

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2006 Legislative Session

Bill No. CB-47-2006

Chapter No. 39

Proposed and Presented by Council Members Dernoga, Bland, Dean, Harrington, Peters
and Exum

Introduced by Council Members Dernoga, Bland, Dean, Harrington, Peters and Exum

Co-Sponsors _____

Date of Introduction June 20, 2006

BILL

1 AN ACT concerning

2 Purchase of Development Rights

3 For the purpose of establishing a Purchase of Development Rights Program in Prince George's
 4 County to permit the acquisition of conservation easements.

5 BY adding:

6 SUBTITLE 30. AGRICULTURE.

7 Sections 30-301, 30-302, 30-303, 30-304, 30-305,

8 30-306, 30-307, 30-308, 30-309, 30-310, 30-311,

9 30-312 and 30-313,

10 The Prince George's County Code

11 (2003 Edition, 2005 Supplement).

12 SECTION 1. BE IT ENACTED by the County Council of Prince George's
 13 County, Maryland, that Sections 30-301, 30-302, 30-303, 30-304, 30-305, 30-
 14 306, 30-307, 30-308, 30-309, 30-310, 30-311, 30-312 and 30-313 of the Prince
 15 George's County Code be and the same are hereby added:

16 SUBTITLE 30. AGRICULTURE

17 **DIVISION 3. PURCHASE OF DEVELOPMENT RIGHTS.**

18 **Sec. 30-301. Short Title.**

19 This section shall be known and may be cited as the "purchase of development rights
 20 ("PDR") program."

Sec. 30-302. Introduction.

As a result of the recommendations of Commission 2000, it is the policy of the County to restrict growth in the Rural Tier, to provide regulatory incentives to restrict the development of certain lands in perpetuity and to preserve sensitive natural resources. The County Council recognizes both the need and the public value of protecting farm and forest lands, ecologically fragile watershed and flood plains, as well as the more general need to protect scenic vistas and view sheds enjoyed by the citizens and residents of the County.

Sec. 30-303. Purposes.

The regulations in this Part are established for the following purposes:

(a) Implement the policies of the Prince George's County General Plan and the Green Infrastructure Plan relating to the Rural Tier;

(b) Preserve ecologically fragile and aesthetically valuable environments of the County, including streams, stream valleys, flood plains, wetlands, groundwater, steep slopes, woodlands, habitats, scenic vistas and scenic corridors;

(c) Retain agricultural land and augment other local and state programs certified in accordance with the Code of Maryland Regulations for the preservation of agricultural land;

(d) Maintain rural character;

(e) Limit non-agricultural uses;

(f) Conserve and protect biodiversity, wildlife and aquatic habitat; and

(g) Promote tourism through the preservation of scenic resources.

Sec. 30-304. Applicability.

The PDR program shall be available to all land zoned O-S, R-A, R-E and R-R in the Rural Tier. Any conservation easement acquired under the PDR program shall be voluntarily offered by the landowner.

Sec. 30-305. Definitions.

(a) The following definitions shall apply to the interpretation and implementation of the PDR program:

(1) Board. The term Board shall mean the Agricultural Preservation Advisory Board as defined in Section 3-107 of the Prince George's County Code.

(2) Conservation Easement. The term "conservation easement" shall be defined as a non-possessionary interest encumbering a qualifying property, whether the easement is appurtenant

1 or in gross, and conveyed by a landowner in connection with the PDR program for the purpose
 2 of restricting the development potential on the property in perpetuity.

3 (3) Department. The term “department” means the Prince George’s Soil
 4 Conservation District.

5 (4) Parcel. The term “parcel” means a lot or acreage parcel, lawfully recorded among
 6 the Land Records of the County.

7 (5) Program Administrator. The term “program administrator” means the District
 8 Manager of Prince George’s Soil Conservation District or his designee.

9 (b) Construction. A conservation easement may encumber one or more parcels or
 10 portions, therefore, for the purposes of the PDR program the term “parcel” shall include all of the
 11 property described in the legal description attached to the conservation easement and recorded
 12 among the Land Records of the County.

13 **Sec. 30-306. Administration.**

14 (a) The Program Administrator shall administer the daily activities of the County’s PDR
 15 program.

16 (b) Prince George’s Soil Conservation District shall function as the central clearing house
 17 for all PDR related activities and shall have the following powers and duties:

18 (1) Promulgation of program regulations and procedures for the proper administration
 19 and implementation of the PDR program subject to County Council approval.

20 (2) Promote the PDR program by providing educational materials to the public and
 21 conducting informational meetings.

22 (3) Investigate and pursue additional public and private resources to fund the program
 23 and maximize private participation.

24 (4) Evaluate all applications to determine their eligibility and ranking score, rank
 25 applications and include the ranking in the recommendations to the Board.

26 (5) Prepare a report on the development potential for each parcel subject to an
 27 application, from a development certification provided by the Department of Planning and
 28 include a summary in the recommendations to the Board.

29 (6) Coordinate the preparation of appraisals to be included in the recommendations to
 30 the Board.

31 (7) Provide the staff support, report and recommendation to the Board for each

1 application.

2 (8) Monitor conservation easements purchased to ensure compliance with the terms
3 and conditions of each easement.

