

Maryland Agricultural Land Preservation Program

THE EASEMENT ACQUISITION PROCESS

This Fact Sheet describes the easement acquisition process, from application to settlement.

The Easement Acquisition Process

You should be aware that the various stages of the program may cumulatively take as long as 12-18 months from the time you submit your easement sale application until you receive a check from the Foundation to purchase your easement.

STAGE ONE: SUBMITTAL OF APPLICATION TO SELL EASEMENT

The State deadline to submit your application is July 1 of every year. Please check with the program administrator in the county in which your property is located for any county-specific application deadlines that may differ from the July 1 deadline. Applications should be submitted to the [county program administrator](#).

Most of the information requested on the application is to assist the appraisers and to secure signatures of any third part interests in the property. The most important part of the application to you may be the establishment of your Asking Price. (See Fact Sheet 3 entitled "Determining Your Asking Price.") Application forms with instructions are available elsewhere at this website, from your local program administrator, or from the Foundation.

STAGE TWO: COUNTY APPROVAL OF APPLICATIONS

The maximum number of applications that will be accepted is established each fiscal year by the Foundation's Board of Trustees. Some years, because of funding limitations, the Board chooses not to accept all applications, requiring counties to prioritize applications during the approval process.

For example, because funding fell from \$60 million to \$25 million from FY 2008 to FY 2009, the Board chose to limit the number of applications to sixteen per county. Because of limited funding, this allows the Foundation to spend less on appraisals and more on easement purchases, and reduces the time necessary for the appraisal stage of the easement acquisition process.

The counties have 60 days to review the applications and approve up to the maximum number the Foundation will consider for that fiscal year. The Foundation may only offer to purchase easements from applicants who have been approved by the county. Counties also collect and then provide to the Foundation the information on the development potential of your property that is necessary to provide to appraisers.

STAGE THREE: APPRAISALS

Two independent fee appraisers are selected by bid to establish a Fair Market Value (that which a developer might pay) for your property. Appraisal reviewers at the Maryland Department of General Services will select one of the two appraisals (or three if you submit an appraisal) that reflects the most accurate and best documented work. Appraisals calculate Fair Market Values only for the land, and not the improvements on your property.

STAGE FOUR: ESTABLISHING AN AGRICULTURAL AND AN EASEMENT VALUE

The Foundation calculates an Agricultural Value for the property, which is its agricultural production value. The Agricultural Value is determined by a formula that calculates land rent based on the soil productivity OR the five-year average cash rent in the county, whichever is lower. The Easement Value of the property is then calculated by subtracting its Agricultural Value from the Fair Market Value. The maximum price that the Foundation can pay for an easement is the landowner's Asking Price, the Easement Value, or a cap set by the county in which the land is located, whichever is the lowest.

STAGE FIVE: ROUND ONE OFFERS

Each county prioritizes its applicants by its own ranking system approved under State ranking guidelines. You should consult your county's program administrator for information on the criteria by which applicants are ranked in your county.

Round One offers are made county-by-county. Offers are made to applicants in the order they are prioritized by the county until funds allocated to that county are fully committed. Generally, properties are ranked based on the relative quality of their soils, their relative size, their contiguity to already preserved properties, and their strategic importance to the county's land-use objectives.

STAGE SIX: ROUND TWO OFFERS

If you did not receive a Round One offer, your property will be ranked again on a statewide basis using the State discounting formula: a ratio of the applicant's Asking Price divided by the Easement Value. In other words, properties are ranked based on the relative willingness of landowners to discount. Using any remaining funds, offers are made down the ranked list of applicants until remaining State funds are fully committed. Anyone who does not get an offer may reapply by submitting a new application by July 1.

