

## Chapter 26

### Open-Space and Conservation Easements, Land Use Valuation, and Other Laws Related to the Use of Land

#### 26-100 Introduction

A locality's comprehensive plan, zoning ordinance, and subdivision ordinance work with other state statutes and ordinances related to how land may be used. These other laws are typically very narrow in scope, established to address specific goals and objectives such as the protection of agricultural activities or the preservation of undeveloped land. This chapter briefly examines several of those laws.

#### 26-200 The Open-Space Land Act

The Open-Space Land Act authorizes public bodies to protect open space by acquiring easements in gross to preserve open-space land. *Virginia Code § 10.1-1703*; 2009 Va. AG LEXIS 29, 2009 WL 1567667. Albemarle County's Acquisition of Conservation Easements (ACE) program, summarized in section 26-400, is established under the Open-Space Land Act.

##### 26-210 The features of an open-space easement

An open-space easement has several features:

- *“Open-space land” defined:* Open-space land includes any land which is provided or preserved for: (1) park or recreational purposes; (2) conservation of land or other natural resources; (3) historic or scenic purposes; (4) assisting in the shaping of the character, direction, and timing of community development; (5) wetlands as defined in Virginia Code § 28.2-1300; or (6) agricultural and forestal production. *Virginia Code § 10.1-1700.*
- *The interest acquired:* A locality may acquire unrestricted fee simple title to tracts, fee simple title to tracts subject to the reservation of rights to use such lands for farming or to the reservation of timber rights thereon, or easements or other interests in land of not less than five years' duration. *Virginia Code § 10.1-1703.*
- *How the interest is acquired:* A locality may acquire the interest by purchase, gift, devise, bequest, grant or otherwise. *Virginia Code § 10.1-1701.*
- *Who holds the interest:* Any *public body* as defined under the Act may be an easement holder, including the Virginia Outdoors Foundation and any locality, park authority, public recreational facilities authority, any soil and water conservation district, and any community development authority. *Virginia Code §§ 10.1-1700 (definition of public body) and 10.1-1703 (authority of any public body to be an easement holder).* In Albemarle County, the Virginia Outdoors Foundation and the Albemarle County Public Recreational Facilities Authority (PRFA) are typical holders of donated open-space easements. Under the county's ACE program, the county co-holds the easement with either the Virginia Outdoors Foundation or the PRFA. A historic preservation easement may also be held by the Virginia Board of Historic Resources. *Virginia Code § 10.1-2202.2.*
- *Duration of the interest:* The interest must be for at least five years' duration. *Virginia Code § 10.1-1701.*

##### 26-220 Tax consequences

An open-space easement has beneficial tax consequences to the owner of the underlying interest that are too numerous and complex to discuss in any detail in this handbook. These include:

- *Taxation of the interest:* The easement holder’s interest is not taxed because the public body is exempt from the real property tax.
- *Taxation of the land:* If the land is subject to a perpetual open space interest or is otherwise devoted to an open space use, the land is assessed and taxed at the use value for open space if the locality has a use valuation program; if it does not, the land is taxed at the fair market value less the easement value.

*Virginia Code §§ 10.1-1011, 10.1-1700 et seq., and 58.1-3230 et seq.*

In addition, donated open-space easements may qualify for the charitable donation deduction under federal tax laws and a Virginia tax credit.

## **26-300 The Virginia Conservation Easement Act**

The Virginia Conservation Easement Act authorizes the creation of conservation easements which are held by qualifying charitable organizations. A locality does not typically have direct involvement in establishing these easements.

