

OPEN SPACE AND AGRICULTURE PRESERVATION (OSAP) MANUAL

PURPOSE AND EFFECT

This Open Space and Agriculture Preservation (OSAP) Manual is adopted pursuant to Article X of Chapter 26 of the Chesapeake City Code ("OSAP Ordinance"). This Manual is intended to supplement the OSAP Ordinance by providing for the administration and enforcement of the provisions contained therein. This Manual shall be considered a part of the OSAP Ordinance but in no event shall it supersede the provisions of the City Code. This Manual shall be interpreted and applied in a manner consistent with the terms, purpose and intent of the OSAP Ordinance.

AMENDMENT

This Manual may be amended from time to time by the City Manager or if the City Manager so delegates this authority by the OSAP Program Administrator. All amendments shall be consistent with the OSAP Ordinance.

DEFINITIONS

The words and phrases used in this Manual shall have the same meaning as set out in Section 26-574 of the City Code.

ADMINISTRATION

The OSAP Program shall be implemented and enforced by the Program Administrator appointed by the City Manager. The Program Administrator shall have the following duties:

1. Interpret, administer and enforce the OSAP Ordinance, including this Manual.
2. Generate, approve and make available applications, forms, agreements and deeds. All agreements and deeds shall be approved by the City Attorney.
3. Receive, research and evaluate applications for eligibility to participate in the OSAP Program.
4. Implement review procedures for City staff and the Agricultural Advisory Commission ("Commission").
5. Provide training programs for the Commission.
6. Schedule Commission meetings, prepare staff reports, keep minutes at all open meetings and maintain all records relating to the OSAP Program.

7. Provide reports to the City Manager setting forth staff and Commission recommendations as to the purchase of development rights pursuant to voluntary application of the landowner.
8. Conduct inspections to evaluate property under consideration for the purchase of development rights and as otherwise may be necessary to administer and enforce the OSAP Ordinance.
9. Take steps to educate the public as to the benefits and availability of the OSAP Program.
10. Research and apply for grants to be used in support of the OSAP Program.
11. Undertake any other duties assigned by the City Manager under the OSAP Ordinance.

APPLICATIONS

The Program Administrator shall evaluate applications for purchase of development rights, determine eligibility and report to the Agricultural Advisory Commission concerning each application. Where more than one qualifying property is eligible for consideration, the Program Administrator shall refer the applications to the Agricultural Advisory Commission for ranking under the OSAP ranking system set out below.

OSAP RANKING SYSTEM

In determining rankings of priority for land competing for available funding, the Agricultural Advisory Commission shall apply the ranking criteria set out below. There are two (2) sets of ranking criteria for two categories: (1) agricultural lands and (2) open space (non-agricultural). The ranking system applies to the area proposed to be covered by the easement, which may not be the entire parcel or farm. In each category, certain factors descriptive of the characteristics of property sought to be preserved in the OSAP Program are included. Each factor is assigned a numerical weight signifying its importance relative to all other factors in that category. The 5 properties having the highest total scores shall be forwarded to the City Manager for consideration.

CATEGORY 1: AGRICULTURAL RESOURCES

- A. Quality of Farmland (Productivity Capability) - Constitutes 33% of the number of points in the system. Factors and points are as follows:**

<u>Factor</u>	<u>Points</u>
1. Size of Farm	
(a) 100 acres or more	15

(b)	60-99 acres	10
(c)	20 to 59 acres	6
(d)	10 to 19 acres	3
(e)	Less than 10 acres	0

2. Soils – Percentage in United States Department of Agriculture Natural Resources Conservation Service Land Capability Classification System Land Capability Class 1, 2E, 2W, 3W and 4W undrained, 3E, 2S, and 3S.

