

ROCKBRIDGE COUNTY CODE

Chapter 13

ROCKBRIDGE EASEMENT AGREEMENT PROGRAM

Sec. 13-1. Short title.

This chapter shall be known and may be cited as the “Rockbridge Easement Agreement Program (“REAP”).”

Sec. 13-2. Purpose.

The Board of Supervisors finds that between 1987 and 1997, 6,345 acres of farmland in the County were lost to development; that regulatory land-use planning tools available to date have not been able to stem the conversion of farm and forest land to other uses; and that farm and forest land, clean water and air, biological diversity, scenic vistas and rural character have a public value as well as a private value and contribute to the quality of life of all citizens. Therefore, the specific purposes of this chapter include, but are not limited to:

- (1) Establishing a program by which the County can acquire voluntary conservation easements to serve as one means of assuring the County’s resources are protected and efficiently used;
- (2) Preserving farm, forestland and open space; thereby preserving adequate lands for food and fiber production and the rural character of Rockbridge County;
- (3) Conserving and protecting water resources and environmentally sensitive lands, waters and other natural resources;
- (4) Conserving and protecting biodiversity and wildlife and aquatic habitat;
- (5) Assisting in shaping the character and direction of the development of the community;
- (6) Improving the quality of life for the inhabitants of the County; and
- (7) Promoting tourism through the preservation of scenic resources.

State law reference(s)--Code of Virginia, §§10.1-1700 *et seq.*; 10.1-1009 *et seq.*; and 15.2-5601.

Sec. 13-3. Applicability.

The REAP 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. The owner shall voluntarily offer any conservation easement acquired pursuant to this chapter.

Sec. 13-4. Definitions and construction.

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

(1) *Agriculture.* A farm is constituted of land that has been used for the agricultural production of food and fiber. All lands used for this production are important to agriculture in Rockbridge County and are considered to be on prime, unique, or state & locally important soils. Farms must also be in compliance USDA regulations for highly erodible lands and wetlands. Crop production and livestock records shall be on file with the local Farm Service Agency, USDA.

(2) *Conservation easement.* The term “conservation easement” means a nonpossessory interest in one or more parcels of one or more qualified easement holders under section A.1-110(E) acquired under the Open-Space Land Act (Virginia Code §§10.1-1700 *et seq.* and 10.1-1009 *et seq.*).

(3) *Development right.* The number of buildable lots that may be created from the parent tract in a given zoning district per Section 701 of the Rockbridge County Land Development Regulations.

(4) *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; or, 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.

(5) *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.

(6) *Immediate family.* The term “immediate family” means an owner’s spouse and his or her offspring residing in the same household as the owner.

(7) *Owner.* The term “owner” means the owner or owners of the freehold interest of the parcel.

(8) *Program administrator.* The term “program administrator” means the Director of the Department of Planning and Zoning.

(9) *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 Rockbridge.

B. *Construction.* Because a conservation easement may contain one or more parcels, for purposes of this chapter the term “parcel” shall include all parcels covered by, or proposed to be covered by, the conservation easement.

Sec. 13-5. Designation of program administrator; powers and duties.

A. *Designation.* The Director of the Department of Planning and Zoning is hereby designated as the program administrator.

B. *Powers and duties.* The program administrator, or his designee, shall administer the REAP program and shall have the powers and duties to:

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

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

(3) Investigate and pursue, in conjunction 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 thereon to the REAP committee.

(5) Determine the number of usable development rights existing on each parcel subject to an application.

(6) Coordinate the preparation of appraisals.

- (7) Provide staff support to the REAP committee and the Board of Supervisors.
- (8) Provide educational materials regarding other land protection programs to the public.
- (9) For each easement, assure that the terms and conditions of the 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 easement.

Sec. 13-6. REAP committee established; powers and duties.