### **26-310 The features of a conservation easement**

A conservation easement has several features:

- *“Conservation easement” defined:* A conservation easement is “a nonpossessory interest of a holder in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural or open-space values of real property, assuring its 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 real property.” *Virginia Code § 10.1-1009.*
- *How the easement is acquired:* The easement may be acquired by gift, purchase, devise or bequest. *Virginia Code § 10.1-1010.*
- *Who holds the easement:* The easement is held by a tax exempt charitable corporation, association or trust, whose primary purpose or powers include preserving the historic, architectural or archaeological aspects of real property. *Virginia Code §10.1-1009.* The Nature Conservancy is an example of an eligible holder of conservation easements in Albemarle County.
- *Duration of the easement:* The easement is perpetual, unless the instrument creating the easement provides a specific duration. *Virginia Code § 10.1-1010(C).*

“A conservation easement is . . . appropriately viewed as a form of ‘restrictive covenant or negative easement’ on the land it encumbers.” *Wetlands American Trust, Inc. v. White Cloud Nine Ventures, L.P.*, 291 Va. 153, 782 S.E.2d 131, 138 (2016) (interpreting conservation easement and applying rules of construction) (citations omitted).

### **26-320 Tax consequences**

A conservation easement has beneficial tax consequences to the easement holder and the owner of the underlying interest:

- *Taxation of the interest in the easement:* If a conservation easement is perpetual, the interests of the easement holder and the owner of the underlying fee are exempt from taxation for the interest in the easement.

- *Taxation of the land:* If the land is subject to a perpetual conservation easement and is devoted to an open-space use, the land is assessed and taxed at the use value for open space if the locality has a use valuation program; if it does not, the land is taxed at the fair market value less the easement value.

*Virginia Code §§ 10.1-1009, 10.1-1011, and 58.1-3230 et seq.*

Like open-space easements, donated conservation easements may qualify for the charitable donation deduction under federal tax laws and a Virginia tax credit.

## **26-400 Albemarle County's Acquisition of Conservation Easements (ACE) program**

In 2000, the Acquisition of Conservation Easements (ACE) program in Albemarle County was established under the Open-Space Land Act, and is codified in Albemarle County Code, Appendix A.1 (hereinafter, "Appendix A.1"). Although "conservation easements" are part of the name of the program, the easements acquired under the program are open-space easements.

### **26-410 Reason for the program**

The goals of the Albemarle County comprehensive plan include protecting the county's natural, scenic and historic resources, promoting the continuation of a viable agricultural and forestal industry and resource base, and protecting the county's surface and ground water supplies. The county's open space and critical resources plan, adopted in 1992 as part of the comprehensive plan, identified the purchase of development rights as a potential technique to preserve the county's resources and recommended further study.

A citizen committee was established in 1997 to study the purchase of development rights as a tool to preserve the county's resources. The committee's research revealed that between 1959 and 1992, 37% of Virginia's farmland was lost. In Albemarle County alone, 25,000 acres of farmland were lost from 1974 to 1992 and, in 2000, almost one-third of the county's forest land was too densely populated for long-term timber production. The committee concluded that regulatory land use planning tools alone were insufficient to stem the tide of land development:

It was a governing assumption that an Acquisition of Conservation Easement Program will always be one arrow in the quiver of arrows available to protect the rural areas of Albemarle County. It is intended to supplement rather than replace protective planning efforts of the Comprehensive Plan and Zoning Ordinance, Agricultural and Forestal Districts, donation of conservation easement, and acquisition of park land and natural areas. Acquisition of conservation easements can never do the job alone.

The committee also recognized that farm and forest land, clean water and airsheds, scenic vistas and rural character have public as well as private value.

### **26-420 The effect of the program**

The ACE program is a voluntary program by which qualifying landowners offer to have open-space easements placed on their property for a determined sum paid by the county and/or another easement holder. The program was established under the Open-Space Land Act (*Virginia Code § 10.1-1700 et seq.*). It attempts to strike a balance between landowners' rights and responsibilities, and between the private and public values of rural land.

