

## Maryland Agricultural Land Preservation Program

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### ELIGIBILITY FOR THE EASEMENT ACQUISITION PROGRAM

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This Fact Sheet describes the easement (or restrictions) you would be selling to the Maryland Agricultural Land Preservation Foundation and the eligibility criteria to apply to sell an easement to the Foundation.

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#### What is an Easement?

An easement is a legal agreement between a landowner and another entity, such as the State or a public utility that establishes a material interest in a property. For example, a public utility typically owns an easement over private property that allows the utility to construct and maintain electrical transmission lines across that property.

When the State of Maryland purchases an agricultural preservation easement on your property, you are, in essence, selling your development rights. You voluntarily sell your right in perpetuity (forever) to develop your farm for residential, commercial, or industrial use. This means that, for whatever compensation mutually agreed upon by you and the Maryland Agricultural Land Preservation Foundation, you will preserve the land for agricultural and silvicultural use without exception now and in the future.\*

The deed of easement you will sign if the Foundation purchases your development rights contains the following restrictions.

- The land may not be developed or subdivided for industrial, commercial or residential use except for certain personal eligibility options you retain.
- Even if the land under a single easement is composed of multiple parcels, it may not be subdivided without permission of the Foundation.
- Signs or billboards may not be displayed on the property except for signs smaller than four feet square which may only be erected for the following purposes:
  - to state the name of the property and the name and address of the occupant;
  - to advertise a home based occupation or other use consistent with the purposes of the easement; or,
  - to advertise the property's sale or rental.
- Trash or rubbish may not be dumped or stored on the property. Any material which is for regular agricultural use may be dumped.
- Soil erosion and water quality practices contained within a soil conservation and water quality plan approved by the local soil conservation district must be implemented. The practices shall be installed on the land according to the schedule of implementation within the plan. The plan must be completely implemented within ten years of the easement settlement date.

- For properties containing 25 or more acres of contiguous forested land, a forest stewardship plan must be secured for the property before settlement on the easement.
- Representatives of the Foundation shall be permitted to periodically inspect the property for compliance with the conditions of the easement. The representatives shall have no right to inspect the interior of any structures.
- The easement does **not** grant the public any right to access or use the land.

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## Eligibility Criteria for Easement Application

### - SIZE -

An effective way to preserve agricultural land is to amass contiguous acreage. The larger the mass of agricultural land, the greater the opportunity to:

- preserve sufficient acreage to provide significant productivity,
- retain dealers of agricultural equipment and supplies nearby, and
- maintain a sense of a rural agricultural community.

**The minimum property size is 50 contiguous acres.** If you do not own 50 acres, neighboring landowners can join together to apply as long as there is a collective total of 50 contiguous acres, subject to Board approval. Offers to purchase an easement on a property less than 50 acres may be contingent on an adjacent applicant also receiving and accepting an offer to preserve a total of 50 acres or more. Applicants with less than 50 acres should review Fact Sheet 12 entitled "Small Properties in the Agricultural Land Preservation Program," and/or confer with the [local program administrator](#).

If your property is contiguous to existing preserved acreage, you may apply to sell an easement to the Foundation regardless of the acreage.

### - PRODUCTIVITY -

Applications are accepted on land that is either currently being used for producing food or fiber or has the capability to do so. Woodland management and harvesting operations are eligible and, indeed, encouraged to participate in this program. Irrespective of the land use, a key eligibility criterion is the productivity of the soil as measured by the USDA's Soil Conservation Service Land Classification System. For the property to qualify to participate in the Program requires:

- at least 50 per cent of the land shall classify as Class I, II or III soils; or,
- if the land is wooded, 50 per cent of the land is classified as Woodland Group 1 or 2 soils; or,
- if the reason the land cannot meet the above conditions is because of flood-plain or wetland soils, those areas could be excluded as a percentage of land; or,
- if there is an insufficient percentage of Class I, II or III soils alone and there is an insufficient percentage of Woodland Groups 1 and 2 soils alone, the land would qualify if the combination of the two exceeded 60 per cent; or,
- land with lower soil capabilities may qualify to be if 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 an easement. Visit your local program administrator for advice on whether you might qualify for such an exception.

- Because of changes in USDA classifications of forest land incorporated in the soil survey currently underway in Maryland, the qualification criteria for forest land will soon be reevaluated and updated in the regulations. Please consult your program administrator for more information when it becomes available.

**- LOCATION -**

Land that lies within the boundaries of a 10-year water and sewer service area plan is generally not eligible for the program unless it has extraordinary productive capability and is of significant size.

**- CONSERVATION AND MANAGEMENT PLANS -**

First, you must have a soil conservation and water quality plan for the property which:

- has been approved by the local soil conservation district;
- has been made or revised within the last ten years;
- lists all soil conservation and water quality practices needed to correct existing problems on the property; and,
- contains a schedule of implementation which indicates when the soil conservation and water quality practices will be installed.

Second, if you have more than 25 acres of contiguous forest land, you must have secured a forest stewardship plan demonstrating proper forest management techniques on the forested acreage before closing on the easement.

**- COMMITMENT -**

While you have an application or offer pending before the Foundation, you must agree not to change the conditions of the property subject to the application.

- You agree not to subdivide and/or develop the land for residential, commercial, or industrial purposes while you have a pending application to sell the easement.
- You agree not to subdivide the land for agricultural purposes while you have a pending application to sell the easement.

**- LOCAL CRITERIA -**

The criteria listed above are the minimum eligibility standards set by the State. The program is administered by county and State in an equitable partnership. The county may impose criteria which could be in addition to and/or more stringent than State criteria. For example, the county may also require you to agree to a maximum per acre offer price as a condition for county approval to sell your easement to the Foundation.

## Fact Sheet 1

As of July 1, 2007, the Foundation no longer requires your property to be in a State agricultural land preservation district to be eligible to apply to sell an easement to the Foundation. However, individual counties retain the right to require that your property within the county be in a county agricultural land preservation district as a condition of county approval of the application to sell your easement to the Foundation.

For more information on any county-specific requirements, please contact the county program administrator where your property is located. If your property is already in a State agricultural land preservation district, please read Fact Sheet 14 entitled "Agricultural Preservation Districts."

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- \* *Easements purchased by the Foundation are perpetual. For easement sellers whose option contracts were approved by the Board of Public Works before October 1, 2004, the law allows the possibility 25 years or later from the date the easement was purchased for the easement to be re-purchased by the landowner at the appraised value of the easement at the time of re-purchase. This possibility depends upon extraordinary circumstances. First, the Foundation must determine that profitable farming of any kind by any farmer is no longer feasible on the property. Second, after a public hearing, the county governing authority must approve, at its discretion, the repurchase of the easement by the landowner. After county approval, the easement termination must also be approved by the Foundation's Board of Trustees, the Secretary of Agriculture, the State Treasurer, and the Board of Public Works (the General Assembly may also be required to approve easement termination, but this has not yet been completely determined). Easements resulting from option contracts approved by the Board of Public Works after October 1, 2004, and all GreenPrint-funded easements are explicitly perpetual with no possibility of termination.*
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This fact sheet is a public document and is provided for general information only. If you have a question about a specific law, regulation, option contract, or deed of easement, please consult legal counsel.

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