

1                                   **AN ORDINANCE TO AMEND THE CODE OF**  
2                                   **THE COUNTY OF WASHINGTON, VIRGINIA TO ADD CHAPTER 47**  
3                                   **TO ESTABLISH A PURCHASE OF DEVELOPMENT RIGHTS PROGRAM**  
4

5                   **WHEREAS** the County Comprehensive Plan states the conclusion that a primary  
6 interest of the citizens of the County of Washington, Virginia is to preserve the rural and  
7 natural character of the County;

8                   **WHEREAS** continuous pressure from development for residential, commercial,  
9 and industrial uses threatens the rural and natural character so prized by the County's  
10 residents;

11                   **WHEREAS** the legislature of the Commonwealth has empowered local  
12 governments to establish a Purchase of Development Rights Program to allow voluntary  
13 safeguarding of land used for agricultural, forest, open space, or other conservation  
14 purposes; and

15                   **WHEREAS** the Board of Supervisors of the County of Washington, Virginia, has  
16 fully considered the proposed program, the interests of the citizens, and its long-term  
17 vision for the future of the County.

18                   **NOW, THEREFORE, BE IT ORDAINED**, that the Board of Supervisors of the  
19 County of Washington, Virginia, finds it in the best interests of the public health, safety,  
20 and welfare to establish a Purchase of Development Rights Program and, on the basis  
21 of that finding, directs the following:

- 22                   1. The Code of the County of Washington, Virginia shall be amended to include  
23 Chapter 47, "Purchase of Development Rights Program," as set forth below. The  
24 Editor is requested to assign section and subsection numbers consistent with the  
25 codification system in place for other chapters.
- 26                   2. Should any section or provision of this ordinance be decided to be invalid or  
27 unconstitutional by a court of competent jurisdiction, such decision shall not  
28 affect the validity or constitutionality of any other section or provision of this  
29 ordinance or the Code of the County of Washington, Virginia (2002, as  
30 amended).
- 31                   3. This ordinance shall become effective immediately.
- 32                   4. The text of Chapter 47, "Purchase of Development Rights," shall be, as follows:  
33  
34

1 Chapter 47

2 **PURCHASE OF DEVELOPMENT RIGHTS PROGRAM\***

3 \*Cross references:

4 **State law references:** Code of Virginia, § 10.1-1700 et seq.

5 [Sec. 1. Short title.](#)

6 [Sec. 2. Descriptions and purpose.](#)

7 [Sec. 3. Applicability.](#)

8 [Sec. 4. Definitions.](#)

9 [Sec. 5. Designation of program director; powers and duties.](#)

10 [Sec. 6. Purchase of development rights committee established; powers and duties.](#)

11 [Sec. 7. Eligibility criteria.](#)

12 [Sec. 8. Ranking system.](#)

13 [Sec. 9. Conservation easement terms and conditions.](#)

14 [Sec. 10. Application and evaluation procedure.](#)

15 [Sec. 11. Purchase of development rights procedure.](#)

16 [Sec. 12. Restriction on buy-back; extinguishment and exchange of easements.](#)

17 [Sec. 13. Program funding.](#)

18

19 **Sec. 1. Short title.**

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

22

23 **Sec. 2. Description and purpose.**

24 The PDR program compensates property owners who voluntarily agree to sell the right  
25 to develop their land. Every property comes with certain rights including but not limited to  
26 the right to sell, mortgage, or bequeath the property. In the PDR program, the right to  
27 develop is separated and sold so that the land remains undeveloped.

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

- 29 (1) Establishing a program enabling the county to acquire conservation easements  
30 voluntarily offered by owners to serve as one means of assuring that Washington  
31 County’s resources are protected and efficiently used;
- 32 (2) Establishing and preserving open-space and the rural character of the county;
- 33 (3) Preserving farm and forest land;

- 1 (4) Conserving and protecting water resources and environmentally sensitive lands,  
2 waters and other natural resources;
- 3 (5) Conserving and protecting biodiversity and wildlife and aquatic habitat;
- 4 (6) Assisting in shaping the character and direction of the development of the  
5 community;
- 6 (7) Improving the quality of life for the inhabitants of the county; and
- 7 (8) Promoting recreation and tourism through the preservation of scenic and  
8 historical resources.