The county does not directly purchase development rights under the program; instead, the use of those rights is restricted under the terms of the open-space easement. A model deed of easement establishes the minimum terms and conditions of the open-space easement:

- *Division:* Restrict further division so that that a parcel 200 acres or larger may be divided into as many lots so as to maintain an average lot size of at least 100 acres, plus one additional lot *for any acres remaining above the required minimum average lot size.*

- *Maintain mountain resource and other resources:* If the parcel is eligible for points because it has mountain resources, adjoins a scenic highway or byway, is within a qualifying watershed or adjoins a qualifying stream, adjoins a scenic river, or has sites of archaeological or architectural significance, additional restrictions to protect those resources apply.
- *No buy-back option:* Prohibit the owner from reacquiring the easement.
- *Other restrictions:* Impose other standard easement restrictions regarding uses and activities allowed on the parcel, improvements that can be made, management of forest resources, and the right of the easement holder to enter and inspect the parcel to determine compliance with the terms and conditions of the easement.

*Appendix A.1-109.*

A landowner may add additional restrictions to the easement (including the direct sale of development rights), but these need to be determined before the parcel is appraised so that the appraisal reflects the value of the easement with the additional restrictions. Because county funds will be used to purchase most easements, the county and another qualified entity, such as the Virginia Outdoors Foundation or the PRFA, will be the holders of each easement. *Appendix A.1-109.*

### **26-430 Administration of the ACE program**

The ACE program is administered by the director of planning, who is designated as the program administrator. *Appendix A.1-104.* The key functions of the program administrator include establishing reasonable and standard procedures and forms for properly administering and implementing the program, promoting the program, pursuing additional public and private funding for the program, evaluating applications for easements, providing staff support to the program's committees and the board of supervisors, and assuring that the terms and conditions of each easement are monitored and complied with.

A 10-member ACE committee is appointed by the board. Its primary purposes are to evaluate and rank applications and make recommendations to the board, and to annually review the program's eligibility and ranking criteria and recommend changes to the board. *Appendix A.1-105.* An appraisal review committee was also appointed by the board in order to review appraisals and make recommendations on those appraisals to the board. *Appendix A.1-106.* The board will decide which open-space easements will be purchased. *Appendix A.1-107 and A.1-108.*

### **26-440 Eligibility of parcels**

The ACE program is available for all privately owned and controlled lands in Albemarle County. In order for a parcel to be eligible: (1) the use of the parcel subject to each easement must be consistent with the comprehensive plan; (2) the proposed terms of the easement must satisfy the minimum easement terms and conditions set forth in the ordinance; and (3) the parcel must obtain at least 15 points under the program's ranking criteria. *Appendix A.1-107.*

The ranking criteria assign various points based on the parcel's open space resources, threat of conversion to developed use, natural, cultural and scenic resources, and the availability of other public or private funding to be applied to leverage the purchase of the open-space easement. *Appendix A.1-108.*

### **26-450 Procedure to establish open-space easements**

By an annual October 31 deadline, interested landowners submit applications on a standard application form to the program administrator, who evaluates each application and submits a list of ranked parcels to the ACE committee. *Appendix A.1-110.* The county does not charge an application fee.

The ACE committee evaluates and ranks the applications in the order of priority that it recommends easements should be purchased, and forwards its recommendation to the board of supervisors. The board then reviews the

ACE committee's recommendation, and decides which easements it desires to purchase. The board then ranks those parcels. Each parcel identified by the board will be appraised by either the county assessor or an independent qualified appraiser. The appraisal review committee reviews each appraisal and submits its recommendation to the Board. *Appendix A.1-110.*

The board then identifies the initial pool of eligible parcels on which easements are proposed to be purchased. The size of the pool is based on the funds available to purchase easements in the current fiscal year. The purchase price is determined by multiplying the appraised value by a factor based on the average annual adjusted gross income of the owner and his or her immediate family. This factor decreases as the adjusted gross income increases (e.g., if the adjusted gross income is \$55,000 or less, the purchase price will be 100% of the appraised value; if the adjusted gross income is between \$105,001 and \$115,000, the purchase price will be 64% of the appraised value; if the adjusted gross income is \$205,001 or more, the purchase price will be 4% of the appraised value). How annual adjusted income is determined varies depending on whether the land is owned by a single individual (*Appendix A.1-111(B)(1)*), by multiple individuals, C-corporations having 10 or fewer shareholders, S-corporations, partnerships, limited liability companies, trusts or estates (*Appendix A.1-111(B)(2)*), or C-corporations having more than 10 shareholders and other entities not otherwise addressed (*Appendix A.1-111(B)(3)*). The county took this approach to encourage landowners with higher income to donate open-space and conservation easements in order to receive tax benefits, rather than use the ACE program with its limited funding.

