



## **INTERNAL AUDIT REPORT**

DATE: October 5, 2018

TO: Jim Gray, Mayor

CC: Sally Hamilton, Chief Administrative Officer  
Glenn Brown, Deputy Chief Administrative Officer  
Aldona Valicenti, Chief Information Officer  
Janet Graham, Commissioner of Law  
William O'Mara, Commissioner of Finance & Administration  
Derek Paulsen, Commissioner of Planning, Preservation and  
Development  
Beth Overman, Director of Purchase of Development Rights Program  
Susan Straub, Communications Director  
Urban County Council  
Internal Audit Board

FROM: Bruce Sahli, CIA, CFE, Director of Internal Audit  
Matthew Reid, CPA, Internal Auditor

RE: Purchase of Development Rights Program Audit

### **Background**

The Purchase of Development Rights (PDR) Program was established in Fayette County in 2000 as a result of a recommendation from the Rural Land Management Plan (RLMP) adopted in 1999. The PDR Program was created to protect the agricultural, rural, and natural resources of Fayette County with the goal of purchasing perpetual conservation easements on 50,000 acres of eligible lands. Rural landowners who wish to sell conservation easements on their property to the LFUCG apply through the PDR



Program, where their application is scored and ranked by the Director of the PDR Program. Once the score is completed and verified in the field, the application is reviewed by the Rural Land Management Board (RLMB), which governs the PDR Program. The RLMB will extend conservation easement offers to selected applicants and, if accepted, a conservation easement will be purchased and filed on the landowner's property. The RLMB serves as an agency of the Lexington Fayette Urban County Government. The PDR Program reports on their website that "There are 261 farms permanently protected by PDR, totaling nearly 30,000 acres". The PDR Program has approximately \$1.3 Million in its acquisition budget as of June 26, 2018. For calendar 2014 through 2017, 25 farms have applied for PDR easements, of which 9 have been approved for offer by the RLMB and one of which has closed i.e. a conservation easement was sold to the LFUCG.

### **Scope and Objectives**

The general control objectives for the audit were to determine that:

- The PDR Program is sufficiently managed
- The PDR Program properly tracks available funding for future purchases
- Management confirms that funding is available and approved prior to extending an offer
- Payments made to landowners are approved and accurate
- Scoring (ranking) of farms in the PDR Program is conducted in an objective and consistent manner
- The PDR Program is in compliance with LFUCG Ordinances, CAO Policies, and the Federal Cooperative Agreement

The scope of the audit included activity for the period January 1, 2014 through December 31, 2017.

### **Statement of Auditing Standards**

We conducted our audit in accordance with the International Standards for the Professional Practice of Internal Auditing. Those standards require that we plan and perform the audit to afford a reasonable basis for our judgments and conclusions



regarding the organization, program, activity or function under audit. An audit also includes assessments of applicable internal controls and compliance with requirements of laws and regulations when necessary to satisfy the audit objectives. We believe that our audit provides a reasonable basis for our conclusions.

### **Audit Opinion**

In our opinion, the controls and procedures provided reasonable assurance that most of the general control objectives were being met. Opportunities to improve controls are included in the Summary of Audit Findings.

### **Priority Rating Process**

To assist management in its evaluation, the findings have been assigned a qualitative assessment of the need for corrective action. Each item is assessed a high, moderate, or low priority as follows:

High - Represents a finding requiring immediate action by management to mitigate risks and/or costs associated with the process being audited.

Moderate – Represents a finding requiring timely action by management to mitigate risks and/or costs associated with the process being audited.

Low - Represents a finding for consideration by management for correction or implementation associated with the process being audited.

## **SUMMARY OF AUDIT FINDINGS**

### **Finding #1: Issues Noted in the Easement Scoring Process**

**Priority Rating: High**

#### **Condition:**

Section 26-10 of the Ordinance outlines the criteria on which easements should be evaluated and scored. During the audit, we made the following observations that could improve the evaluation process:



- The PDR Ordinance awards two points to any farm that is located on the “B” List of Special Natural Protection Areas, as described in the RLMP. However, we noted the borders of the “B” List of Special Natural Protection Areas are not clearly defined on Geographic Information Services (GIS) Map #2 or adequately described in the RLMP, making it impossible to clearly determine if a farm falls within “B” List borders. We were advised by GIS personnel that mapping “B” List Special Natural Protection Areas borders would be difficult, if not impossible. It should be noted that none of the farms tested within the scope of this audit received points for being located within a “B” List Special Natural Protection Area.
- The current practice of awarding Focus Area points is inconsistent with the original predefined boundaries established by the RLMP. The RLMP created in 1999 established defined boundaries of five Focus Areas, and the Ordinance allows farms located within the boundaries of these Focus Areas to receive ten points. Furthermore, any farm located within the Focus Area boundaries have any negative points from “Urban Service Boundary” and “Urban Development” scores ignored or nullified. We noted that the Focus Areas boundaries have been extended from the original defined boundaries to include all tributaries that flow through Fayette County.
- Although all farms tested contained a scoring summary sheet, we noted that a few points that were awarded to farms lacked documentation supporting those points. For example, one farm received two points for containing an “archeological site”, but no documentation supporting an archeological site was found in the farm’s file.

**Effect:**

Determining if farms are located within “B” List Special Natural Protection Areas is impossible without clearly defined boundaries of “B” List Special Natural Protection Areas. The extended Focus Area boundaries are inconsistent with the original RLMP. Providing documentation for every point awarded helps to justify farm scores and rankings.

**Recommendation:**

If GIS cannot determine the borders of “B” List Special Natural Protection Areas, this scoring criterion should be removed from the Ordinance. Senior Administration management and/or Council should consider if future farms should be scored based upon the original predefined Focus Area boundaries established in the RLMP, or if they



should be scored by the extended boundaries that include all tributaries that flow through Fayette County. Documentation and support should be filed along with each farm's scoring sheet which will adequately support every point awarded to each farm.

**Director of Purchase of Development Rights Response:**

**Natural Areas B:** The audit findings are correct that awarding points for Natural Areas B, as based on the 1999 Rural Land Management Plan (RLMP), is extremely difficult unless the indicated Natural Area lies directly on a parcel. The list of Natural Areas B includes 26 areas and they vary in size from 30 to 600 acres, but there are no specifications or parameters included in the 1999 RLMP indicating the direction or shape of those areas. The RLMP was updated by the Division of Planning staff in 2017 and approved by the Planning Commission, and will be incorporated into the 2018 Comprehensive Plan that is expected to be adopted this year. The updated Plan no longer recognizes the Natural Areas B as the list was previously documented by the local office of The Nature Conservancy, and they informed the Planning staff that they no longer maintain that list and are unable to verify the existence of those areas. The updated Plan does note that the PDR Program uses the list and map of the Natural Areas B for their rankings, and states it is therefore included in the appendix. We will present these findings to the Rural Land Management Board as soon as the Chair is able to add it to the agenda, and recommend they consider removing these areas from the rankings. The PDR ranking points awarded for Natural Areas B are 2 out of a possible 141 points, and farms also include points for Environmentally Sensitive Areas, Rural Greenways and Focus Areas, all of which are components of the Natural Areas. There are also points awarded for Natural Areas A, which are verifiable and included in the 2017 Rural Land Management Plan.

**Focus Areas:** The audit findings are correct that the ranking criteria included in the Ordinance states that Focus Area points shall be awarded for farms "within" the Focus Areas as indicated in the 1999 Rural Land Management Plan. I discovered that farms were not being ranked this way upon taking this role in 2014. My research into the issue included talking with former Planning Director Chris King as well as the two previous PDR directors. This is an important issue because in addition to being one of the highest categories for points, being in a Focus Area eliminates any negative points awarded for being in a Sewerable Area or in close proximity to the Urban Services Area boundary, and can effect a farm's score by up to 30 points. I presented my findings to the Board and though they agreed points needed to be awarded for parcels "within" the boundaries, they were concerned about the number of pending farms and acquired farms that had not been scored that way. At that time we still had a number of farms that had been pending funding consideration for many years. The board voted on the



issue and decided to continue awarding points for farms with tributaries even if they were not “within” the boundaries, though the vote was not unanimous. That being four years ago, we have successfully acquired easements on many of those farms and there are only four farms pending funding consideration that are not in some stage of the federal funding process. Those four farms each received points for being in a focus area based on being “within” the boundaries, so it is a good time to return to rewarding points in the manner outlined in the ordinance.

**Scoring Sheet Documentation:** A large portion of the points awarded in our ranking process are done so based on PDR Ranking Maps provided by our GIS staff, and are therefore easily verifiable. Others are verified with photos taken by staff on the initial visit or from documentation provided by our Division of Historic Preservation. However, there are times when landowners who have inherited land may tell us that prior generations shared with them that there are Indian artifacts in a specific area of the farm, and we have taken their word rather than requiring documentation. Beginning with the fall 2018 rankings, we will require the landowner to document the history in writing for us if they have no formal documentation. The auditor also suggested that a column be added to our scoring sheet indicating what type of documentation was used for individual points such as “GIS map” or “staff photo”. We believe this is a great idea and will implement it beginning with our fall 2018 rankings.