STAGE SEVEN: ACCEPTING OR REJECTING AN OFFER

If you receive an offer, with your offer letter will be a complete option contract composed of two parts: the option contract to be signed and the sample deed of easement. You must fill out, sign, witness, and return the option contract to the Foundation before any action can begin on settlement. The option contract describes the acreage to be encumbered by the easement and the per acre price to be paid. The sample deed of easement provides the text of the document to be executed at settlement and recorded among the land records of your county. Please review it carefully as it lists the conditions you will be responsible to uphold

and maintain as long as you own the land. If you sell or otherwise transfer the land, any subsequent landowner must also comply with the stipulations in this deed of easement.

You must indicate in writing within 30 days of receiving the offer whether you will accept or reject it. You will specify how you wish to be paid in your option contract: either the total in a lump sum, installment payments spread over as many as ten years, or an installment purchase agreement from ten to thirty years. (See the fact sheet entitled "Payment Options for Selling an Agricultural Preservation Easement.")

If you are made an offer for the full amount of your Asking Price or the Easement Value (whichever is lower) and you reject the offer, you may reapply in the year immediately following. However, if you are made an offer for the full amount and you reject the offer two years in a row, you will not be allowed to reapply until two years after the date of your most recent application. For example, if you reject a second full offer in the Fiscal Year 2000 Easement Program, you will be allowed to reapply for the Fiscal Year 2002 Easement Program (with an application deadline of July 1, 2001).

You may be made an "insufficient funds offer." This occurs when the balance of available funds is not enough to make a full offer. If you accept an insufficient funds offer, you must accept it on the terms as stated (in other words, the offer cannot be increased). If you reject it, you would be eligible to compete if any additional offers were to be made based on rejections or, if your insufficient funds offer was made in Round One, in the subsequent Round Two offers; however, there is no guarantee of another offer. If you do not receive a full offer by the end of the program cycle, you may reapply for the next available program cycle.

Once you have signed and returned the option contract, it must be signed by the Secretary of Agriculture and then the Foundation submits it to the Maryland Department of General Services to be scheduled for Board of Public Works review and approval.

All offers, once accepted, must be approved by the Maryland Board of Public Works.

If the offer is rejected by the Maryland Board of Public Works (a very rare occurrence), the offer is rescinded and the process ends. If the offer is approved, the contract is returned to the Department of General Services.

STAGE EIGHT: SETTLEMENT

A title search is conducted. The Assistant Attorney General assigned to your case reviews the title search report to determine that the property's title is clear, the property description is accurate, and the acreage can be verified.

You will be contacted by the Foundation about any problems that arise at this stage of the easement acquisition process. Any title, subordination, and/or acreage issues must be resolved before settlement can proceed. If the acreage of the property in which the Foundation is acquiring interest cannot be verified from existing property descriptions, you may need to have the property surveyed at your expense for the settlement to proceed.

When the title is clear title and the acreage is verified, settlement papers are delivered to the title company, the settlement check is ordered, and the landowner is notified by mail of the readiness to settle.

A settlement date is scheduled by the title company and the landowner. The settlement check is sent to the title company. Settlement takes place. The deed of easement signed at settlement is recorded in the land records of your county.

If the settlement involves installment payments (the "installment payments option"), the installment funds are invested by the State at the interest rate in effect on the day of deposit. Each installment includes interest minus one-quarter of one percent of the interest earned.

If the settlement involves an "installment purchase agreement," the agreement(s) will be prepared by the Maryland Agriculture and Resource Based Industry Development Corporation (MARBIDCO) and provided for signature at settlement with an opinion of counsel on the tax-exempt status of the installment purchase agreement instrument. The semi-annual interest payments and the payment of the principal at the end of the agreement will be secured by the purchase by MARBIDCO of State and Local Government Series of Treasuries at the interest rate in effect at settlement. MARBIDCO will make payments directly to easement sellers through a contracted paying agent.

For Foundation easements taken to settlement by a county's installment purchase agreement program, please consult with your county's program administrator for settlement information.

This fact sheet is a public document and is provided for general information only. If you have a question about a specific law, regulation, or provision of the district agreement, option contract, or deed of easement, please consult legal counsel.

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<http://www.malpf.info/fact02.pdf>