

# **RURAL PROTECTION TOOLS**

*Prepared by the Valley Conservation Council, September 2005*

## **Setting Goals**

## **Defined Growth Areas**

## **Green Infrastructure**

## **Land Use Taxation**

## **Zoning and Subdivision Regulations**

- Large-Lot Zoning**

- Maximum Lot Size**

- Agricultural Zoning**

- Exclusive Agricultural Zoning**

- Sliding Scale Zoning**

- Time Release Subdivision**

## **Agricultural and Forestal Districts**

## **Conservation Easements**

## **Purchase of Development Rights (PDRs)**

## **Open Space Design Development (Clusters)**

## **Historic Preservation**

- Surveys**

- Historic Designations**

- Local Historic Preservation Ordinances**

- Historic Easements**

- Certified Local Government Status**

## **Protection of Scenic Resources**

- Scenic Roads**

- Ridgeline Protection**

## **Prevention of Light Pollution**

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*Valley Conservation Council 17 Barristers Row Staunton VA 24401*

*www.valleyconservation.org 540.886.3541*

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### *Setting Goals*

**Rural Land Protection Goals** – Clear goals are an obvious but often overlooked foundation to an effective plan. Expressly stated goals are more likely to lead to action. They also can help the locality integrate its various and sometimes competing goals into a comprehensive vision.

There are many different aspects of “rural protection.” Examples include protecting natural resources, preserving rural character, preserving scenic quality, and maintaining viable agricultural and forestry sectors. Each focus requires a different approach.

However, they all have in common the fact that *appropriate land use* is the most effective way to protect these features. Keeping a landscape rural therefore rests in large part on traditional uses staying viable for landowners. VCC encourages counties to include in their comprehensive plans the stated goal of maintaining rural land uses such as farming and forestry.

**Rural Land Protection Programs** – With a clear goal, a county can target specific programs or initiatives to address agricultural issues and farmland protection. A first step is often to appoint an Agricultural Task Force to research local challenges and develop recommendations. This can lead to such steps as evaluating tax policy, reviewing zoning regulations, or establishing a purchase of development rights program.

### *Defined Growth Areas*

A successful rural protection program depends on accommodating population growth in a way that avoids sprawl. The principle of “growing in, not out” means protecting the integrity of the rural areas, while building communities that offer a high quality of life.

Defined growth areas are the way that counties can get serious about reducing sprawl. The county aligns both its development regulations and its capital improvements program toward steering new development into these defined growth areas. The most basic principle is to limit new infrastructure to growth area boundaries. This removes the density potential of parcels outside of the growth areas and increases demand for the land that the locality is prepared to serve with utilities.

Containing the geographic scope of infrastructure does much to contain costs. Unless a government makes the political and financial investment in its growth areas, it will be unlikely to draw development away from a sprawling pattern.

The locality can designate areas (growth areas or service districts) and specify that water and sewer connections be limited to those areas. It even can prevent connections to utility lines that cross properties outside the district.

Suggestions for Successful Growth Areas:

- water and sewer limited to designated boundaries
- zoned for density
- priority for infrastructure funding
- detailed plan for growth (e.g., streetscapes, parks, roads)
- zoning to achieve neighborhood amenities rather than just more density

### *Green Infrastructure and Rural Preserve*

The same goal (accommodating population while protecting rural assets) also can be approached from the opposite angle. A 'green infrastructure' approach looks first at identifying important natural resources and protecting the integrity of these areas from development. In contrast to the 'hard' boundary of a growth area, this could result in fingers of greenways integrated with parks and other open space within fully developed areas.

In rural areas, sites such as riparian corridors, surface water recharge areas, farming enclaves, and so on might be targeted for conservation. This would provide a reserve of farmland and forest for future needs. In some cases, there could even be a rural preserve. A major example is the state of New Jersey's plan to set aside significant parts of the "Highlands" to protect water supply for half the state.

The advantage of this approach is that it is strategic, as it focuses on protecting those areas that have the most environmental value. The benefits are more widespread, since citizens even in the densely populated sections can enjoy access to open space and the community can better address issues like stormwater management, flooding, and water quality. This approach also is more effective, since it can follow watersheds, ridgelines, and other natural boundaries.

