

Topic:	Purchase of Development Rights
Resource Type:	Regulations
State:	South Carolina
Jurisdiction Type:	Municipal
Municipality:	County of Beaufort
Year (adopted, written, etc.):	1999
Community Type - applicable to:	Urban; Suburban; Rural
Title:	County of Beaufort Rural Land Purchase of Development Rights Program
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Abstract

The purpose of this ordinance is to create a purchase of development rights (PDR) program that enables the preservation of rural and critical lands in Beaufort County. Land must meet certain requirements in order for a conservation easement to be funded.

Resource

Beaufort County, SC
Chapter 94 PLANNING*
ARTICLE III. RURAL AND CRITICAL LAND PRESERVATION
DIVISION 3. RURAL LAND PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

Sec. 94-126. Applicability and general process.

- (a) The rural land purchase of development rights program shall apply in those portions of the county designated "rural service areas" and "resource conservation areas" on the official zoning map of the county, as adopted and amended by the county council.
- (b) The designation of rural service areas and resource conservation areas shall be reviewed and revised in compliance with the program review schedule of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994.
- (c) The rural land purchase of development rights program is a multistep program whereby, at a minimum, the land preservation board:
 - (1) Receives landowner applications pursuant to section 94-127;
 - (2) Evaluates landowner applications for eligibility in the program pursuant to section 94-127;
 - (3) Ranks landowner applications based on a prioritization system to be established by the land preservation board pursuant to subsection 94-128(b); and

- (4) Prioritizes and recommends the purchase of development rights to the county council pursuant to section 94-131.
(Ord. No. 99-19, § 6.1, 7-26-1999)

Sec. 94-127. Landowner application procedure.

- (a) Applications to sell development rights shall be on a form prescribed by the county rural and critical land preservation board and shall be signed by the landowner or designated agent (referred to as "applicant") and shall include a plat of the subject parcel. The application shall be submitted to the land preservation board at a time prescribed by the land preservation board. The land preservation board may require supporting documentation, including deeds, surveys, or other legal instruments, to be submitted with the application. An applicant may submit an application for each parcel or may submit a single application for more than one contiguous parcels. Applications for batched parcels shall follow the same procedure, but shall be signed by all landowners or designated agents.
- (b) The land preservation board shall only consider applications for the purchase of development rights from applicants whose land is within the rural service areas and resource conservation areas.
- (c) The land preservation board shall begin each application period by giving notice in newspapers of general circulation which will reach the public throughout the county. The notice shall describe the areas of applicability listed in subsection 94-126(b), explain the general procedure to be followed in the rural land purchase of development rights program, and invite landowners of such properties to make applications for the purchase of development rights by the county.
- (d) Upon closing of the application period, the land preservation board shall review each application to determine whether the eligibility criteria set forth in subsection 94-128(c) are met generally and all required information is provided. Incomplete or otherwise deficient applications shall be returned to the landowner with a statement of reasons for the rejection. Landowners shall be allowed a reasonable time in which to revise, complete and resubmit deficient applications.
- (e) If an application fails to meet the eligibility criteria set forth in subsection 94-128(c), it shall not be eligible for inclusion in the program. For multiple-parcel applications where the land preservation board determines that any one or more parcel is ineligible, the land preservation board may accept the application as if the application was submitted without the ineligible parcel.
- (f) The submission of an application shall not be deemed to constitute a binding contractual offer to convey any interest in the landowner's property, but shall be revocable at will by the landowner prior to the execution of a purchase agreement, without penalty.

(Ord. No. 99-19, § 6.2, 7-26-1999)

Sec. 94-128. Purchase of development rights criteria.

(a) Subsequent to the deadline for applications as provided in this division, the county rural and critical land preservation board shall review and prioritize applications. The land preservation board shall establish a prioritization system to rank landowner applications based on the criteria in subsection (b) of this section. The system shall be subject to final approval by the county council.