A. *Establishment.* The REAP committee is hereby established, as provided herein:

- (1) The committee shall consist of ten (10) members appointed by the Board of Supervisors. Each member shall be a resident of Rockbridge County. The committee should, but is not required to, be comprised of members who are knowledgeable in the fields of conservation, conservation biology, real estate and/or rural land appraisal, farming, and forestry and may also include members of conservation easement holding agencies and conservation organizations.
- (2) The members of the committee shall serve at the pleasure of the Board of Supervisors. The initial term of three (3) members shall be for one (1) year. The initial term of three (3) members shall be for two (2) years. The initial term for four (4) members shall be for three (3) years. Each term after the initial term shall be for (3) years.
- (3) The members of the committee shall serve without pay, but the Board of Supervisors may, at its discretion, reimburse each member for actual and necessary expenses incurred in the performance of his duties.
- (4) The committee shall elect a chairman, vice-chairman, and secretary at its first meeting each calendar year. The secretary need not be a member of the committee.

B. *Powers and duties.* The REAP 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 conservation easements should be purchased.

(3) Annually review the program's eligibility and ranking criteria and recommend to the Board of Supervisors any changes needed to maintain the program's consistency with the comprehensive plan, or to improve the administration, implementation and effectiveness of the program.

(4) Review appraisals to assure they are consistent with appropriate appraisal guidelines and practices, and to make recommendations thereon to the Board of Supervisors.

Sec. 13-7. Eligibility criteria.

In order for a parcel to be eligible for a conservation easement, it must meet the following criteria: (i) the use of the parcel subject to the conservation easement must be consistent with the comprehensive plan; (ii) the proposed terms of the conservation easement must be consistent with the minimum conservation easement terms and conditions set forth in section 13-9; and (iii) the parcel shall obtain at least fifteen (15) points under the ranking criteria set forth in section 13-8 except as specified in section 13-8E(2).

Sec. 13-8. Ranking criteria.

In order to effectuate the purposes of this chapter, parcels for which REAP applications have been received shall be ranked according to the criteria and the point values assigned thereto as set forth herein. Points shall be rounded to the first decimal (*e.g.* Under criteria A.1., a property with 740 feet of shared boundary with a park would receive 1 point for sharing a boundary, plus 1.48 points for the length of the shared boundary, which when rounded to the first decimal would be 1.5 points, for a total of 2.5 points for that criteria).

A. *Open-space resources.*

(1) The parcel adjoins an existing permanent conservation easement, a national, state or local park. One (1) point for every five hundred (500) feet of shared boundary.

(2) Size of the parcel: one half (1/2) point for each 25 acres.

(3) The number of usable development rights on the parcel as determined by section 701 of the Rockbridge County Land Development Regulations: one half (1/2) point per usable development right based on net developable acreage.

B. *Threat of conversion to developed use.*

- (1) The parcel is threatened with forced sale: five (5) points.
- (2) The parcel is threatened with other hardship: three (3) points.

C. *Natural, cultural, and scenic resources.*

- (1) Working family farm, including forestry: five (5) points if at least one owner's family member's principal occupation and income (more than half) is farming or foresting the parcel; four (4) points if at least one owner's family member produces farm products derived from the parcel; or three (3) points if the property qualifies for agricultural land use taxation.
- (2) The parcel adjoins a road designated either as a Virginia scenic highway or byway, or lies within or adjoins a Tourist Corridor Overlay District as defined in section 611 of the Rockbridge County Code: one (1) point for each five hundred (500) feet of road frontage or adjoining District boundary; or the parcel adjoins a non-designated public road: one (1) point for each one thousand (1000) feet of road frontage.
- (3) The parcel contains or fronts a public trail: one (1) point.
- (4) Mountain protection: one half (1/2) point for each 25 acres within a mountain overlay as shown on the current Land Use Plan of Rockbridge County.
- (5) The parcel contains historic resources: three (3) points if it is within a national, or state rural historic district, or is subject to a permanent easement protecting a historic resource, or two (2) points if the parcel is within a designated corridor or scenic overlay as shown on the Land Use Plan of Rockbridge County, or one (1) point if the parcel contains, or adjoins a parcel containing, a documented historic resource; and an additional one (1) point if the parcel contains archaeological resources.
- (6) The parcel is within one of the following impaired watersheds also identified by their Hydrologic Unit number, three (3) points; Kerrs Creek Watershed (HU 133), Hays Creek Watershed (HU 134), Mill Creek Watershed (HU 135), Buffalo Creek Watershed (HU 138).
- (7) The parcel fronts on a perennial stream as identified by the USGS 7.5 minute series quad maps: one (1) point for each five hundred (500) linear feet of frontage if subject to a permanent riparian easement as defined in 58.1-3666 of the Code of Virginia as amended, or one (1) point for every one thousand (1000)

linear feet of stream frontage. If the owner voluntarily offers in his application to place the parcel in such a permanent easement, then the higher points may also be awarded.

