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## CODE OF MARYLAND REGULATIONS (COMAR)

15.15.01.00

### **Title 15. DEPARTMENT OF AGRICULTURE** **Subtitle 15. MARYLAND AGRICULTURAL LAND PRESERVATION** **FOUNDATION**

#### **Chapter 01. Guidelines for the Maryland Agricultural Land Preservation Program**

**Authority: Agriculture Article, §§ 2-504, 2-509, and 2-513, Annotated Code of Maryland**

15.15.01.01

#### **.01 General.**

The Maryland Agricultural Land Preservation Program was created by the Maryland General Assembly to preserve productive agricultural land and woodland which provides for the continued production of food and fiber for the citizens of the State. This program is administered by the Board of Trustees of the Maryland Agricultural Land Preservation Foundation (the Foundation). The preservation of agricultural land will curb the spread of urban sprawl and protect agricultural land and woodland as open space land.

15.15.01.01-1

#### **.01-1 Program Summary.**

- A. The Maryland Agricultural Land Preservation program is voluntary on the part of landowners and is dependent upon the cooperation of local government. This program requires local governments to appoint agricultural preservation advisory boards that assist in the creation of agricultural preservation districts where the subdivision and development of land is restricted by agreement between the landowner and the Agricultural Land Preservation Foundation, and where agricultural and woodland production activities are encouraged and protected. If a landowner requests that this property be included in a district, that property must meet minimum criteria as established by the Agricultural Land Preservation Foundation. If an easement has not been sold to the Foundation, a landowner may terminate after 5 years his property's inclusion in a district. Notice to terminate must be given 1 year in advance of the termination date.
- B. A landowner who includes his land within a district will receive the following benefits:
  - (1) Direct and indirect support of agriculture;
  - (2) Insulation of normal agricultural activities from nuisance complaints; and
  - (3) Eligibility to make an application to sell an agricultural land preservation easement to the Foundation.
- C. Once land is in an agricultural preservation district, a landowner may make application to sell an easement to the Maryland Agricultural Land Preservation Foundation. The application will indicate the price of any easement offered. The maximum value of this easement is determined as the difference between the land's agricultural use value and its fair market value as determined by appraisals. However, the Foundation has the discretion to select those easements which it shall purchase. Purchased easements may be reviewed after a 25-year period, and if profitable farming is found not to be feasible, an easement may be terminated by repurchase.

15.15.01.01-2

### **.01-2 Definitions.**

- A. In these regulations, the following terms have the meanings indicated.
- B. Terms Defined.
  - (1) "Adjoining" means having a common border.
  - (2) "Agricultural land preservation easement" or "easement" means a negative servitude which restricts a landowner's right to use the land for any commercial, industrial, or residential purpose except as otherwise permitted by Agriculture Article, §2-513, Annotated Code of Maryland.
  - (3) "Agricultural use" means any use of land which directly contributes to the production, processing, or storage of agricultural products.
  - (4) "Contiguous" means having a common border.
  - (5) "Profitable farming feasibility" means the:
    - (a) Potential for yielding an excess of returns over expenditures through agricultural production and transactions as influenced and determined by productive capability of the subject land;
    - (b) Existence and proximity of markets for agricultural products; and
    - (c) Relative profitability of agricultural pursuits on adjacent and nearby lands.
  - (6) "Severe economic hardship" means:
    - (a) A state of financial peril of a landowner as evidenced by bankruptcy proceedings;
    - (b) The results of natural disaster or farm owner/operator disability; or
    - (c) As determined by the Board of Trustees on a case-by-case basis.
  - (7) "Subdivision" means the division of land into two or more parts or parcels.

15.15.01.02

### **.02 Agricultural Preservation Advisory Boards.**

- A. In each county containing productive agricultural land, the county governing body shall appoint a five-member agricultural preservation advisory board as provided by law (Agriculture Article, §2-504.1).
- B. The appointment of an agricultural preservation advisory board shall be a prerequisite to program eligibility for landowners in each county.
- C. Agricultural preservation advisory boards shall have the following responsibilities and duties:
  - (1) To advise the county governing body with respect to the establishment of agricultural preservation districts and the approval of purchases of easements by the Foundation within the county;
  - (2) To assist the county governing body in reviewing the status of agricultural preservation districts and land under easement;
  - (3) To advise the Foundation concerning county priorities for agricultural land preservation, and to develop, for consideration by the county governing body, criteria which may expand upon Foundation criteria and priorities relative to size, productive capability, and location of land eligible in the program;
  - (4) To promote the preservation of agriculture within the county by offering

- information and assistance to farmers with respect to the establishment of agricultural preservation districts and the purchase of easements; and
- (5) To perform any other duties as assigned by the county governing body.

15.15.01.03

### **.03 Agricultural Preservation Districts.**

#### **A. Conditions for Establishment.**

- (1) To establish a district, a landowner shall:
- (a) File a petition as provided under §B of this regulation; and
  - (b) If the petition is approved as provided under this regulation, execute a district agreement in the form prescribed by the Foundation, agreeing, among other things, that the following covenants, conditions, and restrictions contained in it run with the land covered by the agreement for so long as the agreement remains in effect:
    - (i) The landowner agrees to keep the land in agricultural use in a district for, except as otherwise permitted by law, a minimum period of 5 years from the date the district agreement is recorded in the land records of the county where the district is located,
    - (ii) The landowner agrees not to use the land for any commercial, industrial, or residential purpose, except as otherwise permitted by Agriculture Article, §2-513, Annotated Code of Maryland,
    - (iii) The landowner agrees not to subdivide the land for any purpose unless the Foundation first has approved the proposed subdivision, and
    - (iv) The landowner agrees not to construct buildings or structures on the land that are not designed or intended to be used for agricultural purposes unless the Foundation first has approved the proposed construction.
- (2) The Foundation may only purchase an easement on land in a district.

#### **B. Petition for Establishment.**

- (1) One or more owners of land actively devoted to agricultural use within an eligible county may voluntarily file a petition with the county governing body requesting the establishment of an agricultural preservation district composed of the land owned by the petitioners.
- (2) The petition shall include a general description of each land parcel including acreage and the current use of the land and shall be accompanied by a map or plat of each subject parcel at a scale no smaller than 1 inch equals 600 feet (copy of tax map will meet requirement).
- (3) The petition also shall be accompanied by a district agreement for each subject parcel signed by the landowner or landowners.
- (4) The petition and district agreement shall be submitted to the local governing body.

#### **C. Agricultural Preservation District Establishment – Procedures.**

- (1) Referral of Petition.
- (a) Upon receipt of a petition to establish an agricultural preservation district, the local governing body shall refer the petition and accompanying materials to both the agricultural preservation advisory board and to the county planning and zoning body.

- (b) Within 60 days of the referral of a petition, the agricultural preservation advisory board shall inform the county governing body whether the land in the proposed district meets the qualifications established by the Foundation under §D of this regulation, and whether the advisory board recommends establishment of the district.
  - (c) Within 60 days of the referral of a petition, the county planning and zoning body shall inform the local governing body whether establishment of the district is compatible with existing and approved county plans, programs, and overall county policy, and whether the planning and zoning body recommends establishment of the district. In the process of review, the local planning and zoning body shall consider compatibility of district establishment with State and local plans and programs.
- (2) If either the agricultural preservation advisory board or the planning and zoning body recommends approval, the county governing body shall hold a public hearing on the petition. Adequate notice of the hearing shall be given to all landowners in the proposed district, to landowners adjacent to the proposed district, as far as feasible, and to the Foundation. If neither body recommends approval of the petition, the local governing body shall deny the petition and notify the landowner or landowners and the Foundation stating the reasons for the denial.
- (3) Approval of Petition.
  - (a) Within 120 days after the receipt of the petition, the county governing body shall render a decision on whether the petition shall be recommended to the Foundation for approval.
  - (b) If the county governing body decides to recommend approval of the petition, this body shall so notify the Foundation and forward to the Foundation the petition and all accompanying materials, including the recommendations of the advisory board and county planning and zoning body, and a composite property boundary map of the proposed district.
  - (c) If the county governing body recommends denial of the petition, it shall so inform the Foundation and the petitioner or petitioners, stating the reasons for this denial.
- (4) The Foundation may approve a petition for the establishment of an agricultural preservation district only if:
  - (a) The land within the proposed district meets the qualifying criteria established under §D of this regulation;
  - (b) Approval of the petition has been recommended by the county governing body; and
  - (c) Establishment of the district is approved by a majority of the Foundation Board of Trustees at-large, by the Secretary, and by the State Treasurer.
- (5) The Foundation shall render its decision on a petition to establish an agricultural preservation district within 60 days of the receipt of the petition, and shall inform the county governing body and the petitioner (or petitioners) of its decision.
- (6) If the Foundation approves the petition, the agricultural preservation district shall be established by the county governing body. However, the establishment may not take effect until all parties have executed agricultural preservation district agreements and until these agreements have been recorded in the land records of the county. The Foundation shall do the recording. The Foundation shall notify the landowner and the local governing body of the effective date of district

- establishment.
- (7) Ordinance.
    - (a) Each county shall establish an ordinance relative to all agricultural preservation districts.
    - (b) The ordinance shall provide that, within the district:
      - (i) Any farm use of land is permitted;
      - (ii) Operation at any time of machinery used in farm production or the primary processing of agricultural products is permitted; and
      - (iii) Normal agricultural operations performed in accordance with good husbandry practices, which do not cause bodily injury or directly endanger human health, are permitted, including the sale of farm products produced on the farm where the sales are made.
  - (8) Local governments are encouraged to minimize regulatory requirements for non-residential farm structures and related agricultural improvements.
  - (9) The establishment of a district does not grant the public any right of access or right of use of subject properties.
- D. Agricultural Preservation Districts – Qualifying Criteria.
- (1) Productive Capability Criteria.
    - (a) Agricultural preservation districts shall consist of land which is either used primarily for the production of food or fiber or is of such open space character and productive capability that continued agricultural production is feasible.
    - (b) Soils Criteria.
      - (i) The majority of the land of any district shall consist of U.S.D.A. Soil Capability Classes I, II, and III;
      - (ii) The majority of the land area of any district shall consist of U.S.D.A. Woodland Groups 1 and 2 which are applied to wooded areas only;
      - (iii) The majority of the land area of any district less the acreage contained within the 100-year floodplain as delineated on Flood Hazard Boundary Maps produced by the Federal Emergency Management Administration and State or federal designated wetlands shall consist of U.S.D.A. Soil Capability Classes I, II, and III on cropland and pasture or Woodland Groups 1 and 2 on wooded areas only;
      - (iv) A minimum of 60 percent of the land area of any district shall consist of U.S.D.A. Soil Capability Classes I, II, and III on cropland and pasture and Woodland Groups 1 and 2 on woodland areas; or
      - (v) A minimum of 60 percent of the land area of any district less the acreage contained within the 100-year floodplain and State or federal wetlands shall consist of U.S.D.A. Soil Capability Classes I, II, and III on cropland and pasture and Woodland Groups 1 and 2 on wooded areas.
    - (c) Exceptions to §D(1)(b)(i) – (v) of this regulation may include land areas of lower soil capabilities, but with a rating similar to Classes I, II, and III on cropland and pasture and Woodland Groups I and II on woodland areas. Land with lower soil capabilities may qualify to be in a district if the soils on the applicant's farm otherwise comply with all the requirements of this section and the applicant submits to the Foundation

a letter from the appropriate U.S. Department of Agriculture district conservationist that states that the soils on the applicant's farm have a cropland or pasture rating similar to Classes I, II, and III, or Woodland Groups I and II. Farm areas with extensive specialized production, including but not limited to dairying livestock, poultry, fruit, or berry production may also be considered by the Foundation to be included in a district.