The board's next step is to invite the owners of the parcels in the pool to submit offers to sell open-space easements to the board. If an offer to sell is submitted by an owner and accepted by the board, the parties will proceed to establish the easement. If an offer to sell is not submitted, or the board elects not to acquire an easement, an invitation may be sent to the next remaining parcel on the list of eligible parcels not included in the initial pool. The purchase price and the terms and conditions of the easement are not subject to negotiation. *Appendix A.1-111.*

The procedure requires all applications to be ranked and the purchases occur at the same time each year. However, the board may waive any requirement or target date if it is shown that exigent circumstances exist or that the requirements of the ordinance unreasonably restrict the purchase of an easement. *Appendix A.1-110.*

## **26-500 Land use valuation**

This section provides a summary of the law pertaining to land use valuation under Virginia tax law.

### **26-510 The constitutional and statutory framework**

Article X, § 1 of the Virginia Constitution provides that "all property, except as hereinafter provided, shall be taxed." Thus, taxation is the rule, and exemption from taxation is the exception. *Virginia Baptist Homes, Inc. v. Botetourt County*, 276 Va. 656, 668, 668 S.E.2d 119, 125 (2008). Section 1 also provides that "all taxes . . . shall be uniform upon the same class of subjects." Article X, § 2 provides that "all assessments of real estate . . . shall be at their fair market value, to be ascertained as prescribed by law." The Virginia Supreme Court has construed "fair market value" generally as "the price [a property] will bring when it is offered for sale by one who desires, but is not obliged, to sell it, and is bought by one who is under no necessity of having it." *Tuckahoe Woman's Club v. City of Richmond*, 199 Va. 734, 737, 101 S.E.2d 571, 574 (1958). In determining fair market value, "all the capabilities of the property and all the uses to which it may be applied or for which it is adapted, are to be considered," *Tuckahoe Woman's Club*, 199 Va. at 738, 101 S.E.2d at 574, with the assessment based on the highest and best use of the property. See *County Board of Arlington v. Commonwealth*, 240 Va. 108, 393 S.E.2d 194 (1990).

Article X, § 2 also authorizes the General Assembly to define and classify real estate devoted to agricultural, horticultural, forest and open space uses, and to allow localities to defer or relieve portions of taxes that would otherwise be payable if the real estate was not so classified. The General Assembly has granted localities this authority in Virginia Code §§ 58.1-3229 (not set out) through 58.1-3244, which provide for the special assessment of real property for land preservation.

## 26-520 The land use valuation program

Real estate devoted to agricultural, horticultural, forest, or open space use may qualify to be assessed on the basis of its use value, as distinguished from its fair market value, if the local governing body has adopted an appropriate ordinance under Virginia Code § 58.1-3231. A locality may elect to include any or all of the qualifying use classifications. As of 2010, 96 Virginia localities had adopted land use ordinances granting use value for at least one qualifying use. Albemarle County's use valuation ordinance recognizes all four qualifying use classifications. *Albemarle County Code § 15-800 et seq.*

The manifest purpose of the use valuation program is to create a financial incentive to encourage the preservation and proper use of real estate devoted to agricultural, horticultural, forest, and open space uses. *2004 Va. Op. Atty. Gen. LEXIS 71, 2004 WL 3089838; 2002 Va. Op. Atty. Gen. 318; 1987-1988 Va. Op. Atty. Gen. 138.* Land use taxation is intended to “ameliorate pressures which force the conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible” with the use and preservation for the desired purposes. *2004 Va. Op. Atty. Gen. LEXIS 71, 2004 WL 3089838, citing 1984 Va. Acts ch. 675, at 1178, 1373* (quoting § 58.1-3229, not set out in Virginia Code).