(8) The parcel is within a sensitive groundwater recharging area as demonstrated by the presence of sinkholes or karst topography: one (1) point.

(9) The parcel contains perennial springs or wetlands. One (1) point for each occurrence.

D. *For Farmland Protection*

(1) The parcel contains USDA land capability classes I, II, III, & IV soils, one half (1/2) point for each 10 acres containing such soils areas, for up to a total of five (5) points.

(2) The parcel is currently designated as part of an Ag/Forestral district: three (3) points.

E. *Fund leveraging.*

(1) State, federal, public or private funding identified to leverage the purchase of the conservation easement: one (1) point for each ten (10) percent of the total purchase price of the easement for which those funds can be applied. Donation of a portion of the easement by the owner for income tax advantage may be considered fund leveraging and points awarded at the same rate.

(2) The REAP Committee shall give special consideration and take immediate action to review and refer applications to the Board of Supervisors in the special case where private funding is identified to cover one hundred (100) percent of the cost of the purchase of the conservation easement provided that such parcels meet the requirements of Sec. 13-7(i) and (ii).

Sec. 13-9. 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, as applicable, § 10.1-1009 *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. Per the Virginia Outdoors Foundations guidelines, the parcel shall be restricted from division as follows: (i) if the parcel is less than one***

hundred (100) acres, it shall not be divided; (ii) 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; (iii) 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 (100) 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 lot size of 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.* In addition to the foregoing, the parcel 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.

D. *Designation of easement holders.* **The County and one or more other public bodies**, as defined in Virginia Code § 10.1-1700, or private organizations as defined in Virginia Code § 10.1-1009, and designated by the Board of Supervisors shall be the holders of each easement. The public or private body or bodies who may be designated by the Board shall include, but not be limited to, Rockbridge County, the Virginia Military Institute (VMI) Foundation, Rockbridge Area Conservation Council (RACC), Valley Conservation Council (VCC), and the Virginia Outdoors Foundation (VOF).

Sec. 13-10. 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 REAP 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 Rockbridge 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 and for the County's assessor or an independent

appraiser to appraise the property. The application form shall also include a space for an owner to indicate that he volunteers to have his parcel be subject to greater restrictions than those contained in the standard sample deed of easement, and to state 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: (i) whether the proposed easement is eligible for purchase; and (ii) the purchase price of such easement.

D. *Submittal of application.* Applications shall be submitted to the office of the program administrator. An application may be submitted at any time. However, applications received after June 1 shall be evaluated in the following year.

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 the parcel satisfies the eligibility criteria set forth in section 13-7 and, if it does, shall determine the number of points to be attributed to the parcel by applying the criteria set forth in section 13-8. The program administrator shall then rank each parcel scoring at least fifteen (15) points under the criteria set forth in section 13-8, with the parcel scoring the most points being the highest ranked and descending there from. The program administrator should submit the list of ranked parcels to the REAP committee by July 1.

F. *Evaluation and ranking by REAP committee.* The REAP committee shall review the list of ranked parcels submitted by the program administrator and shall rank the parcels in the order of priority it recommends the easements shall be purchased. The committee should forward to the Board of Supervisors by August 1 its recommendation of which conservation easements should be purchased.

G. *Evaluation and ranking by Board of Supervisors.* The Board of Supervisors shall review the list of ranked parcels submitted by the REAP committee and identify on which parcels it desires conservation easements. The Board shall then rank those parcels on which it will seek to purchase conservation easements that year. Nothing in this chapter shall obligate the Board to purchase a conservation easement on any property that meets the minimum number of qualifying points.

