

ORDINANCE NO. 00-A.1(1)

AN ORDINANCE TO AMEND THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA BY ADDING APPENDIX A.1, ACQUISITION OF CONSERVATION EASEMENTS PROGRAM

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that Appendix A.1, Acquisition of Conservation Easements Program, is hereby added to the Code of the County of Albemarle, Virginia as follows:

By Adding:

- Sec. A.1-100. Short title.
- Sec. A.1-101. Purpose.
- Sec. A.1-102. Applicability.
- Sec. A.1-103. Definitions and construction.
- Sec. A.1-104. Designation of program administrator; powers and duties.
- Sec. A.1-105. ACE committee established; powers and duties.
- Sec. A.1-106. Appraisal review committee established; powers and duties.
- Sec. A.1-107. Eligibility criteria.
- Sec. A.1-108. Ranking criteria.
- Sec. A.1-109. Easement terms and conditions.
- Sec. A.1-110. Application and evaluation procedure.
- Sec. A.1-111. Purchase of conservation easement.
- Sec. A.1-112. Program funding.
- Sec. A.1-113. Program non-exclusivity.

Appendix A.1. Acquisition of Conservation Easements Program

Sec. A.1-100. Short title.

This chapter shall be known and may be cited as the “acquisition of conservation easements (“ACE”) program.”

(Ord. 00-A.1(1))

Sec. A.1-101. Purpose.

The board of supervisors finds that between 1974 and 1992, twenty-five thousand (25,000) acres of farmland in the county were lost to development; that at present, almost one-third of the acres of forest land in the county is considered by the Virginia Department of Forestry to be too densely populated for timber production; that regulatory land-use planning tools acceptable 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 airsheds, biological diversity, scenic vistas and rural character have a public value as well as a private value. Therefore, the specific purposes of this chapter include, but are not limited to:

1. Establishing a program 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;
2. Establishing and preserving open-space and preserving the rural character of Albemarle County;
3. Preserving farm and forest lands;
4. Conserving and protecting water resources and environmentally sensitive lands, waters and other natural resources;
5. Conserving and protecting biodiversity and wildlife and aquatic habitat;
6. Assisting in shaping the character and direction of the development of the community;
7. Improving the quality of life for the inhabitants of the county; and
8. Promoting tourism through the preservation of scenic resources.

(Ord. 00-A.1(1))

State law reference – Va. Code § 10.1-1700 et seq.

Sec. A.1-102. Applicability.

The ACE 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 pursuant to this chapter shall be voluntarily offered by the owner.

(Ord. 00-A.1(1))

Sec. A.1-103. Definitions and construction.

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

(1) *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.1-109(E) acquired under the Open-Space Land Act (Virginia Code § 10.1-1700 *et seq.*), whether the easement is appurtenant or in gross, voluntarily offered by an owner and acquired by purchase pursuant to the ACE 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, 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 the parcel or parcels.

(2) *Development right.* The term “development right” means a right to divide a parcel within the rural areas zoning district conferred on the parcel by Chapter 18 of the Albemarle County Code (Zoning), including the right to create a parcel twenty-one (21) acres or greater.

(3) *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.

(4) *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.

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

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

(7) *Program administrator.* The term “program administrator” means the director of the department of planning and community development.

(8) *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 Albemarle.

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.

(Ord. 00-A.1(1))

Sec. A.1-104. Designation of program administrator; powers and duties.

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

B. *Powers and duties.* The program administrator, or his designee, shall administer the ACE 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 ACE committee, by providing educational materials to the public and conducting informational meetings.
3. Investigate and pursue, in conjunction with the county executive, 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 ACE committee.
5. Determine the number of usable development rights existing on each parcel subject to an application, after obtaining the number of theoretical development rights from the zoning administrator.
6. Coordinate the preparation of appraisals.
7. Provide staff support to the appraisal review committee, the ACE 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.

(Ord. 00-A.1(1))

Sec. A.1-105. ACE committee established; powers and duties.

A. *Establishment.* The ACE 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 Albemarle 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, in 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 ACE 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.

(Ord. 00-A.1(1))

Sec. A.1-106. Appraisal review committee established; powers and duties.