- (2) District Size Criteria.
  - (a) An agricultural preservation district shall be 100 contiguous acres. However, a parcel of less than 100 acres may qualify as a district if:
    - (i) It adjoins a 100-acre parcel which has been approved by the Foundation as an agricultural preservation district;
    - (ii) It is added to one or more adjoining parcels which together have been approved by the Foundation as agricultural preservation districts;
    - (iii) The land has extraordinary agricultural capability as provided by §D(5) of this regulation and is of significant size; or
    - (iv) It adjoins land subject to a recorded instrument which permits agricultural activities and contains restrictions that are the same as or more stringent than those found in the Foundation's deed of easement, and the collective mass of these lands total at least 100 acres.
  - (b) The Foundation may not purchase an agricultural preservation easement from a landowner of a district of less than 100 acres unless:
    - (i) It is contiguous to a district or districts on which a 100-acre easement has been purchased;
    - (ii) The landowners in the adjoining districts which are each less than 100 acres but total at least 100 acres accept the Foundation's offer to purchase an easement;
    - (iii) The land has extraordinary agricultural capability as provided by §D(5) of this regulation and is of significant size; or
    - (iv) It adjoins land subject to a recorded instrument which permits agricultural activities and contains restrictions that are the same as or more stringent than those found in the Foundation's deed of easement, and the collective mass of these lands total at least 100 acres.
- (3) Locational Criteria. Land within the boundaries of a 10-year water and sewerage service district may be included in an agricultural preservation district only if that land is outstanding in productivity and is of significant size. Note: Refer to County Water and Sewerage Plan.
- (4) Agricultural land which is otherwise qualified for district establishment and is comprised predominantly of land of lower general capability also may meet minimum qualifying criteria if the following conditions are met to the satisfaction of the Foundation:
  - (a) The agricultural preservation advisory board of the county in which the land is located shall obtain general information from the Agricultural Extension Agent and specific written information from the soil conservation district in the county, and such other sources as might be applicable, addressing the long-term productivity of the land and farm management practices, and shall forward this documentation to both the

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forfeiture of the owner's right as described in this subsection, to have lots released from the Foundation's easement, should the Foundation acquire an easement.

- G. Continuation of Districts. Agricultural districts shall continue in effect indefinitely unless terminated in accord with any of the procedures provided in Regulation .04 of this chapter.
- H. Access. In determining questions about easements, rights-of-way, licenses, and other similar servitudes in land subject to a district agreement, the Foundation shall follow the same rules that are applicable to the establishment of these servitudes in land subject to a preservation easement set forth under Regulation .17F of this chapter.

15.15.01.04

#### **.04 Termination and Alteration of Districts.**

- A. The provisions of this regulation are applicable only to land in agricultural preservation districts on which an easement is not held by the Foundation.
- B. After 5 Years. A landowner may terminate his property's inclusion in an agricultural preservation district at any time after 5 years from the establishment of the district. Notice of intention to terminate may be submitted to the Foundation at the end of the fourth year of the district's establishment, or anytime after, with a 1-year notice.
- C. Severe Economic Hardship.
  - (1) Foundation and County Approval Needed. If severe economic hardship occurs, the Foundation with the concurrence of the county governing body may release the landowner's property from an agricultural preservation district at any time.
  - (2) Petitioning the Foundation.
    - (a) To obtain the relief available under §C(1) of this regulation, the landowner shall petition the Foundation, stating succinctly the severe economic hardship that the landowner is sustaining, and providing the Foundation with the following information:
      - (i) A recent financial statement which shows the owner's complete assets and liabilities and a statement that the information contained in the financial statement is true and accurate;
      - (ii) Other information attesting to the severe economic hardship that the landowner is sustaining, including by way of example, information from mortgagees, lien holders, creditors, attorneys, the Internal Revenue Service, or other third-party interests who are qualified to address the economic condition of the landowner.
    - (b) Copy to County. The landowner shall send a copy of this petition and the information required under §C(2)(a) of this regulation to the appropriate county governing body.
    - (c) Disclosure of Information. To the extent permitted by law, the Foundation shall deny public access to the information the landowner has supplied the Foundation under §C(2)(a) of this regulation. Nothing in this regulation shall preclude the Foundation from discussing this information with the appropriate county governing body, whose concurrence is required in any property release under this section.
    - (d) If the Foundation approves the petition to release the landowner's property from a district, the Foundation shall prepare the release.

- D. Land Within District No Longer Meeting Qualifications. The Foundation may approve alteration or abolishment of the district, if the following occur:
- (1) The use of land within the district has so changed as to cause land within the district to fail to meet the qualifications under Regulation .03D of this chapter;
  - (2) The Foundation has assessed the potential impacts of alteration on remaining lands in the district;
  - (3) The alteration or abolition of the district has been recommended by the county governing body after review by the agricultural preservation advisory board and county planning and zoning body, and a public hearing has been held; and
  - (4) The alteration or abolition is approved by a majority of the Foundation Board of Trustees at large, by the Secretary, and by the State Treasurer.

15.15.01.05

#### **.05 Application to Sell Agricultural Land Preservation Easement.**

- A. An owner of agricultural land located within an agricultural land preservation district may offer by written application to sell to the Foundation an easement on the entire contiguous acreage of land within that district.
- B. The owner shall submit a written application to sell an easement to the Foundation not later than July 1 of the fiscal year in which the application is to be considered and include with the application:
- (1) An asking price for which the owner is willing to sell an easement;
  - (2) A complete description of the subject land;
  - (3) A certification from the local soil conservation district that it has prepared or revised within the last 10 years a soil conservation and water quality plan that:
    - (a) Identifies the existing erosion and water quality problems on the subject land and the means (that is, the practices and other conservation measures) necessary to address them, and
    - (b) Contains a schedule for implementing the means to address the problems; and
  - (4) An acknowledgement of the following by the landowner:
    - (a) That upon the Foundation's acquisition of the easement, the landowner agrees to follow the recommended schedule to implement the best management practices described in a soil conservation and water quality plan applicable to the land; and
    - (b) For land with 25 acres or more of contiguous forest land, the landowner agrees, before the easement is acquired, to provide the Foundation with a certification from a forester licensed in this State, that:
      - (i) A forest stewardship plan has been prepared or revised for the land within the last 10 years; and
      - (ii) The landowner agrees to implement the practices stated in the plan.

15.15.01.06

#### **.06 Maximum Number of Applications.**

- A. The Board shall determine the maximum number of applications it may consider in each offer cycle.

- B. Applications received after the maximum number has been reached may be considered in the next available cycle.

15.15.01.07

**.07 Date on Which the Foundation Shall Receive Applications.**

In each offer cycle, the Foundation shall hold all applications to be considered until July 1, when it officially shall receive the applications.

15.15.01.08

**.08 Notice to Landowner of Receipt and Sufficiency of Application to Sell.**

Within 30 days after the receipt of an application, the Foundation shall notify the landowner whether the application is sufficient. If the application is insufficient, the Foundation shall specify the reason for insufficiency and grant the owner an additional 30 days to remedy the insufficiency. If the application is made sufficient within 30 days of the notification by the Foundation, the application shall be considered as if it had originally been submitted in a timely and sufficient manner.

15.15.01.09

**.09 Approval or Disapproval of Application by County Governing Body.**

- A. Within 30 days after receiving an owner's application to sell an easement, the Foundation shall notify the governing body of the county containing the subject land that it has received an application.
- B. Within 60 days after receiving the notification referenced in §A of this regulation, the county governing body shall advise the Foundation as to local approval or disapproval of the application.
- C. The Foundation shall grant a county governing body a 30-day extension of this response period if the county governing body applies to the Foundation for an extension and states its reasons.
- D. In deciding whether to approve the application, the county governing body shall receive the recommendation of the county agricultural preservation advisory board.
- E. In making its recommendation, the county agricultural preservation advisory board shall take into consideration criteria and standards adopted by the Foundation under current local regulations, local patterns of land development, and any locally established priorities for the preservation of agricultural land.
- F. The county agricultural preservation advisory board shall provide a public hearing concerning any application to sell an easement if a hearing is requested by a majority of the county agricultural preservation advisory board, or by a majority of the county governing body, or by the applicant.
- G. The Board of Trustees of the Foundation may not approve an application to sell which has not been approved by the governing body of the county containing the subject land.

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15.15.01.10

## **.10 Value of Easement.**

- A. Maximum Value.
- (1) Computation. The maximum value of any easement to be purchased shall be the asking price, or the difference as of the valuation date between the fair market value of the land and the agricultural value of the land, whichever is lower.
  - (2) Valuation date. The valuation date for each property within an agricultural land preservation district being appraised in a given offer cycle shall be July 1, the last day in each offer cycle that an application may be submitted for consideration.
- B. Fair Market Value.
- (1) The fair market value of the land is the price as of the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property was not subject to any restriction imposed under these regulations.
  - (2) The Department of General Services shall determine the land's fair market value based on one or more appraisals by the State appraisers, and appraisals, if any, submitted by the landowner. The entire contiguous acreage shall be included in this determination, less 1 acre per single dwelling.
  - (3) In determining the fair market value of land, improvements to the land may not be considered.
  - (4) If the subject property is less than 100 acres and its fair market value is being determined under the direct sales comparison approach, the adjustments for size between the subject property and the comparison properties shall be calculated as though the subject property is 100 acres.
- C. Agricultural Value. The agricultural value of land shall be determined by the formula provided under COMAR 15.15.02.
- D. Appeal Route. In the establishment of an easement value, the following steps of appeal are available:
- (1) If the landowner and Foundation do not agree on the value of the easement as determined by the State, either party may request that the matter be submitted to the property tax assessment appeals board where the property is located for arbitration;
  - (2) Either party may appeal the property tax assessment appeal board's determination of the easement value by petitioning the Maryland Tax Court for a de novo hearing;
  - (3) Either party may appeal from the Tax Court's final order to the circuit court of the county where the property is located.
- E. Effect of Board's Determination in a Purchase of the Easement. Unless the parties agree to a lesser value or an appeal is noted to the Maryland Tax Court, the parties are bound for a period of 2 years by the property tax assessment appeal board's determination of the easement value.
- F. Consideration of Application Following Appeal.
- (1) If, following an appeal, the round of easement offers has closed for the offer cycle that the landowner originally applied to sell the easement, the Foundation shall consider the landowner's application in the next available offer cycle as provided in §F(2) or (3) of this regulation.
  - (2) Foundation Would Have Made Offer.

- (a) If the value of the easement as finally determined on appeal is such that the landowner would have received an offer in the offer cycle that he applied to sell the easement, the Foundation, subject to §F(2)(b) and (c) of this regulation, shall offer the landowner a sum equal to the value determined on appeal or the original asking price, whichever is lower.
  - (b) The Foundation may make an offer only if:
    - (i) Funds are available;
    - (ii) A majority of the board members at-large approve the offer;
    - (iii) The State Treasurer and the Secretary have recommended that the offer be made; and
    - (iv) The value determined on appeal is greater than the State's appraised value of the land.
  - (c) If the conditions of this section have been met, the Foundation shall make the offer:
    - (i) After paying the current year's appraisal costs for the county where the property is located; and
    - (ii) If possible, before making the first ranked current offer cycle applicant in that county an offer.
- (3) Foundation Would Not Have Made Offer.
- (a) If the value of the easement as finally determined on appeal is such that the landowner would not have received an offer in the offer cycle that he had applied to sell the easement, the Foundation, subject to §F(3)(b) and (c) of this regulation, may consider his application to sell along with the new applications.
  - (b) The Foundation may not consider the landowner's application if:
    - (i) The landowner has not requested in writing that the Foundation do so; and
    - (ii) The value determined on appeal is less than or equal to the State's appraised value of the land.
  - (c) The Foundation shall treat the landowner's written request as a formal application.

15.15.01.11

### **.11 Rejection of Foundation's Offer.**

- A. A landowner whose application to sell an agricultural land preservation easement has been rejected for a reason other than insufficient funds may not reapply to sell an easement on the same land or on the same terms until 2 years have passed after the date of the original application.
- B. However, if the landowner's asking price is lower than that indicated in the original application, the landowner may apply to sell an easement on that same land in the next available offer cycle or any cycle after that.

15.15.01.12

### **.12 Land Subject to Mineral Rights.**

- A. Unless a property owner either releases or subordinates its mineral or material extraction rights interest to the Foundation's interest under the easement, the Foundation may not

- acquire an easement on a farm that is subject to mineral rights or a right to extract sand and gravel, shale, limestone, crude petroleum and natural gas, clay, ceramic, and fertilizer minerals and deep-mined minerals, including bituminous coal.
- B. The Foundation may accept subordination of less than 100% of the mineral rights interest if owners of fractional shares cannot be located or are unwilling to subordinate, and the Foundation determines that the fractional interests are unlikely to be exercised.
- C. In Garrett County or Allegany County only, the Foundation may not require subordination if the Foundation determines that exercise of natural gas rights will not interfere with an agricultural operation on property subject to an easement.