### *Land Use Taxation*

Land use taxation, by lowering the tax burden on land kept in rural uses, is the most basic incentive a locality can offer landowners to keep their land undeveloped. The state allows localities to tax landowners based on how the land is used, rather than on its market value. Counties can designate any or all of four categories for the program: agricultural, forestal, horticultural, or open space lands. The local Commissioner of Revenue sets a use value rate for each category, based on the land's productive earning power. The locality also can set differing standards for eligibility. It even can limit eligibility to land in designated agricultural and forestal districts.

Whenever land is pulled out of the land use taxation program and developed, a 'roll-back' tax is collected. Some localities designate this revenue for farmland protection or related programs.

### *Zoning and Subdivision Regulations*

Local land use regulations are the primary determinant of the pattern of development. Zoning regulations specify what uses are allowed where, while subdivision regulations control how parcels can be subdivided. Zoning, however, is not a reliable protection tool. It is only temporary, since individual parcels can be rezoned to a different category and the regulations of a district can be changed. Zoning therefore tends to reflect rather than shape development pressure.

Each county has its own unique set of ordinances, the accretion of decades of policymaking. There is not a 'one-size fits all' solution. However, each zoning district can be evaluated along the following major considerations: 1) density level (how many dwelling units per acre), 2) permitted uses, 3) protection of environmental features (such as prohibition of development in floodplains), 4) timing of subdivisions, and 5) design of subdivisions. Development on the ground will reflect the answers to these basic questions. Below are some of the zoning measures that are typically used to try to control residential development in rural areas:

**Large-Lot Zoning** – Large-lot zoning sets a high minimum lot size that results in large house sites served by individual well and septic. Minimum lot sizes can range from 5 to 10 to 20 acres or more. Some localities even exempt from subdivision regulations 'large-lot divisions,' those in which all resulting parcels meet an even higher size threshold. This serves as an incentive to create artificially large residential lots.

Large-lot zoning has several failings. It leads to more sprawl by spreading the same population over a far greater area, increasing the cost of housing and limiting the county's future options for utilities. It does nothing to protect farmland, since it brings residents into agricultural areas, drives up the cost of land, and adds to potential conflicts over nuisance and roads. In particular, large-lot exemptions, if widely used, result in the development of significant land area for only a few households. (VCC does not advocate large-lot zoning unless it is part of comprehensive, well-thought-out growth policies and unless the lot size is large enough for a viable farm, which studies have found can be as high as between 50 and 100 acres.)

**Maximum Lot Size** – The opposite of a minimum lot size, a maximum lot size provision limits the size of lots in order to reduce consumption of prime farmland. As with clustering, the overall density is still based on total parcel size.

**Agricultural Zoning** - Too often perceived as a catch-all district for undeveloped ('vacant') areas, general agriculture districts typically allow varying degrees of residential development by right, as well as other uses by permit. As development pressure builds, piecemeal residential subdivision can compromise rural land uses and character. Facing this dilemma, counties often react either by drastically tightening the regulations in ag districts or going in the other direction and rezoning some areas out of agriculture.

**Exclusive Agricultural Zoning** – A locality can use different tiers of agricultural zoning. In exclusive ag districts, the only uses allowed are those involving or compatible with farming or forestry. The allowed density is typically lower as well. In some cases, standards are set to accommodate intensive ag operations such as poultry houses.

**'Ag Compatible' Uses** - As farmers face increased financial uncertainty and pressures, they may need expanded options of how they can use their property in order to stay on the land. Some counties are responding by seeking ways to broaden the nonresidential uses allowed. These efforts typically set criteria that address compatibility issues rather than trying to specify uses.

**Sliding Scale Zoning** – Rather than applying the same density standard everywhere, sliding scale zoning allows smaller parcels to be subdivided at a greater density than larger parcels. The intent is to allow most owners to divide at least once, but to reduce the overall potential development density of larger parcels. In one example, parcels less than 10 acres in size can have one division, those between 80 and 105 acres can be divided into 6 lots, and those greater than 200 acres can be divided into 11 lots, plus 1 lot for each additional 50 acres. This strategy can help forestall wholesale subdivision of large tracts, because of the diminishing returns as tract size increases.