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

1. The committee shall consist of five (5) members appointed by the board of supervisors. The committee shall be comprised of three (3) real estate professionals, the county assessor, and a member of the ACE committee.

2. The members of the committee shall serve at the pleasure of the board of supervisors. Each member, other than the county assessor, shall serve a one (1) year term. The county assessor shall be a permanent member of the committee.

3. The members of the committee shall serve without pay, but the board of supervisors may, in its discretion, reimburse each member other than the county assessor for actual and necessary expenses incurred in the performance of his duties.

4. The county assessor shall be the chairman of the committee.

B. *Power and duty.* The appraisal review committee shall have the power and duty to review appraisals to assure they are consistent with appropriate appraisal guidelines and practices, and to make recommendations thereon to the board of supervisors.

(Ord. 00-A.1(1))

Sec. A.1-107. 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 A.1-109; and (iii) the parcel shall obtain at least fifteen (15) points under the ranking criteria set forth in section A.1-108.

(Ord. 00-A.1(1))

Sec. A.1-108. Ranking criteria.

In order to effectuate the purposes of this chapter, parcels for which conservation easement 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.

A. *Open-space resources.*

1. The parcel adjoins an existing permanent conservation easement, a national, state or local park, or other permanently protected open-space: one (1) point for every five hundred (500) feet of shared boundary.

2. Size of the parcel: one (1) point for each fifty (50) acres.

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.

3. The number of usable development rights on the parcel: one-half (1/2) point for each usable development right to be eliminated, which shall be determined by subtracting the number of usable development rights to be retained from the total number of usable development rights.

C. *Natural, cultural and scenic resources.*

1. Mountain protection: one (1) point for each one thousand (1000) feet of mountain ridge, as shown on county mountain overlay maps.

2. Working family farm, including forestry: five (5) points if at least one family member's principal occupation and income (more than half) is farming or foresting the

parcel; three (3) points if at least one family member produces farm products derived from the parcel.

3. The parcel adjoins a road designated either as a Virginia scenic highway or byway, or as an entrance corridor under section 30.6.2 of Chapter 18 of the Albemarle County Code: one (1) point for each six hundred (600) feet of road frontage; or the parcel adjoins a public road: one (1) point for each one thousand (1000) feet of road frontage.

4. 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; two (2) points if the parcel is within the primary Monticello viewshed, as shown on viewshed maps prepared for Monticello and in the possession of the county.

5. The parcel contains an occurrence listed on the state natural heritage inventory: five (5) points.

6. The parcel contains class I, II or III soils, based on federal natural resources conservation service classifications: one (1) point for each fifty (50) acres containing such soils, for up to a total of five (5) points.

7. The parcel is within the South Fork Rivanna Reservoir Watershed or the Totier Creek Watershed: three (3) points; or the parcel adjoins the Ivy Creek, Mechums River, Moormans River, Doyles Creek, Buck Mountain Creek, South Fork Rivanna Reservoir, Rivanna River, Totier Creek Reservoir, Jacob's Run, or the Hardware River: one-half (1/2) point for each one thousand (1000) feet of frontage.

8. The parcel adjoins a waterway designated as a state scenic river: one-half (1/2) point for each one thousand (1000) feet of frontage.

9. The parcel is subject to a permanent easement whose primary purpose is to establish or maintain vegetative buffers adjoining perennial or intermittent streams, as those terms are defined in Chapter 17 of the Albemarle County Code: one (1) point for each one thousand (1000) feet of buffer that is between thirty-five (35) and one hundred (100) feet wide; two (2) points for each one thousand (1000) feet of buffer that is greater than one hundred (100) feet wide. If the owner voluntarily offers in his application to place the parcel in such a permanent easement, then the above-referenced points may also be awarded.

10. The parcel is within a sensitive groundwater recharging area identified in a county-sponsored groundwater study: one (1) point.

D. *County fund leveraging.* State, federal or private funding identified to leverage the purchase of the conservation easement: one (1) point for each ten (10) percent of the purchase price for which those funds can be applied.