**Commissioner of Planning, Preservation, and Development Response:**

I concur with the recommendations of the PDR Director on how to address the audit findings.

**Commissioner of Law Response:**

The Department of Law agrees that documentation in support should be filed along with each farm’s scoring sheet which adequately supports every point awarded to each farm. In regard to assigning points to farms for being located in Special Natural Protection Areas “B” sites, the Department of Law states as follows. The “B” sites are specifically listed with assigned acreage in Appendix D of the Rural Land Management Plan (RLMP). Those sites were identified by the drafters of the RLMP and specifically included for points in the Purchase of Development Rights (PDR) ordinance by its drafters. Because of the inclusion in both the RLMP and the PDR ordinance, the drafters of both assigned significance to the “B” sites. While some “B” sites are defined and should be simple to identify (i.e. Calumet Farm, 400 acres), other sites may be more difficult. The Department of Law is of the opinion that if the “B” sites can be more specifically defined by their acreage and shown on a map, then points could continue to be assigned and documented in a farm’s file. However, if the acreage noted for the



“B” sites cannot be defined and shown on a map, then the PDR ordinance should be revised to allow points for only those “B” sites where boundaries are clearly defined and shown on a map.

**Finding #2: Some PDR Program Practices Not Consistent With PDR Ordinance**

**Priority Rating: High**

**Condition:**

We noted some practices that were inconsistent with the language provided in the PDR Ordinance. Each circumstance is explained below:

- According to Section 26-9(1)(f) of the City’s PDR Ordinance, all PDR applications shall include "the landowner’s preferred method of payment for the acquisition, including but not limited to, lump sum payment or payout over time." We were unable to locate documentation of landowner’s payment preference within the PDR Applications. We were informed that all landowners that sold easements to the PDR Program have been paid a one-time, lump sum payment, and we verified that every easement tested within the scope of the audit was purchased via lump sum payments. We were also informed that if periodic payments were provided, the landowner would have to agree to relinquish their full PDR rights at closing prior to collecting the complete series of periodic payments, typically making this option unattractive to the landowner. PDR Management stated they were unaware of any applicant ever receiving periodic payments over time.
- Section 26-9(2) states that after the PDR Application has been submitted and reviewed by PDR Staff, the PDR Staff shall notify the landowner in writing that the Conservation Easement will be considered for purchase or that, for reasons set forth in writing, the Application is being rejected. However, we were informed that this letter is not being prepared or issued to the landowners. Instead, the PDR Director stated that landowners are informed during the application process if their farm does not qualify for the PDR Program prior to their paying the Application Fee.
- Section 26-17(1) of the PDR Ordinance requires PDR Staff to inspect PDR farms on an annual basis. Although we noted the schedule used by PDR to track farm monitoring indicates all farms have been monitored on an annual basis, this schedule alternates between calendar year and fiscal year reporting. This creates gaps in time



in between years and resulted in some farms not being inspected within a twelve month period as required by the Ordinance. Upon further inquiry, the PDR Director informed us that she does not have enough staffing to adequately annually inspect all PDR farms and administer the PDR Program. We were informed by the PDR Director that she was the only person to complete all of the PDR administrative duties, but that the RLMB was in the process of hiring outside services to assist in the monitoring function. In April 2018, the RLMB hired outside assistance to help complete easement monitoring.

**Effect:**

Failure to document the landowner's preferred payment method (lump sum versus periodic payments over time) within each PDR Application is inconsistent with the requirements of the Ordinance. Verifying that PDR Applications include all documentation required in Section 26-9 of the Ordinance ensures the application is complete. Failure to monitor or inspect all PDR Farms on an annual basis increases the possibility farms could violate the terms of the easement without PDR management's knowledge.

**Recommendation:**

PDR staff should document each applicant's payment method (lump-sum versus periodic payments over time) within each PDR Application in order to comply with Sec. 26-9(1)(f) of the Ordinance. The Department of Law should consider whether the option for PDR participants to receive payments over time is feasible, or if this provision should be removed from the Ordinance. If LFUCG is making payments over time for the easement purchase, this complicates seeking 50% reimbursement from the federal government for the easement purchase because the practice is to seek reimbursement for easement purchases that have already been paid.