In general, to qualify for land use valuation, assessment and taxation, the real estate must meet the following use requirements:

- *Agricultural use:* Real estate devoted to agricultural use is either land devoted to the *bona fide* production for sale of plants and animals useful to man, or land that meets the requirements for payments or other compensation pursuant to a soil conservation program.
- *Horticultural use:* Real estate devoted to horticultural use is either land devoted to the *bona fide* production for sale of fruits, vegetables, and nursery and floral products, or land that meets the requirements for payments or other compensation pursuant to a soil conservation program.
- *Forest use:* Real estate devoted to forest use is land devoted to tree growth in such a quantity and so spaced as to constitute forest area.
- *Open space use:* Real estate devoted to open space use is real property used to preserve park and recreational areas, conserve land or other natural resources, floodways, or lands of historic or scenic value, or assist in the shaping of the character, direction and timing of community development, or for the public interest and consistent with the local land use plan.

*Virginia Code § 58.1-3230; Albemarle County Code § 15-800.*

Real estate that has been designated as devoted to one of these four uses does not lose its designation solely because a portion of the property is being used for a different purpose as allowed by the locality's zoning regulations, including pursuant to a special use permit, if the property, excluding the portion used for a different purpose, meets all the requirements for the applicable designation. *Virginia Code § 58.1-3230.* The portion of the property being used for a different purpose is deemed to be a separate piece of property from the remaining property for purposes of assessment. *Virginia Code § 58.1-3230.* Neither the property's zoning designation nor any special use permits is to be the sole consideration in determining whether real property is devoted to one of the four qualifying uses. *Virginia Code § 58.1-3230.*

In addition to the foregoing use requirements, the real estate must meet the following minimum size requirements: (1) agricultural or horticultural property must consist of a minimum of five acres; (2) forest property must consist of a minimum of 20 acres; and (3) open-space property must consist “of a minimum of five acres or such greater minimum acreage as may be prescribed” by the locality. *Virginia Code § 58.1-3233(2).* The minimum acreage for open-space lands in Albemarle County is 20 acres. *Albemarle County Code § 15-804(2).* The purpose for the minimum acreage requirements in Virginia Code § 58.1-3233(2) is to allow land use assessment and taxation on only those parcels large enough to further the goals of preserving agricultural, forest, and open-space lands. *2004 Va. Op.*

*Atty. Gen. LEXIS 71, 2004 WL 3089838.* The minimum acreage requirements for the qualifying use classifications is determined by adding together the total area of contiguous real estate, excluding subdivision lots recorded after July 1, 1983 that are titled in the same ownership. *Virginia Code § 58.1-3233(2)*. Parcels created after July 1, 1983, by a recorded plat subject to a locality's subdivision ordinance, but not falling within the ordinance's definition of "subdivision," may be aggregated for purposes of meeting the minimum acreage requirements. *2004 Va. Op. Atty. Gen. LEXIS 71, 2004 WL 3089838.*

In determining the area devoted to a qualifying use, the area of all barns, sheds, silos, cribs, greenhouses, public recreation facilities and like structures, lakes, dams, ponds, streams, irrigation ditches and like facilities are included. *Virginia Code § 58.1-3236; Albemarle County Code § 15-805(B)*. Farm houses and other structures not used for the qualifying use are valued, assessed and taxed at fair market value. *Virginia Code § 58.1-3236; Albemarle County Code § 15-805(B) and (C)*.

Finally, real estate devoted to open space use also must be: (1) within an agricultural, a forestal, or an agricultural and forestal district entered into under Virginia Code § 15.2-4300 *et seq.*; (2) subject to a recorded perpetual easement that is held by a public body promoting the open space use classification; or (3) subject to a recorded commitment entered into by the landowners with the board of supervisors or its designee not to change the use to a nonqualifying use for a period of not less than four nor more than ten years. *Virginia Code § 58.1-3233(3); Albemarle County Code § 15-804(3)*.

