

FARMLAND PRESERVATION PROGRAM

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Sec. A.I-100. Short title.

This appendix shall be known and may be cited as the Farmland Preservation (FP) Program

Sec. A.I-101. Purpose.

The Board of Supervisors finds that regulatory land-use planning tools acceptable to date have not been able to stem the conversion of farm and forest land to other uses; and that farm and forest land, clean water and airsheds, biological diversity, scenic vistas and rural character have a public value as well as a private value. Therefore, the specific purposes of the FP program include, but are not limited to:

1. Preserving farm and forest lands;
2. Establishing a program by which the County can acquire conservation easements voluntarily offered by owners to serve as one means of assuring that the County's resources are protected and efficiently used;
3. Establishing and preserving open-space and preserving the rural character of Rappahannock;
4. Protecting and enhancing the quality of life for the inhabitants of the County; and

5. Promoting tourism through the preservation of scenic resources and a healthy, economically viable agricultural base for the local economy.

Sec. A.I-102. Applicability.

The FP program shall be available for all lands in the County in a resource preservation zoning district, except those lands under the ownership or control of the United States of America, the Commonwealth of Virginia, or an agency or instrumentality thereof. Any conservation easement acquired under the FP program shall be voluntarily offered by the owner.

Sec. A.I-103. Definitions and construction.

A. The following definitions shall apply in the interpretation and implementation of the FP Program

(1) Conservation easement. The term "conservation easement" means a nonpossessory interest in one or more parcels of one or more qualified easement holders under section A.I-109(E), whether acquired under the Open-Space Land Act (Virginia Code § 10.1-1700 et seq.), or otherwise, and whether the easement is appurtenant or in gross, voluntarily offered by an owner and acquired by purchase pursuant to the FP program, imposing limitations or affirmative obligations for the purpose of retaining or protecting natural or open-space values of the parcel or parcels, assuring availability for agricultural, forestal, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of the parcel or parcels.

(2) Division rights. The term "division rights" means the number of parcels into which a parcel could be divided under: (i) the resource preservation zoning district regulations stated in Chapter 170, Zoning, of the Rappahannock County Code, where each potential parcel could comply with all applicable requirements of Chapter 147, Subdivision of Land, and Chapter 170, Zoning, of the Rappahannock County Code; and, (ii) any existing easements, covenants or restrictions which restrict lot size, number of lots or density.

(3) Forced sale. The term "forced sale" means a sale of a parcel with unused development rights in a manner

prescribed by law that is conducted under a judgment, order or the supervision of a court of competent jurisdiction, other than a sale arising from a partition action; a sale resulting from foreclosure under the laws of the Commonwealth of Virginia; or, a sale that is not the voluntary act of the owner but is compelled in order to satisfy a debt evidenced by a mortgage, judgment, or a tax lien.

(4) Hardship. The term "hardship" means an economic hardship, other than a circumstance causing a forced sale, experienced by the owner of the parcel so as to compel him to place a parcel with unused development rights for sale or to use such development rights.

(5) Immediate family. The term "immediate family" means an owner's spouse and his or her offspring residing in the same household as the owner of the parcel.

(6) Owner. The term "owner" means the owner or owners of the freehold interest

(7) Program administrator. The term "program administrator" means the County Administrator.

(8) Parcel. The term "parcel" means a lot or tract of land, with an assigned Tax Map and ID number, lawfully recorded in the office of the Clerk of the Circuit Court of the County of Rappahannock.

(9) Retained division rights. The term "retained division rights" means the number of parcels into which a parcel subject to a conservation easement may be divided as provided in section A.I-109(A).

B. Construction. Because a conservation easement may contain one or more parcels, for purposes of the FP program the term "parcel" shall include all parcels covered by, or proposed to be covered by, the conservation easement.

Sec. A.I-104. Designation of program administrator; powers and duties.

A. Designation. The County Administrator is hereby designated as the program administrator.

B. Powers and duties. The program administrator, or his designee, shall administer the FP program and shall have

the powers and duties to:

1. Establish reasonable and standard procedures and forms for the proper administration and implementation of the program. Upon receiving an application the Program Administrator shall obtain a title examination. He shall also obtain a survey if necessary to evaluate the property. Provided, an application may be rejected by the Program Administrator, after consultation with the Farmland Preservation Committee, if the survey expense will be too large in relation to the expected benefit to the County, or if the title examination shows title deficiencies which the Owner is unlikely to be able to cure, or lienholders who are unlikely to subordinate to the proposed easement.
2. Promote the program, in cooperation with the FP committee, by providing educational materials to the public and conducting informational meetings.
3. Investigate and pursue state, federal and other programs available to provide additional public and private resources to fund the program and to maximize private participation.
4. Evaluate all applications to determine their eligibility and their ranking score, rank applications based on their ranking score, and make recommendations thereon to the FP committee.
5. Determine the number of division rights existing on each parcel subject to an application, after determining the number of theoretical development rights.
6. Coordinate the preparation of appraisals.
7. Provide staff support to the FP committee and the Board of Supervisors.
8. Provide educational materials regarding other land protection programs to the public
9. For each conservation easement, assure that the terms and conditions of the deed of easement are monitored and complied with by coordinating a monitoring program with each easement holder, and if the other easement holders are either unable or unwilling to do so, monitor and assure compliance with the terms and conditions of the deed of easement.