PDR Staff should deliver written notification to applicants informing them their farm will be considered for a PDR easement or explaining the reason(s) the farm does not qualify as stipulated in Sec. 26-9(2).

With the recent hiring of outside services to conduct on-site inspections of PDR Program farms, it appears that the issue of monitoring farms for compliance may be in the process of being resolved. In order to ensure this issue is fully addressed, the PDR Director should provide an annual report to the RLMB summarizing the results of monitoring and identifying any uninspected farms.



**Director of Purchase of Development Rights Response:**

**Ordinance Section 26-9(1) Lump Payment vs. Payment Over Time:** At the May 30, 2018 meeting of the Rural Land Management Board, the Board voted unanimously to eliminate this language from the Ordinance. At their August 22, 2018 meeting, the Board voted to forward this item to Council. The staff will present this recommendation at the October 16<sup>th</sup> meeting of the Council's Planning & Public Safety Committee.

**Ordinance Section 26-9(2) Staff correspondence to landowner notifying them their farm will be considered for purchase:** The intent of this ordinance language is being met, though the process that was adopted as the program was implemented differs from the original language. We currently have a very constituent friendly process of meeting with each landowner prior to them applying to the program, and addressing any questions or concerns they may have. The only reason a landowner would not qualify for the PDR program is if their farm was smaller than 20 acres and/or was not located in the A-R or A-N Zones of the Rural Services Area. In that case, we would notify the landowner prior to them paying the \$200 application fee rather than allowing them to pay the fee and then receive a letter from us stating their application was being rejected. After all applications are received each year, the staff visits and ranks the farms, then compiles and presents the rankings to the Board. The Board generally votes to approve the rankings, and at that point a letter is mailed to each landowner notifying them of their ranking in our program and if applicable, any next steps in the acquisition process. This is how the language in Section 26-9(2) has been adapted. I knew this was the practice in recent years as my predecessor included this step in the PDR Process Manual he developed, but after reading the audit report, I was able to look back to 2001 and see that this has been the practice from the beginning. We are aware that the ordinance language needs updated to reflect the processes developed by the staff and Board as the program was implemented. I have drafted language to update Section 26-9(2), and will present it to the Board and/or Council for consideration as soon as it can be added to the appropriate agendas.

**Ordinance Section 26-17(1) Annual Monitoring of Farms:** With funding provided by our Mayor and Council to obtain assistance with easement monitoring, we have contracted with a former longtime USDA Natural Resources Conservation Service (NRCS) employee to assist with easement monitoring. He begin monitoring in June of this year, and the collaboration is proving to be beneficial for both our program and our farm owners, as he wrote many of the farm's conservation plans during his tenure at NRCS. Though our annual monitoring schedule did vary based on when I began in



this role then NRCS asking us to follow their fiscal year and our contracting with outside help, we have settled on the federal fiscal year of October 1<sup>st</sup> to September 30<sup>th</sup> for our annual monitoring schedule, as most of our farms are federally funded and require annual reports. Importantly, the NRCS Assistant State Conservationist did provide an email during the audit process stating that we have been in compliance with our federal monitoring requirements throughout my tenure. The ordinance states that the staff will administer and enforce easement monitoring under the supervision of the CAO which as implemented is the Commissioner of Planning, Preservation and Development, and I have provided annual updates to Commissioner Paulsen in addition to us discussing it throughout the year, and will be happy to provide an annual update to the Board as well.

**Commissioner of Planning, Preservation, and Development Response:**

I concur with the recommendations of the PDR Director on how to address the audit findings.

**Commissioner of Law Response:**

The Department of Law defers to the Department of Finance regarding permitted methods of payment, and notes that the PDR staff should comply with the PDR ordinance regarding written notification to and inspections of PDR farms.

**Commissioner of Finance & Administration Response:**

The Department of Finance concurs with the recommendation to include the type of payment in the PDR application and acknowledges that lump sum payment is the only viable payment method unless partial easements can be administered.

**Finding #3: PDR Ordinance Regarding Counter Appraisals is Inconsistent with Federal Cooperative Agreement**

**Priority Rating: High**

**Condition:**

Sec 26-13(2)(c) of the PDR Ordinance states the landowner has the option to secure an independent appraisal at his/her expense within 30 days of receiving the appraisal letter. However, the Federal Cooperative Agreement prohibits this practice for easements purchased using federal funding. Section VII.A.(15) of the 2016 Federal Cooperative Agreement states, "Under no circumstances will the ENTITY (LFUCG) allow the landowner to approve or disapprove of the appraiser selected to prepare the appraisal



report”. Most of the easements purchased in the PDR Program qualify for 50% reimbursement from the federal government. We did not note any counter appraisals on any of the PDR farms that qualified for federal funding.