15.15.01.13

### **.13 Tender of Offer to Buy After Approval of Application.**

Upon approval of a majority of the Board members at-large, and upon the recommendation of the State Treasurer and the Secretary, an application to sell shall be approved, and an offer to buy which contains the specific terms of the purchase shall be tendered to the landowner. An offer to buy may specify terms, contingencies, and conditions not contained in the original application.

15.15.01.14

### **.14 Time of Tender; Acceptance or Rejection.**

- A. With respect to allotted purchases, the Foundation shall tender any offer to buy containing the specific terms of the purchase for the:
- (1) First offer cycle, on or before January 31; and
  - (2) Second offer cycle, on or before July 31.
- B. With respect to additional offers to buy tendered, the Foundation may not tender these offers earlier than 30 days after the completion of allotted purchases in each offer cycle.
- C. A landowner has 30 days from the date of any offer to buy in which to accept or reject the offer.

15.15.01.15

### **.15 Schedule of Payment.**

- A. At the time of settlement of the purchase of an easement, the landowner and the foundation may agree upon and establish a schedule of payment such that the landowner may receive consideration for the easement in a lump sum, or in installments over a period of up to 10 years from the date of settlement.
- B. If a schedule of installments is agreed upon, the Comptroller shall retain in the Maryland Agricultural Land Preservation Fund an amount of money sufficient to pay the landowner according to the schedule.
- C. The landowner shall receive annually interest on any unpaid balance remaining after the date of settlement. This interest shall be at the same rate as any interest earned on the funds retained pursuant to §B of this regulation, less 1/4 of 1 percent.

15.15.01.16

### **.16 Notice of Rejection of Application; Reapplication.**

- A. On or before June 30, following the first offer cycle, or on or before December 31, following the second offer cycle, the Foundation shall notify every landowner whose application had been rejected during that offer cycle. The Foundation shall specify the reasons for that rejection.
- B. A landowner whose application has been rejected for a reason other than insufficient Foundation funds may not reapply to sell an easement on the same land on the same terms until 2 years after the date of the original application.

15.15.01.17

### **.17 Use of Land on Which an Easement is Purchased.**

- A. Provisions to be Included in Easement and County Regulations. Agricultural land preservation easements may be purchased for land in agricultural use which meets the qualifying criteria established under Regulation .03D of this chapter if the easement and county regulations governing the use of the land include the following provisions:
  - (1) Any agricultural use of land is permitted;
  - (2) Operation of machinery used in farm production or the processing of agricultural products is permitted;
  - (3) Normal agricultural operations performed in accordance with good husbandry practices, which do not cause bodily injury or directly endanger human health, are permitted, including sale of farm products produced on the farm where the sales are made, and may generally include up to 25 percent in gross sales of farm products produced locally on other farms.
- B. Prohibitions. Except as permitted by Agriculture Article, Title 2, Subtitle 5, Annotated Code of Maryland, a landowner who has sold an agricultural preservation easement to the Foundation is prohibited from using that land for any commercial, industrial, or residential purpose.
- C. Dwellings.
  - (1) Application. Before a lot may be released from an easement's restrictions for the construction of a dwelling house, the landowner shall submit an application to the Foundation that:
    - (a) The landowner has signed;
    - (b) Contains a declaration that the lot and dwelling house are only for the use of the landowner or the landowner's child, whichever is the case (if the use is for the landowner's child, identify the child);
    - (c) Includes signed statements indicating approval of the release from both the local agricultural land preservation advisory board and the county planning and zoning department;
    - (d) Includes a description of the land to be disturbed by both the dwelling and access to that dwelling, so as to gauge the impact that the dwelling and any access to that dwelling will have on the farm; and
    - (e) Includes a survey plat or tax map on which the precise location of the proposed lot is noted.
  - (2) Corporation's or Similar Entity's Request for Children's Lot. The Foundation may not approve an application from a corporation, partnership, or other similar

- entity to have a child's lot released from an easement's restrictions unless the:
  - (a) Entity's membership is comprised of family members who are actively engaged in the daily agricultural operations on the land; and
  - (b) Entity is otherwise eligible to have a lot released.
- (3) Owner's Lot. A landowner is entitled to have only one owner's lot released from the easement's restrictions regardless of how land is titled (that is, as tenants in common, in joint tenancy, or in a corporation's or partnership's name).
- D. Tenant House. A landowner also may construct housing for tenants fully engaged in the operation of the farm. The procedure for the approval of a tenant house is provided by COMAR 15.15.03.
- E. Public Not to be Granted Right of Access or of Use. Purchase of an easement by the Foundation does not grant the public any right of access or right of use of the subject property.
- F. Granting Easements and Rights-of-Way.
  - (1) General Rule. After a landowner has sold an agricultural preservation easement to the Foundation, the landowner may not grant or permit another to establish an easement, right-of-way, or other servitude in that land without the Foundation's written permission.
  - (2) Exceptions to General Rule. The Foundation may permit an easement or right-of-way to be granted in land subjected to a preservation easement under the following circumstances:
    - (a) If it is to service a lot released from preservation easement restrictions under Agriculture Article, §2-513, Annotated Code of Maryland;
    - (b) If it is to service a neighboring farm, provided, however, that its use is restricted to the movement of farm equipment or other items associated with farming.
- G. Permitted Uses.
  - (1) The Foundation may not purchase a preservation easement unless, as provided under Agriculture Article, §2-513, Annotated Code of Maryland, the easement instrument and the regulations in the county in which the easement is to be purchased permit the following uses on that land:
    - (a) Any farm use of land is permitted;
    - (b) Operation at any time of any machinery used in farm production or the primary processing of agricultural products is permitted; and
    - (c) All normal agricultural operations performed in accordance with good husbandry practices which do not cause bodily injury or directly endanger human health are permitted including, but not limited to, sale of farm products produced on the farm where these sales are made.
  - (2) A landowner may not use land subjected to a preservation easement for any purpose that is otherwise prohibited, inconsistent with, or contrary to State or local law, or the restrictions imposed by the preservation easement.
  - (3) In determining whether a particular use is inconsistent with or contrary to the preservation easement, the Foundation shall consider the following factors:
    - (a) Whether it is a commercial, industrial, or residential use;
    - (b) Whether it will likely have a negative impact on the agricultural operations of the farm on which it is to be implemented;
    - (c) Whether it has an historical relationship to farming (for example, goose hunting); and
    - (d) Whether it is temporal, seasonal, or permanent in nature.
- H. Documentation Required For Agricultural Subdivision.

- (1) A landowner may not subdivide land subject to restrictions of an agricultural land preservation district or easement without written approval from the Foundation.
  - (2) A landowner shall submit a written request for approval to the Foundation.
  - (3) All requests for agricultural subdivisions shall be decided on a case-by-case basis.
  - (4) A request shall be considered by the Foundation if:
    - (a) An application for agricultural subdivision has been fully and accurately completed and signed by all landowners;
    - (b) The landowner provides an unmarked copy of the tax map outlining the entire district or easement property;
    - (c) A second copy of the tax map is provided that clearly indicates the property boundaries of the district or easement and the area proposed to be agriculturally subdivided, including access to all pre-existing dwellings, lot exclusions, tenant houses, and farm buildings;
    - (d) The county program administrator submits written verification to the Foundation describing the current overall farm operation, as well as the current and intended use of the proposed agricultural subdivision;
    - (e) The local tax assessment office submits written documentation to the Foundation that the subdivided portion and the remaining portion of the original parcel continue to qualify for agricultural use assessment under Tax-Property Article, Annotated Code of Maryland;
    - (f) The local agricultural land preservation advisory board submits a letter to the Foundation addressing the potential for continued agricultural use of the property and approving the request;
    - (g) The proposed subdivision is intended for an agricultural purpose and both the parcel to be subdivided and the remaining parcel are able to sustain long-term agricultural production, independent from the other; and
    - (h) The requested subdivision is consistent with county planning and zoning regulations, as evidenced by a letter of approval and recommendation or statement of conformity received from the local planning and zoning office or the county program administrator.
- I. Property Requirements For Agricultural Subdivision.
- (1) The subdivided portion and all remaining parcels shall be at least 50 acres, and each parcel shall meet the minimum soils requirement, as provided by Regulation .03D of this chapter, for district establishment; and
  - (2) A request for an agricultural subdivision may not be considered by the Foundation for land that is less than 100 acres, unless the property is subject to an agricultural preservation easement.
- J. Exceptions to Property Size.
- (1) The Foundation may permit a subdivision of less than 50 acres of easement property if:
    - (a) One of the following exists:
      - (i) It is for the purpose of straightening a boundary; or
      - (ii) The parcel to be subdivided is conveyed to an adjoining easement property, the remaining parcel is at least 50 acres, and if the adjoining easement property is not a Foundation easement, it shall be restricted by a recorded instrument that permits agricultural activities and contains restrictions that are the same as or more stringent than those found in the Foundation's deed of

- easement; and
    - (b) The remaining portion of the original parcel meets the minimum soils criteria, as provided in Regulation .03D.
  - (2) The Foundation may permit the subdivision of an easement property that is less than 100 acres if:
    - (a) The parcel to be subdivided is conveyed to an adjoining easement property; and
    - (b) The remaining portion of the original parcel consists of at least 50 acres.
- K. Special Exceptions. If the request for an agricultural subdivision is being made as a special exception, the following documentation is required:
  - (1) A recommendation to either endorse or deny the request for the subdivision from the local agricultural land preservation advisory board; and
  - (2) When the request is not for a boundary line adjustment, letters of support from organizations such as the Soil Conservation Service and Forest Service that can attest to the long-term productive capabilities of both the proposed agricultural subdivision and the remaining parcel.

15.15.01.18

## **.18 Repealed.**

15.15.01.19

## **.19 Acceptance of Easements by Donation, Gift, Bequest, or Grant.**

- A. The Foundation may accept easements or other rights to restrict the use of agricultural land and woodland in accord with the criteria and procedures of this regulation.
- B. Criteria.
  - (1) Agricultural land and woodland parcels on which easements are accepted shall be:
    - (a) Primarily used for the production of food or fiber;
    - (b) Of such size, configuration, and natural capability to assure continued economically viable agricultural production or be located contiguous to other similarly productive land; and
    - (c) Land within the boundaries of a 10-year water and sewerage service district only if the land is outstanding in productivity and is of significant size.
  - (2) The acceptance of an easement by donation, gift, bequest, or grant may not be contingent upon inclusion of the land in an agricultural preservation district.
- C. Procedures for Acceptance of Easement Donations. The Foundation shall forward any donation offers to the applicable local governing body for review and comment. The Foundation shall determine easement acceptability in accord with the criteria as provided in §B of this regulation and findings from a field visit to the property. Further acceptance is contingent upon a satisfactory legal review.
- D. Deed Form.
  - (1) Donated easements may be in perpetuity or for a specified term. Special provisions, unique to the land or to the wishes of the donor, may be incorporated in the easement form for consideration by the Foundation.
  - (2) Restrictions.
    - (a) However, the restrictions in this subsection are generally applicable to

- the encumbered land in any deed for an easement by donation.
- (b) Any agricultural use of the land is permitted. However, industrial or commercial use is not permitted with the exception of uses related to the primary processing of agricultural and/or woodland products and the direct sale of locally produced agricultural and woodland products to the public.
  - (c) Subdivision for residential and commercial purposes is not permitted. However, upon written application to and approval by the Foundation, conveyance of a lot for the owner and for each of his children for the purpose of construction of one dwelling intended for his or their use may be permitted.
  - (d) The property may be subdivided only with the written approval of the Foundation.
  - (e) Signs, billboards, or outdoor advertising structure may not be displayed on the property, except that one sign, not exceeding 4 feet by 4 feet, may be displayed to state the name of the property and the name and address of the occupant, to advertise an activity permitted above, and to advertise the property for sale or rental.
  - (f) No dump of ashes, sawdust, bark, trash, rubbish, or any other material, except that which is for regular agricultural use, may be permitted on the property.
  - (g) Agricultural lands shall be managed in accordance with sound agricultural and soil and water conservation practices, in a manner which will not be of significant detriment to agricultural production capability on the land.
  - (h) Woodlands shall be managed in accordance with sound forestry practices, and trees may be selectively or clear cut from time to time in a manner that will not alter the character of the land or diminish its productive capability.
  - (i) The grantee and its representatives, after appropriate notice to the grantors and any person residing on the property, may enter the property from time to time for the purpose of inspection and enforcement of the terms of the easement granted herein. However, the grantee may not have the right to inspect the interior of any dwelling on the subject property.
  - (j) In case of doubt concerning the appropriateness or permissibility of agricultural or related uses of encumbered property, the property owner may submit a written request for consideration and approval of the use to the Board of Trustees of the Maryland Agricultural Land Preservation Foundation.