(b) The following positive criteria shall be applied by the land preservation board in determining which development rights to recommend the purchase of to the council:

- (1) Quality of the rural land subject to a proposed conservation easement, including soils classified as prime, unique, or of statewide importance.
- (2) The likelihood that the rural lands would be converted to nonrural use unless subject to a conservation easement.
- (3) Sufficient size to ensure stability of rural uses or to preserve sensitive environmental areas.
- (4) Proximity of the rural lands subject to proposed conservation easements to other rural lands in the county which are subject to conservation easements or other methods of permanent protection.
- (5) Benefits, including but not limited to enhancement of wildlife habitat, air and water quality, groundwater recharge, preservation of historic or other cultural features and preservation of scenic qualities.
- (6) The stewardship of the land and use of conservation practices and best land management practices, including but not limited to soil erosion and sedimentation control and nutrient management.
- (7) Price of the conservation easement, with priority given to those easements offered at a bargain sale or other pricing mechanisms which maximizes the use of public and private funds to further preserve rural lands.

(c) The land preservation board shall consult with the county's planning department to evaluate an application's satisfaction of the criteria.

(d) Once applications are ranked, the land preservation board shall recommend to the council the purchase of development rights in order of each application's rank.

(Ord. No. 99-19, § 6.3, 7-26-1999)

Sec. 94-129. Conservation easement requirements.

To qualify under this article a conservation easement shall be subject to the following terms, conditions, restrictions, and limitations:

- (1) The duration of a conservation easement shall be perpetual except as provided for in subsection (2) of this section.
- (2) If the land surrounding the land subject to a conservation easement is no longer rural in character, the county council, upon recommendation of the county rural and critical land preservation board, may sell, lease, or convey the conservation easement to the current owner of record of the rural land subject to the easement after the expiration of 30 years from the date of purchase of the easement for a price equal to the value at the time of reconveyance determined pursuant to section 94-130. If federal, state or private funds were used to purchase

development rights, the contributing entity must also give its approval to the county's selling, leasing or conveying a conservation easement to the current owner of record of the rural land subject to the easement. The purchase price must be payable to the county. Any payment received by the county pursuant to this section must be paid into a county account that may be used only for the purpose of purchasing development rights.

- (3) Land subject to a conservation easement may not be subdivided unless such subdivision is subject to the specific terms, conditions and duration of the conservation easement. Land may be subdivided prior to the granting of a conservation easement if subdividing will not harm the rural or open space character of the land subject to the easement.
- (4) The instruments and documents for the purchase, sale, and conveyance of any conservation easements must be approved by the county attorney or his designee prior to execution and delivery. Proper releases from mortgage holders and lienholders must be obtained, executed, and properly recorded with the register of deeds to ensure that all conservation easements are purchased free and clear of all encumbrances.
- (5) Upon approval of the county council, the land preservation board may transfer title to a conservation easement purchased pursuant to this article to a land trust. The land preservation board may also purchase a conservation easement from a land trust. In these events, all sections of this article remain in effect.

(Ord. No. 99-19, § 6.4, 7-26-1999)

Sec. 94-130. Valuation.

- (a) Valuation of land or development rights pursuant to this division shall be determined by appraisal and shall be equal to the difference between the market value of the property without encumbrance by a conservation easement and market value of the property so encumbered. Value shall be established by an appraisal process where a land preservation board shall retain a real estate appraiser, certified by the state.
- (b) Appraisals shall be in writing and shall be furnished to the respective landowners for review. Errors of fact in any appraisal may be called to the attention of the county rural and critical land preservation board and the land preservation board's appraiser, but corrections to the appraisal may be made only by the land preservation board's appraiser.
- (c) If a landowner disagrees with the appraisal made by the land preservation board's appraiser, a landowner has the right to select and retain a separate, independent, state-certified general real estate appraiser within 30 days of receipt of the appraisal of the land preservation board's appraiser to determine value of the development rights. The landowner's appraisal shall then be filed with the land preservation board. The land preservation board shall use both appraisals to attempt to reach an agreement as to the appropriate value of the development rights.
- (d) The entire acreage within the parcel under consideration must be included in the determination of the value of the development rights. The land preservation

board's appraiser and the landowner's appraiser shall take into account the potential increase in the value of any parcel retained by the landowner because of the placement of the conservation easement on the remaining rural land.