(Ord. 00-A.1(1))

Sec. A.1-109. 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.* 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. *Protection of mountain resources.* If the owner voluntarily requested in his application that the parcel be awarded points during the evaluation process pursuant to section A.1-108(C)(1) for mountain protection, the deed of easement shall assure that the parcel is used and maintained in a manner consistent with the comprehensive plan.

C. *No buy-back option.* The owner shall not have the option to reacquire any property rights relinquished under the conservation easement.

D. *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.

E. *Designation of easement holders.* The county and one or more other public bodies, as defined in Virginia Code § 10.1-1700, and designated by the board of supervisors shall be the easement holders of each easement. The public body or bodies who may be designated by the board shall include, but not be limited to, the Albemarle County Public Recreational Facilities Authority and the Virginia Outdoors Foundation.

(Ord. 00-A.1(1))

Sec. A.1-110. 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 ACE 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 Albemarle 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 assessor or an independent appraiser to appraise the property; and (ii) state his adjusted gross income for the three (3) prior tax years, as explained in section A.1-111(B). 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 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: (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 July 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 A.1-107 and, if it does, shall determine the number of points to be attributed to the parcel by applying the criteria set forth in section A.1-108. The program administrator shall then rank each parcel scoring at least fifteen (15) points under the criteria set forth in section A.1-108, with the parcel scoring the most points being the highest ranked and descending therefrom. The program administrator should submit the list of ranked parcels to the ACE committee by August 1.

F. *Evaluation and ranking by ACE committee.* The ACE 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 September 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 ACE 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 assessor or by an independent qualified appraiser chosen by the county. Each appraisal should be completed by October 1. Each completed appraisal shall be submitted to the program administrator and the owner. The program administrator shall forward each appraisal to the appraisal review committee, which shall review each appraisal and make recommendations thereon to the board of supervisors by November 1.

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.

(Ord. 00-A.1(1))

Sec. A.1-111. 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 A.1-110(D), 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. The size of the pool shall be based upon the funds available for easement purchases in the current fiscal year and the purchase price of each conservation easement in the pool established under section A.1-111(B).

B. *Determining purchase price.* The purchase price of a conservation easement shall be calculated by multiplying the appraised value by the applicable percentage of appraised value set forth in the table below. The average annual adjusted gross income shall be based on the aggregate of the annual adjusted gross income of each owner of record and the members of his or her immediate family in each of the three (3) most recent tax years. In the case of a parcel owned by an entity such as a corporation, partnership, limited liability company, trust or estate, the average annual adjusted gross income of the owner shall be based on the aggregate annual adjusted gross incomes of the shareholders, partners, members, grantor, beneficiaries or decedent, as the case may be.

Average Annual Adjusted Gross Income	Percentage of Appraised Value
\$ 0 - \$50,000	100%
\$50,001 - \$60,000	94%
\$60,001 - \$70,000	88%
\$70,001 - \$80,000	82%
\$80,001 - \$90,000	76%
\$90,001 - \$100,000	70%
\$100,001 - \$110,000	64%
\$110,001 - \$120,000	58%
\$120,001 - \$130,000	52%
\$130,001 - \$140,000	46%
\$140,001 - \$150,000	40%
\$150,001 - \$160,000	34%
\$160,001 - \$170,000	28%
\$170,001 - \$180,000	22%
\$180,001 - \$190,000	16%
\$190,001 - \$200,000	10%
\$200,001 or more	4%

C. *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 the purchase price, 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 a form offer to be returned by the owner if the owner desires to offer to sell a conservation easement.

D. *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 Albemarle, 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.

E. *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. An offer shall not be accepted by the board 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.

F. *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 Albemarle. A single conservation easement may be established for more than one parcel under the same ownership.

G. *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.1-110(E).

H. *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.

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

(Ord. 00-A.1(1))

Sec. A.1-112. Program funding.

The ACE program may 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.

(Ord. 00-A.1(1))

Sec. A.1-113. Program non-exclusivity.

The ACE 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.

(Ord. 00-A.1(1))

I, Ella W. Carey, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of _____ to _____, as recorded below, at a regular meeting held on _____.

Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Bowerman	_____	_____
Ms. Humphris	_____	_____
Mr. Dorrier	_____	_____
Mr. Martin	_____	_____
Mr. Perkins	_____	_____
Ms. Thomas	_____	_____