### **26-530 Determining land use value**

Land participating in the land use valuation program is entitled to a tax preference in the form of a reduction in the assessed value of the qualifying land. Determining the fair market value is a factual question for the county assessor. *Virginia Code § 58.1-3236*.

In assessing land qualifying for land use valuation, the assessor must determine the value in accordance with Virginia Code § 58.1-3236, which provides that he must "consider only those indicia of value which such real estate has for agricultural, horticultural, forest or open space use, and real estate taxes for such jurisdiction shall be extended upon the value so determined." *Virginia Code § 58.1-3236(A); Albemarle County Code § 15-805(A)*. These factors include the real estate's location, appearance, availability for use and the economic situation in the area. *See Smith v. City of Covington*, 205 Va. 104, 135 S.E.2d 220 (1964); *1997 Va. Op. Atty. Gen. 196*. The ultimate issue is the effect these factors have on the price the land will bring when offered for sale "by one who desires, but is not obliged, to sell it, and is bought by one who is under no necessity of having it." *Tuckaboe Woman's Club v. City of Richmond*, 199 Va. 734, 737, 101 S.E.2d 571, 574 (1958).

In determining the *indicia* that are relevant to the fair market value of land devoted to a qualifying use, the focus of the inquiry is the effect that the factor (*i.e.*, its use for agricultural, horticultural, forest or open space) would have on the value of the property. *See 1997 Va. Op. Atty. Gen. 196*. The assessor may consider the economic conditions existing in the locality as a factor that affects the value of the property. *1997 Va. Op. Atty. Gen. 196*. However, the assessor has no authority to: (1) adjust the fair market value of the property on the basis of the financial effect the ultimate determination will have on the taxpayer; or (2) consider whether a landowner will receive government services equivalent to the amount of the tax imposed. *1997 Va. Op. Atty. Gen. 196*.

In addition to applying his personal knowledge, judgment and experience as to the value of land in agricultural, horticultural, forest or open space use, the assessor must, in arriving at the value of the land, *consider* available evidence of agricultural, horticultural, forest or open space capability, and the recommendations of value provided by the State Land Evaluation Advisory Council ("SLEAC"). *Virginia Code § 58.1-3236(A); Albemarle County Code § 15-805(A)*. SLEAC's recommendations provide a range of suggested values for each classification of land, based on the productive earning power of that particular type of land. If, in exercising this judgment and considering other evidence, the assessor determines that the recommendations made by SLEAC are not indicative of the fair market value of property devoted to a qualifying use within the county, the assessor may disregard SLEAC's recommendations. *1997 Va. Op. Atty. Gen. 196*.

Land in the land use valuation program also must be evaluated on the basis of its fair market value as applied to other land in the county and the land book records must be maintained to show both its use value and the fair market value. *Virginia Code § 58.1-3236(D)*; *Albemarle County Code § 15-805(D)*. For example, the county’s real estate records would reflect the following value information on an unimproved piece of land:

Land Market	\$287,800
Land Use	\$9,300
Improvement	0
Total	\$9,300

Under the county’s land use valuation program, the real property taxes for this parcel are based on a use valuation of \$9,300, rather than its fair market value of \$287,800.

### **26-540 Sliding scale tax rate permitted**

A locality may provide a sliding scale tax rate for real estate under its land use valuation program based on the length of time the real estate is used for the activity by which it qualifies for use valuation. *Virginia Code § 58.1-3231*. The sliding scale establishes a lower assessment for property held for longer periods of time within the four qualifying use classifications. *Virginia Code § 58.1-3231*. If a sliding scale is used, a written agreement is required between the locality and the landowner for a term not to exceed twenty years. *Virginia Code § 58.1-3234*. A change in use prior to the end of the agreed-upon term will result in roll-back taxes from the date of the agreement. *Virginia Code § 58.1-3237(C)*.

