A
MODEL PURCHASE OF DEVELOPMENT RIGHTS (PDR) PROGRAM FOR VIRGINIA

Part 1: Suggested components of Local PDR Programs
(June 2004)

Part 2: A Proposed State-level Program to Complement
Local PDR Programs
(November 2005)

by the

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

FARMLAND PRESERVATION TASK FORCE

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Virginia Department
of Agriculture and
Consumer Services

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I. **LETTER TO THE SECRETARY AND COMMISSIONER**

November 11, 2005

The Honorable Robert S. Bloxom
Secretary of Agriculture and Forestry

The Honorable J. Carlton Courter, III, Commissioner
Virginia Dept. of Agriculture and Consumer Services

Gentlemen:

In June of 2004, the Virginia Department of Agriculture and Consumer Services' (VDACS) Farmland Preservation Task Force released "Part 1: Suggested Components of Local PDR Programs" as the first element of "A Model Purchase of Development Rights (PDR) Program for Virginia." This document was released by The Honorable Michael J. Schewel, Secretary of Commerce and Trade to the Presidents of VACo (Virginia Association of Counties) and VML (Virginia Municipal League) before an audience of approximately 75 invited guests. Part I of this document represents one component of the Task Force's responsibility as mandated by the 2001 Virginia General Assembly.

I am now writing to convey Part 2 and Appendix B of our proposed model PDR program. Part II sets out a plan to implement a state-level program which will complement local PDR programs in the state. Appendix B discusses options for funding a State PDR Program.

Because the Governor included the release of Part One in a list of potential actions supporting his efforts to double agricultural net receipts in Virginia, he has signaled the important role PDR programs – and other farmland preservation strategies -- will play in the ultimate success of Virginia agriculture. The most critical actions state government can take now to promote the preservation of farmland in Virginia are to fund the startup costs for the Office of Farmland Preservation and to provide a dedicated source of funds for the state match of local easement purchases.

On behalf of the Task Force, I wish to convey our thanks for the opportunity to develop this tool for the preservation of farmland and forest land in Virginia. If I can answer questions about any of this document, please let me know.

Sincerely yours,

William P. Dickinson, Jr., Deputy Secretary
Agriculture and Forestry
Chair, Virginia Farmland Preservation Task Force

II. FOREWORD

Readers are asked to note that the new parts of this paper are primarily Part 2 and Appendix B, Funding Options and Sources. Much of the material between this Foreword and Part 2 was contained in the paper Suggested Components for Local PDR Programs (Part1) which was released in June 2004.

III. INTRODUCTION/PURPOSE

In the late 1990s, leadership in the Virginia agriculture and forestry sector took note of two trends which will shape the future of agriculture in Virginia, namely, the loss of farm and forest businesses and the loss of Virginia's working farm and forestlands to development. The purpose of this paper is to briefly describe the challenge posed by these two trends, describe the strategies adopted by the 2000 and 2001 General Assemblies to deal with these challenges and to provide details of a model purchase of development rights (PDR) plan developed at the direction of the General Assembly.

IV. VIRGINIA'S EMERGING AGRICULTURAL CHALLENGES: LOSS OF AGRICULTURAL AND FORESTRY PRODUCTION

Statisticians looking at recent trends in the Virginia agricultural economy are struck by two rather dramatic changes which challenge the future of the Virginia agricultural sector. The first of these challenges relates to the aging of Virginia farmers and the subsequent loss of farm and forest businesses. With the average age of Virginia farmers at more than 56 years, with many of these farmer's assets invested in farmland and buildings and with many farmers counting on these assets to form the core of their retirement income, many of them will have to liquidate these assets and their businesses in order to maintain a minimal lifestyle in retirement. Without programs to help farmers find alternatives to liquidating businesses, farm and forest businesses will disappear at an increasing rate over the next decade.

Contributing to the tenuous prospects for survival of many farm businesses are the extreme development pressures on many Virginia farmlands. Economists at Virginia Tech project that given the current age of Virginia farmers, more than 70% of Virginia farmland and a significant percentage of the farm businesses will be transitioned over the next 15 years to either a new generation of farm businesses or to other businesses seeking to develop farm and forest land for non-agricultural purposes.

Between 1992 and 1997, according to data provided in the National Resource Inventory, Virginia lost 23, 260 acres of agricultural land and over 22,000 acres of forest land to developed uses each year. Of this land lost to development, more than 10,000 acres (43% of the annual loss) was prime farmland - - the most productive land in the Commonwealth. This total of over 45,000 acres of "working landscape" represents an erosion of critical working landscape significant to maintaining a high quality of life for Virginia's citizens.