**Effect:**

There is a significant inconsistency between the PDR Ordinance and the Federal Cooperative Agreement regarding counter appraisals.

**Recommendation:** As noted above, most PDR farm easements qualify for the 50% federal reimbursement, and it is clearly in LFUCG’s financial interest to obtain such reimbursement to extent it is possible to do so. We therefore recommend that Ordinance Section 26-13(2)(c) be amended to prohibit counter appraisals.

**Director of Purchase of Development Rights Response:**

The Rural Land Management Board voted on May 30<sup>th</sup> of this year to remove Section 26-13(2)(c) from the ordinance. On August 22<sup>nd</sup> of this year, they voted to forward this recommendation to Council, and staff will do so at the October 16<sup>th</sup> meeting of the Council’s Planning & Public Safety Committee.

**Commissioner of Planning, Preservation, and Development Response:**

I concur with the recommendations of the PDR Director on how to address the audit findings.

**Commissioner of Law Response:**

An ordinance revision committee of the Rural Land Management Board is currently reviewing and preparing a recommendation regarding the issue of counter appraisals. The recommendation should be forthcoming and will address this issue.

**Finding #4: New Application Should Be Submitted When Farms on PDR Ranking List are Sold to New Owners**

**Priority Rating: High**

**Condition:**

We noted a situation in which a farm on a PDR Application was submitted several years ago but was not selected by the RLMB for the PDR Program. The farm remained in the PDR Rankings and was later sold to new owners. The new owners wanted the farm to remain on the list of farms requesting a PDR Easement, but were not required to



submit a new application with new information such as the new mortgage and Subordination Agreement relating to the new owner's purchase of the farm. When the initial application was submitted by the original owners, there were no outstanding mortgages on the farm, and therefore the PDR Application indicated there were no mortgages on this property and no need for a Subordination Agreement. A Subordination Agreement was subsequently completed and filed away with the Federal Reimbursement Package in the application file.

**Effect:**

Failure to require new farm owners to submit a new PDR Application may result in overlooking important circumstances and documentation required by the Ordinance. In addition, the original application might be considered null and void because it was submitted and signed by previous owners.

**Recommendation:**

Landowners that purchase a farm currently being considered by PDR should be required to complete a new PDR Application to update personal information about the new property owners and disclose any new or updated information concerning the farm, or inform PDR that they are not interested in participating in the PDR Program.

**Director of Purchase of Development Rights Response:**

The application referenced in this finding closed under my tenure, but the application and transfer of ownership occurred prior to my tenure. The original application was received in 2007, and the new landowners assumed the application in 2008. I agree with the audit recommendation that when an applicant sells their farm and the new owner chooses to assume the application, they need to complete a new application form. The type of farming being practiced and the housing needs of the new owners could change in addition to the financial information, and our program needs to be aware of those changes. I will begin implementing this recommendation immediately, and will recommend that the Board adopt a policy on this issue that specifies whether the new owner needs to pay the \$200 application fee when assuming an existing PDR application.

**Commissioner of Planning, Preservation, and Development Response:**

I concur with the recommendations of the PDR Director on how to address the audit findings.



**Commissioner of Law Response:**

The Department of Law agrees that if a landowner purchases a farm that is currently being considered for easement purchase that the new purchaser should provide a written statement as to whether he/she wishes to continue with the purchase process and, if so, update the existing PDR Application with any new information. Both the statement to proceed and the updated application should be documented in the farm's file.

**Finding #5: PDR Ordinance Section 26-13 (2) Needs to be Complied With**  
**Priority Rating: High****Condition:**

We noted that the language regarding the selling of an Easement for less than appraised value is not included in the letters mailed to landowners. Section 26-14(1) of the PDR Ordinance describes the manner in which a landowner who wishes to sell his/her easement for an amount less than appraisal value would receive additional Land Evaluation and Site Assessment (LESA) points to increase the farm's score and rank in PDR. Section 26-13(2) states the appraisal letter mailed to the landowner shall advise the landowner of the additional points which may be secured if the landowner is willing to sell the Easement for less than the appraisal value. The purpose of this option is to increase the likelihood of a farm being selected for the PDR Program by increasing the farm's PDR points and improving the farm's ranking. Section 26-13 (2) makes reference to Sec. 26-14, which specifies this point system and states, "These points shall be in addition to those calculated by the Rural Land Board in determining from which landowners to purchase Conservation easements in the event funds are not sufficient within the current fiscal year to make purchases from all landowners with which it has begun negotiations pursuant to Section 26-11 (4)."