Sec. A.I-105. Farmland Preservation committee established; powers and duties.

A. Establishment. The Farmland Preservation committee is hereby established, as follows:

1. The committee shall consist of seven (7) members appointed by the Board of Supervisors, and shall include among their number the Program Administrator and the Commissioner of the Revenue who shall be *ex-officio* members. Each other member shall be a resident of Rappahannock County. The committee should, but is not required to, be comprised of members who are knowledgeable in the fields of farming and forestry, conservation, conservation biology, real estate and/or rural land appraisal, and may also include members of conservation easement holding agencies and conservation organizations.

2. The *ex officio* members of the committee shall serve at the pleasure of the Board of Supervisors. The initial term of two of the voting members shall be for two (2) years. The initial term of the remaining three (3) voting members and for all members after the initial term shall be for four (4) years.

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

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

B. Powers and duties. The FP committee shall have the powers and duties to:

1. Promote the program, in cooperation with the program administrator, by providing educational materials to the public and conducting informational meetings.

2. Review the ranking of applications recommended by the program administrator, and make its recommendation to the Board of Supervisors as to which conservation easements should be purchased.

3. Periodically review the program's regulations, guidelines, administrative procedures and promotion and

recommend to the Board of Supervisors or the program administrator, as appropriate, any changes needed to maintain the program's consistency with the comprehensive plan, or to improve the administration, implementation and effectiveness of the program.

4. Annually review and set the purchase price for a conservation easement/development right.

Sec. A.I-106. Eligibility criteria.

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

- (i) the use of the parcel subject to the conservation easement must be consistent with the comprehensive plan; and
- (ii) the proposed terms of the conservation deed of easement must be consistent with the minimum terms and conditions set forth in section A.I-109; and
- (iii) the parcel shall obtain at least fifteen (15) points under the ranking criteria set forth in section A.I-107.

Sec. A.I-107. Ranking criteria.

In order to effectuate the purposes of the FP program, parcels for which conservation easement applications have been received shall be ranked according to the criteria and the point values assigned as provided below. Points shall be rounded to the first decimal.

A. Natural, cultural and scenic resources.

1. Working family farm, including forestry: seven (7) points if at least one family member's principal occupation and income (more than half) is farming or forestry on the parcel; three (3) points if at least one family member produces farm products derived from the parcel.

2. The parcel contains capability class II or III soils ("prime soils") for agricultural lands or «Fair» for forest land, based on federal natural resources conservation service classifications found in the United States Department of Agriculture Soil Survey of Rappahannock County, Virginia: two (2) points for each fifty (50) acres containing such soils to a maximum of eight (8) points.

3. The parcel is subject to a permanent easement whose primary purpose is to establish or maintain vegetative buffers adjoining perennial or intermittent streams: one (1) point for each one thousand (1000) feet of buffer that is between thirty-five (35) and one hundred (100) feet wide; two (2) points for each onethousand (1000) feet of buffer that is greater than one hundred (100) feet wide. If the owner voluntarily offers in his application to place the parcel in such a permanent easement, then the above-referenced points may also be awarded. If the parcel adjoins a waterway designated as a state scenic river: one-half(1/2) point for each one thousand (1000) feet of frontage.

4. The parcel is within an agricultural and forestal district: two (2) points.

B. Threat of conversion to developed use.

1. The parcel is threatened with forced sale: five (5) points.

2. The parcel is threatened with other hardship: three (3) points.

3. The number of division rights to be eliminated on the parcel: one-half (1/2) point for each division right to be eliminated, which shall be determined by subtracting the number of retained division rights from the number of division rights.

C. Open-space resources.

1. The parcel adjoins an existing permanent conservation easement, a national, state or local park, or other permanently protected open-space: one (1) point for every five hundred (500) feet of shared boundary.

2. Size of the parcel: one (1) point for each fifty (50) acres.

D. County fund leveraging. State, federal or private funding identified to leverage the purchase of the conservation easement: one (1) point for each ten (10) percent of the purchase price for which those funds can be applied.

