

Virginia Beach Agricultural Reserve Program (ARP)

Frequently Asked Questions

Does the landowner have to offer all of his/her property?

No. They may offer to sell the development rights on all or any part of the property.

If the landowner signs an application to have the property reviewed, and accepts the purchase price offer, is he/she bound to enter into the ARP?

No. The program is voluntary. The landowner can accept an offer, the application can even be approved by City Council and it is still up to the landowner if they would like to close on the application and enter into the ARP.

What are the incentives for landowners to enter into the program?

The program would provide a way for a landowner to cash in on the development value of his/her land while still being able to retain the land for farming. In cases where inheritance taxes might force the sale of a farm, the sale of development rights could provide an additional income source to allow the heirs to continue farming.

Other incentives include:

Extra capital which could be used for purchasing additional land, making improvements in present operations, or for any other purpose the landowner chooses;

The assurance that other farms around them in the program would continue to be farmed;

Stability in agriculture and the assurance that the State and City care about farmers and farming;

Present farmers who are farming on rented land (or new farmers) may be better able to financially purchase land for farming;

Capital gains taxes would be deferred for 25 years when entering the program because the principal is paid at the end of the installment purchase agreement;

Semi-annual interest paid on the purchase price is exempt from federal, state *(VA), and local income taxes. **If a landowner lives outside of Virginia, they would need to check with a financial advisor to see if their payments would be tax free.*

What restrictions would be placed on the land in the Agricultural Reserve Program?

Once the development rights have been purchased, no non-farm development could take place on the land. However, subject to Council approval, the owner can withhold future development rights and exclude certain lands to meet their future needs at the time of sale.

The Agricultural Advisory Commission would have to decide in cases where agricultural sales, agricultural processing, or other agricultural related uses of the land are proposed, whether such uses are in keeping with the purpose and intent of the program.

The mineral rights would be retained by the landowner, but the program forbids excavation, dredging, or removal of loam, peat, gravel, soil or other mineral substance in such a manner as to adversely affect the land's overall future agricultural potential.

If a landowner sold their development rights, is it more likely the land would be taken by eminent domain for a public facility such as a school site?

No. If the need arises for public facilities, the City should first pursue sites which have not been placed in the ARP. The ARP easement however cannot protect against eminent domain. An example would be a road project which necessitates taking land for the improvement or realignment. The landowner would then be compensated for the land that was taken.

Could the City sell the development rights to someone else to build on the acquired property?

No. Once the City purchases the development rights, the rights would be held in public trust and could not be used by anyone without the owner’s consent. The taxpayers are paying the landowner not to develop because they want the land to remain undeveloped.

Would this mean the public has a right to come on the landowner’s property?

No. Even though the landowner sells the development rights of his/her land, it does not become public property. The land is still the landowner’s private property and subject to the laws of trespass. The general public could not enter the property without the landowner’s permission.

How does the City determine the value of the property?

The City contracts with an independent real estate appraiser to determine the “Fair Market Value” of the property. This value is established by using comparable sales of property. After the value is determined, the City will offer the difference between the full fair market value and the agricultural value of the property. This is what we call the value of the “development rights.” The City pays tax-free interest payments for 25 years on the principal amount and the principal is paid in one lump sum at the end of 25 years.

Payment Plan Example:

A 100-acre farm valued at \$10,000/acre would yield a fair market value of \$1,000,000:

\$1,000,000	Fair market value (\$10,000 per acre)
- <u>\$180,000</u>	Agricultural value (\$1,800 per acre) is withheld since the landowner retains ownership of the property
\$ 820,000	Purchase price of the development rights

Compensation for selling the development rights on this farm would be:

\$820,000 at 4.0% interest*	=	\$ 32,800 <u>tax-free</u> interest paid per year
\$32,800 per year for 25 years	=	\$ 820,000 total interest paid, tax-free
TOTAL COMPENSATION	=	\$ 820,000 (total interest payments)
		+ <u>\$ 820,000 (lump sum principal payment)</u>
		\$1,640,000 TOTAL COMPENSATION

**A floor interest rate is established when the offer letter is sent. At closing, the interest rate that is paid for 25 years is the greater of the floor rate or the current day’s market. Semi-annual tax-free interest payments are made on June 1 and December 1 each year, therefore, in this example you would receive \$16,400 in June and another payment of \$16,400 in December.*

If a landowner has a mortgage, could he still enter the program?

Yes. Before the landowner can enter into the ARP, the lender would need to agree to the enrollment of the property and sign a Certificate of Partial Satisfaction.

What has been the experience of farmers who try to obtain loans once the development rights have been sold?

This is not a problem. After the development rights are sold, many times the interest payments received semi-annually are used to improve the farming operation, which enhances the farm value and thus the ability to obtain more loans if needed for other purposes. The interest payments are viewed as a positive cash flow by the lending institution during the 25 year payment plan.

If a landowner wants to reserve a lot for future development what do they have to do?

Notification would need to be given to the Agriculture Department when the offer to purchase development rights is accepted that you want to reserve a future building site. After approval and when you are ready to build, a maximum of three acres of land would need to be surveyed and subdivided for the building site. The site would still need to meet all of the planning department requirements for development.

If a landowner places his/her property into the program and then sells/transfers the property to someone else, who would receive the principal and interest payments?

The landowner who enters the agreement with the City will continue to receive the payments. The perpetual easement that extinguishes the development rights transfers with the sale of the land. Therefore the next landowner must abide by the terms of the easement.

What would happen if the landowner sold his/her development rights and then decided to change the type of farming or quit farming all together?

Nothing in this program requires the landowner to farm his/her property. Selling development rights simply restricts the landowner or anyone else from developing the property for non-farm purposes. If the landowner wished to change his/her type of farming, he/she would be perfectly free to do so. If he/she didn't want to farm the property at all, he/she would be free to lease it to someone else to farm, or sell it.

The only restriction on the landowner or any subsequent owner is that the property cannot be developed for non-farm purposes. In other words, even if the landowner sold the property, the restriction against development would continue with the land.

Could the landowner repurchase his/her development rights?

After a minimum period of twenty-five years from the date the development rights were purchased by the City, the landowner could request a review by the City Council to consider an application for repurchase of the development rights. If the City Council found that because of changed circumstances that the development rights should no longer be reserved, it could approve the repurchase of those rights at the current market value with certain contingencies.

For more information on the Agricultural Reserve Program (ARP), please contact:

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