

ARTICLE II. - RURAL AND CRITICAL LANDS PRESERVATION PROGRAM

Sec. 26-26. - Title.

This article shall be known as the "Rural and Critical Lands Preservation Program Ordinance."

(Ord. No. 2019/47, 10-28-2019; Ord. No. 2019/48, 10-28-2019)

Sec. 26-27. - Purpose.

It is the purpose of this article to:

- (1) Provide a means by which rural and critical lands may be protected and enhanced as economic and environmental resources of major importance.
- (2) Encourage landowners to make a voluntary long-term commitment to rural and critical land protection by offering landowners financial incentives and security of land use.
- (3) Preserve open space; protect critical and natural resources; and/or provide land for passive recreation.
- (4) Leverage federal, state, local, and private conservation efforts and development rights purchase funds and protect the investment of taxpayers in purchased and donated conservation easements.
- (5) Provide a means whereby rural landowners can maintain and preserve the rural character of their land through land conservation.
- (6) Provide compensation to landowners in exchange for their relinquishment of the right to develop their private property.
- (7) Reduce and defer the need for major urban infrastructure improvements in the rural areas of the county and the expenditure of public funds for such improvements.
- (8) Provide for the purchase of fee simple interests in lands deemed critical to provide for the protection of the natural resources, historic and cultural significance, passive recreation, viewscales and lands suitable for public use in a manner consistent with its conservation values.
- (9) Provide for purchase of development rights and fee simple interest in lands threatened by development, which if it occurs will have detrimental effects on land use patterns, traffic, public safety, stormwater runoff, water quality or other conservation objectives.
- (10) Provide for purchase of development rights on rural lands, which provide protection of natural resources and stability of agricultural, timber and other open space uses.

(Ord. No. 2019/47, 10-28-2019; Ord. No. 2019/48, 10-28-2019)

Sec. 26-28. - Findings.

- (a) Rural and critical lands in many parts of the county are under significant development pressure from expanding urban areas.
- (b) This urban pressure takes the form of scattered development in wide belts around urban areas and brings conflicting land uses into juxtaposition, creates high costs for public services, and stimulates land speculation.
- (c) Many of the rural and critical lands in the county are in jeopardy of being lost due to these activities.
- (d) These rural and critical lands constitute unique and irreplaceable land resources of countywide importance.
- (e) There are additional critical lands which are also valued natural and ecological resources which provide open space for wildlife habitat, wildlife corridors, clean air, clean water, groundwater recharge, and protection of cultural resources.
- (f) It is the declared policy of the county to provide a voluntary program to acquire or otherwise permanently protect rural lands and other lands containing critical natural, cultural and historic resources.
- (g) It is the policy of the county that rural and critical lands are valued natural and ecological resources which provide certain needed open space for wildlife habitat, wildlife corridors, clean air, clean water, groundwater recharge, and protection of historic and cultural resources.
- (h) It is the policy of the county to provide opportunities, through the purchase of development rights, to landowners to protect agricultural lands so that they may continue to farm the land, as well as to acquire such rights to protect other parcels where the landowner wishes to retain an ownership interest.

(Ord. No. 2019/47, 10-28-2019; Ord. No. 2019/48, 10-28-2019)

Sec. 26-29. - Definitions.

The following words and terms shall have the meaning respectively ascribed to them in this section:

Conservation easement means a non-possessory interest of a holder in real property imposing restrictions or affirmative obligations as defined in S.C. Code, § 27-8-20, or as defined in 26 U.S. Code Section 170(h).

- (1) These easements could take the form of an agricultural conservation easement, which would be rights and restrictions encumbering a property primarily for the purpose of protecting the agricultural soils, including prime, statewide, and locally important agricultural soils, viability, and productivity of that property.

County means Beaufort County, South Carolina.

County council or *council* means the elected County Council of Beaufort County, South Carolina.