15.15.01.20

## **.20 Determination by Foundation of Applications To Be Approved.**

- A. In determining which applications to approve for the purchase of the easements offered, the Foundation shall approve only those applications which have received approval of the applicable local governing body in which the subject land meets the qualifying criteria of Regulation .03D of this chapter on lands which are currently within an agricultural preservation district.

B. Approval of Easement Sale Applications.

- (1) Ratios of 1.0 or Lower. All applications for the sale of easements shall be assigned a rank in ascending order with respect to the proportion obtained by dividing the asking price by the State appraisal easement value. The resulting rank shall be the sole criterion for establishing the priority for approved applications with ratios of 1.0 or lower. If between two or more landowners, the proportions obtained are equal, the following land characteristics shall affect the priority of acquisition:
  - (a) Highest productive capability;
  - (b) Greatest urban pressure; and
  - (c) Largest parcel.
- (2) Ratios of Greater than 1.0. All applications for the sale of easements shall be assigned a point total resulting from the following easement priority formula. Applications shall be ranked in descending order of respective point totals and this shall be the sole criterion for establishing the priority for the approved applications that include asking price/appraised value ratios greater than 1.0.
- (3) Points. The following points shall be assigned to soil capability, based on the land classification system as developed by the U. S. Department of Agriculture, Soil Conservation Service. The following standard priority ranking system applies to ratios greater than 1.0 if the total district acreage is:  
(Maximum 20 Points)
  - (a) 50 percent or more Classes I and II ----- 20 points;
  - (b) 50 percent or more Classes II and III ----- 16 points;
  - (c) 50 percent or more Class III ----- 12 points;
  - (d) 50 percent or more Woodland Group 1 ----- 20 points;
  - (e) 50 percent or more Woodland Group 2 ----- 12 points;
  - (f) Less than 50 percent Class I, II, and III soils or Woodland Groups 1 and 2, but 50 percent or more of the productive area of the district is devoted to specialized food production such as orchard, vineyard, poultry, livestock, or other agricultural commodities intended for human consumption which can be produced on poorer soils without the eventual degradation of the productive capability of the land; or agricultural land which is otherwise qualified for district establishment and is comprised predominantly of lower general capability which was subject to Foundation approval based on documented productivity ----- 12 points;
  - (g) Less than 50 percent Class I, II, and III soils or Woodland Groups 1 and 2, but 50 percent or more of the productive area of the district is devoted to non-food production such as nursery, horses, tobacco, or other non-food agricultural commodities which could be produced on poorer soils without the eventual degradation of the productive capability of the land-----8 points.
- (4) Points. The following points shall be assigned based upon agricultural preservation area and district size (maximum 25 points):
  - (a) Preservation area. Agency Note: An agricultural preservation area is the amount of contiguous land under district agreement which may include separate ownership and land which is permanently preserved for agriculture through a county, State, federal, or private organization.
    - (i) 1,000 acres or larger --- 10 points,

- (ii) 500—999 acres --- 8 points,
    - (iii) 100—499 acres --- 5 points;
  - (b) District:
    - (i) 175 acres or larger --- 10 points,
    - (ii) 100—174 acres --- 8 points,
    - (iii) 50—99 acres --- 2 points;
  - (c) If the District adjoins a district on which a development rights easement has been acquired or the adjacent land has been permanently preserved for agriculture through county, State, federal, or private organization --- 5 points.
- (5) Points. Points shall be assigned based upon the threat to the continuance of agriculture. The following points apply to the percentage of existing or formally proposed nonagricultural land use acreage within a 1.5 mile radius of the district (maximum 30 points):
  - (a) 41—50 percent developed and district is contiguous to the undeveloped portion --- 10 points;
  - (b) 31—40 percent developed and district is contiguous to the undeveloped portion --- 8 points;
  - (c) 21—30 percent developed and district is contiguous to the undeveloped portion --- 6 points;
  - (d) 10—20 percent developed and district is contiguous to the undeveloped portion --- 4 points;
  - (e) The following points apply to the proximity to the county's existing sewer service or sewer service planned within the next 10 years:
    - (i) Less than 1 mile --- 15 points,
    - (ii) 1—2 miles --- 12 points,
    - (iii) 2.1—4 miles --- 9 points,
    - (iv) 4.1—6 miles --- 6 points;
  - (f) The following points apply to the proximity to community or suburban development areas outside the county's existing or ten year sewer service boundary: Agency Note: A community or suburban development area is an area of existing and formally proposed residential development greater than 500 contiguous acres.
    - (i) Less than 0.5 miles --- 5 points,
    - (ii) 0.6—1.0 miles --- 4 points,
    - (iii) 1.1—2.0 miles --- 3 points,
    - (iv) 2.1—3.0 miles --- 2 points.
- (6) Points. The following points apply to the priority recommendations of local governing bodies for applications based on a formal objective evaluation process approved by the Foundation (maximum 25 points):
  - (a) Applications designated high priority --- 25 points;
  - (b) Applications designated medium priority --- 10 points;
  - (c) Applications designated low priority --- 5 points.
- C. The Foundation shall only approve those applications that have been approved by the applicable local government.

15.15.01.21

**.21 Maryland Agricultural Land Preservation Fund and Local Funds.****A. Definitions.**

- (1) "Total amount to be allotted" means the amount, as certified by the Comptroller, which remains in the Maryland Agricultural Land Preservation Fund at the beginning of the fiscal year after payment of all expenses of the Foundation and the Board of Trustees during the previous fiscal year, and after subtraction of funds committed for payment as consideration for easements purchased during previous fiscal years, and after subtraction of any money remaining in the Fund as a result of a transfer of local program open space funds.
- (2) "General purchases of easements" means purchases of agricultural land preservation easements in which the governing body of the county in which the land is located is not required to make a contribution to the Maryland Agricultural Land Preservation Fund.
- (3) "Matching purchases of easements" means purchases of agricultural land preservation easements in which the governing body of the county in which the land is located is required to make a contribution to the Maryland Agricultural Land Preservation Fund of an amount equal to at least 40 percent of the value of the easement for each purchase.
- (4) "Allotted purchases" means general or matching purchases made pursuant to offers to buy tendered by the Foundation on or before January 31 in the first offer cycle and on or before July 31 in the second offer cycle.
- (5) "County" means any county containing productive agricultural land which is being actively farmed and which meets the criteria for land on which easements may be purchased.
- (6) "Eligible county" means a county as defined in §A(5) of this regulation which has secured approval from the Foundation for a local agricultural land preservation program (applicable only to local matching programs).

**B. Sources.** The Maryland Agricultural Land Preservation Fund shall comprise money made available to the fund by general or special fund appropriations, and money made available to the fund by grants or transfers from governmental or private sources.**C. Disbursements.** The Comptroller of the Treasury may not disburse any money from the Maryland Agricultural Land Preservation Fund other than for:

- (1) Costs associated with the staffing and administration of the Maryland Agricultural Land Preservation Foundation;
- (2) Reasonable expenses incurred by the members of the Board of Trustees of the Maryland Agricultural Land Preservation Foundation in the performance of official duties; and
- (3) Consideration in the purchase of agricultural land preservation easements beginning with fiscal year 1979 and each fiscal year thereafter. Money may be disbursed from the Fund only upon formal notification to the Comptroller of the Treasury from the Maryland Agricultural Land Preservation Foundation.

**D. Fund Regulation, Distribution, and Procedures.**

- (1) **Audit.** The Fund shall be audited annually by the Legislative Auditor in the manner prescribed by law.
- (2) **Maximum Amount To Be Expended for Allotted Purchases.**
  - (a) Beginning with fiscal year 1979, and in each fiscal year after, the Foundation shall determine the maximum amount which may be

- expended for allotted purchases of easements on land located within each county.
- (b) The maximum amount which may be expended for allotted purchases of easements in any county in any fiscal year shall be:
    - (i) For general allotted purchases, an amount, which shall be divided equally between the two cycles, equal to  $\frac{1}{23}$  of  $\frac{1}{2}$  of the total amount to be allotted after first deducting the amount of local shares of agricultural transfer tax, which was unexpended and uncommitted for 3 years and is being held by the Department in a special account, plus any amount of transferred local open space fund designated by the local governing body for general purchases.
    - (ii) For matching allotted purchases, an amount, which shall be divided equally between the two cycles, which shall be computed for each eligible county by dividing  $\frac{1}{2}$  of the total amount to be allotted equally among those counties having an approved local matching program. The maximum amount available from the Foundation for the Foundation's share in matching allotted purchases may not exceed \$1 million in any county in any fiscal year.
  - (c) Matching allotted purchases may not be approved for land located in any county which has not secured approval from the Foundation for a local matching program of agricultural land preservation in accord with Regulation .22 of this chapter.
- (3) Money Remaining at End of Fiscal Year. Money remaining in the Fund at the end of a fiscal year may not revert to the general funds of the State, but shall remain in the Maryland Agricultural Land Preservation Fund to be used for the purposes specified in this subtitle. It is the intent that, to the extent feasible, the Foundation use the full amount of money available for the purchase of easements in any fiscal year so as to minimize the amount of money remaining in the Fund at the end of any fiscal year.
- (4) Additional Offers to Buy.
- (a) If during the first offer cycle, the Foundation receives acceptances of offers to buy in insufficient numbers to expend the first offer cycle allotment (that being 50 percent of the total amount to be allotted for allotted purchases), the Foundation, to the extent feasible, shall tender, after completion of the first round of the first offer cycle, additional offers to buy in sufficient numbers to expend the first offer cycle allotment. If during the second offer cycle, the Foundation receives acceptances of offers to buy in insufficient numbers to expend the remainder of the total amount to be allotted for allotted purchases, the Foundation, to the extent feasible, shall tender, after completion of the first round of the second cycle, additional offers to buy in sufficient numbers to expend the total amount to be allotted and any funds remaining from the first offer cycle allotment.
  - (b) Additional offers to buy shall be tendered:
    - (i) To landowners who have applied to sell easements on land which was otherwise acceptable, but who had not received an offer to buy solely because of limitations on the amount of money to be spent for allotted purchases.

- (ii) To applicants on a Statewide basis in ascending order with respect to the proportion obtained by dividing the landowner's asking price by the State appraisal easement value for ratios of 1.0 or lower, and in descending order by point totals for ratios of greater than 1.0 as determined by Regulation .20B of this chapter. If proportions obtained are equal, the following land characteristics shall affect priority of acquisitions: highest productive capability, greatest urban pressure, and largest parcel.
- (iii) Only after the expiration of the period allowed for acceptance of offers to buy under allotted general and matching purchases.

E. Local Funds.

- (1) Transfer of Local Subdivision's Program Open-Space Funds. If authorized by law, a portion of a local subdivision's allocation of program open space funds is transferred to the Maryland Agricultural Land Preservation Fund pursuant to the provisions of Natural Resources Article, §5-903, Annotated Code of Maryland, the Foundation may use these transferred funds only for purchases of easements on land located within the boundaries of the subdivision which requested the transfer of funds. These transferred open-space funds shall be available in addition to any funds which would otherwise be allotted under this subtitle for purchases of easements in the county which requested the transfer of funds, and, at the discretion of the local governing body, the transferred open-space funds may be used for general purchases or applied as the local contribution in matching purchases.
- (2) Other Local Funds. Other local funds may be transferred to the Maryland Agricultural Land Preservation Fund.

15.15.01.22

## **.22 Local Matching Programs of Agricultural Land Preservation.**

- A. The Foundation may approve a local matching program of agricultural land preservation, provided that:
  - (1) The county agrees to make payments up to a specified and Foundation-approved aggregate amount to the Maryland Agricultural Land Preservation Fund to equal at least 40 percent of the value of an easement acquired by the Foundation as a result of a matching allotted purchase made during the ensuing fiscal year;
  - (2) The county shows evidence that the local matching program for the acquisition of easements for the purposes of agricultural land preservation will not result in preservation of land which does not meet the qualifying criteria as established in these regulations; and
  - (3) The county request for approval of a local matching program is submitted to the Foundation, together with any necessary agreements, not later than 90 days before the beginning of the fiscal year for which approval is being sought.
- B. Approval of a local matching program by the Foundation is valid only during the fiscal year following the fiscal year of the request for approval by the county.
- C. Local matching programs shall be approved upon the affirmative vote of a majority of the Board members at-large, and upon approval of the Secretary and the State Treasurer.
- D. Local matching programs submitted to the Foundation for consideration shall include:
  - (1) An inventory of productive agricultural land in the county based upon the qualifying criteria of these regulations;

- (2) County agricultural land preservation goals;
  - (3) Analysis of alternative local means of preserving productive agricultural land;
  - (4) Analysis of the relationship between the county comprehensive plan and agricultural land preservation goals and program; and
  - (5) Selected approaches to preserving productive agricultural land.
- E. Matching allotted funds shall be available exclusively for the acquisition of easements. The Foundation may not approve matching allotted purchases of easements for land located in any county which has not secured approval from the Foundation for a local matching program of agricultural land preservation.