9

10 **Sec. 3. Applicability.**

11 The PDR program shall be available for all qualifying lands in the county, except those  
12 lands under the ownership or control of the United States of America, the  
13 Commonwealth of Virginia, or an agency or instrumentality thereof. Any conservation  
14 easement acquired pursuant to this chapter shall be voluntarily offered by the owner.

15

16 **Sec. 4. Definitions.**

17 The following definitions shall apply in the interpretation and implementation of this  
18 chapter.

19 *Active farmland* means cropland or pastureland that has been harvested or grazed  
20 during the preceding year or in three out of five previous years.

21 *Application period* is the interval of time during which the committee will accept  
22 applications for consideration for purchase of development rights.

23 *Batch* means a grouping of contiguous parcels for purposes of making application for  
24 purchase of development rights.

25 *Board* means the board of supervisors of the county.

26 *Commission* means the planning commission of the county.

27 *Committee* means the purchase of development rights committee.

28 *Conservation easement* means a nonpossessory interest in one or more parcels by one  
29 or more qualified easement holders under subsection 10(d) of this Code, acquired under  
30 the Open-Space Land Act (Code of Virginia, § 10.1-1700 et seq.), whether the easement  
31 is appurtenant or in gross, voluntarily offered by an owner and acquired by purchase or  
32 donation pursuant to the PDR program, imposing limitations or affirmative obligations for  
33 the purpose of retaining or protecting natural or open-space values of the parcel or

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1 parcels, assuring availability for agricultural, forest, recreational or open-space use,  
2 protecting natural resources, maintaining or enhancing air or water quality, or preserving  
3 the historical, architectural or archaeological aspects of the parcel or parcels.

4 *County* means the County of Washington, Virginia.

5 *Director* is the person designated by the Soil & Water Conservation District, who is  
6 placed in a managerial position over the daily operations of the program. The director  
7 shall serve as a direct liaison to the program.

8 *District* means the Holston River Soil & Water Conservation District.

9 *Dwelling* means any structure which is designed for use for residential purposes, except  
10 hotels, boardinghouses, lodging houses, tourist cabins, apartments and automobile  
11 trailers.

12 *Easement* and/or *Conservation Easement* means the property interest conveyed  
13 pursuant to the provisions of this chapter for the purpose to conserve the rural,  
14 agricultural, forest, and/or open space quality of the real property burdened by the  
15 easement

16 *Foundation* means the Virginia Outdoors Foundation.

17 *Owner* means the owner or owners of the freehold interest of the parcel.

18 *Parcel* means a lot or tract of land or portion thereof, lawfully recorded in the clerk's  
19 office of the circuit court of the county. A conservation easement may contain one or  
20 more parcels, for purposes of this chapter the term "parcel" shall include all parcels  
21 covered by, or proposed to be covered by, the conservation easement.

22 *Program* means the purchase of development rights program as operated pursuant to  
23 the terms of this ordinance in the county.

24 *Ranking system* means the formula by which applications for the sale of development  
25 rights are ranked in order of priority of acquisition of such rights.

26  
27 **Sec. 5. Designation of program director; powers and duties.**

28 *Powers and duties.* The director shall administer the program and shall have powers  
29 and duties to:

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

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

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1 (3) Investigate and pursue, in conjunction with the county, state, federal and other  
2 programs available to provide additional public and private resources to fund the  
3 program and to maximize private participation.

4 (4) Evaluate all applications to determine their eligibility and their ranking score, rank  
5 applications based on their ranking score, and make recommendations thereon to the  
6 PDR committee.