V. THE VIRGINIA AGRICULTURE VITALITY PROGRAM AND THE OFFICE OF FARMLAND PRESERVATION

The Virginia General Assemblies of 2000 and 2001, taking note of these trends, established the Virginia Agriculture Vitality Program (and subsequently the Office of Farmland Preservation) within the Virginia Department of Agriculture and Consumer Services. In taking these actions the General Assembly assigned VDACS several responsibilities, among which were the administration of the Virginia FarmLink Program and the farmland preservation program. Virginia FarmLink is designed to introduce people who are interested in entering agriculture to those farmers who are leaving the profession. To save farmlands, the VDACS' Office of Farmland Preservation is charged with, among other duties, developing a model PDR program for the state.

All of the other specific powers and duties of the Office of Farmland Preservation are set out in the Code of Virginia §3.1-18.10, which is included in Appendix A of this document.

VI. DEVELOPING A MODEL PDR PROGRAM: METHODOLOGY, DEFINITIONS AND PROCESS

To deal with the farm and forest land preservation challenge, the Commissioner of Agriculture and Consumer Services established the VDACS Farmland Preservation Task Force. This Task Force is comprised of representatives of the Virginia Farm Bureau Federation, the Virginia Association of Counties, pertinent state agencies, Virginia Cooperative Extension, American Farmland Trust, and several land conservation organizations. A complete listing of the membership of the Virginia Farmland Preservation Task Force is included in the Appendix to this paper. In an effort to include existing local Purchase of Development Rights (PDR) Programs, all PDR Program Directors in localities around the state were included as advisors to the Task Force. As a first priority, the Task Force was assigned the responsibility of developing a Model PDR Program for the Commonwealth and its localities.

A PDR Program

Under a PDR program, a landowner voluntarily sells his or her rights to develop a parcel of land to a public agency or a qualified conservation organization charged with the preservation of farm and/or forest land. The landowner retains all other ownership rights attached to the land, and a conservation easement is placed on the land and recorded on the title. The buyer (often a local unit of government) essentially purchases the right to develop the land and extinguishes that right permanently, thereby assuring that development will not occur on that particular property. In placing such an easement on their farm and/or forest land, participating landowners often take the proceeds from sale of the development rights to invest in their farming operations or retire from the business, and may allow another farmer to purchase the land at lower rates (i.e. rates devoid of development rights).

The Task Force's Process

Responding to expressions of interest and need from Virginia localities, the Task Force first set about developing the local component of a model PDR program. In this process, the group heard from all PDR programs in the Commonwealth as well as programs in Pennsylvania, Maryland and New Jersey. The Task Force also called in representatives of American Farmland Trust to provide an overview of PDR programs across the country.

At the outset of its work, the Task Force set forth several fundamental positions:

1. "Farmland" and "Forest Land" means working farm and forestlands.

2. No program or group of programs will be able to preserve all farmland in the Commonwealth, with the result that farmland to be preserved must be carefully targeted on a statewide basis and more importantly, on a local and regional basis.

3. PDR programs will succeed only if implemented in tandem with other farmland preservation strategies, such as protective zoning and land use taxation, among others.

4. Model programs should be developed under the premise that they contain elements to make them qualify for protection for funding under the USDA Farmland Protection and Forest Legacy Programs, to the extent possible.

5. Any model developed, would be a model, and the state would not mandate specific requirements for PDR programs.

6. Should state funding become available to supplement local funding for the purchase of development rights, funding would be allocated to those programs and to those easement purchases which most closely meet the elements in the model program.

7. All PDR programs would be voluntary in terms of landowner participation.

After establishing these basic premises, and after receiving extensive input from local governments and PDR programs within and beyond the state, the Task Force developed the suggested components for local PDR programs shown as Part I in Section VI. The material there was not only exposed to Virginia localities with PDR programs, but it was also presented to local officials at the 2003 Virginia Association of Counties Annual Meeting. All of the feedback received thus far has been very positive.

Because of the interest in the local model, the Task Force decided to release this component of the model while more fully developing the state level component and meeting the other mandates of §3.1-18.10.