4 (c) The Board shall have the following powers and duties:

5 (1) The Board shall review the report and recommendation for each application
6 provided by the Program Administrator and determine which easements should be purchased.

7 (2) Periodically review the program regulations and procedures and make
8 recommendations to the Program Administrator and the County Council of any changes needed
9 to maintain the program's consistency with the Prince George's County General Plan and the
10 Green Infrastructure Plan relating to the Rural Tier.

11 **Sec. 30-307. Eligibility Criteria.**

12 (a) A parcel must meet the following criteria to be eligible to participate in the program:
13 the parcel must be zoned O-S, R-A, R-E or R-R and located in the Rural Tier; privately owned;
14 the parcel shall be capable of being further developed; include a minimum of 35 acres with no
15 more than one single-family dwelling, or include a minimum of 20 acres with no more than one
16 single-family dwelling and be contiguous to property held as a public park or preserve or
17 property otherwise permanently protected from development by easement or otherwise;
18 notwithstanding the forgoing criteria, a property may be deemed eligible by the County Council
19 upon a determination that the property has sensitive natural resources and there is an important
20 public value of protecting the property for the citizens and residents of the County.

21 (b) A parcel shall not be eligible to participate in the program if the development rights
22 have been extinguished by the donation or sale of an easement to any other party, or if the
23 property is encumbered by a tree conservation easement or any other easement which would
24 prevent the property from being developed.

25 **Sec. 30-308. Ranking Criteria.**

26 In order to effectuate the purposes of the PDR program, parcels for which conservation
27 applications have been received shall be ranked according to criteria and the point values
28 established in the regulations. The criteria shall include the size of the parcel; natural, cultural
29 and scenic resources; development pressures; proximity to other preserved land; soils; family
30 farm and deferral from a prior funding cycle as a result of insufficient funding.

31 **Sec. 30-309. Easement terms and conditions.**

1 (a) Each conservation easement shall be in a form approved by the county attorney, and
 2 shall contain, at a minimum, the following provisions:

3 (1) Restriction on division. The parcel shall be restricted from any further division
 4 except as may provided in the program regulations.

5 (2) No buy-back option. The owner shall not have the right to re-acquire the
 6 development potential extinguished by the easement.

7 (3) Agricultural uses. Agricultural uses shall be permitted on a parcel subject to a
 8 conservation easement.

9 (4) Prohibited uses. Industrial or non-agricultural commercial uses shall not be
 10 permitted on a parcel encumbered by a conservation easement.

11 (5) Designation of Easement Holders. The County shall be the easement holder of
 12 each easement.

13 (b) The easements shall be recorded in the Land Records of the County and a copy of the
 14 recorded easement shall be forwarded to the Department of Environmental Resources Permit
 15 Review Division.

16 **Sec. 30-310. Offer to Purchase.**

17 (a) The Board shall make offers to purchase easements based on the ranking and
 18 recommendations of the Program Administrator and the offer shall include one of the following
 19 payment options:

20 (1) Lump sum payment for acquisition of the easement;

21 (2) Installment purchase by a multi-year agreement.

22 (b) If funding is insufficient during a program year to purchase easements from all of the
 23 applicants, the Board may recommend that some or all of the remaining applications be
 24 considered for acquisition in the next program year.

25 **Sec. 30-311. Enforcement/Penalties.**

26 (a) Inspection. The Program Administrator or his designee shall have the right, upon prior
 27 written notice to the landowner, to enter upon the land subject to a conservation easement
 28 annually to inspect for compliance with the terms and conditions of the conservation easement.

29 (b) Damages. The County shall be responsible for enforcing the conservation easement
 30 and may seek damages up to 25 % of the value of the easement if the landowner engages in
 31 practices or activities on the parcel, which are inconsistent with the spirit and intent of the

1 conservation easement.

2 (c) Injunction. In addition to other remedies available, the County may seek an injunction
 3 to halt the practices or activities which violate the terms and conditions of the easement.

4 **Sec. 30-312. Rights of landowner.**

5 (a) General. The landowner retains all of the rights of a fee simple owner, except for the
 6 development rights, which shall be extinguished by the conservation easement pursuant to this
 7 Subtitle. The conservation easement does not grant the public any rights of access or rights to
 8 use the land whatsoever.

9 (b) Limited Number of Dwellings. This subsection applies to parcels of 50 acres or more.
 10 A landowner shall be entitled to create one additional dwelling in connection with an intra-
 11 family transfer per 25 acres pursuant to requirements of the program regulations.

12 **Sec. 30-313. Program Funding.**

13 The PDR program shall be funded annually by the County Council, upon advice of the
 14 County Executive, or by special appropriation. The County shall seek funding from federal,
 15 state and private sources to implement the purposes of the PDR program.

16 SECTION 2. BE IT FURTHER ENACTED that the provisions of this Act are hereby
 17 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
 18 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
 19 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining
 20 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this
 21 Act, since the same would have been enacted without the incorporation in this Act of any such
 22 invalid or unconstitutional word, phrase, clause, sentence, subparagraph, subsection, or section.

23 SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
 24 calendar days after it becomes law.

Adopted this 18th day of July, 2006.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Thomas E. Dernoga
Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Jack B. Johnson
County Executive

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.
Asterisks *** indicate intervening existing Code provisions that remain unchanged.