7 (5) Determine easement value by subtracting the County's land-use based taxation  
8 value from the most the recent County general reassessment value.

9 (6) Receive owner-provided easement value appraisal report performed and prepared  
10 by a certified general appraiser if the applicant volunteers to provide such appraisal  
11 report.

12 (7) Negotiate with owner relating to conservation easement terms and value.

13 (8) Provide staff support to the committee.

14 (9) Make report and recommendations to committee, which shall include, without  
15 limitation, the easement value as derived from the calculation stated in this section and  
16 from results of negotiation with owner.

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

20  
21 **Sec. 6. Purchase of development rights committee established; powers and**  
22 **duties.**

23 **(a) Establishment.**

24 (1) The board shall appoint a committee that consists of five voting members, which  
25 shall include one member of the commission, one member of the board, one member  
26 who also serves on the district board of directors, and two additional members. Each  
27 member shall be a resident of the county. In addition to the voting members of the  
28 committee, the board shall identify individuals, who are knowledgeable in the fields of  
29 conservation, conservation biology, farming, forestry, planning, real estate, and rural  
30 land appraisal, to support the work of the committee. The board shall invite, without  
31 limitation, the district, agricultural extension office, department of forestry, and the  
32 foundation to provide representative(s) to fill these supporting personnel roles.

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1 (2) The members of the PDR committee shall serve at the pleasure of the board.  
2 Each member shall serve two-year terms that begin on July 1<sup>st</sup> and expire on June 30<sup>th</sup>,  
3 with the exception that two of the five members appointed, effective July 1, 2010, shall  
4 serve for a one-year term, to be followed by two-year terms.

5 (4) Vacancies in membership shall be filled by appointment by majority vote of the  
6 board for an unexpired term only. The appointed member shall represent the same field  
7 of knowledge and serve in the same position and capacity as the previous member.

8 (5) The members of the committee shall serve without pay, but the board may, in its  
9 discretion, reimburse members for actual and necessary expenses incurred in the  
10 performance of his/her duties.

11 (6) The committee shall elect a chairperson and appoint a secretary at its first  
12 meeting and henceforth at the beginning of each county fiscal year (July 1<sup>st</sup>). The  
13 secretary need not be a voting member of the committee.

14 (7) The director shall be an ex officio, non-voting member of the committee.

15 (8) The committee shall establish bylaws for its meetings and may defer to Roberts  
16 Rules of Order for small boards.

17 (9) A quorum shall consist of three voting members present and the committee shall  
18 operate on a "majority rule" basis.

19 (10) A majority of the voting members shall be required to accept an invitation to sell.  
20

21 **(b) Powers and duties.** The committee shall have the following powers and duties.

22 (1) Establish and advertise the application period.

23 (2) Promote the program, in cooperation and under the guidance of the director, by  
24 providing educational materials to the public and conducting informational meetings.

25 (3) Review the ranking of applications recommended by the director, and make  
26 recommendations to the director who will present such recommendations to the board  
27 as to which conservation easements should be purchased.

28 (4) Annually review the program's eligibility and ranking criteria and recommend to  
29 the director any changes needed to maintain the program's consistency with the  
30 comprehensive plan, or to improve the administration, implementation and effectiveness  
31 of the program.  
32  
33

1 **Sec. 7. Eligibility criteria.**

2 Property is eligible for consideration for purchase of a conservation easement only upon  
3 meeting the following criteria:

4 (1) A conservation easement may extend beyond the jurisdictional limits of the  
5 county, but the conservation easement to be purchased pursuant to the program must  
6 be entirely within the jurisdictional limits of the county;

7 (2) The use of the parcel subject to the conservation easement must be consistent  
8 with the comprehensive plan; and

9 (3) The proposed terms of the conservation easement must be consistent with the  
10 minimum conservation easement terms and conditions set forth in this chapter, unless  
11 modified by the board.

