

# Chapter 72 Conservation Easement Purchase Program

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## **Chapter 72 Conservation Easement Purchase Program**

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[HISTORY: Adopted by the Board of Supervisors of Clarke County June 18, 2002; Amended October 19, 2004]

### *§ 72-1 Purpose*

The general purpose of the Clarke County Easement Purchase Program (CEP Program) is to protect and preserve land with significant agricultural, natural, scenic, and historic resources. In furtherance of the general purpose, the specific purposes of the CEP Program include, but are not limited to:

- A. Protection of quality farmland;
- B. Preservation of open-space and the rural character of Clarke County;
- C. Protection of environmentally sensitive areas important to water quality, plant life, and wildlife;
- D. Protection of historic resources;
- E. Protection of natural and scenic resources;
- F. Promotion of tourism; and
- G. Protection of water resources.

### *§ 72-2 Conservation Easement Purchases - General*

Conservation easements shall be acquired pursuant to the provisions of this chapter and shall be in conformity with the Clarke County Comprehensive Plan. Any conservation easement acquired pursuant to this chapter shall be voluntarily offered by the owner.

### *§ 72-3 Conservation Easement - Definition*

For purposes of this chapter, “conservation easement” shall mean a non-possessory interest in real property of one or more qualified easement holders under § 72-9 of this chapter, acquired pursuant to the Virginia Open-Space Land Act (§ 10.1-1700, et seq., Code of Va.) and this CEP 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, forestry, 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.

#### *§ 72-4 Administration*

The CEP Program shall be administered by the Clarke County Conservation Easement Authority (Authority). The county Planning Administrator shall serve as Clerk to the Authority, and the county Planning Department shall serve as staff to the Authority.

#### *§ 72-5 Selection Criteria/Property Resource Score*

Easements shall be purchased based upon a Property Resource Score and such other factors deemed applicable by the Authority. The Property Resource Score shall include criteria, established by resolution by the Board of Supervisors, which includes the following factors for each property:

- A. agricultural value;
- B. area;
- C. number of dwelling unit rights;
- D. location in regard to water resources or unique topographic features;
- E. location in regard to significant publicly owned open space;
- F. presence of threatened or endangered plant or animal species;
- G. location in regard to primary and scenic highways;
- H. location in regard to areas of scenic vistas; and
- I. presence of historic or cultural resources.

#### *§ 72-6 Income Criteria*

Criteria for evaluating income of property owners (Income Criteria) shall be adopted by resolution by the Board of Supervisors to implement the purpose of focusing the expenditure of county funds in the CEP Program toward lower and middle-income property owners.

#### *§ 72-7 Procedures*

[Amended 2004-10-19]

- A. Any interested property owner may submit an application to offer a conservation easement for acquisition by the county. The application shall be submitted on a form provided by the Authority, and shall include the information and documents called for in the application. In addition, the property owner shall submit thereafter such additional

information or documents deemed necessary by the Authority to consider the application.

- B. The Authority shall rank the application in accordance with the Property Resource Score.
- C. Based on the ranking determined by the Property Resource Score, the Authority shall select proposed easements to be purchased.
  - 1. If the Authority determines that an appraisal of the easement is necessary, it shall commission an appraisal of the easement. Using the Property Resource Score, the Income Criteria, and such other factors deemed applicable by the Authority, the Authority shall determine the maximum amount of County funds that would be offered to the property owner (Purchase Price) for the purchase of the easement.
  - 2. If the Authority determines that an appraisal of the easement is not necessary, using the Income Criteria, the Property Resource Score, such valuation methodology as established by the Authority, and such other factors that may be determined by the Authority, the Authority shall determine the maximum amount of County funds that would be offered to the property owner (Purchase Price) for the purchase of the easement.
- D. Using the appraised value of the proposed easement, the Income Criteria, the Selection Criteria score of a property, and such other factors that may be determined by the Authority, the Authority shall determine the maximum amount of county funds that would be offered to the property owner (Purchase Price) for the purchase of the easement. [amended 2004-10-19]
- E. For each easement which the Authority proposes to submit to the Board of Supervisors for consideration of purchase, the Authority shall invite the property owner to submit a written offer, on a form provided by the Authority, to sell the easement to the county for the Purchase Price, and to donate to the county the balance, if any, of the fair market value of the easement, subject to the terms and conditions of the proposed deed of easement, which proposed deed of easement shall be prepared by the Authority and provided to the property owner. Nothing herein shall compel the property owner to submit an offer to sell.
- F. After receipt of a written offer to sell, the Authority shall forward the offer to the Board of Supervisors for consideration and approval.
- G. Upon formal approval by the Board of Supervisors of the purchase of an easement, the Authority shall arrange for a closing on the transaction and the recordation of the deed of easement in the Office of the Clerk of the Circuit Court of Clarke County.

