

**A RESOLUTION
TO ESTABLISH IN THE CODE OF THE COUNTY OF NELSON, VIRGINIA
A PURCHASE OF DEVELOPMENT RIGHTS PROGRAM**

BE IT RESOLVED by the Nelson County Board of Supervisors that the Code of the County of Nelson, Virginia be and hereby is amended to enact therein a local purchase of development rights program, as follows:

PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

Section 1. Short Title.

This chapter shall be known and may be cited as the “Purchase of Development Rights Program” (PDR Program).

Section 2. Purpose.

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

1. Establishing a program enabling the county to acquire easements voluntarily offered by owners to serve as one means of assuring that Nelson County’s resources are protected and efficiently used;
2. Establishing and preserving open-space and the rural character of the county;
3. Preserving farm and forest land;
4. Conserving and protecting water resources and environmentally sensitive lands, waters and other natural resources;
5. Conserving and protecting biodiversity and wildlife habitat;
6. Assisting in shaping the character and direction of the development on the community;
7. Improving the quality of life for the inhabitants of the county; and
8. Promoting recreation and tourism through the preservation of scenic and historic resources.

Section 3. Applicability.

The PDR program shall be available for all qualifying lands in the county, except those 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 pursuant to this chapter shall be voluntarily offered by the owner.

Section 4. Definitions.

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

- A. **Conservation easement.** The term “conservation easement” means a nonpossessory interest in one or more parcels of one or more qualified easement holders under Section 10 (D) 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 pursuant to the PDR 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 archaeology aspects of the parcel or parcels.
- B. **Division rights.** The term “division rights” means the number of parcels into which a parcel could be divided under the conservation district regulations as stated in Article 3, and the agricultural district regulations as stated in Article 4, of the Nelson County Zoning Ordinance, Appendix A of the Nelson County Code, where each parcel could comply will all applicable requirements of Appendix B, Subdivisions of the Nelson County Code.
- C. **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; 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.
- D. **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.
- E. **Immediate family.** The term “immediate family” means an owner’s spouse and his or her offspring residing in the same household as the owner.
- F. **Owner.** The term “owner” means the owner or owners of the freehold interest of the parcel.
- G. **Program administrator.** The term “program administrator” means the person placed in a managerial position over the daily operations of the PDR program. The program administrator shall serve as a direct liaison to the program.
- H. **Parcel.** The term “parcel” means a lot or tract of land lawfully recorded in the clerk’s office of the circuit court of the County of Nelson.
- I. **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 9 - A.
- J. **Construction.** Because a conservation easement may contain one or more parcels, for the purposes of the PDR program, the term “parcel” shall include all parcels covered by, or proposed to be covered by, the conservation easement.

Section 5. Designation of program administrator; powers and duties.

- A. Designation. The program administrator shall report to the county administrator.
- B. Powers and duties. The program administrator shall administer the PDR program and shall have powers and duties to:
 - 1. Establish reasonable and standard procedures and forms for the proper administration and implementation of the program.
 - 2. Promote the program, in cooperation with the Agricultural and Forestal committee, by providing educational materials to the public and conducting informational meetings.
 - 3. Investigate and pursue, in cooperation with the county administrator, 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 to the Agricultural and Forestal Districts Advisory Committee.
 - 5. Determine the number of development rights existing on each parcel subject to an application, after obtaining the number of theoretical development rights from the zoning administrator.
 - 6. Coordinate the preparation of appraisals.
 - 7. Provide staff support to the appraisal committee, the Agricultural Forestal Districts Advisory Committee and the board of supervisors.
 - 8. Provide to the public educational materials regarding other land protection programs.
 - 9. For each conservation easement, assure that the terms and conditions of the deed of easement are monitored and complied with by coordinating the 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.

Section 6. Agricultural and Forestal Districts Advisory Committee; powers and duties.

- A. Designation. The Agricultural and Forestal Districts Advisory Committee, established pursuant to Chapter X, Section X-104 of the Code of Nelson County, is hereby designated as the citizen committee to work with and promote the PDR program.
- B. Powers and duties. The Agricultural and Forestal Advisory 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 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.

Section 7. Appraisal review committee established; powers and duties.

- A. Establishment. The appraisal review committee is hereby established, as provided herein:

The committee shall consist of three (3) members appointed by the board of supervisors. The committee shall be comprised of one real estate professional, the Commissioner of Revenue, and a member of the Agricultural and Forestal District Advisory Committee.