12

13 **Sec. 8. Ranking system.**

14 In order to effectuate the purposes of this chapter, parcels for which conservation  
15 easement applications have been received shall be evaluated by utilizing a ranking  
16 system. The initial ranking system and changes to the ranking system shall be approved  
17 by resolution of the committee. The ranking system may be used to prioritize the  
18 acquisition of conservation easements. Notwithstanding any other provision of this  
19 chapter, the ranking system is non-binding on the county, the board, its staff and the  
20 committee for negotiation, selection, invitation to purchase or purchase of conservation  
21 easements.

22

23 **Sec. 9. Conservation easement terms and conditions.**

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

28 (1) *Restriction on division.* The parcel shall be restricted from division as follows:

29 a. If the parcel is less than 100 acres it shall not be divided;

30 b. If the parcel is 100 acres or larger but less than 200 acres, it may be divided into  
31 two lots; and

32 c. If the parcel is 200 acres or larger, it may be divided into as many lots so as to  
33 maintain an average lot size of at least 100 acres, plus one additional lot for any acres

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1 remaining above the required minimum average lot size (e.g., an 850-acre parcel may  
2 be divided into as many as nine parcels, eight of which must maintain an average size of  
3 at least 100 acres, and the ninth of which consists of the remaining acres).

4 (2) *Conservation easement duration.* A conservation easement acquired under the  
5 terms of this chapter shall be perpetual except as provided in section 12.

6 (3) *Other restrictions.* In addition to the foregoing, the parcel shall be subject to  
7 standard restrictions contained in conservation easements pertaining to uses and  
8 activities allowed on the parcel. These standard restrictions shall be delineated in the  
9 deed of easement and shall include, but not necessarily be limited to, restrictions  
10 pertaining to:

- 11 a. Accumulation of trash, junk, and inoperable vehicles;
- 12 b. Display of billboards, signs and advertisements;
- 13 c. The management of natural resources including, without limitation, forest, water,  
14 minerals, natural gas, and wind and/or solar (for purposes of electric power generating  
15 equipment);
- 16 d. Grading, blasting or earth removal;
- 17 e. The number and size of residential structures, outbuildings, artificial lighting  
18 fixtures, farm buildings, and other structures;
- 19 f. Conduct of industrial or commercial activities on the parcel;
- 20 g. All county zoning and use restrictions; and
- 21 h. Monitoring of the easement.

22 (4) *Designation of easement holders.* The District shall hold the easement jointly  
23 with one or more other public bodies, as defined in Code of Virginia, § 10.1-1700, or one  
24 or more organizations then qualifying as an eligible donee as defined by section  
25 170(h)(3) of the Internal Revenue Code of 1986, as amended, as such joint holder is  
26 approved by the committee. Notwithstanding the foregoing, the District shall jointly hold  
27 the easement together with the Foundation without requiring specific prior approval of  
28 the committee, whenever the Foundation shall agree to do so.

29 (5) *Taxation of burdened property.* Taxation of real property burdened by an  
30 easement shall be governed by Va. Code section 10.1-1011 or as otherwise set forth in  
31 the Code of Virginia in the event of recodification or amendment.

32  
33



1    **Sec. 10. Application and evaluation procedure.**

2    Each application shall be processed and evaluated as follows:

3    (1)    *Application; program materials to be provided to owner.* Upon request, the  
4    director shall provide to an owner a standard application form and additional information  
5    about the program, as such is available to or created by the director.