VII. A MODEL PDR PROGRAM FOR VIRGINIA

"Part I: Suggested Components of Local PDR Programs" can be found in its entirety as released in June 2004 by going to: www.vdacs.virginia.gov However, for ease of reference we have included the suggested components of Part I, A-I.

PART I: SUGGESTED COMPONENTS OF LOCAL PDR PROGRAMS

A. Clearly defined goals & purpose

1. Voluntary program for landowners
2. Areas of farmland concentration
3. Areas of natural resource concentration
4. Defined target areas, such as but not limited to century farms, bicentennial farms, or agricultural and forestal districts.
5. Other

B. Action plan for education/outreach to landowners, public officials, and the public

Suggested methods for public education effort, pre and post adoption

1. Brochures
2. Article placement, i.e. Press Releases
3. Web Page, all documents available on web or links
4. Public meetings, i.e. seminars, ongoing speaking engagements, informational meetings, Virginia Cooperative Extension educational programs.
5. Partnership development, i.e. land conservation organizations, local Soil and Water Conservation Districts, etc.
6. CD or Video
7. Mailings to landowners (specific target group area)

C. Adopted ordinance/resolution establishing a PDR program

Administrative process needs to be: consistent, replicable, transparent, non-discriminatory, fair, objective, and equitable.

1. Adopted ordinance lays out clearly articulated process identifying all elements and clearly assigning responsibilities (i.e. farmland selection process, recordation, monitoring, funding, applications, valuation, etc.)

OR

2. Adopted resolution lays out clearly articulated process identifying all elements and clearly assigning responsibilities (i.e. farmland selection process, recordation, monitoring, funding, applications, valuation, etc.)

D. Valuation process

Standards for selection of an appraiser must be consistent with Commonwealth procurement and Uniform Standards of Professional Appraisal Practice. A certified general appraiser is recommended.

1. Market approach appraisal
   a. Before and after valuation
   b. Comparable sales

2. Income approach appraisal
3. Rent Amortization appraisal
4. Flat rate
5. Other methods, such as a points system

E. Components of an Agricultural Enhancement Strategy

1. Comprehensive plan reviewed as required by Code of Virginia.
2. Comprehensive plan internally consistent and promotes the goals and objectives of retaining agricultural land
3. Implementing ordinances (zoning, subdivision, etc.) consistent with and promote the agricultural goals of the comprehensive plan
4. An agricultural land retention strategy should
    a. Recognize agriculture as a vital element of the community and the local economy
    b. Define agricultural/forestal areas in the locality. Suggested criteria include: agricultural/forestal districts; land-use taxation; prime, unique and locally important soils; Land Evaluation Site Assessment (LESA); etc.
    c. Designate soils of local importance pursuant to Code of Virginia §3.1-18.4-5.
    d. Delineate an area sufficient for agriculture and support of agribusinesses
    e. Define goals for retaining productive agricultural land
5. Agricultural development office/program in county/city of interest.

F. Deed of Easement

Consistent with administrative process and Agricultural Enhancement Strategy

1. Qualities:
    a. Clearly delineates the process for review of an application to amendment of the deed so long as they are consistent with the stated goals and objectives of the purchase of development rights program
    b. Recognizes and allows for the dynamic, changing nature of agriculture and not unduly restricting agricultural practices and products
    c. Cites, applicable federal, state, and county enabling legislation
    d. Contains recitation clauses ("Whereas")
        1. Statement of easement purpose
        2. Defined specific agricultural resource being protected
2. Content:
    a. Legal description of property
    b. Identifies easement holders
    c. Delineates restrictions
    d. Provision for resource management plan (optional, but required for properties planning to qualify for Federal Farm and Ranchlands Protection Program funds and Forest Legacy)
    e. Perpetual in duration
    f. Monitoring provision, including the right of holder to monitor
    g. Enforcement provision

h. Easement copy filed with appropriate county and state departments
i. Easement recorded at the appropriate office of the Clerk of the Circuit Court
j. Compiled baseline documentation
k. Clearly delineated the process for review of an application to amend an easement

G. Mandatory Monitoring Program

1. Identified monitoring entity (Local Government, Purchase of Development Rights Administrator, Soil & Water Conservation District, Agricultural Statistics, Non-Governmental Organization, etc.)
2. Regular/frequent monitoring schedule with compliance checklist tailored to the individual properties
3. Identified enforcement entity and procedure;
4. Baseline documentation, including but not limited to:
   a. Description of site and conservation values
   b. Photos
   c. Map(s)
   d. Property sketch