Critical lands means any lot(s), tract(s), parcel(s), or areas(s), within the county that possess unique, significant, or important characteristics as may be identified by the rural and critical land preservation board and subject to final approval by county council. "Unique, significant, or important characteristics" include, but are not limited to, protection of cultural and historic resources and sites, the potential for medium to high density development, the ability to use the land for public access and passive recreation, the ability to use the land for public access to waterways, the ability of the land to be used for the preservation of public views of waterways or other scenic vistas, the quality of the land for purposes of a wildlife sanctuary, or such other and further characteristics which may be used to further the goals of council.

Development right means the right to legally develop or subdivide property under current county codes and ordinances. The term includes, but is not limited to, the right to develop property for any commercial, industrial or residential use except as expressly permitted by this article and as further defined by the Beaufort County Community Development Code, as adopted and amended by county council.

Easement holder means a holder as defined by S.C. Code, § 27-8-20(2), or a qualified organization as defined by 26 U.S. Code Section 170(h)(3).

Greenprint means the most recent Beaufort County Council approved version of the map of identified and prioritized parcels for acquisition under the county's rural and critical lands preservation program.

Landowner means the record owner of the land or the authorized contract purchaser of the land.

Land preservation board or *board* means the Beaufort County Rural and Critical Lands Preservation Board established by county council as more fully described in County Code of Ordinances chapter 2, sections 2-281 through 2-290.

Land trust means a nonprofit land conservation organization accredited by the land trust alliance which meets the requirements of Internal Revenue Code Section 170 and is active in conservation efforts in the county or state.

Passive park means any fee-simple county owned or co-owned property purchased with rural and critical lands preservation program designated funding as adopted by the Beaufort County Council. A list of passive parks is available with the passive parks manager upon request and/or on the Beaufort County website. Properties not designated by the council as a passive park may still be managed through the passive park program/manager.

Passive recreation means recreation requiring little or no physical exertion focusing on the enjoyment of one's natural surroundings. In determining appropriate recreational uses of passive parks, the promotion and development of resource-based activities such as fishing, camping, hunting, boating, gardening, bicycling, nature studies, horseback riding, visiting historic sites, hiking, etc., shall be the predominant measure for passive park utilization.

Resource conservation area means those areas of land in the county designated as "resource conservation areas" on the Zoning Map of Beaufort County, as adopted and amended by county council.

Restrictive easement means rights and restrictions encumbering a property primarily for the purpose of limiting development on that property that would be incompatible with the United States of America's mission of Marine Corps Air Station Beaufort.

Rural land means any lots, tracts, parcels that are zoned for low-density residential, rural, agricultural or farming uses, or which are being used, or which have the ability to be used, for such purposes, including, but not limited to, wildlife management or recreation. Rural lands possess unique, significant, or important characteristics as may be identified by the Beaufort County Rural and Critical Land Preservation Board and subject to final approval by the county council. Unique, significant, or important characteristics include, but are not limited to, protection of farmland, prime soils,

other working landscapes, river frontages, small marsh islands, wildlife corridors, fresh and saltwater wetlands, and land on the urban-rural edge or immediately outside the municipal boundary under threat of development or such other and further characteristics which may be used to further the goals of the county.

Any terms left undefined by this section shall take the meaning as otherwise defined by the Beaufort County Community Development Code, as adopted and amended by county council. In the event of conflicting meanings, the definitions of this section shall control.

(Ord. No. 2019/47, 10-28-2019; Ord. No. 2019/48, 10-28-2019)

Sec. 26-30. - In general.

- (a) The county council may designate by resolution any policies, procedures, rules and regulations for the purpose of regulating the rural and critical lands preservation program, its operation and funding, and may request and receive recommendations from the rural and critical lands preservation board.
- (b) The county shall retain a rural and critical lands preservation program land acquisition contractor who shall be trained and properly qualified for the work and who shall work with the county community development department, or other county staff as assigned, to procure, dispose of, and administer real estate and land rights for the county which have been procured through the rural and critical lands preservation program in accordance with the county's purchasing policies and procurement code.

(Ord. No. 2019/47, 10-28-2019; Ord. No. 2019/48, 10-28-2019)

Sec. 26-31. - Types of acquisitions.