**Time-Release Subdivisions** - A locality can limit how often a landowner can divide a parcel. The intent is to allow farmers a periodic flow of income from selling off pieces of their main asset, yet remove the incentive for land speculation. Developers will not be as interested in the land if they cannot quickly recoup their land purchase and development costs. This technique is employed in Augusta, Rockingham, and Shenandoah counties, the three most important agricultural counties in the region.

### *Agricultural/Forestal Districts*

An Agricultural and Forestal District ('ag district') is a voluntary agreement between farmers and the local government to maintain land in farming for a set term. When a district is established, landowners agree not to convert their farm or forest land to development for a period of between 4 and 10 years. In return,

the locality offers automatic land use taxation rates, protection from nuisance suits, and consideration of the district in local land-use planning. The Commonwealth also agrees not to take actions or make infrastructure investments that will place increased pressure on landowners to convert land. It is possible to stipulate that no hook ups are allowed on utility lines passing through districts.

Ag districts are stronger than zoning regulations. Landowners gain strength in numbers with their neighbors, making it known to all that this land, at least for the near term, is reserved for farming and forestry. It is, however, still only a temporary measure. As development pressure increases, district participation tends to drop.

Basic criteria for ag districts are as follows: 1) they are initiated by landowners and enrollment is voluntary; 2) a district must have a core of at least 200 acres in one or more contiguous parcels, 3) parcels can be included in the district if their closest boundary is within one mile of the core, or if they are adjacent to a parcel that is in the district, and 4) part or all of a parcel can be enrolled.

The use of ag districts has grown markedly. Of the 45 districts in the 11-county Valley region in 2002, 38 had been formed since 1990. Increasingly, both farmers and localities realize the need to react to development pressure. However, as development pressure has intensified, particularly in the Northern Valley, there has been a troubling negative trend. As the terms expire, significant amounts of acreage have been withdrawn from long-standing ag districts.

### *Conservation Easements*

A conservation easement is a voluntary agreement in which a landowner permanently limits the uses of the land while maintaining all other rights of ownership. The restrictions are binding on all future landowners.

Most conservation easements restrict uses that would destroy natural, scenic, or historic values while allowing traditional uses such as farming and forestry. Typically, conservation easements limit the number of parcels and the number of dwellings. Other common provisions are buffers to protect streams or views. Each easement is tailored to the site and to the owner's wishes. The terms are negotiated between the landowner and the easement holder, which is the entity that agrees to uphold the terms of the easement.

There are many types of conservation easements. Agricultural or open space easements protect farm or forest land, typically by entire parcel. Riparian easements cover just the areas adjacent to streams and have provisions relating to protecting water quality and wildlife habitat. Scenic easements contain provisions aimed at protecting the view from or of a certain location (such as the Skyline Drive). They may specify building envelopes. Historic easements are written to protect specified historic features.

Most easements are donated (and can have significant tax benefits). To qualify for a federal charitable deduction, an easement must be permanent and must be held by a qualified entity. The Virginia Outdoors Foundation holds most

easements in the state. Local land trusts, such as Valley Conservation Council, are another option. In addition, easements can offer a range of state tax relief and estate planning benefits.

Easements also can be purchased (as described below under Purchase of Development Rights). Another option is a combination of donation and purchase.

In recent years, there has been exponential growth in the Valley region in the use of easements. There are conservation easements in every county and, while the overall acreage is lower than in some portions of the state, the rate of growth is higher. The Piedmont region is particularly strong for easements. In Fauquier County alone more than 65,000 acres are protected by conservation easements, representing 15% of the county area.

### *Purchase of Development Rights (PDRs)*

A purchase of development rights (PDR) program enables a locality or other entity to purchase conservation easements. The protection is the same as with a donated conservation easement and the easement is still voluntary. In fact, an easement can be a combination of purchase and donation.