6    (2)    *Application form.* The director shall provide a standard application form for  
7    owners to use for consideration of a property for a conservation easement. The  
8    application form shall require, at a minimum, that the owner provide: the names of all  
9    owners of the parcel and adjacent parcels, the address and telephone number of each  
10   owner and adjacent owner, the acreage of the parcel, the county tax map parcel  
11   number, the zoning designation of the parcel, a copy of the deed or other instrument by  
12   which the current owner(s) obtained title to the parcel, a copy of any applicable deed  
13   covenants and/or restrictions, tax assessed value of the parcel, land-use based value of  
14   the property, an affidavit of liens that encumber the title, and permission for the director  
15   and such other staff as may be appropriate to enter the property after reasonable notice  
16   to the owner to evaluate the parcel. When such exists on record in the land records of  
17   the Clerk of the Circuit Court of the County, the applicant shall include a copy of the  
18   most recent plat of the boundary lines for the parcel. The application form shall also  
19   include a space for an owner to indicate whether he/she volunteers to have his parcel be  
20   subject to greater restrictions than those contained in the standard deed of easement,  
21   and to delineate those voluntary, additional restrictions, and a space for the owner to  
22   specify any uses that the owner wished to continue on the parcel or to reserve the right  
23   to add.

24   (3)    *Additional application information required by director.* The director may require  
25   an owner to provide additional information deemed necessary to determine: (i) whether  
26   the proposed easement is eligible for purchase; (ii) the ranking of the parcel; (iii) the  
27   value of such easement; and (iv) such other information deemed necessary for the  
28   processing of an application.

29   (4)    *Submittal of application.* Applications shall be submitted to the director. An  
30   application fee, as established by the committee, may be required. An application may  
31   be submitted at any time during an open application period. However, the director shall  
32   notify owner(s) who submitted applications received after an application period deadline

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1 that their applications shall not be considered and, if owner desires consideration in a  
2 subsequent application period, then resubmittal shall be required.

3 (5) *Evaluation by director.* The director shall evaluate each application received and  
4 determine whether the application is complete. If the application is incomplete, the  
5 director shall inform the owner in writing of the information that must be submitted in  
6 order for the application to be deemed complete. Any application remaining incomplete  
7 for 15 days after the cutoff date for the application period shall be deemed withdrawn.

8 When an application is deemed complete, the director shall determine whether the  
9 parcel satisfies the eligibility criteria and, if it does, shall determine the number of points  
10 to be attributed to the parcel by applying the ranking system. The director shall then rank  
11 each parcel with the parcel scoring the highest percentage score being the highest  
12 ranked and descending there from. The director shall submit the list of ranked parcels to  
13 the committee after each application period.

14 (6) *Evaluation by committee.* The committee shall review the list of ranked parcels  
15 submitted by the director and identify on which parcels it desires conservation  
16 easements. The committee shall then prioritize the parcels on which it will seek to  
17 purchase conservation easements. Nothing in this chapter shall obligate the committee  
18 to purchase a conservation easement on any property.

19 (8) *Requirements and deadlines may be waived.* Any requirement or deadline set  
20 forth in this chapter may be waived by the committee if, for good cause, it is shown that  
21 circumstances exist that warrant consideration of an application. Under such  
22 circumstances, the committee may purchase a conservation easement at any time it  
23 deems necessary.

24 (9) *Reapplication.* An owner of a parcel not selected by the committee for purchase  
25 of a conservation easement may reapply in any future open application period.

26  
27 **Sec. 11. Purchase of development rights procedure.**

28 Each purchase of a conservation easement shall proceed as follows:

29 (1) *Invitation to sell.* After the committee ranks the pool of properties proposed for  
30 conservation easements, the committee shall, by majority vote of the voting members,  
31 instruct the director as to initial pool of parcels to be considered for acquisition of  
32 easements and assign a value to be considered for acquisition of each easement so  
33 identified. In accordance with the board's instruction, the director shall invite the owner of

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1 each parcel included in the initial pool of parcels to sell to the district a conservation  
2 easement on that parcel for an amount based upon the assigned value of such  
3 conservation easement, subject to the terms and conditions of a proposed deed of  
4 easement. The invitation to sell shall be in writing and shall include the proposed  
5 purchase price, the proposed deed of easement, and the date by which the written offer  
6 must be received by the director in order to be accepted. The invitation may contain a  
7 firm offer to be returned by the owner if the owner desires to sell a conservation  
8 easement.