H. Perform Periodic Program Evaluation

1. Establish frequency of program review
2. Identify responsible agency
3. Solicit citizens and landowner input
4. Evaluate consistency with program goals
5. Implement findings of program evaluation

I. Reporting as Required

VIII: PART 2: A PROPOSED STATE-LEVEL PROGRAM TO COMPLEMENT LOCAL PDR PROGRAMS

Introduction:

After reviewing state level PDR programs in other states, and acknowledging the special role of Virginia localities in zoning and land use decisions, the Task Force concluded that the state level PDR program—as administered by the Office of Farmland Preservation—should be designed to support, assist and guide local programs. As envisioned here, the state program would be a complement to, not parallel to local PDR programs. The state-level PDR program would (1) accept and review applications for matching easement purchase funds for local programs (2) certify local programs as being operational and (3) disperse state funds to localities to match local PDR funds in the purchase of easements for farmland.

In the strategic plan developed below, specific strategies are set forth for assistance from the Office of Farmland Preservation to local PDR programs across the state. It is envisioned, however, that the Office of Farmland Preservation will work with both public and private partners including, but not limited to, Virginia Cooperative Extension, Virginia Farm Bureau, Department of Conservation and Recreation and others to provide assistance to local PDR Programs.

STRATEGIC PLAN: OFFICE OF FARMLAND PRESERVATION

Goal:

Enhance the viability of Virginia agriculture and forestry by facilitating local governments' abilities to protect working farm and forest lands.

Objective 1.

By 2007, the Commonwealth, through the Office of Farmland Preservation and public and private partners, shall have the capacity to provide farm and forestland protection assistance to all requesting localities.

Strategy 1.1.: Coordinate and schedule Secretary's tour for legislators to a Virginia locality or localities and another state with operating and funded programs by 4-15-06.

Strategy 1.2: Fund the administration of the Office of Farmland Preservation at $500,000 per year by 6-30-07 and beyond.

Strategy 1.3: Develop educational materials and/or programs for Governor and Legislators by 6-30-07.

Strategy 1.4: Develop a How-To Binder (Tool Box) for local PDR Directors and Managers by 6-30-07.

Strategy 1.5: Establish State PDR website to be used as a clearing house, for FAQs, links to other resources and for posting (view only) a generic power point presentation about the program by 6-30-06.

Strategy 1.6: Plan and host workshops about PDR programs, Agriculture Transition, Agricultural/Agribusiness Development and other topics (go out of state for resources) by 6-30-06 and an ongoing basis.

Strategy 1.7: Develop and provide a basic training program (1 or 2 days) for new PDR managers at the Farmland Preservation Office; offer a mentoring program with and between localities; and, provide training for local Agricultural Boards by 6-30-06 and an ongoing basis.

Strategy 1.8: Establish a Speakers Bureau to be supported by a general PowerPoint presentation for statewide use, generic brochures and background and contacts for implemented programs by 6-30-06.

Strategy 1.9: Develop an informational booth and exhibit for use at the Virginia State Fair and other local fairs and events by 6-30-06.

Strategy 1.10: Develop a How-To Binder for education of local Boards of Supervisors by PDR Managers by 6-30-07.

Strategy 1.11: Coordinate resources and agencies involved in land conservation of all types that would include things like GIS, surveys, questionnaires and analysis on a local and statewide basis by 12-31-07.

Objective 2:

By 2007, the Commonwealth shall make at least $1M available annually to each locality with a PDR program consistent with the State guidelines to be used as matching funds for easement purchases.

Strategy 2.1: Develop and provide educational opportunities for the general public and land owners or the importance and purpose of PDR programs by 12-31-07

Strategy 2.2: Create and publish by 12-31-07 application periods for which to receive PDR applications and requests for State matching funds.

Objective 3:

By 2010, 30 additional localities will establish PDR programs consistent with the State guidelines. By 2020, at least 70 total localities will have adopted and funded PDR programs consistent with the State model.

Strategy 3.1: Obtain $1M for the Office of Farmland Preservation to distribute to local governments to assist in developing new PDR programs by 12-31-07.

Strategy 3.2: Provide education about the benefits, operation and administration of PDR programs to PDR Managers, Extension Agents, General Public, Local elected Officials and Landowners (see Strategies 1.1.4-1.1.10 of Objective1.1) by 12-31-07.

Strategy 3.3: Plan and host workshops by 12-31-07.

