

Chapter 5.5

CONSERVATION EASEMENTS PROGRAM

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Chapter 5.5
CONSERVATION EASEMENTS PROGRAM¹

Sec. 5.5-1. Short title.

This Chapter shall be known and may be cited as the “conservation easements program” or “the Program”, as the context may require. (Ord. 06-21-06)

Sec. 5.5-2. Purpose.

The board of supervisors finds that a substantial area of rural land in the County has been converted to uses not consistent with or conducive to agriculture, forestry or other traditional rural uses; that regulatory land-use planning tools may not, in themselves, be sufficient to inhibit 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 board of supervisors has determined that it is advisable to establish a program, pursuant to Virginia Code Sec. 10.1-1700, *et seq.*, 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; to help in preserving open-space and the rural character of the County by (a) preserving farm and forest lands; (b) conserving and protecting water resources and environmentally sensitive lands, waters and other natural resources; (c) conserving and protecting biodiversity and wildlife and aquatic habitat; (d) improving the quality of life for the inhabitants of the county; (e) assuring availability of lands for agricultural, forestal, recreational, or open-space use; and (f) promoting tourism through the preservation of scenic resources. (Ord. 06-21-06)

Sec. 5.5-3. Applicability.

The Program shall be available for all lands in the County, 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 Program shall be voluntarily offered by the owner. Each such easement shall be subject to the approval of the board of supervisors to determine that the acceptance of such easement shall further the purposes of this Chapter in accordance with Sec. 5.5-6. (Ord. 06-21-06)

Sec. 5.5-4. Definitions and construction.

¹ Ordinance adopted 6-21-06 enacting Chapter 5.5, Conservation Easements Program, is effective on and after July 1, 2006.

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

(1) Conservation easement. The term “conservation easement” means a nonpossessory interest of the County in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural or open-space values of real property, assuring its 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 real property.

(2) Program administrator. The term “Program administrator” means the director of the department of planning and development.

(3) 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, or any lawfully described portion of such lot or tract.

B. Construction. Because a conservation easement may contain one or more parcels, for purposes of the Program the term “parcel” shall include all parcels covered by, or proposed to be covered by, a particular conservation easement. (Ord. 06-21-06)

Sec. 5.5-5. Designation of Program administrator; powers and duties.

A. Designation. The director of the department of planning and development is hereby designated as the Program administrator.

B. Powers and duties. The Program administrator, or his designee, shall administer the 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.
2. Promote the Program by providing educational materials to the public, conducting informational meetings and otherwise.
3. Investigate and pursue state, federal and other programs available to maximize private participation.
4. Evaluate all applications to determine their eligibility and make recommendations thereon to the board of supervisors.

5. Provide educational materials regarding other land protection programs to the public.
6. 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. (Ord. 06-21-06)

Sec. 5.5-6. Eligibility criteria.

In determining whether to accept a proposed conservation easement, the board of supervisors shall consider the following criteria:

- (i) the use of the parcel subject to the conservation easement shall be consistent with the comprehensive plan as in effect at the time of the proposed dedication; (ii) the proposed terms of the conservation deed of easement shall be consistent with the minimum terms and conditions set forth in Sec. 5.5-7; and (iii) the acceptance of the proposed conservation is consistent with the purposes of this Chapter. (Ord. 06-21-06)

Sec. 5.5-7. 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.) and of 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. No parcel shall be divided so as to create any parcel containing less than one hundred (100) 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: (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. (Ord. 06-21-06)

Sec. 5.5-8. 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, and information about the Program.

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 County tax map and parcel number, the zoning designation of the parcel, and permission for the Program administrator to enter the property after reasonable notice to the owner to evaluate the parcel. The application form shall also include a space for an owner to indicate whether 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.

C. Additional application information required by Program administrator. The Program administrator may require an owner to provide additional information deemed necessary to determine whether the proposed easement can be recommended for acceptance.

D. Submittal of application. Applications shall be submitted to the office of the Program administrator. An application may be submitted at any time.

E. Evaluation by Program administrator. The Program administrator shall evaluate each application received and determine within fifteen (15) 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. When an application is deemed complete, the Program administrator shall determine whether, in his judgment, the proposed easement satisfies the eligibility criteria set forth in Sec. 5.5-6.

F. Evaluation by board of supervisors. The board of supervisors shall review the proposed easement and determine whether or not the same should be accepted. The determination as to whether or not a particular easement should be accepted shall be in the sole discretion of the board of supervisors, and nothing in this Chapter shall obligate the board to accept a particular conservation easement.

G. Reapplication. An owner whose proposed conservation easement is not accepted may reapply at a later time.

H. Easement established. A conservation easement shall be deemed to be accepted when all the owners of the subject parcel shall have signed the deed of easement; such deed of easement shall have been approved in writing as to form by the county attorney; and the same shall have been accepted by an authorized agent of the board of supervisors on its behalf. The deed shall be recorded in the office of the clerk of the circuit court of the County at the expense of the applicant. A single conservation easement may be established for more than one parcel under the same ownership.

I. Costs. The applicant shall be solely responsible for the cost of preparing and recording each such easement, including, but not necessarily limited to, environmental site assessments, surveys, recording costs and other charges associated with closing; and shall pay to the County a fee sufficient to defray the actual and reasonable expenses of the County's review of the application and the proposed deed of easement. The amount of such fee shall be established by resolution of the board of supervisors. The County shall not pay fees incurred for independent appraisals, legal, financial, or other advice, or fees in connection with the release and subordination of liens to the easement conveyed to the County. (Ord. 06-21-06)

Sec. 5.5-9. Program non-exclusivity.

This Chapter shall not be construed in any way as a limitation upon the County's authority to acquire land for public purposes, nor shall this Chapter be construed to prohibit the holding of easements for conservation of resources by entities other than, or in conjunction with, the County. (Ord. 06-21-06)