PDR programs offer key advantages to both the landowner and the community. The landowner gets to keep the land, and he also receives financial compensation for it. For some landowners, easement purchase can make a conservation easement a viable economic option. For communities, a PDR program can give the community a tool for guiding growth, reducing long-term infrastructure costs, and protecting particular sites. Studies estimate that localities can achieve significant long-term cost savings through buying conservation easements in the present and avoiding significant service costs later.

PDR programs can be established at any level of government. There are some nationwide PDR programs, such as the Federal Farm and Ranchland Protection Program. Many states, including most in the mid Atlantic, have statewide PDR programs. In addition, localities can establish PDR programs, as have about half a dozen in Virginia.

Local PDR programs typically accept applications from interested landowners once or twice a year. They develop a set of standards and criteria for ranking the proposed parcels. They then negotiate and make purchases based on how much funding the program has. Some programs have a set price per development right. Others use appraisals as a basis for setting a price.

A local PDR program can be funded through a variety of mechanisms. These include line item in the local budget, general revenue, roll-back taxes, a specific local tax, grants, and dedication of a particular windfall. Some of the most effective programs in the nation structure a PDR financing package that includes borrowing money at an advantageous interest rate and making payments to farmers on an installment plan. For more information on funding options, contact Valley Conservation Council.

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## *Open Space Design Development*

In open space design development (sometimes referred to as “clustering”) the density, or number of lots, is based on the entire parcel, but the lots are sited on just a portion of the parcel. The remainder is set aside as ‘open space.’ For example, a 100-acre parcel at a base density of 1 dwelling unit per 10 acres and a minimum lot size of 2 acres would result in 20 developed acres (holding 10 residences on 2-acre lots) and an undeveloped residual of 80 acres. The residual acreage can be available for continued farming or other rural use or it can be incorporated into the development as common open space.

Localities can set different standards for different purposes. For example, in agricultural zones, the emphasis might be on maintaining a sizeable contiguous area to enable continued farming or forestry. One county for example requires that 85% of the parcel be reserved in this way. Other ordinances may specify that environmental features be protected. Or provisions might address the suitability of the reserved open space to ensure that it is usable and appealing for common open space. All of these strategies recognize that the open space should be ‘designed’ in its own right, to serve specific purposes, rather than merely be the ‘leftover’ portion after house sites are chosen.

One variation to open space design is requiring minimum open space requirements. Some communities have varying minimum open space requirements for various zoning districts, including multi-family and commercial.

The benefits of clustering include the opportunity to protect natural areas, scenic views, and other assets during development as well as somewhat reduced land consumption. It is not, however, generally effective for farmland preservation because it brings nonfarming residences directly into farming areas, increasing potential for conflicts and driving up land prices and the pressure to sell for development. These developments are neither community nor rural. Well and septic issues can surface over time. (VCC does not generally advocate clustering except in growth areas served by water and sewer.)

### Considerations in Regulating Open Space Design:

- Is the open space design optional or required? Optional programs may need to offer incentives, such as density bonuses or streamlined review process, to encourage its use.
- In what areas is it offered? Some ordinances set different open space requirements for different types of zoning districts.
- What percentage of open space is required? Different amounts may be required in different districts. Some communities have minimum open space requirements for residential, commercial, multifamily, and rural.
- How many units can be clustered? Too many units can overwhelm a site and raise concerns over groundwater pollution.
- What are the standards for the open space? The purpose(s) should be stated to guide regulation. Contiguous blocks may be appropriate for

farming preservation, staying below the ridge line for protection of steep slopes and scenic views; and avoiding sensitive areas for protecting the environment. In residential areas, standards can ensure that open space is usable for active or passive recreation.

### *Historic Preservation*

Preserving historic resources is vital to maintaining the extensive cultural heritage of the Shenandoah Valley region. While the most obvious historic sites are in towns and cities, many of the region's historic resources are in rural settings, such as the farms that define the Valley landscape.

The three main steps to historic preservation are 1) identification, 2) recognition, and 3) protection. Identification means inventorying the historic resources in a community and understanding their importance. Designations provide recognition for particularly significant sites, but do not protect them. Protection comes only through local preservation ordinances or through a property owner placing a historic easement.