Sec. A.I-108. Easement terms and conditions.

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

A. Restriction on division. The parcel shall be restricted from division as follows: (i) if the parcel is less than one hundred (100) acres, it may not be divided; (ii) if the parcel is one hundred (100) acres or larger it may be divided into as many lots so as to maintain an average lot size of at least seventy-five (75) acres (e.g., an eight hundred fifty (850) acre parcel may be divided into as many as eleven (11) parcels). These restrictions shall be perpetual in nature and run with the land so to be binding on all present and future owners of the property under easement.

B. No buy-back option. The owner shall not have the option to reacquire any property rights relinquished under the conservation easement.

C. Other restrictions. The parcel also shall be subject to standard restrictions contained in conservation easements pertaining to uses and activities allowed on the parcel. These standard restrictions shall be delineated in the deed of easement and shall include, but not necessarily be limited to, restrictions pertaining to: (i) the accumulation of trash and junk; (ii) the display of billboards, signs and advertisements; (iii) the management of forest resources; (iv) grading, blasting or earth removal; (v) the number and size of residential outbuildings and farm buildings or structures; (vi) the conduct of industrial or commercial activities on the parcel; and (vii) monitoring of the easement.

D. Designation of easement holders. The County may be the sole easement holder, or it may include one or more other public bodies, as defined in Virginia Code §10.1-1700, as co-holder(s). The public body or bodies who may be designated by the board shall include, but not be limited to, the Virginia Outdoors Foundation.

Sec. A.I-109. 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, a copy of these rules and information about the FP program. The owner shall be advised to seek the advice of his or her own attorney as to any questions about the legal effect of any proposed easement; the County Attorney cannot provide legal advice to the owner.

B. Application form. Each application shall be submitted on a standard form prepared by the program administrator. The application form shall require, at a minimum, that the owner: (i) provide the name of all owners of the parcel, the address of each owner, the acreage of the parcel, the Rappahannock County tax map and parcel number, the zoning designation of the parcel, and permission for the program administrator and Committee Members, and such other persons as may be designated by them, such as surveyors, appraisers and consultants, to enter the property after reasonable notice to the owner to evaluate the parcel; and (ii) state his adjusted gross income for the three (3) prior tax years; and (iii) provide a copy of the Internal revenue Service Form 1040 Schedule Fs for the three prior tax years. The application form shall also include a space for an owner to indicate that he volunteers to have the parcel be subject to greater restrictions than those contained in the standard sample deed of easement, and to delineate those voluntary, additional restrictions. The owner shall attach the most recent plat of survey of the property.

C. Additional application information required by program administrator. The program administrator may require an owner to provide additional information deemed necessary to determine: (i) whether the proposed easement is eligible for purchase; and (ii) the purchase price of the easement.

D. Submittal of application. Applications shall be submitted to the office of the program administrator. An application may be submitted at any time. However, applications received after July 1 shall be evaluated in the following calendar year. The application shall be signed by all owners of the property.

E. Evaluation by program administrator. The program

administrator shall evaluate each application received and determine within thirty (30) days whether the application is complete. If the application is incomplete, the program administrator shall inform the owner in writing of the information that must be submitted in order for the application to be deemed complete. All additional information requested shall be submitted not later July 15 in order to be considered. When an application is deemed complete, the program administrator shall determine whether the parcel satisfies the eligibility criteria set forth in section A.I-107 and, if it does, shall determine the number of points to be attributed to the parcel by applying the criteria set forth in section A.I-108. The program administrator shall then rank each parcel scoring at least fifteen (15) points, with the parcel scoring the most points being the highest ranked and descending therefrom. The program administrator should submit the list of ranked parcels to the FP committee by August 1.

F. Evaluation and ranking by FP committee. The FP committee shall review the list of ranked parcels submitted by the program administrator and shall rank the parcels in the order of priority it recommends the easements shall be purchased. The committee should forward to the Board of Supervisors by September 1 its recommendation of which conservation easements should be purchased.

G. Evaluation and ranking by Board of Supervisors. The Board of Supervisors shall review the list of ranked parcels submitted by the FP committee and identify on which parcels it desires conservation easements. The board shall then rank those parcels on which it will seek to purchase conservation easements that year. Nothing in this appendix shall obligate the board to purchase a conservation easement on any property that meets the minimum number of qualifying points.

H. Requirements and deadlines may be waived. Any requirement or deadline set forth in this appendix may be waived by the Board of Supervisors if, for good cause, it is shown that exigent circumstances exist to warrant consideration of an otherwise untimely application, or it is shown that the requirements unreasonably restrict the purchase of an easement. Under these circumstances, the board may purchase a conservation easement at any time it deems necessary and subject to only those requirements it deems appropriate.

