qualified easement holders under section C-9 (d) of the Code of the County of Isle of Wight acquired under the Open-Space Land Act (Virginia Code § 10.1-1700 et seq.), whether the easement is appurtenant or in gross, voluntarily offered by an owner and acquired by purchase or donation pursuant to the PACE program, imposing limitations or affirmative obligations for the purpose of assuring availability for agricultural, and forestall use.

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

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

Parcel. A lot or tract of land, lawfully recorded in the clerk's office of the circuit court of the County of Isle of Wight. An agricultural 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 agricultural conservation easement.

Sec. C-5. Designation of program Administrator; powers and duties.

(a) *Designation.* The Administrator shall report to the Director of Economic Development.

(b) *Powers and duties.* The Administrator shall administer the PACE program and shall have powers and duties to:

1) Establish reasonable and standard procedures and forms consistent with this chapter for the administration and implementation of the program.

2) Promote the program, in cooperation with the PACE committee, by providing educational materials to the public and conducting informational meetings.

3) Investigate and pursue, 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 PACE committee.

5) Coordinate the preparation of appraisals.

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

7) Provide staff support to the Board, and the PACE committee.

8) For each agricultural conservation easement accepted into the program, establish baseline data, and assure that the terms and conditions of the easement are monitored and complied with by coordinating a monitoring program with each easement holder.

Sec.C-6. Purchase of agricultural conservation easements committee established; powers and duties.

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

1) The committee shall consist of five members appointed by the Board. Each member shall be a property owner in and a resident of Isle of Wight County. The committee should, but is not required to be, comprised of members who are knowledgeable in the fields of planning, real estate, land appraisal, agricultural lending, farming and forestry and land conservation.

2) The members of the committee shall serve at the pleasure of the Board. The initial terms of the members shall be as follows: two members shall be for one year; two members shall be for two years; and one member shall be for three years. Each term after the initial term shall be for three years.

3) The members of the committee shall serve without pay, but the Board may, in its discretion, reimburse members for actual and necessary expenses incurred in the performance of his/her duties.

4) The committee shall elect a chairman, vice chairman and secretary at its first meeting of each calendar year. The secretary need not be a member of the committee.

5) The Administrator and county agricultural extension agent, the area forester, the director of Planning and Zoning (or his designee) and a representative of the local soil and water conservation district shall be ex officio members of the committee.

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

1) Promote the program, in cooperation and under the guidance of the Administrator, by providing educational materials to the public and conducting informational meetings.

2) Review the ranking of applications recommended by the Administrator, and make recommendations to the Administrator and the Board as to which agricultural conservation easements should be purchased.

3) Bi-annually review the program's eligibility and ranking criteria and recommend to the Administrator any changes needed to maintain the program's consistency with the comprehensive plan, or to improve the administration, implementation and effectiveness of the program.

4) Appoint committees to assist in implementation of the program.

5) A quorum shall consist of three members present and the committee shall operate on a "majority rule" basis.

Sec. C-7. Eligibility criteria.

In order for a parcel to be eligible for an agricultural conservation easement, it must meet the following criteria: (i) the use of the parcel subject to the agricultural conservation easement must be consistent with the comprehensive plan; (ii) the proposed terms of the agricultural conservation easement must be consistent with the minimum agricultural conservation easement terms and conditions set forth in section C-9, unless modified by the Board; and (iii) the parcel must be located in the County of Isle of Wight.

Sec. C-8. Ranking system.

In order to effectuate the purposes of this chapter, parcels for which agricultural 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

recommended by the PACE Committee for approval by the Board. The ranking system may be used to prioritize the acquisition of agricultural conservation easements.

Sec. C-9. Agricultural conservation easement terms and conditions.

Each agricultural conservation easement shall conform to the requirements of the Open-Space Land Act of 1966 (Virginia Code § 10.1-1700 et seq.) and this chapter. The deed of an agricultural easement shall be in a form approved by the County Attorney, and shall contain, at a minimum, the following provisions:

(a) *Restriction on new dwellings.* No new dwellings may be constructed on a parcel except as provided hereafter; the deed of easement may allow one new dwelling per 100 acres, with the dwelling location specified by plat on or before the agricultural conservation easement is established. The dwellings shall comply with the current zoning ordinance then in effect, or the terms and conditions contained in the agricultural conservation easement, whichever is more restrictive.

(b) *Agricultural conservation easement duration.* An agricultural 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 agricultural conservation easements pertaining to uses and activities allowed on the parcel. These restrictions shall be delineated in the deed of easement and shall include provision for monitoring by the County.

(d) *Designation of agricultural easement holders.* The County shall be the easement holder, and if designated by the Board, and with the landowner's consent which shall not be unreasonably withheld one or more other public bodies, as defined in Virginia Code Section 10.1-1700, or one or more organizations then qualifying as an eligible donee as defined by Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, shall also be an easement holder.

Sec. C-10-. Application and evaluation procedure.

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

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

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

parcel, and for the a certified independent appraiser to appraise the property. The application form shall also include a space for an owner to indicate whether he/she volunteers to have his parcel be subject to greater restrictions than those contained in the standard deed of easement, and to delineate those voluntary, additional restrictions.