15.15.02.00

**Title 15. DEPARTMENT OF AGRICULTURE**  
**Subtitle 15. MARYLAND AGRICULTURAL LAND PRESERVATION**  
**FOUNDATION**

**Chapter 02. Formula for Determining the Agricultural Value of Land**

**Authority: Agriculture Article, § 2-511, Annotated Code of Maryland**

15.15.02.01

**.01 Scope.**

These regulations provide the formula for determining the agricultural value of land under the Maryland Agricultural Land Preservation Program.

15.15.02.02

**.02 Definitions.**

- A. In this chapter, the following terms have the meanings indicated.
- B. Terms Defined.
  - (1) "Agricultural land preservation easement" or "easement" means a negative servitude in land which restricts a landowner's right to use the land for any commercial, industrial, or residential purpose except as otherwise permitted under Agriculture Article, §2-513, Annotated Code of Maryland.
  - (2) "Agricultural value" means the value of the land determined by a formula adopted by the Department that measures the farm productivity of the land.
  - (3) "Cultivable land" means the portion of the applicant's land that consists of the following soil groups as classified under the USDA Soil Conservation Service's Soil Capability System: Class I, II, III, IV, V, and VI soils.
  - (4) "Department" means the Maryland Department of Agriculture.
  - (5) "Fair market value" means the value of land as of the valuation date for the highest and best use of the land which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property was not subject to any easement restriction.

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15.15.02.03

### **.03 Purchase of Easement.**

If land has development potential for commercial, industrial, or residential use, the Department may purchase, subject to requirements of COMAR 15.15.01, an agricultural land preservation easement from a landowner. The maximum value that the Department may pay for an easement is the asking price or the difference between the fair market value of the land and the agricultural value of the land, whichever is lower. The Foundation may not purchase an easement from a landowner whose land is already restricted to agricultural use.

15.15.02.04

### **.04 Fair Market Value.**

The fair market value of the land on which the landowner has applied to sell an easement shall be determined by the Department of General Services based upon one or more appraisals by State appraisers and any appraisals, if any, of the landowner.

15.15.02.05

### **.05 Explanation of Formula for Determining Agricultural Value.**

- A. Formula's Underlying Premise. The agricultural value of the land on which the landowner has applied to sell an easement shall be determined by the formula provided under Regulation .06. This formula, which measures the farm productivity of the applicant's land, provides a method for ascertaining the capitalized value of the sum necessary to rent the applicant's farm. (The formula's premise is that the capitalized value of cash rents paid for land is a reliable indicator of the land's agricultural value.) The formula numerically explains how certain factors such as a farm's location and its soil types affect rent.
- B. Factors Affecting Rent.
  - (1) Soil Types. A survey of Maryland farmers who rented land revealed a strong relationship between rent and soil types, that is, the greater a land's natural productivity, the greater the rent paid for that land (and per the formula's premise, the greater the agricultural value of the land). As explained in Regulation .07, a land's natural productivity is measured in terms of a soil productivity index. This index is based on the natural characteristics of each soil class and how these characteristics relate to crop production.
  - (2) Location. A survey of Maryland farmers also revealed a relationship between rent and a farm's location, that is, the greater a farm's average distance from Baltimore and Washington, up to 100 miles, the greater the rent paid for that land (and per the formula's premise, the greater the agricultural value of the land). Beyond 100 miles, the relationship between rent and a farm's location was not significant.
  - (3) Quantifying How Soil Types and Location Affect Rent. From the results of this survey, a mathematical equation was developed which effectively estimates how a farm's soil types and location would affect its rent. Being able to effectively estimate how these factors would affect a farm's rent (and consequently, per the formula's premise, how they would affect a farm's agricultural value), this

equation forms a major step in the Department's formula for determining agricultural value. The mathematical equation is as follows:  $\text{Rent} = -53 + (160 \times \text{productivity index}) + (0.11 \times \text{average distance from Baltimore and Washington, up to 100 miles})$ . The equation, however, is only effective for estimating rental values greater than \$25 per acre. For this reason, under the Department's formula for determining agricultural value, \$25 per acre constitutes the minimum per acre rental value for a parcel of land.

- (4) Explanation of Mathematical Equation.
- (a) Relationship Between Rent and Soil Types. The chart indicated in Regulation .08 is useful to understand the relationship between rent and soil types. A visual inspection reveals that rents tend to be greater for higher soil productivity indexes. Mathematical methods are used to generalize this relationship into a statistically "best fit" formula shown by the formula line on the graph. The -53 in the equation represents the point where the formula line crosses the rent axis on the graph. It has no practical meaning except to fit the formula line to the data. The 160 in the equation represents the formula line's slope. It means that for each increase of 0.10 in the soil productivity index of a parcel of land, rental values increase \$16.
  - (b) Relationship Between Rent and Location. The relationship between rent and location of this equation can be similarly explained. The 0.11 in the equation means that for every mile increase in average distance that the applicant's land is from Baltimore and Washington, up to 100 miles, rental rates increase by 11 cents.
  - (c) Range of Equation's Effectiveness. The \$25 minimum rent value line indicates that the equation is only effective for estimating rents within the range of the data. In those few cases when, under the equation, a land's rental value is estimated to be less than \$25 per acre, use \$25 per acre to complete the formula for determining the land's agricultural value.

15.15.02.06

## **.06 Formula for Determining Agricultural Value.**

To determine the agricultural value of the land on which the landowner has applied to sell an easement, complete the following five steps:

- A. Step 1. Using the following method, determine the soil productivity index of the parcel of land on which the applicant has applied to sell an easement. First, note how many acres of cultivatable land (Class I through VI soils) are contained in this parcel. Second, determine how many of these acres consist of Class I soils. Third, using the table found in Regulation .07 of this chapter, multiply the number of acres of Class I soils by the soil productivity index for Class I soils. Having completed the calculation process for Class I soils, follow the same process for Class II through Class VI soils. Next, add each of these calculations together. Finally, divide this sum by the total number of acres of cultivatable land contained in the entire parcel. This figure equals the soil productivity index of the applicant's parcel. (For example, if the applicant's parcel consists of 60 acres of Class II soils and 40 acres of Class III soils, the following calculations must be made:  $60 \text{ acres} \times 0.72 = 43.20$ ;  $40 \text{ acres} \times 0.50 = 20$ ;  $43.20 + 20 = 63.20$ ;  $63.20 \text{ divided by } 100 \text{ acres} =$

- 0.632. The soil productivity index of the applicant's parcel in this example equals 0.632.) Use this calculation to complete Step 3.
- B. Step 2. Determine the average distance the applicant's land is from Baltimore and Washington. First, note the distance this land is from Baltimore. Second, note the land's distance from Washington, D.C. To obtain the land's average distance from Baltimore and Washington, add these two distances together and divide by 2. (For example, if the applicant's land is 50 miles from Washington and 20 miles from Baltimore, its average distance from these areas is 35 miles.  $(50 + 20) \div 2 = 35$ .) Use this calculation to complete Step 3.
- C. Step 3. Using the mathematical equation discussed in Regulation .05 of this chapter, determine the per acre rental value of the applicant's land. That equation is as follows:  $\text{Rent} = -53 + (160 \times \text{productivity index}) + (0.11 \times \text{average distance from Baltimore and Washington, up to 100 miles})$ . Insert the figures derived from completing Steps 1 and 2 to complete the equation. The productivity index number is the figure derived from completing Step 1. The average distance is the figure derived from completing Step 2. If the average distance is 100 miles or more, insert 100 into the equation. (Using the figures from the examples noted in Steps 1 and 2, the equation is completed as follows:  $\text{Rent} = -53 + (160 \times 0.632) + (0.11 \times 35)$  or, to answer the equation, \$51.97 per acre.) Use this calculation or the most recent 5-year average cash rent of the county where the property is located, whichever is lower, to complete Step 4. If the rental value calculated in Step 3 or if the running 5-year average cash rent of the county is less than \$25 per acre, use \$25 per acre to complete Step 4.
- D. Step 4. To determine the per acre agricultural value of the applicant's land, divide the figure derived from completing Step 3 (the per acre rental value of the applicant's land) by a capitalization rate of 6 percent (the Department has estimated 6 percent to be the capitalization rate). (Using the figure from the example noted in Step 3, or \$51.97 per acre, the per acre agricultural value is \$742.43  $(\$51.97 \div 0.06)$ .) Use this figure to complete the final step.
- E. Step 5. To determine the agricultural value of the applicant's land, multiply the figure derived from completing Step 4 (the per acre value) by the total number of acres of cultivatable land comprising the applicant's land.

15.15.02.07

### **.07 Soil Productivity Index\*.**

Soil Class	Soil Productivity Index
Class I	1.00
Class II	.72
Class III	.50
Class IV	.50
Class V	.18
Class VI	.18

\*The figures in this table numerically express the soil productivity for each class of soil. Compiled by the Maryland Agricultural Statistics Services, USDA, and the Agricultural Resource Economics Department, University of Maryland, they are based on the capability each class has of producing crops under average management. Class I soils have a high productivity rating. Class II soils have a medium productivity rating which is 28 percent less than Class I. Class III and IV soils have a low productivity rating which is 50 percent less than Class I. Class V and VI

soils have the lowest rating which is 82 percent less than Class I.

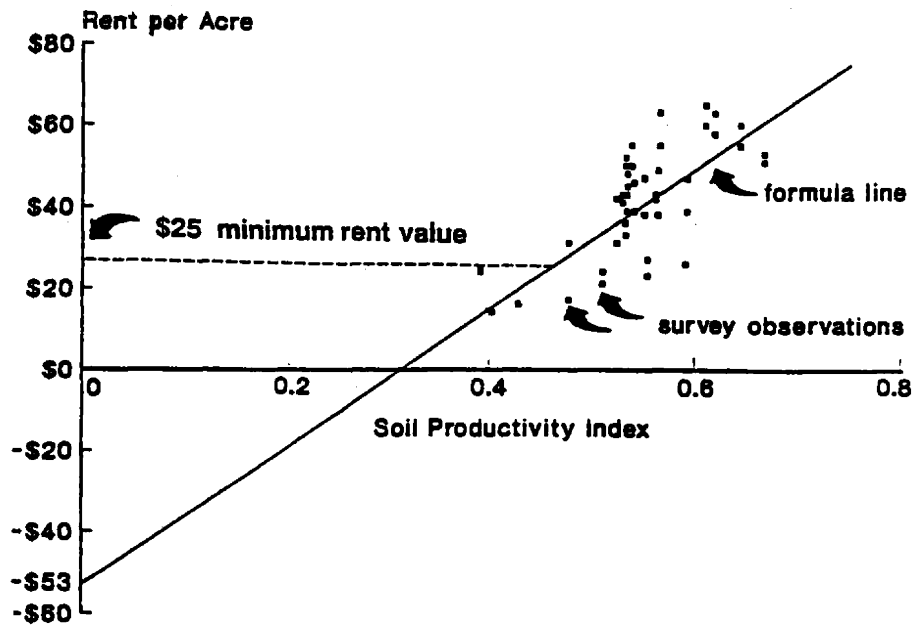
15.15.02.08

#### **.08 Relationship Between Rent and Soil Productivity Index.**

15.15.02.08

DEPARTMENT OF AGRICULTURE

#### **.08 Relationship Between Rent and Soil Productivity Index.**



15.15.03.00

**Title 15. DEPARTMENT OF AGRICULTURE**  
**Subtitle 15. MARYLAND AGRICULTURAL LAND PRESERVATION**  
**FOUNDATION**  
**Chapter 03. Tenant House Approval for a Farm Subject to an Agricultural Land**  
**Preservation Easement**  
**Authority: Agriculture Article, §§ 2-504 and 2-513, Annotated Code of Maryland**

15.15.03.01

#### **.01 Scope.**

This chapter establishes the criteria and eligibility for the approval of a tenant house on a farm subject to an agricultural land preservation easement held by the Maryland Agricultural Land Preservation Foundation.