For example, a locality’s land use assessment program could allow taxpayers currently enrolled in its “Land Use Assessment Program” to defer additional real estate taxes by entering into a recorded commitment to keep the property in a qualifying use for a term of up to twenty years under the following scale:

- *10 to 20 year commitment*: For a commitment to hold the land in its qualifying use for more than ten years, but not exceeding twenty years, ninety-nine percent (99%) of the use value taxes otherwise assessed may be deferred for the term of the commitment.
- *5 to 10 year commitment*: For a commitment to hold the land in its qualifying use for more than five years, but not exceeding ten years, fifty percent (50%) of the use value taxes otherwise assessed.

Like use valuation generally, the additional deferral applies to qualifying land only and does not include ineligible land or buildings assessed at fair market value.

The program could provide that if roll-back taxes were triggered, the roll-back would include the current tax year plus the greater of: (1) the previous five tax years; or (2) each year from the date the sliding scale agreement was signed. For example, if real estate enrolled in the sliding scale option effective beginning tax year 2004 was rezoned in 2006, the roll-back period would include the year 2006 plus the previous five tax years, 2001 through 2005. If real estate enrolled in the sliding scale option effective beginning tax year 2004 was rezoned in 2011, the roll-back period would include the year 2011 plus each year from 2004 through 2010, a total of 8 years.

### **26-550 Roll-back taxes**

When the use by which real estate qualified for land use valuation changes to a nonqualifying use, or the zoning of the real estate is changed to a more intensive use at the request of the owner or his agent, it is subject to roll-back taxes. *Virginia Code § 58.1-3237(A)*; *Albemarle County Code § 15-806(A) and (D)*. However, a locality may adopt an ordinance that does not trigger roll-back taxes because the owner or its agent requested and obtained a rezoning of the land to a more intensive use, provided that the land remains eligible for use value assessment and taxation for as long as the use by which it qualified does not change to a nonqualifying use. *Virginia Code § 58.1-3237(G)* (further providing that the roll-back tax becomes due when the use changes to a nonqualifying use).

Roll-back taxes are considered to be deferred real estate taxes. *1999 Va. Op. Atty. Gen. 202*. These additional taxes are only assessed against that portion of the real estate that no longer qualifies for use valuation. *Virginia Code § 58.1-3237(A)*.

The roll-back tax is equal to the sum of the deferred tax for each of the five most recent complete tax years, including simple interest on the roll-back taxes at a rate no greater than the rate applicable to delinquent taxes. *Virginia Code § 58.1-3237(B)*; *Albemarle County Code § 15-806(B)*. The deferred tax for each year is equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year. *Virginia Code § 58.1-3237(B)*. Therefore, roll-back taxes are equal to the difference between the tax levied under the land use valuation laws and the tax that would have been levied pursuant to the assessed fair market value of the real estate had it not been subject to the special assessment. *1999 Va. Op. Atty. Gen. 202*.

Roll-back taxes are imposed when the actual use of land changes to a non-qualifying use; land remaining idle does not trigger roll-back. *Virginia Code § 58.1-3237*; *1997 Va. Op. Atty. Gen. 195*. When land subject to use valuation is purchased by eminent domain, the residual parcel, although it no longer meets the minimum acreage requirements, is not subject to roll-back taxes. *1997 Va. Op. Atty. Gen. 193*. There also is no liability for roll-back taxes when a change in ownership of the title takes place if the new owner does not rezone the real estate to a more intensive use and continues the land in the use for which it is classified. *Virginia Code § 58.1-3237(D)*; *Albemarle County Code § 15-806(C)*.

The separation or split-off of parcels by conveyance or other action by the owner subjects the separated parcels to roll-back taxation, but it does not impair the eligibility of the separated real estate for future use valuation or affect the remaining real estate's right to continuance of land use valuation if it still meets the requirement. *Virginia Code § 58.1-3241(A)*. The subdivision of land into parcels that meet the applicable use valuation requirements does not subject the real estate to roll-back taxation if the owner attests that subdivision is for one or more of the qualifying use classifications. *Virginia Code § 58.1-3241(A)*.