(c) *Additional application information required by Administrator.* The Administrator may require an owner to provide additional information deemed necessary to determine: (i) whether the proposed easement is eligible for purchase; (ii) the ranking of the parcel; and (iii) the value of such easement.

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

(e) *Evaluation by Administrator.* The Administrator shall evaluate each application received and determine whether the application is complete. If the application is incomplete, the Administrator shall inform the owner in writing of the information that must be submitted in order for the application to be deemed complete.

When an application is deemed complete, the Administrator shall determine whether the parcel satisfies the eligibility criteria set forth in section C-8 and, if it does, shall determine the number of points to be attributed to the parcel by applying the ranking system in accordance with section C-8. The Administrator shall then rank each parcel with the parcel scoring the most points being the highest ranked and descending therefrom. The Administrator shall submit the list of ranked parcels to the PACE committee after each open application period.

(f) *Evaluation by PACE committee.* The PACE committee shall review the list of ranked parcels submitted by the Administrator. The PACE committee shall forward to the Administrator and the Board recommendations of which agricultural conservation easements should be purchased.

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

(h) *Requirements and deadlines may be waived.* Any requirement or deadline set forth in this chapter may be waived by the Board if, for good cause, it is shown that urgent circumstances exist that warrant consideration of an application. Under such circumstances, the Board may purchase an agricultural conservation easement at any time it deems necessary.

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

Sec. C-11. Purchase of development rights procedure.

Each purchase of an agricultural conservation easement shall proceed as follows:

(a) *Identification of initial pool.* From the list of parcels received under section C-10, the Board shall designate the initial pool of parcels identified for agricultural conservation easements to be purchased.

(b) *Determining purchase price.* The PACE Committee shall be charged with determining a method of valuating properties for which applications are submitted. Such method shall be approved by the Board. The valuation method shall be reviewed by the PACE Committee bi-annually as provided for in Section C-6 above. Any changes to the method of valuation shall be approved by the Board.

(c) *Invitation to sell.* The Administrator, subsequent to approval by the PACE Committee shall invite the owner of each parcel included in the initial pool of parcels to sell to the County an agricultural conservation easement on that parcel for an amount based upon the appraised value of such agricultural 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 proposed purchase price, the proposed deed of easement, and the date by which a written offer must be received by the Administrator in order to be accepted.

The invitation may contain a form offer to be returned by the owner if the owner desires to sell an agricultural conservation easement.

(d) *Offer to sell.* Each owner who desires to sell and/or donate an agricultural conservation easement shall submit a written offer that must be received by the Administrator by the date contained in the invitation to sell. The offer should include a statement that substantially states the following: "(The owner) offers to sell and/or donate an agricultural conservation easement to the County of Isle of Wight, Virginia for the sum of (purchase price), subject to the terms and conditions set forth in the proposed deed of easement enclosed with the invitation to sell." Nothing in this chapter shall compel an owner to submit an offer to sell.

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

(f) *Agricultural conservation Easement established.* An agricultural 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 Isle

of Wight. A single agricultural conservation easement may be established for more than one parcel under the same ownership.

(g) Offers not made; offers not accepted; invitation to other owners. If an owner invited to sell elects not to do so, or if the offer to sell is not accepted by the Board, then the Administrator may send an invitation to sell to the owner(s) of the next highest prioritized parcel(s) remaining on the list of parcels identified in section C-10 (g).

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

Sec. C-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 agricultural 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 an agricultural 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 an agricultural conservation easement on a different parcel of property meeting all of the eligibility requirements as set forth in section C-8.

2) Requirements. No such extinguishment and exchange of easement shall be authorized, unless a two-thirds majority of the Board finds that:

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

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

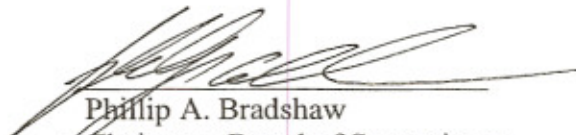
(iii) The extinguishment and exchange does not adversely affect the County's interests in accomplishing the purposes of this ordinance;

(iv) There is substituted other real property which is (a) of at least equal fair market value and at least equal acreage; (b) of greater value as permanent agricultural or forestry land than the land upon which the easement is extinguished, (c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land upon which the easement is extinguished and (d) is in accordance with the Virginia Open-Space Land Act, (Virginia Code §10.1-1700 et seq.); and

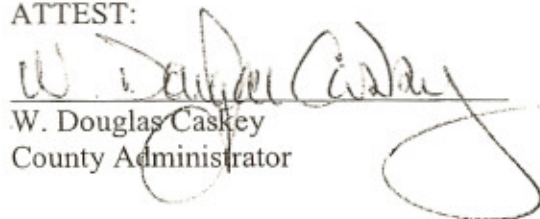
(v) Agriculture or forestry is no longer viable on the property.

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, appraisal, site assessments, surveys, closing costs, recording fees and taxes, title search, and title insurance if required.


Adopted by the Board of Supervisors of the County of Isle of Wight, Virginia on the 19th day of May, 2005.


Phillip A. Bradshaw
Chairman, Board of Supervisors

ATTEST:


W. Douglas Caskey
County Administrator

Approved as to Form:


Jacob P. Stroman, IV
County Attorney