There are two types of property interests that can be acquired under the provisions of this article, the purchase of development rights and the purchase of fee simple interests.

- (a) *Purchase of development rights (PDR)*. Development rights will typically be purchased in areas designated "rural land", although there may be instances where PDR may be appropriate for purchase in other zoning designations. Generally, properties considered for PDR are those areas of the county where one or more of the following apply:
 - (1) There are conservation values in or on the property to be preserved.
 - (2) Development of the property would result in adverse impacts to the environment or public infrastructure serving the property.
 - (3) The character of the property and its surrounding area would be threatened by proposed or possible future development.
 - (4) The owner wishes to retain ownership of the property.
 - (5) Public access to the property is not required or desirable.

The development rights purchased shall be transferred to Beaufort County by a deed of development rights. If the development rights are to be purchased, the property may also be subject to the provisions of a conservation easement, and/or other applicable legal instruments as approved by Beaufort County Council which will assure that the property is protected from development other than what is permitted by the PDR agreement, the conservation easement, and/or any other legal instruments as approved by Beaufort County Council.

- (b) *Purchase of fee simple interests (PFSI)*. Fee simple interests shall be applicable in all areas of the county, including those designated as "rural land". Generally, properties considered for PFSI are those where the property owner(s) are willing to sell in those instances where one or more of the following apply:
 - (1) There are conservation values in or on the property to be acquired and the owner is only willing to sell all of their interest in the property.
 - (2) Public access to the property is required or desirable.
 - (3) Development of the property for public access and passive recreation use is desirable.
 - (4) Development of the property would result in adverse impacts to the environment or public infrastructure serving the property.

(Ord. No. 2019/47, 10-28-2019; Ord. No. 2019/48, 10-28-2019)

Sec. 26-32. - General process.

- (a) The PDR and PFSI is a multi-step process within the rural and critical lands preservation program (RCLPP or program) whereby, at a

minimum:

- (1) The land preservation board receives initial acquisition applications and does or does not recommend due diligence authorization to county council.
 - (2) The county council does or does not authorize due diligence funding.
 - (3) The land preservation board receives acquisition proposals due diligence information and does or does not recommend acquisition approval to county council.
 - (4) The county council does or does not approve acquisition proposal.
- (b) The PDR and PFSI is also an application process within the RCLPP whereby the following apply:
- (1) Generally, eligible applicants are those individual property owners, land trusts, environmental advocacy organizations, or municipalities located in Beaufort County where property has been identified on the most recent version of the Greenprint.
 - (2) An application form shall be completed and submitted, as provided and instructed on the county website.
 - (3) Applications will be compiled and reviewed by the appropriate county staff and the land acquisition contractor on no less than a quarterly basis.
 - (4) Eligible applications will be provided to the land preservation board where they will discuss, prioritize, and recommend to the county natural resource committee (NRC) for due diligence approval.
 - (5) The board recommendation will be presented to the NRC, or other committees as may be appropriate or required, where a decision to fund due diligence will or will not be approved for each application.
 - (6) If approved by the NRC, the land acquisition contractor will proceed with obtaining due diligence, which will be reviewed and each application ranked by the appropriate county staff and contractor upon completion utilizing the board adopted ranking forms.
 - (7) Applicant due diligence will be presented to the land preservation board where they will discuss, prioritize, and make a recommendation to the NRC for acquisition approval.
 - (8) The board recommendation will be presented to the NRC committee or, with the consent of the chair of the natural resources committee, may also be brought before the executive committee where a recommendation to acquire will or will not be made to county council for approval. The matter may also be presented directly to county council upon consent of the chair of the natural resources committee.
 - (9) The NRC or executive committee recommendation and applications will be presented to the full county council for final approval.
 - (10) All closing documents will be provided to the county attorney no less than three days prior to closing for review and approval.
 - (11) All contractual discussions by the board, NRC, or council may or may not be in executive session, as permitted by the South Carolina Freedom of Information laws.