**Effect:**

The current PDR practice is inconsistent with the requirement in the Ordinance.

**Recommendation:**

PDR management should re-insert this language in the letter to comply with the existing Ordinance.



**Director of Purchase of Development Rights Response:**

As stated in one of my earlier responses, there are portions of the ordinance that were implemented in a different manner than written as the best practices for the program were developed, and Sections 26-13(2) and 26-14(1) are additional examples. This language could be useful in another stage of the acquisition process, but is not so as currently written. When the Board presents the appraisal to a landowner, they do so with a written offer to purchase an easement and both local and federal funding in place for that easement. Advising a landowner at this juncture that they could move ahead of another landowner if they accept less than appraised value would have no meaning since full funding is in place. This language could be useful if moved to Section 26-10 with all other ranking points and made optional. I looked back as far as 2001 at a sample of offer letters extended to landowners and none contained the language notifying them they could move ahead of other landowners if they accepted less than the appraised value, nor does the offer letter template we currently use which was drafted by our outside counsel and approved by the Board in late 2015. I have drafted language to move Section 26-14(1) to Section 26-10 and make it optional, and will present that to the Board and/or Council for consideration as soon as they are able to add it to the appropriate agendas.

**Commissioner of Planning, Preservation, and Development Response:**

I concur with the recommendations of the PDR Director on how to address the audit findings.

**Commissioner of Law Response:**

The Department of Law agrees with this recommendation.

**Finding #6: PDR Ordinance Change Recommended to Enhance Compliance with Cooperative Agreement Responsibilities**

**Priority Rating: Moderate**

**Condition:**

The 2016 Cooperative Agreement between LFUCG and the Natural Resources Conservation Service (NRCS-(a federal agency) states in Section VII. A. 17 (RESPONSIBILITIES) that, “The ENTITY (LFUCG) agrees to conduct itself in a manner so as to protect the integrity of agricultural land easements it holds and avoid the appearance of impropriety or actual conflicts of interest in its acquisition and management of agricultural land easements”.



Our detail testing of easement purchases found no instances where Board members submitted a farm for a PDR easement while serving on the Board. However, we did note that in past years there had been a few occurrences where a Board member resigned from the Board, later submitted a farm to the RLMB which was approved for a PDR easement, and then sometime later the member was re-instated on the RLMB. This type of situation was not prohibited then, nor is it now. However, the Ordinance needs to establish clear parameters for the approval of current or former Board member farms.

**Effect:**

Improved guidance in the area mentioned above will enhance LFUCG's ability to ensure continuous compliance with the requirements set forth in Section VII. A. 17 of the 2016 Cooperative Agreement.

**Recommendation:**

The PDR Ordinance should be amended to state that no member of the RLMB shall submit an application offering to sell a Conservation Easement while a member of the Board or within a certain period of time of serving on the Board (at least one year off the Board is suggested). It is our understanding the RLMB also plans on making this recommendation to the Urban County Council.

**Director of Purchase of Development Rights Response:**

On May 30<sup>th</sup> of this year, the Board voted to add language to the ordinance requiring that board members be separated from the Board for one (1) year prior to submitting an application to the PDR Program. They voted on August 22<sup>nd</sup> of this year to have staff present this language to the Council, and we will do so at the October 16<sup>th</sup> meeting of the Planning & Public Safety Committee.

**Commissioner of Planning, Preservation, and Development Response:**

I concur with the recommendations of the PDR Director on how to address the audit findings.

**Commissioner of Law Response:**

An ordinance revision committee of the Rural Land Management Board is currently reviewing and preparing a recommendation regarding the issue of serving on the Board and the appropriate time lapse between serving on the Board and participating in the program. The recommendation should be forthcoming and will address the issue.



**Finding #7: Late Deposit Activity**  
**Priority Rating: Moderate**

**Condition:**

According to CAO Policy #40, any checks received by PDR Staff should be delivered to the Division of Revenue within 24 hours. From time to time the PDR Program receives a \$200 check from an applicant to process their PDR Application. From 2014 through 2017, the PDR Program received 25 application checks, 16 of which were deposited from one to thirteen days late. Three were deposited six or more days late, and the average was 2.25 days late. We also noted that applicants are not given a receipt when they pay the application fee.

**Effect:**

Failure to adhere to CAO Policy #40 creates the opportunity for lost or misappropriated funds.