## **26-600 The Right-to-Farm Act**

The Right-to-Farm Act limits the circumstances under which agricultural operations may be deemed to be a nuisance, especially when nonagricultural land uses are initiated near existing agricultural operations. *Virginia Code §§ 3.2-301 and 15.2-2288*. The Act places limits on a locality's exercise of its zoning power:

- *Prohibits regulation of certain structures and practices*: The Act prohibits a locality from enacting a zoning regulation that unreasonably restricts or regulates farm structures or farming and forestry practices in an agricultural district or classification, unless the restriction is related to the health, safety and general welfare.
- *Prohibits requiring a special use permit in certain circumstances*: The Act prohibits a locality from requiring a special use permit for any production agriculture or silviculture activity in an agricultural zoning district.

*Virginia Code §§ 3.2-301 and 15.2-2288*.

## **26-700 The Agricultural and Forestal Districts Act**

Localities may establish agricultural and forestal districts under the Agricultural and Forestal Districts Act, which serve two primary purposes:

- *Conserve and protect agricultural and forestal lands*: Conserve and protect agricultural and forestal lands for the production of food and other agricultural and forestal products; conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clear air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes.

- *Develop and improve agricultural and forestal lands:* Encourage the development and improvement of agricultural and forestal lands for the production of food and other agricultural and forestal products.

*Virginia Code § 15.2-4300; Albemarle County Code § 3-100 et seq.*

Localities may establish districts of statewide significance (*Virginia Code § 15.2-4300 et seq.*) and districts of local significance (*Virginia Code § 15.2-4400*). This section focuses on districts of *statewide significance*, the much more common class of district.

### **26-710 Establishment and effect**

Agricultural and forestal districts are established by the governing body on the petition of participating landowners. A new district must have a minimum core of 200 acres in a single or in contiguous parcels. *Virginia Code § 15.2-4305*. A parcel not part of the core may be included in a district: (1) if the nearest boundary of the parcel is within one mile of the boundary of the core; (2) if it is contiguous to a parcel in the district the nearest boundary of which is within one mile of the boundary of the core; or (3) if the local governing body finds, in consultation with the advisory committee or planning commission, that the parcel not part of the core or within one mile of the boundary of the core contains agriculturally and forestally significant land. *Virginia Code § 15.2-4305*.

A landowner may petition to add her land to the district at any time. *Virginia Code § 15.2-4310*. Districts are periodically reviewed by the locality (each 4 to 10 years, depending on the applicable district ordinance) and during the review period, any landowner may request to withdraw her lands from a district. *Virginia Code § 15.2-4311*. At other times, land may be withdrawn from a district only for *good and reasonable cause*. *Virginia Code § 15.2-4314*.

The Agricultural and Forestal Districts Act has a number of effects on development:

- *Prohibits development to a more intensive use:* The Act prohibits any parcel in a district from being developed to a more intensive use, other than a use resulting in more intensive agricultural or forestal production, without prior approval of the governing body.
- *Prohibits regulation of certain dwelling construction and placement:* The Act bars the locality from prohibiting the construction and placement of dwellings for persons who earn a substantial part of their livelihood from a farm or forestry operation on the same property, or for members of the immediate family of the owner, unless the locality finds that the use in the particular case would be incompatible with farming or forestry in the district.
- *Prohibits regulation of certain structures and practices:* The Act bars a locality from exercising its zoning power in a district in a manner which would unreasonably restrict or regulate farm structures or farming and forestry practices in contravention of the Act unless the restrictions or regulations bear a direct relationship to public health and safety.

*Virginia Code § 15.2-4312.*

### **26-720 Tax consequences**

Land lying within a district and used in agricultural or forestal production *automatically qualifies* for use-value assessment authorized under *Virginia Code § 58.1-3229 et seq.* if the requirements for that assessment are satisfied. Land lying within a district that is devoted to open-space is *eligible* for use-value assessment authorized under *Virginia Code §§ 58.1-3230 and 58.1-3231* if the requirements for that assessment are satisfied.