#### What Localities Can Do:

- Have complete and thorough surveys of architectural and archaeological resources.
- Link survey data to the planning process (at a minimum mapping properties or districts that are on or eligible for the National Register)
- Consider nominating historic districts.
- Designate and protect publicly owned historic properties.
- Consider enacting a local historic preservation ordinance.
- Seek Certified Local Government status

**Surveys** - Not all historic properties that would qualify for listing have been identified or nominated. In fact, the assessment of historic resources is far from complete throughout the region. Many counties do not have a complete reconnaissance level architectural survey meeting state standards. All have some level of survey, but in some cases they may not be as thorough or complete as they should. The Virginia Department of Historic Resources (VDHR) ranks how well each locality has assessed its architectural and archaeological resources.

**Historic Designations** - The National Register of Historic Places and the Virginia Landmarks Register recognize properties of significant historic importance and integrity. The National Register is the official list of structures, sites, objects, and districts that embody the "historical and cultural foundations of the nation." The state uses the same nominating process and criteria for its

counterpart, the Virginia Landmarks Register. These designations convey information, confer honor, and heighten awareness, but they do not restrict property owners in any way.

Designation raises understanding of the historical significance of a particular site, enhancing the likelihood that it will be maintained and protected. Designation also can potentially qualify owners for technical assistance and tax incentives to restore listed properties.

Districts can be listed on the National Register. National Register historic districts are collections of buildings or sites. These can range from downtown commercial areas, older neighborhoods, or even agricultural complexes. Historic districts also can follow a theme, such as military or education.

Listing as a National Historic Landmarks is an even higher level of distinction, given only to properties of historical significance to the nation. There are 11 NHL sites in the region.

**Local Historic Preservation Ordinances** - Localities can adopt regulations to protect the integrity of their historic areas. Most historic district ordinances aim at ensuring that any changes (new construction, additions, and substantial repairs) are compatible with historic character. Typically this is done through an overlay district, with proposals evaluated by an architectural review board.

Local historic preservation districts are more common in cities than in counties. Five of the seven cities in the Valley region have local historic districts. Three counties have overlay districts in their ordinances (Frederick, Highland, and Rockbridge), but only Frederick applies the overlay, and then to only a small area.

**Historic Easements** - Historic easements ensure that the characteristics that give a property its historical integrity will not be destroyed. The Virginia Board of Historic Resources holds or enforces these easements. As with conservation easements, the underlying ownership does not change. There were 24 historic easements in the VCC as of 2002. Many covered properties owned by the public or nonprofit groups.

**Certified Local Governments** - Localities that qualify as Certified Local Governments (CLGs) are eligible for grants and training from the state. The grants can be used to survey architectural and archaeological resources, prepare nominations to the National Register of Historic Places, create preservation planning documents and programs, create public education programs, and rehabilitate publicly owned buildings listed on the National Register. One of the requirements is having a local historic district ordinance. The City of Winchester is the only CLG in the Valley region. For information, contact the Virginia Department of Historic Resources, [www.dhr.virginia.gov](http://www.dhr.virginia.gov); Winchester Regional Preservation Office, 540 / 722-3427.

### *Protection of Scenic Resources*

Preserving scenic views and vistas is particularly important for the Valley region, because its pleasing scenery is one of its most distinguishing features. The Skyline Drive and Blue Ridge Parkway are world-class attractions, and derive their popularity from their spectacular views. Tourism and nature-based leisure draw on the beauty of the region and have significant economic impact. On a daily basis, residents value the beauty of their natural surroundings.

#### Ways to Preserve Scenic Views

- Maintain farmland and forestland
- Control signs
- Develop corridor plans and overlay districts
- Minimize the visibility of cell towers and other structures
- Use scenic designations (like Virginia Byways and Virginia Scenic Rivers)
- Site rural buildings to their context
- Use viewshed easements around particularly important sites
- Minimize ridgeline development
- Use open space development designs
- Set standards for outdoor lighting

**Scenic Road Designations** -The Valley region is widely known for its scenic beauty. As would be expected, a number of its roadways have received various scenic designations. However, many worthy roads are not designated.