I. Reapplication. An owner whose parcel is not selected for purchase of a conservation easement may reapply in any future year.

Sec. A.I-110. Purchase of conservation easement.

Each conservation easement shall be purchased as follows:

A. Identification of initial pool. From the list of applications received under section A.I-110(D), the Board of Supervisors shall designate the initial pool of parcels identified for conservation easements to be purchased. The purchase price may be supplemented by non-County funding. The size of the pool shall be based upon the funds available for easement purchases in the current fiscal year and the purchase price of each conservation easement in the pool established under section A.I-110 (B).

B. Determining purchase price. The purchase price of a conservation easement shall be calculated by multiplying the number of division rights to be sold by the value of the division right as determined by the Farmland Preservation Committee for the subject year.

C. Invitation to offer to sell. The Board shall invite the owner of each parcel included in the initial pool to submit an offer to sell to the County a conservation easement on that parcel for the purchase price, and/or to donate to the County the balance of the fair market value of the conservation easement, subject to the terms and conditions of a proposed deed of easement. The purchase price shall not be subject to negotiation. The invitation shall be in writing and shall include the purchase price, the proposed deed of easement, and the date by which a written offer must be received by the program administrator in order for it to be considered. The invitation also may include a form offer to be returned by the owner if the owner desires to offer to sell a conservation easement.

D. Offer to sell. Each owner who desires to sell and/or donate a conservation easement shall submit a written offer that must be received by the program administrator by the date contained in the invitation to offer to sell. The offer should include a statement substantially stating the following: "(The owner) offers to sell and/or donate a conservation easement to the County of Rappahannock, Virginia for the sum of (purchase price), subject to the terms and conditions set forth in the proposed deed of

easement enclosed with the invitation to offer to sell." Nothing in this appendix shall compel an owner to submit an offer to sell. The usual, customary payment shall be in a lump sum, paid within ninety days, but alternate terms may be negotiated by agreement of all parties.

E. Acceptance. An offer to sell a conservation easement shall be accepted by the Board of Supervisors only in writing, and only following approval by majority vote of the Board at a public meeting; a public hearing is not required but may be held in the discretion of the Board. Notwithstanding any other provision of these rules, nothing shall bind the County to purchase an easement unless and until the said majority vote is obtained. An offer shall not be accepted by the Board if the proposed easement would be inconsistent with the policies and goals of the comprehensive plan at the time the offer is received. Once an offer is accepted the Owner and the County shall be in a legally binding contract, and should the Owner thereafter default, he/she shall be liable to the County for all costs incurred by the County to evaluate the property from the time the application was filed, including survey costs, appraisals, title examination and legal fees.

F. Easement established. A conservation easement shall be established when the owner and an authorized representative of the holder of the easement have each signed the deed of easement. The deed shall be recorded in the office of the Clerk of the Circuit Court of the County of Rappahannock. A single conservation easement may be established for more than one parcel under the same ownership. It shall be the Owner's responsibility to convey title free and clear of all liens, defects and encumbrances which could adversely affect the easement. The form of the deed and title to the property must be approved by the County Attorney, and the County shall not be required to purchase an easement unless such approvals are obtained.

G. Offers not made; offers not accepted; invitation to other owners. If an owner invited to submit an offer elects not to do so, or if his offer to sell is not accepted by the Board of Supervisors, then the board may send an invitation to offer to sell to the owner of the next highest ranked parcel remaining on the list of parcels identified in section A.I-110(E).

H. Costs. If the Board of Supervisors accepts an offer to sell, the County may pay all costs, including environmental

site assessments, surveys, recording costs, grantor's tax, if any, and other charges associated with closing. Provided, the County shall not pay fees incurred for independent appraisals, legal, financial, or other advice obtained by the Owner, or fees in connection with the release and subordination of liens to the easement purchased by the County.

I. Reapplication. An owner who fails to submit an offer to sell or whose offer to sell was not accepted may reapply in any future year.

Sec. A.I-111. Program funding.

The FP program may be funded annually by the Board of Supervisors in the County budget or by special appropriation. Its only dedicated revenue source shall be the funds paid to the County as a result of roll-back taxes realized from parcels that are withdrawn from the Use-Value Taxation program (see §151-14, Rappahannock County Code). The County shall endeavor to seek funds from federal, state and private sources to effectuate the purposes of the FP program.

Sec. A.I-112. Program non-exclusivity.

The FP program is a non-exclusive means by which the County may purchase conservation easements or control land use and development, or by which landowners may establish conservation easements and other self-imposed limitations on land use or development. These rules shall not be construed in any way as a limitation upon the County's authority to acquire land for public purposes.