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15.15.03.02

**.02 Definition.**

- A. In this chapter, the following terms have the meanings indicated.
- B. Terms Defined.
  - (1) Tenant.
    - (a) "Tenant" means an individual fully engaged in the operation of a farm.
    - (b) "Tenant" does not include a landowner or a person who has a financial interest in the landowner, including a shareholder interest, partnership interest, or membership interest, full, limited, or otherwise.
  - (2) "Tenant house" means an accessory structure in which a tenant resides consisting of not more than 2,000 square feet, unless provided otherwise by the Foundation, calculated by first multiplying the exterior footprint of the portions of the structure with multiple stories by the number of stories with windows, and then adding the exterior footprint of any portions of the structure with one story, but excluding basements, attics, porches not used as living space, garages, and unenclosed decks.

15.15.03.03

**.03 Eligibility.**

- A. The approval for the construction of a tenant house by the Maryland Agricultural Land Preservation Foundation is not an absolute right of a landowner, and requests shall be reviewed by the Foundation on a case-by-case basis. Each request shall be reviewed to determine if a proposed tenant house is necessary based on the nature of the farming operation. A tenant house shall be located on a farm consistent with this chapter and its purpose as housing for a tenant fully engaged in the operation of the farm.
- B. Farm Size.
  - (1) A request for a tenant house may not be considered by the Foundation for any farm of less than 100 acres, unless the Foundation grants an exception based on a showing of compelling need.
  - (2) Not more than one tenant house per full 100 acres may be considered by the Foundation for a farm, for example, one house for 100—199.99 acres, two houses for 200—299.99 acres.
- C. A tenant house may be approved for and occupied only by tenants in which one or more is fully engaged in the operation of the farm.
- D. The Foundation shall approve the location and size of a tenant house as an accessory structure. Unless the Foundation approves otherwise a tenant house:
  - (1) Shall be located in the vicinity of other farm buildings; and
  - (2) May not be located on a farm field.
- E. A tenant house, including its size and location, may not be approved by the Foundation unless it conforms with local planning and zoning regulations.
- F. A tenant house and the land where it is constructed may not be subdivided and separately conveyed from the farm subject to the easement.
- G. The Foundation may not approve the construction of a tenant house solely for the purpose of producing rental income.

15.15.03.04

#### **.04 Application Procedure.**

Before the Foundation may consider a request for the construction of a tenant house, all of the following information shall be submitted:

- A. An application for construction of a tenant house, which has been completed and signed by all titled landowners;
- B. An unmarked copy of the tax map, which outlines the entire district or easement property;
- C. A second copy of the tax map, which shall include the following:
  - (1) Property boundaries of the district of easement property;
  - (2) Location of, and access to, the proposed tenant house; and
  - (3) Location of, and access to, all preexisting dwellings, lot exclusions, tenant houses, and farm buildings;
- D. A written statement from the landowner indicating how much the tenant will be compensated for the tenant's work;
- E. Written verification from the county program administrator describing:
  - (1) The current overall farm operation; and
  - (2) The need for the proposed tenant housing to support the current operation;
- F. A letter of recommendation from the local agricultural land preservation advisory board; and
- G. A written statement from the local planning and zoning office or the county program administrator indicating that the proposed tenant house may be constructed under current local regulations.

15.15.04.00

**Title 15. DEPARTMENT OF AGRICULTURE**  
**Subtitle 15. MARYLAND AGRICULTURAL LAND PRESERVATION**  
**FOUNDATION**  
**Chapter 04. Relocation of the Site of an Existing Dwelling on a Farm Subject to an**  
**Agricultural Land Preservation Easement**  
**Authority: Agriculture Article, §§ 2-504 and 2-513, Annotated Code of Maryland**

15.15.04.01

#### **.01 Scope.**

This chapter establishes the criteria and eligibility for the approval of the relocation of the site of an existing dwelling on a farm subject to the Maryland Agricultural Land Preservation Program.

15.15.04.02

#### **.02 Definitions.**

- A. In this chapter, the following terms have the meanings indicated.
- B. Terms Defined.

- (1) "Existing dwelling" means a building, structure, trailer, or mobile home that was designated by the landowner and recognized by the Foundation and the county as an existing dwelling at the time of the establishment of an agricultural land preservation district or sale of the Agricultural Preservation Easement, whether or not the dwelling was occupied at the time of the sale.
- (2) "Farm" means any land subject to an agricultural land preservation easement or district agreement.
- (3) "Foundation" means the Maryland Agricultural Land Preservation Foundation.
- (4) Restoration to Agricultural Use.
  - (a) "Restoration to agricultural use" means to alter the land to open space so that it may produce a crop or be used for livestock.
  - (b) "Restoration to agricultural use" does not include altering an existing dwelling to another use as an accessory farm building.

15.15.04.03

### **.03 Eligibility.**

#### **A. Requests for Approval.**

- (1) The approval to relocate the 1-acre site of any dwelling by the Foundation is not an absolute right of a landowner.
- (2) Requests shall be reviewed on a case-by-case basis, and approved if consistent with the guidelines established by this chapter.
- (3) Each request shall be reviewed to determine if:
  - (a) The proposed new site for any new dwelling will adversely affect farming operations; and
  - (b) The site where the dwelling exists at the time of the request may be restored to agricultural use.

#### **B. Dwelling Relocation Criteria.**

- (1) A request to relocate the site of an existing dwelling on a farm may not be approved by the Foundation if it increases the residential development or the number of dwellings on the farm.
- (2) The proposed new site for a new dwelling:
  - (a) Is subject to the Foundation's approval; and
  - (b) May not be located in an area that interferes with any agricultural use.
- (3) The Foundation's approval for a new site for an existing dwelling shall be conditioned upon the removal of the existing dwelling, and restoration of the existing dwelling site to agricultural use, within 60 days after the use and occupancy permit is issued for the new dwelling, or sooner, if required under county law.
- (4) A request to relocate the 1-acre site of any proposed new dwelling may not be approved unless the landowner can demonstrate to the Foundation that the existing dwelling site can be restored to agricultural use.
- (5) A landowner's request to relocate the site of an existing dwelling may not be approved if its purpose is solely for aesthetic reasons.

15.15.04.04

**.04 Application Procedure.**

Before the Foundation may consider and approve a landowner's request to relocate the site of an existing dwelling, all of the following shall be filed with the Foundation:

- A. A written application for the relocation of a dwelling which has been completed and signed by all titled landowners, which shall include the following:
  - (1) A map that clearly indicates:
    - (a) The property boundaries of the easement property;
    - (b) The location of, and proposed access to, the new site of the proposed dwelling;
    - (c) The location of and access to the existing dwelling; and
    - (d) The location of Class I, II, and III soils;
  - (2) Photographs of the property showing views of the property from the nearest roads;
  - (3) A description of the farm operation;
  - (4) A written statement from the landowner that the existing dwelling shall be removed at the landowner's expense and the existing dwelling site restored to agricultural use within 60 days after a use and occupancy permit is issued for the new dwelling, subject to the Foundation's inspection; and
  - (5) A detailed description showing how the landowner proposes to restore the site of the existing dwelling to agricultural use;
- B. A written review from the county program administrator of the applicant's proposal, based upon the "Dwelling Relocation Criteria", in accordance with Regulation .03B of this chapter, and any other information that may assist the Foundation in making its decision;
- C. A letter from the local soil conservation district on the feasibility of the landowner's plan to restore the 1-acre site to agricultural use;
- D. A letter of recommendation from the local agricultural land preservation advisory board; and
- E. A written statement from the local planning and zoning office or the county program administrator stating that the landowner's proposal to tear down a dwelling in exchange for a new dwelling on the 1-acre construction site is allowed under local regulations.

15.15.04.05

**.05 Agreement.**

If the Foundation approves a landowner's request to relocate a dwelling, the landowner shall enter into a written agreement with the Foundation, to be recorded among the county land records, describing the terms and conditions of the Foundation's approval for the site for the relocation of the dwelling.

15.15.05.00

**Title 15. DEPARTMENT OF AGRICULTURE**  
**Subtitle 15. MARYLAND AGRICULTURAL LAND PRESERVATION**  
**FOUNDATION**  
**Chapter 05. Easement Termination Requests**  
**Authority: Agriculture Article, §§ 2-504 and 2-514, Annotated Code of Maryland**

15.15.05.01

**.01 Purpose.**

- A. This chapter provides the eligibility criteria for a landowner to request that the Maryland Agricultural Land Preservation Foundation terminate an agricultural land preservation easement. Each easement granted to the Foundation is of perpetual duration and may be terminated only under extraordinary circumstances. The easement's broad purpose is to:
  - (1) Provide a present and future source of agricultural products within the State for the citizens of the State;
  - (2) Control urban expansion, which is consuming the agricultural land and woodland of the State;
  - (3) Curb the spread of urban blight and deterioration; and
  - (4) Protect agricultural land and woodland as open-space land.
- B. Before an easement is purchased by the Maryland Agricultural Land Preservation Foundation, a county shall first provide approval, based on whether the farm acreage to be preserved is compatible with existing and approved county plans and overall county policy.
- C. If any easement was approved for purchase by the Board of Public Works before October 1, 2004, it may be reviewed for possible termination 25 years after the purchase, unless the right to apply to terminate was specifically waived in the deed of easement.
- D. As each easement, and Agriculture Article, §2-514, Annotated Code of Maryland, provides, the termination shall be approved by the Foundation and by the county governing body where the land is located. Similar to when an easement is purchased, the Foundation and the county have separate duties and responsibilities when reviewing an easement for possible termination. In the case of easement termination, the Foundation's responsibility is to determine whether future profitable farming is feasible on the land under easement. The Foundation may only approve the termination if it finds that future profitable farming is not feasible. A county's separate responsibility is to consider factors relating to local land use policies. If either the Foundation or the county fail to agree, an easement may not be terminated.

15.15.05.02

**.02 Definitions.**

- A. In this chapter, the following terms have the meanings indicated.
- B. Terms Defined.
  - (1) "Agricultural product" includes, but is not limited to, livestock and crops.
  - (2) "Agricultural value" means the price as of the valuation date which a vendor willing, but not obligated to sell, would accept, and which a purchaser willing, but not obligated to buy, would pay for a farm unit with land comparable in

- quality and composition to the property being appraised, but located in the nearest location where profitable farming is feasible.
- (3) "County governing body" means the board of county commissioners or, in a charter county, the county executive and the county council of a county.
  - (4) "Easement" means an agricultural land preservation easement held by the Maryland Agricultural Land Preservation Foundation, solely or jointly with any other entity or local government, and approved for purchase by the Board of Public Works prior to October 1, 2004.
  - (5) "Foundation" means the Maryland Agricultural Land Preservation Foundation.
  - (6) "Landowner" means the fee simple owner of the land that is subject to easement restrictions.
  - (7) "Profitable farming is feasible on the land" means that an agricultural product can be produced on the land that can be sold to realize an excess of return over expenditures, excluding the cost of constructing farm structures, the cost of acquisition of the land itself, and debt service relative to the financing of the acquisition of the land.
  - (8) Public Hearing.
    - (a) "Public hearing" means a meeting conducted by the Foundation to give the public the opportunity to express its views on a landowner's application to terminate an easement.
    - (b) "Public hearing" does not mean a contested case hearing, as defined by the Administrative Procedure Act.

15.15.05.03

### **.03 Landowner's Request for Review.**

- A. Request. A landowner whose farm is subject to an easement may make a written request to the Foundation for a review of the easement for termination, as provided by this chapter.
- B. Restriction. A landowner's request for review may not be considered by the Foundation unless 25 years have passed from the date that the Foundation purchased the easement.
- C. Form. A landowner's request shall be submitted on a form provided by the Foundation that explains, as defined by this chapter, why profitable farming is not feasible on the land under easement.