**Recommendation:**

PDR Staff should deliver all PDR Application Checks to the Division of Revenue within 24 hours of receipt as required by CAO Policy #40. PDR Staff should also obtain a pre-numbered receipt book. The original receipt should be provided to the Applicant and the carbon copy should be retained for transaction documentation purposes.

**Director of Purchase of Development Rights Response:**

The PDR program generally only receives checks one time per year when we hold our application cycle, and it has been the practice to submit those checks to the Division of Revenue in one batch. We generally receive 4-8 checks depending on the number of applications received. Though we have kept good records of each check by photocopying each check and keeping a copy in both a file of checks received that fiscal year and the individual farm file, we have not always met the 24-hour deposit requirement. We are currently in an application cycle with October 29<sup>th</sup> being the deadline, and have obtained a receipt book as recommended. We will issue a receipt to each landowner as they apply and keep one for ourselves, and ensure that all checks are deposited within 24 hours of receipt.

**Commissioner of Planning, Preservation, and Development Response:**

I concur with the recommendations of the PDR Director on how to address the audit finding.



**Finding #8: CAO Policy #22 Grants Management Requirement Not Complied With**  
**Priority Rating: Moderate**

**Condition:**

CAO Policy #22 specifically states that the Division of Grants and Special Programs has responsibility for the planning, administration, coordination, and regulatory oversight for all state, federal, and foundation grants applied for and awarded to the LFUCG. We noted that most of the PDR easements purchased are partially funded with federal funds (with 50% matching of eligible conservation easement purchases), and therefore per CAO Policy #22 should be managed by the Division of Grants and Special Programs. We discussed this issue with the Commissioner of Planning, Preservation, and Development and the Director of Grants and Special Programs and were unable to determine why the grant oversight is not being provided by the Division of Grants and Special Programs as required by the CAO Policy. The Director of PDR stated that the grants portion of the PDR Program has never been administered by the Division of Grants & Special Programs.

**Effect:**

The current practice of having PDR related federal grants administered by the Director of the PDR Program contradicts CAO Policy #22.

**Recommendation:**

The CAO should determine if PDR grant management should remain within the PDR Program, or if it should become a function of the Division of Grants & Special Programs as currently required by CAO Policy #22. If it is determined that the grant function should remain within the PDR Program, CAO Policy #22 should be amended to indicate this decision.

**Chief Administrator Officer Response:**

We will amend the CAO policy to make it clear that the grant function for PDR should remain with PDR and not with Grants.



**Finding #9: Inconsistent Development Rights Language in the Ordinance**  
**Priority Rating: Moderate**

**Condition:**

Section 26-8(2)(d) of the PDR Ordinance states that in order for a Conservation Easement to be considered for purchase by PDR, “the land in question must be at least 20 acres and must have at least one development right.” A “Development Right” was originally defined in the Ordinance as the right to divide the tract so as to create a new ten acre tract. However, in December 2007, the Ordinance was amended so that a “Development Right” was defined as the right to divide the tract so as to create a new 40 acre tract. We were advised by the PDR Director that the purpose of amending the definition of a Development Right was to make appraisals more consistent with the Federal Farm and Ranch Lands Protection Program in effect at that time (2005) by appraising farms using current zoning laws. It appears the effect the 2007 amendment had on Sec 26-8(2)(d) of the Ordinance was overlooked, resulting in a contradictory requirement.

**Effect:**

Inconsistent language in the Ordinance makes the PDR requirements ambiguous and more difficult to correctly implement.

**Recommendation:**

The Department of Law should review this language and recommend changes in the Ordinance necessary to remove this inconsistency.

**Director of Purchase of Development Rights Response:**

In February of this year, I presented this issue to our Ordinance Review Committee and reported that it appeared the December 2007 amendment to the ordinance had inadvertently changed the eligibility for the program from 20 acres to 80 acres. Our staff attorney and the Committee agreed. We discussed multiple ways to address this issue and the Committee settled on recommending ordinance language changes to the Board that would return the eligibility to the original 20 acres. That language was approved by our Board on May 30<sup>th</sup>, and on August 22<sup>nd</sup> the Board agreed to have the staff present these recommendations to Council. The staff will do so at the October 16<sup>th</sup> meeting of the Planning & Public Safety Committee.

**Commissioner of Planning, Preservation, and Development Response:**

I concur with the recommendations of the PDR Director on how to address the audit findings.



**Commissioner of Law Response:**

The Department of Law is working with the Rural Land Management Board ordinance revision committee to resolve this inconsistency in the ordinance. A recommendation from the committee should be forthcoming to address this issue.