H. *Appraisal of conservation easement value.* Each conservation easement identified by the Board of Supervisors to be purchased shall be appraised either by the County's assessor or by an independent qualified appraiser chosen by the County. Each appraisal should be completed by September 1. Each completed appraisal shall be submitted to the program administrator and

the owner. The program administrator shall forward each appraisal to the REAP committee, which shall review each appraisal and make recommendations to the Board of Supervisors by October 1 as to the appropriate value of the development rights.

I. *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 exigent circumstances exist that warrant consideration of an otherwise untimely application, or it is shown that such requirements unreasonably restrict the purchase of such easement. Under such circumstances, the Board may purchase a conservation easement at any time it deems necessary and subject to only such requirements it deems appropriate.

J. *Reapplication.* An owner of a parcel not selected by the Board of Supervisors for purchase of a conservation easement may reapply in any future year.

Sec. 13-11. Purchase of conservation easement.

Each conservation easement shall be purchased as follows:

A. *Identification of initial pool.* From the list of parcels received under Section 13-10, the Board of Supervisors shall designate the initial pool of parcels identified for conservation easements to be purchased. The purchase price may be supplemented by non-county funding as discussed in Section 13-8(E) above. The size of the pool shall be based upon the funds available for easement purchases in the current fiscal year.

B. *Invitation of offer to sell.* The Board shall invite the owner of each parcel included in the initial pool of conservation easements to submit an offer to sell to the County a conservation easement on that parcel for value of the development rights, which price shall not be subject to negotiation, and to donate to the County the balance of the fair market value of the conservation easement, subject to the terms and conditions of a proposed deed of easement. The invitation to sell shall be in writing and shall include the purchase price, the proposed deed of easement, and the date by which a written offer must be received by the program administrator in order to be considered. The invitation may contain an offer form to be returned if the owner desires to sell a conservation easement.

C. *Offer to sell.* Each owner who desires to sell and/or donate a conservation easement shall submit a written offer that must be received by the program administrator by the date contained in the invitation to offer to sell. The offer should include a statement that substantially states the following: “(The owner) offers to sell and/or donate a conservation easement to the County of Rockbridge, Virginia, for the sum of (purchase price), subject to the terms and conditions set forth in the proposed deed of easement enclosed with the invitation to offer.” Nothing in this chapter shall compel an owner to submit an offer to sell.

D. *Acceptance.* An offer to sell a conservation easement shall be accepted by the Board of Supervisors only in writing, and only following an action by the Board authorizing acceptance. The Board shall not accept an offer if a conservation easement on the subject parcel is inconsistent with the policies and goals of the comprehensive plan at the time the offer is received. Nothing in this chapter requires the Board to accept an offer to sell a conservation easement.

E. *Easement established.* A conservation easement shall be established when the owner and an authorized representative of the holder of the easement have each signed the deed of easement. The deed shall be recorded in the office of the Clerk of the Circuit Court of the County of Rockbridge. A single conservation easement may be established for more than one parcel under the same ownership.

F. *Offers not made; offers not accepted; invitation to other owners.* If an owner invited to submit an offer elects not to do so, or if his offer to sell is not accepted by the Board of Supervisors, then the Board shall send an invitation to offer to sell to the owner of the next highest ranked parcel remaining on the list of parcels identified in section A.1-109(E).

G. *Costs.* If the Board of Supervisors accepts an offer to sell a conservation easement, the County shall pay all costs, including environmental site assessments, surveys, recording costs, grantor's tax, if any, and other charges associated with closing. Provided, however, the County shall not pay fees incurred for independent appraisals or legal, financial, or other advice, or fees in connection with the release and subordination of liens to the easement purchased by the County.

H. *Reapplication.* An owner for whose parcel a conservation easement is not purchased may reapply in any future year.

Sec. 13-12. Program funding.

The REAP program may, but is not required to, 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 this chapter. Nothing in this chapter shall require the Board of Supervisors to fund this program.

Sec. 13-13. Program non-exclusivity.

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

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