15.15.05.04

### **.04 Foundation Review.**

- A. Notice to County of Landowner's Request. Upon receipt of a landowner's request for review to terminate an easement on the form provided by the Foundation, the Foundation shall notify the governing body of the county where the land is located of the landowner's request.
- B. Inquiry. The Foundation shall conduct an inquiry to determine whether profitable farming is feasible on the land, and issue a decision within 180 days after receiving the landowner's request for termination, unless:
  - (1) The parties mutually agree in writing to extend the 180-day period; or
  - (2) The landowner requests a hearing under §E of this regulation.
- C. In determining whether profitable farming is feasible on the land, the Foundation's

inquiry shall include:

- (1) An on-site inspection of the subject land;
- (2) A public hearing, conducted by the Foundation, after adequate public notice within the county where the land is located;
- (3) A determination of the productive capacity of the land;
- (4) A consideration of the effect of any nonagricultural development contiguous to the land;
- (5) An assessment of the extent to which markets exist for any agricultural products that can be produced on the land;
- (6) A determination of the profitability of nearby farms, if this information is readily available to the Foundation;
- (7) An opinion of an expert as to the future feasibility of profitable farming on the land; and
- (8) Any other information that the Foundation considers relevant in determining whether future profitable farming is feasible on the land.

D. Standard of Review.

- (1) In determining the feasibility of profitable farming, the lack of ability of the particular landowner seeking termination of the easement to profitably farm may not be the standard by which feasibility of profitable farming is measured.
- (2) The standard by which feasibility of profitable farming is measured shall be whether the land of the farm in question could be profitably farmed.

E. Hearing Notice.

- (1) In accordance with Agriculture Article, §2-514(h)(2), Annotated Code of Maryland, the Foundation shall provide the landowner with notice of the opportunity for a contested case hearing, as defined by the Administrative Procedure Act, before issuing any final decision to terminate.
- (2) A landowner's opportunity for a hearing is waived if the landowner fails to request a hearing within 30 days of the Foundation's hearing notice.

15.15.05.05

## **.05 County Review.**

A. County Agricultural Advisory Board Recommendation. Upon receipt of a landowner's request for review to terminate an easement from the Foundation, the county governing body shall notify and ask for the recommendation of the county agricultural preservation advisory board, established under Agriculture Article, §2-504.1, Annotated Code of Maryland, or any other appropriate county agency or board. The advisory board or other county agency shall recommend to the county governing body the approval or disapproval of the termination of the easement based on current land regulations, local comprehensive planning, and any local priorities for the preservation of agricultural land to the county governing body.

B. County Decision.

- (1) Upon receipt of the recommendation of the county agricultural preservation advisory board and, as determined by the county, any other appropriate county agency or board, and after the Foundation's public hearing, as required by Regulation .04C(2) of this chapter, the county governing body shall approve or disapprove the termination of the easement based on local regulations, local patterns of development, comprehensive planning, and any local priorities for the preservation of agricultural land.

- (2) The county governing body shall notify the Foundation of its decision within 90 days after the Foundation's public hearing, as required by Regulation .04C(2) of this chapter. The county's decision is not the final decision that is subject to appeal.

15.15.05.06

#### **.06 Foundation Decision.**

- A. **County Approval Required.** After receipt of the county's decision, as provided under Regulation .05B of this chapter, the Foundation shall inform the landowner of the county's decision and the Foundation's proposed decision and, if the request was denied, provide the landowner with the opportunity for a contested case hearing, as defined by the Administrative Procedure Act. The Foundation may not approve a landowner's request for termination unless it is approved first by the governing body of the county containing the land.
- B. **Foundation Approval.** After county approval under Regulation .05B of this chapter, and the landowner's opportunity for a hearing under Regulation .04E of this chapter, the Foundation may approve a request for termination only upon a finding by an affirmative vote of a majority of the Foundation members at-large, and upon the approval of the Secretary of Agriculture and the State Treasurer that profitable farming is not feasible on the land. The Foundation shall notify the landowner and the county governing body of the Foundation's decision.

15.15.05.07

#### **.07 Landowner Repurchase of Easement.**

- A. **Appraisal at Landowner's Expense.** The landowner shall remit good funds as instructed by the Foundation within 10 days of approval to pay for the cost of an appraisal, which shall then be ordered by the Foundation within 20 days of the receipt of the funds. The date of valuation shall be the date of approval.
- B. **Repurchase.** The landowner has a maximum of up to 180 days following the date of the completion of the appraisal set forth in §A of this regulation to repurchase the easement by paying to the Foundation the difference between the fair market value and the agricultural value of the subject land, as determined by the appraisal, pursuant to Agriculture Article, §2-514(f), Annotated Code of Maryland, and subject to Board of Public Works Approval, as set forth in State Finance and Procurement Article, §10-301 et seq., Annotated Code of Maryland.
- C. Upon receipt of payment of all required funds as specified in §§A and B of this regulation, the Foundation shall prepare, execute, and deliver to the landowner for recording, a Termination of Easement.

15.15.05.08

#### **.08 Subsequent Request for Termination after Denial or Failure to Repurchase.**

If the request for termination is denied, or if the landowner fails to repurchase the easement within 180 days of the date of the completion of the appraisal, the landowner may not again request termination of the easement until 5 years after his last request for termination.

15.15.05.09

**.09 Appeal.**

- A. After a contested case hearing is conducted, the Foundation's decision is the final decision that is subject to judicial review. Subject to the requirements of the Maryland Rules of Civil Procedure, a landowner may appeal the Foundation's final decision disapproving a request to terminate an easement directly to the circuit court of the county where the land is located.
- B. The circuit court shall hear and determine the appeal on the record, pursuant to State Government Article, §10-222, Annotated Code of Maryland.

15.15.06.00

**Title 15. DEPARTMENT OF AGRICULTURE**  
**Subtitle 15. MARYLAND AGRICULTURAL LAND PRESERVATION**  
**FOUNDATION**  
**Chapter 06. Transfer of Lot Released from Easement for Landowner or Child**  
**Authority: Agriculture Article, §§ 2-504 and 2-513, Annotated Code of Maryland**

15.15.06.01

**.01 Scope.**

- A. This chapter applies to any lot released by the Foundation to a landowner or landowner's child for the landowner's or landowner's child's use and occupancy on a farm, and explains when the lot may be transferred to another person under the Maryland Agricultural Land Preservation Program.
- B. The lots permitted to be released from the deed of easement under this chapter are:
  - (1) Restricted under the terms of each agricultural land preservation easement; and
  - (2) Intended only for the limited purpose of constructing a dwelling for the landowner who transferred an easement to the Foundation or for the landowner's child, thereby allowing that landowner's immediate family to live on the farm.
- C. Except as provided by this chapter, these dwellings or lots may not be transferred to any other person.

15.15.06.02

**.02 Definitions.**

- A. In this chapter, the following terms has the meanings indicated.
- B. Terms Defined.
  - (1) "Child" means the child of the landowner who sold or transferred an agricultural land preservation easement to the Foundation.
  - (2) "Dwelling" means the dwelling house, including lot acreage, allowed to be released under Agriculture Article, §2-513, Annotated Code of Maryland, and under the terms of an agricultural land preservation easement, for the use and occupancy of a landowner or landowner's child on the farm.

- (3) "Farm" means the land encumbered by the agricultural land preservation easement.
- (4) "Landowner" means the landowner who sold or transferred an agricultural land preservation easement to the Foundation.

15.15.06.03

### **.03 Lot Eligibility.**

Upon approval and release by the Foundation, only a landowner who sold or transferred an easement to the Foundation has the right to construct a dwelling on a lot on the farm for the bona fide use and occupancy of the landowner or a child.

15.15.06.04

### **.04 Lot Approval and Release.**

- A. The Foundation may not approve a landowner's request for the release of a lot for the construction of a dwelling unless the landowner complies with the requirements of COMAR 15.15.01.17C that include the submission of a declaration to the Foundation that the dwelling to be constructed or already constructed will be occupied by the landowner, in the case of the landowner's lot, or by a child, in the case of a child's lot.
- B. After Foundation approval, the release of the lot shall consist of two parts, a preliminary release and a final release, as specified in Agriculture Article, §2-513, Annotated Code of Maryland.

15.15.06.05

### **.05 Lot Transfer Restrictions.**

- A. A landowner or child who has a lot released under the terms of the easement shall occupy the dwelling constructed on the lot and may not transfer or lease the lot to any person except after the expiration of 5 years from the date of the Foundation's final release for the lot. Before the expiration of the 5-year period, the Foundation may only approve a landowner's or child's request to transfer a lot upon the occurrence of the following events:
  - (1) Notice to the Foundation of a transfer pursuant to:
    - (a) A bona fide foreclosure of a mortgage or deed of trust; or
    - (b) A deed in lieu of foreclosure;
  - (2) The death of the landowner or landowner's child;
  - (3) A decree of divorce where the landowner or child is ordered to sell or transfer the lot as part of a bona fide property settlement;
  - (4) A change of employment location of the landowner or child where the Foundation determines that it would be impractical for the landowner or child to commute to the new work location; or
  - (5) Any other circumstance, as determined by the Foundation, where it would be impossible for the landowner or child to continue to occupy the dwelling.
- B. A landowner or child who has a lot released under the terms of the easement may not transfer or lease the lot if a dwelling has never been constructed on the lot.

15.15.06.06

#### **.06 Easement Violation.**

A person who transfers a lot in violation of this chapter is in violation of the agricultural land preservation easement applicable to the farm.

15.15.07.00

**Title 15. DEPARTMENT OF AGRICULTURE**  
**Subtitle 15. MARYLAND AGRICULTURAL LAND PRESERVATION**  
**FOUNDATION**  
**Chapter 07. Approval for Uses of or Activities on Farmland Subject to an**  
**Agricultural Land Preservation District or Easement**  
**Authority: Agriculture Article, §§ 2-504 and 2-513(b), Annotated Code of Maryland**

15.15.07.01

#### **.01 Scope**

This chapter establishes the criteria and eligibility for the approval of allowable uses or activities on a farm subject to an agricultural land preservation easement held by the Maryland Agricultural Land Preservation Foundation.

15.15.07.02

#### **.02 Eligibility**

The Maryland Agricultural Land Preservation Foundation may approve farm, forest, or home occupation related uses or activities of eligible landowners on a farm subject to easement restrictions even though the use or activity does not strictly fall within the definition of traditional agricultural use. Each request shall be reviewed by the Foundation based on the criteria provided by this chapter to determine if a landowner's requested use or activity conflicts with the overall purpose of the easement to preserve the farm for agricultural use and as open-space land.

15.15.07.03

#### **.03 Criteria to be Considered**

The Foundation shall consider the following criteria in determining whether to approve or disapprove any use or activity:

- A. Proportion of size of use or activity to total farm operation;
- B. Compatibility with farm or forest production;
- C. Potential damage to soil productivity;
- D. Extent of use of existing farm structures or buildings and impact on the value of the existing structure for farm or forestry use;
- E. Whether any new structure or parking to support the use meets Foundation guidelines for location, scale, and impervious surfaces;
- F. Compatibility with the rural character of the farm and the surrounding area;

- G. County advisory board recommendation;
- H. Compatibility with the implementation or maintenance of a best management practice provided in a soil conservation and water quality plan for the farm and, if applicable, a Forest Stewardship Plan or a nutrient management plan; and
- I. Impact on sensitive natural resources on the farm, such as steep slopes, highly erodible soils, wetlands or stream buffers.

15.15.07.04

#### **.04 Application Procedure**

Before the Foundation may consider a request for approval of any use or activity provided by this chapter, all of the following information shall be submitted by the county on behalf of the landowner:

- A. An application for approval that has been completed and signed by all titled landowners that fully and completely describes the proposed use or activity on the farm;
- B. A letter of recommendation from the local agricultural land preservation advisory board or program administrator;
- C. A written statement from the local planning and zoning office, or the county program administrator indicating that the proposed use or activity is permitted as of right or by special exception under local zoning; and
- D. A written statement from the local soil conservation district that the use or activity does not:
  - (1) Interfere in the implementation or maintenance of a best management practice for the farm provided in its soil conservation and water quality plan, or
  - (2) Adversely impact sensitive natural resources on the farm, if such statement is requested by the Foundation.

15.15.07.05

#### **.05 Violation**

Any landowner who violates an approval by the Foundation for any use or activity may also be in violation of that landowner's district agreement or agricultural land preservation easement. This violation may result in the rejection of the landowner's offer to sell an easement or in the enforcement of easement restrictions.