- H. The county shall pay all closing costs associated with the purchase of an easement to include, without limitation, site assessments, appraisals and surveys commissioned by the Authority, grantee's recording costs, and grantor's tax (if any); provided, however, the county shall not pay fees incurred by the property owner for independent appraisals, or legal, financial, or other professional advice or services to the property owner, or fees and costs in connection with the release and/or subordination of liens to the easement purchased.
- I. A property owner whose proposed easement is not purchased may reapply in the next fiscal year.

*§ 72-8 Duties of the Authority*

In administering the CEP Program, the Authority's duties shall include, but not be limited to:

- A. Developing and proposing Property Resource Score criteria for adoption by the Board of Supervisors;
- B. Developing and proposing Income Criteria for adoption by the Board of Supervisors;
- C. Publicizing the CEP Program in Clarke County;
- D. Identifying properties that would have high Property Resource Scores and target information to the owners of those properties;
- E. Soliciting and receiving voluntary applications from property owners;
- F. Ranking applications in accordance with the Property Resource Scores;
- G. Selecting proposed easements to be appraised and commissioning appraisals;
- H. Determining the Purchase Price for selected parcels using the appraised value of the proposed easement and the Income Criteria;
- I. Establishing a methodology for valuation of proposed easements not appraised to determine the Purchase Price;
- J. Submit written offers to sell to the Board of Supervisors for approval;
- K. Complete closings on purchases and record deeds of easement;
- L. Apply for and pursue grants, other funding, and gifts from the Virginia Land Conservation Fund, other state or federal agencies, and private persons or entities;
- M. Monitor properties to determine compliance with the terms of easements purchased, and take action to enforce compliance;

- N. Have prepared application forms, written offer to sell forms, and other documents used in the administration of the CEP Program;
- O. Have deeds of easement prepared;
- P. Establish procedures consistent with the provisions of this chapter for the receiving and processing of applications and for the administration of the CEP Program;
- Q. Conduct periodic reviews of the CEP Program to determine if its purposes are being met; and
- R. Provide training programs for Board of Directors members and for staff.

#### *§ 72-9 Deeds of Easement*

- A. Each conservation easement shall conform with the requirements of the Virginia Open-Space Land Act and this chapter.
- B. The Board of Supervisors and the Authority shall be co-holders of all easements acquired under the CEP Program. In addition, where advisable the Authority shall seek an additional public body, as defined in the Virginia Open-Space Land Act, or, as permitted by law, other federal or state agency or private organization, to be an additional co-holder.
- C. The deed of easement shall be perpetual.
- D. The deed of easement shall be in a form approved by the county's attorney, shall include standard restrictions contained in conservation easements pertaining to uses and activities allowed on the parcel, and shall include, without limitation, restrictions pertaining to: (1) the maximum number of dwelling unit rights which may be utilized on the parcel on which the easement is located; (2) a prohibition against the accumulation of trash and junk, mining, and commercial activities, but shall not prohibit agricultural, silviculture, horticulture, or home occupations (as defined in the Clarke County Zoning Ordinance); (3) the right of the Authority to conduct periodic inspections; and (4) the right of any one or more of the co-holders of the easement to enforce the easement.
- E. In addition, the Authority may include in the deed of easement restrictions or provisions that deal with the specific public values (agriculture, water resources, historic resources, scenic resources, etc.) being protected by the easement.

#### *§ 72-10 Funding*

The CEP Program may be funded annually by the Board of Supervisors in the county budget or by special appropriation.

#### *§ 72-11 Non-Exclusive*

The CEP Program is a non-exclusive means for the county to acquire conservation easements, and shall not limit the county or the Authority in acquiring, receiving, or holding conservation easements by other methods or under other programs. This chapter shall not limit the ability of property owners to establish conservation easements or other self-imposed limitations on land use or development, and shall not be construed in any way as a limitation on the county's authority to acquire land for public purposes.

*§ 72-12 Five -Year Review*

On or about July 1, 2007, and every five years thereafter, the Authority shall submit to the Board of Supervisors a report of the Authority's review of the CEP Program and its effectiveness in fulfilling its purposes.

## Amendments Chapter 72

2004-10-19

§72-7, D, Procedures for the Clarke County Conservation Easement Authority, so that the Authority will use the Selection Criteria Score of a property and such other factors that it may be determined (in addition to the appraised value of the proposed easement, and the Income Criteria for property owners) when determining the maximum amount of county funds that would be offered to a property owner (Purchase Price) for the purchase of an easement. CC-04-05

2009-11-17

§ 72-5 Selection Criteria, so as to add reference to the Property Resource Score; 72-7 Procedures and 72-8 Duties of the Authority, so as to reference and reflect the proposed purchase policy; 72-12 Five Year Review, so as to provide a summary of the Authority's accomplishments to the Board every five years. CC-09-08