**Virginia Byways** - The Scenic Highways and Virginia Byways Act authorizes the Commonwealth Transportation Board to recognize specific roads for their outstanding features. A Scenic Highway is defined as a road that is built within a protected corridor. Virginia Byways are existing roads with significant aesthetic and cultural values, leading to or lying within an area of historical, natural, or recreational significance.

Designation does not bring any state regulation and does not prevent future road improvements. Any land-use controls are decided upon and applied at the local level. Virginia Byway status encourages local governments to adopt land use measures to protect these resources for the enjoyment of future generations.

To qualify for Virginia Byway status, a road must substantially meet these criteria: 1) The route provides important scenic values and experiences; 2) There is a diversity of experiences, as in the transformation from one landscape to another; 3) The route links together or provides access to significant scenic, scientific, historic, or recreational points; 4) The route provides opportunity to leave high-speed routes for variety and leisure in motoring; 5) Landscape controls or monitoring along the route is feasible; and 6) The route affords opportunities for the provision of features which will enhance the motorist's enjoyment of the byway.

Many Virginia Byways pass through multiple localities. Some counties or citizen groups make concerted efforts to designate qualified scenic roads. In this way, byway designations can build on tourism or historical themes and can be coordinated with other county programs.

**Other Designations** – Localities also can develop designations that suit their particular resources. For example, Alleghany County is developing the Jackson River Scenic Trail. The Board of Supervisors voted to ban all motorized vehicular traffic from this future hiking and biking trail. The county established a committee to address development of the trail and a sister committee to concentrate on use of the Jackson River itself.

**Virginia Scenic Rivers Program** - The Virginia Scenic Rivers Program identifies, recognizes, and provides a level of protection to rivers or streams whose scenic beauty, historic importance, recreational significance, and natural characteristics make them important resources.

Scenic Rivers must meet a rigorous assessment based on 11 criteria. Typically, a local government requests an evaluation. If a segment is deemed eligible, a local legislator must sponsor designation by the General Assembly.

In the VCC region, two rivers have been designated Scenic Rivers, the James River in Botetourt County and the St. Mary's River in Augusta County. The North

Fork of the Shenandoah River in Shenandoah and Warren counties has been qualified but not designated. A number of other rivers have been identified as potentially eligible, particularly in Bath County.

**Ridgeline Protection** - The mountainous topography of the region means that a panoramic view can be destroyed by even a minor amount of development above the ridgeline. Localities adjoining the VCC region, including Albemarle and Clarke, have attempted to address this aspect of development. Within the region, Botetourt County is looking at how to protect scenic views.

**Cell Towers and Other Structures** - Modern communications require telecommunications facilities. Unfortunately, the height makes these highly visible and to provide full service coverage, companies seek to spread them throughout the rural areas as well as in population centers. Many of the siting issues are determined by federal law. This combination creates significant challenges for localities. Most localities in the region regulate cell towers in terms of safety and siting. Many include additional standards to mitigate the negative visual impact of these structures.

Just as no one twenty years ago could have predicted the proliferation of cell towers, there will be additional threats to rural landscapes in the future, as shown by the recent wind tower proposal in Highland County. Ordinances that rely only on listing allowable and prohibited uses may be more vulnerable to such unanticipated developments. A statement of intent for each zoning district, including protecting visual quality, might be useful in such cases.

### *Prevention of Light Pollution*

Outdoor lighting can turn into light pollution when light spills onto adjoining properties or upward into the night sky. The effect? Potential nuisance to the neighbors and, cumulatively, a diminution of the darkness. The scenery at night in the region can be significantly damaged by excessive or ill-considered lighting.

The solution is to shield outdoor lighting and direct it downward so that it illuminates only the intended areas. The International Dark Sky Association (IDA) ([www.darksky.org](http://www.darksky.org); 520/293-3198) has a wealth of resources, including fact sheets, a model lighting ordinance, and specific information on appropriate light fixtures and where to find them.

**Outdoor Lighting Ordinances** - Many localities in the state, the nation, and the world regulate outdoor lighting. So have a number of localities in the region.