15.15.08.00

**Title 15. DEPARTMENT OF AGRICULTURE**  
**Subtitle 15. MARYLAND AGRICULTURAL LAND PRESERVATION**  
**FOUNDATION**

**Chapter 08. Installment Purchase Agreement Grant Program**

**Authority: Agriculture Article, §§ 2-504, 2-505, and 2-510.1, Annotated Code of Maryland**

15.15.08.01

**.01 Purpose.**

This chapter establishes the criteria for a program administered by the Maryland Agricultural Land Preservation Foundation to purchase easements under an installment purchase agreement for farmland selected by the Foundation, in cooperation with:

- A. An eligible county, if a landowner chooses an eligible county's installment purchase agreement program; or
- B. The Maryland Agricultural and Resource-Based Industry Development Corporation, if a landowner chooses the Foundation's installment purchase agreement program.

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15.15.08.03

**.03 Landowner's Option for Installment Purchase Agreement.**

- A. The Foundation may offer to buy an easement from a landowner through an IPA either:
  - (1) In an eligible county where the land will be subjected to easement restrictions; or
  - (2) Through MARBIDCO, if the offer is not for less than \$100,000.
- B. At the time of escrow closing on an IPA, the landowner and the Foundation shall agree to the terms of an IPA, including the following:
  - (1) Payment from MARBIDCO shall be made in cash for not less than:
    - (a) The maximum value, based on the Foundation's per-acre purchase price, of any easements on an unrestricted lot or family lots reserved by the landowner at escrow closing for future purchase from the Foundation; and
    - (b) Any additional amounts, as required by the Foundation;
  - (2) Payment from MARBIDCO shall be made in one or more IPAs, each in a principal amount not less than \$100,000;
  - (3) An IPA shall be with the appropriate eligible county or MARBIDCO; and

- (4) If the IPA is with MARBIDCO, the maturity date shall be at least 10 years from settlement for each IPA.
- C. A landowner's designation of the appropriate eligible county for an IPA shall be approved by the eligible county before escrow closing.

15.15.08.04

#### **.04 Grant to Eligible County.**

- A. A county is an eligible county for purposes of this chapter upon the Foundation's approval and after submission by the county to the Foundation of:
  - (1) The IPA form to be used by the county to purchase easements pursuant to a Foundation offer, which installment purchase agreement shall meet the requirements of Agriculture Article, §2-510.1(b), Annotated Code of Maryland, and otherwise be acceptable to the Foundation;
  - (2) The opinion of bond counsel form that states that the IPA is legal, valid and binding, and that interest paid under the IPA is exempt from federal and Maryland state and local income taxes, in form and substance satisfactory to the Foundation; and
  - (3) An ordinance, resolution, or other evidence of approval acceptable to the Foundation authorizing the issuance of the IPA by the county.
- B. The terms of an eligible county's IPA program are governed by an MOU that states the duties and obligations between the Foundation and an eligible county and shall:
  - (1) Require the county to make annual equal payments to the landowner of interest on the outstanding balance of the purchase price;
  - (2) Require that the county pay the landowner the remainder of the purchase price at the end of the term;
  - (3) State the total amount of money the county will pay the landowner, the interest rate, and the terms of the agreement; and
  - (4) Require that the easement be recorded within 30 days of settlement.
- C. If a landowner elects to sell an easement through an IPA with an eligible county, the Foundation shall, before escrow closing on the easement, ask the State Treasurer to provide funds for the Foundation's portion of the easement purchase price as a grant to the eligible county.
- D. An easement acquired by an eligible county according to an IPA:
  - (1) Shall be held jointly by the eligible county and the Foundation; and
  - (2) May not terminate.
- E. An eligible county may use a Foundation grant described in §C of this regulation to provide for the easement purchase price due under the IPA.
- F. If the amount of the Foundation grant exceeds the amount needed by a county to settle the easement transaction, the remaining amount of the grant shall be used to extend offers to purchase additional easements within that county in ranking order as provided by Agriculture Article, §2-510, Annotated Code of Maryland. However if there are no additional approved applicants within that county, the remaining IPA grant funds shall be retained, along with any future fund allocation by the Foundation, for up to two subsequent easement cycles for the purpose of making IPA easement offers to applicants in that county. IPA grant funds not used within those three consecutive easement cycles will revert to the Maryland Agricultural Land Preservation Fund.
- G. County IPA grant funds from the Foundation may only be used for farmland easement purchases, and may not be used to make offers through any local preservation program or

- to pay interest on an IPA.
- H. An eligible county may not use a Foundation grant for an IPA in the Foundation's matching grant program pursuant to Agriculture Article, §2-512, Annotated Code of Maryland.

15.15.08.05

## **.05 Foundation IPA.**

If a landowner elects to participate in the Foundation IPA program, and a county is paying a portion of the easement purchase price, the county shall provide its portion to the Foundation within 30 days of the Foundation's notice.

15.15.09.00

**Title 15. DEPARTMENT OF AGRICULTURE**  
**Subtitle 15. MARYLAND AGRICULTURAL LAND PRESERVATION**  
**FOUNDATION**  
**Chapter 09. Civil Penalty Standards**  
**Authority: Agriculture Article, § 2-519, Annotated Code of Maryland**

15.15.09.01

## **.01 Penalty in Violation.**

- A. The Foundation may impose a civil penalty on an owner of a property whose farm is subject to the terms of an easement granted under Agriculture Article, Title 2, Subtitle 5, Annotated Code of Maryland, who violates that subtitle, any regulations adopted in accordance with the subtitle, or the terms of the easement.
- B. A civil penalty may be imposed by the Foundation instead of, or in addition to, any remedies at law or in equity.

15.15.09.02

## **.02 Violation.**

- A. **Property Use.** Except as otherwise permitted by Agriculture Article, §2-513, Annotated Code of Maryland, the deed of easement, or Foundation approval, the Foundation may impose a civil penalty on a property owner subject to this chapter who:
- (1) Uses easement property for commercial, industrial, or residential use;
  - (2) Grants an easement, right-of-way, oil, gas, or mineral lease, or similar servitude on land to any person or government agency;
  - (3) Erects a sign, billboard, or outdoor advertising on easement property;
  - (4) Dumps ashes, sawdust, bark, trash, or rubbish on easement property, except when used in normal agricultural practices; or
  - (5) Violates an approval by the Foundation for any use or activity under the deed of easement.

- B. Property Management. Except as otherwise permitted by Agriculture Article, §2-513, Annotated Code of Maryland, the deed of easement, or Foundation approval, the Foundation may impose a civil penalty on a property owner subject to this chapter who:
  - (1) Fails to manage easement property with sound agricultural soil and water conservation practices; or
  - (2) Fails to manage easement property with sound forest stewardship practices, if the land contains 25 acres or more of contiguous forest.
- C. Subdivision or Conveyance. Except as otherwise permitted by Agriculture Article, §2-513, Annotated Code of Maryland, the deed of easement, or Foundation approval, the Foundation may impose a civil penalty on a property owner subject to this chapter who:
  - (1) Divides, partitions, or subdivides the property, or otherwise creates a lot for any purpose, including off conveyance or boundary line adjustment;
  - (2) Sells, transfers, gives, bequeaths, donates, or otherwise divides, any pre-existing subdivided parcel separately from the total of the parts in an easement, whether voluntarily, involuntarily, or by reason of foreclosure or bankruptcy;
  - (3) Transfers or sells any remaining developmental rights of the property; or
  - (4) Fails to comply with lot transfer restrictions.
- D. Dwelling House. Except as otherwise permitted by Agriculture Article, §2-513, Annotated Code of Maryland, the deed of easement, or Foundation approval, the Foundation may impose a civil penalty on a property owner subject to this chapter who:
  - (1) Constructs a dwelling on easement property;
  - (2) Constructs a replacement dwelling house on easement property; or
  - (3) Permits any lot or dwelling house constructed on an owner's or child's lot to be used for the purposes of an individual other than a property owner or, in the case of a child's lot, the identified child.
- E. Tenant House. Except as otherwise permitted by Agriculture Article, §2-513, Annotated Code of Maryland, the deed of easement, or Foundation approval, the Foundation may impose a civil penalty on a property owner subject to this chapter who:
  - (1) Constructs a tenant house on easement property;
  - (2) Allows a dwelling designated as a tenant house to be occupied entirely by individuals who are not fully engaged in the operation of the farm; or
  - (3) Subdivides and separately conveys a tenant house or the land where it is constructed, or both.
- F. The Foundation may impose a civil penalty on a property owner subject to this chapter who violates any other law or regulatory requirement governing the Maryland Agricultural Land Preservation Program, an individual deed of easement acquired by the Foundation, or Foundation approval or policy.

15.15.09.03

### **.03 Violation Classification and Penalty.**

- A. The Foundation may impose a penalty for:
  - (1) Up to \$2,500 for each violation;
  - (2) Each day a violation occurs; and
  - (3) Up to \$50,000 in penalties during one administrative hearing.
- B. Before imposing any civil penalty under this chapter, the Foundation shall consider the following:
  - (1) The nature and gravity of each violation;

- (2) The willfulness of the violation and the extent to which the existence of the violation was known to the violator but uncorrected by the violator; and
- (3) A history of prior violations, if any.

15.15.09.04

#### **.04 Civil Penalty Procedure.**

- A. The Foundation shall issue a written notice of violation to the property owner upon finding that a violation has occurred or is ongoing.
- B. A written notice of violation shall include:
  - (1) A statement of the statute, regulation, or deed of easement violated by the landowner;
  - (2) A description of the evidence of a violation;
  - (3) A statement informing the property owner of the right to an informal meeting with the Foundation;
  - (4) The amount of the proposed civil penalty;
  - (5) A statement of the remedial action necessary to bring the property owner into compliance; and
  - (6) A reasonable amount of time, as determined by the Foundation, to correct a violation.
- C. If the alleged violation still exists after the property owner has had an opportunity for an informal meeting and a reasonable amount of time to correct the violation, the Foundation may issue a written notice of violation with a penalty.

15.15.09.05

#### **.05 Contested Case Hearing; Appeal.**

A property owner may petition the Foundation for a contested case hearing on the violation and penalty within 30 calendar days of the issuance of the notice of violation by the Foundation. The Office of Administrative Hearings shall conduct a hearing and issue proposed findings of fact and conclusions of law pursuant to State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland. The Foundation shall adopt or reject the proposed findings of fact and conclusions of law and issue a final decision. An owner may then appeal the Foundation's decision as provided by Agriculture Article, §2-405, Annotated Code of Maryland.

15.15.09.06

#### **.06 Penalty Payment.**

- A. Unless a property owner requests a contested case hearing, the property owner shall promptly pay the penalty.
- B. Payment of a penalty is not a substitute for compliance. If the property owner continues to violate this chapter, the Foundation may impose additional civil penalties or pursue other remedies at law or in equity.

15.15.09.07

#### **.07 Violation Date.**

This chapter applies to any violation that occurs on or after October 1, 2009.

15.15.10.00

**Title 15. DEPARTMENT OF AGRICULTURE**  
**Subtitle 15. MARYLAND AGRICULTURAL LAND PRESERVATION**  
**FOUNDATION**

**Chapter 10. Confidential Records**

**Authority: Agriculture Article, § 2-510(m), Annotated Code of Maryland**

15.15.10.01

#### **.01 Scope.**

This chapter explains the confidentiality requirement and its duration for records relating to the sale of an easement to the Maryland Agricultural Land Preservation Foundation. Confidentiality of records is maintained during an offer cycle to ensure the integrity of the offer and sale process for all participants. An offer cycle begins upon submission of a property owner's application and ends as provided by this chapter.

15.15.10.02

#### **.02 Record Custodian.**

This chapter applies to a custodian of public records as defined by the State Government Article, §10-611, Annotated Code of Maryland. For purposes of this chapter, a public record is defined by State Government Article, §10-611, Annotated Code of Maryland.

15.15.10.03

#### **.03 Confidentiality Requirement.**

A public record subject to the Maryland Public Information Act relating to a property owner's ranking, asking price, or offer by the Maryland Agricultural Land Preservation Foundation under Agriculture Article, §§2-501—2-519, Annotated Code of Maryland, is confidential. A custodian may not disclose the record until the end of the Foundation's offer cycle as provided by this chapter.

15.15.10.04

#### **.04 End of Offer Cycle; Duration of Confidentiality.**

A public record subject to this chapter is available for public inspection and disclosure at the end of an offer cycle. An offer cycle for an individual applicant ends on the earlier of the following:

- A. When an offer from the Maryland Agricultural Land Preservation Foundation is scheduled for review by the Board of Public Works; or
- B. November 1 of the year when offers are being made for an applicant pool.

*Last update: October 14, 2010*