Appendix A

§ 3.1-18.10. Powers and duties of Office of Farmland Preservation.

The Office of Farmland Preservation shall have the following powers and duties:

1. To develop, in cooperation with the Department of Business Assistance, the Virginia Farm Bureau Federation, the American Farmland Trust, the Virginia Land Conservation Foundation, the Virginia Outdoors Foundation, the Virginia Association of Counties, and the Virginia Cooperative Extension, (i) model policies and practices that may be used as a guide to establish local purchase of development rights programs; (ii) criteria for the certification of local purchase of development rights programs as eligible to receive grants, loans or other funds from public sources; and (iii) methods and sources of revenue for allocating funds to localities to purchase agricultural conservation easements;

2. To create programs to educate the public about the importance of farmland preservation to the quality of life in the Commonwealth;

3. To provide technical, professional, and other assistance to farmers on matters related to farmland preservation; and

4. To administer the Virginia Farm Link program established pursuant to § 3.1-18.11.

(2001, c. 521.)

Appendix B: Funding Options and Sources

<u>Funding Sources for State Purchase of Development Rights Programs</u>

By Michelle Groenevelt and Jesse Richardson, JD, Virginia Tech, 2005

Nineteen state purchase of development rights programs exist in the United States. Most, but not all, of these programs receive state funding. The most common state funding sources are general appropriations and bonds. Real estate transfer taxes are also used in several states.

Annual appropriations tend not to be the primary source of funding for PDR programs. However, annual appropriations may provide the funds needed to start a state program and then other sources may be used to maintain the funding. This approach saves on financing costs.

General obligation bonds allow governments to borrow money without using assets as collateral. The government must pay the debt obligation plus interest. The government uses taxation or revenues from the project to repay the debt. General obligation bonds are used to finance large public projects, generally over 20 to 30 years.

Bonds are the most popular source of funding PDR programs. The benefits of bonds allow programs to commit large sums of money to farmland protection while the land is still relatively affordable and the payment is distributed over a number of years. Conversely, the use of bonds increases the cost of the program because of interest payments.[1]

Real estate transfer taxes consist of "state and local taxes that are assessed on real property when ownership of the property is transferred between parties."[2] Recordation taxes are a form of this tax. These taxes may be used to fund programs designed to preserve rapidly depleting open spaces in commercial or residential areas.

Agricultural land transfer taxes are a form of real estate transfer tax. An additional tax is levied on the transfer of agricultural land only.

The real estate transfer tax is a small percentage of the purchase price paid by the buyer. Using the transfer tax is one way to allocate funds based on relative development pressure in the counties. The transfer taxes are related to development activity so funding increases when there are many real estate transactions. The transfer tax can be used to cover financial costs of bonds or obtain land directly.

Sales tax may also be used to provide a regular stream of revenue for a PDR program. Sales tax may target a specific item or be broad based. As a regressive tax (amount of tax is constant same for people with all income levels), consideration should be given because increase in sales tax can negatively affects people with low-incomes. Pennsylvania also uses a portion of the cigarette tax to fund the purchase of development rights.

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[1] American Farmland Trust 1999.
[2] Cordero 2002.

Funding Sources for PDR Programs in the United States:
A Comparison of Advantages and Disadvantages

The following table summarizes the major sources of state funding for purchase of development rights programs in the United States

	# of States	List of States	Advantages	Disadvantages
Annual Appropriations	12	California, Delaware, Kentucky, Maine, Montana, New Hampshire, New Jersey, North Carolina, Pennsylvania, Rhode Island, Utah, Vermont	Saves financing costs	Tenuous
General Obligation Bonds	14	California, Connecticut, Delaware, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont	May commit large amount of funds while land is relatively affordable; paid off over a number of years	Tenuous; interest cost; often one-time infusion of money
Real Estate Transfer Taxes	3	Maryland, New York, Vermont	Small percentage of purchase price; funds produced when land conversion is occurring; may be used to cover bond interest	Not reliable or even; generation of funds lags conversion, may be too late
Agricultural Land Transfer Tax	2	Delaware, Maryland	Small percentage of purchase price; funds produced when land conversion is occurring; may be used to cover bond interest	Not reliable or even; generation of funds lags conversion, may be too late
Sales and Use Tax	1	New Jersey	Relatively stable stream of revenue	Regressive
Cigarette Tax	1	Pennsylvania	Relatively stable stream of income	Regressive

Appendix C:

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