- (e) The purchase price may be paid in a lump sum, in installments over a period of years, or in any other lawful manner of payment. If payment is to be made in installments or another deferred method, a person selling development rights may receive, in addition to the selling price, interest in an amount or at a rate set forth in the agreement of purchase.

(Ord. No. 99-19, § 6.5, 7-26-1999)

Sec. 94-131. Development rights purchase procedure.

- (a) Upon the ranking in priority of the landowners' applications and approval by the council pursuant to this division, the county rural and critical land preservation board shall by and through the county administrator convey to the owners of the selected parcels, in writing, an offer to purchase development rights from the subject property. Such offer shall be in an amount determined by the land preservation board in section 94-130 and approved by the council. Such offer shall also contain the specific terms of the conservation easement. It shall also be conditioned upon the absence of any defects in title or other restrictions or encumbrances which may adversely affect the county's interest in accomplishing the purposes of this article.
- (b) The landowner shall have 60 days following receipt of the county's offer in which to respond by acceptance, rejection or counteroffer. Failure to respond after 60 days will be considered a rejection of the offer. The landowner may reject the offer to purchase up to the point of settlement. A landowner who rejects a county offer to purchase development rights will forfeit the right to sell development rights to the county for a period of 12 months from the date of rejection.
- (c) Settlement will occur following the landowner's acceptance and the county council's approval of the county's offer to purchase development rights. The county's acquisition of a conservation easement shall be recorded in the office of the register of deeds. The land preservation board, its staff, or the land preservation board's designee shall monitor the properties under conservation easement in this program at least biannually to ensure compliance with the conservation easement.
- (d) The land preservation board shall maintain an official map and files of all development rights held by the county or its designee.

(Ord. No. 99-19, § 6.6, 7-26-1999)

Sec. 94-132. Purchase and resale.

Subject to county council approval on a case-by-case basis, the county rural and critical land preservation board may acquire in fee simple rural land located in areas designated in subsection 94-126(a). The intent of such purchase will be to place a conservation easement on the property and to resell or make such other disposition of the property as restricted.

Best efforts shall be used by the land preservation board to sell the property within 12 months of purchase. The purchase and resale method is intended to be limited to those properties which are offered for sale or which may otherwise be available for purchase, on which development pressure or the chance of use of the property are very high, and whose location is such that the property's continued rural use is important to the purpose of this article.

(Ord. No. 99-19, § 6.7, 7-26-1999)

Sec. 94-133. Rural activity.

The county shall encourage the continuity, development and viability of agricultural production within rural lands by not enacting local laws or ordinances which would unreasonably restrict agricultural production within the rural lands in contravention of the purposes of this article unless restrictions or ordinances bear a direct relationship to the public health or safety.

(Ord. No. 99-19, § 6.8, 7-26-1999)

Sec. 94-134. Land preservation board report.

The county rural and critical land preservation board shall submit to the county council an annual report based on all of the activities carried out pursuant to the purchase of development rights program. The report shall include but is not limited to the following:

- (1) Map indicating the location of rural lands in the county and the location of the parcels from where development rights are purchased;
- (2) Number of acres in the county's rural lands;
- (3) Total number of conservation easements and number of acres of each of the conservation easements in the rural lands throughout the county;
- (4) Nature, scope, and extent of development activity in the rural lands where development rights have been purchased;
- (5) Number of landowner applications for the given year for the rural land purchase of development rights program; and
- (6) Number of conservation easements and number of acres of each of the conservation easements in the rural land throughout the county for the given year.

(Ord. No. 99-19, § 6.9, 7-26-1999)

Sec. 94-135. Appropriations to fund.

The county council shall appropriate annually such funds as the county council may deem appropriate to the rural land purchase of development rights program.

(Ord. No. 99-19, § 6.10, 7-26-1999)

Sec. 94-136. Conflicting laws.

If any section of this article pertaining to the rural land purchase of development rights program conflicts with state law, state law shall control.

(Ord. No. 99-19, § 6.11, 7-26-1999)

Secs. 94-137--94-165. Reserved.