(Ord. No. 2019/47, 10-28-2019; Ord. No. 2019/48, 10-28-2019)

Sec. 26-33. - Due diligence.

Any PDR or PFSI will be subject to all due diligence being satisfactorily completed, reviewed and approved by the county. All due diligence shall be reviewed by the appropriate county staff before being sent to county council for action. Due diligence shall include, but may not be limited to:

- (1) An appraisal of the value of the interest being acquired prepared by a member of the appraisal institute (MAI), or other appropriately licensed or certified South Carolina Appraiser.
- (2) A boundary survey completed by a South Carolina Registered Land Surveyor. In those instances of PFSI, a topographic survey, tree survey, archaeological survey, or other due diligence items shall also be obtained when appropriate.
- (3) A phase I environmental assessment by a qualified environmental consulting firm. In instances where the phase I report so indicates, a phase II environmental assessment including a plan for any remediation, by the seller or purchaser, is required for the property to address the concerns to the satisfaction of the county.
- (4) When warranted by the community development department or the land acquisition contractor as a part of due diligence, a title search, title opinion, and/or title insurance commitment with only normal title exceptions.

(Ord. No. 2019/47, 10-28-2019; Ord. No. 2019/48, 10-28-2019)

Sec. 26-34. - Conservation easements.

- (a) Conservation easements may be placed on property where development rights have been acquired (subsection 26-31(a)).

- (b) The conservation easements shall be granted directly to an appropriate easement holder by the owner, or by the county. The RCLP board recommend an appropriate easement holder to county council.
- (c) The stewardship funding required by the easement holder to defend and provide the necessary annual monitoring required for the easement may be granted by the county for the easement depending on the nature of the agreement reached between the county and the easement holder.
- (d) When the county and Marine Corps Air Station (MCAS) Beaufort collaborate on a PDR acquisition, an appropriate restrictive easement will be applied to the acquired property.

(Ord. No. 2019/47, 10-28-2019 ; Ord. No. 2019/48, 10-28-2019)

Sec. 26-35. - Covenants and restrictions.

- (a) Covenants and restrictions may be placed on property where development rights have been acquired.
- (b) Generally, covenants and restrictions will describe in some detail how a property is to be developed, used and maintained consistent with the conservation values of the property.

(Ord. No. 2019/47, 10-28-2019 ; Ord. No. 2019/48, 10-28-2019)

Sec. 26-36. - Resale, swap, condemnation or lease of acquired property.

There may be instances where property acquired under the RCLPP for its conservation value(s), and possibly to mitigate the impacts of development, may not be suitable or needed for county ownership in the future. In such cases, the county council may request the RCLP board to evaluate and make a recommendation on selling, swapping or leasing the property, in whole or in part.

- (a) In those instances, the RCLP board shall be guided by the following:
 - (1) To ensure that the resale, swap or lease of the property, in whole or in part, will not have an adverse impact on the conservation value(s) of the property, which can be assured through the placement of a conservation easement or other appropriate instruments on the sold, swapped or leased property if necessary.
 - (2) To ensure that the development of the property for use(s) permitted under a conservation easement will be carefully monitored by the easement holder.
- (b) Additionally, the following will apply:
 - (1) Any RCLPP property considered for sale, swap or lease shall require appropriate action by a two-thirds majority of the county council following prescribed procedures for sale, swap or lease of county-owned land.
 - (2) If all or part of a RCLPP property is sold, swapped or condemned, the county and any co-owners will be entitled to respective ownership ratio compensation of any net proceeds, after payment of all closing expenses.
 - (3) Any RCLPP property sold, swapped or condemned will have the county's portion of any proceeds deposited into the land preservation fund for use in future RCLPP acquisitions.
 - (4) Any RCLPP property leased by the county will have any proceeds deposited into the passive parks fund for use in management and maintenance of RCLPP passive parks.

(Ord. No. 2019/47, 10-28-2019 ; Ord. No. 2019/48, 10-28-2019)

Secs. 26-37—26-49. - Reserved.