(a)	80% or more	15
(b)	60 to 79%	10
(c)	40 to 59%	6
(d)	20 to 39%	3
(e)	Less than 20%	0

3. Percentage of farm in cropland or pasture

(a)	80% or more	15
(b)	60 to 79%	10
(c)	40 to 59%	6
(d)	20 to 39%	3
(e)	Less than 20%	0

4. Percentage of farm in high-value crops

(a)	80% or more	15
(b)	60 to 79%	10
(c)	40 to 59%	6
(d)	20 to 39%	3
(e)	Less than 20%	0

5. Amount of animal units produced on the farm

(a)	Greater than 100 animal units	15
(b)	51 to 100 animal units	10
(c)	26 to 50 animal units	6
(d)	5 to 25 animal units	3
(e)	Less than 5 animal units	0

B. Likelihood of conversion to non-farm use (development pressure) constitutes 33% of the number of points in the system. Factors and points are as follows:

1. Urgency of circumstances favoring conversions

(a)	Farm subject to potential forced sale	5
(b)	Farm subject to estate settlement sale	10

(c)	Farm advertised for voluntary sale	6
(d)	Parcel owner is older than average of Chesapeake farmers according to most recent Ag Census	3
(e)	Other	0

Note: Advertised for voluntary sale would include a sign posted in the yard and/or listing on a real estate multiple listing service.

2. Farm suitability for residential conversion – percentage of well or moderately well-drained soils on the farm

(a)	80% or more	10
(b)	60 to 79%	8
(c)	40 to 59%	6
(d)	20 to 39%	3
(e)	Less than 20%	0

3. Percentage of farm offered to preservation program

(a)	90 or greater	10
(b)	70 to 89%	6
(c)	Less than 70%	0

4. Amount of public road contiguous to a farm

(a)	More than 1,000 linear feet	15
(b)	601 to 1,000 feet	12
(c)	301 to 600 feet	9
(d)	150 to 300 feet	6
(e)	Less than 150 feet	0

5. Percentage of farm in upland forest (excluding swamp)

(a)	80% or more	10
(b)	60 to 79%	8
(c)	40 to 59%	6
(d)	20 to 39%	3
(e)	Less than 20%	0

6. Purchase price is leveraged using other funding sources including but not limited to state, federal, foundation funding or private donations (0.12 points for each one percent of purchase price leveraged, up to 50%)

Up to 6

Note: For OSAP rounds using state or federal funding for the purchase of a portion or all of the development rights, all applicants would receive the maximum number of points.

C. Circumstances Supporting Agriculture – Constitutes 14% of the number of points in the system.

1. Number of Non-farm Rural Residences within one-half mile of the farm

(a)	0 to 3 dwelling units	10
(b)	4 to 7 dwelling units	8
(c)	8 to 12 dwelling units	5
(d)	13 to 18 dwelling units	3
(e)	more than 18 units	0

Note: Based on the Planning Department’s land use database, aerial photography, and/or site visits.

2. Proximity to other farms in the OSAP program or with other perpetual easements

(a)	Contiguous	10
(b)	Within ¼ mile	8
(c)	Within ½ mile	5
(d)	Within 1 mile	3
(e)	Greater than 1 mile	0

3. Proximity to significant or unique agricultural support services

(a)	Contiguous	10
(b)	Within 1 mile	8
(c)	Within 2 miles	5
(d)	Within 3 miles	3
(e)	Greater than 3 miles	0

Note: Based on input from the Agricultural Advisory Commission, GIS database layer, and/or site visits. *Significant or unique agricultural support services* means a commercial farm operation upon which the agricultural industry generally depends. The term includes, but is not limited to, suppliers of fertilizer, seed and plant protection products, equipment dealers, and large-scale buyers of farm products. Such uses must be lawfully permitted or conditional uses in the A-1 agricultural district under the City zoning district.

4. On-farm agricultural infrastructure and improvements

(a)	Headquarters farm	10
(b)	Functional farm buildings	5

- (c) No farm buildings 0

Note: Based on input from the Agricultural Extension Agent and/or other staff, and site visits. *Headquarters Farm* means a farm parcel which serves as a base of operations for a large scale farming operation, typically row crop or livestock. It may consist of equipment storage and repair shelters, grain storage facilities, livestock barns, seed and chemical storage buildings.