**Finding #10: PDR Farm Housing and Infrastructure Requests Should be Formally Documented**

**Priority Rating: Moderate**

**Condition:**

Landowners who have PDR Easements on their farmland can request to perform certain Housing and/or Farm Infrastructure work on their property. During the audit, we learned that Housing and Infrastructure requests are typically communicated to PDR Management by email requests, and no formal application for Housing and Infrastructure requests exist. Prior to granting approval of Housing and Infrastructure requests, information concerning the exact nature and extent of the work requested, who granted approval (Staff Approval vs. Board Approval), and whether proposed construction is permitted according to the terms of the easement, etc. must be obtained. A “Housing and Infrastructure” Application Form would be a better process to document any official Housing and Infrastructure request and approval by utilizing a standard application form for each request. We noted the PDR Director began drafting this form near the end of fieldwork.

**Effect:**

Creating a formal “Housing/Infrastructure Request” Application Form will help ensure all necessary information concerning the nature and extent of the work to be performed and the approving authority is documented in a consistent manner.

**Recommendation:**

PDR should create a “Housing / Infrastructure Request” Application Form to be filled out by the landowner each time a construction request is submitted. The form should also contain an approval section. This form should be placed in the PDR farm’s file for documentation purposes.



**Director of Purchase of Development Rights Response:**

Though we have had a thorough process of requiring landowners to submit their requests in writing and provide architectural drawings and an aerial map indicating the proposed construction location, we agree that this recommendation will streamline our process. We have been using a Housing and Infrastructure Request Form when presenting requests to the Board, and used that format as a base to create a form the landowners and staff will use. We have provided it to farm owners requesting housing and/or infrastructure this summer as test period to ensure the form includes everything both we and the farm owners will need, and plan to have the final version available on our website by early October.

**Commissioner of Planning, Preservation, and Development Response:**

I concur with the recommendations of the PDR Director on how to address the audit findings.

**Finding #11: Excessive Holding of Easement Checks Affected LFUCG Cash Flow**

**Priority Rating: Moderate**

**Condition:**

We were informed that in 2017 the PDR Director completed a Form 211-5 requesting that Accounting issue nine checks totaling \$834,205 for several farms that were preparing to close on their easement contracts. After the PDR Director received the checks from Accounting, but before the closings occurred, the easements were changed and had to be sent back to NRCS (a federal agency) for approval. As a result, the farms did not close on the anticipated date. The checks were stored in the locked filing cabinet located in an Administrative Assistant's office. The closings continued to be delayed until the checks were stale dated (i.e., more than 180 days old). The PDR Director informed us she had spoken to Accounting about this and was going to deliver the checks to Accounting to be voided and have replacement checks issued just prior to closing on these farms. We confirmed that these checks were returned to Accounting and voided on April 18, 2018.

**Effect:**

Checks cut for the purchase of PDR Easements reduce cash in the LFUCG Concentration Account. Therefore, in the situation described above, cash available to LFUCG was reduced by \$834,205 when the checks were printed and remained reduced until the checks were voided. This affected LFUCG cash flow.



**Recommendation:**

Should a situation arise in the future where checks have been cut but the closing is delayed for what is expected to be more than a few weeks, the checks should be voided in order to free up LFUCG funds for other uses. New checks can then be cut once the closing issue is resolved.

**Director of Purchase of Development Rights Response:**

Prior to my tenure, it was the practice of the PDR Program to request a check for payment to the landowner as soon as the contract to purchase an easement was executed, and hold that check until the closing. However, after having a check expire early in my tenure due to a delayed closing, I talked with the Accounting staff and learned their preference was for us to request checks when closings were scheduled, rather than upon signing contracts. We have implemented that process since that time and did so in September 2017 when requesting checks for imminent closings, but unexpected circumstances delayed those closings at the last minute. Both we and our federal partners expected the issues to be resolved quickly, and it became a process of continually expecting the farms to close. Our checks are written against bond funds rather than cash and we were not crossing over a fiscal year, so we held the checks rather than having them voided. When we approached the 180 days, I reached out to our Accounting staff to notify them the checks would be expiring and obtained directions on having the checks voided. We did so and did not have those checks re-issued until the closings were rescheduled. We will continue our practice of not requesting checks until the closing is confirmed and if the situation arises again where the closing is canceled, we will notify the Division of Accounting and adhere to the instructions they provide.

**Commissioner of Planning, Preservation, and Development Response:**

I concur with the recommendations of the PDR Director on how to address the audit findings.