1. The members of the committee shall serve at the pleasure of the board of supervisors. Each member, other than the Commissioner of Revenue, shall serve a one (1) year term. The Commissioner of Revenue shall be a permanent member of the committee.
2. The members of the committee shall serve without pay, but the board of supervisors may, in its discretion, reimburse each member other than the Commissioner of Revenue for actual and necessary expenses incurred in the performance of his/her duties.
3. The Commissioner of Revenue shall be the chair of the committee.

- B. Power and duty. The appraisal review committee shall have the power and duty to review appraisals to assure they are consistent with appropriate appraisal guidelines and practices, and to make recommendations thereon to the board of supervisors.

Section 8. Eligibility criteria.

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

- A. The use of the parcel subject to the conservation easement must be consistent with the comprehensive plan.
- B. The proposed terms of the conservation deed of easement must be consistent with the minimum terms and conditions set forth in Section 10.
- C. The parcel must be located in the County of Nelson.

Section 9. Ranking system.

In order to effectuate the purposes of this chapter, parcels for which conservation easements applications have been received shall be evaluated by utilizing a ranking system. The initial ranking system and changes to the ranking system shall be approved by the board of supervisors. The ranking system may be used to prioritize the acquisition of conservation easements.

Section 10. Conservation easement terms and conditions.

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

- A. Restriction on division. The parcel shall be restricted from division as follows:
 1. If the parcel is less than one hundred (100) acres, it shall not be divided.
 2. If the parcel is one hundred (100) acres or larger but less than two hundred (200) acres, it may be divided into two (2) lots.
 3. If the parcel is two hundred (200) acres or larger, it may be divided into as many lots so as to maintain an average lot size of at least one hundred acres, plus one additional lot for any acres remaining above the required minimum average lot size (e.g., an eight hundred fifty (850) acre parcel may be divided into as many as nine (9) parcels, eight (8) of which maintain an average size if at least one hundred (100) acres, and the ninth of which consists of the remaining acres.
- 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:
 1. The accumulation of trash and junk;
 2. The display of billboards, signs and advertisements;
 3. The management of forest resources;
 4. Grading, blasting or earth removal;
 5. The number and size of residential outbuildings or structures;
 6. The conduct of industrial or commercial activities; and
 7. The monitoring of the easement.
- D. Designation of easement holders. The county shall be the easement holder, and if designated by the board of supervisors, one or more other public bodies as defined in Virginia Code § 10.1-1700 shall also be an easement holder.

Section 11. Application and evaluation procedure.

Each application for a 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 PDR 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:
 - 1. The names of all owners of the parcel.
 - 2. The address and telephone number of each owner.
 - 3. The acreage of the parcel.
 - 4. Nelson County tax map and parcel number.
 - 5. The zoning designation of the parcel.
 - 6. Permission for the administrator and an 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 commissioner or revenue or an independent appraiser to appraise the property.
 - 7. The application form shall also include a space for an owner to indicate whether he/she volunteers to have his/her 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:
 - 1. Whether the proposed easement is eligible for purchase.
 - 2. The ranking of the parcel.
 - 3. 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. 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 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 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 9. The administrator shall rank each parcel with the parcel scoring the most points being the highest ranked and descending there from. The administrator shall submit the list of ranked parcels to the Agricultural and Forestal Districts Advisory Committee after each open application period.

- F. Evaluation by Agricultural and Forestal Districts Advisory Committee. The AFDA committee shall review the list of ranked parcels submitted by the administrator. The AFDA Committee shall forward to the administrator and the board of supervisors recommendations of which conservation easements should be purchased.
- G. Evaluation by board. The board of supervisors shall review the list of ranked parcels submitted by the AFDA committee and identify on which parcels it desires conservation easements. The board shall then prioritize the parcels on which it will seek to purchase conservation easements. Nothing in this chapter shall obligate the board to purchase a conservation 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 of supervisors if, for good cause, it is shown that urgent circumstances exist that warrant consideration of an application. Under such circumstances, the board may purchase a conservation easement at any time it deems necessary.
- I. Reapplication. An owner of a parcel not selected by the board for purchase of a conservation easement may reapply in any future open application period.

Section 13. Program funding.


The PDR program may be funded annually by the board of supervisors in the county budget or by special appropriation. The county shall endeavor to seek funds from federal, state and private sources to effectuate the purposes of the PDR program.

Section 14. Program non-exclusivity.

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

BE IT FURTHER RESOLVED that the ordinance, as delineated herein, shall be effective upon enactment with establishment in the County Code to be completed by the County's codification service.

Approved: November 21, 2006

Attest:  Clerk
Nelson County Board of Supervisors