D. Historic and scenic features constitutes 8% of the number of points in the system.

1. Proximity to historic or cultural feature(s)

- (a) Exceptional features on the property 10
 - (1) Currently listed on the National Register as an individual structure or district
 - (2) Recommended for nomination to the National Register in the 1987 Reconnaissance Survey
 - (3) On-farm exceptional features favorable to preservation specifically identified on an intensive survey form accepted by the Virginia Department of Historic Resources
- (b) Exceptional features within ¼ mile 8
- (c) Exceptional features within ½ mile 7
- (d) Exceptional features further than ½ mile 0

2. Aesthetic value of forest on the farm

- (a) No significant timber harvest within last 20 years from the date of application 10
- (b) Significant timber harvest within last 11 to 20 years 4
- (c) Significant timber harvest within last 6 to 10 years 2
- (d) Significant timber harvest within last 5 years, land cut over within 10 years and not reforested, or land cut over within 5 years and not reforested 0

Note: Significant timber harvest constitutes a clearing of 50% or more of the woodland, which is based on information provided by the applicant.

E. Environmental Quality – constitutes 12% of the number of points in the system.

1. Proximity to areas identified as having high environmental value, such as state or federal parks, areas within the Dismal Swamp National Wildlife Refuge designated expansion boundary, exemplary wetlands, critical areas, medium density conservation corridor and endangered species habitat as shown in the “Natural Areas Inventory of the City of Chesapeake,” (DCR, Natural Heritage, 1998), and the “Conservation Plan for the Southern Watershed Area,” (DCR, Natural Heritage, 2001).
 - (a) Within or Contiguous 10
 - (b) Within ½ mile 8
 - (c) Within 1 mile 5
 - (d) Within 1 1/2 miles 2
 - (e) Greater than 1 ½ miles 0
2. Located in the Northwest River Watershed Protection District 10
3. Proximity of farm to perennial stream or waterway outside of the Northwest River Watershed Protection District and the Southern Watershed Area
 - (a) Farm either includes or is adjacent to perennial waterway 10
 - (b) All other 0
4. Located in the Fentress Overlay District
 - (a) Located in the APZ-1 10
 - (b) Located in noise contour 75 DNL or greater 9
 - (c) Located in noise contour 70-75 DNL 8
 - (d) Located in APZ-2 and/or noise contour 65-70 DNL 7

Note: The property shall not contain any land required to be reserved or set aside for open space, recreation, preservation, or similar purposes ... (Please refer to Section. 26-577 – Eligibility Requirements of the City Code for this and other limitations.)

CATEGORY 2: OPEN SPACE RESOURCES (NON-AGRICULTURAL) – NATURAL, HISTORIC, & SCENIC RESOURCES, AND CHARACTER OF URBAN DEVELOPMENT (MAXIMUM OF 110 points)

1. Size of Parcel or Batch
 - (a) 11 acres or more 6

	(b) 3 to 10 acres	5
	(c) Less than 3 acres	0
2.	Proximity to special natural habitat	
	(a) Property contains or is contiguous to endangered or threatened species habitat or is part of a the medium density conservation corridor as shown in the Conservation Plan for the Southern Watershed Area (DCR, Natural Heritage, 2001)	6
	(b) Within ¼ mile of such areas	3
	(c) Further than ¼ mile of such areas	0
3.	Property contains Resource Protection Areas or Resource Management Areas	6
4.	Property affords an opportunity to link open space or recreational resources	7
5.	Proximity to historic or cultural feature	
	(a) On-farm exceptional features favorable to preservation specifically identified on an intensive survey form accepted by the Virginia Department of Historic Resources	10
	(b) Exceptional features within ¼ mile	8
	(c) Exceptional features within ½ mile	7
	(d) Exceptional features further than ½ mile	0
6.	Property contains an archeological site	
	(a) Designated archeological site	6
	(b) Archaeological site eligible for designation	3
7.	Property contains distinct scenic resources such as mature forest, stands of trees, open fields	6
8.	Purchase price is leveraged using other funding sources including but not limited to state, federal, foundation funding or private donations (0.12 points for each one percent of purchase price leveraged, up to 50%)	Up to 6

Note: For OSAP rounds using state or federal funding for the purchase of a portion or all of the development rights, all applicants would receive the maximum number of points.