9 (2) *Offer to sell.* Each owner who desires to sell and/or donate a conservation  
10 easement shall submit to the director a written offer that must be received by the date  
11 contained in the invitation to sell. The offer should include a statement that substantially  
12 states the following: "(The owner) offers to sell and/or donate a conservation easement  
13 to the district for the sum of (purchase price), subject to the terms and conditions set  
14 forth in the proposed deed of easement enclosed with the invitation to sell." Nothing in  
15 this chapter shall compel an owner to submit an offer to sell.

16 (3) *Acceptance.* An offer to sell a conservation easement may be accepted by the  
17 committee.,

18 (4) *Conservation easement established.* A conservation easement shall be  
19 established when the owner and authorized representatives of the holders of the  
20 easement have each signed the deed of easement. The deed shall be recorded in the  
21 office of the clerk of the circuit court of the county. A single conservation easement may  
22 be established for more than one parcel under the same ownership.

23 (5) *Offers not made; offers not accepted; invitation to other owners.* If an owner  
24 invited to sell elects not to do so, or if the offer to sell is not accepted by the committee,  
25 then the director may send an invitation to sell to the owner(s) of the next highest  
26 prioritized parcel(s) remaining on the list.

27 (6) *Costs.* If the committee accepts an offer to sell a conservation easement, the  
28 committee may pay the grantor's tax, if any, and the committee may pay all other costs,  
29 including environmental site assessments, surveys, recording costs, if any, and other  
30 charges associated with closing. However, the committee shall not pay expenses or fees  
31 incurred by the property owner for independent appraisals or legal, financial, or other  
32 advice, or any other expenses or fees in connection with the release and subordination  
33 of liens to the easement.

**1    Sec. 12. Restriction on buy-back; extinguishment and exchange of easements.**

2    (1)    *Restriction on buy-back.* The owner shall not have the option to reacquire any  
3    property rights relinquished under the conservation easement, except as provided  
4    hereafter.

5    (2)    *Petition to board.* Upon the expiration of 25 years from the date on which a  
6    conservation easement was recorded, the owner or successor in interest to the property  
7    that is subject to the easement may petition the board for the extinguishment of such  
8    easement in exchange for the conveyance to the district of a conservation easement on  
9    a different parcel of property meeting all of the eligibility requirements as set forth in  
10   section 7. The committee may establish a fee schedule to be paid upon application for  
11   extinguishment and exchange of easement.

12   (3)    *Requirements.* No such extinguishment and exchange of easement shall be  
13   authorized, unless a majority of the voting members of the committee finds that:

- 14   a.      The extinguishment and exchange is determined to be essential to the orderly  
15   development and growth of the county;
- 16   b.      The extinguishment and exchange is in accordance with the comprehensive plan  
17   for the county in effect at the time of the extinguishment and exchange;
- 18   c.      The extinguishment and exchange does not adversely affect the county's  
19   interests in accomplishing the purposes of this chapter;
- 20   d.      There is substituted other real property that is (a) of at least equal fair market  
21   value and at least equal acreage; (b) of greater value as permanent open-space land  
22   than the land upon which the easement is extinguished, (c) of as nearly as feasible  
23   equivalent usefulness and location for use as permanent open-space land as is the land  
24   upon which the easement is extinguished and (d) is in accordance with the Virginia  
25   Open-Space Land Act, (Code of Virginia, § 10.1-1700 et seq.).

26   (4)    *Expenses.* The petitioner shall bear all expenses and fees in connection with the  
27   exchange, including, but not limited to, purchase of the substituted easement, site  
28   assessments, surveys, closing costs, recording fees and taxes, title search, and title  
29   insurance if required.

30   **Sec. 13. Program funding.**

31   The program may be funded annually by the board in the county budget or by special  
32   appropriation. The committee shall endeavor to seek funds from federal, state, local and  
33   private sources to effectuate its purposes.