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| 9. | Urgency of circumstances favoring conversions | |
| | (a) Land subject to potential forced sale | 7 |
| | (b) Land subject to estate settlement sale | 5 |
| | (c) Land actively marketed for voluntary sale | 3 |
| | (d) Other | 0 |
| 10. | Land suitability for residential conversion – percentage of well or moderately well-drained soils on the land | |
| | (a) 80% or more | 8 |
| | (b) 60 to 79% | 6 |
| | (c) 40 to 59% | 4 |
| | (d) 20 to 39% | 2 |
| | (e) Less than 20% | 0 |
| 11. | Percentage of land offered to preservation program | |
| | (a) 90 or greater | 7 |
| | (b) 70 to 89% | 4 |
| | (c) Less than 70% | 0 |
| 12. | Land suitable for development in the Fentress Overlay District | |
| | (a) Located in the APZ-1 | 10 |
| | (b) Located in noise contour 75 DNL or greater | 9 |
| | (c) Located in noise contour 70-75 DNL | 8 |
| | (d) Located in APZ-2 and/or noise contour 65-70 DNL | 7 |
| | Note: The property shall not contain any land required to be reserved or set aside for open space, recreation, preservation, or similar purposes ... (Please refer to Section 26-577 – Eligibility Requirements of the City Code for this and other limitations.) | |
| 13. | Located in the Northwest River Watershed Protection District | 10 |
| 14. | Proximity to any of the following critical environmental areas:
Northwest River Watershed Protection District, wetlands, major floodplains, woodlands, perennial streams, and stream headwaters | |
| | (a) Property contains critical environmental area | 7 |

- (b) Property is within ¼ mile of critical environmental area 4
- (c) Property is further than ¼ mile 0

15. Amount of public road contiguous to land

- (a) More than 1,000 linear feet 8
- (b) 601 to 1,000 feet 6
- (c) 301 to 600 feet 4
- (d) 150 to 300 feet 2
- (e) Less than 150 feet 0

The ranking system points shall not be used in determining the value of development rights or the amount of any offer to purchase. Findings and recommendations of the Commission shall be final and unappealable. In the event of disagreement among the members of the Commission as to the number of points to be assigned to a given application, each member shall state the number of points he or she believes should be assigned and the average number of points so obtained, rounded upwards to the nearest point, shall constitute the decision of the Commission. In the event of a tie ranking, the Commission shall re-evaluate the tying application and shall give consideration to the factors listed in section 26-579. The Commission shall promptly transmit a report of its findings and recommendations to the City Manager. The recommendations of the commission shall include the identification of the 5 properties having the highest ranking under the OSAP criteria.

OFFER TO PURCHASE

Upon recommendation of the Commission to purchase development rights, the City Manager may consider up to 5 competing applications for possible purchase of development rights and may engage in simultaneous or successive negotiations with the landowners. Based on the outcome of the negotiations, the City Manager may recommend to the City Council that the City purchase development rights of one or more of the properties under consideration. The City may continue to purchase properties identified on the ranking list in subsequent years as long as there is a willing seller. The City Manager may also determine that no recommendation of purchase should be made.

As part of the negotiating process, the City Manager may, but is not obligated to, seek one or more independent appraisals to ascertain the value of the development rights of the property, which value shall be equal to the difference between the value of the property without encumbrance by a preservation easement and the value of the property so encumbered. In all cases, the fair market value of each existing single-family dwelling unit and of each lot reserved for a future single-family dwelling, as permitted under the definition of "agricultural use" in Section 26-574 of the OSAP ordinance, shall be deducted from the overall value of development rights. Prior to making an offer of purchase, the City Manager shall be required to engage a

qualified, independent appraiser to determine the value of the development rights under consideration for purchase. Upon review of the independent appraisal, the City Manager may make a written offer to purchase the development rights of the property. Prior to communicating any such offer, however, the City Manager may first elect to seek City Council's preliminary approval of the offer. In no event shall the offer be binding on the City or the applicant. All such offers shall be contingent on:

1. Available funding
2. City Council approval
3. Appropriation of funds
4. Execution of a purchase agreement
5. Absence of defects in title or other encumbrance that may adversely affect the City's interest in accomplishing the purpose of the OSAP Program. A lien or deed of trust is considered an unacceptable encumbrance unless released from the preservation easement area. In the event the City extends an offer to purchase an easement from an equitable owner, the trustee and/or lienholder must sign the deed of easement to release the deed of trust from the easement area.
6. Conveyance of a perpetual preservation easement to the City.

All written offers made to a landowner shall clearly state that:

- a. The offer is contingent on City Council approval, funding and appropriation
- b. The funds used to purchase development rights may include federal and state monies subject to restrictions on use
- c. The offer is revocable by the City at any time prior to the authorized execution of a purchase agreement
- d. The offer is contingent on the landowner's execution of a purchase agreement and preservation easement acceptable to the City Attorney
- e. The acceptance of the offer by the landowner may be revoked at any time prior to execution of the purchase agreement
- f. The preservation easement will be perpetual and nonrevocable.

ACCEPTANCE OF OFFER BY LANDOWNER/ COUNCIL APPROVAL

In the event the offer is accepted by the landowner, the City Manager shall place the matter before the City Council for approval. The City Council may approve the purchase of development rights only with respect to such applications for which there is available funding, in a priority recommended by the City Manager, and only upon finding that the proposed terms and conditions of purchase, including the purchase price and manner of payment, are fair and reasonable and in furtherance of the purposes of this Ordinance.

RIGHTS ACQUIRED BY CITY

The acquisition of a preservation easement by the City shall not extinguish any rights of the landowner except for the right to develop, improve or use the property for any purpose other than open space or agricultural uses, and shall not by right confer upon the public any right of entry or access, or any other rights, express or implied, unless expressly stated in the preservation easement signed by the landowner.

The preservation easement shall be perpetual; however, the landowner or successor in interest to the property that is subject to the easement may petition the City Council to repurchase the development rights on such property upon the expiration of a minimum of twenty-five (25) years from the date on which the preservation easement is recorded. Such petition shall be considered pursuant to the criteria in Section 26-581 of the OSAP Ordinance.

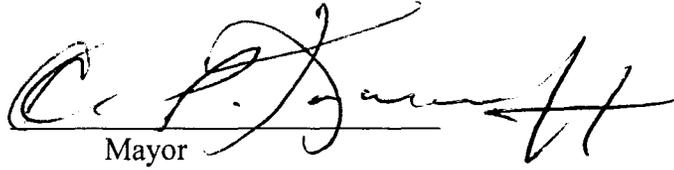
The Program Administrator shall immediately notify the Zoning Administrator and the Director of Planning upon a landowner's execution of the perpetual preservation easement. Within ten (10) days of such execution, the Zoning Administrator shall make a notation on the official zoning map to indicate the City's acquisition of development rights and the date thereof. No building permits shall be issued for such areas unless the Zoning Administrator verifies with the City Attorney that the proposed building or structure is permitted under the preservation easement.

ENFORCEMENT

The OSAP Ordinance, including this Manual, shall be administered, interpreted and enforced by the Program Administrator. The Administrator is authorized to inspect property participating in the Program to ensure compliance with the terms of the preservation easement and to issue notices of correction. Any violation of one or more terms of the preservation easement shall be deemed a violation of this article and shall be punishable as a class 3 misdemeanor. Each day of the violation shall constitute a separate violation.

ADOPTED by the Council for the City of Chesapeake, Virginia, this 15th day of August,
2017.

APPROVED:


Mayor